

The dynamics that underpin the overrepresentation of female young offenders in custody
for administrative offences in British Columbia

By Thais Costa Rabelo Amorim
LL.B, Faculdade de Direito Milton Campos, 2008

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Supervisory Committee

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Abstract

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This study used thematic analysis to investigate how youth court professionals, namely Youth Court Judges, Youth Probation Officers, and Youth Police Officers, make decisions to incarcerate young females for administrative offences. Sixteen professionals from Lower Vancouver Island shared their experiences through one-on-one interviews, which were then thematically analysed. This method of analysis shed light on four major themes across the professional groups: i) The Youth Criminal Justice Act (2002); ii) Decision-making; iii) The decline in crime; and iv) Services for adjudicated youth. Findings were discussed in relation to the literature and the resources currently available in the community.

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Dedication

I lovingly dedicate this thesis to my parents, sister, and vó TT.

Chapter One: Introduction

For more than twenty years those who work with females in the youth justice system have been reporting that these girls come with many more burdens than their male counterparts and as a consequence, these girls are more difficult and more demanding to deal with (Corrado, Odgers & Cohen, 2000; Dean, 2005; Schissel, 2010). In British Columbia (B.C.), as in the rest of Canada, Aboriginal youth in general and Aboriginal females in particular, are disproportionately represented in all areas of the youth justice system (Calvery, Cotter & Halla, 2010), especially the youth custody centres. As well, female youth and especially Aboriginal female youth make up the largest number of youth who are jailed for “administrative offenses,” that is, breaches of bail or probation orders, e.g. ignoring curfews, skipping school, not attending mandated programs, and not complying with probation orders or conditions of bail (Calvery, Cotter, Halla, 2010).

At the time this research project was proposed (December, 2011), the ratio for charges for females to males was nearing about 1:3.5 for all cases (Taylor-Butts & Bressan, 2006) and that males accounted for the majority of youth in custody, although, the proportions within the female group were heavily skewed with respect to Aboriginal females. Also at that time, in Canada, Aboriginal female youth represented 44% of all female youth sentenced to custody, although they made up only about 4.5% of the under 19 population. In British Columbia, a province that takes pride in having one of the lowest youth incarceration rates in Canada, 58% of girls custody centres were Aboriginal while only 8 % of the B.C. youth population is Aboriginal (Sharpe & Gelsthorpe, 2009).

During the time that the study was being conducted, overall, the proportion of

administrative offences (as compared to other offences) has steadily increased for both boys and girls in B.C., a trend that began with the introduction of the Youth Criminal Justice Act (2002). In 2002, 7.8% of all youth charges in B.C. were for administrative offences. In 2006, 11.5% of all youth charges in B.C. were for administrative offences. Most recently, in 2011, 16% of youth charges were for administrative offences. In that year, 18.6% of all girls charged in B.C. were charged with administrative offences; 15.4% of all boys charged were charged in relation to administrative offences. This is significantly different than 2006: In 2006, 8.3% of all girls charged and 7.8 of all boys charged were charged with administrative offences.

This trend mirrors the adult charges in B.C. for the same period, and nothing indicates that B.C. is different in this respect from other provinces. Still, these changes must be understood as relating to an overall decrease in violent (-44%) and property charges (-72%), and a relative stable number of administrative charges (-9%). For example, while there were 3,010 youth charged for violent crimes in 2002, only 1,691 youth were charged for violent crime in 2011 – the biggest decreases being seen in the categories of assault level 1 and assault level 2. Furthermore, charges for property offences have dropped from 5,484 in 2002 to 1,538 in 2011 – with all subcategories reflecting a significant decrease in charges. For these reasons, a relatively stable number of administrative charges mean that these charges now occupy a larger proportion of charges as compared to a decade ago.

In 2011, the most common charge for boys was related to the administration of justice, followed by possession of cannabis, level 1 assault, and then theft under \$5000. During the same year, the most common charge for girls was theft under

\$5000, followed by charges relating to administration of justice, and then level 1 assault.

Unfortunately, if the consequence of an administrative charge is time spent in custody, girls, many of whom are not there because they initially committed a serious violent offense but rather, because of theft and administrative breaches, maybe introduced to serious violent (often male) offenders and to a peer group that reinforces a criminal career path. It is therefore thought by some scholars, especially those in the United States, that preventing the ongoing engagement in crime and the attendant psychosocial and community issues by keeping young people out of jail and away from the opportunity to become a part of a criminalized peer group and subculture makes good fiscal and social policy sense (Acoca & Raeder, 1999; Beckett, 2001; Wilhelm & Turner, 2002; Latimer, 2011). Therefore, an investigation of the dynamics that underpin the overrepresentation of females, especially Aboriginal females, among youth who are being jailed for administrative offences was undertaken.

It was noted from the outset, that while researchers have noted the high incidence levels of administrative charges in Canada and in B.C., in-depth research into reasoning and decision making of those who work with administrative charges is missing. Therefore, it was argued that a more in-depth understanding of the use of administrative charges and of the decision making of those who work with administrative charges could better inform policy and practice, the public and researchers who critically analyse youth justice law and practice.

Chapter Two: Literature Review

Probation and Administrative Offences in the Youth Criminal Justice Act

The first segment of this thesis comprises a thorough review of the literature on the use of administrative charges. Reviewing literature about the use of administrative charges and offences in Canada was quite challenging because relatively little has been written about the topic, especially since the implementation of the Youth Criminal Justice Act (2002). Considering this limitation, this review explores academic papers written during the past two decades, papers that aim to understand probation practices in relation to the Canadian legislation. In order to conduct this review, key word searches were undertaken using the terms: probation, administrative offences, breach of probation, young offenders, female young offenders, sentencing, Youth Criminal Justice Act (2002), Juvenile Delinquents Act (1908), Young Offenders Act (1984), youth crime, female crime, probation officers, and discretion. These searches were carried out with the aid of the University of Victoria's library physical and digital database, keyword search engines, and databases including Google Scholar, Eric, JSTOR, Legal Trac, Irwin Law Collection, and Lexis Nexis Academic. All Abstracts that the search produced were screened based on the criteria that they contain research and commentary about the use of administrative offences. Over 150 quantitative, qualitative papers, and theoretical reviews were selected and are reviewed here.

History of Youth Probation in Canada

As Bernard (1992) informs us, crime and the state's response to it can only be fully comprehended when the historical contexts of what is identified as crime are

understood. More specifically, Latimer (2011) explains that an analysis of the history of youth justice in Canada is key to the understanding of how youth sentences and probation orders came to be what they currently are. For this reason, this review addresses how community values and research based scientific knowledge have evolved since before the implementation of the Juvenile Delinquents Act (1908) and how these changes have influenced our understanding of children, youth, crime, punishment and consequently, our laws and their applications.

It has been observed that the first years of the twentieth century were crucial to the evolution of criminal legislation across the Western world (Garland, 1985; Trepanier, 1999). During this period, “punishment was shifted from the offence to the offender himself/herself, with the aim of reforming him/her, both in his/her interest and that of the community, and therefore, the State was no longer “present solely as an agent of punishment; it was to be seen as benevolent, helping to save the citizens from vice and crime” (Trepanier, 1999, p. 41). Moreover, “legal thinkers ... [had] reasoned that children and young persons [had to be treated] differently than adults for criminal conduct by virtue of their lesser maturity and lesser capacity to appreciate the nature and consequences of their acts, and to distinguish between right and wrong” (Davis-Barron, 2009, p. 2; Sanders, 1970). These shifts prompted the creation of youth courts and legislation such as the British Children’s Act (1908), the Canadian Juvenile Delinquents Act (1908); the French *Loi sur les Tribunaux por Enfants et Adolescents et sur la Liberté Surveillée* (1912), and the *Loi sur la Protection de l’Enfance* in Belgium (1912) that aimed to specifically address youth delinquency.

In Canada, young offenders were tried and sentenced as adults until 1857. It was

then that the Parliament of the Province of Canada recognized the “ special status for juveniles” (Griffiths & Verdun-Jones, 1989; Pulis, 2003; Trepanier, 1999, p. 42). That is, from that time forward, “every juvenile delinquent [had to] be treated, not as a criminal, but as a misdirected and misguided child” (Section 38 of the Juvenile Delinquents Act). With the advent of the 1867 Constitution of Canada, the power to legislate was divided between the provincial legislatures and the federal parliament such that the federal legislative branch of Canada legislated criminal procedure and criminal law, and the provinces legislated matters of child welfare and protection, while also having jurisdiction over “most of the judicial system, court services, police, prisons, and institutions for juveniles” (Trepanier, 1999, p. 42). For the next several decades following this change in attitude and legislation, many provincial institutions for juvenile offenders (reform schools) and deserted and maltreated children (industrial schools) were created (Bala & Anand, 2009; Davis-Barron, 2009; Leon, 1977; Trepanier, 1999), and the understanding that “children in need and children in need of punishment” (Davis-Barron, 2009) both required assistance and care was consolidated.

The Juvenile Delinquents Act. In 1908, the notion of care described above was embodied in the new federal law for youth crime, the Juvenile Delinquents Act (1908) (Department of Justice Canada, 2012a; Griffiths & Verdun-Jones, 1989; Scott, 1914; Trepanier, 1999). Under this legislation, “the court [was] placed in a position by reason of prerogative of the Crown to act as a supreme parent of children, and [had to] exercise that jurisdiction in the manner in which wise, affectionate, and careful parent would act for the welfare of the child” (Bala, 1997; Pulis, 2003; R v. Gyngall, 1893 cited by Davis-Barron, 2009, p. 39). In this positive and welfare-oriented approach (Bala & Anand, 2009),

servants of the legal system had to focus on assisting, guiding, and supervising the youth and their parents (Anand, 1999; Department of Justice Canada, 2012a; Davis-Barron, 2009; Latimer, 2011; Scott, 1914; Trepanier, 1999;).

The Juvenile Delinquents Act (1908), with its enshrined parental approach to youth crime, utilized a broad definition of delinquency, imposing sanctions not only on children and youths' criminal acts but also on non-criminal, "unmoral" behaviours (Chesney-Lind & Pasko, 2004a; Latimer, 2011; Thomas, 2009). That is, Section 2(1) of the Act defined juvenile delinquents as,

...any child who violate[d] any provision of the Criminal Code or of any federal or provincial statute, or of any by-law or ordinance of any municipality, or who [was] guilty of sexual immorality or any similar form of vice, or who [was liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or provincial statute (Juvenile Delinquents Act).

As Thomas (2009) explains, "habitual truancy, curfew law violations, repeated running away, underage liquor law violations, tobacco offences, and ungovernability or incorrigibility in failing to respond to the reasonable requests of parents," were considered vices and named from then on status offences (p. 771). According to Chesney-Lind and Pasko (2004a), "although not technically crimes, these offences [could] result in a youth's arrest and involvement in the criminal justice system" (p. 10).

Further, throughout the 20th century, the interpretation of laws pertaining to youth reflected dominant sociocultural ideals of femininity and masculinity. Accordingly, young females were characterized as naturally fragile, obedient, passive, and chaste, while young males were expected to be brave, aggressive, and strong. For this reason, "girls were charged with acts of sexuality, immorality or vice more often

than boys” (Bala & Anand, 2009; Bell, 1999; Chesney-Lind & Pasko, 2004a, ; Dean, 2005; Pulis, 2003, p. 4). Judges agreed that charges and incarceration for immoral acts was for the young females own protection and safety (Andrew & Cohn, 1974; Chesney-Lind, 2004a, Dean, 2005). For these professionals, “such behaviours suggested to the courts that a child was in danger of becoming involved in criminal activity and that intervention was therefore necessary to try and divert them from the road to a criminal lifestyle” (Dean, 2005, p. 5). Dean (2005) notes that the notions of safety and protection refer to “morality rather than physical or emotional well-being” (p. 7) of the young female. That is, even in situations where the physical and emotional state of youth were being violated, for example a young female was being sexually abused by an older man, the justice system seemed less concerned “with the threat of male violence but instead focused primarily on the immorality of the young woman” (Dean, 2005, p. 7).

Moreover, Youth Court Judges’ decisions to charge females for status offences resembled the concerns of many parents, who “[felt uncomfortable tampering with existing traditions and [did] not want to risk their children becoming misfits” (Katz, 1979, p. 24). As an American judge affirmed in a study conducted by Rogers in 1972, “why most girls I commit are for status offences? I figure if a girl is about to get pregnant, we’ll keep her until she’s 16 and the Aid to Dependent Children will pick her up” (p. 227). As Orenstein (1994) observes, it was believed that “sex [ruined] girls; and it [enhanced] boys” (p. 57). According to Chesney-Lind and Pasko (2004a), “this double standard of juvenile justice also appeared in” many countries (p. 62). For example, Australia, the United States, England, Portugal, and Spain also reported an overrepresentation of young females in custody for status offences (Cain, 1989;

Hancock, 1981; May, 1977; Smart, 1976).

Moreover, Bala and Anand (2009) explain with reference to status offences and administrative charges, especially during most of the twentieth century, “in practice, th[ese] offence[s] [were] used almost exclusively against girls, typically those from socially disadvantaged backgrounds and racial minorities” (p. 9; Barnhorst, 1978; Dean, 2005; Strange, 1995), largely with the intention of correcting their unseemly behaviour. That is, these charges aimed to make female young offenders conform to

the picture of womanhood upheld by the courts and promoted to the largely poor, racialized young women they dealt with, [this picture was] shaped by values and standards that were white, middle or upper-class, and that positioned monogamous heterosexual marriage and female domesticity and motherhood as key achievements for young women (Dean, 2005, p. 6).

Regarding race, Dean (2005) explains that

First Nations young women were often perceived to be at significant ‘risk’ because of what was believed by the courts to be a lack of discipline in Native homes, and also because of the lingering effects of colonialism – namely higher rates of alcoholism, violence, and criminalization among First Nations people (p. 7).

Dean (2005) also suggests that reformatory and rehabilitative efforts towards First Nations girls, which consisted of incarceration and commitment to reform schools, reinforced the impacts of colonization and, consequently, contributed to perpetuation of the cycle of crime, drug and alcohol consumption, physical and emotional abuse.

Another innovation of the Juvenile Delinquents Act (1908) was the introduction of a specialized court system for children and youth who were “under the age of sixteen, or such other age as may be directed in any province pursuant to subsection (2)” (Section 2). This aimed to fulfill the juvenile justice system’s protection and parental

role. The legislation also established that “trials of juveniles [had to] be private and held separately from those of adults” (Trepanier, 1999, p. 43; Scott, 1914).

Thirdly, the Act gave complete discretion to Judges with regard to termination of sentences and services rather than working within the boundaries of the principle of proportionality used in adult court with the intention to examine the “proper relations between crime and punishment” (Bala & Anand, 2009; Beaulieu, 1991; Hermeren, 2012, p. 373; Kirchengast, 2010; Scott, 1914; Trepanier, 1999). According to Reid-MacNevin (1991), setting aside the principle of proportionality meant that there was little-to-no relationship prescribed in law between the offence and the consequence imposed. This meant that the length of the sentences depended solely on the judicial system’s interpretation of the psychosocial needs of the offenders (Bala & Anand, 2009; Latimer, 2011).

Lastly, the most important change introduced by the Juvenile Delinquents Act (1908) was the inclusion of probation as a sentencing option (Davis-Barron, 2009; Latimer, 2011; Scott, 1914; Trepanier, 1999). According to Pulis (2003), “probation became a viable sentencing option for Youth Court Judges who favoured rehabilitative rather than punitive measures” (p. 3). This disposition served as a way to assist, supervise, and hold youth accountable, without placing them in reform schools (Davis-Barron, 2009; Leon, 1977; Latimer, 2011; Trepanier, 1999). Since the Juvenile Delinquents Act (1908) associated delinquent behaviour “with factors external to the offender, over which the latter had no control; such as genetic factors, family environment, and social surroundings” (Trepanier, 1999, p. 51), Section 31 ruled that probation officers were “to seek the input and advice of trained professionals where

necessary, such as psychologists and psychiatrists, to represent the interests of the child when the case was heard, to provide information and assistance to the Judge, as required, and to take charge of any child, before and after trial, as directed by the court” (Davis-Barron, 2009, p. 43; Bell, 1999; Pulis, 2003).

The Canadian Charter of Rights and Freedoms (1982) and The Young Offenders Act (1984). By the 1960s, the increased number of trained lawyers and Judges present in youth court challenged “the informality and lack of legal rights for youth” (Bala, 2003, p. 9) in the Juvenile Delinquents Act (1908). As Caputo & Vallee (2010) explain there were several issues that needed to be addressed in the law. According to these scholars,

criticism about the existing juvenile justice legislation in Canada revolved around several issues including:

- i. the inability of the legislation to either prevent crime or rehabilitate offenders;
- ii. the lack of due process safeguards;
- iii. the over-reliance on indeterminate sentences;
- iv. the inconsistent application of the law across the country;
- v. the variable maximum ages that existed across the country (Caputo & Vallee, 2010).

However, professionals and scholars’ biggest concern was the legislation’s “highly discretionary regime, which gave judges, police, and juvenile correctional officials broad powers to deal with individual youths in accordance with their perceptions about each child’s best interests” (Bala, 2003, p. 9). The definition of best interest of the child was not standardized or present in the Act, which allowed for decisions to “reflect the values and biases of individual officials” (Bala, 2003, p. 9).

The Act’s welfare-oriented philosophy was also contested. The importance of the promotion of the wellbeing of children and youth was unquestionable. However, as

Bala (2003) explains, “critics of the Juvenile Delinquents Act argued that the protection of the public and accountability of offenders [were] as important as rehabilitation [of young offenders]. . . . In fact, concerns of social protection and accountability were often reflected in sentencing decisions under the Act” (p. 10). The realization that the youth’s interests were not the only factor taken into consideration in sentences shed light on the need for legislation that could accommodate the protection of society and the offenders’ accountability within youth justice’s philosophy.

Although legal reform was eminent since late 1960s, youth justice was not the federal government’s greatest concern. According to Bala (2003), the spark that ignited the change in youth justice legislation did not happen until 1982. That is, “[the] strong impetus to federal action was the constitutional entrenchment of the Canadian Charter of Rights and Freedoms in 1982” (Bala, 2003, p. 11; Bala & Anand, 2009; Department of Justice Canada, 2012b). This amendment (1982) aimed to “protect, among other things, legal rights such as the right to life, liberty, and security of the person” (Department of Justice Canada, 2012b).

Two years later, in 1984, The Young Offenders Act (1984) came into force in order to address most of the issues previously enumerated, above all, it focused on the disparities between the Juvenile Delinquents Act (1908) and the legal rights of juveniles afforded to Canadians in the Charter (1982) (Bala, 1997, 2003, 2008; Department of Justice Canada, 2012b; Latimer, 2011). That is, the Young Offenders Act (1984) “[provided] young people with the same basic rights and freedoms before the law as those enjoyed by adults, such as the right to legal counsel and the right to appeal a conviction” (Bala & Anand, 2009; Department of Justice Canada, 2012b; Pulis, 2003).

Still, the Young Offenders Act (1984) retained some features of the Juvenile Delinquents Act's (1908) welfare-oriented approach along side the new elements of the legally protected rights-based approach (Latimer, 2011). As Bala (1997) explains:

The Young Offenders Act (1984) [balanced] a concern for the special needs of youth with the importance of protection of the public; in particular, with regard to sentencing issues, it [provided] for determinate (fixed) custodial dispositions, subject to early judicially controlled released (p. 9; Bala & Anand, 2009; Pulis, 2003).

In practical terms, the Young Offenders Act (1984) was also innovative in providing a wider range of dispositions. These dispositions emulated those available in the Criminal Code (1955). As Caputo and Vallee (2010) explain, since the implementation of the Act,

the youth court was required to consider pre-disposition reports, representations, and any other relevant information prior to sentencing, especially when considering a custodial disposition. The dispositions included: forfeiture, prohibitions, fines (up to a maximum of \$1,000), compensation, restitutions, community service (to a maximum of 240 hours), probation, treatment, and custody up to a maximum of three years (The Young Offenders Act).

Moreover, "as of 1984 the basis of any judicial action against Canadian youths ages 12 to 17 [was] an offence listed in the Criminal Code and related federal statutes" (Reitsma-Street, 1993, p. 438). That is, offences in the Juvenile Delinquents Act that were particular to youth were decriminalized. This meant that youth could no longer be charged for acts of truancy, sexuality, or immorality alone (Bala, 2003; Davis-Barron, 2009; Reitsma-Street, 1993), increasing the "hope that the sexism and racism so strongly influencing the sentencing of young women under the [Juvenile Delinquents Act](1908) would not continue under the new act" (Dean, 2005, p. 8). Instead, the Young Offenders Act (1984) replaced the status offences for the 'failure to comply with

a disposition' offence, in which a convicted youth sentenced with probation, bail, or other community-based disposition could be brought back to court for not complying with probation conditions that included, but were not limited to what was previously known as status offences (Latimer, 2011; Pulis, 2003; Reitsma-Street, 1993; Trepanier, 1999). The legislation determines that:

Conditional supervision

26.2 (1) The provincial director of the province in which a young person is held in custody pursuant to a disposition made under paragraph 20(1)(k.1) or, where applicable, an order made under subsection 26.1(1), shall cause the young person to be brought before the youth court at least one month prior to the expiration of the period of custody and the court shall, after affording the young person an opportunity to be heard, by order, set the conditions of the young person's conditional supervision.

(2) In setting conditions for the purposes of subsection (1), the youth court shall include in the order the following conditions, namely, that the young person

- (a) keep the peace and be of good behaviour;
- (b) appear before the youth court when required by the court to do so;
- (c) report to the provincial director immediately on release, and thereafter be under the supervision of the provincial director or a person designated by the youth court;
- (d) inform the provincial director immediately on being arrested or questioned by the police;
- (e) report to the police, or any named individual, as instructed by the provincial director;
- (f) advise the provincial director of the young person's address of residence on release and after release report immediately to the clerk of the youth court or the provincial director any change
 - (i) in that address,
 - (ii) in the young person's normal occupation, including employment, vocational or educational training and volunteer work,
 - (iii) in the young person's family or financial situation, and
 - (iv) that may reasonably be expected to affect the young person's ability to comply with the conditions of the order;
- (g) not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized by the order; and
- (h) comply with such reasonable instructions as the provincial director considers necessary in respect of any condition of the conditional supervision in order to prevent a breach of that condition or to protect society.

Other conditions

(3) In setting conditions for the purposes of subsection (1), the youth court may include in the order the following conditions, namely, that the young person

- (a) on release, travel directly to the young person's place of residence, or to such other place as is noted in the order;
- (b) make reasonable efforts to obtain and maintain suitable employment;
- (c) attend school or such other place of learning, training or recreation as is appropriate, if the court is satisfied that a suitable program is available for the young person at such a place;
- (d) reside with a parent, or such other adult as the court considers appropriate, who is willing to provide for the care and maintenance of the young person;
- (e) reside in such place as the provincial director may specify;
- (f) remain within the territorial jurisdiction of one or more courts named in the order; and
- (g) comply with such other reasonable conditions set out in the order as the court considers desirable, including conditions for securing the good conduct of the young person and for preventing the commission by the young person of other offences.

Section 26 ruled that, “a person who is subject to a disposition made under paragraphs 20(1)(b) to (g) or paragraph 20(1)(j) or (l) and who wilfully fails or refuses to comply with that order is guilty of an offence punishable on summary conviction.” As Latimer (2011) clarifies, this section not only let “a probation officer [charge] a youth with a new offence if he or she did not abide with the terms and conditions of their probation sentence” (p. 16), but also allowed Judges to imprison youth for first and/or posterior non-compliance offences (Bala, 1997; Latimer, 2011). In the United States and in Canada, young females are more likely than their male counterparts to be sentenced to jail for failure to comply; that is, administrative offenses (Dean, 2005). According to Dean (2005),

the tendency to incarcerate young women for non-compliance charges [was] related both to our society's lower tolerance for 'disobedient' females and our strong desire to control and limit behaviour or freedom of young women 'for their own good' or for their protection. It has also been argued that non-compliance charges [were] used to control young women's sexuality, confining them to prison cells in an effort to maintain or reinstate the morality of those girls who [were] suspected of promiscuity (p. 3).

These shifts in the law resulted in the overuse of the court system, jail, and police intake (Table 1) (Bala, 2003; Department of Justice Canada, 2012b; Latimer, 2011; Pulis, 2003). This meant that not only the police were diverting fewer cases, but also Judges, Crown Counsel, and probation officers were opting more frequently for incarceration (Bala & Anand, 2009; Carrington, 1999). As the Department of Justice Canada (2012b) noted, “a related concern about the experience under the [Young Offenders Act] was the very high use of custody as a sentence, particularly for less serious and non-violent offences and for young persons who are not serious repeat offenders” (Purpose and Principles of Sentencing).

More specifically, as statistical reports repeatedly showed, during the period the act was in force:

- The youth incarceration rate [was] higher than the adult incarceration rate in Canada.
- Provinces [varied] considerably in their youth incarceration rates.
- For eight of the nine most common offences in youth court, youth receive[d] longer periods of custody than adults who receive[d] custody for the same offence; in addition, youth [spent] more time in custody than adults with similar sentences due to the adult conditional release provisions.
- About 80% of custodial sentences [were] for non-violent offences.
- Almost half of the cases resulting in a custodial sentence [fell] into four categories of less serious offences: theft under \$5000 (e.g., shoplifting); possession of stolen property; failure to appear; and failure to comply with a disposition (e.g., breach of a condition of probation) (Department of Justice Canada, 2012b) (See Table 2).

As a result of the law-enshrined requirements that made overuse of custody possible, Canada, when compared to other Western industrialized states, appeared to be incarcerating young people, especially girls, at rates far higher than all other states (Figure 1) (Artz et al., 2012; Dean, 2005; Department of Justice Canada, 2012b). The

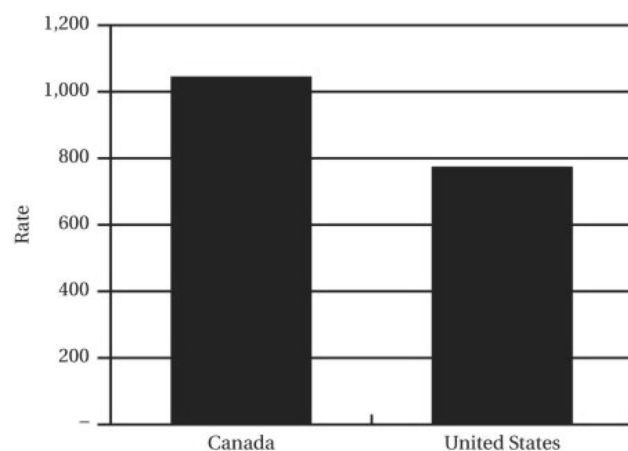
Canadian propensity to over-incarcerate was duly noted and became the basis for changes in law.

Table 1. Administration of justice offences: percent sentenced to custody (Canada 1998-9)

	<i>Total found guilty</i>	<i>Total sent to custody</i>	<i>Percent (of guilty) that are sentenced to custody</i>
Failure to comply with disposition (e.g. breach of probation)	10,547	4,979	47%
Failure to appear	6,946	2,822	41%

Source: Statistics Canada (2000). Youth Court Statistics 1998-9. Ottawa: Canadian Centre for Justice Statistics.

Figure 1. The overall rate (per 100,000 youth age 12 to 17) of youth court judges imposing custody in Canada and the US (1997)



Source: Statistics Canada (2000). Youth Court Statistics 1997-98. Ottawa: Canadian Centre for Justice Statistics. Snyder, H., Finnegan, T., Stahl, A. and Poole, R. (1999). Easy Access to Juvenile Court Statistics (1988-97). Pittsburgh, PA: National Center for Juvenile Justice.

Table 2. Majority of cases sentenced to custody (Canada 1998-9)

	<i>Total number of cases</i>	<i>Percent</i>
Theft under \$5,000	2,289	9%
Possession stolen of property	1,522	6%
Failure to appear	2,822	11%
Failure to comply with a disposition	4,979	20%
Subtotal	11,612	46%
Other thefts	1,168	5%
Mischief/damage	788	3%
Break and enter	3,415	14%
Minor assault	1,691	7%
Subtotal	7,062	29%
Total: Sum of eight offences	18,674	75%
All cases	25,169	100%

Source: Statistics Canada (2000). Youth Court Statistics 1998-9. Ottawa: Canadian Centre for Justice Statistics

The Youth Criminal Justice Act (2002). Since its inception, the Young Offenders Act (1984) was subjected to criticism. While it was in force, it was amended three times. First, in 1986, the amendment aimed to address “concerns from the police and the provinces, which as a result, made it easier to charge young persons with breach of probation and to permit the publication of information concerning dangerous young persons at large in the community” (Bala 2003; Davis-Barron, 2009, p. 60).

The second set of amendments passed in 1992, in order to raise youth court

maximum sentences for murder cases to five years less a day. It also “[amended] the transfer provisions so that the paramount consideration for transferring a young person to adult court was ‘protection of the public’” (Davis-Barron, 2009, p. 61). In 1995, the last amendment passed bringing to bear several changes. The most relevant of them “created the presumption that 16- and 17-year-old young persons charged with the most serious offences (murder, attempted murder, manslaughter, and aggravated sexual assault) would be tried in adult court” (Davis-Barron, 2009, p. 61). This amendment also increased jail time sentences to ten years for first-degree murderers (Davis-Barron, 2009).

Despite these changes, there were still concerns about the efficiency of the Young Offenders Act to protect the public from violent young offenders. The Act’s leniency, the lack of victim participation in court processes, and “whether [the Act] was the best juvenile justice model for Canada” (Davis-Barron, 2009, p. 62) were also issues of greatest concern. These recurrent issues led “Federal, provincial and territorial Ministers responsible for justice (excepting Quebec, which had just completed its own review of the Young Offenders Act) to review the Act” (Davis-Barron, 2009, p. 62). The results of the review were then analysed by the Standing Committee of on Justice and Legal Affairs and released as a report called *Renewing Youth Justice* (Bala, 2003; John Howard Society of Alberta, 1997). *Renewing Youth Justice* had 14 recommendations for amendments to the Young Offenders Act.

Since there were so many changes to be implemented, the federal government opted to implement a new Act, which by “[introducing] an entirely new youth justice regime, [signalled] to the public and to criminal justice participants that significant

change was afoot” (Bala, 2005; Davis-Barron, 2009, p. 63). In 2002, Bill C-7, the Youth Criminal Justice Act (2002), was passed into law in the House of Commons. It aimed to resolve issues of the Young Offenders Act (1984), and included the following acknowledgements:

- the system lack[ed] a clear and coherent youth justice philosophy;
- incarceration [was] overused – Canada [had] the highest youth incarceration rate in the Western world, including the United States (Cheney-Lind, 2005);
- the courts [were] overused for minor cases that [could have been] dealt with better outside the courts;
- the system [did] not make a clear distinction between serious violent offences and less serious offences;
- sentencing decisions by the courts [had] resulted in disparities and unfairness, complexity and delay (Department of Justice Canada, 2012c, The need for new youth justice legislation).

Section 3 of the Youth Criminal Justice Act (2002) attempted to provide an updated philosophical framework for the interpretation of the law and its principles, especially those regarding sentencing. This section enumerated prevention of crime by understanding and addressing the circumstances of youth criminal behaviour (physical, psychological, and emotional disturbances; education and/or employment situation; level of parental and community support; substance abuse, low income); rehabilitation and reintegration of youth into their communities; application of meaningful disciplinary actions; and safety of the public as its main goals (Bala, 2003; Becroft & Thompson, 2006; Davis-Barron, 2009; Latimer, 2011). However, even though the Declaration of Principle clearly defined the intents of the Act, it did not establish its fundamental principle (Davis-Barron, 2009). According to Latimer (2011), this means that at every level of the justice system, those whose roles and responsibilities are defined by that system (Police Officers, Crown Counsel,

probation officers and Judges) have the discretion to decide which principles are more important and relevant to each specific case.

Still, while discretion was retained, the overuse of custody was addressed. Section 39 of the Youth Criminal Justice Act (2002) imposed limitations on the use of custody (Barnhorst, 2004; Davis-Barron, 2009; Department of Justice Canada, 2012c; Latimer, 2011; Latimer & Verbrugge, 2004). Since the implementation of the Act, custody can only be used if the offender:

- (a) had attempted or caused bodily harm;
- (b) had repeatedly failed to comply with non-custodial sentences;
- (c) had committed a summary offence for which an adult could be sent to custody for a term of more than two years; and,
- (d) exceptionally, when the offender has committed a summary offence in which the imposition of a custodial sentence would be consistent with the sentencing principles of Section 38.

Section 39(5) added that custody must not be used as a social service measure (Dean, 2005). As Latimer (2011) explains, probation officers cannot base their decisions to advise Judges to send youth to custody based on the “social-demographic characteristics of youth (e.g. psychosocial needs)” (p. 20). That is, unlike what was possible via sentencing under the Young Offenders Act (1984), custodial sentences can no longer be used as a way to accelerate youth’s, especially female youth’s (Dean, 2005), access to child protection and mental health services (Bala & Anand, 2009; Department of Justice Canada, 2003; Latimer, 2011). However, it has been observed that “cutbacks to the B.C. Ministry of Children and Family Development [have resulted] in the [continued] use [of] custody to deal with social problems faced by youth” (Dean, 2005, p. 9)

Dean (2005) notes that the recent closure of youth jails due to the low number of teenage incarcerations is evidence of the success of Youth Criminal Justice Act (2002) in

diminishing the use of custody. Nevertheless, she argues that, “while the overall numbers of youth being sentenced to prison may be decreasing, a corresponding increase in funding for supportive youth programming in communities has not been forthcoming” (p. 9). This means that, even though the law encourages the use of community-based resources, there are “fewer and fewer community options [for Judges] to choose from” (Dean, 2005, p. 9).

In order to address both the need to decrease the number of minor cases dealt with in court and to respond to such cases in a more effective and timely manner the Youth Criminal Justice Act (2002) introduced the extrajudicial measures and the extrajudicial sanctions (Davis-Barron, 2009; Doob & Cesaroni, 2004; Doob & Sprott, 2004, 2005; Latimer, 2011; Latimer & Verbrugge, 2004). These dispositions replaced the non-judicial ways of addressing less serious offenses known as alternative measures in the Young Offenders Act (1984).

Extrajudicial measures encompass any measures appropriate for addressing the needs of youth who potentially committed less serious offences (Bala, 2003; Davis-Barron, 2009). Extrajudicial sanctions are more severe “program[s] to deal with youth who have committed offences outside the formal court system. ... Some extrajudicial sanction programs operate pre-charge and accept police referrals of youth believed to have committed offences but who are not charged, while other programs are post-charge and accept referrals from the police or Crown of youth who have been charged” (Bala, 2003, p. 583).

Moving on to the differentiation between serious violent offences and less serious offences, Section 2(1) of the Youth Criminal Justice Act (2002) defines serious

violent offences as those offences “in the commission of which a young person causes or attempts to cause serious bodily harm.” Bala (2003) explains that a youth who commits three serious violent offences has a strong chance of being sentenced accordingly to the adult Criminal Code. Unlike serious violent offences, less serious offences are not defined in the Act. However, the literature shows that they sit at opposite end of the seriousness spectrum (Bala, 2003; Davis-Barron, 2009; Latimer, 2011). Less serious offences do not involve “any hurt or injury to a person that interferes with [his/her] health or comfort” (NormStanford, 2012). For these crimes, there is a presumption that young offenders without previous involvement with the system should be taken care of by the means of extrajudicial measures, and even youth with a record are often dealt with by the use of non-custodial sentences (Bala, 2003). Speaking to sentencing disparities and unfairness, Part IV of the Youth Criminal Justice Act (2002) offers an explicit set of complex processes and principles to guide sentencing (Bala, 2003; Davis-Barron, 2009; Latimer, 2011). Through these principles, the Act emphasizes the importance of holding offenders accountable, preserving proportionality in sentencing, investing in community-based sanctions, and limiting the use of custody for youth (Bala, 2003; Latimer, 2011). Moreover, the use of proportionality (Section 38(2)(c)) and the restriction of the use of custodial sentences limit Judges’ sentencing discretion, and thereby help with avoiding the application of unequal and unfair sentences (Jones & Kerbs, 2007; Latimer, 2011).

Probation in the Youth Criminal Justice Act (2002)

Section 42(2)(k) of the Youth Criminal Justice Act (2002) established that:

42. (1) A youth justice court shall, before imposing a youth sentence, consider any recommendations submitted under section 41, any pre-sentence report, any

representations made by the parties to the proceedings or their counsel or agents and by the parents of the young person, and any other relevant information before the court.

42. (2) When a youth justice court finds a young person guilty of an offence and is imposing a youth sentence, the court shall, subject to this section, impose any one of the following sanctions or any number of them that are not inconsistent with each other and, if the offence is first degree murder or second degree murder within the meaning of section 231 of the Criminal Code, the court shall impose a sanction set out in paragraph (q) or subparagraph (r)(ii) or (iii) and may impose any other of the sanctions set out in this subsection that the court considers appropriate:

42. (2, k) place the young person on probation in accordance with sections 55 and 56 (conditions and other matters related to probation orders) for a specified period not exceeding two years.

What this section means is that when a youth is convicted of an offence, he/she may be sentenced to probation for up to two years. For the length of the sentence, the young offender must comply with a list of conditions crafted by the Judge, at the magistrates' discretion, with the assistance of Crown Counsel and probation officers (Bala & Anand, 2009). The terms of the probation order must be in accordance with Section 55 of the Act and the principle of proportionality laid out on Sections 3(1)(c) and 38(2)(c) (Bala & Anand, 2009).

Proportionality and appropriateness of probation terms. Where proportionality and appropriateness of conditions are concerned, “sentences must represent meaningful consequences for the young person, but this goal must be achieved and maintained within the limits of proportionate sentencing” (Pulis & Sprott, 2005, p. 711). Toh (2003) clarifies that the intention behind each condition in a probation sentence should be carefully examined to identify if there is a causal relationship between the term of the condition and the youth's criminal behaviour it aims to address. Moreover, for this author, “a realistic assessment should be made as to whether the young person will be

likely to comply with the condition[s]” (Toh, 2003, p. 4016). As in the Young Offenders Act (1984), under Section 137 of the Youth Criminal Justice Act (2002), non-compliance with one or more conditions leads to a new charge of failure to comply with a disposition (Bala, 2003; Bala & Anand, 2009; Davis-Barron, 2009; Pulis, 2003).

Breaches of probation are seen as lack of respect or an act of insubordination (Carrington & Schulenberg, 2003). According to Bala (2003), these acts are bound to happen, if terms or conditions that bear no relation to the offence are imposed. For example, a Judge, under recommendation of a probation officer, sets a 7:00 pm curfew for a youth who committed a theft under Can\$ 5,000 at 2:00 pm. Most criminologists agree that when such disconnection happens, Judges are setting youth up for failure (Bala, 2003, 2008; Bala & Anand, 2009; Bloomenfeld & Harris, 2012; Davis-Barron, 2009; Latimer, 2011; Latimer & Verbrugge, 2004; Toh, 2003). In addition, as Bala and Anand (2003) explain, unrealistic or non-related probation orders “can result in an escalating spiral of involvement in the legal system and, ultimately, in an inappropriate custodial sentence” (p. 531). The escalating spiral of involvement in the criminal justice system as an outcome of unrealistic probation orders, that is, probation orders that set up youth for failure, are of concern to many who research the youth justice system (Bala, 2003; Barnhorst, 2004; Best & Birzon, 1970; Bloomenfeld & Harris, 2012; Carrington & Schulenberg, 2003; Davis- Barron, 2009; Pulis, 2003; Toh, 2003).

Content of probation orders. Addressing the content of the probation orders, Bloomenfeld and Harris (2012) state that, “reference should be made to Section 55 for mandatory terms and optional terms that may be included in the order” (p. 4-40). It is imperative that Judges include the terms (a) ‘keep the peace and be of good behaviour’

and (b) ‘appear before the youth justice court when required by the court to do so’ in all probation orders. The return to court is a monitoring measure; that is, Judges request that youth appear in court to monitor their success or failure to comply with the conditions of the probation orders (Bala & Anand, 2009).

Judges have the faculty to add any of the conditions of Section 55(2). They are:

- (a) report to and be supervised by the provincial director or a person designated by the youth justice court;
- (b) notify the clerk of the youth justice court, the provincial director or the youth worker assigned to the case of any change of address or any change in the young person’s place of employment, education or training;
- (c) remain within the territorial jurisdiction of one or more courts named in the order;
- (d) make reasonable efforts to obtain and maintain suitable employment;
- (e) attend school or any other place of learning, training or recreation that is appropriate, if the youth justice court is satisfied that a suitable program for the young person is available there;
- (f) reside with a parent, or any other adult that the youth justice court considers appropriate, who is willing to provide for the care and maintenance of the young person;
- (g) reside at a place that the provincial director may specify;
- (h) comply with any other conditions set out in the order that the youth justice court considers appropriate, including conditions for securing the young person’s good conduct and for preventing the young person from repeating the offence or committing other offences; and
- (i) not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized by the order”.

As far as these conditions are concerned, “most judges determine the nature of the terms of the probation order, but they may delegate the details of the implementation to the probation officer” (Bala & Anand, 2009, p. 532; Latimer, 2011).

Probation Officer’s Discretionary Role. Researchers, such as Latimer (2011), Lin and Gratted (2008), Jones & Kerbs (2007) have given special attention to the exercise of discretion on the part of probation officers since the implementation of the Youth

Criminal Justice Act (2002). Whether these professionals assist Judges in the crafting of sentences through pre-sentence reports, make decisions about the execution of probation orders, or decide whether to lay breach of probations charges or not, the involvement of probations officers' has profound consequences for young offenders and, consequently, for society (Jones, 2004; Jones & Kerbs, 2007). As illustrated by Latimer (2011) and Jones and Kerbs (2007), their decisions have the potential to jeopardise public safety if their recommendations are too lenient and, on the individual level, limit someone's physical freedom if their recommendations are too harsh.

Jones and Kerbs (2007) suggest that factors such as “(a) differing philosophical orientations to criminal justice goals like rehabilitation versus retribution; (b) scholarly interpretations of the law; (c) formal organizational and/or community practices; and finally; (d) personal preferences” (p. 9), have an impact on probation officers decision-making. Lin and Gratted (2008) add that the following also play important roles: (a) specific attributes of the case and the offender; (b) organizational pressures on the professionals; and workers' understanding of offenders' communities. Latimer (2011) groups these factors into two broad categories: “(a) cultural factors such as agency rules and constraints; and (b) personal factors such as in individual biases and values” (p. 24).

Cultural factors. Latimer (2011) explains that cultural factors, especially agency and institutional subcultural factors, are directly implicated in how probation officers carry out their roles. For Latimer, agencies' values have an impact on how these officers of the court make decisions about the youth they work with. Some agencies focus on the rehabilitation of the offenders, while others concentrate their efforts on ensuring public safety.

These factors are associated with “the degree of adherence to actuarial justice discourse” (Latimer, 2011, p. 25). The various approaches used across jurisdictions can be described as five different models: 1) Some criminal legislations look at offenders through a needs-based lens (social work or welfare approach). 2) Others prefer a “risk-based [that is a social or crime control] approach to assess the level of intervention required” (Blyth & Soloman, 2009, p. 5). 3) There are also those who emphasize “youth’s procedural rights and proportional sentencing” [that is, a justice approach] (Corrado et al., 2010, p. 400). 4) Some scholars defend the community or societal-change model, which “dispel[s] any attempts to ‘correct’ the offender, arguing that, unless there is an overall change within society, little can be accomplished through reforms aimed at changing the individual offender” (Chambliss, 1975; Quinney, 1977; Reid-Macnevin, 2001, p. 132). 5) Lastly, there is a group of scholars that favours a combination of the welfare, justice, and crime control approaches (Corrado et al. 2006, 2010). These approaches are summarized below in Table 3.

Table 3. Tenets for the Five Models of Juvenile Justice

<i>Models</i>	<i>Tenets for Community-change</i>	<i>Tenets for Welfare</i>	<i>Tenets for Justice</i>	<i>Tenets for Crime Control</i>	<i>Combination welfare, justice, and crime control approaches</i>
<i>Main tenet</i>	Society is responsible for the promotion of the welfare of its citizens and must work to prevent crime and delinquency	The needs of the young person and his or her family must be attended to	The interference with freedom is limited and procedures and based on consent as much as possible	The responsibility of the state and the courts to maintain order in society	The responsibility of the state and the courts to maintain order in society by preventing crime and rehabilitating offenders
<i>Understanding of youth behaviour</i>	Youth behaviour is seen as being determined by life conditions	Youth behaviour is seen as being determined by social/psychological forces	Youth behaviour is seen as freely determined	Youth behaviour is seen as freely determined	Youth behaviour is seen as being somewhat determined by social/psychological forces
<i>Focus</i>	Focus on collective society rather than the individual youth as being responsible for criminal conduct	Focus on criminal conduct as being part and parcel of social events	Focus on the repression of crime with a qualification that there is a high probability of error in informal fact-finding	Focus on repression of criminal conduct	Focus on repression of criminal conduct and rehabilitation of offenders
<i>Objective</i>	Change social processes that lead young people to engage in criminal conduct and to improve the quality of life	Evaluation of whole youth and his or her life circumstances	Formal adversarial system	Screening of processes that divert the innocent out of the courts	Diversion of low-risk offenders out of the courts system. Formal adversarial processes for those found guilty of serious offences.
<i>Offences</i>	Offences are unspecified prior to occurrences	Offences are unspecified and young person is brought to court to be aided and assisted		Offences are specific and defined prior to their occurrence	Offences are specific and defined prior to their occurrence

Adapted from Reid-Macnevin, S. (2001). Toward a theoretical understanding of Canadian Juvenile Policy. In R. C. Smandych, *Youth Justice: History, legislation, and reform* (p. 137). Toronto: Harcourt Canada.

Regarding Canadian youth justice laws, the Young Offenders Act (1984) tended to be more punitive than its predecessor. That is, “the Young Offenders Act (1984) included more tenets of crime control model than did the Juvenile Delinquents Act (1908)” (Reid-Macmevin, 2001). The Youth Criminal Justice Act’s (2002) objective to reduce the use of the courts and custody for purposes of social control demonstrates a tendency to look at crime through a social welfare model. Nevertheless, Corrado et al. (2010) affirm that this legislation has elements of all three models. That is, the law encompasses: (a) the welfare model, when it “[emphasizes] the rehabilitation, reintegration of young offenders” and the use of community-based responses to crime (Corrado et al., 2010, p. 400); (b) the justice model, when it stresses the importance of the “due process, rights, and procedures” (Corrado et al., 2010, p. 400); (c) and the social control model, when it addresses crime control and safety of society.

Unlike in Canada, Garland (2001) explains that the current political scenario in the United States and the United Kingdom is pushing for a shift from social welfare to social control. For this scholar, “this shift [observed abroad] has led to a need for probation officers to legitimize their new role by ensuring that youth are adhering to the conditions of their probation sentences punitively in order to minimize the risk to the community” (Garland, 2001; Latimer, 2011, p. 25; Nash, 2005). However, as Latimer (2011) explains, assessing whether social control has really diminished and given room to the legalistic and needs-based approach is more complex than solely referring to the declining numbers of youth in court and custody across Canada. For Latimer, this assessment would depend on “the degree of social control associated with a sentence of probation compared to a custodial sentence” (Cohen, 1985; Latimer, 2011, p. 27). As

Fischer (2003) explains, despite de-emphasizing custody, probation is still a form of extended social control:

[T]raditional carceral punishment is a multi-faceted regime of disciplinary and behavioural correction tools under the ‘therapeutic jurisprudence’ umbrella, providing a new scope, reach and quality of penological or disciplinary control over the offender. The various tools of ‘therapeutic jurisprudence’ are largely sentencing connotations of negative power or punishment. However, in practice these tools are imposed on the offender in rather coercive ways and deeply penetrate a multiplicity of aspects of the offender’s personal life and existence – far beyond the specific concern of ‘lawful conduct’ ... - towards a morally informed ‘good person’ (p. 236; Hora et al., 1999; Melossi, 1990; Zola, 1972).

Conversely, other scholars argue that probation, as well as other community-based responses to crime, “reach[es] beyond the necessary basic concerns for public safety to include health, substance abuse, lifestyle improvement, employment, parenting, and other objectives, designed to improve the lives of participants and to eliminate the need for drugs or crime” (Goldkamp, 2000, p. 950). In fact, as Dean (2005) explains, only 4.5 percent of pre-sentence reports’ recommendations are based on the need to keep society safe.

Controlled needs/risks-based approach by means of assessment tools (Garland, 1996) is widely used in the U.S., U.K., and Canada (Hannah-Moffat & Maurutto, 2003; Muncie, 2008). Probation officers believe it helps increase fairness and equality in sentencing (Kempf-Leonard & Peterson, 2000), predict the risk of recidivism, and foster rehabilitation of youth by looking at criminogenic needs (e.g. education, living environment, family and peer relationships, drug and alcohol abuse, behaviours, personality traits, etc.) and static factors of the offenders’ lives (e.g. ethnicity, gender, age, history, etc.). In addition, workers believe “that decisions made using structured

risk assessment tools were more defensible than gut feelings” (Hannah-Moffat & Maurutto, 2003, p. 13). However, not everyone agrees that these tools are necessarily effective. Some researchers have argued that intervention plans for youth that are based on structured risk assessment tools “are of questionable empirical and legal relevance” (Hannah-Moffat & Maurutto, 2003, p. 14; Kempf-Leonard & Peterson, 2000).

Concerns also include, “gender, racial, and culture discrimination [and] the targeting of marginalized populations and the redistribution of resources based on risk profiles” (Hannah & Maurutto, 2003; Hannah-Moffat & Shaw, 2001; Silver & Miller, 2002).

When it comes to legality, Latimer (2011) explains that the scope of probation, in terms of needs and risks of the offender, disregards the application of the principle of proportionality (Hudson, 2004; Rose, 1998). This principle focuses on the gravity of the offence, whereas assessment tools target the circumstances of the offender. That is, “risk levels generated by the actuarial tools are not measures of seriousness of the offence and do not predict the potential for future seriousness of an offence” (Hannah-Moffat & Maurutto, 2003; Latimer, 2011, p. 34). This means that, under this approach, the importance given by the law to the causal relationship between the offence and its respective consequence is often neglected during the appraisal of suitable terms to include in each individual probation order (Hannah-Moffat & Maurutto, 2003).

As for the needs and risk tools’ empirical relevance, several studies have questioned the validity and reliability of the instruments as predictors of criminal behaviours. Hannah-Moffat (2002), Kemshall (1998), and Robinson (1996, 1999, 2002) amongst others, suggest that these tools have failed to consistently demonstrate “adequate reliability and psychometric and predictive validity” (Hannah-Moffat &

Maurutto, 2003, p. 12) when applied with juvenile offenders across Canada. Moreover, Zimmerman et al. (2001) question the use of tools developed in Ontario in other provinces before accounting for regional validity.

In terms of racial, cultural and gender discrimination, Hannah-Moffat and Shaw (2001) explain that

risk-based classification systems in corrections have been concerned with the control of male populations, and have rarely considered their implications for minority ethno-cultural and female populations. This has often resulted in systemic discrimination against minorities both within and on release from prison. ... No viable gender-specific and culturally sensitive method of security or risk assessment was found in practice. Most jurisdictions use gender-neutral systems that do not differentiate between women and men, or modified systems that make some attempts to add gender-specific items. None appear to consider ethno-cultural diversity adequately. The rapidly growing body of literature on gender and diversity underlines the considerable differences among correctional populations, which have not been taken into account in classification and assessment (p.vi).

Regarding marginalized populations, Silver and Miller (2002) argue that actuarial tools used in the justice system “contribute to the marginalization of populations already at the fringes of the economic and political mainstream (p. 139). According to these researchers, people from racial minorities, who deal with economic hardship, mental instabilities, lack educational and professional opportunities, etc. are more likely to be framed by assessment tools because the circumstances of their lives correlate highly with crime (Silver & Miller, 2002).

Nonetheless, what is of the greatest concern is the fact that professionals are using the tools based on the false notion that they are meant to measure offenders’ dangerousness and/or the seriousness of their offences. As previously mentioned, “risk scores merely identify who is more likely to re-offend. They do not differentiate between

type of recidivism, that is, they cannot differentiate between who will breach a probation order versus who will commit an assault” (Hannah-Moffat & Maurutto, 2003, p. 12).

In sum, the previous paragraphs show how the different approaches to youth crime are present in the current legislation, especially with regard to probation. As explained, probation encompasses: (a) the welfare model, when it “[emphasizes] the rehabilitation, reintegration of young offenders” by being a community-based responses to crime; (b) the justice model, when it stresses the importance of rights, and procedures (e.g. proportionality principle, breaches); (c) and the social control model, when it aims to protect society by controlling different aspects of juveniles’ lives (Corrado et al., 2010). As Latimer (2011) explains, regardless of the degree to which each of these approaches are applied through the practices of probation officers, they “[shape] probation officers’ views on their role within the justice system, and ultimately their decision-making” (p. 31).

Personal factors. When it comes to personal factors, Latimer (2011) explains that probation officers “personal preferences and biases may influence [their] decision making” (p. 37). For him, these preferences and biases can be explained in part by the labelling theory and professionals’ understanding of the effects of particular characteristics of the youth on crime, that is, the intersection of race, class, gender, and criminal behaviour.

Labelling theory. Little research has been conducted about the relationship between court professionals’ decision-making and labelling theory. However, Latimer (2011), Drass and Spencer (1987) and Bernburg et al. (2003) are among the scholars who theorize the existence of such a correlation, but have not been able to statistically

demonstrate it yet. These authors believe that, since there is strong evidence that “official intervention can be a stepping stone in the development of a delinquent career (Bernburg et al., 2003, pp. 1287-1288), officers of the court, “consciously or unconsciously, [adhere] to the basic tenets of labelling theory” (Latimer, 2011, p. 40).

In general terms, labelling theories look at “several different processes through which public labelling may influence subsequent involvement in crime and deviance” (Bernburg et al., 2003, p. 68). Labelling triggers further involvement in deviant social groups, reduction of educational and professional opportunities, stigmatization, and damage to relationships with significant others (Bernburg et al., 2003; Dunnuck, 2003; Link, 1982; Stewart et al., 2002; Tannenbaum, 1938). All of these factors have been proven to predict “involvement in delinquency in successive periods” (Bernburg et al., 2003, p. 70).

Based on this understanding that labels have the potential to foster the development of a criminal identity and with that a career path, Latimer (2011) argues that, whether probation officers are aware or not of the impact of a criminal label on a person, they tend to consider the consequences of formally prosecuting youth, before charging them, writing pre-sentence reports, or laying breaches. For this researcher, “the original offence for which a youth received probation represents the primary delinquency and the probation sentence may represent the initial label. The subsequent violation and formal charge could propel a youth further towards secondary delinquency” (Latimer, 2011, p. 39).

Gender, race, and class. As for the impact of gender, race, and class on crime, the latest statistical reports on youth crime have demonstrated an overrepresentation of

Aboriginal girls in the criminal justice system and youth correctional facilities (Calverley et al., 2010; Mahoney, 2011; Munch, 2012). Dean (2005) argues that this overrepresentation is a consequence of a crisis in the youth criminal justice system, which incarcerates on a regular basis young females “who rarely pose a threat” (p. 4) to public safety. Moreover, this scholar believes

[young women] are [brought to the system and] put into prisons where they frequently experience violence and unjust treatment, and where they are often denied the rights that they are entitled to under the Canadian Charter of Rights and Freedoms (1982) and the United Nations Convention on the Rights of the Child (1989), and other provincial, national and international legislation and treaties. ... Young women experience this injustice most intensely, as sexism, racism, and harsh paternalism combine to trap girls in a system in which their access to justice remains a distant and unfulfilled promise (Dean, 2005, p. 4).

In terms of gender, research has consistently shown that there are differences in the seriousness and frequency offences committed by males and offences committed by females. Bala (2003) explains that, even though the number of female youth engaging in offending behaviours is slightly larger than it was two decades ago, these adolescents are rarely charged for committing the serious violent offences that boys often commit (e.g. murder, sexual assault). Females “are charged with a greater proportion of ordinary assaults (about 30 percent) than property offences (about 20 percent). In the category of property offences, girls make up a relatively small proportion of those charged with the more serious offence of break and enter (under 10 percent) in comparison to those charged with theft under \$5000, mainly shoplifting (about 25 percent). Female adolescents are much more likely to be charged with prostitution related offences” (Bala, 2003, p. 54; Bishop & Frazier, 1992; Pulis & Sprott, 2005; Norland & Mann, 1984). These youth are also breached for non-compliance more often than their male

counterparts (Bala, 2003; Bell, 2012; Chesney-Lind & Pasko, 2004; Pulis, 2003; Pulis & Sprott, 2005). The less serious nature of female offending and the state's "paternalistic desire to protect girls for their own good" (Bell, 2012, p. 350; Dean, 2005; Latimer, 2011) demonstrate how "gender-role expectations and sex stereotypes ... guide and weight" (Latimer, 2011, p. 45) court professionals' decision-making (Bala, 2003; Bell, 1999; Latimer, 2011).

As for race, the Women and the Criminal Justice System report shows that while Aboriginal youth make up 5% of the Canadian population (Dean, 2005), "Aboriginal female [youth] accounted for 44% of admissions to open or secure custody, 34% of admissions to remand, and 31% of admissions or intakes to probation" (Mahony, 2011, p. 37). Dean (2005) explains that, "the overrepresentation of Aboriginal peoples in the justice system is a product of the legacies of colonialist oppression which continues to influence the current racist practices of police, the courts, and child welfare officials" (p. 3).

Wortley (2003) refers to the Bias Model and the Strain Model to explain the overrepresentation of Aboriginals in the adult and youth court in Canada. The Bias Model proposes that, "the over-representation of ... ethnic minorities in crime statistics may not be the result of actual differences in criminal behaviour. Rather, such differences may be the result of overt and systemic discrimination within the criminal justice system" (Dean, 2005; Wortley, 2009, p. 355;). That is, the disproportional numbers of Aboriginal youth involved in the system may be because "they are more likely to come under intensive police surveillance (racial profiling), more likely to be arrested by the police, and more likely to be convicted and given tough sentences by criminal courts"

(Dean, 2005; Latimer, 2011; Wortley, 2009, p. 355). For example, Dean (2005) argues that

[the] overabundance of low-income girls among those arrested and incarcerated may well be related to the intense police surveillance of impoverished neighbourhoods – a reality that is still very much the case in Vancouver today due to the extensive police surveillance of the Downtown-Eastside, one of the most socio-economically disadvantaged neighbourhoods in Canada. In fact, Vancouver social justice organization Justice for Girls has argued that ‘it is not an exaggeration to say that the residents of Downtown-Eastside are currently living in a police state’ (Justice for Girls, 2003 cited by Dean, 2005, p. 6).

When it comes to the Strain Model, classic strain theory suggests that,

crime occurs as a result of failure to reach monetary goals through legitimate avenues. ... Socially structured class differences limit the accessibility of legitimate opportunities to achieve these goals. Individuals in lower class positions [are] said to be likely to experience strain manifested frustration which motivate[s] individuals to seek alternative means to achieve these goals, including illegal means (Agnew, 1992; Baron, 2006, p. 209;).

Agnew’s (2001) new interpretation of this theory “broadened the conception of strain to include a wide array of potential stressors – stressors that are not limited to lower-class individuals” (Brezina, 2010, p. 7). It is believed that some strains tend to favour criminal behaviour more than others, due to “their effect on negative emotions such anger” (Agnew, 2009, pp. 8-9, 2006). According to his research, “these strains (a) are seen as high in magnitude; (b) are seen as unjust, (c) are associated with low social control, and (d) create some incentive or pressure to engage in crime” (Agnew, 2009, p. 8). These strains include, but are not limited to: inconsistent or harsh parental care; parental neglect and physical, emotional, or verbal abuse; peer physical, emotional, or verbal abuse; negative and stressful school or employment experience; adverse living conditions; criminal victimization; racial, ethnic, or gender prejudice; “failure to

achieve selected goals, including thrills/excitement, autonomy, masculine status, and money” (Agnew, 2009, p. 8).

General Strain Theory also tries to explain why some people are more likely to cope with strains through crime while others resort to other coping mechanisms. Those likely to engage in criminal activities usually display characteristics that “reduce the ability to cope in a legal manner, reduce costs of crime, and increase the disposition for crime” (Agnew, 2009, p. 9). The characteristics are:

“(a) poor coping skills and resources (e.g. poor social and problem-solving skills, the personality trait of low self-control); (b) low levels of conventional social support; (c) low social control; (d) association with criminal others and beliefs favourable to crime; and (e) exposure to situations where costs of crime are low and the benefits are high”(Agnew, 2009, p. 9).

According to several scholars, females are less likely than males to be exposed to strains that lead to criminal behaviours such as: harsh discipline, negative school experiences, conflict and competition with friends, and so forth (Agnew, 2009; Agnew & Brezina, 1997; Bottcher, 2001; Broidy & Agnew, 1997; Cernkovich & Giordano, 1979; Giordano et. al, 1986; Hagan & McCarthy, 1997; Hay, 2003; McCarthy et. al, 2004; Messerschmidt, 1993). In addition, girls also experience strains that hinder their involvement in criminal activities. According to Agnew (2009),

these strains include close supervision by parents and others; the burdens associated with the care of others, especially family members; problems in forming and maintain close relationships; and pressure to conform to traditional gender roles, with such pressure increasing during adolescence (p. 9; Agnew, 2006; Agnew & Brezina, 1997; Berger, 1989; Broidy & Agnew, 1997; Chesney-Lind & Shelden, 2004; Gove & Herb, 1974; Katz, 2000; Orenstein, 1995).

Moreover, females also tend to respond differently to strains that cause them to become angry. Unlike the anger of males,

the anger of females is more often accompanied by feelings of depression, guilt, and anxiety. This may be because females are more likely to blame themselves for the strains they experience, be concerned about hurting others, and view their anger as inappropriate. ... The anger of females ... may be especially conducive to self-directed crimes and deviant act (e.g. drug use, eating disorders) (Agnew, 2009, p. 9).

According to Dean (2005), when females commit other-directed crimes, especially violent crimes, “they often employ it in self-defence or as a last ditch attempt at resistance against the systemic, symbolic, or personal violence perpetrated against them” (p. 2). As for males,

they are more likely to blame others for the strains they experience and view their anger as an affirmation of their masculinity. The moral outrage of males is more conducive to other-directed crime than the type of anger experiences by females. (Agnew, 2009, p. 9; Broidy & Agnew, 1997).

In addition, as Agnew (2009) affirms, “the sexualisation and commodification of the young female body increases the likelihood that females will engage in selected crimes, like prostitution” (p. 10; Chesney-Lind, 1989; Chesney-Lind & Pasko, 2004). According to Finkelhor & Baron (1986), 70 percent of victims of child sexual abuse are females. Moreover, “sexual abuse of girls tend to start earlier than of boys, girls are more likely than boys to be assaulted by a family member, and, as a consequence, their abuse tends to last longer than boys” (Chesney-Lind & Pasko, 2004, p. 25; DeJong et al., 1983; Finkelhor & Baron, 1986; Russell, 1996). These stressors are linked to trauma, “fear, anxiety, depression, anger and hostility, inappropriate sexual behaviour, ... running away from home, difficulty in school, truancy, drug abuse, pregnancy, and early marriage” (Chesney-Lind & Pasko, 2004, p. 25; Browne & Finkelhor, 1986).

As for males, other-directed crimes are more appealing to them as they tend to have weaker coping skills, have less access to social support, and have more challenges in terms of social control (Agnew, 2009). Another important factor is that they are more likely to be involved with peers entrenched in criminal activities (Agnew, 2009; Cloward & Piven, 1979). Males' physical strength is also believed to increase boys' "ability to engage in several types of criminal coping" (Agnew, 2009, p. 10).

Even though there is evidence that suggests that gender differences in strain predict gender differences in offending, the extent to which this happens has not been determined yet (Agnew, 2009). Agnew (2009) explains that, "no currently available data set contains measures of delinquency and measures of all or even most of these strains" (p. 9).

Chesney-Lind and Pasko (2004) also argue that,

girls of colour grow up and do gender in contexts very different from those of their white counterparts. Because racism and poverty are often fellow travelers, these girls are forced by their colour and their poverty to deal early and often with problems of violence, drugs, and abuse. Their strategies for coping with these problems, often clever, strong, and daring, also tend to place them outside the conventional expectations of white girls (pp. 22-23; Campbell, 1984; Orenstein, 1994).

Summary

In sum, the literature makes it clear that the process followed by youth justice professionals' when deciding to charge female young offenders with breach of probation is multifaceted. This process is a result of changes in legislation, cultural, and personal factors. In terms of legislation, scholars agree that this decision-making process is highly impacted by youth justice's legislative evolution. This evolution had started in the first years of the twentieth century, before the Juvenile Delinquents Act (1908) came into

effect, , with the change in focus from the offence to the offender. That is, the State's interest lay more in rehabilitation of the offender than retribution/punishment.

With the advent of the legislation of 1908, it was recognized that children and adolescents' maturity levels differ from that of adults. This meant that, by being below the age of what was believed to be complete physical, emotional, and cognitive development, children and adolescents were not able to fully comprehend the severity and outcomes of their actions. Consequently, when children and teenagers engaged in illegal behaviours, they had to be treated by a specialized court system as "children in need of punishment" (Davis-Barron, 2009), who needed care and assistance. With that in mind, the law also stipulated that youth justice courts act as "designated guardian of [these] vulnerable individuals" (Sullivan, 2009, p. 372). That is, it became the courts' duty, to protect young offenders and their interests as well as to guide and supervise parents in the provision of adequate care for their offspring (the welfare-oriented approach).

The Juvenile Delinquents Act (1908) introduced the criminalisation of youth's unmoral behaviour and the institution of status offences. These offences encompassed sexual immorality, truancy, curfew disobedience, running away, consumption of alcohol and drugs, etc. Although these offences were not criminal in nature, youth who engaged in any of them could end up in jail.

The application of the Juvenile Delinquents Act, especially pertaining to status offences, expressed the prevailing ideas of what it meant to be a boy and a girl. Due to the characterization of females as fragile, obedient, passive, and chaste beings, the system aimed to correct their behaviour, protect them from vice and crime, and keep them safe.

However, Dean (2005) argues that the safety of girls referred to “morality rather than physical or emotional well-being” (p. 7).

Status offences charges were often laid against young females from ethnic and racial minorities and disadvantaged households. Several scholars (Bala & Anand, 2009; Barnhorst, 1978; Dean, 2005; Strange, 1995) agree that these girls were forced to conform to white, middle-to-upper-class values and ideas of family and motherhood. Moreover, Dean (2005) affirms that juvenile courts believed First Nation girls were at higher risk of engaging in status offences and criminal behaviours, because of the higher rates of violence, crime, and alcohol consumption amongst the Aboriginal population.

The Juvenile Delinquents Act (1908) also proposed the use of probation as a sentencing option for young offenders. Probation was believed to be a rehabilitative disposition, which aimed to assist, supervise, and hold youth accountable for their offences without sentencing them to reform schools (Davis-Barron, 2009; Leon, 1977; Latimer, 2011; Trepanier, 1999). As a result of the legislators’ belief that crime was associated with factors such as family and social surroundings and genetic disposition, the law suggested that Judges should take into consideration the advice of trained psychologists and psychiatrists regarding the circumstances of the offenders when sentencing youth to probation (Trepanier, 1999). Nevertheless, Judges alone decided when to terminate probation or other types of sentences based on their understanding of what was in the best interest of each youth. Youth Judges’ extensive discretion reflected the law’s disregard of the principle of proportionality (Bala & Anand, 2009; Beaulieu, 1991; Hermeren, 2012; Kirchengast, 2010; Latimer, 2011; Scott, 1914; Ten, 1987; Trepanier, 1999).

By the late 1960's, the Juvenile Delinquents Act (1908) had been highly criticized by Judges and lawyers for its "discretionary regime" (Bala, 2003, p. 9); its inability to promote rehabilitation of juvenile offenders and prevention of criminal acts, "the lack of due process safeguards; the over-reliance on indeterminate sentences; the inconsistent application of the law across the country; the variable maximum ages that existed across the country" (Caputo & Vallee, 2010). However, it was not until the enactment of the Canadian Charter of Rights and Freedoms, in 1982, that action towards a legal reform started to take shape (Bala, 2003).

In 1984, the Young Offenders Act came into force to address the issues of its predecessor, especially by balancing the special needs of offenders and public safety (welfare and control approaches) and by addressing Judges' vast discretion. It also extended the charter rights to youth in order to protect their legal rights.

In addition, the Young Offenders Act (1984) introduced new dispositions that emulated those of the Criminal Code, such as fines, community service, treatment, probation, etc. (Caputo & Valle, 2010). It also decriminalized status offences. Under the new law, youth could not be accused of acts of sexuality, truancy, and immorality alone (Bala, 2003; Davis-Barron, 2009; Reitsma-Street, 1993).

The decriminalization of these offences led scholars to believe gender and racial prejudices would stop impacting how female young offenders were sentenced (Dean, 2005). However, the act replaced status offences with the failure to comply with a disposition offence. This meant that, when a youth had been previously convicted for an offence and sentenced to a community-based sanction, such as probation or bail, if he/she violated the disposition's conditions, he/she would be charged by police and probation

officers and brought back to court.. Under the Young Offenders Act (1984), the first and posterior violations of these dispositions were punishable with jail time, which contributed to a rapid increase in youth jail sentences across Canada (Artz, 2012; Bala, 2003; Dean, 2005; Department of Justice Canada, 2012; Latimer, 2011; Pulis, 2003). As Dean (2005) notes, boys were less likely than girls to be incarcerated for non-compliance offences, because of society's need "to control and limit behaviour of young women" (p. 3).

The Young Offenders Act (1984) was in force until 2002 when the current legislation was enacted. The Youth Criminal Justice Act (2002) aimed to resolve several issues of the previous legislation. These issues concerned the youth justice system's lack of clear philosophy, the overuse of custody, the overuse of the courts to resolve minor cases, the lack of differentiation between serious violent offences and less serious offences, and unfair sentences (Department of Justice Canada, 2012).

In terms of the system's philosophy, the Youth Criminal Justice Act proposed a philosophical framework that encompasses three approaches. It has traits of the welfare-approach (recognition of the need to address the circumstances of the offender), the crime control approach (protection of society is a core goal of this legislation), and the justice approach (respect for legal rights and proportionality in sentencing increase youth's accountability by the imposition of fair sentences) (Bala, 2003; Becroft & Thompson, 2006; Davis-Barron, 2009; Latimer, 2011). Nevertheless, the Act does not set forth a fundamental principle, and this lack, according to Latimer (2011), allows professionals to deliberately decide which principle to implement in any given situation.

This legislation addressed the overuse of custody by restricting jail sentences to crimes that cause or attempt to cause physical harm, continuous failure to comply with dispositions, summary offences punishable with custodial sentence in criminal court, and summary offences in which imposition of jail time is pertinent with Section 38 of the Act (Barnhorst, 2004; Davis-Barron, 2009; Department of Justice Canada, 2012; Latimer, 2011; Latimer & Verbrugge, 2004). It also prohibited the use of custody as a social measure (Bala & Anand, 2009; Department of Justice Canada, 2003; Latimer, 2011).

Although it has been forbidden to accelerate youth's access to child protection and mental health services by taking them into custody, Dean (2005) observes that due to the reduction of funds suffered by the Ministry of Children and Family Development, custody is still being used to address youth's social issues. According Dean (2005), all these limitations to the use of custody have indeed impacted the number of youth in jail throughout the entire nation.

Extrajudicial measures and extrajudicial sanctions were created to attend to the overuse of youth courts for minor cases (Bala, 2003; Davis-Barron, 2009). In these cases, the victims' physical and emotional integrity are not compromised (NormStanford, 2012). So, the needs of first-time less serious offenders are dealt with by means of non-judicial measures, according to pre or post-charge referrals of Police Officers or Crown Counsel members (Bala, 2003).

Lastly, the current Act laid out a set of sentencing principles to address unequal and unfair sentences. These principles accentuated the importance of proportional sentences, preferring community-based responses to crime over incarceration of youth, and ensuring accountability of young offenders.

In terms of probation, the act establishes that, for youth sentenced to this community-based disposition, youth must comply with a list of mandatory and optional conditions. These conditions are carefully crafted with observance of the proportionality principle. That is, in order to induce optimal compliance with the terms of probation orders, Judges, with the assistance of the Crown and defence lawyers, must take into consideration the causal relationship between the probation conditions and the crime they intend to address (Bala, 2003, 2008; Bala & Anand, 2009; Bloomenfeld & Harris, 2012; Davis-Barron, 2009; Latimer, 2011; Latimer & Verbrugge, 2004; Toh, 2003). Probation officers also participate in the crafting of sentences by writing pre-sentence reports, and, after sentencing, they make decisions about the implementation of the orders. Probation officers can lay breach charges against non-compliant youth.

These professionals' decisions are impacted by cultural and personal factors. Cultural factors influence decisions when officers' adhere to justice discourses that are needs-based or risk-based or legal-based or societal change-based, or a combination of these. Since the implementation of the Youth Criminal Justice Act, traces of the welfare model, the justice model, and the social control model have guided the work of Youth Probation Officers (Corrado et al., 2010). Among others, Latimer (2011) and Fischer (2003) argue that, although probation is a rehabilitative disposition, it has become an extension of social control, because this disposition explores circumstances of the offender that go beyond the offence committed in order to safeguard public safety. Goldkamp (2000) and Dean (2005) disagree, affirming that the main focus of this disposition is the overall improvement of the lives of young offenders.

Youth Probation Officers in Canada adopted actuarial probability assessments for risk and needs to determine the needs of the offenders and the risk of them reoffending. Although these professionals agree “that decisions made using semi-structured risk assessment tools [are] more defensible than gut feeling” (Hannah-Moffat & Maurutto, 2003, p. 13), some scholars question their effectiveness in predicting young offenders’ dangerousness and the gravity of their future offences.

In addition, academics have concerns about the legality of these methods. The use of needs and risk assessment tools to inform sentencing tends to ignore the principle of proportionality (Latimer, 2011). That is, when professionals use these tools, they focus on the circumstances of the offenders instead of the seriousness of the offences committed when making sentencing suggestions.

Moreover, actuarial tools disregard an offender’s race, culture, and gender (Hannah-Moffat & Shaw, 2001; Hannah-Moffat & Maurutto, 2003; Kemshall, 1998; Robinson, 1996, 1999, 2002; Silver & Miller, 2002). Hannah & Shaw (2001) affirm that most tools used in jurisdictions across Canada are blind to gender, race, and culture. Ignoring these factors contradicts recurrent findings that indicate differences in criminal behaviour due to these biosocial and cultural categories. Lastly, the use of actuarial tools reinforces the marginalization of low-income individuals, as the consequences of their economic difficulties often relate to criminal behaviour (Silver & Miller, 2002).

When it comes to the impact of probation officers’ personal factors, the literature clarifies that these professionals’ preferences and biases also impact their decision-making. As well, emphasis is given to the impact of race, class, and gender on criminal behaviour.

In terms of gender, Dean (2005) and Bala (2003) clarify that, when it comes to patterns of offending, females commit less serious offences than their male counterparts. However, court professionals tend to be harsher to girls than boys when making decisions about sex-related and non-compliance offences (Bala, 2003; Bell, 2012; Bishop & Frazier, 1992; Chesney-Lind & Pasko, 2004; Pulis, 2003; Pulis & Sprott, 2005; Norland & Mann, 1984). According to Bell (2012), Dean (2005), and Latimer (2011), the harsher treatment towards females reflects the professionals' paternalistic wish to keep girls safe for their own benefit.

As for race, Aboriginal females are overrepresented in youth courts (Dean, 2005). The Bias Model states that this overrepresentation is a direct result of "overt and systemic discrimination within the criminal justice system" (Wortley, 2009, p. 355). The Strain Model refers to financial hardship, negative perceptions of parental care, abuse, negative work and school experiences, poor living conditions, experience of prejudice, etc. to explain in part the disproportional numbers of First Nations girls in the system. Agnew (2009) affirms that, although females are exposed to these stressors, they respond to them differently than boys do. Males often commit other-directed crimes. Conversely, females blame themselves for the strains in their lives and engage in self-directed destructive behaviour, such as eating disorders, and drug and alcohol abuse.

Moreover, this scholar also affirms that "the sexualisation and commodification of the young female body increases the likelihood" (Agnew, 2009, p. 10) of their engagement in sexual crimes, such as prostitution. Girls are more likely to be victimized by sexual perpetrators (Finkelhor & Baron, 1986). They also experience sexual abuse at a younger age than boys (Chesney-Lind & Pasko, 2004; DeJong et al., 1983; Finkelhor &

Baron, 1986; Russell, 1996). Sexual abuse is a traumatizing experience that is often related to female “fear, anxiety, depression, anger, hostility, inappropriate sexual behaviour ... running away from home, difficulty in school, truancy, drug abuse, pregnancy, and early marriage” (Chesney-Lind & Pasko, 2004, p. 5).

As demonstrated above, the literature refers to changes in legislation and to cultural and personal factors to explain how youth court professionals make the decision to charge female young offenders with administrative offences. However, in-depth qualitative research into the reasoning and decision making of those who work with administrative charges in British Columbia is as yet missing. Therefore, this study aimed to uncover the use of administrative charges for female young offenders and the decision making processes behind such charges, in order to better inform policy and practice, the public, and researchers who critically analyse youth justice law and practice.

Chapter Three: Methodology

Research Question

This study explores the following question: How do youth court professionals, namely Youth Court Judges, Youth Probation Officers, and Youth Police Officers, make decisions to incarcerate young females for administrative offences in British Columbia? More specifically, this research aimed to explore how these professionals understand their professional roles in relation to the law that governs their work; how the youth's psychosocial and ecological circumstances impact how these professionals work within the boundaries of the Youth Criminal Justice Act; what factors are weighed during their decision-making processes; how gender and culture come into that process; and how policy changes have affected their work.

Methodology

For this study, a qualitative research approach was used to explore the decision-making process of youth court professionals when they decide to sentence young Aboriginal females to juvenile detention centres for breaches of probation orders. A qualitative methodology is suitable for this research because it “embrace[s] the complexity of the social interactions [in this case within the youth justice system] as expressed in daily life and the meanings the participants [in this case, Youth Police Officers, Youth Probation Officers, and Youth Judges] themselves attribute to these interactions” (Kirby et al., 2010, p. 12; brackets are mine).

Denzin & Lincoln (2000) define qualitative research as

a situated activity that locates the observer in the world. It consists of a set of interpretative, material practices that make the world visible. These practices transform the world. They turn the world into a series of representations, including field notes, interviews, conversations, photographs, recordings, and memo to the

self. At this level, qualitative research involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings attempting to make sense of, or interpret phenomena in terms of the meanings people bring to them. Qualitative research involves the use of a variety of empirical materials – case study; personal experience; introspective; life story; interview; artefacts; cultural texts and productions; observational historical, interactional, and visual texts – that describe routine and problematic moments and meanings in individuals’ lives. Accordingly, qualitative researchers deploy a wide range of interconnected interpretative practices, hoping always to get a better understanding of the subject matter at hand (Delzin & Lincoln, 2000, pp. 3-4).

Creswell (2007, 2009) enumerates several characteristics of qualitative research that informed the decision to use this methodology on this study. Firstly, in qualitative research, researchers are key instruments, performing the collection of different forms of data, and the interpretation, and analysis. In this case, Dr. Artz and I collected data by the means of interviews. I later moved on to the inductive analysis of the data, which means

“[I] buil[t] patterns, categories, and themes from the bottom up, by organizing the data into increasingly more abstract units of information. This inductive process illustrates working back and forth between the themes and the database until the researchers have established a comprehensive set of themes” (Creswell, 2009, p. 175).

Secondly, the researcher’s goal is to learn “the meaning participants hold about the problem or issue ... not the meaning that the researchers bring to the research or writers express in the literature”(Creswell, 2009, p. 175). Accordingly, the focus of this research was to investigate participants’ understandings of their decision-making processes in cases of breaches involving girls. As demonstrated in Chapter I, the literature suggests aspects such as the evolution in Youth Justice’s legislation, the legislation in force, and professionals’ cultural and personal factors usually impact professionals’ decision-making. This study, however, aimed to understand whether and how professionals, alone or within their professional groups, believed these and other aspects

influenced their decisions in the context of the current Youth Justice system and the circumstances of young offenders in British Columbia.

Thirdly, Creswell (2009) explains that qualitative researchers attempt to identify multiple aspects of the issue being studied:

[Q]ualitative researchers try to develop a complex picture of the problem or issue under study. This involves reporting multiple perspectives, identifying the many factors involved in a situation, and generally sketching the larger picture that emerges. A visual model of many facets of a process or a central phenomenon aid in establishing this holistic picture (p. 176).

By reaching out to professionals from three different groups (Judges, Youth Probation Officers, Youth Police Officers), I attempted to create a holistic understanding of the subject matter under observation. The unique experience of each participant, shaped by differences in profession, clientele, time working in the field of Youth Justice, Corrections or related fields, and understanding of legislation and the system, enriched my understanding of their work, their clients, and the environment they work in.

Unlike quantitative research, studies conducted using qualitative methodology are not designed and conducted linearly. That is, the qualitative research process unfolds in a cyclical way, “with a number of steps repeated as the research process continues and as the researchers tests new ideas as they emerge throughout the project” (Jackson & Verberg, 2007, pp. 149-150). This process involves, but it is not restricted to, the following steps: identification of an issue; research proposal and ethical approval; review of the literature; elaboration of a single or multiple research questions; selection of research participants; collection of data; analysis of the data gathered; ensuring validity and reliability of the study; writing the final report; and dissemination of findings via reports, research articles and papers (Boeije, 2010; Streubert & Carpenter, 1999 cited by

Jackson & Verberg, 2007)

This study went through a similar process. In January of 2012, I joined Prof. Artz and a group of Youth Probation Officers, Intensive Support and Supervision Workers, and representatives of community support agencies in a discussion of the need for more and better-specialised services for female young offenders in the Lower Vancouver Island region. Even though the topic of the conversations was the improvement of services for female offenders, questions about how boys and girls, particularly Aboriginal girls, were being treated differently for the commission of less serious offences often surfaced. In many instances, the conversation revolved around how professionals were more lenient with boys who breached and harsher with girls, principally First Nations girls, who engaged in the same type of behaviour.

Searching the literature I found that others researchers shared our concerned and were also engaged in understanding such treatment differences. As demonstrated in Chapter 1, some focused on gender differences (e.g. Bala, 2003; Carrington, 1999; Dean, 2005; Department of Justice Canada, 2012c; Latimer, 2011; Pulis, 2003), and others on racial or class disparities (e.g. Agnew, 1992; Baron, 2006; Chesney-Lind & Pasko, 2004; Dean, 2005; Latimer, 2011; Wortley, 2003). Some scholars focused on how the changes in legislation shaped those treatments over time (e.g. Bala & Anand, 2009; Chesney-Lind & Pasko, 2004a; Davis-Baron, 2009; Garland, 1985; Griffins & Verdun-Jones, 1989; Leon, 1977; Pulis, 2003; Sanders, 1970; Trepanier, 1999). However, little was known in terms of how Lower Vancouver Island professionals' decision-making around young female offenders who breached court orders was impacted by some or all of these factors.

The processes of sampling, customization of measuring tools, data collection, and

data analysis are addressed in the following sections of the chapter.

Key Informants

Johnson (2004) defines key informants or key consultants as “individual[s] who provide in-depth, expert information on elements of culture, society, or social scene” (p. 537). Fetterman (2008) adds that these individuals

help to establish a link between the researcher and the community. They may provide detailed historical data, photographs, manuscripts, knowledge about interpersonal relationships, a contextual framework in which to observe and interpret behaviour, and a wealth of information about the nuances of everyday life (p. 477).

These consultants’ expertise is measured either by the extent of time “they have been in the community, knowledge community and neighbouring community or organizations” (Fetterman, 2008, p. 477), or the amount of theoretical and practical information and skills they obtained through education and experience. The level of and kind of interactions between the informant and the individuals being studied are also indicators of the consultants’ competency (Fetterman, 2008).

In addition to the depth of the information provided by key consultants, resorting to these individuals has several advantages over other forms of data collection. Firstly, key consultants provide high quality information “in a relatively short period of time” (Marshall, 1996, p. 93). Secondly, Kumar (1989) adds that key informant interviews are fairly inexpensive. Moreover, this data collection method allows for participants to bring new ideas to the study (Kumar, 1989).

The literature argues that there are limitations to the contribution of key informants in qualitative research. According to Fetterman (2008), even though key informants give comprehensive insight on their own opinions, feelings, and “larger social

patterns” (Fetterman, 2008, p. 477), their account of phenomena might be biased, incomplete, and distorted (Fetterman, 2008; UCLA Center for Health Policy Research; University of Illinois Extension). Secondly, the researcher’s relationship with the consultant might affect the information provided (University of Illinois Extension). In addition, the University of Illinois Extension states that studies that rely solely on key informants’ accounts of issues often “overlook the perspectives of community members who are less visible” (p. 2).

In terms of selection of key informants, Parsons (2008) explain that “key informant interviews are in-depth interviews of a select (non-random) group of experts” (p. 408). That is, these individuals are chosen, by the means of snowball sampling or purposive sampling, based on a pre-established criteria formulated by the researcher (Saumure & Given, 2008a). In the snowball sampling method, “new participants to the study are recruited when current participants refer other, potential participants to the researcher” (Saumure & Given, 2008b, p. 563). As for purposive sampling, Saumure and Given (2008b) define it as “a process where participants are selected because they meet criteria that have been predetermined by the researcher as relevant to addressing the research question” (p. 563). Tongco (2007) explains that in qualitative studies “sometimes snowball sampling ... follows purposive sampling” (p. 152).

For this study, the University of Victoria Human Research Ethics department initially approved a Research Ethics Form that determined that twelve highly experienced professionals in the field of youth justice (six Youth Court Judges and six Youth Probation Officers) would take part in this study. The Youth Probation Officers were believed to be primarily white females. As for the Youth Court Judges, the majority were

white males. All of these professionals were of middle class or higher socioeconomic status and held positions of power vis-a-vis the clients they work with.

As previously mentioned, Dr. Artz and I were invited members of a group of youth workers including Youth Probation Officers who were supportive of this research. This group was a source of potential participants. These professionals also assisted us in connecting to others through a chain-referral approach. It is relevant to mention that although the participant group included people with whom Dr. Artz and I were acquainted, none of them were our colleagues or personal friends.

Dr. Artz recruited and contacted all participants. She consulted the list of Lower Vancouver Island Youth Probation Officers and Youth Court Judges suggested by the group of youth workers and personally contacted each potential key informant via telephone at his or her office. She explained the purpose of the research and invited the potential participants to be interviewed. Dr. Artz and I followed up with face-to-face interviews with those who were willing to take part in the project and, during the course of the interview, explained the chain-referral process to all participants and solicited additional potential participants. Once the desired number of participants was reached the recruitment process ended.

However, the literature, and five Youth Probation Officers and two Youth Court Judges who had already been interviewed, suggested that the views of Crown Counsel members, Youth Police Officers, and mental health workers also impact how decisions to incarcerate female young offenders for administrative offence are made. Thus, Dr. Artz and I agreed that this project would benefit from these professionals' understanding of the research topic. A Request for Modification of an Approved Protocol Form that included

the participation of four Youth Police Officers, four Crown Counsel members, and four mental health professionals was submitted and approved by Human Research Ethics.

Dr. Artz made several attempts to contact Crown Counsel members and mental health professionals, but was not successful in recruiting any participants from these professional groups. Nevertheless, four Youth Police Officers agreed to participate. This means that this study is based on the understanding of four Youth Police Officers, six Youth Probation Officers, and four Youth Court Judges. These key informants were all experienced professionals from Lower Vancouver Island who had extensive experience in the field, including work in the interior and the north of the Province of British Columbia. The majority had worked in youth justice for more than ten years, and some for more than thirty years. Eight females and six males contributed to this research.

Informed Consent and Confidentiality

Before each interview, Dr. Artz and I guided participants through a Recruitment and Participant Consent Form (See Appendix 1). Our goal was to ensure that they understood:

- the purpose, objectives, and importance of the research;
- that their participation was voluntary;
- that they could withdraw from the study at any time;
- that the interviews were being recorded to then be transcribed verbatim;
- that their statements could be quoted verbatim in reports and academic papers, except for information that could compromise their anonymity;
- that they could choose not to have the information they shared quoted;

- that identifiers such as name, gender, and location were not to be used in any papers or presentations;
- that there were no anticipated risks to their participation in the research;
- that the information shared was confidential;
- that the data collected was going to be protected;
- that the data gathered was going to be used in a report to the Law Foundation of BC, published journal articles, this master thesis, and presentation conferences.

It is important to note that, aside from some limits to confidentiality given the recruiting process, confidentiality was retained. Names of participants and identifying features in the data (e.g. names of places, professional positions) were not disseminated. Pseudonyms were assigned to each participant during data collection and findings will be disseminated in such a way that any markers of personality or identity will not be included in research reports, articles, or this thesis.

Data Collection: Semi-Structured Interviews

Holstein and Gubrium (2002) explain that the act of conducting an interview happens when “the interviewer coordinates a conversation aimed at obtaining desired information” (Holstein & Gubrium, 2002, p. 3). McGinn (2009) adds that this interactive method of data gathering “[can] be formal or informal, structured or unstructured, and individual or collective” (p. 1). Informal interviews are contextual and require no preparation (Padgett, 2008, p. 99). Conversely, formal or in-depth interviews “[are] scheduled in advance, [take] place in a private setting conducive to trust and candour, and [require] careful preparation” (p. 103).

Kirby, Greaves, and Reid (2010) explain that the latter varies according to how much preparation and control the interviewer has over the questions being asked (p. 133). The most controlled are known as structured interviews. They are individual interviews composed of standardized questionnaires (Holstein & Gubrium, 2002, p. 39) and commonly used to compare “expressions of opinions or beliefs” (Kirby, et al., 2010, p. 134). Semi-structured interviews are also individual. They have interview guides, which can suffer modifications in the sequence and arrangement of the questions. That is, in the midst of scripted questions, there is space for “flexibility in the way issues are addressed by the informant(s)” (Clifford & Valentine, 2010, p. 105). Lastly, the unstructured interview, also known as narrative interview, is similar to a “guided conversation” (Kirby et al., 2010, p. 134). It is a one-with-one data-gathering technique, useful for the analysis of the “normative structure of organizations, for establishing classes, and for discovering the existence of possible social patterns” (Holstein & Gubrium, 2002, p. 39).

Using interviews has its advantages and disadvantages. According to Barlow (2009), this data collection method allows the researcher to compile a large amount and variety of data over a short period (p. 497). In addition, Taylor and Bogdan (1998) explain that

that participant observation provides a yardstick against which to measure data collected through any other method. That is, no other method can provide the depth of understanding that comes from directly observing people and listening to what they have to say at the scene (p. 90)

However, there are criticisms pertaining to “attitude toward participants, power, culture, and confusion between research interviewing and therapy” (Barlow, 2009, p. 497).

Moreover, interviewing “is not practical or even possible in all cases” (Taylor & Bogdan, 1998, p. 90). Taylor and Bogdan (1998) also point out that

people say and do different things in different situations. Since the interview is a particular kind of situation, you cannot assume that what a person says during an interview is what the person believes or will say or do in other situations (p. 91).

Lastly, researchers (Becker & Geer, 1957; Taylor & Bogdan, 1998) are often concerned with communication misunderstandings between interviewers and interviewees. More specifically,

interviewers are likely to misunderstand informants’ language since they do not have opportunities to study it in common usage; informants are unwilling or unable to articulate many important, and only by observing these people in their daily lives can researchers learn about these things; interviewers have to make assumptions about things that could have been observed, and some of the assumptions will be incorrect (Taylor & Bogdan, 1998, p. 92).

For this thesis, each participant was interviewed for approximately an hour to an hour and one half, as per our attached semi-structured interview guides (See Appendix 2). These guides focused on the same or similar questions for each group and were adapted to each professional designation. The interview questions were structured around questions and concerns raised by the youth workers who were involved in the discussion of specialized services for female young offenders in the Victoria region. The questions revolved around:

- a. Youth Justice services being provided by the Ministry of Children and Family Development;
- b. The shifts in legislation, most importantly, the consequential prohibition to use custody as a social measure and the need of multiple violations of probation conditions before youth experience consequences;

c. The lack of resources for female young offenders in the Lower Vancouver Island region, especially after the closure of the girls' wing at the Victoria Youth Custody Centre.

The interviews took place in a location of the participants' choosing, usually their private professional offices, but possibly some other place where they felt comfortable meeting with the researchers. Interviews were recorded using the Voice Recorder app for IOS. Then, I transcribed them verbatim using the Philips LFH-2330/00 customizable four-pedal foot control for digital systems, Express Scribe and Dragon Dictation software, and the word processors Microsoft Word 2011 for Mac and Pages. The transcriptions generated approximately 250 single-line-space pages of raw data.

Data Analysis: Thematic Analysis

According to Holloway and Wheeler (2010), thematic analysis is an “approach to analysing narrative data” (p. 204). Lapadat (2010) adds that thematic analysis is more than an analytic approach, it is a “synthesizing strategy used as part of the meaning-making process of many methods” (p. 926). It has five purposes: it is

1 - a way of seeing; 2 - a way of making sense out of seemingly unrelated material; 3 - a way of analysing qualitative information; 4 - a way of systematically observing a person, an interaction, a group, a situation, an organization, or a culture; 5 - a way of converting qualitative information into qualitative data (Boyatzis, 1998, p. 4).

This data analysis method allows researchers to organize and make sense of large quantities of different types of data, without losing site of the contextual pieces that permeate such data.

Boyatzis (1998) divides the different types of thematic analysis into four stages “sensing themes; doing it reliably; developing codes; and interpreting the information and themes in the context of a theory or a conceptual framework” (p. 11).

In the first stage, he explains that researchers’ senses “should be ready to receive pertinent information” (Boyatzis, 1998, p. 9). That is, there needs to be some kind of preparation pertaining to the nature and fundamental concepts and theories about topic being studied.

In the second stage, when it comes to reliability in thematic analysis, the word consistency comes to mind. Before the researcher moves to the next phase, he/she has to be trained to identify themes and codes consistently, not only with his/her perceptions, but also with the perceptions of other researchers as identified in the literature (Boyatzis, 1998, p. 10). That is, these themes and codes cannot “merely reflect [his/her] idiosyncratic view of the world” (p. 10).

The third stage consists in the development of “code[s] to process and analyse or capture the essence of the observations”. (Boyatzis, 1998, p. 11). Lapadat (2009) explains that this process aims to shed light on “recurrent themes, topics, or relationships” (p. 927). That is, coding is about “[capturing] something important about the data in relation to the research question, that represents some level of patterned response or meaning within the dataset” (Braun & Clarke, 2006, p. 82).

As for the fourth step, after the data is coded and divided into themes, the researcher must interpret the data. According to Boyatzis (1998), “this will require some theory or conceptual framework” (p. 11). He adds that regardless whether the theories were already part of the literature or “[emerged] from the information being analysed”

(Boyatzis, 1998, p. 11), there needs to be a synchronization between the meaning of the finds and conceptual framework. Lastly, the results of the interpretation must be made public and accessible to other scholars.

Thematic analyses, “when properly contextualized, ... can illuminate the foreground as well as the behind-the-scenes aspects of individual lives, programs, and practice” (Padgett, 2008, p. 35). Moreover, Pope et al. (2007) add that this approach

provides a means of organising and summarising the findings from a large, diverse body of research. It can also handle qualitative and quantitative findings since it is, in large part, a narrative approach. This means it can be used in almost all circumstances (p. 97)

Nevertheless, according to Boyatzis (1998), this analytical method presents challenges. Some potential difficulties are:

- a. The possibility of “the number of themes or the depth of interpretation possible with the themes identified not [being] satisfying” (Boyatzis, 1998, p. 164);
- b. The scholar’s time constraints to perform the analysis of the data;
- c. The tendency of use narrative analysis “to draw researchers to a manifest level” (Boyatzis, 1998, p. 166);
- d. Lack of research skill with this analytical technique (Kirby, Greaves, & Reid, 2010).

When implementing the thematic analysis approach in this research, this study took into account the four-stage strategy of Boyatzis (1998). After conducting the interviews and transcribing them verbatim, the transcripts of each professional category were read and re-read to increase familiarity with their individual and collective contents, in order to “sense the themes” (p. 11). As demonstrated in the analysis and discussion chapters, first I explored the convergence and divergence of information within each professional designation. In a second operation, the data analysed within groups was crossed to identify converging topics and themes across professional

categories.

It was recognized from the outset that the way in which the interviews were structured necessarily imposed a framework within which the themes could emerge. Participants were asked to address how they understand their professional roles in relation to the law that governs their work; how they view the youth they work with and how they interpret the law in regard to these young people's psychosocial and ecological conditions and circumstances; what they consider during their decision making processes, how gender and culture come into that process; and how recent policy changes have affected that process.

Summary

In this chapter, the qualitative research positioning and the specific qualities of thematic analysis were explained. Besides demonstrating how these methodologies fit within my study, this chapter described the process of sampling, recruiting, and interviewing key informants. In sum, this section addresses the methodological steps taken to answer the research question: How do youth court professionals make decisions to incarcerate young females for administrative offences?

Chapter Four: Analysis

Investigative Interviews of the use of Administrative Charges

During the course of the interviews, Youth Police Officers, Youth Probation Officers, and Youth Court Judges on Lower Vancouver Island were interviewed to investigate how decisions about invoking administrative charges are made. The content of the interviews was then thematically analysed, shedding light on these professionals' efforts to collaboratively build supports to effectively rehabilitate these young offenders and keep society safe. When the resources in the community are not enough to hinder further breaches or criminal activities, custody is used as a last resort to ensure the safety of the youth and the public. It was also learned that there is a great concern about the scarcity of specialized resources, secure care, and treatment centres in Vancouver Island, especially since the closure of the female wing of the Victoria Youth Custody Centre (Appendix 3). It was also pointed out that this closure jeopardized the relationships of these girls with their workers, probation officers, and families, etc. The following sections outline the themes that emerged from the interview transcripts of each professional group. A comparison of recurring themes across the professional groups is presented in the discussion section.

Analysis of the Responses of the Individual Professional Groups

Police Officers. The analysis of the four Police Officers' interviews shed light on five themes: i) The complexity of their roles as Youth Police Officers; ii) The recent decline in crime; iii) Profiles of the young offenders; iv) The process of deciding to charge a young offender; and v) How the recent decision to centralize female Youth Custody Services has affected police work.

The complexity of their roles as youth Police Officers. As a Police Officer explained, the role of her fellow Officers, whose primary focus is youth, “incorporates a number of different policing aspects, because [they] do investigative work. [They also] do a lot of proactive enforcement.” More specifically,

We used to have youth investigators. Youth investigators were originally detectives dealing with youth and would respond to youth issues here. They were fairly effective in what they did. Problems caused by youth declined and then their positions were vacuumed into the detective positions and we lost the dedicated youth positions. Then, there was kind of a flourish, a resurgence of problem youth causing a bunch of problems and these were predominantly prolific offenders causing more serious offences both criminal in nature and administrative in nature and they realised that we had lost that touch with it and liaisons with the crown, youth probation, and with the social services. So, we brought back the youth positions. The first part was building those bonds between the police, between probation, between social services, between different youth outreach organizations so that when we are dealing with a youth what can you do to creatively to take that youth out of the system. And, with some of them, it was following them and doing criminal charges. For some of them, it was going after them with administrative charges because, even though administrative charges are failed to abide by curfew or conditions or red zone, or alcohol, every time they did something wrong being caught, in the regards, some of them would go back to jail or go back to Youth Detention Centre for 1 night or 2 nights and realize that is not fun.

This Officer’s explanation has several elements, two of which are key to shaping the officers’ work. Mentioned first is the investigative and charging component of policing, which aims to “minimize the number of victims that they [young offenders] have out in the community.” Secondly, the necessity to establish relationships with other youth service providers in the community is noted. In another officer’s words, “[Our] best defense or offence is the relationships we build with social services, with outreach programs, because together we try to point the child into the right direction.”

This collaboration unfolds in several ways. For example,

This position [youth focused policing] is kind of quite a bit “social workie,” right, which I think it needs to be, because there’s such a social element to it. But, right now I’ve got a young girl who was just brought to my attention. I met her a couple of times. There’s a bunch of risk factors for her. She’s 13 and so, she’s... her behaviour is escalating...lot’s and lot’s of drug use, likely sexual exploitation, going missing, but she hasn’t been in the criminal system yet. And, the social worker calls me and says, “What are we going to do? She’s connecting with police, but they’re letting her off, and letting her off, and letting her off.” I said, “Well, I can put it out there that we’re requesting zero tolerance from her. That she’s had enough breaks right now.” So, I can, in my role, you now, get a picture of her and put her on our computer system, so that patrol can say, “This is this young girl.” I can start a file and do what I need to do so that they can be aware of her, to keep an eye out for her on the streets, know that she is a high-risk youth, and then, if they encounter her and she’s done some sort of...something criminal, she’s had enough chances now. She maybe needs to get into the system...I always hate to put them into the criminal justice system, but in this case, she’s at risk of losing her housing and there’s nothing else for her but the street.

When it comes to Crown Counsel, the partnership can begin in the investigation phase and continue until after the youth is sentenced. As the Youth Officers pointed out,

[We] have a good working relationship with our Youth Crown. So, if [they] do have an issue during the course of an investigation, [the officers] go on to say to the Crown Prosecutor, ‘This is what we’ve got. What do you think?’ And, then, we get to discuss it, which of course is the best way to proceed with it.

In terms of their role, these officers clarified that their work requires both an ability to work relationally with youth and to keep in mind the individual life circumstances of each young person they deal with, and the ability to work relationally with other the professionals who are a part of the young persons lives. The officers also explained that their jobs are shaped by the social contexts in which they work. Thus, they must keep in mind the social expectations of the communities in which they work.

The recent decline in crime. According to the officers interviewed, we live in a society based on fear. As one officer put it,

After 9-11, the World Trade Center and all that, security around the world changed. If you now go to the US, (we work with the Coho with the American immigration) and when you go down there to the States, the first question they ask you is, 'Have you ever been charged with a criminal offense?' Not convicted, charged. So, if you would steal a piece of pepperoni or steal this pen cap, let's say, and we would charge you, you haven't even gone to court, you have now been charged with a criminal offence and the American Immigration would say, 'We are not allowing you into the country because you could be a potential criminal. We don't want you to steal from the States.' You haven't been convicted. You get charged, you go to court, you get probation or a suspended sentence. So, you don't get an official criminal record, but you've still been charged...[and that means that you can't cross the border, you can't get a job that involves handling money]...By stealing that simple pepperoni or pen cap, that could affect the rest of your life...and because of 9-11, because how worried society is nowadays, do you actually want to wreck the youth's whole future for them stealing a pepperoni or something small, or smashing a window because they were upset about mom grounding him, taking his iPhone and putting it away. So, you have to look at the whole background of it.

In Canada (and for that matter in the U.S.), this fear is unjustified according to the latest report on Youth Correctional Statistics. The report shows that "the rate of youth in the correctional system (includes youth in custody and under community supervision), on any given day, has been generally declining in recent years. At 79 per 10,000 youth in 2010/2011, the rate was 6% lower than the previous year and 12% lower than five years earlier" (Munch, 2012, p. 3). In addition, Munch (2012) explains, "British Columbia reported the lowest rate of youth in the correctional system on any given day in 2010/2011, at less than half the overall average" (p. 3).

Police Officers shared mixed opinions about these numbers. Some of them believe that crime has temporarily gone down. One suggested that,

We live in a very transient society, where people do move around and people of criminal nature have no borders. ... It is statistics and you can use statistics to make or break anything you want. You know, 50 percent of statistics aren't true and the other 50 percent are made up, so... I can't remember what the acronym

for that is, but you can use statistics to prove anything. How does your public feel? How do they feel for safety? Do they feel like they are safe enough to leave their houses and go for a walk in the evening? I have to say that in general we live in a fairly safe community. No place is perfect. There is no utopia.

Another Officer added that,

Crime is very cyclical, especially with youth. We get a bunch of youth, crime goes up, we start dealing with these youth, crime goes down, the resources get pulled in another direction, it goes up again. We have youth that age out, it goes down. The brothers and sisters get involved, they start off small, they get bigger, crime goes up.

A third Officer suggested that the drop in crime is likely related to the discretion given to the Police Officers in the new Youth Criminal Justice Act (2002). That is,

In this new act, there's just more discretion for everything. So, that will probably be the reason why. And, I hate to say this, sometimes it just depends on how busy the police are, what is going on at the time they're dealing with the youth. If we've got a lot of armed robberies and a bunch of things that are going on right now, that youth might just get a stern warning. It's their lucky day. [Or] they might get a tenacious officer that feels that this is what they have to do and you could have an old cop that's just at the end of his shift and they want to go home. And, because there is some discretion and there's nobody saying you have to lay these charges, they don't get laid. A lot of times it just depends ...probably because of the discretion in there. Sometimes it could be good, right. I mean, like I've had youth where I've used discretion and called their parents and we sat down and talked. I really get that that kid was sorry...and I kind of think the likelihood of a conviction isn't very good. I think that this youth is going to really benefit by showing that the police aren't always bad, by saying, "You know what I'm going to give you a break. This is your one chance. I think this is your turning point here. If it happens again, you will be getting arrested." And they're very appreciative and you know that you've gotten through to them. Whereas the old act, maybe there wasn't that discretion and the charge went to the courts, did we really prove anything at the end of the day? Maybe not?

The Officers also noted that even though they may lay a charge, the decision to proceed to court with charges rests with Crown Counsel:

The whole notion that crime has gone down because we're not charging enough, there's two sides of that. We can charge as much as we want, but Crown has to approve these charges. ... I mean, we've all had situations where we considered pretty much, rock solid cases turn back to us, because of minor, possible technical issues that might arise, which kind of defers our ability to get a substantial likelihood of conviction. So, we have to battle that. I mean, I just have to do that. So, instead of me being able to get a file, investigate it, move on to the next one, I have to go back, address this issue, write another two page essay, kind of reiterating everything, and then, ask for it to be considered again, which may or may not even go through. So, that's a big issue. There's no way, I think, to assess how many cases are dropped. ... From a youth perspective, we haven't had a lot of issues with that, because we have a good working relationship with our Youth Crown. So, if we do have an issue during the course of an investigation, we go on to say "this is what we've got. What do you think?" And, then, we get to discuss it, which of course this is the best way to proceed with it. Sometimes, it's just not going to work. But, for the most part, we've been able to work around it.

Another Officer added that,

Ultimately it goes to Crown and to the judge, so we'd still arrest and put through charges like we would pre [Youth Criminal Justice Act (2002)]. ... the problem with the charges is we can put in 5 breaches, and the 3 of them will get stayed and they'll only proceed with 2. So, it doesn't mean that the charges aren't there. It just means that they are not proceeding with them. You can have a kid charged with 5 or 6 different offences, but maybe they'll go with the most serious one and drop the other 4. So, it doesn't mean that the crime isn't there. It just means that they're not proceeding with everything that we put forward. And, the Crown has that discretionary power to do that. ... How can the kids, youth take it seriously, if they're not even charged with it? How can they take it seriously that they have to abide by their conditions if they're not being charged for it, if there's no consequences to their breaching?

Two factors that some believe help to explain the decline in crime are the criminal code of silence or what is described also as young people's "don't rat mentality" and the perception that many members of society lack of confidence in the police force and the justice system and therefore don't call the police or report crime:

The rates are going down because a lot of it is not being reported. So, they say crime is going down, but I don't think it necessarily is...with the youth now, maybe it has been. The whole idea of being a rat now is huge. One of the girls I

know has tattooed on her back ‘snitches get stitches.’ ‘There better not be any rats around me,’ is what she is saying. And so, these kids are afraid to rat on each other. So, there’s crime that is happening amongst them all the time and I hear it and they’re not reporting any of that. Or people are getting so desensitized ‘oh, there’s somebody in my backyard and they just stole something. What are the police going to do?’ They don’t report it. A lot of it isn’t being reported. We’re getting the serious stuff. That comes through. Although, even some of the serious stuff, if we happen to stumble upon it and someone reports “Gezz, someone just got beat up,” then a lot of times, they don’t want to lay charges.

One Officer suggested that the crime numbers are down because the police are “not catching [the young offenders]”:

There are not enough Police Officers to do the jobs that we need to do effectively. ... Members are more in the office than they are on the road. ... [They are doing] paperwork, bogged down by paperwork. Now, we’re Police Officers. We’re supposed to be on the road catching the bad guys, so to speak, but now we’re attached to our computers trying to type up our paperwork. So, they’re making us administration staff.

Lastly, another Officer added that the limitations to the use of custody imposed by Section 39 of the Youth Criminal Justice Act (2002) have also affected youth criminal rates. According to this officer, “crime is not going down. [Youth] are just not getting custody sentences. ... They’re getting deferred custody. They’re getting longer probation periods. They’re getting probation with ISP (Intensive Support and Supervision) workers.” In other words,

In our current legislation where those kids are the ones with first charge, first of all, don’t charge, right. The first move now, unless it is violence, serious violence offence, is to do some sort of diversion, extrajudicial measure. Every system has its benefits and every system has its detractors. And, I realise the thing with youth is that you want to try and give them that second chance. You want to give them that opportunity to learn to better themselves, to learn from their mistakes. If they have to go into jail or something to give them some treatment... They are young, so hopefully they can learn something and come out better... Unfortunately... the version [of the law] we have right now, they are getting too many chances. It takes too long before they get punished... the kids nowadays, they go to jail for the first time, their first appearance, they get

released on conditions. They get a court date, we'll say, 3 weeks away, the lawyer comes and says "I haven't reviewed the file," it gets put off for another 2 weeks, it comes back next week, "We're busy," another week, holidays, another two weeks. So, by the time the youth actually faces the music, as per se, he is like, "That happened so long ago, it is not a biggie." Kids, everyone learns by more of immediate consequences. So, they need more immediate consequences instead of putting it off and delaying, delaying, and delaying.

The lack of immediate consequences appeared to worry most of the Officers:

If you breach it is like (slap on the hand) 'don't do that again. Don't do that again.' Deferred custody is what sends youth right to Youth Detention Centre. And you spend the night there and if it is a weekend, you're there until Monday, or until Tuesday, until you go to youth court. And, then, the judge can say 'we'll keep you in for a period of time'. So, it is almost as if they realised if they're on a deferred custody, if there's consequences to their action, they learn a lot faster then...where the females get or even the males get 5 or 6 breaches, it goes to court, they'll be sentenced to one breach and they'll stay the other 4 or 5. What does a youth learn? "If I'm going to breach, I might as well breach of a whole week and do a whole bunch of different things, because I'll only plead guilty to one, and I'll get one more week of probation" I'm over simplifying it, but where is the deterrence. There is no deterrence?

During the discussion about society, crime, the decline (or not) of levels of crime and the flow of the processes that all Police Officers deal with, they also spoke to the kinds of young people they work with and offered us a descriptive "profile" of these young people:

Profiles of the young offenders. The Police Officers interviewed, who had all been working with youth for many years, described their client group, whom they referred to as "prolific offenders." They also described their observations of the distinctions between the criminal behaviours of males and females.

When it comes to these prolific offenders (that is, the youth they see in the streets most often and over a long period of time), an Officer explained that,

Most of our time is spent dealing with about 20 to 30 youth, that we focus on exclusively. They would be considered our prolific offenders, right. And that is kind of, I guess, where our crime rates are at. When they are out in their community, they are out to committing crimes. ... [The kind of crime] depends what they want to do. Really, it is what it comes down to. I mean, there is a group, two summers ago that was heavily involved in residential break and enters. They were arrested. They spent a year or so in jail. And, when they got back out in the community, they kind of have given that up, but they've been involved in assaults and robberies now. I think they are back in custody, but then they will be out again soon and then who knows what they will do after.

As for the differences between boys and girls involved in the Criminal Justice System, the Officers reported that currently the number of males in the system is five times greater than the number of females. They also think that the level of seriousness of boys' criminal behaviour is greater than the girls. That is,

I think for the most part, there's mostly males that we deal with. But, there's certainly, I think, a higher proportion of girls than there was before and for more vile offences. Not just for shoplifting, but definitely for robberies, assaults. We're starting to see young girls getting involved in the drug trade.

Another Officer added that,

My old, red neck and old teeth think that even as Police Officers when we deal with a male or a female, there's more chance that the female will get the break versus the male. So, now we're more tainted towards males. Males will do more serious things to start, where the girls are more hangers on in the area. Getting into the drugs, ...the guys realise that when [male] police come up, they check the guys, but not the girls, because they can't touch them. Because if they touch them, now it is sexual harassment, sexual touching, inappropriate touching. Realistically, as Police Officers, if we have the grounds, we can do what we have to do. But, most of them, because they watch television and TV has given this image that "you can't do that. You can't do this." ...So we don't...

Further, as the Officers explained, since the Justice System's response to crime depends on the seriousness of youth's criminal behaviour and boys tend to commit more serious offences; they tend to receive harsher punishment. That is to say,

What it boils down to is males generally still tend to be involved in more serious offences. So, when they commit more serious offences, they will either end up in jail quicker and spend more time in jail versus the girls. If they [girls] do commit a serious offence, very seldom have we seen it that they're kept in custody for any significant period of time. Generally, they'll be arrested on a Wednesday, they'll stay in custody until the Youth Court date on a Tuesday, be released on conditions, and then from there, what we generally see is a lot of breaches of the conditions, before they end up back in custody for that first initial matter. That is kind of the pattern that we see.

This was further explained as follows,

Boys usually spend more time in custody. They'll do a serious, substantive crime... we had a youth who was involved in all those residential break and enters, he spent about a year in prison. He was released on the open portion of it, I guess, in the community. So, he was out in the community for a day or two, he breached, and then he went back and served the rest of his time, right. So, there's a lot more of that. The males seem to be much more on a strict supervision order. The supervision community orders and deferred custody orders are kind of what are usually put in place. So, whenever they do a breach, they're generally put back in custody for the amount of time before they're given that opportunity again. Whereas the girls, you know, if they breach, they'll get arrested for the breach and they might stay, again, a night in custody, but then will be rereleased on that same order, or maybe with some amendments. And, then they'll be arrested again for breaching, and that is a repetitive pattern.

Since girls are often under supervision in the community, "chances are they have more chances or opportunities to do an administrative breach, because the guys are locked up." An Officer gave the following example of how the breaching process works for females:

I'm thinking of a girl who committed an assault and had a court case that would have been coming up in August. She was released on conditions, so she accumulated a bunch of administrative breaches of curfews and drinking, and all that, while waiting for her court case to come up, which was 8 months away from the day of the offence. When was the offence? It [the court date] was actually, 9 or 10 months from the day of the offence. So, during that 10 month period, she was out in the community just getting more opportunities to drink, to miss her curfew, and ... There were no more assaults and all that. Finally, she plead guilty to the offence and she got a deferred custody for six months and she'd better be very good, because now if she breaches the deferred she goes

immediately back to jail.

Another Officer explained that girls who breach their probation orders usually do so by going missing and, consequently, failing to report to their probation officers, attend treatment, appear in court, etc. That is,

As far as with boys and girls, where I see the big thing is if a girl...has been charged, and has a probation order with a curfew, that's often where they are breaching, they're just going missing. And, it's the chronic missing. And, for whatever reason, I see far more chronic missing girls than guys.

As an Officer pointed out, girls' reasons for going missing vary.

Maybe they miss their bus. That's the usual excuse. So, then, they go 'Oh well, I missed it, I'm in trouble already, so I may as well stay out and have fun.' And then, it's like 'oh, I may as well not come home the next day either, because I'm already out, I've already breached'. So, they'll stay missing for a little while sometimes, because they know that there's a very good chance they're going to get in trouble, so they may as well run with it for a while. They may go 'my probation officer isn't in town right now, so nothing is going to happen until she gets back', which I hear, which isn't necessarily true. But, that's what they think. They're just going to wait until they return and maybe they turn themselves in later.

The Officers also suggested further reasons why these young women disappear for a while. Often their relationships with male drug dealers and peers and a perception that having a relationship with what they perceive to be an older, powerful male keeps them safe favours this breaching behaviour.

Often young females who are chronic runaways are in relationships with drug dealers. These youth end up running drugs for them. They'll be having sex with them, obviously. And, where it becomes a concern is if the youth is underage and if she is doing it for drugs, exchanging sex for drugs, she's being exploited, or she's in a relationship. I'm not getting a lot where they're getting pimped out. But, that can happen too. There's been some cases it's a boyfriend pimping her out and she's getting drugs in exchange for it. And, again, it's not a lot of times...a lot of the girls that I'm working with are not real criminals. They're getting criminalized because of their lifestyle and what's going on... One girl

I'm thinking of had so many breaches, so many missings, and she just had 2 thefts charges, for shoplifting of some food...

Young offenders' friends also influence their decisions to abide by their probation conditions. As the officers we interviewed saw it, peer pressure and peer influence may be somewhat differently experienced by males and by females. As one Officer put it:

I don't know if [boys] get themselves in such predicaments where they are as out of control as much as the girls would be. They [the boys] seem to be a little more in control of what they're doing. So, theirs is more a case of won't than can't. You know, if the guys said, "Gezz, I'm going," no one is going to go, "Oh no, you need to stay." But, if a girl were to say, "Hey, I'm leaving," she would probably get a lot of pressure from her friends or from everybody else, like, "It's not safe for you to go. You shouldn't go. Don't go." And, she would probably cave to peer pressure, whereas I don't think he would.

The Officers' understanding of their professional roles, the law, the youth justice process, societal expectations and their well-schooled understanding of the youths and their peer groups all come into play in making choices about charging a young person who has broken the law:

The process of deciding to charge a young offender. The process of making decisions about young people's criminal behaviour differs for every professional group interviewed. There are several elements to how Police Officers decide to charge a young offender. The victims play an important part in their decisions. As they explained this, it was evident that in their role as peace officers, they have to consider both victim and offender in every case. So for example, if police are called regarding a theft or a break-in, they, "have to consider the store, right, how many times have they been the victim? What are their losses? How much of it are repetitive losses? That is a big issue".

Secondly, they are very much aware of the youth's circumstances. They look at youth's "substance abuse, drugs and alcohol, the issues a lot of these kids suffer from growing up in that family, in that sort of environment." As the Officers explained, the youth's home and family conditions foster behaviours that are not accepted by the mainstream society and this plays a role in the young person's behaviour as follows:

I remember going to one of the kid's homes, just before they turned 12, to remove the oldest brother who was causing a scene, and in the house were two known crack addicts, prostitutes tweaking in the living room, while three other children were kind of getting breakfast ready with mom. So, this is the kind of environment that they live in, right. So, that's why they're used to a lot of anti- authority, anti-society, anti-social behaviours and attitudes.

More specifically,

[We] have to look at every situation and find out what did the kid do? What is the kid like? [We] chat with the kid and ask ...what is your background? Can you try to determine why you stole or why did you break the window? Is there some background information? Is there an outlying issue? Was that a case that they stole because the parents kicked them out of the house? They were hungry. They've got no food. They stole because it was a dare. They stole because they love pepperoni. Did they steal because they hated the storeowner? And, where we say, what's a package of pepperoni worth as a dollar? ... You have to look at how is it going to affect society? Is this a first time offender who did it because of need, because of want, because of a foolish action? [We] can look at diversion. [We] can look at restorative justice. [We] can look at dealing with them in some way that prevents them from getting a criminal record.

The youth's reaction to the arrest also affects the decision to charge. As an Officer explained,

If I'm interpreting [the Youth Criminal Justice Act] properly, it gives us a lot of discretion on how we handle things. So, we can address things by a warning, by a deferral, by charges, we kind of sit there and go, I wonder what's the best? And, here is the thing, and this is might be interesting, ... when we're trying to decide, you got a police officer with a young person...So, we get some tears and we get some remorse, and get some pleading. We might be likely to go, oh she

really seems sincere here, I think we're going to put her through diversion. Obviously we're going to look at her criminal background and see what she's done, but if she's kind of ... maybe just lots of missing, nothing really substantive there, there's a chance that we would warn her, divert her, put her through the system, whatever we are going to do it. And, just think too, there's the balance. You may have a young boy who is maybe defiant and he shows his distress in a different way, you know. I would hate to say that could happen, you know, he may get charges. If he is not pleading his way and saying he is sorry, he may end up getting charged. You know, because there's discretion there. Whether it is fair or not, I don't know, but often we kind of first line go, "Are they remorseful? Are see something here and feeling some empathy for them? Now, that being said, a lot of times, it's out of our hands. The store may say "I want to press charges," and we are going to go with charges, especially if we think there's enough. It depends on the officer.

Still, all that said, it was learned that even though the youths' circumstances and reactions, and the victims' wishes are taken into consideration, these may be superseded by the likelihood of conviction and youth's criminal history. That is,

Police Officers often look at past or history, what's going on. We do have some discretion ... I've never been told, "Yeah, you have to lay charges." If we still don't think that there's a likelihood of a conviction, then we don't have to lay charges. If there's a likelihood of conviction, I would hope that that member would carry on through it, but it can go either way. I've seen cases of shoplifting, where I think it should have gone and it wasn't. And, maybe other times where you charge and let the courts decide. And, often I prefer that way, because now that person, not in the heat of the moment but later on down the road, can then say "this is why, this is what happened" and defend themselves and their actions. It works both ways, I suppose...

Clearly, the decision to charge a young person with an offence requires taking into account a number of circumstances and conditions that can affect both the present and the future of victims and offenders while also holding young people accountable and keeping in mind due process in the justice system. One aspect of this that now has a direct effect on how female youth are dealt with is the recent Ministry for Children and Family Development decision, (March 30, 2012) to close the girls' wings in two of the three

youth custody centres in the province of British Columbia and to send all girls who require custody to the remaining open wing in Burnaby.

How the recent decision to centralize female youth custody services has affected police work. The Police Officers interviewed for this study varied in their beliefs about the need for youth custody. For some, it is the only answer to deter some types of criminal behaviours and keep society safe..For others, it presents problems because it increases the opportunity for some youth to strengthen their relationships with other deviant peers. As an Officer explained,

Based on this group that we're dealing with (prolific offenders), when they get arrested, when they go to juvenile prison, they're just hanging out with their buddies. So, that's not much of deterrence, going to jail. And, there's so many social issues behind them, that I don't think there would be anything, from a youth perspective, that would deter them.

However, even though criminal culture peer involvement is a drawback, having a youth custody centre in the community seems to benefit youth and youth justice professionals. Police Officers and other service providers in the community were not favourably inclined toward the Ministry of Children and Family Development's decision to close the female's wing at the Victoria Custody Centre. According to one Officer,

It's unfortunate. But, from a policing perspective, it doesn't impact us much, because we're not going to base our decision to arrest female youth, on the fact that there's no custody centre. I mean, if she does something bad, we have to act on it. Again, we have that duty to the public. I think it probably has more impact for all the services that rely on having the youth here in the community, so they can approach them, have an opportunity to intervene, and make that connection with them, which is now impossible. So, that's definitely impacting the other agencies a lot more as oppose to us. I mean, we would prefer to have them here in the community....

As the Police Officers understood it, having the Centre in Victoria, allowed workers to create relationships and provide services that helped to deter young offenders from further involvement in crime:

For a youth service provider, it would be great to have the centre back open again, because it was one of the few places where you knew the girl was there and that you knew you could get in contact with her. A lot of these cases, when the girls go missing, they'll be hanging out at certain points in the community and they'll only be found when they're arrested. So, it makes it harder for a lot of the agencies that we work with, support workers and stuff, to actually try to help them. When you're missing all the time, they don't know where they are, whereas if they were actually in custody, somewhere local, then they can go in, build these relationships, make those connections, and try and provide the guidance and services that they can.

While it was agreed that day-to-day youth-focused police work may not be substantially affected, one officer did point that there may well be implications for police work, implications that are unfavourable from both a financial cost and a human cost perspective:

It's had so many implications to the department for having to house these females, right, and also for follow-up investigations, where we found out that perhaps this female is a key witness to some other investigation and needs to be interviewed, right. So, a lot more expenses incurred to us now to have to travel to Burnaby to possibly get an interview done over there. And, then, there's always the potential for these girls, if they've been a victim of whatever offence and we find out after the fact that she's in custody, this means that we'd have to do a lot more ... again, more expenses to try to investigate that.

In addition to investigation challenges, housing females between their arrests and their hearings has become a major issue. As an officer explained, girls are now being housed in police departments.

There was one girl who spent the night in a cell in the Victoria Police Department. I think [the officers] weren't sure if they were going to be releasing her or not. And, so, they do have the ability to keep them in for a night. And I don't know how that plays out to be honest; because I know quite often our cells are used

overnight... I think because this youth was already in the court system in custody of sheriffs, they just took her there. I haven't seen it where the youth's been in custody and sheriffs would then take them to our cells for the night. But, what will happen is, any other police departments if they need that youth to appear in court, she'll come to our cells and then she'll appear in court.

It was further explained that this practice means that youth prisoners are now in the same location as adult prisoners:

They can't see them, they can probably hear them yelling, or they can hear commotions going on here, absolutely. One of them probably can see some of the prisoners being brought in. It's not ideal and it certainly would be terrible for any length of time. And, if a youth got picked up on a Friday, right now, the way I understand it, she'd be in our cells until Monday or Tuesday when she appears.

Thus, while the Officers affirmed that they would do their best to focus on what is required of them, they suggested that overall, narrowing the options for female young offenders is not helpful to them. In all their responses, the Police Officers that participated in this study demonstrated a clear understanding of psychosocial and contextual demands and complexities of policing youth.

Youth Probation Officers. The six Youth Probation Officers' interviews yielded five recurring themes or areas of focus: i) The demands of Youth Probation Officers' twofold role; ii) The challenges of Youth Justice Work within the Ministry of Children and Family Development; iii) The decision-making process of crafting probation orders and invoking administrative charges; iv) The effects of the recent decision to centralize female Youth Custody Services on the work of Youth Probation Officers; and v) Differences between Aboriginal and non-Aboriginal female young offenders.

The demands of Youth Probation Officers' twofold role. Each Youth Probation Officer (YPO) interviewed described having a twofold role that is prescribed by the

conditions of their employment and the law. According to the Ministry for Children and Family Development policy manual, a YPO's role is "to protect society by providing [youth involved in the justice system with] appropriate support and supervision and facilitate rehabilitation by providing [them] the best possible opportunities for health growth and pro-social development through a youth focused integrated case management process" (Ministry of Children and Family Development, www.mcf.gov.ca/youth_justice/community.htm). As one YPO eloquently explained, this means that she has both a "hammer and helping hand." Here she describes what happens when a client first walks into her office:

I tell [the kids] I have two hands. Most people have two hands. This is my helping hand...It is the one that will explain the procedures and the process and explain what is going on, it is the one that is going to help them never to be in trouble again and we all can agree in that sort of common goal...But some kids only seem to get in trouble. They've been drinking and they make a bad choice or they have anger issues and they keep coming up and getting them in trouble with the law. So, this is the one [the hand] that might make those referrals, this is the one that might talk about those issues, this is the one that is going to ask for those rules in court to be able to assist. And I say, if you let me, this is the only hand you'll ever see, it's the helping hand. But, most people have two hands, and so do I. And they need to know, you need to know, it's only fair that they have this knowledge that there is this other side of me, and I call it the hammer hand. This is the one that if you're not following your conditions I will be asking for a warrant, will be breaching you and if you're completely out of control, and not following those conditions, the one that will ask you to be in court or, in custody rather. So, I say really the power is in the hands of the youth, because I will never use this hammer hand, unless my own hand is forced per say."

The "hammer hand" was offered as a metaphor for the formal requirements that clearly define their roles as Officers of the Court: "[We] respond to the courts. [We] are officers of the court and the court gives [us] clients, so it is not a voluntary service. And, what [we] are doing is trying to ensure that the wishes of the court, protection of society, are upheld". The protection of society entails that probation officers must, "monitor

youth who are on a court order of some sort with a report and enforce those conditions, when they're not being met". In other words, "[Our] job description would say that [we] are to monitor the kids involved in the justice system and the conditions they have ... and then, inform the courts."

The rehabilitative or support role, that is the "helping hand" that is an integral part of the work of YPOs, was seen by several of these officers as also contributing to safeguarding social well-being. As one YPO explained, "The [Youth Criminal Justice Act] says that if you rehabilitate youth, then they are less likely to cause a community to be endangered, from them. So, we are reducing the risk by offering rehabilitative services." For this reason, these workers believe that probation "[looks] at all of the other stuff in [the youth's lives] that has less to do with their probation conditions and more to do with them being healthy, functional human beings."

Thus, these officers take into account the youths' homes and housing conditions, their overall health, history, involvement in school, work, and/or recreational activities, family support, peer involvement, etc. That is, their duties and responsibilities require that they investigate "what issues the youth are facing, what are their barriers and help them pass that. And, generally that means try to engage the family and working with the family, as well, providing referrals and engaging them in resources within the community." One YPO summed it up this way:

I think the philosophy for most of us is that until the basic stuff is dealt with [medical appointments, immunizations, all the health stuff] you can't expect these kids to get up and go to school everyday, you can't expect them to make it to appointments to care about counselling if they haven't eaten, if they're not physically healthy enough to care about their future.

Nevertheless, as those YPOs who had been in the job since the mid 1990s noted,

they did not always have these two roles or the time to support youth in the way that they are now able to. Until 1997, due to their extensive caseloads (an average of 90 youth per worker), “It was a whole different kind of work. ... [we] didn’t do any of the helping stuff.” However, since youth crime numbers have been declining and along with them workers caseloads (an average of 20 in 2012), these professionals have had more time per client to dedicate to rehabilitative efforts and thereby hopefully also contribute to lessening the involvement in crime of those on their caseloads. The twofold roles of the YPOs and particularly their rehabilitative work have also come into sharper focus since they became employees of the Ministry for Children and Family Development rather than the Ministry of Justice:

The challenges of youth justice work within the Ministry of Children and Family Development. In 1996, Community Youth Justice Services was transferred from the Corrections branch, which is part of the Ministry of Justice, to the Ministry of Children and Family Development (MCFD). This shift contributed substantially to changes in youth probation practices, some of which were described as positive and some as negative by the participants in this study.

Those who believe the change was beneficial defend the specialization of services and MCFD’s holistic approach to children and youth. As one YPO noted, “[the change] has been good in so many ways. [There are] so many positives to be able to just focus on the youth and the families and kind of specialize in that area.” As another YPO pointed out, “certainly the Ministry coming together in a different, more holistic, decision making kind of sense and working out of the same office ... leads to better practice and better outcomes.”

Conversely, there are those workers who disagree with the cessation of services when a youth turns 19 years of age that is part of the MCFD mandate, but was not the case if a young person came under the jurisdiction of the Ministry of Justice. These YPOs lamented the abrupt cessation of services and decried the fact that, “the Ministry will only look at people until they turn 19. Stop! ... That is not how [they] see it. [They] see it as, you know, reduction of risk is not [just something they need] until they turn 19. Reduction of risk is to society, to this kid himself as he turns into an adult, and has relationships and has children. This is the lifetime of the kid.” Moreover, these YPOs also believe that the “[Ministry] is limited in its view, scope, and its vision, and it is all around this kid, this family, until that kid turns this age.” In other words, for these YPOs life conditions and patterns of behaviour are not determined by age and so age should not be seen as the line of demarcation for services.

In addition to the dissatisfaction with the age-determined interruption of services, some workers affirm that, “sometimes the system is working against [them]. ... The impression front-line workers have is that [executives] have no clue about what [they] are doing, because they seem to tinker and toy, whatever, with a huge disconnect from what is really happening.” These workers would prefer it if the framework of rules and the MCFD structure “helped [these professionals] as opposed to hinder [them].” This disconnect can be partially explained by the philosophical conflict between youth justice and the Ministry’s mandate. That is, youth justice professionals are engaged in the assessment of risk in youth on behalf of society, whereas the Ministry for Children and Family Development “is more child-centred, child-based, family-centred. ... The rest of the Ministry is looking after children who are in need of protection from society,” rather

than the other way round.

The twofold role and its dual demands are very much in play during the decision making process of crafting probation orders and invoking administrative charges:

The decision-making process of crafting probation orders and invoking administrative charges. As the Youth Probation Officers who participated in this study explained, in cases of breach of probation, their decision-making process is very complex. This process is divided in two steps. First, they have to consider ways to support the youth in order to prevent their undesired behaviour from happening again, and make recommendations that will allow Judges to craft probation orders for youth to abide by. Then, if their clients do not obey the conditions placed on them, probation officers have to weigh the impact of labelling an undesired behaviour as a breach of the probation order and recommending an administrative charge.

As previously explained, when teenagers commit crimes and are sentenced to probation, according to Section 42(2)(k) of the Youth Criminal Justice Act, Youth Probation Officers are nominated to monitor their behaviour and make recommendations to Judges about supports in the community that may reduce their risk of reoffending. As explained in the literature review, crafting probation orders requires the application of Section 55 of the Youth Criminal Justice Act. This process also involves the evaluation of resources that are available in the community for dealing with the youths' needs. Attention is also paid to the youths' circumstances and their criminal history.

The YPOs explained that Judges have the legal responsibility to craft

probation orders and can do so without consulting workers and/or Crown, but nevertheless, in the vast majority of the cases such that, as one YPO noted,

Judges ask a lot of questions and want to know. And sometimes, it's kind of a collaboration, the judge will say 'give me some information about this kid, tell me what you think should happen' and then judge will listen to Crown, and listen to defense and then make the decision.

To assist with this collaboration, YPOs give their input by means of a report to court where,

[We, the YPOs] usually start by a kind of a paragraph about the offence that's been committed, then, a couple of paragraphs about the good and the bad that's going on in their lives, and then make mention about other people, like on the team, and how they ... what their opinions are, and then recommendations.

As the YPOs made clear, the Police Officers who lay the charges play a large role in whether or not a young person has any conditions or requirements placed upon his or her behaviour. The overall perception among correctional service providers is that, "since the implementation of the Youth Criminal Justice Act, the police [have] more discretion and also more work when it comes to charging and putting youth on conditions. Both factors seemed to have influenced the numbers of youth charged and in custody in B.C.."

It is probation officers' understanding that the decrease in youth charge rates and in the number of people on their caseloads reflects the Police Officers' frustration with the youth justice system and the application of the current legislation. That is,

In the Youth Criminal Justice Act you can't jail adolescents or something like that (breaching and/or less serious offences). So, the police don't think anything is going to happen to them in court, so they essentially turn a blind eye, they give the kids a warning, they might drive them home, and have a chat with parent. But, mostly, I think they just probably give them a caution or warning using their

discretion and send the kid on their very way. That's what I think is kind of happening. Talking to some of the higher officials, in the local detachment, his sense was the police have a 12-page document that they have to go through when they are processing a young offender. Basically, every other paragraph says 'you don't have to talk to me, you don't have to talk to me'. And, so by the time they get through that, and, actually do what they need to do, 2-3 hours have passed. So, the officers ask themselves, you know, 'is this, whatever I'm looking at, worth all our intervention at this point?' And, quite often, they are saying 'no'. And, they say they're not even bringing the kid in to have that chat.

As a consequence of what is perceived by some as police leniency,

Those kids aren't getting the interventions that they may benefit from, at a younger age. And, now, when we see them, as later teens, they're a little bit more entrenched, a little bit hardened, and a little bit tougher to work with. I'm not saying it can't happen, but certainly that just, you know, continues the cycle that they ran in. This makes it tougher to bring forth some change.

As for the assessment of community resources, all the YPOs agreed that the province of British Columbia is somewhat limited in terms of resources for these youth. As they explained, "we do not have the resources. I mean, in B.C., especially, but, you know, I do not know. I hear the other provinces are better. We just do not have the resources we need for a lot of these kids." This province is lacking in:

some preventative things. We need somebody to be getting involved. Any kindergarten teacher you talk to, in B.C., will tell you they know who in their kindergarten class is going to have issues, who needs help, and we do not do anything. I mean, even paediatricians. There's no follow up if a kid suddenly stops coming or... We have nothing in place if a child leaves the hospital the day it is born and never sees a doctor again. There is nobody that follows up on any of that kind of stuff, like, and it continues on, right. I mean, elementary school at least has some resources. But, by the time they get to middle school, there's just about nothing. I understand that the counsellors are being cut again, for the next school year.

In addition to preventative measures, the lack of mental health and specialized services for female young offenders seemed to be of greater concern to

the YPOs. As One YPO explained, even though there is a Youth Mental Health team in her office,

Generally, their focus, because I'm told that their numbers are high, the focus is people who are willing to engage in their services. They work with all age ranges, 2 up to 18, but their focus is on people who are wanting the service.

Mental health services are also voluntary at Ledger House (a Vancouver Island resource that provides acute, in-patient, hospital-based psychiatric services for children and youth) and the Maples Adolescent Treatment Centre (a provincial Child and Youth Mental Health Services facility that provides direct residential and community services for youth and their families). Youth who receive services from these facilities can refuse treatment or leave if they wish to. For this reason, the professionals who were interviewed underlined the need in British Columbia for a secure care facility, a residential treatment facility in which children and youth could be placed even if they did not wish to be, "something between voluntary and custody."

[We need a place for youth who are involuntary], who say 'thank you very much; I don't need your help. I'm just fine how I am, trying to live my life in whatever way.' And they are 14 or they are 16, whatever, you know. Parents don't have the ability to keep their children safe and that's what they are asking for.

When it comes to services for female young offenders, "in Victoria, we don't have anything for girls. No alcohol and drug resources for girls. We have a couple on the mainland, but they are voluntary. And, some of these kids are not voluntary."

As it was observed by the YPO participants, in British Columbia, invoking administrative charges involves the interpretation of the policies, the evaluation of the youth's circumstances and behaviour, and the need to interrupt wrongful

behaviours. Those involved in the process must follow the policies described in the Youth Justice Policy and Program Support document developed under the auspices of the Ministry of Children and Family Development and can refer to the Community Youth Justice Programs provided by or paid for by this Ministry. The prescribed policies make clear when a YPO “may, must, and shall breach” a probation violator.

Some workers gave examples of how this document is applied in practice: A probation officer must breach:

if [a youth] didn't complete his community work service hours, it's a must. There is no discussion. If Timmy or Sally did not do their 30 hours, I have to breach her.” They may breach “if [young offenders] are not following [their] school condition or if they tend to offend in the middle of the afternoon or if it is a pattern. It was an afternoon here; we are not going to necessarily breach on that, even a couple of days. But, if there is a pattern of a breach behaviour, that's again a must. Or, if it is a contravention of the serious condition, like, not attending counselling. That was one intent of the judge, so if they are not attending counselling, that is something that you have, I think it is a shall or a must.

The evaluation of the youth’s situation and actions is by far the core aspect of decisions to lay an administrative charge. Probation officers look at the young offenders’ age, gender, how often they go missing, if they report to their probation officer according to their probation orders, who they socialize with, the frequency of their breaches, whether they attend school, programmes, and/or treatment as directed, their history of drug and alcohol abuse, and the seriousness of the initial offence and the breach. As one YPO explained,

For me it is how often, how serious, and what kind of drugs. Poly use and we are looking at anything beyond pot, and definitely the age factor, as well. And, I think, I’m into the connectedness of this youth. Are they connected with anyone? So, when a youth is not connected and I do not know where there are at, you know, combined with being AWOL.

When the young offender is a female, alcohol and/or drug use and regular disappearances are seen as indicators of greater risk largely because substance use is very much a part of the process of grooming girls for the sex trade. As a YPO noted,

What we hear about girls is that when they are AWOL, for that period of time, they are getting their drugs and alcohol from adult men. And, they are being sexually exploited. They, maybe, do not know they are being sexually exploited, but 30 year-old men are having sex with them. We see their pictures on the Internet. It happens really quickly, right. Sometimes, we see they are out on Rock Bay, working the streets. I do not know where the boys go. We do not see them doing that. So, then, you get the girl back and now she is drug and alcohol addicted or has been using quite seriously, now she has a bunch of sexual exploitation. They do not use birth control. They do not use condoms, none of that kind of stuff, when they are out. Their general health seems to be more at risk...the boys still eat the girls don't eat.

Another YPO added that these girls, who are generally stereotypical in their gender orientation, male focused and often younger than the males they are involved with, can be readily persuaded to “run as a mule, run [dealers’] drugs for them, or they are asking them to steal for them, they might be asked to go beat up on someone”.

YPOs also spoke about how the change in legislation from the Young Offenders Act (YOA, 1984) to the Youth Criminal Justice Act (YCJA, 2002) had changed their approach to “breaching” youth; that is, invoking the law. Under the YOA their mandate in law was to do what they could to inhibit further criminal involvement, thus YPOs could “breach” a young person whenever they believed that the youths’ risky behaviour was severe enough to constitute a threat to the youths’ own lives and/or to society. When this was the case, jail time was often recommended. In one YPO’s words:

Under the Young Offenders Act, sometimes where you are like, ‘okay, she’s just being arrested, she is in really bad shape, maybe at this point I am supporting jail, so at least we can stabilize her, detox, take her off the streets for a little bit, find an alternative place for her to live’, and what have you, that kind of thing.

However, under the current legislation, custody cannot be so readily used in these situations. Youth have to have breached multiple conditions before being sent to jail and YPOs have to have exhausted all the resources in the community. Thus one YPO stated that,

What drives me crazy is the mindset that all that we do out here, as soon as the kid's breached a curfew, boom, we're sending them to jail. You know, if anything is just to have that understanding that we do not breach frivolously. It is the last thing we want to do, we've tried everything that comes to mind for us, to the social worker, everybody that is working on that continuum. We are only doing a breach because we have no other answers at this stage and it is just for safety. To get that kid safe, it's the only reason we are doing that.

Short, sharp custody sentences are also used in order to “[allow youth] to take a breath, get them clean and sober so that they can kind of look clearly at what their situation is.” Such sentences are also used to hold the young offenders still, in a safe place, long enough to engage them and help them become willing to take services. In other words, “[Our] intent is not necessarily to have them locked up. It is just maybe a pause while [they] can get supports build in the community to have them release in the community again.”

However, even though short custody sentences are sometimes used to “pause” misbehaving teenagers, YPOs also debate among themselves about the useful impact (or not) of these sentences. As one YPO asked, ‘what's the message to the kid with a short sentence? Society is intolerant of you at this point, and we are not going to fix it. You do not really go out with any more skills than you came in with’. Moreover, it was noted that this ‘slap on the wrist’ punishment does not contribute to the reduction of risk, because “there is no time to do anything” during such a short period of time. Further it was pointed out to us that where drug and alcohol addicted youth are concerned, “if you

are going to throw them in jail, you have to throw them in long enough to detox them, otherwise there's no point." As another YPO explained while kids are in custody for short sentences,

[Custody personnel] do not [and cannot] do a lot with them, other than detox them, and maybe, you know, they will get a little bit of mental health assessment, a little bit of talking to some counsellors about what's going on for them, but that does not really reduce anything, right? What we know about the brain and what we know about trauma and all of that, you can't make any difference in that short period of time, except you might interrupt it, for a moment.

For all the YPOs interviewed, the greatest challenge was trying to make decisions that contributed above all to the prevention of recidivism and the positive development of the young people on their caseloads. They made it very clear that every decision carried with it the weight of a great responsibility to choose wisely both in the best interests of the young person but also of society; so no decision was an easy or simple one to make. As with the Police Officers interviewed, the decision-making processes of YPOs are also directly affected by the recent MCFD policy changes about females and custody:

The effects of the recent decision to centralize female youth custody services on the work of Youth Probation Officers. In March 30, 2012, the Ministry of Children and Family Development made public the decision to centralize female youth custody services in British Columbia. This measure was taken as a result of the low number of young females in custody the province. Moreover, the Ministry believes that "bringing all the girls in youth custody together in Burnaby enables the development of and access to a broader array of gender-specific programs that, for example, will better address addictions and mental health needs (especially trauma) of girls. This will benefit all girls in custody, but especially girls who otherwise would have been in Prince George or Victoria and

would not have access to the array of gender-specific programs available in Burnaby” (Ministry of Children and Family Development, 2012, p. 1).

Youth Probation Officers seemed pleased to see efforts to create specialized programmes for female young offenders in Burnaby. However, they were worried about the effects the change would have on their relationships with their clients. As a probation officer stated, "I like to be close to my youth. I need them to have a connection with me." Another worker added that, "I cannot see any of my girls, that I have worked with in the recent past, sending them to Burnaby. I could not possibly. I would have to look at other ways and, as you know, [other probation officers] and I have been working on trying to create a programme here. It has been slow going, but we will continue work towards that. I would find every other possibility before I would send them to Burnaby.”

Sending people away from their local communities also places the youths' connections with their families at risk. As a worker explained, "If there's family, then I want to be able to get them in and connect the youth with them." Even though MCFD had promised that “as part of the realignment, the ministry [would] promote family visits through telephone, video conferencing and financial supports for parent travel, where required” (Ministry of Children and Family Development, 2012, p. 2), YPOs affirm that,

They keep saying it is coming, but we have not seen it yet. There was talk about how they would set up something special. There would be some funding so that the parent could see the kids. Well, so, apparently that is the case, you need a sentence of more than 30 days and the funding is not to actually physically go there. It is a laptop that, apparently they've purchased, they will mail this laptop to the probation office, the parent can come into the probation office and, I don't know what it's called, and SKYPE with the custody centre, in the probation office with their child. If they have a sentence of more than 30 days! So, I don't know what I had imagined, but that wasn't what I imagined visits were going to look like for these girls.

The jeopardizing of the girls' relationships with their workers and families is not the only issue caused by the transition of female youth custody services to Burnaby.

Youth Probation Officers believe that youth from smaller communities will

get pulled into the behaviours and the dramas of the other girls. [They are] going to be exposed to kids who are doing criminal things beyond the assaults.... [They are] going to meet girls who are going to teach her how to break into cars and break into houses. These girls are going to expose [them] to stuff about drugs and alcohol and [they are] not ready.

For the YPO participants in this study, a move away from local community connections and from family and probation officers with whom they either already have, or could readily develop relationships, has the potential for creating much greater risk for the vulnerable females they work with. Their greatest concern is that these young women will be inducted into a more hardened and better organized urban crime underworld where they are also likely to be sexually exploited and further encouraged to take drugs and engage in other high risk behaviours. Although concerned for all females, these concerns come into even sharper focus for Aboriginal females.

Differences between Aboriginal and non-Aboriginal female young offenders. As noted in the introduction, Aboriginal female youth are overrepresented in the justice system. YPOs have different opinions as to why that happens. Some contend that stressors of Aboriginal marginalization and the attendant difficulties in Aboriginal families and communities contribute to the greater involvement of Aboriginal females in the system. That is, "you have [Aboriginal] families that often are not functioning as well, so the kids have that extra layer. And, you've got sometimes, especially on reserves, the whole community is not functioning very well."

Others suggested that this population is resistant to the Youth Criminal Justice

system because of the many injustices of colonization and the systemic abuse that First Nations people have suffered for so very many years. For a great many good reasons, for First Nations youth and their families, there is little or no trust in government systems and the justice system in particular. As one YPO explained,

With a lot of First Nations people, probably it is safe to say, the majority, there is still this feeling like, and I have heard it a hundred times 'we do not need to follow. We do not want to follow. We do not trust the white man. Your court means nothing to us'.

Another YPO added that the numbers are higher for Aboriginal girls in custody because,

They are breaching all that much more. Like, they are breaching even more than Caucasian girls. ... One [white] girl I work with, whenever she does go home, ... she has got the adults in her life ...saying she needs to deal with that and she needs to ... And, I don't think, for a lot of the Aboriginal girls, they're not getting those messages. And, in fact, they might be getting the opposite message, the 'who cares. You don't need to deal with it. They have no right to do this to you'.

There are also those workers who think that, for some Aboriginal youth and their parents, there are values and cultural differences that work against accepting the demands of justice system:

Where you have explained the system, you have explained how it's going to work, but, yeah, when they are late for the curfew, they're totally surprised that there's a consequence for their behaviour... The kids who are fairly urban, maybe have a different sense, than someone who might have been out on reserve ... It's actually more almost rural-urban, just a level of sophistication that they just don't quite get how this is going to work and that this is serious, and that this is the justice system...

On the whole, as the YPOs see it, the urban-reserve differences in simple processes like the importance that is placed on defined schedules and most of all, the impact of the long and painful history of colonization on Aboriginal communities,

families and children have contributed to the creation of many layers of interconnected personal and social difficulties that work against Aboriginal youth, especially Aboriginal girls, being able to successfully navigate the Youth Justice System. That these young people breach their probation orders and therefore incur more Administrative Charges is not very difficult to understand given the circumstances and conditions of their young lives.

The Youth Probation Officers interviewed explained that their decisions are governed by an ongoing demand to balance the needs of the individual and the needs of society against a backdrop of often competing demands, while also negotiating shifts in policy, and most of all, while often lacking the resources that could assist them with intervening in ways that do not take away a young person's freedom

Youth Court Judges. The analysis of the four Judges' interviews is presented as per three themes that emerged from our interviews: i) Demands of the shifts in legislation; ii) Perspectives of the young offenders; iii) Judges' decision-making process when sentencing youth.

The demands of the shift in legislation. The four Judges interviewed have vast experience dealing with youth, having worked with all three youth criminal legislations: the Juvenile Delinquents Act (1908), the Young Offenders Act (1984), and the Youth Criminal Justice Act (2002). Their knowledge of the acts contributed to a better understanding of the change in law and judicial practice that happened over time.

First, the magistrates agreed that, since the Juvenile Delinquents Act (1984), the legislation that regulates youth's criminal behaviour has become more complex and rights- based. As a Judge explained,

I like things to be fairly simple and it's become more and more complex. ... I like to focus on the person I'm dealing with, and not get bogged down in section, after section, subsection, sub subsection, to try to see where they fit in into the process.

What Judges appreciated about the pre 1984 legislation was the ability to focus very directly on the young person and his or her actions. Since 1984, the processes have become more protracted. As one Judge told us,

Now, [young offenders] come to court on their first appearance, and duty counsel speaks to them, and then they go away so that they can get appointed legal aid counsel, and then they come back again and the counsel will need further time to review the case and take instructions, and do all the work. So, it's weeks and weeks before they get anything real. And then they, like in [one of my current cases], the offence was, I think it was November 2010, now it's more than eighteen months later...

The issue for the Judges is not that young people should not have the same rights as adults before the courts. The issue is that they were already very much engaged in expanding legal rights to youth, while being able to avoid being bogged down in procedures that create a protracted timeline and a long delay between behaviour and consequence. As one Judge noted,

By 1982, [when the Canadian Charter of Rights and Freedoms became law] we were making sure they read the charge, we were making sure they spoke to counsel, and we were making sure they got the Charter Rights. So, we would be a little legal, but it was discretionary other than prescribed ... in this new act, everything is prescribed. It focuses more on the young person's rights and all the procedures that go with that, procedures that create great distance between the action and the outcome.

The Judges also understood that the changes in legislation since 1984 are meant to enshrine in law an approach that takes into account the youth as a developing being in a much more complex way. As one Judge suggested, compared with the Juvenile

Delinquents Act (1908),

The Young Offenders Act was much more sophisticated, much more academically oriented. ... Dealing with youth was not just dealing with young criminals; you were dealing with undeveloped minds. That was a totally different job or work that you were doing, whether as a lawyer or anything else, than dealing with adults. YCJA ... carries that on, carries on that philosophy, but it intellectualizes it even further, and attempts to be very careful making sure that you are on the right track that you were dealing with youth instead of an adult and that it is an entirely different process.

Thus, in terms of court responses to crime, the Judges believe that the law now demands

a much more multifaceted grasp of youth and situation than [only the relationship of offender and offence], and, even more so, when people who do not have completely formed brains. To have it emphasized, the end goal here is to have this person develop into a responsible member of the community.

For this reason, the latest legislations

constant[ly] [emphasize] that you were dealing with a social problem, a social issue, that you were dealing with potential adults. You were not just dealing with a completed product, you were dealing with people who are in transition, and that is constantly put in your face, when you're dealing with youth under the Youth Criminal Justice Act or the Young Offenders Act up to a point, there is an emphasis on a more sociological problem than just an offender-offense penalty.

In philosophical terms, these changes in law created a judicial shift in paradigm.

Whereas in the past the focus was on retribution, since the Young Offenders Act (1984), the focus is on re-socialization. In practice, as the Judges see it, this shift is translated into

a deliberately reduced ... emphasis on just imposing, just penalizing for the act, for the wrongful act, and... while you do have to bear that in mind, paying greater attention to the individual and that individual's circumstances. When you are sentencing someone in adult [court], sentencing anybody, you're thinking of the general seriousness of the type of the offence committed, the seriousness of

the circumstances under which it was committed in this particular case, and the circumstances of the offender. Now, in dealing with the Youth Criminal Justice Act, more so than dealing with any of the predecessors, you are commended that your primary emphasis is on the circumstances of the offender.

In other words,

How [judges] dispose of a matter in youth court has to bear relationship to that kind of wrongdoing that has happened. But, that is a much less significant factor than the other one [circumstances of the offender], which is what do we do about this person to make sure that they are held accountable, but also that they are brought back into the mainstream of the community.

These discussions about focus lead to discussions about another issue in the current legislation: Having to account for and respond to the circumstances of the offender. As one Judge noted, increased responsibility to make decisions about matters that go beyond the scope of the law brings challenges the Judges have not been trained to address:

It is just hard to know exactly where the boundary [between criminality and sociological parameters] is. But, I think one of the failings is, and this is probably what I am saying, one of the failings of the Youth Criminal Justice Act is recognizing that an unlawful act on the part of the youth is not the same as a crime in adult and that it is a social problem. Part of the blurring of all of that is the tendency to cause you to get in there and decide 'what am I going to do to make this child's life good?'. That, sometimes, goes a little bit too far. I don't think we are equipped to do that.

In other words, the Judges noted that legal training and training in child development, child psychology, youth and family work, and sociology is not the same. The current legislation is however, premised on values and principles that require Judges to take all these knowledge areas into account.

Judges pointed out another change in legislation that affected their work in terms of their responses to social issues. Until 2003, when the Youth Criminal Justice Act

came into force, youth could be sentenced to custody to have social issues addressed.

However, Section 39(5) of the current Act strictly prohibited that. As a Judge explained, under the old acts,

I used to use it as a [foster or special care] home. When they [were] on the streets and their parents [were] not interested or [couldn't] handle it anymore, where else do you put them if there's no beds available to house them...and, custody is specifically prohibited in the YCJA. You cannot use it as a social measure...where do you send them?

Now that Judges can no longer sentence youth to custody in order to make sure that youth receive services, they are restricted in their ability to assist with the very kinds of help with social and personal issues that the most recent law demands that they provide. This presents them with a problematic paradox. This paradox is all the more important to keep in mind given the Judges' keen awareness of the difficult life circumstance of the young people who come before them.

Perspectives of the young offenders. As mentioned previously, the new youth crime legislation underlines the developmental fact that youth are growing beings. All of the Judges interviewed believe the legislation is correct to describe youth in this way and to treat them differently from adults because

Lots of the things that they've brought before the court are things that [they] do stupidly, not because [they] are a criminal or have a criminal mind. [They] are young and [they] are guided by [their] peer group and alcohol and other factors that eventually [they] learn to master. Or, maybe through the court, [they] can accept that perhaps [they] want to rethink doing those things.

Another Judge added that,

From a sociological point of view, we are dealing with young people, who not fully matured, who have sailed over the edge into behaviour that the community doesn't accept. Most of it is stupid, impulsive, behaviour that does not indicate propensity to a life of crime. It is just wild, unplanned activity that needs to be

curbed. That does not involve simply ratcheting up the penalty. You know, it's like that old saying, 'we are going to keep beating you, until you are rehabilitated'. We don't do that, and that doesn't create change...the impact of the court process is grossly overstated. Most people just grow up. We like to help them along the way, obviously. But, most of our work is not dealing with murderers and rapists in juvenile clothes. It is dealing with stupid things, stealing things, hitting someone in the side of the head, completely unplanned stupid activity, which doesn't require the ham-fisted behaviour that the public often seems to think it should.

Along with noting that impulsivity and immaturity rather than criminality are the dominant forces that ground the actions of all young offenders, the Judges also noted gender differences in how that immaturity and impulsivity is manifested by male and females, especially where breaches of probation are concerned:

The boys are more like... They are psychologically younger than the girls at the same physical age, generally speaking, and tend to be more compliant. I found... Girls are more difficult than boys, I think. When they are bad, they are really bad. They tend to be a bit mature, more mature, and they get into relationships, some of them, unfortunately, get into the street work...I always found it is more difficult to deal with hard-core girls than the boys... Often they've got their boyfriends or their pimps. They have a totally different life in that sense. They don't think too much of the restrictions we put them on.

Another Judge explained that,

I view them, the girls, as being more vulnerable than the boys, typically, although that is not always the case. I mean, if you get a young fellow in front of you, who is obviously completely socially inadequate, he is usually pretty vulnerable too. But, in that milieu that we all went through as teenagers, and we can't understand our hormones and we don't understand what the hell is going on with us, and we can't get along with anybody who is older than..., that sort of thing, I think generally speaking, woman or girls come off worse than boys and the consequences are more devastating for them, because typically they will end up pregnant. So, at the age of 16 or 17, they are already with children, who wind up being taken away. And, even at that age, it seems to me, that for a mother to have a child taken away, even though they may be immature as mothers, it has to have a lasting significant impact on them. It has a tendency to destroy their ability to make a positive change, you know. So, in that sense, I guess there is a difference in the sense that I would be looking for more resources and probably incline to deal more leniently, not that we are...we are pretty lenient anyway,

with young girls that appear in front of me. Boys, they can come in looking tough at the age of 14.

When Judges were asked about their understanding of the recent statistical reports that show that Aboriginal youth are overrepresented in the youth justice system, especially where administrative charges are concerned, one of the Judges, speaking directly to breaches of probation orders, suggested that this could be because,

Our Aboriginal youth are less encapsulated in a family structure that encourages accountability as to their timeframe, you know, like the "it's important to us that you are here." The family is more scattered and more fluid, more flexible, so there is less accountability about where you are or who you are with. And, once they are on the streets, there isn't anybody looking after them. You know, there's no family member going after them. And, there is a real reluctance to place those aboriginal kids in care, so they don't even have foster parents who would be unconditional and bring them back home. I think that is a big problem.

One limitation of this study is that while the numbers are skewed with respect to overrepresentation of Aboriginal youth at the provincial level, this is not as always as apparent in the Greater Victoria jurisdiction in youth court. As one Judge noted, he had not experienced overrepresentation of Aboriginal youth in Greater Victoria as he had elsewhere, despite his awareness that, "There's just no question that Aboriginals are generally overrepresented in the criminal justice system, and no doubt in the Youth Court system". Another Judge fully acknowledged the overrepresentation and noted that,

[In a community outside the Greater Victoria area], not most, but a good percentage of [the young people who come before me] are First Nations, and in that community in particular, the pressure on both girls and boys to emulate adult behaviour is such that you can't walk down a street without passing two, three girls, who look like they're barely beyond 15 years of age, pushing baby carriages. It is not uncommon in ministry cases, to find young women in their early 20s who have four, five children; all of them would be removed. And, for the boys, there's this idea of young Warriors. I think they can prove their manhood by emulating a masculine warrior image...and poverty abounds in the

First Nations communities, for the most part. I mean, there are some very wealthy First Nations people and communities, but a majority of them are not. They get next to nothing from the tribes to support themselves with and so that leads to thefts, thefts-under, the most common offence probably for young girls in our court. But boys, it is more physical stuff, assaults, you know, there is a certain number of gangs up there. The girls get involved in gangs, of course, which are not very much different from an adult gang. And windup becoming involved in those more male like activities, but thefts are the most common thing for girls, thefts and drug abuse, which seems to be endemic to all corners of society.

Judges decision-making process when sentencing youth. Judges undertake a complex process in sentencing youth. This process involves a profound understanding of the youth criminal law that is currently in force and just as thorough an understanding of the sentencing options present in the legislation. It also requires knowledge of the resources available in the community; trust in assistants of the courts (Youth Probation Officers, Crown Counsel, Defense Lawyers), and awareness of young offenders' predicaments.

With regard to legislation, Bill C-10 recently amended the current law, restoring the sentencing principles of deterrence and denunciation. According to some of the Judges, the inclusion of these principles did not change how they sentence. They agreed that "denunciation is a theoretical, abstract concept which [is utilized] to pretend that it was something different than retribution." As for deterrence, it is seen as an element of rehabilitation. That is,

I must say, I've always thought that it is a bit of an impossibility that you were sentencing a sentence that doesn't involve an aspect of it deterrence. If you're talking about rehabilitating somebody, you are also talking about deterring them, they are not mutually exclusive terms. So, I don't have really any problems with the notion of an aim of sentencing ought to be to prevent this person, to persuade this person not to commit the offence in the future, which is what deterrence means. But, the phrase takes on a bit of a nasty political meaning. It just generally is taken to mean to slam people harder, and that is not the meaning of

the deterrence that is helpful in youth court.

When it comes to the sentencing options prescribed in Section 42(2), Judges explained how they decide to use probation and custody. With regard to probation, a Judge explained that,

The vast majority of the sentences result from an agreement between defence and crown. So, in that scenario there is very little need for a judge to engage in a great deal of analysis. Where you don't agree, and it does not happen very often, I would expect that what we are dealing with is someone who might be classified as incorrigible, back and forth in court multiple times over a short period of time. I would want to find out as much as I can about what has gone on and that past. I can almost predict with 100% certainty the kind of family from which that child will emerge, the kind of peers, the group he or she will associate with, the kinds of problems that they are probably manifesting, psychiatric or psychological problems, the lack of support in the community of apart from what is available through youth corrections.

Another Judge noted relying on the work of probation officers:

I would've done that (make a probation order) in conjunction with, usually, a youth worker or something like that. ... When a probation officer says something, I genuinely do it, because they know more about that kid that I ever would. ... That youth worker is going to monitor them in the community, I am not. They are going to see them regularly. They are going to breach them. They are going to do all of those things. So, the probation officer writes the report that says, 'I think if he is motivated he can deal with a sentence that is community-based.' And, I might just say 'I don't. What makes you think that?' We will have that discussion. I'll look at the kid and say, 'I am persuaded because this person is advocating for you, but if you didn't have this person on your side, I wouldn't be doing it.' Just another message, "keep connected to that person'. I tell the kids, 'that is your best friend. When you are in the court, you have that person on your side. So, don't screw up that relationship. Be honest, because they can make all the difference'.

The Judges generally agreed that these professionals are essential to their decision making process. However, they also noted that this does not equate with simply doing what probation officers suggested. As one Judge explained,

Often it's not a head to head disagreement [with probation officers]. Often the report has been bypassed by subsequent events, or there are things that the probation officer didn't know when writing the report. So, I will agree with the conclusion, not necessarily what is in the report, but that there is more information, or more recent information unknown to the probation officer. Even, leaving those aside, there are occasions when I will disagree. I sometimes think probation offices get a little too overzealous in believing that the court is a social welfare agency. They want the court to deal with all sorts of issues in the child's life, that really have nothing to do with criminality. So, I'll, not that often, but I will occasionally peel back a lot of what the probation officers is saying, 'there should be these 15 conditions'. You think, 'ideally, yes! If I wanted this child to live in an ideal environment with no risks at all, yeah, you may be right. This isn't reality. I am not going to do all of that and set the kids up for a breach', which is exactly what you were talking about. I am not here to kind of straighten this kid about everything. You'll often get, for example, let me think, probation officers wanting a curfew. And, I would say to the crowd, 'what time did this crime happen? Four in the afternoon why would I want a curfew, then? ... Most crimes happen at night, and it will be a benefit to the community generally, if the kid is in the house by 9 o'clock.' I am not creating perfect parenting conditions, that is not my task. It may be ideal that a curfew would be a good idea, but I am not there to just to instil good parenting. There is a limited function to what we are doing.

When youth do not abide by the conditions in their probation orders, Judges are also required to make decisions about consequences. One Judge explained that these are qualitatively different kinds of decisions, because,

For me, the probation orders would be orders related to sentences that are outside of the Youth Criminal Justice Act. So they'd be court orders related to sentencing. ... They are outside the actual law that has been broken or there has been non-adherence to the criminal code. So, the Youth Criminal Justice Act is not, you know there to uphold non-criminal code law like kids can't smoke. This is not its purpose.... Probation orders fall under that because, of course, we can make an order of probation. But to me that is an administrative role, it is not a breach of the criminal code, which is how any person gets before us. It is not because they've been bad at school. It's because they've assaulted someone under a criminal law... So, I consider my orders to be administrative in that way because they are an imposition that one expects someone to adhere to because it is a court order.

Another Judge clarified that breaches are used as a way to

have some force to a probation order. If people don't think the court is going to respect its own orders, then why would they respect them? So, there has to be some enforcement clause or it is all meaningless. Now, unfortunately, this process tends to take on a life of its own.

As for the actual consequences, “[their] choices are jail or not. More probation, different terms, you know, what is the plan”. Since there are limitations to the use of custody in the current legislation,

It is very rare to go to jail on a breach. But, if there are repetitive breaches, then you may say, “Okay, enough is enough. You're not taking that seriously. You got 5 days. Know that the next time that's likely going to go up.

Regarding the use of custody in general, a Judge explained that, “under the provisions of this act, and in this one, I think it's section 39, ... it specifically says you shouldn't send them [to custody] unless it is the absolute last resort.” Another Judge added that, unless the case involves violence, it is understood that,

[Custody] should be the absolute last [resort]! It doesn't do anything, except give members of the public the false and temporary belief that the problem has been solved. If you take a step back, and look at this from a sociological, a community perspective, why would you think that taking somebody away with a bunch of others criminals, some other people who have made mistakes, why would you think that would help? Except in a very temporary way that gets them out of the community. It doesn't help! It makes better criminals out of them or it internalizes the notion that they are themselves criminals. It helps with having people label themselves as somehow outcasts. But, it really doesn't help to bring them into the mainstream.

When it comes to community resources, Judges added that that there are a variety of options available to them. They have the assistance of probation officers, custody, treatment programmes, intensive support and supervision workers, etc. However, the Judges were unanimous in their opinion that all of these options are underfunded. As a Judge pointed out

I think we have a huge array of options. I just don't think a lot of them are funded very well. You know, when you think that we have got probation and its many forms, and we have a 'souped-up' probation in the form of intensive support and supervision orders. I think that it is wonderful to have somebody with a one-on-one support worker. But, you better fund it properly. And, you better have enough people doing it, so that they're not completely run off their feet. But, the idea is a very good one. That is the problem with a lot of legislation regarding criminal sentencing. It sounds great, but it's underfunded.

Another Judge added that even though there are options available,

it would be beneficial if there were twice as many youth probation officers, ... respite houses, ... facilities that we can put this kids into where there is real supervision. When you give a kid a curfew and send him off... and he is a ward of the director, and the only place he can go is to one of a very limited number of places, ...if he breaches that curfew, all that the staff can do is file a report... There just isn't the staff there full-time, then night time, of course, there is the least supervision and so, and the issues are psychological, psychiatric, mental health, substance abuse... It is surprising how many 12-year-old alcoholics we have in our part of the world... So, it is really a question of... Every aspect of our process suffers from the same insufficiency. And I don't have any way of knowing whether youth justice gets a bigger portion their resource pile than does adult. But, they are both inadequate.

All the Judges interviewed were appalled by the closure of the girls' wing in the Victoria Youth Custody Centre. Accordingly, they said that this decision

is absolutely outrageous. If the idea is to keep people in the community, and this is one of the central pillars of the youth criminal justice system, to reintegrate, how can you possibly rationalize that with sending 14, 15, 16-year-old girls off to some centre, in the middle of the biggest city in the province, where they have reduced contact with family while increasing contact with people who have similar problems from all over the province? It is completely retrograde to do something like this. It is just not a good idea to sacrifice the principles purely for monetary purposes.

In addition, expanded access to negative peer involvement was also a concern for the Judges. That is,

Would I want to send someone to, especially young women, to Vancouver? ... Especially since they don't have females in our detention center here. I mean, it

is going to be that absolute last resort, for me to send someone over to Vancouver for failing to keep a curfew, or whatever, being down in the red zone. It is not the sort of thing they should be doing. They shouldn't be going and mixing with very rough types who are in female detention in Vancouver. ... All you can do is tighten things up, and if after you've tightened things up a few times the youth continues to disregard, I suppose in the end, you give them custody...

One of the Judges was not quite as affected and suggested that,

[The closure of the girls' wing] won't affect me, because by the time they are in front of me, I am sentencing them. So, if I am sentencing them they could be going anywhere in the province. They could be going to a programme. Sending them there isn't great. It can be a sentencing factor that there won't be any family around, but you know, that may not make a whole lot of difference in the end of the day. Because, obviously the family hasn't been able to provide that kind of structure. Again, from my perspective, this kid would have to have been in court a long time before I'm sending her to jail, but I might make the leash very tight, when they first come in.

In other words, custody is in any case a last resort for this Judge who tries all other measures first.

As previously mentioned, awareness of young offenders' predicaments is the major element in the Judges' decision-making process, as it is for the other professionals interviewed for this study. All are concerned with the young offenders and want to do their best to rehabilitate them. An example of this in action:

I get the kid up there and I try to engage him or her in a conversation and try to get to the bottom of what ... I mean, I am not a psychologist, but I try and make the individual feel like I'm as much on his or her side as anybody else who may be a support person in their lives and try to figure out what is the best thing to do. And, I look for something that I can see as rehabilitative initiative. But, I don't find that I have very much difficulty looking for that because there their YPOs and other workers seem to be almost unanimously to be of the same frame of mind. They are looking for the same answers. And, sometimes, if family members come, I encourage family. I thank them for being there. I get them up and I talk to them. I asked them for their views, what they think should be done. I, sometimes, think it is good for some of these kids to see their parents cry...It makes them realize that they are not shouting at them. They

can't shout at them in my courtroom. So, that way the kids see that and they realize, indeed what they are doing is adversely affecting the family.

Another Judge expanded on this by saying,

When you are sentencing someone in adult court, sentencing anybody, you're thinking of the general seriousness of the type of the offence committed, the seriousness of the circumstances under which it was committed in this particular case, and the circumstances of the offender. Now, in dealing with the YCJA, more so than dealing with any of the predecessors, you are commended that your primary emphasis is on the circumstances of the offender. ... I look at what kinds of supports this youth has. Do they have parents, or at least a parent, who are interested? And, unfortunately, a lot of the times the answer is no. So, if they don't have that kind of support, how do we build support? What kind of connections do we need to make for this person? If they are out of school, you at least have to say 'you either go to school, or go to a day program, or you look for work'. We can't just have them drifting around with no support at all. So, you are looking at those kinds of things. What anchors are there in the community for this kid?

All the Judges who participated in the discussion of these issues are acutely aware of the challenging and difficult circumstances of the lives of the youth who appear before them. They are also equally aware of the challenges of meaningful sentencing, including sentencing as deterrence, and of building support systems that can assist with preventing a return to court, especially while having options under the law without adequate funding.

Chapter Five: Discussion

In this study, I had the opportunity to learn about how youth court professionals make decisions about charging and sentencing young offenders. Overall, the literature on the topic (see Chapter I) has touched upon some of the themes discussed in the analysis of the interviews of the police, probation officers, and Judges. These topics and themes were then incorporated into the discussion provided below. Additionally this section sheds light on issues that are specific to the province of British Columbia and its population of young offenders. It also highlights areas of convergence in the ways in which all three groups of professionals who participated in this study understand their work. The areas of convergence were: i) The Youth Criminal Justice Act; ii) Decision making; iii) The decline in crime; and iv) Services for adjudicated youth.

The Youth Criminal Justice Act (2002)

The literature has demonstrated that the Youth Criminal Justice Act (2002) is the result of nearly a century of discussions pertaining to the wellbeing and rehabilitation of Canadian young offenders. It is important to note that, since the beginning of the 20th century, criminal legislation around the world and in Canada has changed in its understanding of crime, increasing the focus on the offender as opposed to the offence committed (Trepanier, 1999). That is, as observed by all the participants in this study, states now put greater effort into attending to the circumstances of the offender in order to keep him/her and society safe, than into punishing him/her for the offence committed.

In terms of youth justice legislations, scholars and the research participants agree that there is a long-standing legislated difference in the ways in which the system deals with adult offenders and young offenders (Davis-Barron, 2009; Garland, 1985; Sanders,

1970; Trepanier, 1999). Just as its antecessor (YOA) did, the Youth Criminal Justice Act (2002) demands that young offenders should be understood and treated as developing beings (Pulis, 2003). Accordingly, greater efforts are being made on the part of the police, Youth Probation Officers, and Judges to strengthen the pro-social development of these young persons. In practical terms, this means that the professions come together to facilitate youth access to services and programs in the community, which focus on drug and alcohol treatment, mental health, housing, education, recreational activities, and so forth. The intention is that such services and programs will aid in deterring young people from involvement in further criminal behaviour and assist with their rehabilitation.

Deterrence of criminal behaviour and rehabilitation of offenders have been proven as effective in increasing public safety (Bala, 1997; Bala & Anand, 2009; Davis-Barron, 2009; Pulis, 2003; Trepanier, 1999), which happens to be the main objectives of the Youth Criminal Justice Act (2002) (Latimer, 2011; Bala, 1997) and the Criminal Justice System. That is, as explained by scholars (Corrado et al., 2010; Latimer, 2011; Reid-Macnevin, 2001) and Judges who participated in this research, unlike the Juvenile Delinquents Act (1908) and the Young Offenders Act (1984) the current legislation takes a combined philosophical approach to crime, in which the legal system addresses the criminogenic needs of the offenders (welfare approach) in order to represses criminal conduct (crime control approach) (Latimer, 2011).

As the literature demonstrated, there needs to be a balance between the welfare focused and the social-control focused efforts made to achieve this goal (Latimer, 2011). This balance is operationalized in practice as the dual need to support youth (using the helping hand), while controlling their behaviours (applying the hammer hand). Police,

Youth Probation Officers, and Judges told me that they take seriously the dual nature of their roles and all work hard to treat each young person they work with as an individual who is as yet growing and developing and learning about life and community, while that young person also in some way disadvantaged, and if female, likely vulnerable to sexual exploitation. At the same time, all participants were fully aware that they must at all times keep community safety in mind and must therefore evaluate each individual's risk for harming self and others and each situation's community safety requirements accordingly.

This law also takes on a justice approach to crime by respecting the "due process, rights, and procedures" (Corrado et al, 2010; Bala, 2003; Latimer, 2011). As some of the Judges noted, this legislation is the most prescriptive youth justice legislation to ever exist in Canada. The literature (Bala, 2003; Latimer, 2011) and the participants noted that the law has indeed become more procedurally complex and rights based. Judges acknowledged the benefits of the extension of Charter Rights to youth and make sure that the youth who appear before them have legal representation and understand their rights. However, with regard to the many and lengthy procedural steps that are now the norm, Judges and Police Officers suggested that these processes have become too long, thus disconnecting behaviour from consequence and in some cases, allowing offenders to commit other crimes or breach their probation orders even before they are sentenced for their initial offence. In addition, Police Officers think the wait for things to unfold can be detrimental to the youth's rehabilitation, because they believe greater learning comes from immediate responses.

Regarding sentencing options in the Youth Criminal Justice Act (2002), the

extrajudicial sanctions and extrajudicial measures replaced the alternative measures present in the Young Offenders Act (1984). According to Bala (2003), the justice system aims to address less violent offences by using these non-judicial measures. Probation continued to be an option for magistrates, who since 2003 have had to craft proportional probation orders that last up to two years (Bala, 2003; Bala & Anand, 2009; Davis-Barron, 2009; Pulis & Sprout, 2005; Toh, 2003). These orders are put in place as a way to monitor and address the needs of the offenders (Bala & Anand, 2009; Latimer, 2011).

With regard to the use of custody, the research reviewed in Chapter 1 explained that the current youth law restricted the use of jail sentences with the express purpose of dealing with the high number of youth jailed in Canada (Barnhorst, 2004; Latimer, 2011; Davis-Barron, 2009; Department of Justice Canada, 2012c; Latimer & Verbrugge, 2004) under the Young Offenders Act (1984). The new legislation determined that custody could only be used in cases of serious violent offences, multiple failures to comply with community-based sentences, and summary offences (Bala & Anand, 2009; Latimer, 2011). This also means that, unlike in the Young Offenders Act, since 2003, youth justice professionals cannot use jail sentences to address child protection and mental health issues (Bala & Anand, 2009; Department of Justice Canada, 2003; Latimer, 2011).

The Judges and the Youth Probation Officers interviewed agreed that custody, as the law commanded, has indeed been used as their last resort in cases of administrative breaches. Prior to giving sentences that include time in custody, these professionals try to engage young offenders in community services and only when they have exhausted all

the available resources, do probation officers recommend and Judges sentence offenders to custody. The intention that underpins Youth Probation Officers' recommendations that youth who breach their probation orders should spend time in custody is first and foremost that the youth are to be kept safe, that is, away from criminogenic peers and conditions, and, secondly, to interrupt their breaching behaviour and to assist with detoxing those who are addicted to drugs and alcohol. For the Judges, custody is very much the last resort because as they see it, being in custody with other offenders does not contribute to a youth's rehabilitation. On the contrary, it facilitates the internalization of the label 'criminal' (Bernburg et al., 2003; Drass & Spencer, 1987; Latimer, 2011; Sampson & Laub, 1997) and fosters connections with peers who will potentially contribute to further entrenchment in crime.

As explained earlier, the now legislated restraint with respect to the use of custody has also impacted probation officers in another way. As demonstrated in the literature review (Bala, 2003; Davis-Barron, 2009; Department of Justice Canada, 2003; Latimer, 2011), prior to the current legislation, probation officers could "breach" and recommend custody whenever the youth's behaviour was a threat to his/her own life or to the general public. Custody could also be used as a way of holding the young person still long enough to ensure that she/he received the assessments and services that could potentially lead to a better life course. However, the Youth Probation Officers interviewed explained that they now have to wait until their clients have violated multiple conditions before recommendations for custody will be accepted. While these new practices have contributed to lowering the number of youth who are in custody, it was learned that waiting for youth to "breach" repeatedly might negatively impact their

recovery and rehabilitation.

The history portion of the literature review outlined the ways in which probation conditions have changed, status offences have evolved into administrative offences and breaches are no longer employed as tools for controlling what were seen as “unmoral” behaviours as they were under the Juvenile Delinquents Act (1908) (Dean, 2005). Currently as was made clear to me breaches cannot be seen as criminal behaviours that violate the Criminal Code (1985); rather, they are infringing a court order by which youth must abide by. Such infringements invite a review of the court order or a custodial sentence. In the end, the higher the number of breaches, the stronger the likelihood that custody will be the result.

The Youth Criminal Justice Act (2002) introduced an important precedent when it established proportionality as a sentencing principle. In this study, Judges emphasized the importance of this principle. They mentioned that they strive to sentence youth fairly by looking at the severity of their criminal behaviour and/or breaches of their court orders and by taking into account the relationship between the offence and the penalty. These considerations are particular to Judges. In a somewhat different but complimentary vein, Youth Probation Officers, while always keeping community safety in mind, focus as much as possible on the rehabilitation and success of youth. For YPOs to achieve this goal, they recommend services for their clients with the hope that these will address the criminal action, but most of all, the social issues in the youths’ lives. Ultimately, although they have different roles and responsibilities and exercise these in different ways, for all concerned the overarching objective is that the young offenders in question should grow and flourish. The professionals interviewed here seldom disagree

about the Youth Justice System's responsibility for dealing with aspects of youth's lives that are not related to criminality. They all respect and respond to each others' areas of expertise to the degree that some Judges noted that they do not have the knowledge or the resources to handle social problems that are out of the scope of the law and therefore rely on input from YPOs, the Ministry of Children and Family Development, other agency workers, and on parents and family members in their decision making process.

The next section elaborates further on what was learned about how our participants think about the collaborations between Judges, Police Officers, and Youth Probation Officers and about the importance given by all the interviewees to the life conditions and circumstances of the young offenders they work with.

Decision Making

This study shed light on two important components of the decision making process involved in charging and sentencing youth. First, it was impressive to see how compassionate and caring the professionals are when dealing with the young offenders and attending to the circumstances of these offenders. Secondly, it was noted that the more professionals interviewed, the more evident the collaboration and cooperation among these workers became.

Before speaking further to what was said about the circumstances of the offenders, it is important to mention that all the professionals interviewed were mindful of the overrepresentation of Aboriginal females in the Youth Justice System. In terms of ethnic background, the literature (Aboriginal Healing Foundation, 2004; Adams, 1995; Agnew, 2001; Barron, 2006; Brezina, 2010; Coulthard, 1999; Dean, 2005; Latimer, 2011; Melanie, 2008; Wortley, 2009) and the participants agreed that being

marginalized and living a life of difficulties contribute to these young women's involvement in crime. It was also learned from the Youth Probation Officers and the Judges that Aboriginal youth who breach their orders usually receive less support to comply with the orders' dispositions and with the demands of the Justice System from their families. Sometimes, that happens because the families do not think that the dispositions of the white men's legal system apply to them, other times because they do not comprehend the seriousness of court orders.

With regard to gender, the literature (Andrew & Cohn, 1974; Chesney-Lind & Pasko, 2004a; Dean, 2005) and the participants collectively agreed that professionals take extra precautions to safeguard the lives of young females offenders. Even though girls do not engage in criminal activities as often boys and/or tend to commit less serious offences, it is their understanding that females are more vulnerable than the males (Andrew & Cohn, 1974; Bala, 2003; Bell, 2012; Chesney-Lind & Pasko, 2004; Davis-Baron, 2009; Dean, 2005; Pulis, 2003; Pulis & Sprott, 2005; Reitsma-Street, 1993). According to these workers, the consequences of girls' involvement in crime and in the Justice System are more severe. That is, as the literature demonstrates, females entrenched in crime often go missing, date abusive and exploitive older men or are "pimped out" by the adults in their lives (Campbell, 1984; Browne & Finkelhor, 1986; Chesney-Lind & Pasko, 2004a; Orenstein, 1994). They also get pregnant, and are encouraged by way of grooming for the sex trade to use and deal drugs and make money for their boyfriends. This vulnerability, coupled with these young women's greater propensity to breach their probation orders in turn makes them more likely to accumulate breaches of their court orders and therefore be charged with administrative

offences and sentenced to custody (Bala, 2003; Bell, 2012; Chesney-Lind & Pasko, 2004; Pulis, 2003; Pulis & Sprout). Although all the professionals involved are keenly aware of this somewhat circular dynamic they nevertheless find themselves using administrative charges to try to break the cycle in which these young women are caught.

For these reasons, the workers' decisions to "breach" reflect participants' genuine concern with the physical, emotional, and psychological well-being of girls. Their concern contradicts Dean's (2005) belief that youth justice professionals are less concerned with these females safety than they are with the violation of moral standards and the non-conformity with "picture of womanhood upheld by the courts and promoted to the largely poor, racialized young women they deal with, [this picture was] shaped by values and standards that were white, middle or upper-class, and that positioned monogamous heterosexual marriage and female domesticity and motherhood as key achievements for young women" (Dean, 2005, p. 6). That is, when professionals express their "desire to protect girls for their own good" (Bell, 2012, p. p. 350), safety overrides what the literature explained as paternalistic ways to make females conform to gender-role expectations and sex stereotypes (Bala, 2003; Bell, 1999, 2012; Dean, 2005; Latimer, 2011).

The participants also shared that making decisions about what should be done with young offenders in their charge requires them to constantly balance the needs of both the youth and of public safety (Corrado et al., 2010; Latimer, 2011). Achieving that balance means that they must assess all aspects of the youths' lives at all times. Thus, as the literature suggests, they take into account the youths' housing situations; their physical, psychological, and emotional health; their school and work involvement;

their drug and alcohol use and abuse; their family and community supports; their peer involvement, and their access to services and resources (Belcroft & Thompson, 2006; Bala, 2003; Davis-Barron, 2009; Goldkamp, 2000; Latimer, 2011). This holistic evaluation of the youths' life conditions and circumstances allows workers to plan and arrange supports in the community in order to try to meet the needs the youth might have, mitigate the risks that they are exposed to, and consequently reduce the risk of reoffending and keeping society safe (Bala, 2003; Corrado et al, 2010; Latimer, 2011).

This holistic approach also requires collaboration among the professionals (Bala & Anand, 2009; Latimer, 2011). A juvenile's arrest sets in motion a process of several synchronized decisions. It starts with the police deciding to lay a criminal charge, divert the matter, or put the youth on conditions. If a charge is laid, it then moves on to Crown Counsel, who determines whether the charges proceed or not. When they do, the offender is brought to court to discuss the case. That is likely to initiate an often lengthy, protracted process over several months or even more. In cases where the youth is eventually found guilty, he/she is sentenced according to Section 42(2) of the Youth Criminal Justice Act. When Judges sentence a youth to a period on probation, Youth Probation Officers do research and write a pre-sentence report to advise Judges about the conditions suitable to deter further criminal involvement. Lastly, if the youth does not comply with the dispositions of his/her probation order, Police Officers and/or probation officers have to ponder whether to charge the youth with a breach and bring them to court to either have their conditions reassessed or to be sent to custody.

These processes demand that all the actions are coordinated. One decision sets the next in motion, until the process ends. However, synchrony is not as important as the

inter-dependency of the professionals who make each of these decisions. As previously mentioned, together they work hard to assess and design a plan that is meant to facilitate the recovery and rehabilitation for each youth that appears before them.

In practice, the interviewees revealed that this inter-dependency can be seen when the police liaise with Probation Officers, Crown Counsel, and youth workers out in the community to creatively keep youth out of the Justice System or, in case youth are already entrenched, to make sure they do not get further involved. Workers and Youth Probation Officers often share information that is relevant to police investigations, especially information about young females who are missing. All involved, the police, Crown Counsel, Youth Probation Officers and youth workers, ponder and debate the benefits and challenges of diverting youth and if possible do what they can to help youth to be diverted from entering into the system.

Judges are also a part of this inter-dependent and collaborative approach. Before a youth is sentenced, a Youth Probation Officer writes a pre-sentence report with information about the conditions and circumstances of the young offender's life to help the Judge make decisions about ways to help and rehabilitate the youth, while keeping the community safe. Later on, if the youth has been found guilty, the Judges engages Crown Counsel and Defense Counsel in a conversation to craft a sentence and a probation order that includes a referral to any resources that are available to respond to the issues in the youth's life and the collaboration continues.

The Decline in Crime

The latest statistical reports on youth crime shows a decline in numbers, since

the implementation of the Youth Criminal Justice Act (2002) (Calvery et al., 2010; Sharpe & Gelsthorpe, 2009). Nevertheless, several of the participants expressed doubts about the accuracy of these reports. Some Youth Probation Officers suggested that the decrease in charge rates is because of the increase in police discretion with regard to laying charges and perhaps it is also an outcome of the noticeable increase in the requirements for paperwork, which may exert a downward pressure on the laying of charges.

Police Officers, in fact, agreed that their discretion to charge and their office work have indeed both increased, but disagreed that they have not been charging youth as they did before. When it comes to the laying of charges, they explained that they do this when they see the greatest chances for prosecution and conviction. That is, even when the police charge youth, it is up to Crown Counsel to proceed with the charges and to Judges to find them guilty. As for the increase in paperwork, some Officers expressed concerns that many Officers have been transferred from patrol work to the office to deal with bureaucratic work, instead of being out in the streets catching and charging offenders, and they wanted this to be otherwise so that they could do their jobs as keepers of the peace

Police Officers also listed other factors that might explain the apparent decline in youth crime: 1) Crime like many things is cyclical and the current decline is part of such a cycle, whereby prolific young offenders have been arrested, so crime declines while at the same time some of these offenders age out and graduate to the adult system. 2) Catching young offenders is difficult because this peer group operates with the requirement of a code of silence causing young people to fail to report crime, especially

crime committed against them because they fear that their peers might retaliate and exclude them from their friendship group. Along the same lines, society's lack of confidence in the police force also leads to many unreported crimes and with it a decline in criminal charges. None of these explain the current widespread and consistent decline in crime not only in Canada but also in the United States and all other Western industrialized countries.

Services for Adjudicated Youth

In terms of services, the participants interviewed believe that British Columbia lacks community resources for young offenders. More specifically, Youth Probation Officers advocated strongly for specialized services for female offenders in Vancouver Island. They also suggested that there is a need for mental health and drug and alcohol treatment services for youth who do not accept services voluntarily. That is, secure care and/or residential treatment facilities should be created to serve involuntary children.

Judges, Youth Probation Officers, and scholars concurred that there are resources in the community. Nevertheless, most of these are underfunded. They strongly suggested that more funding should be available to increase the services available to Youth Probation Officers, such as Intensive Support and Supervision Workers, Mental Health Workers and mental health and drug and alcohol treatment facilities. Police Officers also raised concerns about funding for various forms of treatment and about sufficient funding of police youth detachments. In their case, they believe departments need resources to hire more officers in order to increase street patrols with a youth focus.

Lastly, in terms of resources, Police and Youth Probation Officers and Judges

were struck by the news of the closing of the female wing at the Victoria Youth Custody Centre. Even though some professionals admitted that the re-allocation of funds to create specialized female services in the mainland is beneficial, most of them questioned the decision. They raised concerns about several issues: 1) the involvement of island based female offenders with mainland and urban peers who are more experienced and entrenched in crime; 2) workers' difficulties with establishing and maintaining trusting relationships with youth at a distance; 3) the physical distance from female youth's support systems (family, friends, and community); 4) the distance and access-related difficulties with interviewing girls for investigation purposes; and 5) the problem of housing of females in police departments in close proximity to adult cells until their hearings and transfers to the Burnaby Youth Custody Services Centre could take place.

Summary

In sum, this study found that, as prescribed in the Youth Criminal Justice Act (2002), Youth Justice professionals' main objective is long-lasting safety by rehabilitating young offenders (helping hand) and controlling their actions (hammer hand), according to the precepts of the law (justice approach). In practice, a lot of thought is given to the predicaments in the youth's lives and ways to increase the supports around them to help alleviate their burdens, improve their overall lives (welfare approach), control their behaviour (social control approach) and prevent further involvement in crime.

Nevertheless, even though the current legislation determines that youth justice professionals should attend to the circumstances of the offenders, some Judges question their ability to address issues that go beyond the scope of youth criminal law. In these cases, they rely on information provided by Youth Probation Officers, agency workers,

and relatives of offenders. In addition, even though there is the impetus to contribute to the prosocial development of young offenders and keep society safe, professionals share a concern about the consequences of the lack of immediate responses resulting from the lengthy, procedural course of justice.

In terms of sentencing options, the legislation enumerates a variety of dispositions, either custody or community-based. When it comes to custody, the Youth Criminal Justice Act has restricted its use to serious violent cases, multiple breaches, and summary offences in order to address the overuse of youth jails across the country. Overall, the numbers have been affected by the legal restriction, but also have to do with:

- The increase of police discretion to charge and lay breaches;
- Decrease of patrol Police Officers;
- An increased likelihood that Crown Counsel will not press charges;
- The cyclical nature of crime;
- Youth's code of silence;
- Society's lack of confidence in the police, resulting in unreported crimes.

The workers emphasized that even though custody can only be used in certain situations, these professionals only resort to it when they have exhausted all community resources available to them and the safety of youth and the general public is at risk.

In regards to community-based services, this study showed that in order to build such supports, professionals collaborate with one another to evaluate what resources in the community are suitable for the individual needs of each offender. Moreover, professionals concur that the services already available in Vancouver Island, such as Youth Probation, Intensive Support and Supervision, Police Youth Detachments, Mental

Health workers and facilities, and drug and alcohol treatment should be better funded. It also became clear that all of the workers interviewed have great concerns about the deficiency of services for female young offenders and juveniles who do not take part in services voluntarily (secure care and/or residential treatment facilities). Regarding service for girls, the decision to close the girls' wing at the Victoria Youth Custody Centre was questioned by all the participants of the study. According to them, not having a specialized centre in the Island is disadvantageous because it increases the chances of involvement with peers who are more experienced in crime, puts in jeopardy the workers' relationships with their clients, isolates youth from their family and friends, compromises police investigations, and creates problems when it comes to housing girls before they are transferred to the custody centre in the mainland.

Lastly, as previously mentioned, this study showed that Youth Justice professionals are knowledgeable and deeply concerned about the circumstances of the offenders. These workers acknowledge the overrepresentation of Aboriginal female young offenders in the Justice System and agree that marginalization and poor living conditions contribute to their involvement in crime. Moreover, it is not uncommon for First Nations parents to ignore court orders under the understanding that the white men's legal system does not apply to them. This resistance to the system is often passed on to their children, who end up receiving less support to abide by court orders than their Caucasian counterparts.

With regards to gender, the findings of this study contradict recurrent findings in the literature. Professionals and scholars agree that workers take extra precautions to keep female young offenders safe due to the harsher consequences suffered by them as an

effect of involvement in crime. However, according to the literature, the system's over-protectiveness towards girls mimics society's stereotypical understanding of females and consequent paternalism to ensure females comply with patterns of being female.

Conversely, the professionals interviewed expressed real concerns with the emotional, psychological, and physical well-being of female young offenders.

Chapter Six: Conclusion

This study was conducted in order to understand how Police Officers, Youth Probation Officers, and Judges on Lower Vancouver Island make decisions about charging female youth for administrative offences. The inability to interview Youth Crown Counsel members and Defense Lawyers at this time limits the scope of the findings, making them in that sense not complete. Still, given the convergence of the findings across the three professional groups that participated, it is believed that what was learned accurately reflects the decision-making processes involved in the use of administrative charges and in sentencing youth to custody in relation to such charges.

An important point of concern in this study was that in B.C., as in the rest of Canada, Aboriginal youth in general and Aboriginal females in particular, are disproportionately represented in all areas of the youth justice system (Calvery, Cotter & Halla, 2010), especially the youth custody centres. It has long been the case that despite having far lower charge rates than male youth, female youth, and especially Aboriginal female youth, make up the largest number of youth who are jailed for “administrative offences,” that is, breaches of bail or probation orders, e.g. ignoring curfews, skipping school, not attending mandated programs and not complying with probation orders or conditions of bail. Since Police Officers, Youth Probation Officers and Judges are all central to the decision-making process that leads to a young person being sentenced to custody for an offence and since there appears to be very little research that speaks directly to the decision-making processes of these professionals, I thought it best to begin with a more in-depth understanding of how their processes work. A comprehensive literature review on the topic and fourteen semi-structured interviews

with key informant Police Officers, Youth Probation Officers and Judges were conducted in order to become better informed.

Through this process, it was learned that these professionals' main objective is rehabilitating young offenders, which they see as the most long-lasting and effective way to keep society safe. It is clear from the interviews that across the three professional groups, at all times, a great deal of thought is given to the problematic conditions and circumstances that characterize the lives of young offenders and to ways to increase the supports around them to help alleviate their burdens and prevent further involvement in crime. In order to build such supports, professionals collaborate with one another to evaluate what resources in the community are suitable for meeting the individual needs of each young offender. It was also emphasized that even though custody can be used as a consequence for multiple breaches of court orders, these professionals only resort to jail sentences when they believe that they have exhausted all community resources available to them and when they believe that the safety of youth and the general public is at risk. All the participants expressed great concerns about the lack of community resources on Vancouver Island, especially now that the girls' wing of the Victoria Youth Custody Centre has been closed. Further, they made it clear that while they wanted to retain the option of sentencing girls to custody in a local setting in order to be better able to maintain these girls' positive family and community connections and, where these are absent, to begin to build such connections while the girls are in custody, what they saw as even more immediately required was a secure care and treatment centre. Also emphasized was the need for more community-based positions and programs directly related to diverting youth from a delinquent career path.

Now that this study has been conducted, I suggest a different understanding of the use of custody sentences for administrative charges than the one currently given in the literature. Rather than seeing these as indicators of the overuse of custody that can be interpreted as a failing of the youth justice system, it is believed that young offender administrative charge rates are best interpreted as very concrete and direct indicators of the need for more accessible and better funded services for youth. Ideally, such services would include secure care and treatment and be focused on dealing with the psychosocial, behavioural and material needs of youth and their families. All the professionals who participated in this study described the use of jail for administrative charges as the choice of last resort. This suggests that the statistics that summarize the use of these charges can be interpreted as telling just how often all else has failed.

In 2011, Police Crime Statistics showed us that 18.6% of all girls and 15.4% of all boys charged in B.C. were charged with administrative offences and that the overall proportion of charges for such offences had more than doubled since 2006, (up from 8.3% of all girls and 7.8% of all boys). At the same time in 2011, a Vancouver Island newspaper reported that everywhere on Vancouver Island, families and children were subjected to long waits for necessary services: Victoria Women's Transition House, wait 1 month; Aboriginal Mental Health, wait 3 months; Phoenix Human Services, wait 8 months; Children Who Witness Violence Program, wait 3 months; Beacon Community Services, wait 4 months (Victoria Times Colonist, April 8, 2011, p. A-14). It is believed that an investigation should be conducted to determine whether there is a direct connection between wait times and lack of access to services, and the recorded rise in the proportion of administrative charges, especially in light of what was learned in this

study.

DeLisi and Vaughn (2011) have shown that, “across an array of studies, the evidence for the value of prevention is compelling” (p. 3) and that for a youth at age 18, the benefits of preventing the costs of dropping out of high school, avoiding the costs of heavy drug use, and particularly avoiding the costs resulting to the individual and society from becoming a career criminal amount to a discounted present value of between \$2.6 million and \$5.3 million (U.S.). It is known that there is a striking lack of funding for, or commitment to, alternatives to formal justice” (Schissel, 2010, p. 157). Currently, services are offered only to the most desperate and are carefully rationed, even though it is known that the combination of caring prevention and intervention is the best option, the least expensive risk for a greater good, and one that, politically, the province will have to invoke very soon because the alternative is bankrupting it morally and financially (Dean, 2005).

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Appendix A: Recruitment Letter and Participant Consent Form



Recruitment Letter and Participant Consent Form

Project Title:

You are invited to participate in a study entitled, Girls in Custody in BC that is being conducted by Dr. Sibylle Artz and her research assistant Thais Amorim, a graduate student in the School of Child and Youth Care's Masters Program. Sibylle Artz is a Professor in the School of Child and Youth Care at the University of Victoria and you may contact her if you have further questions by email: sartz@uvic.ca or by phone: 250-721-6472. The Law Foundation of BC, Legal Research Fund, has provided funding for this project.

Purpose and Objectives

The purpose of this research project is to investigate the use of administrative offenses in the adjudication of girls. Some researchers have noted that when compared with boys, girls are charged with far more administrative offenses than boys and proportionately, Aboriginal girls have the highest rates of administrative charges. We would like to understand the intentions of those who recommend administrative charges and those who sentence girls to custody for administrative charges. While researchers have noted the high incidence levels of administrative charges in Canada and in BC, in-depth research into reasoning and decision making of those who work with administrative charges is as yet missing. We believe that these processes need to be better understood from the perspectives of those directly involved in the use of administrative charges.

Importance of this Research

A more in-depth understanding of the use of administrative charges and of the reasoning and decision making of those who work with administrative charges will better inform policy and practice, the public and researchers who critically analyse youth justice law and practice.

Details of Participation

You are being asked to participate in this study because you have specialized knowledge about administrative offenses and the Youth Criminal Justice Act. If you agree to

voluntarily participate in this research, your participation will include a 1-2 hour audio-recorded semi-structured interview at a location of your convenience. Written notes may also be taken during the interview. Following the interview, transcription of the recording will occur. Some things that you say may be quoted verbatim in reports or scholarly articles, but all information that could potentially identify you will be excluded from any quotations or articles, reports or presentations that will result from this research. You will nowhere be referred to by name, nor will you identified by your gender or location. If you do not want any of your responses to be quoted and want your responses to be referred to only in the aggregate you may request this and your request will be accepted without question. Though participation in this study may cause some inconvenience to you, including your time commitment to take part in the interview, there are no known or anticipated risks to you by participating in this research. On the other hand, the potential benefits of your participation in this research include your own opportunity to reflect on your experiences and an opportunity to contribute to an expansion of locally and nationally relevant knowledge.

Your participation in this research must be completely voluntary. If you do decide to participate, you may still withdraw at any time without any consequences or any explanation. If you do withdraw from the study, you will be asked if your data can be used. If you do not give permission to the use of your data, it will be destroyed at your request. If you do consent to participate in this study, we ask that your consent includes your permission that we may the use of the data that is generated by our interviews will be used in reports and articles and a graduate thesis. The authors of these materials will be Dr. Sibylle Artz, the principal researcher and Thais Amorim, the graduate student who are conducting this research project.

Anonymity and Confidentiality

Although the nature of the in-person interview dictates that the principal investigator and her assistant, if she is present, will know your identity, care will be taken to ensure that you are anonymous in the dissemination of all research results. Your confidentiality and the confidentiality of the data will be protected by the following procedures: (1) paper data/consent forms and audio-recordings will be stored in a locked filing cabinet; (2) transcriptions will be stored in password protected computer files. Data presented in any dissemination will not contain any identifying information. Aside from some limits to anonymity given the recruiting process, that is, your name was suggested either by a Youth Probation Officers or a Youth Court Judge who believes that you have an important perspective to share with regard to the use of administrative charge, we did not in any way indicate that we are making contact with you and have simply thanked those who referred you for the suggestion. Confidentiality will be maintained in this project because names of participants and identifying features in the data (e.g. names of places, professional positions) will not be disseminated. Pseudonyms will be assigned to each participant during data collection and research findings will be disseminated in such a way that any markers of personality or identity will not be included in research reports or articles.

Dissemination of Results and Disposal of Data

It is anticipated that the results of this study will be shared with others in the following ways: a report to the funder. The Law Foundation of BC, published journal articles, the thesis of the graduate student research assistant, presentations at scholarly meetings and/or other scholarly publications. Data from this study will be disposed of once approval of the Masters thesis has been obtained and other publications have been completed. At this time, paper files will be shredded and electronic files will be erased.

Contact Information

Individuals who may be contacted regarding this study include:

Principal Investigator: Sibylle Artz, email: sartz@uvic.ca, Phone: 250-721-6472.

The Director of the School of Child and Youth Care, Dr. Daniel Scott, email:

dgscott@uvic.ca

Phone: 250-472-4770.

In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria (250-472-4545 or ethics@uvic.ca).

Your signature below indicates that you understand the above conditions of participation in this study, that you have had the opportunity to have your questions answered by the researchers, and that you agree to participate in this research project.

Name of Participant

Signature

Date

One copy of this consent will be left with you, and the researcher will keep one copy.

Appendix B: Use of Administrative Charges Study – Interview Guides

Questions for the Youth Probation Officers

1. How would you describe your job?
2. How do you think working for the Ministry of Children and Family Development affects your job?
3. Tell us about your caseload?
 - a) How many people are there in your caseload?
 - b) How many hours a week of contact per person does that take you?
 - c) How do you arrange/prioritize your time and how do you make choices about who to see when?
4. As you are working with people on your caseload and have to make decisions about applying the Youth Criminal Justice Act, how do you decide when to use extrajudicial sanctions, intense support and supervision and other types of programs?
5. How do you decide when to invoke an administrative offense?
6. When you use an administrative offense, what is your aim?
7. What is your sense of the impact of administrative offenses?
8. Quite recently, the Victoria Youth Custody Services closed its girls' wing. How does that affect how you work with girls?
9. What is it you hope to achieve?

Questions for the Judges

1. How long have you been working as judge on youth justice?
2. Do you also judge criminal justice cases?
3. How many versions of this act have you worked with?
4. What is your overall sense of this legislation?
5. How do you go about making sentencing decisions?
6. Have you ever disagreed with a request of a probation officer?
7. As you know, we are primarily interested in administrative offenses. What is your sense of how the act deals with them?
8. Seems like in B.C. and all of Canada, more girls are charged with administrative offenses than boys. What has been your experience with that?
9. How do you decide when to send someone to youth custody for an administrative offense?
10. How do you decide about length of time for administrative offenses?
11. Is there a difference between how you make those decisions and how you decide to incarcerate adults for disobeying order of court?
12. Bill C-10 is going to amend the Youth Criminal Justice Act to change the definitions and principles guiding bail and sentencing, and specifically to include denunciation and deterrence as appropriate principles of sentencing. What do you think about that? How do you think this will change the way you sentence young people to administrative offenses?
13. You are probably aware that the Victoria Youth Custody Services closed its girls' wing, so girls who are sentenced to custody will be shipped to Burnaby. How does that

affect the way you sentence?

14. What is it you hope to achieve?

Questions for youth team Police Officers

1. How would you describe your job?
2. How long have you been working as a member of the youth team?
3. As you know, we are primarily interested in administrative offenses. What is your sense of how the Youth Criminal Justice Act deals with them?
4. Seems like in B.C. and all of Canada, more girls are charged with administrative offenses than boys. What has been your experience with that?
5. How do you decide when to invoke an administrative offense?
6. When you use an administrative offense, what is your aim?
7. What is your sense of the impact of administrative offenses?
8. How do you decide to give recommendations to send someone to youth custody for an administrative offense?
9. Quite recently, the Victoria Youth Custody Services closed its girls' wing. How does that affect your work?
10. What is it you hope to achieve?

Appendix C: Factsheet: Centralizing Female Youth Custody Services



FACTSHEET

March 30, 2012
Development

Ministry of Children and Family

Centralizing female youth custody services

Here are the facts on the centralization of female youth custody services in B.C.:

- Across the province, there is an average daily total (YTD) of only 16 girls in youth custody. Prior to the centralization, averages were: eight girls in Burnaby, five in Victoria and three in Prince George. There were many times in Prince George and Victoria where only one girl was in custody, isolated by herself, and many times when the staffed girls unit in Prince George was empty.
- There have been 118 individual girls admitted to custody this fiscal year to date, 76 of whom were placed in Burnaby.
- Bringing all the girls in youth custody together in Burnaby enables the development of and access to a broader array of gender-specific programs that, for example, will better address addictions and mental health needs (especially trauma) of girls. This will benefit all girls in custody, but especially girls who otherwise would have been in Prince George or Victoria and would not have access to the array of gender-specific programs available in Burnaby.
- About half of the girls formerly admitted to Prince George and Victoria were already transported from other communities and were long distances from their families. A review found that only about one-quarter of the girls in custody in Victoria and Prince George had relatives who visited the centres in person.
- Centralizing female youth custody services in Burnaby will decrease the amount of travel time in confinement for girls committed to custody from outlying communities.
- Formerly, girls committed to custody were transported to Burnaby or regional centres in sheriff vans. This type of ground travel can take days at a time. Under the new system, girls from outlying areas will be flown to Burnaby from the nearest

airport under the escort of a female sheriff, spending less time travelling and less time in police cells.

- Girls who are released from custody in Burnaby will have community transition plans and will be provided transportation under appropriate adult supervision to return to their home communities and families. Girls will not be released to the street under any circumstance.
- Girls sentenced to secure custody have been centralized in Burnaby for five years – nothing has changed. The closure of the girls’ units at Victoria and Prince George, which were only for open custody and remand purposes, and centralization of all girls’ custody services in Burnaby is consistent with the approach taken for secure sentenced custody for girls.
- The Elizabeth Fry Society of Greater Vancouver which, for many decades, has been the leading Canadian and international organization that advocates for the rights of female prisoners fully supports the centralization of services for girls.
- As part of the realignment, the ministry will promote family visits through telephone, video conferencing and financial supports for parent travel, where required.
- These improvements are the result of a review of program requirements to address the needs of youth in custody and of B.C.’s very low and decreasing youth incarceration rate.
- B.C. has the lowest per capita youth custody rate in the country due to the use of community-based alternative programs, treatment services, and more integrated service delivery by the ministry.
- Ministry planning has included provision for increases in youth custody expected to result from changes in federal youth justice legislation. A 25-per-cent increase in the youth custody population can, if necessary, be absorbed under the realigned system.

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