II. A Descriptive Profile

This chapter is a descriptive profile of the exercise of police discretion with young offenders. It discusses the main areas of police work with young offenders in which discretion is exercised: the detection of youth crime, clearing youth-related incidents by informal action, referring to alternative measures, or laying a charge, and procedures used to compel the attendance at court of youth who are charged. Special attention is given to the handling of incidents involving offences against the administration of justice and provincial/territorial offences.

For each of these topics, we attempt, within the limits of the data available to us, to provide a general view which applies to police work with young offenders everywhere in Canada, and then to point out what seem to us to be noteworthy variations – in different parts of Canada, different types of communities, different types of police services, and for police officers with different lengths of service.

Our aim in this chapter is to describe the exercise of police discretion with young persons, not to explain it. Our attempts to explain the phenomena described herein are reported in the following chapters.

1.0 Detection of youth crime

Detection of crime can occur in one of two modes. Proactive policing involves police-initiated activities by either an individual officer or the police organization (e.g., traffic tickets, crime prevention initiatives). Proactive mobilization occurs when officers make spontaneous decisions to stop citizens for further investigation, or reflects administrative and supervisory decisions to focus on certain groups of people who are believed to be crime-prone (Ericson, 1982).[1] Reactive policing involves a police response to a specific request by a citizen (e.g. telephoning the police to report a crime). These requests can range from individuals asking for help handling their difficulties, or from community groups requesting a certain level or pattern of service to meet their interests (ibid.).

Police work predominantly involves reactive policing. Black & Reiss (1970) found that 72% of police-juvenile encounters were citizen-initiated. Similarly, Webster's (1970) findings indicated less than 20% of police encounters were self-initiated (proactive). More recent findings indicate the same trend but to a lesser degree: approximately 50% (Cordner, 1989) and 53% (Ericson, 1982) of police encounters were reactive and a large proportion of the balance involved administrative work. A study of a large police force

[1]For example, Ericson (1982) found proactive policing directed at lower status citizens who either presented problems in the officer's view or were out of place in the neighbourhood.

in eastern Canada found that even reactive policing does not involve a large number of calls that relate to crime control (approximately 35%) (Shearing, 1984). Hence, earlier conclusions that "the moral standards of the citizenry have more to do with the definition of juvenile deviance than do the standards of policeman on patrol" (Black & Reiss, 1970: 66-67) are borne out by existing Canadian research.

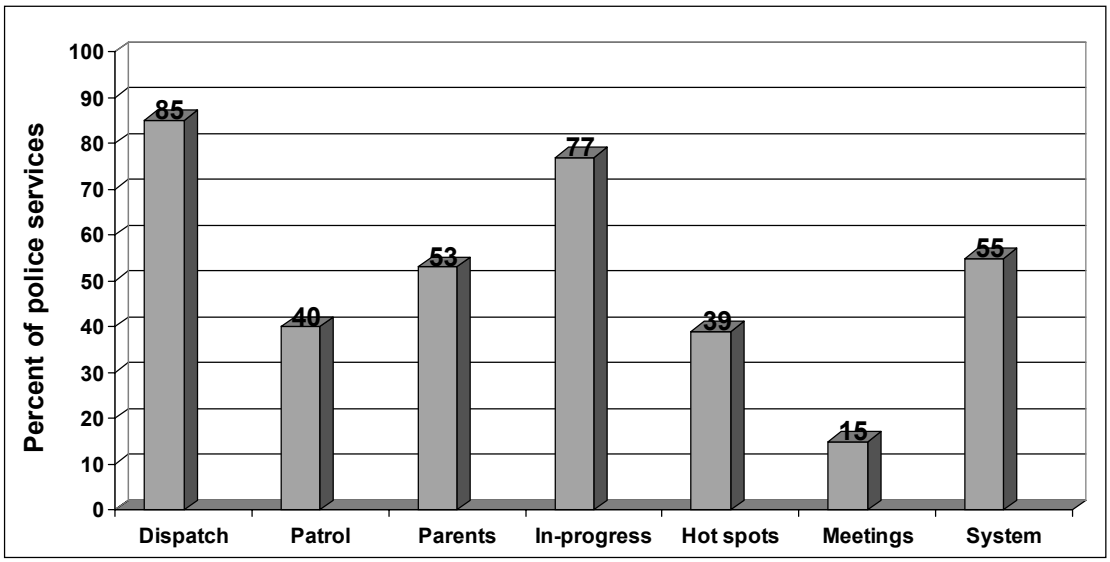
In the reactive situation, a police officer can exercise his or her discretion only after two events have occurred: (i) a decision has been made by either a member of the public (observer, parents, school authorities, etc.) or the victim to call the police, and (ii) the dispatchers have decided this incident warrants sending a patrol car to the scene. Stated differently, typical mobilization scenarios are: (i) police are called by a complainant or witness while the incident is in progress, (ii) police are called by a complainant or witness after the incident is completed, (iii) police discover an incident in progress, (iv) police discover a completed incident, or (v) police are notified by other agents in the criminal justice system (judge, probation officer, etc.). Thus, the detection of crime can be seen as an organizational mobilization (Black & Reiss, 1970).

Within our sample, interviewees were asked whether they felt their work was mostly reactive, mostly proactive, or a bit of both. About one half (51%) told us they felt their work was a bit of both, just under one half (40%) indicated their work was mostly reactive, and 9% suggested it was mostly proactive. The responses suggest three different understandings of the word 'proactive'. First, some officers indicated that even when they respond to a call from dispatch, which is traditionally considered reactive policing, they can choose to deal with the incident proactively (e.g. informally mediating between parties). Second, officers suggested that they not only responded to calls for service by dispatch but proactively went to known 'hot spots' for youth-related deviance (e.g. parks, donut shops). Finally, some officers working within specialized programs (e.g. SHOCAP, SHOP) would proactively check for probation condition compliance by actively door-knocking to ensure the young person was home during the curfew period. All of these conceptualizations of the term 'proactive' led to their answering our question with 'a bit of both'. Those officers that indicated their work was mostly proactive tended to focus on crime prevention initiatives as a community service officer, or were assigned as a school liaison officer who did not perform any enforcement-related duties within the schools. Finally, a large proportion of those who felt their work was primarily reactive worked in patrol or the general investigation section (GIS).[2]

There are several different ways that police officers become aware of youth-related incidents. These include: dispatch, patrol investigation, parents calling in, coming across an in-progress incident while in the field, proactively going to hot spots, through weekly meetings, or via other system agents (e.g. social services, probation, and school officials). Figure 1 presents the percentage of police services that indicated the various ways they become aware of youth-related incidents (percentages add to more than 100% since multiple answers were permitted).

[2] The influence of proactive versus reactive policing on the exercise of discretion is discussed in Chapter IV, Section 6.

Figure II.1. How police become aware of youth-related incidents



The majority of officers indicated that the most common ways they find out about incidents involving youth are via dispatch (85%) or coming across an incident while it is in progress (77%). However, they also receive information from other system agents (55%) and parents (53%). In some jurisdictions, police services have worked very hard to improve their links with the community as well as with other parts of the criminal justice system. With over half of the respondents indicating system agents and parents, this suggests these efforts have been successful to some degree. Finally, officers also told us that they find out about incidents through patrol investigations (40%), proactively going to hot spots (39%), and through weekly meetings with other police officers, community members, or system agents (15%).

Police officers predominantly agreed (88%) that the way they become aware of youth-related incidents does not impact on their use of discretion. Of the 12% whose exercise of discretion was affected, some said that it was the amount of time which had elapsed after the incident that might affect them: they might exercise discretion differently if they were receiving the information several days later (regardless of the way in which they received that information). A few also mentioned that they would respond differently, based on the type of offence (e.g. serious violent offences).

How police officers become aware of youth-related incidents can vary by location of service, type of community, and by province or territory. There was no variation between police types (independent municipal, First Nations, RCMP, or provincial). When police officers are assigned to general duty (patrol), they tend to find out about youth-related incidents through dispatch or coming across them in the field. However, detectives in GIS, officers in a youth division, or school resource officers can potentially find out about these incidents in all of the ways previously discussed.

Two aspects of the detection of youth-related incidents appear to vary with the type of community (metropolitan, suburban/exurban, rural/small town). Learning of the incident from the youth's parents, who have called about it, is more likely to be cited by officers in metropolitan areas (53%) and in rural/small town jurisdictions (59%), and less in suburban/exurban areas (37%). This may due to the nature of the suburban community ("bedroom community"), in which a significant proportion of the population commutes to a metropolitan area. However, this is speculation and no theories have been offered to explain differences in crime detection between these three types of communities. The highest proportion of officers who indicated parents calling in were in Ontario (73%) and the smallest proportion were in the Prairies (35%). System agents provide police with information about young persons more often in metropolitan areas (77%) than in suburban/exurban (42%) or rural/small town areas (45%). This may be due to differences in the human resources available in different types of communities.

A very clear difference is seen when comparing by province and territory the proportion of officers who proactively go to hot spots. 78% of officers in the Yukon, Northwest Territories, and Nunavut indicated that they find out about youth-related incidents through proactively seeking them out. This can be attributed to a very different style of policing that occurs in the Territories. Officers stated that to be accepted by the communities, which tend to be quite small, they spend very little time in their detachment offices and interact with the residents on a daily basis on and off shift. Members indicated they were out on the road all the time stopping and chatting with the kids at the skateboard park, the arena or wherever the local youth congregated. One officer stationed in Nunavut suggests that officers should "always try to have an open door policy, open to every conversation. I think the best approach is to be very visible, not stay in the office that was the best thing". Another officer stationed at an isolated detachment says that "up north, a police officer has to get out and meet people, particularly children. The children will tell you exactly what's going on, in what house, and who does it".

1.1 Clearing the incident

The process of dealing with an incident can be broken down into five stages, or decision points (Klinger, 1996). The first stage is gathering initial information and making a decision as to whether further investigation is warranted; i.e. deciding whether the incident involves a criminal violation (is founded or unfounded). In the second stage, investigation results in the identification of the offender(s), or "clearing" the incident. The third stage involves the choice of disposition for each apprehended offender. This can entail the police laying a charge (or referring a recommendation to the Crown to charge in some provinces), with or without a recommendation for post-charge Alternative Measures; referring the youth to pre-charge Alternative Measures or a Youth Justice Committee, or taking informal action. The next decision is whether to make a police (occurrence) report. If the suspect is charged or referred to Alternative Measures, a report must always be completed. However, if an officer chooses to use informal

measures to handle the incident it is up to the officer's discretion or departmental policy[3] whether a report is completed. Finally, if charges are (to be) laid, an officer (or officers) make a decision concerning the mode of compelling his or her attendance at court: whether the youth is to be given an appearance notice, summonsed, or taken into custody (arrested); and, if arrested, whether to be released or held for a judicial interim release hearing. Thus, officers make three fundamental decisions: (i) whether a youth should be charged or dealt with in other ways; (ii) if not charged, what type of diversion is appropriate (Hornick et al., 1996); or, (iii) if charged, how to compel attendance at court.

The typical process involved in clearing youth-related incidents varies, depending on the type of officer who is responsible for making the decision: patrol, general detective, or youth bureau detective. A member on patrol tends to deal with the investigative process in a similar fashion for youths and adults, with a few exceptions. The officer decides whether an offence was committed, and, if so, who did it. Subsequently, the officer determines whether the youth should be arrested and brought back to the station. Officers often mentioned they would be more likely to let a 16 or 17 year old go at the scene with an appearance notice, as they were able to notify the parents by telephone. However, with a 12 to 15 year old they were more inclined to have the parents come to the station to pick up the young person. One officer summarized this process thus:

> A 16 or 17 year old we can release them on an appearance notice and notify the parents later. But if he's under 16 then we make every effort to contact the parents, we don't release him unless we can find a parent. If we have to bring them in as a result, they are arrested.

Thus, the requirement (under the YOA) to notify the parents, coupled with a concern about the young person's welfare, increases the use of the power of arrest.

Depending on the organizational structure, some police services refer certain types of offences to a youth bureau or the general investigative (detective) section (GIS). In those circumstances, the patrol officer will conduct the preliminary investigation, possibly arrest the young person, and pass the file off to the appropriate investigative section. It is once the file has been taken on by the youth bureau or GIS that the parents are notified, the Section 56 waiver is repeated, statements are taken, and decisions for compelling appearance are made. In one Ontario police service, all files that involve young persons are referred to the youth bureau where the decision is made whether the case will be dealt with informally, by alternative measures, or by way of charge. However, in most police services, if informal action is chosen it is done at the level of the patrol officer.

An officer's and police agency's attitudes towards informal action and alternative measures can also have an impact on how youth-related incidents are cleared. Many

[3]Some jurisdictions (e.g. Ottawa-Carleton Regional Police) have internal policies that dictate the use of a formula-based decision-making model such as the Prevention Intervention at the Pre-Court Level (PIP) Program or the John Howard Pre-Charge Diversion Program (Hornick et al., 1996).

police services have departmental policies that specify which youth-related offences can be considered for alternative measures. None of the police services which we interviewed had policy regarding informal action. However, officers did indicate that there were unwritten rules regarding when informal action is considered appropriate. Some police officers felt very strongly that informal action and alternative measures either work or don't work. For officers who were sceptical about the efficacy of informal action and diversion, only the most minor offences would be considered appropriate to be dealt with outside the formal system.

1.2 Proportion of apprehended young persons who are charged

The main statistical indicator of the exercise of police discretion with respect to laying charges is the proportion of young persons apprehended by police who are charged.

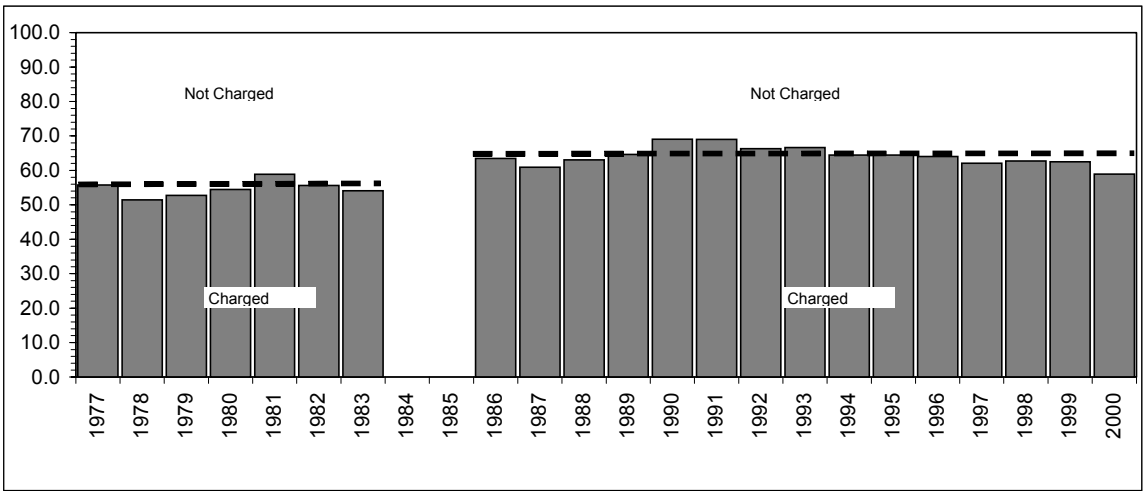
The Uniform Crime Reporting (UCR) Survey provides aggregate numbers of young persons charged (or recommended by police for charging, in provinces with Crown screening) and young persons not charged (but apprehended), by police service, by year, for all of Canada. The numbers of 'youth not charged' reported in the UCR do not distinguish among the reasons for not charging; in particular, they do not distinguish informal action from referral to alternative measures (although this is done by another statistical indicator of police discretion, which is presented later in this section).

From these numbers, we can calculate the proportion of apprehended youth who were charged, which is a rough indicator of the "amount" to which police use their discretion not to lay charges in all cases. It is by no means a perfect indicator of police discretion, for at least three reasons. First, when officers resolve an incident informally, they do not always make a record of it; and if it is not in the RMS (Records Management System) of the police service, it cannot be reported to the UCR. However, a record is always created when officers lay a charge. Second, police services in Canada vary in the degree to which they take the trouble to report numbers of 'youth not charged' to the UCR. The more of these 'youth not charged' who are omitted from the UCR return of a given police service, the more its use of discretion will be underestimated by the variable, 'proportion charged'. In the extreme case, a police service such as Toronto, which has a practice of not reporting numbers of youth not charged, will have a 'proportion charged' of 100%, and appear to exercise no discretion at all with apprehended young persons. Thus, 'proportion charged' tends, to an unknown extent, to underestimate the amount of police discretion. On the other hand, not all 'youth not charged' represent the exercise of police discretion: some apprehended youth cannot be charged, for reasons beyond the control of the police, such as the death, disappearance, or diplomatic immunity of the accused youth. Thus, 'proportion charged' overestimates, to an unknown extent, the extent of police discretion. For these reasons, this indicator is not a reliable basis for comparisons of the use of police discretion by individual police services. Nevertheless, it can be used to compare the use of police discretion, aggregated to the level of the province/territory, and to track changes in police discretion over time *within* provinces and territories (Carrington 1999; Scanlon 1986: 94-95).

1.2.1 Changes over time and differences between jurisdictions

Carrington (1999) found that the proportion of apprehended young persons charged by police was stable at about 55% during 1977-1983, under the Juvenile Delinquents Act,[4] jumped to approximately 65% after the Young Offenders Act came into force, and remained, with minor variations, at that level until 1996. Figure II.2 updates Carrington's analysis to 2000, and shows what appears to be a declining trend from 1991 to 2000 (when 59% of young persons apprehended in Canada were charged), although additional years of data will be needed to establish this apparent trend with certainty. The average proportion of apprehended young persons charged from 1986 to 2000 was 64%, which is substantially greater than the average of 55% for the period, 1977-1983.

Figure II.2. Proportion of apprehended young persons charged, Canada, 1977-2000



Sources: 1977-1996: Carrington (1999); 1997-2000: UCR Survey.

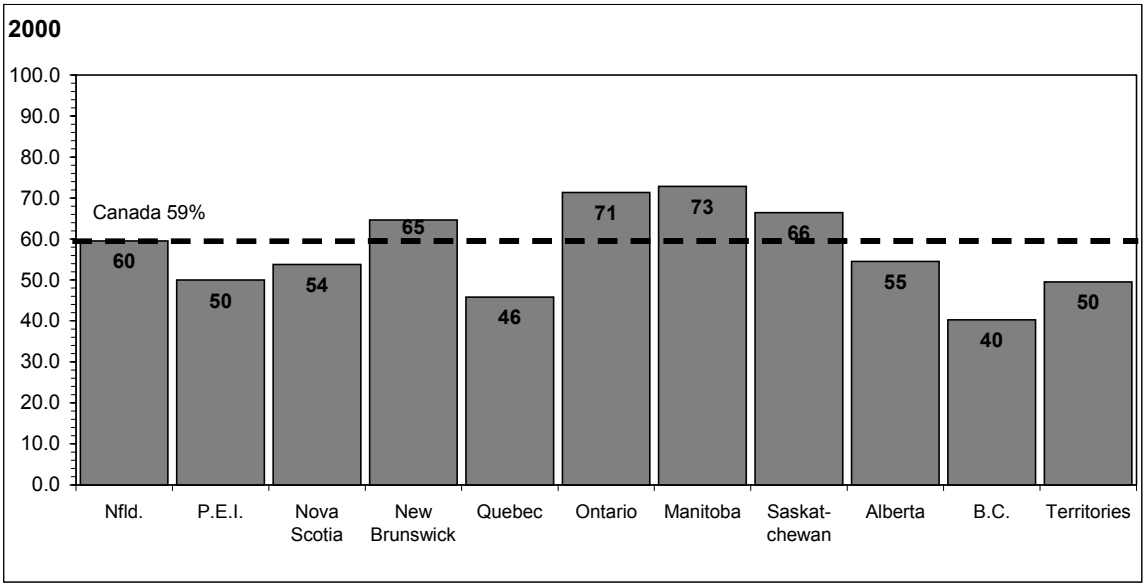
Looking at the trends over time in separate provinces and territories, Carrington (1999) identified two groups: those in which police had exercised a relatively low degree of discretion not to charge under the Juvenile Delinquents Act (charging 50% - 80% of apprehended youth in 1983), and continued to exercise a low degree under the YOA (Newfoundland, New Brunswick, Quebec, Manitoba, Alberta, British Columbia, and the Yukon); and those (P.E.I., Nova Scotia, Ontario, Saskatchewan, and the Northwest Territories) in which police had exercised a relatively high degree of discretion under the JDA (charging 25% - 50% of apprehended youth in 1983) but suddenly started to charge higher proportions when the YOA came into effect, so that the amount of discretion exercised approximated that in the first group of provinces. The change in Saskatchewan – from an average level of 24% of apprehended youths charged during 1977-1983 to an average level of 67% during 1986-1996 – was the most spectacular, but the second largest increase was in Ontario – from an average level of 34% of apprehended youths

[4] Data are not available for years prior to 1977.

charged during 1977-1983 to an average level of 64% during 1986-1996 – and is particularly significant because Ontario accounts for such a large part of the population of Canada.

Figure II.3 shows the proportion of apprehended youth charged in each province and the Territories in the year 2000, and Figure II.4 (on the following pages) shows the trends over time since 1977.[5]

Figure II.3. Percentage of apprehended young persons charged, by province, 2000

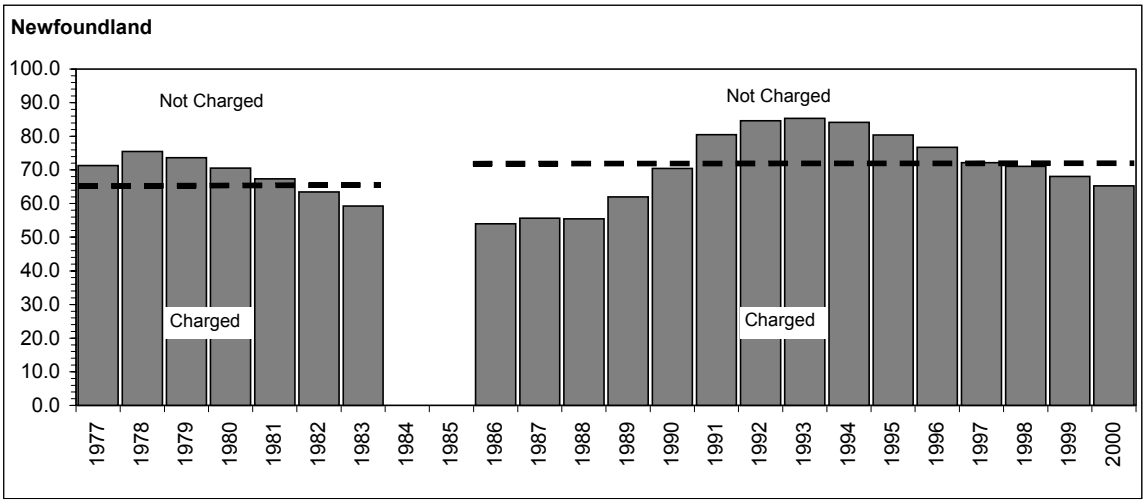


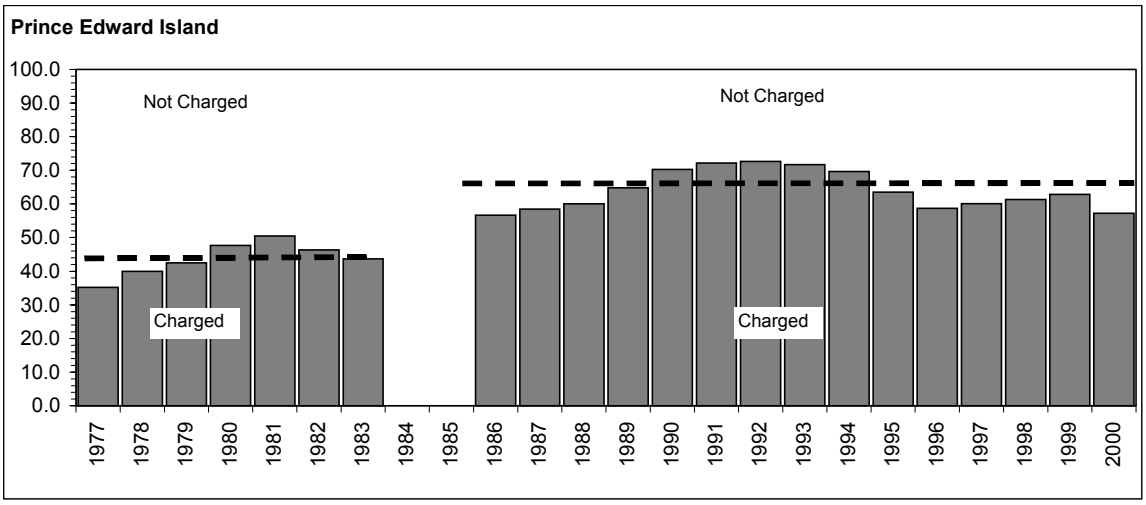
Sources: 1977-1996: Carrington (1999); 1997-2000: UCR Survey.

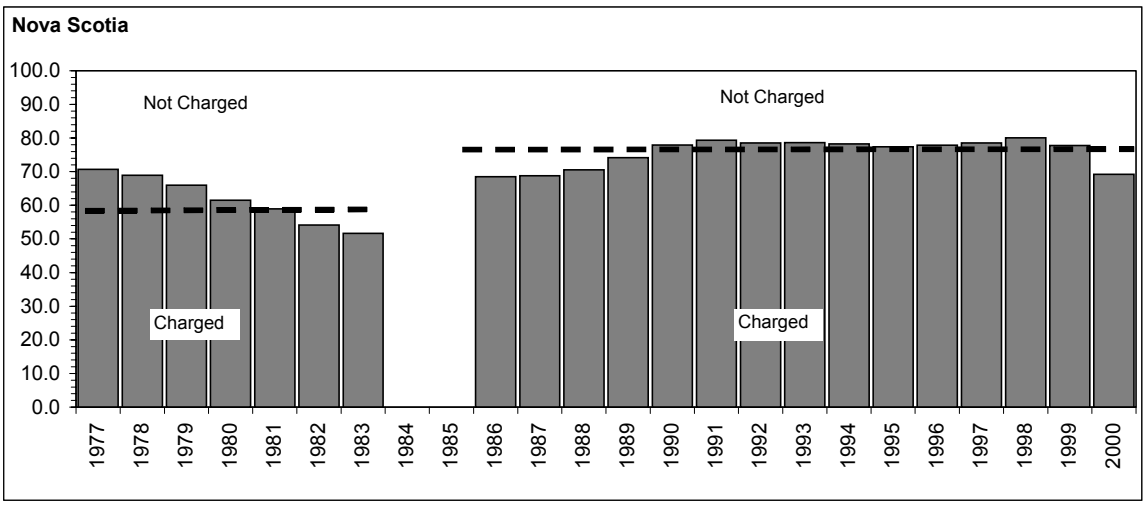
Three patterns are evident in Figures II.3 and II.4. The most striking pattern, noted by Carrington (1999), occurred in Ontario, Saskatchewan, and the Territories, and to a lesser extent in Prince Edward Island and Nova Scotia. This is a sudden shift when the YOA came into force from a regime of high levels of police discretion (low charging) with young offenders to much lower levels of discretion, bringing these jurisdictions into line with the rest of the country. Carrington (1999) pointed out that this change was probably caused, at least in part, by the change in the age jurisdiction of the youth justice system mandated by the YOA; since these four provinces and two territories make up six of the eight jurisdictions in Canada which underwent the major change from a maximum age of 15 years under the JDA to a maximum age of 17 years under the YOA. However, the increase in proportions charged was not simply due to 16 and 17 year olds being charged in higher proportions than 12 to 15 year olds: as Carrington (1998b) showed, apprehended young persons of *all* ages from 12 to 17 were charged in substantially higher proportions in Ontario and Saskatchewan after the YOA came into effect.

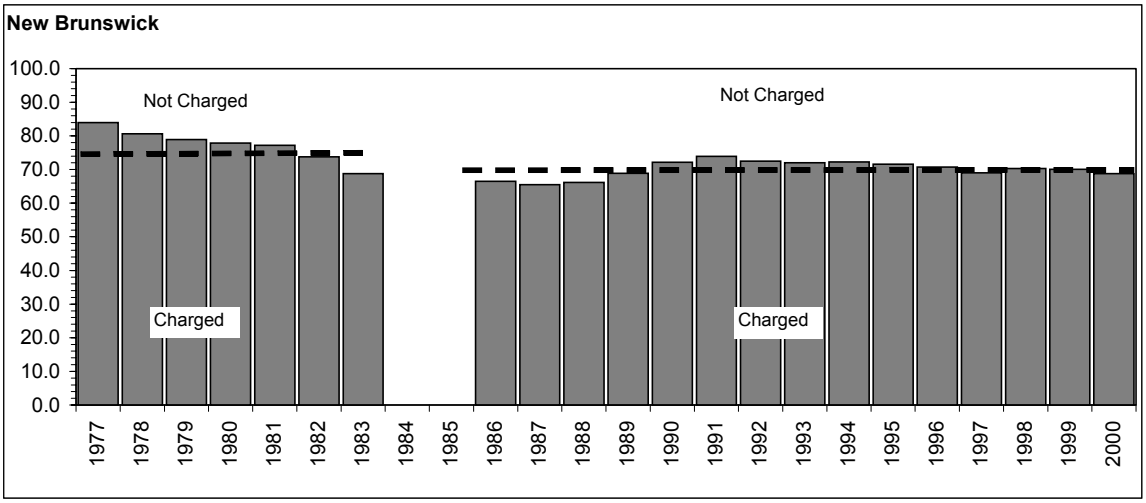
[5] 1984 and 1985 are omitted due to the difficulty of calculating per capita annual rates for those years, when the change in age jurisdiction of the youth justice system was being phased in.

Figure II.4
Proportion of apprehended young persons charged, by province, 1977-2000





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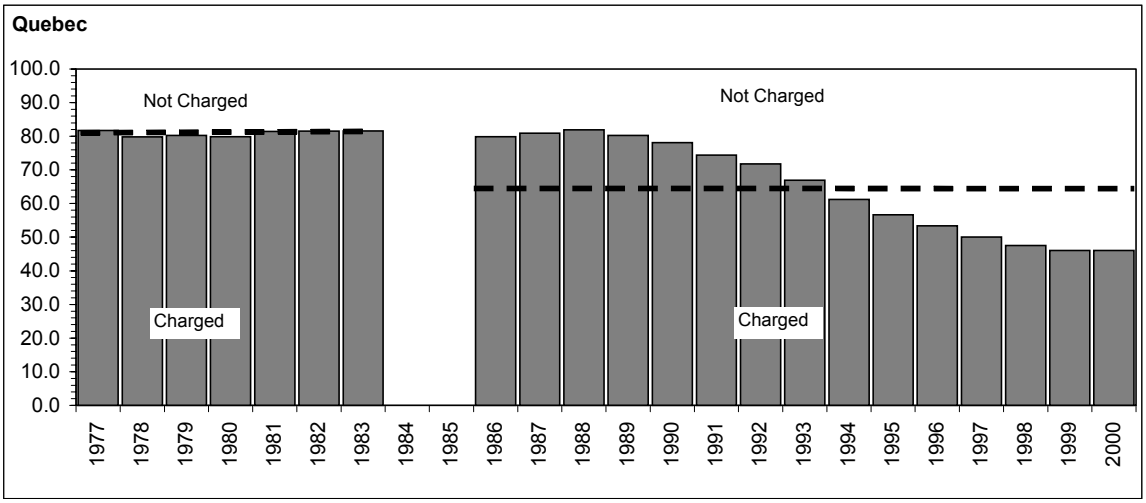
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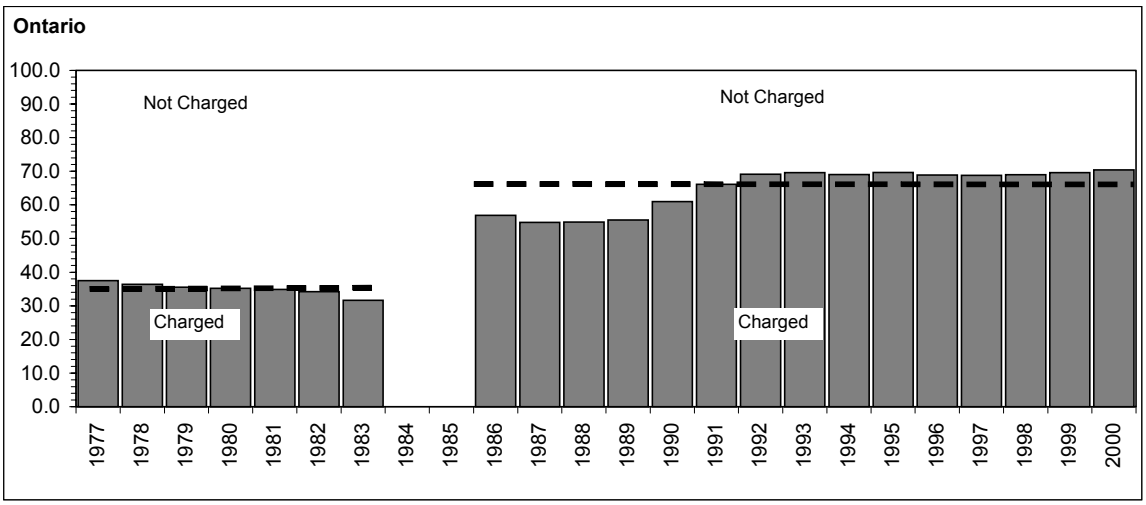
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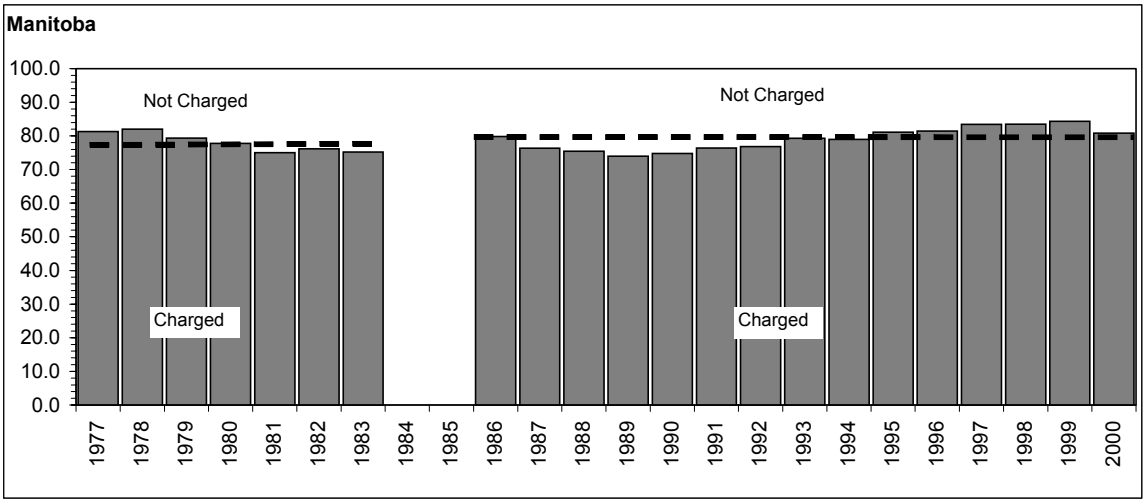
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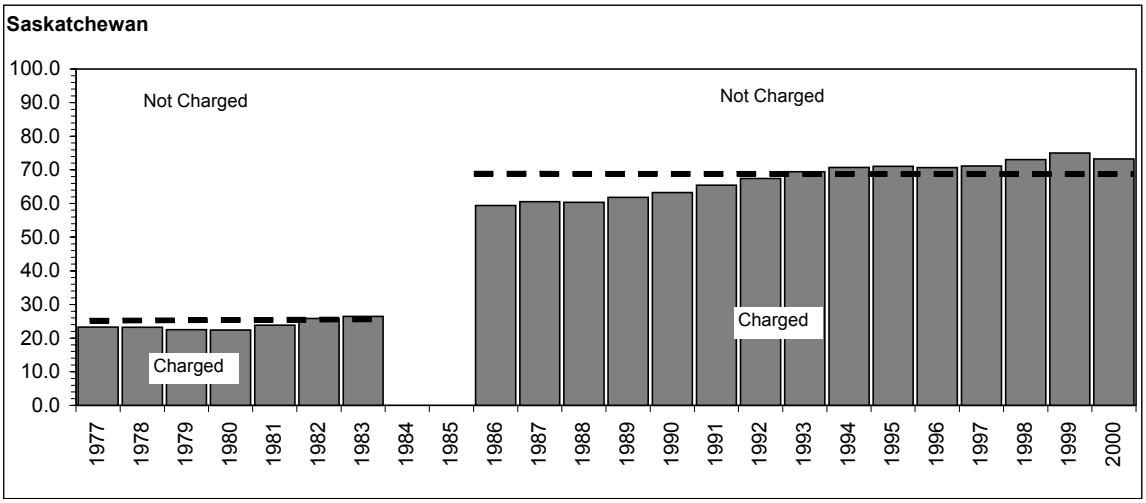
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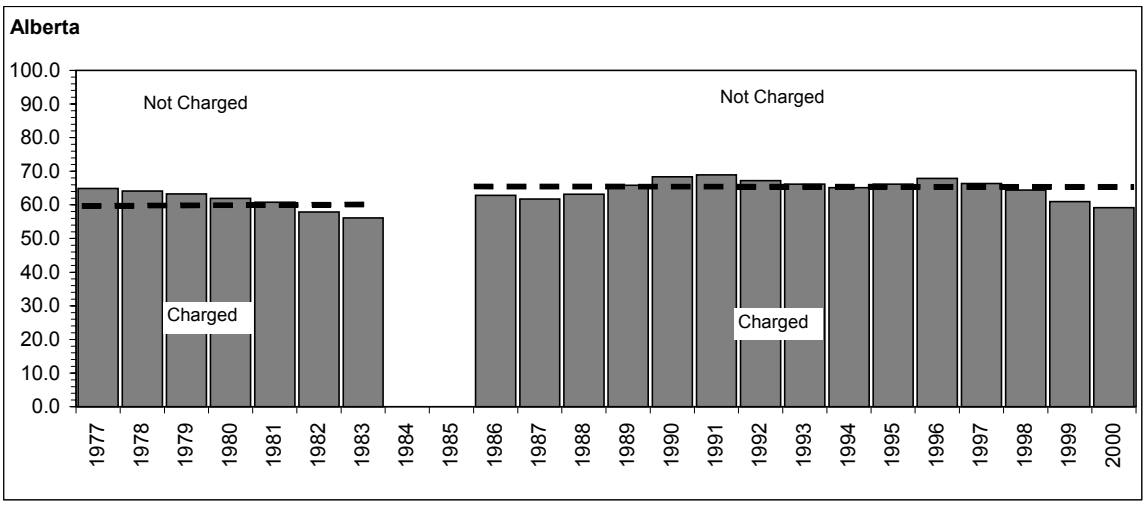
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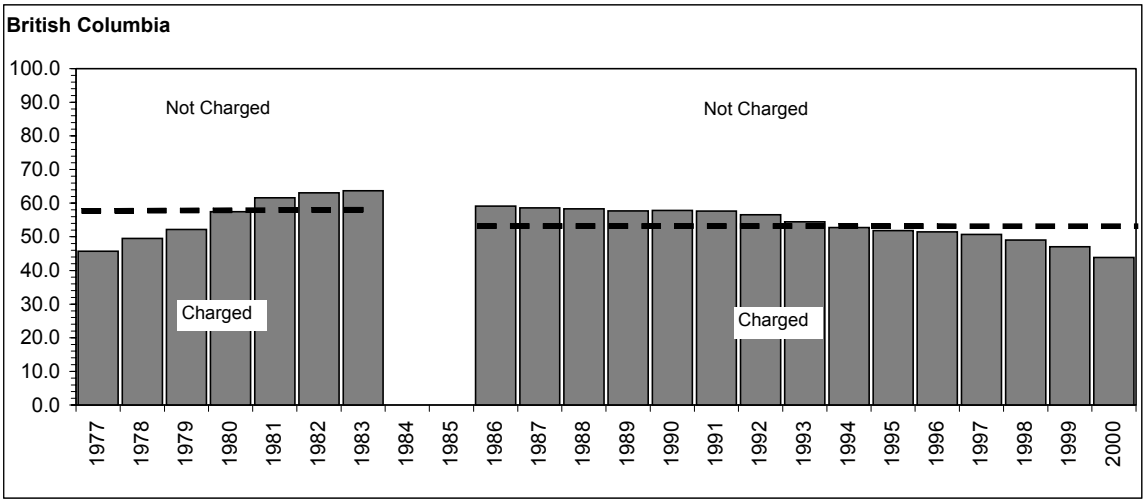
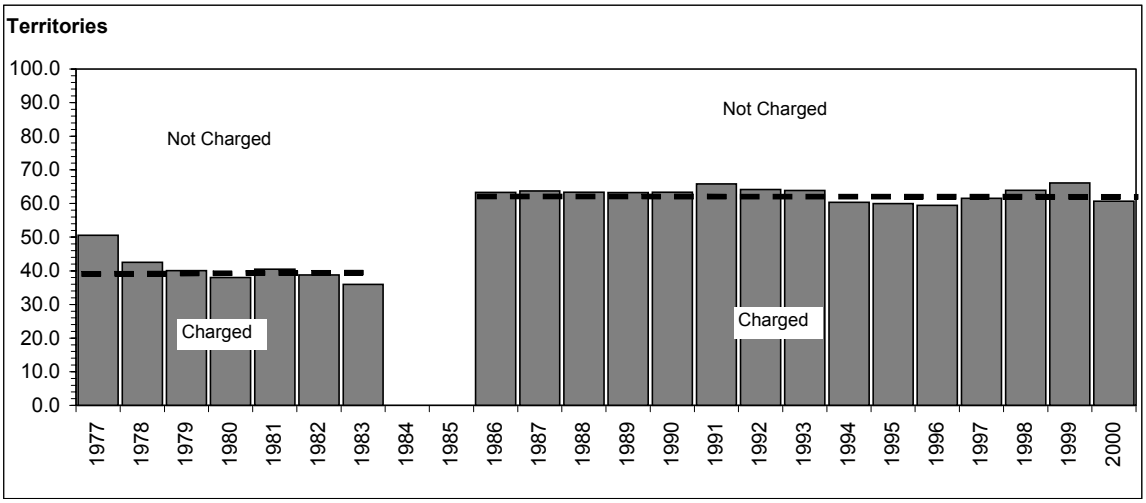




Note: 3-year moving averages have been used for smoothing.
Sources: 1977-1996: Carrington (1999); 1997-2000: UCR Survey.

The second pattern, occurring in Quebec and British Columbia, is an *increase* in the use of police discretion (declining levels of charging[6]). This is most pronounced in Quebec, which has been transformed from the province with the highest average levels of charging during 1977-83 to the province with the second-lowest level in 2000. The level of charging of apprehended young persons in British Columbia has declined from a high of 66% in 1981 to the lowest level in Canada (40%) in 2000. Many police officers whom we interviewed in British Columbia expressed dissatisfaction with the Crown screening regime, which they see as taking an important tool out of their hands; and we speculate that the decline in recommendations to charge by police in that province may, to some extent, reflect the preferences of police to dispose of youth-related incidents in other ways which remain under their control, such as informal action or referral to pre-charge diversion.

[6] Actually, recommending charges, since, in both Quebec and British Columbia, it is the Crown that makes the final decision concerning laying a charge against a young person.

It appears that one effect of the YOA has been to impose greater uniformity across Canada in the use of discretion concerning the charging of youth (see Figure II.3). In 1977, there was wide variation among the provinces and territories in the proportions of apprehended youth who were charged: from 23% in Saskatchewan to 84% in New Brunswick. Nine of the eleven jurisdictions (combining the Territories) were more than 10% higher or lower than the national rate of 56%. In effect, the jurisdictions were polarized into low-charging and high-charging regimes, with only two jurisdictions (Alberta and the Territories) close to average. Low-charging regimes included - in ascending order of proportion charged – Saskatchewan, Prince Edward Island, Ontario, and British Columbia. The other five provinces charged high proportions of their apprehended youth. In 2000, the range of provincial/territorial proportions charged had narrowed considerably: the lowest was 40% in British Columbia, and the highest was 73% in Manitoba. Only four jurisdictions differed by more than 10% from the national rate of 59%: British Columbia and Quebec on the low side, and Manitoba and Ontario on the high side.

1.2.2 Differences between types of police agencies

In order to compare the use of discretion not to charge young persons by different types of police agencies, we calculated from UCR data the proportion of apprehended young persons charged by each of the 93 police services in our sample. We chose a period of three years (1998-2000) combined, in order to smooth out any anomalies that might have occurred in any police services in any one year. Eight police services, in four provinces, reported charging 95% or more of apprehended youth; we omitted these from the analysis, in case they represented under-reporting of number of youth not charged. The three First Nations police services were also omitted from the analysis, since this is too small a number for reliable calculations.

The resulting sample of 82 police services reported charging an average of 61% of apprehended youth. This is the same as the overall rate of charging of apprehended youth for all police services reporting to the UCR in 1998-2000. This suggests that our sub-sample of 82 police services is representative of all services in Canada, at least with respect to this phenomenon. However, as is shown below, the sample is more representative in some provinces than in others.

Overall, independent municipal police services in our sample (n = 46) reported charging an average of 61% of youth whom they apprehended. RCMP detachments (n = 26) had a slightly lower rate of charging apprehended youth (56%), and provincial police detachments (OPP and RNC, n = 10) had a considerably higher rate (79%).

However, clearer patterns emerge if the comparison is made within provinces. Table II.1 shows that, in British Columbia, Alberta, and Manitoba, RCMP detachments in our sample reported charging considerably lower proportions of apprehended youth than the independent municipal services in those provinces. Little difference is observed in

Saskatchewan or New Brunswick. In the Territories, where RCMP detachments are the only police services, overall rates of charging (Table II.1, last column) are either similar to (in the Yukon and Northwest Territories) or lower than (in Nunavut) the overall national rate. Since the RNC and RCMP are the only police services in Newfoundland, and since the rate of charging reported by the two RNC detachments in our sample (80%) is much higher than the overall provincial rate (65%), we can deduce that in Newfoundland, RCMP detachments must have a considerably lower rate of charging than the RNC. The OPP detachments in our sample reported charging an average of 79% of youth whom they apprehended, which is a considerably higher rate than that reported by the independent municipal services in Ontario.

Table II.1 Proportion of apprehended youth charged, by province/territory and type of policing, 1998-2000

Province/territory	Independent Municipal Police sample (n=46)	RCMP sample (n=26)	Provincial police sample (n=10)	Overall sample (n=82)	Overall (all UCR)
	%	%	%	%	%
British Columbia	73	42		56	44
Alberta	64	46		51	59
Saskatchewan	75	77		76	73
Manitoba	95	80		85	81
Ontario	65		79	69	70
Quebec	44			46	46
New Brunswick	64	60		63	69
Nova Scotia	70			70	69
Prince Edward Island	76			76	57
Newfoundland			80	80	65
Yukon		61		61	61
Northwest Territories		68		68	62
Nunavut		47		47	51
Overall	61	56	79	61	61

Source: UCR Survey.

In summary, based on a sample of 82 police services, it appears that in provinces in which the RCMP serves as the provincial police force, it exercises considerably more discretion not to charge young persons than the independent municipal services in those provinces. On the other hand, the two provincial police services in our sample appear to charge apprehended youth in considerably higher proportions than the independent municipal services in those provinces. These comparisons must be interpreted with

caution, both because of the unreliability of UCR data on numbers of youths not charged, and also because of the small size of our sample and its apparent non-representativeness in some provinces (suggested by a comparison of the last two columns of Table II.1).

1.2.3 Differences by type of offence

The importance of the type, or seriousness, of the offence in the exercise of police discretion has been emphasized by practically every writer on the subject. The impact of various case-related factors on the decision to charge, including the type of offence, is explored in depth in Chapter V. In Table II.2 (below), we present data from the UCR Survey for 2000 to describe the variations in proportions of apprehended young persons charged, by the type of (alleged) offence.

This simple distribution gives the lie to the truism that the exercise of police discretion is related in a straightforward way to the "seriousness" of the offence. For example, less discretion is exercised with offences against the administration of justice than with any other offence except homicide and attempt murder – although administrative offences have no victim and cause no harm, except expense and inconvenience to the justice system.[7] If discretion varies inversely with seriousness of the offence, then possession of stolen property is more serious than abduction, major assaults, drug trafficking, break and enter, sexual assaults, etc.; impaired driving is more serious than break and enter, sexual assaults, sexual abuse, etc.; arson is less serious than almost any other offence; and violent crimes, as a group, are slightly less serious than victimless ("Other") crimes. Clearly, there is *some* relationship between the seriousness of the offence and the amount of discretion exercised by police, but the relationship is not straightforward, as Carrington (1998a) also found.

2.0 Offences that are almost always dealt with informally, referred to alternative measures, or charged

In view of the common belief that the type or seriousness of offence is the principal factor determining the way in which police officers exercise their discretion, we asked officers whether there were any types of offences which they "almost always" cleared in a particular way.

Few police officers whom we interviewed were willing to identify specific types of offences that they almost always charge, refer to alternative measures, or deal with informally. Rather, they emphasized that their decisions on clearing an incident were invariably "case-specific": that is, based on a constellation of factors in each case.

[7] The exercise of discretion by police with offences against the administration of justice is discussed in detail in Section 5.0 below.

However, almost half (44%) of our respondents volunteered that they almost always charge "serious" offences. A small contingent of officers (7%) reported that they almost always charge minor offences; these tended to be working for independent municipal police services. A few officers did say that they would almost always charge for drug offences (5%) or gang-related offences (1%).

Table II.2 Proportion of apprehended youth charged, by offence, Canada, 2000

Offence category	Percent charged
Homicide and related	100.0
Attempted murder	100.0
Offences against the administration of justice	95.6
Kidnapping	95.3
Robbery	87.4
Possession stolen property	83.6
Abduction	80.0
Criminal code traffic	79.9
Major assault	79.2
Traffic/Import drugs	77.4
Other federal statutes (primarily YOA)	76.3
Impaired driving	76.1
Break and enter	71.1
Sexual assault	67.7
Fraud and related	64.5
Weapons and explosives	62.4
Sexual abuse	55.0
Other criminal code offences	54.3
Theft	52.7
Common assault	52.2
Possession of drugs	47.1
Morals – sexual	46.0
Arson	45.0
Morals - gaming/betting	40.0
Property damage / Mischief	38.1
Public order offences	28.5
Total Violent Crimes	62.7
Total Property Crimes	55.7
Total Other Crimes	63.6
TOTAL - CRIMINAL CODE	58.9

Source: UCR Survey.

One-third of our interviewees indicated there were no offences that they would almost always refer to alternative measures, despite the clear stipulation in most departmental

policy that there are certain types of offences that officers must consider for diversion. A further 22% of officers indicated they would almost always refer youth to alternative measures if they committed a minor offence. These offences tended to involve minor theft (e.g. shoplifting), mischief, or very minor crimes against the person. In the Atlantic Provinces, half of the officers interviewed responded in this fashion. Finally, very few officers told us they would almost always refer serious offences (1%) or provincial/territorial offences (1%) to alternative measures.

The use of informal action also does not appear to be determined simply by the type of offence. One-third of the responding officers indicated that there are no offences where they almost always would use informal action. A small percentage suggested they would almost always use informal action with provincial offences (14%) and minor offences (13%). Less than 1% identified serious offences or shoplifting as offences where they would "almost always" use informal action. However, 19% of the officers who worked in rural/small town services and detachments said that they almost always use informal action with minor offences, compared to 11% in metropolitan and suburban/exurban areas.

Comments made during the interviews suggest that the primary reason officers felt compelled to indicate there were no specific offences for any of these categories is their belief that each case must be judged on its own merits; thus, the decision is case-specific and cannot be reduced to a formula. One officer says "we've all tried to climb trees, and we all had ways to test our boundaries". A School Resource Officer in Alberta suggests,

> Every time I have a young person in my office and I'm dealing with them in a criminal investigation I always look at their marks, I look at their attendance, their make-up, their behaviour towards life, I look at their relationship with their friends, their demeanour, the way they're sitting, the way they talk. But the most critical aspect is, I extrapolate four years of their life from the time of the incident, I go back four years and I ask them to tell me what it's been like for the last four years. 95% of the time, probably 100% of the time, the common denominator is lack of parenting, effective parenting, alcohol or drug abuse, bad decisions based on friends showing them, lack of dignity and respect, that is the common denominator. When I know that those are the issues, as a policeman, and even as a parent of two young kids, how do you charge somebody like that?

3.0 Informal action

When officers decide not to lay (or recommend) a charge, or to recommend alternative measures, they have a choice among several kinds of informal action. They may give an informal or formal warning, involve the parents and/or social services, arrest and question

the youth at the police station and release him or her, make a referral to a community-based intervention program, or simply take no action, except possibly to file an occurrence report (Bala et al., 1994a). According to Mueller and Heck (1997:116),

> A number of criminologists (including Tittle, 1980; Braithwaite, 1989; Sampson and Laub, 1993) have argued that informal sanctions are more influential and cost-effective than formal sanctions that the police can muster in fighting juvenile crime.

Little is known about the use of informal action by police in Canada, or about their screening practices (Hackler & Don, 1990). According to some writers, young offenders are handled informally in circumstances involving less serious crime (Ericson & Haggerty, 1997; Meehan, 1993). There is evidence of less use of informal action since the inception of the YOA (see Section 1.2 above; Carrington 1999; Carrington & Moyer, 1994; Schissel, 1993). Informal warnings have been found to be used more frequently in rural areas or by school resource officers than by regular front-line officers (Hornick et al., 1996), raising the possibility that rural and Youth Officers may use this approach more with youth due to their familiarity with their 'clientele'.

British research suggests that the use of informal warnings is largely influenced by the administrative and ideological support within a department (Steer, 1970). Although formal, recorded warnings ("cautions") are used by police in other countries, there is no evidence in the literature that they are currently used in Canada, although caution letters issued by Crowns are used in some provinces as alternative measures (Engler & Crowe, 2000; Task Force, 1996). However, we did find evidence of the use of caution letters by some police services in Canada (see Section 3.4 below).

3.1 Frequency of use of informal action

3.1.1 Statistical data

Statistical information on the use of informal action and pre-charge diversion by police is available from the Incident-Based Uniform Crime Reporting Survey ("UCR2"), maintained by the Canadian Centre for Justice Statistics. This survey, which operates in parallel with the UCR Survey, collects data on the characteristics of individual incidents, apprehended offenders, and victims of crime. Thus, it can provide data which are much more detailed than those available from the traditional, aggregate UCR Survey. Its drawback is that it is relatively recent, and some police services do not yet participate in it. Although it began operation in 1988, it did not achieve significant coverage of recorded crime in Canada until 1995, when it included 42% of all recorded incidents in Canada, and 50% of young persons charged (Canadian Centre for Justice Statistics, 2003). By 2001, it covered 59% of recorded incidents in Canada, and 71% of young

persons charged (ibid.). For 2001, the UCR2 covers practically all of the Province of Quebec, much of Ontario (including the OPP and 13 independent municipal police services), and a small number of municipal services in each of the other provinces, except Prince Edward Island. Its major omission is the RCMP, which provides policing services to much of rural and small town Canada, and many larger centres, outside Ontario and Quebec; but many independent municipal police services are also missing. Therefore, distributions of variables in the UCR2 may not be representative of Canada as a whole (Canadian Centre for Justice Statistics, 2002a).

The detailed information in the UCR2 can provide a useful complement to the limited information available in the UCR Survey. The UCR2 records the "clearance status" of incidents. Incidents which are cleared (i.e., in which at least one chargeable suspect, or "accused", is identified), are classified as "cleared by charge" (at least one suspect in the incident has been charged) or "cleared otherwise". For incidents which are cleared otherwise, the reason given by police for not charging any suspects is classified under several headings, which are shown in Table II.3.

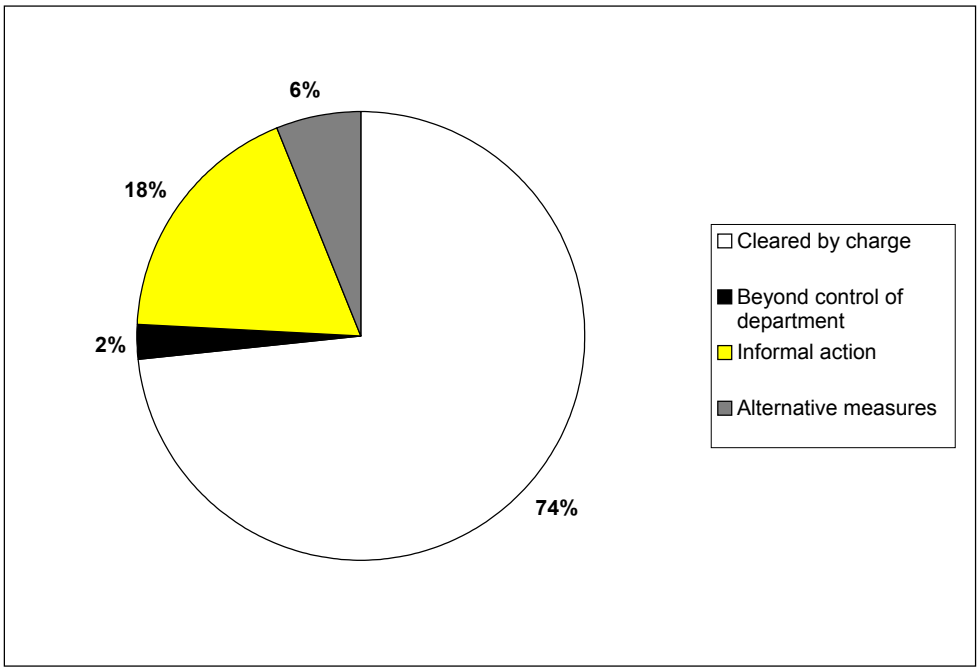
Table II.3 Classification of incident clearance statuses in the UCR2 Survey

Cleared by charge
No charges laid, for reasons beyond the control of the police department
Suicide of the accused
Death of the accused (other than suicide)
Death of a key witness/complainant
Extra-departmental policy (e.g. a directive from the Attorney General)
Diplomatic immunity of the accused
Accused is less than 12 years old
Accused is committed to a mental hospital
Accused is in a foreign country and cannot be returned
No charges laid, police discretion (police could lay a charge but decide not to)
Complainant declines to lay charges (i.e. to cooperate with police)
The accused has been charged in other incidents
The accused is already serving a sentence in a correctional facility
Other discretionary reasons
The accused is being diverted into a (pre-charge) alternative measures program

Source: Canadian Centre for Justice Statistics, 2002b.

We grouped these clearance statuses into four categories: 1) cleared by charge, 2) no charges laid due to reasons beyond the control of the department, 3) no charges laid due to informal action (all "discretionary" reasons except diversion), and 4) no charges laid due to diversion of the accused to alternative measures.. Figure II.5 shows the breakdown of clearance statuses of incidents involving at least one apprehended young person, for all respondents to the UCR2 in 2001.

Figure II.5 Incident clearance status, all UCR2 respondents, 2001



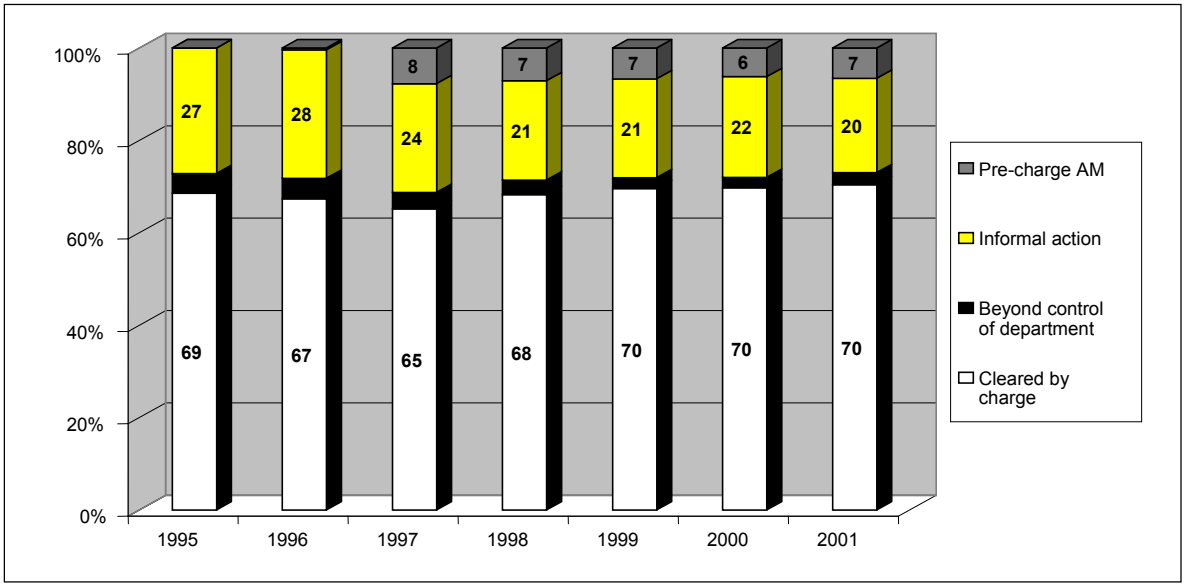
Source: Incident-Based UCR Survey, 2001.

The proportion of incidents cleared by charge is 74%, which is much higher than the proportion of apprehended youths who were charged in Canada in 2000 (59%), according to the UCR Survey (Figure II.2). There are several possible reasons for this discrepancy. One is the omission of the RCMP and other police services which tend to use charges less than the police services included in the UCR2 (see Section 1.2.2). Second, many incidents involving young persons include more than one accused (Carrington, 2002), and if any one of the co-accused is charged, then the incident is classified as "cleared by charge": e.g. if there were two co-accused and one was charged and one was not, this would contribute a count of one incident "cleared by charge" to the UCR2 clearance status variable, but counts of one accused charged and one accused not charged to the "charge status" variable from which we computed that 59% of apprehended youth were charged in 2000. Third, some of the incidents captured in Figure II.5 include adult co-offenders as well as young persons, and adults are more likely to be charged than young persons (Carrington, 2002) – and if any co-offender in the incident is charged, then the incident is classified as "cleared by charge".

The fact that only 2% of all incidents, or 8% of incidents "cleared otherwise", involved "reasons beyond the control of the department" confirms that it is reasonable when analyzing data from the aggregate UCR Survey to use the variable "proportion of apprehended youth not charged" as an indicator of the use of police discretion (as in Section 1.2.1 above). If a large proportion of incidents which were "cleared otherwise" involved reasons which were beyond the control of police, then "not charging" would not be a good indication of the exercise of police discretion.

Of the 24% of youth-related incidents which were cleared without charge due to police discretion, one-third were diverted to alternative measures, and two-thirds were cleared by informal action. This underestimates the *proportion of apprehended youths* dealt with by informal measures and informally, because, for the many incidents in which more than one person was apprehended, the incident is classified according to the most serious "police disposition". Therefore, if one co-offender is charged, and others are diverted or dealt with informally, the incident is classified as "cleared by charge"; or, if none is charged but one youth is diverted to alternative measures and others are dealt with informally, then the incident is classified as "cleared otherwise: diversion".

Figure II.6 Clearance status of youth-related incidents, UCR2 Trend Database respondents, 1995-2001



Source: Incident-Based UCR Survey, Trend Database, 1995-2001.

Figure II.6 shows the trend since 1995 in the clearance status of youth-related incidents recorded in a sub-sample of police services reporting to the UCR2.[8] There is no trend over time: the proportion of incidents cleared by charge fluctuates around 68-70%, and the proportions of incidents cleared by informal action and by alternative measures fluctuate around 20-22% and 7% respectively.[9] The overall proportion of incidents

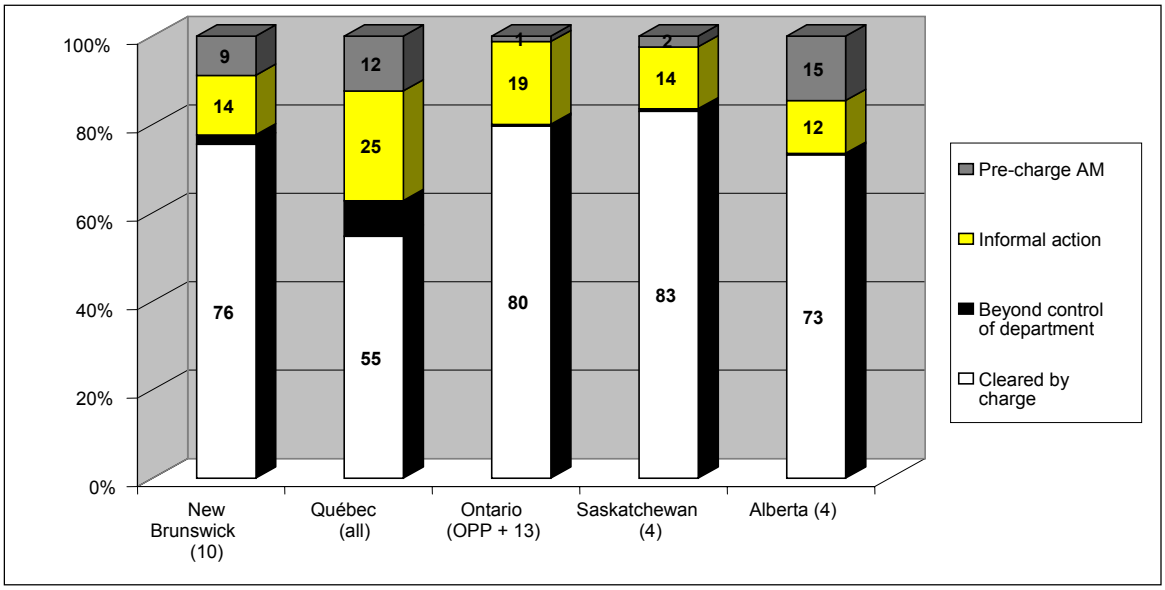
[8] The police services participating in the UCR2 Survey change each year as new forces join the Survey, and occasionally, a police service leaves the Survey. In order to have comparable data over time, we used the "UCR2 Trend Database", which is restricted to police services which reported continuously to the UCR2 from 1995 to 2001. Coverage of this sub-sample is approximately 42% of recorded incidents, and 50% of young persons charged, in Canada.

[9] Referral to alternative measures and informal action were not distinguished before 1997.

cleared by charge is lower than in Figure II.5, and closer to the proportions of apprehended youth charged shown in Figures II.3 and II.4, because some of the police services which are included in the data shown in Figure II.5, notably the OPP, have relatively high proportions of youth charged and of youth-related incidents cleared by charge (see Section 1.2.2 above).

Figure II.7 shows the clearance status of youth-related incidents in police services reporting to the UCR2 in five provinces. The number of police services is shown in parentheses after the name of the province. As in Figure II.5, the proportion of incidents classified as cleared by charge is higher in each province than the proportion of young persons charged in the UCR (Table II.1 above); the reasons for this are discussed above.

Figure II.7 Clearance status of youth-related incidents, all UCR2 respondents, by province, 2001



Source: Incident-Based UCR Survey, 2001.
Note: So few police services in Newfoundland, Nova Scotia, Manitoba, and British Columbia reported to the UCR2 in 2001 that it would be misleading to include them in this analysis.

Proportions of incidents cleared by informal action vary from 12% in Alberta (where only four police services report to the UCR2) to 25% in Quebec. It is noteworthy that, although police services in Ontario which reported to the UCR2 in 2001 had a relatively high overall charge rate (80% of youth-related incidents were cleared by charge; cf. Figure II.3 and Table II.1, above), this appears to be entirely due to the unavailability of pre-charge alternative measures; their rate of clearance of youth-related incidents by informal action (19%) is exceeded only by that of police services in the province of Quebec. Similarly, the even higher overall charge rate of the four respondents in

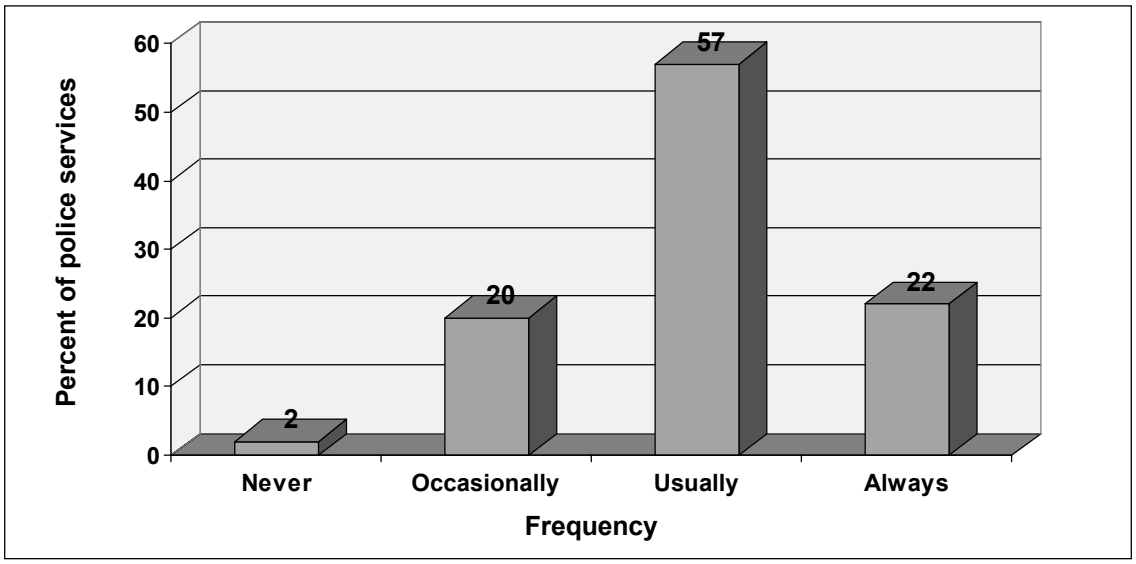
Saskatchewan (83%) is primarily due to the minimal use of pre-charge AM: their rate of informal action (14%) is no lower than that in New Brunswick and Alberta.

3.1.2 Interview data

We asked officers about the extent to which their police service used informal action with young offenders, and classified their answers into four categories. *Always* was used when officers indicated they always consider using informal action in virtually any situation. This is not to say that they do not ultimately proceed by way of charge. There are some circumstances where sufficient evidence exists to proceed on several charges; however, the officer *considers* dealing with some or all of them informally if possible. *Usually* refers to officers that indicated they consider informal action in most cases; however, they offered qualifications to explain their decision-making. For example, an officer might not consider using discretion with charges against the administration of justice, serious offences or with a youth who has an extensive prior record. *Occasionally* means that officers consider informal action only for minor or very minor offences such as shoplifting or mischief. *Never* indicates the responding officer will consider only a charge or alternative measures. These officers felt either that choosing informal action was not their prerogative, or had concerns regarding liability (e.g. from a supervisor questioning their judgment). Figure II.8 summarizes the distribution of our sample in terms of the frequency with which officers from our sampled police agencies told us they use informal action.

Over three-quarters (78%) of the police services in our sample indicated that they would usually or always consider using informal action with young persons. Only 22% of the police services indicated they never or occasionally consider using informal action. Their responses differed by type of police, type of community, province/territory, and location of service.

Figure II.8 Frequency of consideration of use of informal action



Provincial police forces (76%) are more likely "usually" to consider using informal action with young persons when compared to independent municipal police agencies (43%). When looking at the range of responses, independent municipal forces are distributed more widely over the range, "never" to "always" (e.g. 30% answered "occasionally"); whereas, the RCMP and OPP detachments are clustered in the "usually" to "always" categories.

Looking at the use of informal action by type of community, two interesting response patterns are evident. First, there is virtually no difference by type of community when looking at the services that "usually" consider using informal action with young persons. However, a significant proportion of suburban/exurban services (41%) "never" or "occasionally" consider using informal action; compared with only 17% of metropolitan forces and 19% of rural/small town forces. To put it differently, metropolitan (83%) and rural/small town forces (81%) were much more likely than suburban/exurban forces to consider using informal action "usually" or "always".

In all regions of Canada, the majority of police services in the sample "usually" consider using informal action with young offenders. This is the case for 100% of the detachments located within the Territories.

The literature suggests that Youth Officers may divert more youth due to an increased familiarity with their clientele. However, up until now there has been very little research to support this supposition, and it was done when the Juvenile Delinquents Act was in effect (Doob, 1983; Leeson & Snyder, 1981). Three-quarters (75%) of the officers working in a Youth Squad or assigned as School Liaison Officers told us they "usually"

or "always" consider informal action. In contrast, 59% of the officers from all other locations of service (e.g. patrol, GIS, management) consider using informal action "usually" or "always". Therefore, our data do suggest that Youth Squads and SLO's are more likely to consistently consider informal action as a legitimate method of dealing with youth-related incidents. The role of specialized youth officers is considered in more depth in Chapter IV, Section 4.

3.2 Referrals to external agencies

Almost two-thirds (62%) of the police forces in our sample make referrals to external agencies for minor and serious offences. These referrals are predominantly to social service agencies, and, in Quebec, to *La Direction de la Protection de la Jeunesse* (DPJ). However, there are some differences in response patterns by type of police agency and province/territory.

Almost two-thirds (64%) of provincial police detachments indicated that they "never" refer young persons to external agencies compared to 18% of municipal independent police forces. This difference may be the result of a lower availability of external resources in the areas in which provincial detachments operate. We can explore this possibility by examining the distribution by type of community and by province and territory. Officers in 43% of suburban/exurban police forces or detachments, and in 49% of rural/small town services, reported that they are never able to make referrals to external agencies, compared to only 23% of metropolitan area police agencies. In Quebec, all of the police agencies in our sample reported making referrals to external agencies (primarily the DPJ). Similarly, over half of the agencies in the Prairies and the Atlantic region make referrals for minor and serious offences. However, in British Columbia and Ontario, in which most of our rural/small town agencies are located, a larger proportion of agencies report they make no referrals or only for minor offences. Most strikingly, in the Territories, 71% of the detachments interviewed are not able to make any referrals to external agencies due to a lack of community and social service resources in their jurisdictions.

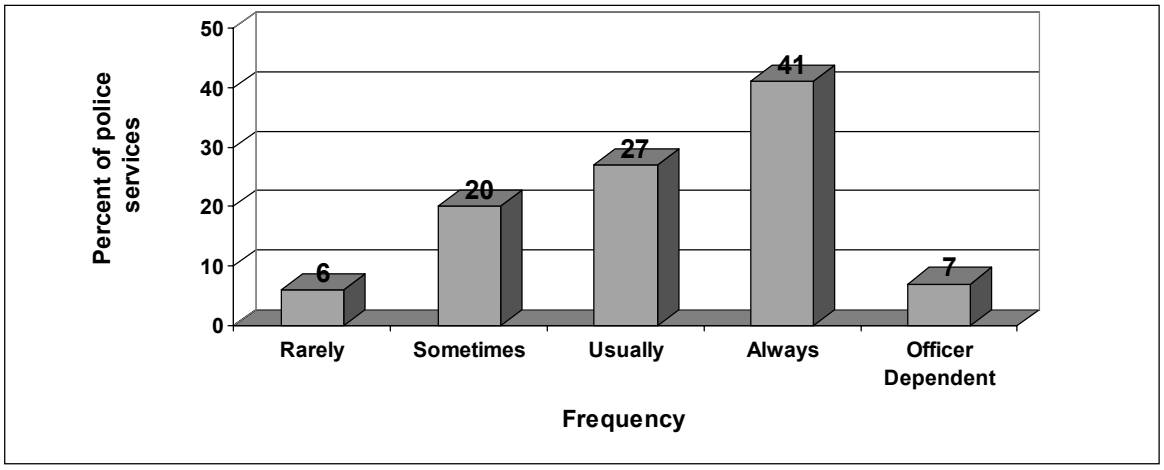
This is a theme which came up repeatedly during the interviews, and which will recur under various headings in this report. When police are dealing with a youth and an offence which, in their view, require a more effective intervention than mere "informal action", but they are reluctant to invoke the heavy hand of the law by laying a charge, then referral to a program or agency, either informally or through Alternative Measures, is an attractive "intermediate sanction". However, in a great number of cases, such an alternative is not available, and police must resort to laying a charge. This issue is explored in more depth in Chapter III, Section 3, "External resources".

3.3 Tracking of informal warnings

There is a great degree of variation across the country in how often police officers' use of informal action is documented within their record management systems (RMS). *Rarely* denotes agencies that do not record informal action except in some rare circumstances where the officer feels it is crucial. This may be the result of management and supervisors creating a somewhat unsupportive environment for informal action, or, in the case of Quebec, where the alternative measures system is highly effective. *Sometimes* refers to agencies where informal warnings do not consistently enter the RMS. *Usually* refers to agencies where it is expected that officers enter informal warnings and they felt confident that it usually occurred. *Always* indicates those police agencies where they consider it mandatory to create a record of all interactions with youth. Finally, *officer dependent* codes the answer, "as long as the officer entered it". This category was created as some officers indicated their police agency would fall under the "always" category; however, the policy directive or unwritten rule that all informal action is documented is not always followed. For example, if an officer comes across a minor incident in the field, he or she may not create a contact entry in the RMS. Several officers argue that as soon as you make a notation into the RMS, the action taken by the officer is no longer informal as a record has been created. Others suggested that, due to time constraints, they are not always able to enter everything in the RMS.

A large proportion of our interviewees suggested that the recording of informal action follows one of two typical scenarios. The first is when an incident is reported by a member of the public. In this situation a notation is almost always made in the RMS. The second category refers to informal action taken by officers when they come across a young person in the field. It is in those circumstances that there may or may not be an entry made into the RMS. Figure II.9 illustrates this variation by police agency.

Figure II.9 Tracking informal warnings in the RMS



Just over two-thirds (67%) of the agencies in our sample reported that they "usually" or "always" record informal action in the RMS. 7% indicated it is dependent on the individual officer. However, the frequency in which officers record informal warnings varies by police agency type, type of community, and province/territory.

Provincial police forces (70%) are much more likely to record their use of informal action in the RMS. Among independent municipal forces, the range varies from "rarely" to "always" with 10% indicating that they never record informal warnings in the RMS. Just under half of metropolitan (43%) and suburban/exurban (47%) police agencies reported that they "always" record informal action. However, there was slightly more variation in recording practices for rural/small town police agencies where 33% reported they usually record informal action. The majority of agencies in Canada reported they "always" record informal warnings and action. However, 38% of those in our sample from the Prairies stated they "sometimes" record informal action.

Evidently, there is much room for expansion in the tracking of informal warnings; but by its very nature, some informal action – perhaps much of it – will always go unrecorded.

3.4 Use of informal and formal warnings with young persons

Informal warnings generally involve a police officer discussing the young person's behaviour with him or her and the parents, warning them that further law-breaking will result in formal action. As a textbook for law enforcement students puts it, "…It is not unusual for an officer to give a stern lecture or a warning to a juvenile, advising of the possible consequences if arrested" (Dantzker & Mitchell, 1998: 59). As previously mentioned, whether this informal warning is documented varies considerably.

A "formal" warning, as the phrase is understood by our respondents, usually involves a police officer entering the incident in the RMS, or even occasionally having a letter issued to the youth and the parents which alleges the criminal behaviour and the issuance of a warning by police (or by the Crown, on the recommendation of police).

The vast majority of police agencies (93%) in our sample indicated that they use informal warnings with young persons. In addition, 32% of our sample told us they did use some form of a formal warning. However, the nature of the formal warning varies considerably between the agencies that answered in the affirmative. For example, in one Ontario police force the youth squad issues the letters and has the young person and parents (or legal guardian) sign the document as well. In other jurisdictions the police will recommend to the Crown to issue a caution letter. Others will make extensive notations in their RMS.

There are some variations by province and territory in terms of the use of informal and formal warnings. In Quebec, 25% of the agencies in our sample did not indicate to us that they used informal warnings with young persons. The numbers for the other regions in Canada ranged from 0% to 9%. Perhaps this is evidence of net-widening in Quebec:

the extensive use of alternative measures may mitigate against other forms of informal police action.

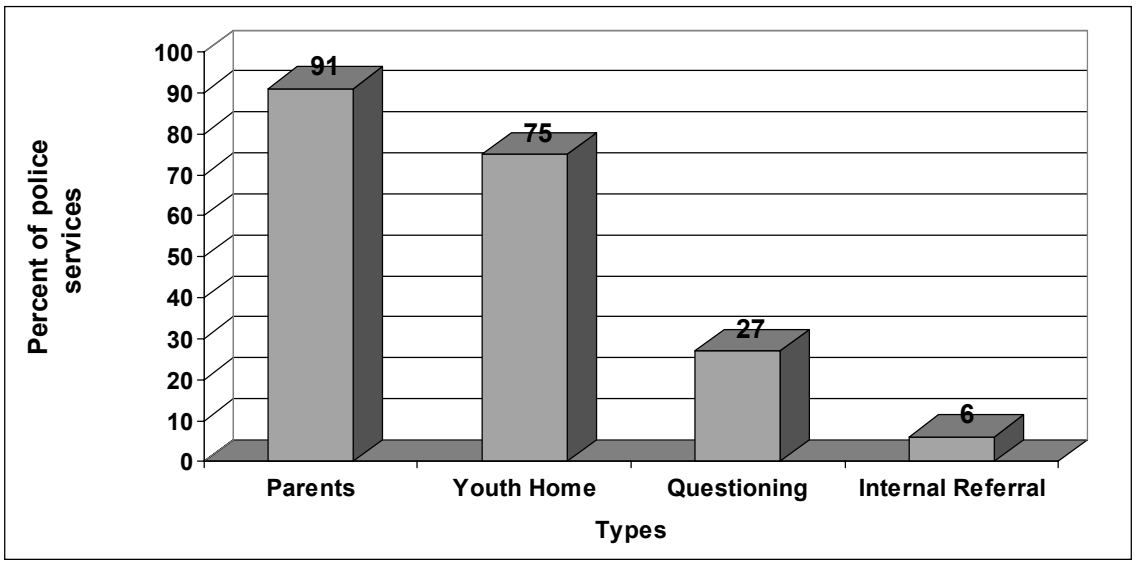
Formal warnings tend to be used in the Prairies, the Atlantic region and the Territories. 92% of the agencies in British Columbia and 88% of the agencies interviewed in Quebec do not use formal warnings. However, the figure for British Columbia should be interpreted with caution as the Crown Attorneys frequently issue Crown cautions. The reason this does not appear in our data is that officers in British Columbia say they rarely have any feedback on Crown decision-making; consequently, they do not know how often a Crown caution letter is issued. For Quebec, the low usage of formal warnings is consistent with the lesser use of informal warnings than the rest of Canada.

Apparently there is considerable variation across the country, and even within individual police agencies, in the understanding of what constitutes an informal or formal warning. If these forms of informal action are going to be recorded and monitored – e.g. in the UCR2 Survey, it will require a substantial effort – involving education and persuasion – to achieve consistency across the country in their operational definitions.

3.5 Other types of informal action

Figure II.10 shows several other types of informal action that officers use when dealing with youth-related incidents (percentages add to more than 100% since multiple answers were permitted).

Figure II.10 Other types of informal action



The majority of police agencies (91%) consider parental involvement mandatory when dealing informally with youth-related incidents informally. Many officers suggest that

the effectiveness of informal action is highly dependent on parental involvement. An officer in Ontario told us, "I place a lot of weight on the parents' input and it's not only getting the young offender on board, it's getting his parent or parents on board". On many occasions officers indicated that they are better able to assess the situation due to the input of first hand knowledge from the parent(s). In some cases, officers indicated it can have a large impact on their decision-making process if they feel that the young person will face a consequence for their behaviour at home. If an officer feels that the young person's behaviour will be dealt with by Mom or Dad, he or she feels much more comfortable not laying charges or referring to alternative measures: "…Occasionally, the best punishment an officer can provide is to take the juvenile home and release him or her into the custody of the parents" (Dantzker & Mitchell, 1998: 59).

Three-quarters (75%) of the police agencies indicated they will take the young person home, or if absolutely unavoidable, to the police station in order to have the parents take care and control over the young person. In the majority of cases, they deliver the young person directly home. However, in some jurisdictions they may bring the young person to the station as a "higher consequence" (i.e. a more severe sanction), as it inconveniences the parents to have to come to the police station to pick up their child. Further, several officers indicated that having the parents pick the youth up at a police station reinforces the message that the behaviour was criminal and needs to be treated as such, even though they are not proceeding by way of charge or alternative measures: "…If the officer wishes to emphasize the situation, the juvenile is taken to police headquarters and, when it exists, to the Juvenile Unit where the release…requires no further action" (Dantzker & Mitchell, 1998: 59). These officers suggest that having the parents come to the police station make them more accountable. They also noted it is much easier to make referrals when the parents and the young person are at the police station.

Despite most officers indicating that they try to *avoid* bringing a young person with whom they intend to use informal action to a police station for *any* reason, 27% of the police forces and agencies indicated that they bring a youth to the police station for questioning even if they know they will be dealing with the incident informally. This practice is especially prevalent in Ontario, and especially among independent municipal police forces, rather than the OPP. In Quebec, none of the agencies in our sample reported bringing a youth back to the station for questioning, in the context of informal action. However, it must be remembered that the police agencies in Quebec which we interviewed rarely mentioned using informal or formal warnings.

Finally, a small proportion of police agencies (6%) refer youths internally to a police-run diversion program. These are all independent municipal police forces. Perhaps it is noteworthy that agencies policing aboriginal peoples are no more or less likely to use informal action than those who do not.

4.0 Use of alternative measures

Rather than using informal action or laying (or recommending) charges, police may choose to refer to or recommend Alternative Measures. 99% of the police agencies in our sample use or recommend either pre- or post-charge alternative measures with youth-related incidents. Typically, alternative measures are considered appropriate for less serious offences and first offenders.[10] The most common alternative measures programs assigned to youth are community service, an apology, social skills improvement, writing an essay, restitution or compensation, and other activities geared toward the specific young person (Kowalski, 1999). A discussion of alternative measures involves an examination of specific procedures and legislation in each province and territory, as there is considerable jurisdictional variation. As of 1998-99, two jurisdictions (Ontario and Yukon) had exclusively post-charge programs (i.e. required that charges be laid before referral to alternative measures); three (New Brunswick, Manitoba, and Alberta) had exclusively pre-charge programs; and the rest had both modes of referral to alternative measures (Engler & Crowe, 2000). Under both modalities (pre-charge and post-charge), the police are responsible for referral, assessment and development of a plan, implementing the plan, and in some cases monitoring the youth's compliance with the plan (Hornick et al., 1996).

Alternative measures refers to programs formalized under Section 4 of the Young Offenders Act where youth are diverted from formal court proceedings at either the pre- or post-charge stage of the proceedings. In most jurisdictions, the referral agent is the Crown Attorney. However, in Manitoba and the Northwest Territories the police can be designated to refer youth to alternative measures programs (MacKillop, 1999). In New Brunswick, police officers are designated as agents for the Attorney General and in Quebec, all referrals are made by the Provincial Director (MacKillop, 1999).

Although the YOA provides for the establishment of formal diversion programs (i.e. alternative measures), this does not automatically entail that the police "cannot continue their former informal procedures in respect of the discretion to lay a charge or not in any given circumstance (Platt, 1991: 87). However, the possibility exists that the availability of alternative measures programs (pre- or post-charge) may lead to the phenomenon known as *net-widening*, in which a measure which is intended to be relatively non-intrusive and to divert people away from other, more intrusive measures, is used with people who would, in its absence, have been dealt with even less intrusively (Lundman, 1993: 99). Thus, the use of pre-charge alternative measures with a youth who would, in their absence, have been dealt with by a police warning, is an example of net-widening; as is the use of post- charge alternative measures with a youth who would otherwise not have been charged. Net-widening would also have occurred if a youth's experience in alternative measures, including the process and the assigned "measure", was more intrusive than the court process and disposition which s/he would have experienced if s/he had been processed "formally". It is not always easy to define, let alone measure,

[10] In contrast, all offenders (regardless of offence) are eligible for alternative measures in Quebec (Kowalski, 1999).

"intrusiveness", so whether net-widening has occurred in any particular case is not necessarily clear. Nevertheless, in the aggregate, we see a prima facie case for net-widening if pre-charge AM has been used where otherwise an informal action would have been used, or if post-charge AM is used where otherwise pre-charge AM or informal action would have been used.

According to Platt (1991), police may prefer to refer to alternative measures because the participation in AM has evidentiary value in future encounters with the law; whereas informal action does not. Post-charge AM has additional potential for net-widening, because the fact that a charge was laid represents the application of "more law" (Black, 1976), which may increase the probability of police laying a charge in a future encounter.[11] Further net-widening may occur if, on a subsequent offence, the prior participation in pre- or post-charge alternative measures is considered as an aggravating factor in the sentencing decision (Platt, 1991). This issue is also discussed in Chapter III, Section 2.1, below.

Section 69 allows for the creation of community-based youth justice committees (groups of citizens) by provincial governments to aid in the administration of any component of the YOA. Committee membership is voluntary and may also include the police or other professionals that have an interest in youth crime and justice. These committees can be used in a variety of ways including: (i) working in conjunction with alternative measures programs as an alternative to formal youth court, (ii) providing recommendations to judges regarding alternatives to sentencing, (iii) providing community service order opportunities, (iv) arranging for reconciliation between victim and offender, and (v) providing community support in various forms to victims and offenders (Bala et al., 1994a).

According to Bala et al. (1994a: 36), "the use of these committees appears to be limited, even though they provide an excellent vehicle for communities to exercise greater authority and control in juvenile justice matters." When the Federal-Provincial-Territorial Task Force on Youth Justice was doing its research, the Northwest Territories, Newfoundland, and Alberta had begun to use Youth Justice Committees more frequently (Task Force, 1996). Saskatchewan was in the process of developing guidelines to increase their use, Ontario did not have any formally designated YJC's, and British Columbia used designated YJC's only as local advisory boards with respect to family and youth court and they did not have direct involvement in working with young offenders (Task Force, 1996: 52). Current examples of the use of these committees can also be found in Manitoba where they are used extensively and are considered particularly appropriate for use with aboriginal youth (Bala et al., 1994a; Task Force, 1996).

When we asked our interviewees whether they found alternative measures effective, two-thirds answered in the affirmative; that is, they said they found it effective "always" (4%), "usually" (52%), or "yes, to an unspecified degree" (11%). The other one-third of

[11] For a discussion of the substantial impact of indications of prior criminal activity on police decision-making, see Chapter V.

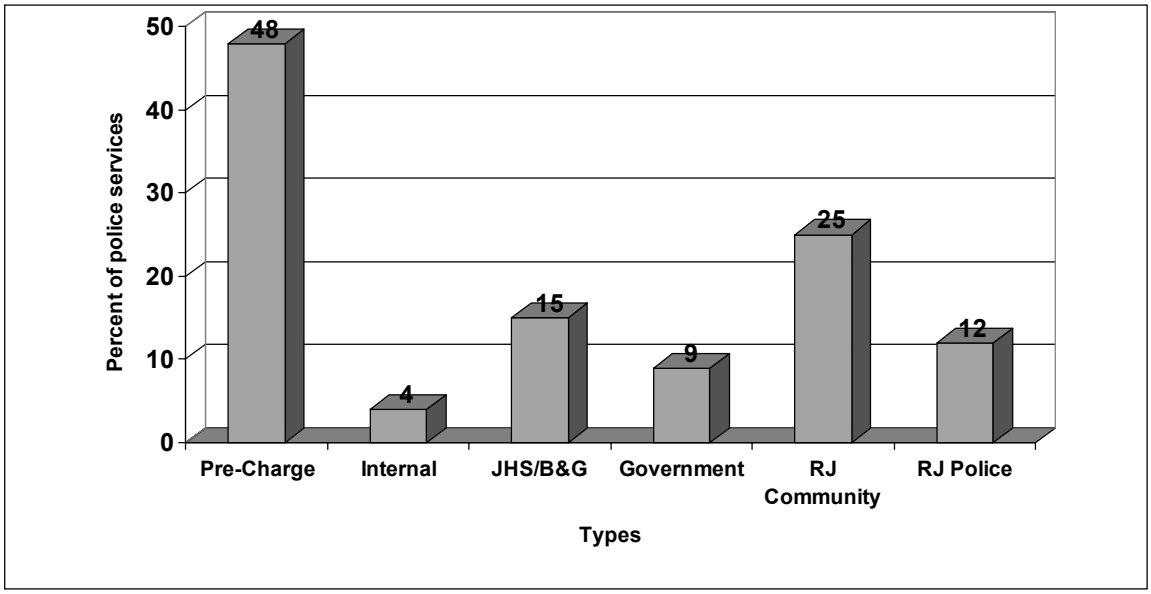
respondents found it effective only "occasionally" (30%) or "never" (4%). Only 50% of respondents in British Columbia answered affirmatively, compared to 58% of Ontarians, and 90% of those in the Prairies (the number of persons answering this question in Quebec, the Atlantic region, and the Territories was too small to provide reliable percentages).

4.1 Use of pre-charge alternative measures/diversion

Figure II.5 (in Section 3.1.1 above) shows that, in police services reporting to the UCR2 Survey in 2001, 6% of incidents were cleared by referral to pre-charge diversion. This underestimates the *proportion of apprehended youths* referred to diversion, because, for the many incidents in which more than one person was apprehended, the incident is classified according to the most serious "police disposition". Therefore, if one co-offender is charged, and others are diverted or dealt with informally, the incident is classified as "cleared by charge". Figure II.6 (above) suggests that the use of pre-charge diversion by police (in the agencies reporting to the UCR2 since 1995) has not changed appreciably since data were first collected in 1997. Figure II.7 (above) shows wide variation among police in five provinces (who reported to the UCR2 in 2001) in the use of pre-charge diversion. As expected, it is hardly used in Ontario; but it is also hardly used in the four municipal police services in Saskatchewan which report to the UCR2. More substantial proportions of incidents are cleared by diversion in New Brunswick, Quebec, and Alberta (four municipal police services).

Our respondents were asked to indicate whether pre-charge alternative measures was an option used by their police service for dealing with youth-related incidents. We quickly learned that most police officers, especially frontline officers, do not make a distinction between pre-charge diversion programs which are and are not officially authorized as Alternative Measures under Section 4 of the YOA. Indeed, when we asked them if a program to which they referred was authorized under Section 4, we were usually met with a blank look. The police officers whom we interviewed tend to use the terms "diversion program" and "alternative measures program" interchangeably, to refer to any program to which youth can be referred as an alternative to formal court processing. They are concerned with finding practical solutions to immediate problems, not with the legal niceties of Section 4 of the YOA. Thus, in what follows, we use the term "pre-charge diversion programs", in order to avoid misleading the reader who might think that they are necessarily official Alternative Measures programs.

Figure II.11 Types of pre-charge diversion programs available for referrals of youth



If the officer answered that pre-charge diversion programs were used in his or her jurisdiction, then we proceeded to explore the different types of pre-charge diversion. *Internal* pre-charge diversion refers to programs that are run within the police agency. An officer would fill out specific forms to refer a young person into the program. *Pre-charge diversion by the John Howard Society, the Boys and Girls Club*, etc. includes those police agencies that would make pre-charge referrals to an external agency which would execute the diversion agreement and monitor compliance. *Pre-charge by government ministry* includes those police forces and agencies that make referrals to some branch of the provincial/territorial government (e.g. Probation, Social Services). *Pre-charge RJ community based* refers to those agencies that make referrals to a youth justice committee that is run by a community organization and volunteers. Finally, *pre-charge RJ police* refers to those agencies where a police officer conducts the forum as a facilitator and organizes the conference, records the agreement, and monitors or assigns monitoring completion. Figure II.11 shows the various forms of pre-charge diversion programs to which police agencies in our sample can refer youth (percentages add to more than 100% since multiple answers were permitted).

Just under one-half (48%) of the police agencies we spoke to indicated they used some form of pre-charge diversion with youth-related incidents. Of all the various types of policing agencies, 69% of the RCMP detachments and 49% of the independent municipal police forces use some form of pre-charge diversion. The majority of rural and small town forces (66%) do not have access to pre-charge diversion, whereas 63% of metropolitan areas and 53% of suburban/exurban areas do. If rural and small-town police

agencies have access to pre-charge diversion for youth it tends to be community based restorative justice.

Reports based on the Canadian Centre for Justice Statistics Alternative Measures Survey (MacKillop, 1999; Engler and Crowe, 2000) indicate that alternative measures programs for young persons in Ontario and the Yukon are exclusively post-charge. Data from the UCR2 Survey confirm that pre-charge alternative measures are used rarely in Ontario (Figure II.7, above). However, of the police services which we interviewed, 37% of those in Ontario, and 3 of the 4 police agencies in the Yukon, said that they used pre-charge alternative measures. It may be that some of these are examples of the terminological confusion discussed above. Others may have come into existence after the cited sources were compiled. In Cornwall, Ottawa, Windsor, Toronto, and Whitehorse, what we believe are authorized pre-charge alternative measures programs have been set up in cooperation with the Crown Attorney and the John Howard Society. (Of course, pre-charge diversion and alternative programs may also exist in the many jurisdictions in Ontario and the Yukon which were not included in our sample.)

Although virtually all the provinces and territories have mandated pre-charge alternative measures, comments made in the interviews suggest that this option is not exercised as often as police believe that it could be.

Only 4% of the police forces in our sample have the option of referring youth to an internal (police-run) pre-charge program. In all cases, these programs were run by independent municipal police forces. Comments made in interviews suggest that the percentage is low due to a lack of financial and human resources.

Of those police agencies in our sample, 15% make pre-charge referrals to an external organization such as John Howard Society or the Boys & Girls Club. All of these types of programs are used by independent municipal forces and tend to be in metropolitan areas. A slightly smaller proportion (9%) of pre-charge referrals are made to a government ministry. Our data suggest that these types of referrals occur only in Saskatchewan, Nova Scotia, and Prince Edward Island.

One-quarter of the police agencies we spoke to indicated they can divert youths pre-charge to a community-based restorative justice forum. Over half of the RCMP detachments (58%) in our sample made these types of pre-charge referrals, compared to only 16% of the independent municipal forces in our sample. 50% of the forces in British Columbia and 55% of those in the Territories have community based restorative justice committees. Over one-quarter of the agencies in the Prairies (29%) and the Atlantic provinces (27%) made pre-charge referrals. Further, of those police agencies which have jurisdiction over aboriginal peoples – whether on- or off-reserve - 35% had the opportunity to make referrals compared to 18% of those agencies that do not police aboriginals.

A small percentage of police agencies (12%) reported they use pre-charge diversion by running restorative justice conferences themselves. The RCMP detachments in our

sample were twice as likely as other police force types to engage in police-run conferencing. One-quarter of the agencies in the Atlantic provinces (27%) and the Territories (22%) ran conferences themselves.

4.2 Process of making pre-charge referrals

The police play an integral role in the process of making pre-charge referrals. In some jurisdictions, police have the authority to refer directly to an official Alternative Measures program (e.g. Manitoba, Northwest Territories). In New Brunswick, the investigating officer refers the case to a senior police officer who is designated as an agent for the Attorney General. The senior officer then reviews the case to see if the young person is eligible for pre-charge Alternative Measures. If the case meets certain prescribed conditions it is then forwarded to the Alternative Measures Coordinator for that region who makes the final referral to an alternative measures committee.

In most jurisdictions that use pre-charge diversion, police officers are given instructions based on Department or provincial policy regarding which cases can be considered for pre-charge diversion. However, in most cases the final decision still rests with the Crown Attorney whether a young person will be diverted without a charge being laid. In Quebec, the Crown Attorney refers the case to the Provincial Director to consider whether it is appropriate for alternative measures.

In Nova Scotia the pre-charge diversion process has become much more formalized. In particular, Halifax Regional Police has instituted a checklist that must be filled out with each young offender case that is processed. This checklist ensures that officers have considered the possibility of pre-charge diversion. Officers are required to articulate the reasons why a case cannot be considered for diversion. The case is then forwarded to a senior police officer who reviews all files dealing with youths under the age of 15 to ensure that all young persons who are eligible for pre-charge diversion are indeed diverted.

Of those police agencies that provided procedural protocols and policy documents, the majority did not include a section that dealt specifically with pre-charge referrals.

4.3 Use of post-charge alternative measures

Because of the involvement of the Crown in post-charge diversion screening, we presume that when police officers talked about post-charge diversion or alternative measures, they were talking about authorized Section 4 Alternative Measures programs.

Almost all (91%) of our sample indicated that youths were diverted post-charge to alternative measures in their jurisdiction. It appears that jurisdictions policed by the RCMP rely less on post-charge alternative measures than jurisdictions policed by other police agencies: 73% of the RCMP detachments which we interviewed said that post-

charge AM was used in their jurisdiction, compared with 93% of provincial police detachments, 98% of independent municipal forces, and 100% of First National police services. This may be because many of the RCMP detachments which we interviewed operate in the one province and three Territories where post-charge AM are less widely used: in British Columbia, only 75% of police services in our sample said post-charge AM was used in their jurisdiction, and in the Territories, it was just over half.

If the use of post-charge alternative measures does indeed encourage net-widening, because of the necessity of laying a charge in order to qualify a youth for a program (see Section 4.0, above), then it appears that considerable net-widening occurs, since a high proportion of our sample, including all types of police (independent municipal, First Nations, and provincial), said that this mode of alternative measures is used in their jurisdiction.

A case that is referred post-charge to alternative measures does not differ in the procedures and paperwork that officers complete from a case that proceeds to youth court. All forms and reports are filled out exactly as they would be for the case to proceed to court. The differences occur once the paperwork has reached the Crown Attorney.

The majority of officers indicated they did not make any notations on the Crown Brief concerning their thoughts on eligibility for post-charge alternative measures. A few stated they *might* tell the Crown Attorney in a private conversation that they would not object to alternative measures. However, the majority of police officers felt that, since the decision rests with the Crown, it was not their place to offer their input. The majority of officers also indicated that, in order for the young person to receive counselling or make reparations for the harm done, they had to charge the young person, since there were no pre-charge alternatives available in their jurisdiction. This finding supports the notion that post-charge alternative measures leads to net-widening.

Several officers raised strong concerns about the use of Crown discretion over alternative measures. There were many examples given of cases where, in the opinion of the officer, the young person was not remorseful and the crime had serious consequences for the victim; yet, despite the officer's communicating concerns to the Crown Attorney, the case was still diverted post-charge to alternative measures. Others expressed dismay at the volume of cases that the courts are contending with. As one officers put it, "It's the system, you've got one crown attorney, 40 cases in the docket, what are you going to do? You're not going to trial through every one of them". They suggested that cases get referred post-charge to alternative measures as the courts do not have the human resources available to try every case.

4.4 Feedback on cases referred to alternative measures

The few research studies available indicate that police perceptions of program effectiveness hinge on meaningful consequences and accurate knowledge (Caputo &

Kelly, 1997; Gottfredson & Gottfredson, 1988; Task Force, 1996). Results from focus group interviews with a small sample of Canadian police officers found that the police use of community-based alternatives would be higher if the consequences which youths faced for their actions were seen as meaningful and timely (Caputo & Kelly, 1997).[12] Further, a portion of the variability in the use of alternatives to formal processing appears to be due to the lack of feedback (Hornick et al., 1996). Police officers require accurate knowledge on how other officers respond to similar situations and the consequences of their decisions (Gottfredson & Gottfredson, 1988). Police officers working in the same community will react differently towards similar youthful offending situations (Brown, 1981a), if they have inadequate knowledge of discretionary options and the most effective use of community alternatives (Hornick et al., 1996).

Most police officers appreciate the long-term benefits of making the transition from the traditional reactive style of policing to a more problem-solving proactive approach.[13] However, the police officers surveyed identified two inherent difficulties in making this transition. First, many jurisdictions contend with a high volume of paperwork and service calls. Second, the current system under the YOA is not graduated. In other words, when officers choose not to charge a youth their only options are seen as informal warnings (where they see accountability and tracking as problematic) or referrals to alternative measures (where they seldom find out what happens to the case). Specifically, internal programs created through community links (primary, secondary, or tertiary) do not provide follow-up information or the police are unable to pursue feedback due to time and resource constraints. These problems have led to frustration with the system, a lack of closure for officers, and an inability to assess the effectiveness of their decisions and use of discretion.

The literature led us to ask the officers whether they received any feedback on cases that were referred to alternative measures (pre- or post-charge). We coded their responses into four categories. *None* indicates that they received no feedback at all concerning cases that went to alternative measures. *Informal (if requested)* denotes situations where officers could inquire about the outcome of an incident that was referred to alternative measures; however, if they did not go out of their way to phone the Crown Attorney they would not receive any feedback. *Occasionally but not consistently* refers to police agencies which do receive some feedback, but the circumstances under which they receive feedback are not consistent. Further, in some jurisdictions police are supposed to receive consistent feedback from the organizations that run the alternative measures or from the Crown, but do not receive it consistently. Others that fell under this category

[12] Examples of "meaningful consequences" which were offered by respondents in this study were: "loss of privileges or freedoms" via a curfew or no-association provision, "public accountability" for wrongdoing, and restitution. "Timely" was apparently not defined precisely by respondents, but one explanation was "not six months down the road" (Caputo & Kelly, 1997: 10-11).

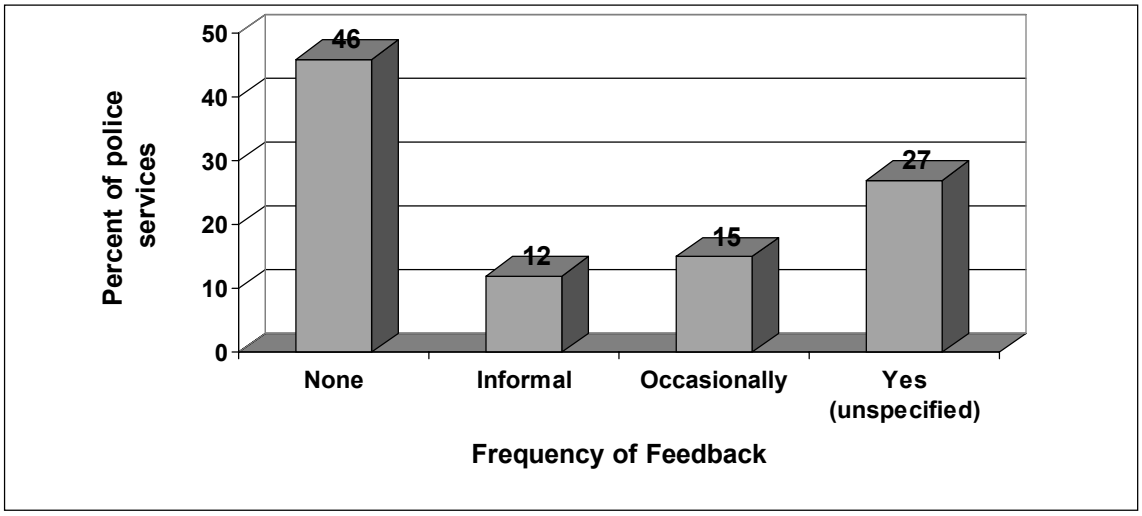
[13] This paragraph relies on Hornick et al. (1996). These results are from a small sample questioned through focus groups. These findings appear to be the only ones that have addressed this area. Consequently, the impact of various facets of community policing needs further exploration, with a focus on handling youth crime and the creation of comprehensive assessments of "what works".

were police services where the Court Liaison officer might find out about youth-related incidents that were dealt with by way of alternative measures but the investigating officer probably would not. *Yes (unspecified)* refers to the police agencies that indicated they do receive feedback fairly consistently but did not indicate when or to what degree.

None of the police agencies or detachments specified that they systematically or routinely receive feedback on cases referred to alternative measures.

Figure II.12 shows that just under half of the police agencies (46%) indicated they do not receive any type of feedback at all on the outcome of alternative measures referrals. Approximately 27% of those within our sample told us they receive feedback occasionally (but not consistently) or informally if requested by the officer, and the remaining 27% receive feedback to an unspecified degree.

Figure II.12 Feedback on Alternative Measures cases



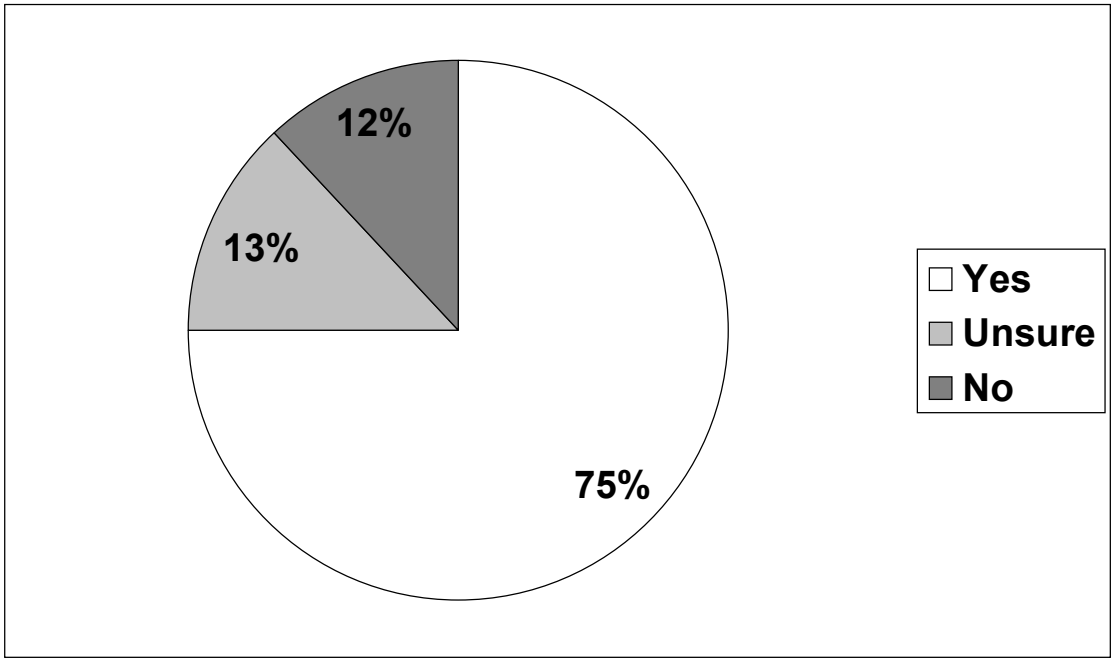
These responses differ by province/territory and type of community. Relatively high proportions of police agencies in British Columbia (67%), Ontario (59%), and Alberta (57%) say that they receive no feedback at all on alternative measures cases. In Ontario and British Columbia, this may be due to the active role of the Crown, in decision-making concerning alternative measures in Ontario, and in screening police recommendations, in British Columbia.

Police agencies in the Atlantic provinces (73%) and the Territories (75%) are much more likely to receive feedback on cases referred to alternative measures than those in the other regions (all under 35%).

Police services in rural and small town areas are more likely to receive feedback (50%) than those in metropolitan (38%) and suburban/exurban jurisdictions (20%).

We asked respondents who do receive feedback whether they found it useful. We also asked respondents who do not receive feedback whether they would find it useful. Figure II.13 shows the range of answers we received from individual police officers (only 92 of our sample of 194 officers answered this question).

Figure II.13 Is feedback on Alternative Measures useful (or would it be, if it were available)?



Three-quarters (75%) of the officers who answered this question felt that feedback on cases referred to alternative measures is or would be helpful for their decision-making processes. One provincial police officer stated, "I think it would be helpful because then you'd know whether to direct others that way. That's important". An officer from Ontario summarized the usefulness of feedback as follows,

I think […] you have to have the feedback because then he'll know if it's working or not. An officer on the road who might be getting 15-20 calls a day, from the time they start they're kicked out on the road, away you go. It's very hard to do your follow-up on it, so you don't know. So a letter back makes it easier. Things that work, you'll use more. Things that you don't really know, you'll try it; well I didn't hear anything back. You'll just revert back to your old ways again.

A very large proportion of officers in Saskatchewan (100%), Quebec (92%), and New Brunswick (80%) said that they find, or would find, feedback on alternative measures cases useful for their decision-making with youths. OPP officers were more likely than

others to say that they would not find feedback useful. Part of the reasoning provided was that they did not have the time and resources to analyze any feedback if they were to receive it. Officers who were unsure if feedback would be useful suggested that, since they have never received any feedback, they cannot judge its usefulness.

Overall, three-quarters of police officers who expressed an opinion said that they find or would find feedback on alternative measures cases useful, even though almost half of the officers in virtually all of the provinces do not get any.

4.5 Summary

Although some officers remain sceptical about the value of pre-charge diversion and Alternative Measures, it appears that the great majority feel that they can play a useful role with some young offenders in some circumstances. In their view, diversion to a program or agency can be a much more effective way of dealing with a youth's perceived criminogenic problem than referring him or her to Youth Court; also, they see referral to Alternative Measures as a useful "intermediate sanction", representing a "consequence" for the youth which is more severe than informal action, but less harsh than laying a charge.

By far the greatest source of dissatisfaction with AM programs which was expressed by interviewees is their unavailability. In many communities, the range of programs is inadequate; in many others, there are no programs at all.

A second deficiency of alternative measures which many officers identified is the lack of mechanisms to provide them with feedback on the outcomes of their recommendations – whether they were accepted, and whether the resulting placement was effective. In the absence of information, they can only speculate about the appropriateness and effectiveness of their past and future recommendations.

Although many officers were interested in discussing pre-charge diversion with us, and many had definite opinions on this subject, very few showed any such interest in discussing post-charge AM. Apparently, this is largely foreign territory for police officers: many said that this is entirely a matter for the Crown, and they did not offer input to the Crown on a decision which is entirely out of their hands.

In summary, pre-charge diversion and alternative measures seem to have been accepted by the great majority of police officers and police services as a very useful method of dealing with certain kinds of offending youth in certain circumstances. However, according to police whom we interviewed, the available facilities and programs are woefully inadequate.

5.0 Discretion with offences against the administration of justice

The great majority of offences against the administration of justice by young offenders are failure to appear for court and breach of probation (usually prosecuted as the offence under the YOA of "failure to comply with a disposition"), but this category also includes violations of bail conditions (both JIR and OIC undertakings), escaping from a facility ("escape custody"), or leaving a facility without permission ("unlawfully at large", or, colloquially, "going AWOL"), and rare instances of other offences.

Offences against the administration of justice differ from other offences in that (i) they rarely involve harm to a victim, other than to the justice system itself; (ii) they do not involve behaviour that is popularly considered "criminal": rather they involve disobeying orders of the court or other system actors; (iii) they can be committed only after a another offence has already been committed, or alleged; i.e. they are "secondary" offences; for this reason, they are particularly at risk of contributing to the "revolving door" syndrome.

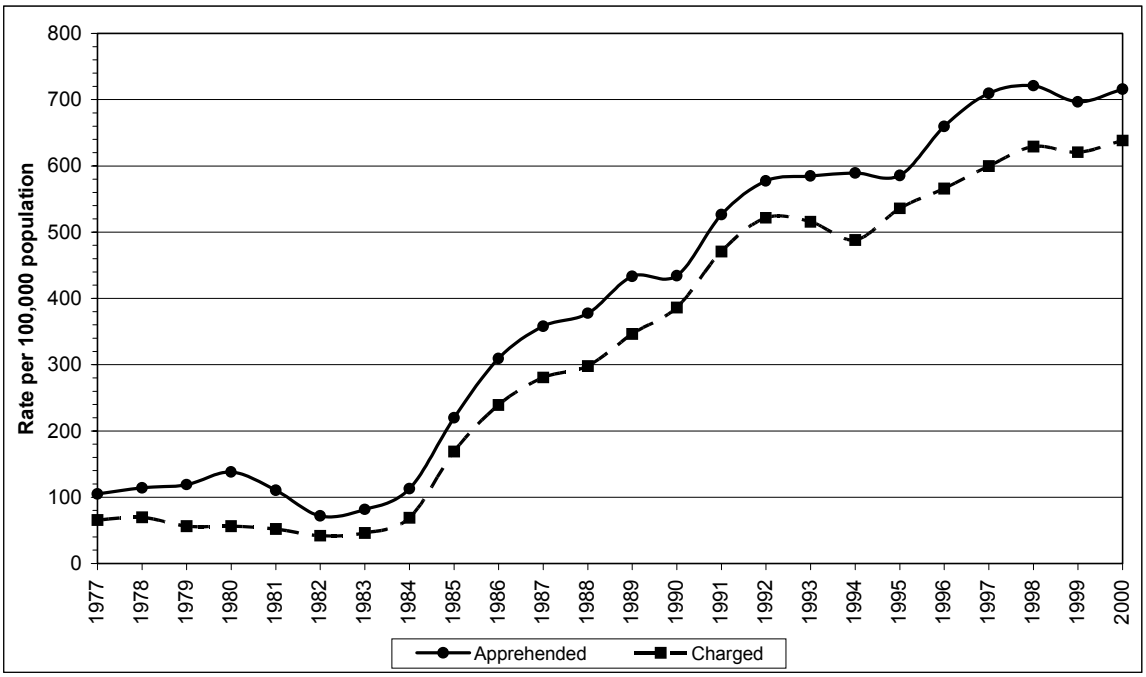
There has been a very large increase in the reported incidence of offences against the administration of justice by young persons since the inception of the YOA. Since very high proportions of these offences are subject to charging, prosecution, conviction, and custodial dispositions, the increase in their reported incidence has resulted in their becoming a substantial and growing proportion of the caseloads of police, prosecution, youth courts, and custodial facilities – a development viewed with alarm by some commentators (Bell, 2002; Schissel, 1987; Task Force, 1996).

Per capita rates of young persons apprehended for offences against the administration of justice, which were declining under the Juvenile Delinquents Act, have climbed very rapidly under the YOA from 115 per 100,000 youth population in 1984 to 734 in 2000 (Figure II.14).[14] Rates of young persons charged have followed this trend closely, since approximately 90% of these offences result in charges being laid: that is, they are subject to lower levels of police discretion than any other type of offence except murder (Carrington 1998a). As indexed by the proportion of apprehended young persons

[14] The UCR Survey does not distinguish between offences under the YOA and offences under miscellaneous federal statutes, such as the Bankruptcy Act, the Income Tax Act, etc. However, almost all *young persons* apprehended and charged since 1984 under the UCR category 'Other Federal Statutes" were in fact implicated in the offence under the YOA of "failure to comply with a disposition". According to Canadian Centre for Justice Statistics (2003), approximately 93% of young persons recorded in the 2001 UCR as charged under "Other Federal Statutes" were charged with an offence under the YOA – and, according to the Youth Court Survey, 98% of cases of offences under the YOA heard in Youth Court in 1999/2000 were failure to comply with a disposition under the YOA (Canadian Centre for Justice Statistics, 2001b). Therefore, in computing rates of young persons apprehended and charged from 1984-2000 for Figures II.14 and II.16, we have used 93% of the total number of young persons apprehended and charged for "Other Federal Statute" offences as an estimate of the number apprehended and charged with administration of justice offences under the YOA. For 1977-1983, we have used the total number of young persons apprehended and charged in the UCR category 'offences under the Juvenile Delinquents Act' as an estimate of breaches of probation under the JDA.

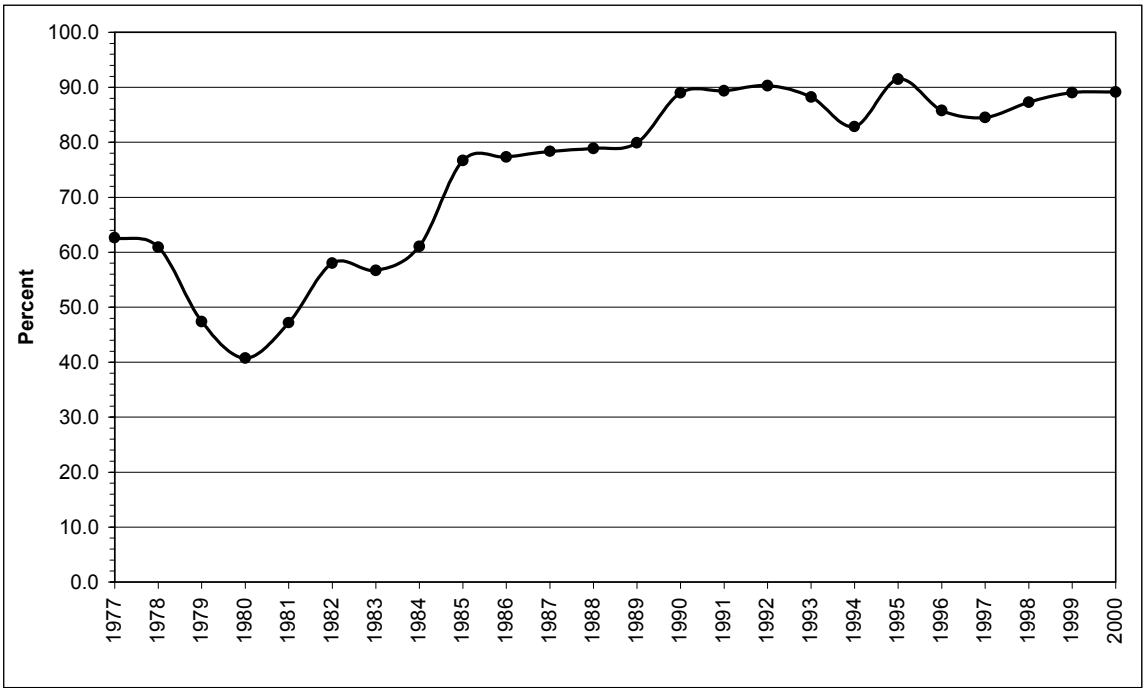
charged, the *non*-use of police discretion with administration of justice offences leapt from about 40% in 1980 to almost 80% in 1985, and stabilized at about 90% in the 1990's (Figure II.15).

Figure II.14 Rates of young persons apprehended and charged for offences against the administration of justice, Canada, 1977-2000



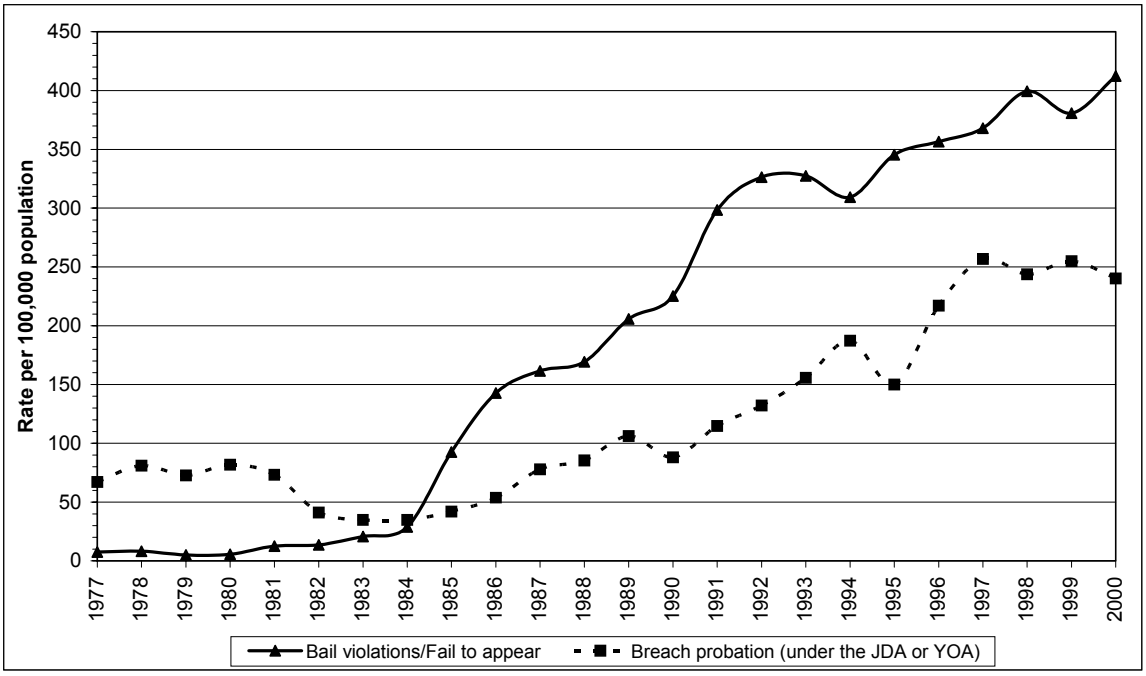
Source: UCR Survey; see note 15.

Figure II.15 Proportion of young persons apprehended for offences against the administration of justice who were charged, Canada, 1977-2000



Source: UCR Survey; see note 15 above.

Figure II.16 Rates of young persons apprehended for common offences against the administration of justice, Canada, 1977-2000



Source: UCR Survey; see note 13 above.

About 90% of offences against the administration of justice committed by young persons are bail violations and failures to appear for court, and breaches of probation conditions (which is usually charged under S. 26 of the YOA, failure to comply with disposition, rather than under S. 733.1 the Criminal Code, failure to comply with a probation order). Both offences have increased sharply under the YOA, but the increase in bail violations and failures to appear has been most spectacular, from 20 juveniles per 100,000 in 1983 to 412 per 100,000 in 2000 (Figure II.16). In 2000, over 9,000 young persons were charged with bail violations or fail to appear, and more than 4,800 were charged with failure to comply with a disposition. Altogether, approximately 16,000 young persons were charged with offences against the administration of justice in 2000: they made up approximately 16% of youth charged for all crimes.

Per capita rates of young persons appearing in youth court for offences against the administration of justice almost doubled between 1987 and 1992, and increased steadily after that (Bell, 2002: 89). By fiscal 1999/2000, cases in which the most serious charge was an offence against the administration of justice accounted for 27% of all youth court cases in Canada (Canadian Centre for Justice Statistics, 2001b: Table 3). Because of high rates of conviction and of custodial dispositions for these offences, they also accounted for a very high proportion of custodial sentences: 40% of custodial dispositions in youth court in fiscal 1999/2000 were for cases in which the most significant charge was an offence against the administration of justice – whereas, only 18% of custodial dispositions handed down in 1999/2000 were for cases involving violent offences (Canadian Centre for Justice Statistics, 2001b: Table 8).

However, to our knowledge, there is almost no published Canadian research on the processes generating these remarkable and alarming numbers (the few extant studies are reviewed below). Accordingly, we made a point of asking police about the processes by which they became aware of this type of offence, to what extent and in what circumstances they exercised their discretion not to lay charges, and what kinds of considerations affected their decision-making.

Officers become aware of administration of justice offences in one of three ways:

- the police service is notified by another system agent; typically, when a youth fails to appear for court and the judge issues a bench warrant, or when the probation service notifies the police of a breach of probation or community service order, or when an open or secure custodial facility in the area notifies police of an escape or a resident "going AWOL"; in the case of fail to appear, the charge (i.e. the information) is often laid by an officer assigned to this and other administrative duties, or by the Court Liaison Officer, if there is one;

- a police officer apprehends a youth for another offence and learns of an outstanding bench warrant, bail violation, breach of probation condition, etc., through a records check;

- a police officer discovers a violation of a condition of bail or probation in the course of a proactive sweep for such offences, e.g. curfew violations discovered during curfew checks done as part of a monitoring program such as SHOP (Serious Habitual Offender Program) or SHOCAP (Serious Habitual Offender Comprehensive Action Program) (see below).

Why, then, are so few cases of offences against the administration of justice dealt with informally or diverted by police? On the face of it, they would appear to be excellent candidates for informal action or diversion, since they are not indictable offences (fail to comply with a disposition is a summary offence; fail to appear is a hybrid offence), and involve no harm to a victim.

In interviews, we were told that officers are much less likely to use their discretion not to charge when they are notified of the offence by a system agent, because the notification is understood as, in effect, a request to charge. This is often explicit when a request comes from a probation officer or official of a custodial facility. However, we were unable to determine precisely the process by which the failure of a youth to appear in court, and subsequent issuance of a warrant to arrest ("bench warrant") on the original charge by the judge, leads to the police laying a fresh charge of failure to appear. Typically this charge is laid as a matter of course by the court liaison officer, after being informed by a court clerk of the issuance of the bench warrant; or the court liaison officer may be present in court when the warrant is issued. The few court liaison officers with whom we discussed this process treated it as one in which police discretion was inapplicable, since, in their view, the judge had indicated that s/he wanted the charge laid, and they would not want to disappoint or disagree with a judge. It is unclear to us whether judges actually communicate such a wish, explicitly or implicitly, or whether this is an unwarranted assumption on the part of police. If judges are indeed initiating the laying of charges by police, is this an appropriate activity for them to be performing in their judicial role? Since charges of failure to appear constitute a substantial proportion of all administrative offences, it would be worthwhile to investigate this process more closely than we were able to do.

A second factor that appears to play a large role in the decision whether to charge is whether the youth is a "known" repeat offender. Many officers told us about youths apprehended for bail or probation violations who were simultaneously on bail and/or probation orders in multiple cases. In these fairly common cases, laying a charge for a bail or probation violation is seen as a response not just to the particular violation, but to a pattern of flagrant disregard for the orders of the justice system.

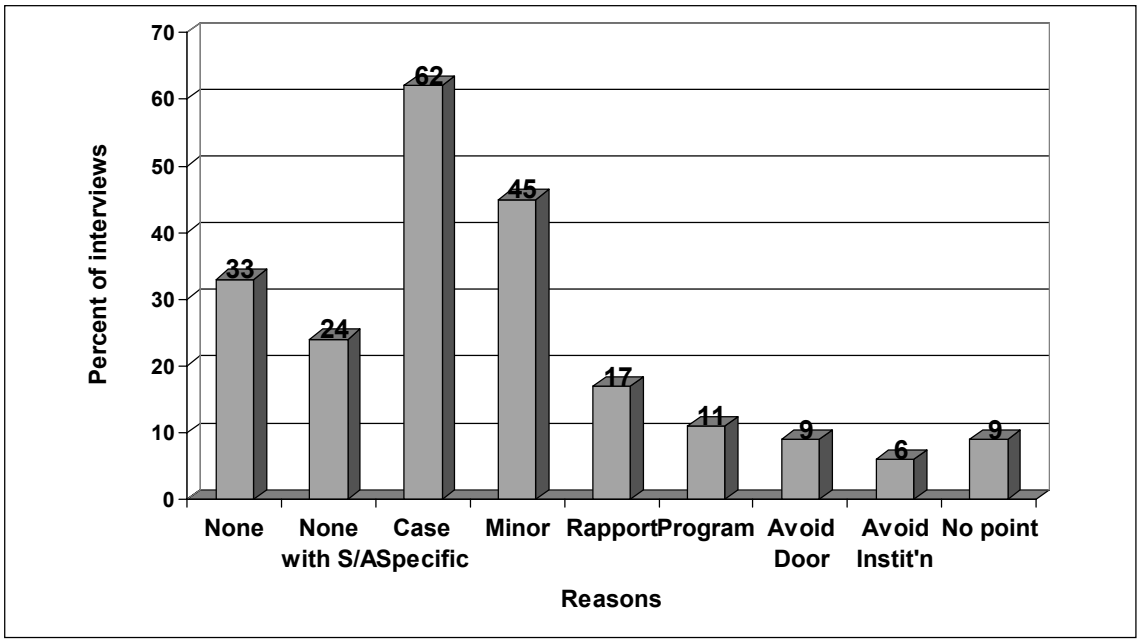
A factor that can mitigate *against* laying charges might be described as "absence of wilfulness": just the opposite of the wilful disregard described above. This appears to be more prevalent in rural/small town jurisdictions. As one officer described it:

> You have to go back to the socio-economic description of the citizenry, there's an awful lot, quite a few who aren't very educated and quite a few that I've come across, an

> inordinate amount, that are absolutely illiterate and have no clue of what a promise to appear says. You just about have to stick it on a post and whack it on their forehead if you've got a court date that's coming Friday, you write it and stick it on their forehead, and then they'll be there. So when it comes to reading a probation order, you watch these people when they sit in court […] and he hasn't got a clue what the guy [judge] is talking about. And then it gets explained to him afterwards, he signs it all up, yeah, no problem and then you catch them out after 7 o'clock at night [… they tell you] I didn't know that. In their mind they didn't. So in those kinds of cases you might cut him a bit of slack.

We asked officers to describe in detail the factors which influence their use of discretion with offences against the administration of justice. Figure II.17 outlines the responses (percentages add to more than 100% since multiple answers were permitted).

Figure II.17 Discretion with Administration of Justice Incidents



One-third (33%) reported that they use no discretion at any time with offences against the administration of justice. When probed for further clarification, three distinct themes emerged. First, the officers reported that there was either departmental policy[15] or an

[15] Despite officers indicating the existence of departmental policy, we did not find any specific directives within the documentation collected which instructs officers to use "no discretion" with administration of justice offences.

understanding within the department that no discretion should be used with these types of offences. Second, officers reported feeling uncomfortable using their discretion when a judge has ordered this young person to adhere to conditions. The fact that the young person is in breach is seen by the officer as evidence of a lack of respect for the criminal justice system. Officers who fell in this category generally told us that these young persons are not new to law-breaking and they had already been "given a break" by receiving conditions. In several instances, officers reported young persons laughing because "probation means nothing to them". Finally, some felt that the youth justice system provides so few consequences for a young person's behaviour that to "give them a break" would further enforce this perception.

Approximately one-quarter (24%) of our interviewees indicated that if they found out about the administration of justice offence from another system agent they would not exercise their discretion. Officers who indicated they use no discretion when reported to them by system agents were more likely to work in metropolitan police forces (37%), compared to only 21% of respondents in suburban/exurban areas and 18% of respondents in rural/small town jurisdictions. They are also more likely to work in the Prairie provinces (53%) or the Atlantic region (55%). Finally, officers with 5 or less years of experience were much more likely to say they would not exercise discretion with cases referred by other system agents (36%) than officers with 6 or more years experience (10%).

Almost two-thirds of the interviewees (62%) responded that their exercise of discretion in cases of offences against the administration of justice is case-specific. When asked to clarify, responses ranged from the circumstances of the offence to characteristics of the young person. For example, if the offence against the administration of justice was committed at the same time as another offence they would probably charge the young person. Or, if they looked on their records management system (RMS) and saw that the young person had been "given a break" already, they would proceed by way of charge. Conversely, if a records check showed the young person did not have a lengthy prior record, they might consider using informal action. On the other hand, if the breach is serious or the young person has a lengthy record, officers suggest they are more inclined to proceed by way of charge and arrest the young person. Respondents' answers also differed by type of police force, province, and whether they police aboriginal persons. 87% of respondents from provincial police forces (including RCMP and OPP) would view each incident on a case-by-case basis, compared to 47% of the independent municipal police agencies surveyed. 100% of the detachments interviewed in the Territories and 87% of the agencies in Ontario indicated they use their discretion differently, depending on the unique circumstances of each case. Finally, 78% of those agencies that police on or off reserve aboriginals said that they use their discretion on a case-by-case basis, compared to 51% of those agencies that do not police aboriginals.

Almost half (45%) of the officers told us that they use their discretion not to charge when the incident involves a minor breach of release conditions or probation. For example, if a young person has a curfew of 10:00 pm and was found on his or her way home at 10:15, the likelihood of charges being laid would be low. Or, if there is a condition not to

consume alcohol and the young person had had a few drinks, but was clearly not intoxicated, the officer would also consider using informal action. If the condition was not to associate with certain individuals and it was conceivable that the young person, although associating, did not intend to breach that condition, the officers might exercise discretion. However, several officers indicated when a young person has a lengthy record or has committed another offence (in conjunction with even a minor breach) they will more than likely charge the young person. Certain types of police agencies were more likely to say they would not charge in the case of a minor breach. 74% of provincial police agencies (including RCMP and OPP) indicated they would use their discretion with a minor breach compared to only 27% of independent municipal forces. 89% of the detachments interviewed in the Territories indicated that discretion is used with minor breaches. 63% of the police agencies that police on or off reserve aboriginals indicated they used discretion with minor breaches.

Officers volunteered several other circumstances under which they exercise their discretion not to charge with offences against the administration of justice. 17% of those interviewed stated they used their discretion to build rapport: that is, by not charging when they clearly could have, they sought to build a good relationship with the youth. These agencies differed by type of policing, type of community, province, and whether they police aboriginal peoples. Of the provincial police detachments, 29% used discretion to build rapport, compared to 9% of independent municipal police forces. 23% of police forces located in rural areas or small towns mentioned rapport-building, compared to 12% located in metropolitan or suburban areas. 44% of the detachments interviewed in the Territories indicated that they used discretion to build rapport. Finally, of those agencies that police aboriginal peoples 28% indicated rapport as a reason for discretion compared to 9% of those that do not police an aboriginal population.

Several police agencies we interviewed run special programs which intensively monitor high risk youth (e.g. SHOP – Serious Habitual Offender Program and SHOCAP - Serious Habitual Offender Comprehensive Action Program). Other police agencies (e.g. Guelph Police Service) do not have an official SHOP or SHOCAP program, but officers – usually specialist youth officers – do the sort of intensive monitoring of high-risk offenders that characterizes these programs. Officers indicated that if the offence involved a youth in one of these specialized programs they would consider using discretion. During ride-alongs with officers involved in these programs, we observed that they would routinely find youth not at home in violation of their bail or probation curfew condition. They would then make a note of the violation, leave their card with a parent or other resident, ask them to tell the youth to call the officer “as soon as s/he gets in”, and take no further action. Thus, by proactively detecting, but not acting on, large numbers of violations of bail or probation conditions, they were able to remind the youth that s/he was being monitored, but also to “build rapport” by repeatedly giving the youth “a break”.

These monitoring programs tend to be run within independent municipal police forces (of which 16% said that they run such a program) and they tend to be located in metropolitan (20%) or suburban/exurban areas (16%). Only 2% of the agencies located in rural/small

town agencies had a program of this type in effect. Officers indicated that a lack of resources is the most salient factor in determining the programs they are able to provide.

9% of officers indicated that they used their discretion to avoid the 'revolving door' syndrome, 6% responded that they used discretion to avoid institutionalization of the youth and another 9% used their discretion because there was no point in processing the charge (e.g. because it would always be pled away) or it was too much work. On the whole, there were no variations in these responses by type of police force, type of community, officer characteristics or province/territory. However, those that policed an aboriginal population were four times more likely to use their discretion to avoid the 'revolving door' syndrome. Some such officers claimed that charging youth for administration of justice offences did "absolutely no good." As one officer put it, the original offence which the youth committed might be a minor mischief, theft, or minor offence against the person, and the rest of his record is filled with 8 or 10 breaches of probation. Further, detaining youth for multiple breaches can institutionalize them. An officer explained it thus:

> We try to work it out and inform, explain the whole thing, just tell them the whole process. Because once [they're] in a jail setting they start to network. So now you've introduced this really young, impressionable individual to a new culture and wham-o. Guess what!

Many officers argued that charging youth for administration of justice offences is simply sending them through a revolving door without addressing the initial problem that brought the youth to police attention. An officer in British Columbia summarized "the door" thus:

> So you arrest him, take him back to the institution or the youth detention centre, and they network in there. You write a really fancy report. So now you get a new separate charge for breaching conditions, so now you've got the original charge, new charges, revolving doors. You can see our frustration, come on […] there must be a better way.

Some officers expressed considerable frustration concerning the processing of offences against the administration of justice by Crowns and youth court. Many officers working in metropolitan areas told us that in order for a charge to stand up in court they had to show a pattern of wilful disregard for the order. In British Columbia, one officer summed it up by saying, "quite often, just because we find a kid out past their curfew, in their no-go, doesn't mean the JP [Justice of the Peace] is going to approve the charge, they're going to want to see a pattern of this misbehaviour, so quite often it's a waste of energy". Of those officers with 6 or more years experience, 8% responded in this manner compared to none of the officers with 5 years or less experience. One officer summarized the sentiment of too much work as follows: "Take into consideration that you work an 11 hour shift, spend 4 hours at the hospital, spend 2 hours doing paperwork,

and one kid just tied you up for half your shift, and where are the rest of your service calls?" The paperwork involved for processing a charge against the administration of justice is exactly the same as any other Criminal Code offence and these officers suggested that they used their discretion not to charge, in order to concentrate on what they saw as more important and productive cases.

In summary, the volume of youth-related cases of breach of conditions of bail or probation, and failure to appear in court, has grown to alarming proportions. In the year 2000, offences against the administration of justice accounted for 16% of all youth charged. In fiscal 1999/2000, 27% of all Youth Court cases, and 40% of all custodial dispositions were in relation to offences against the administration of justice.

The police see themselves as playing only a limited role in this phenomenon because they feel that they have very little discretion in these cases. When an allegation that a youth has committed an offence against the administration of justice is made by another system agent – e.g. a bench warrant is issued by a judge for failure to appear, or a breach of probation is reported by a probation officer – police interpret this as a request to charge, and generally feel that they have little choice but to comply. On the other hand, when they discover a breach as a result of apprehending for another offence, or as part of an intensive monitoring program for high-risk youth, they exercise a great deal of discretion. When police do lay a charge in these circumstances, it is usually because there is some aggravating circumstances: the substantive offence is serious, or the youth is a known repeat offender, or is simultaneously involved in several cases, and violations of court orders.

6.0 Discretion with provincial/territorial offences

Our sample was evenly split between police services whose members said that they use the same amount of discretion with provincial/territorial offences as with Criminal Code offences, and those that said they use *more* discretion with provincial/territorial offences. exceptions.

There were few differences among types or locations of police services in this respect. In Alberta and Nova Scotia, 75% of police agencies indicated they used more discretion with provincial/territorial offences. Notably, officers with 6 or more years of service were much more likely to say that they use more discretion with provincial/territorial offences (70%), compared to respondents with less than 5 years experience (30%).

7.0 Procedures used to compel appearance in court

Concern has been expressed in many quarters about the excessive reliance on incarceration of young persons in Canada, which exceeds that of many other western countries (Department of Justice Canada, n.d.). Although most of the attention is focused

on sentenced custody, young persons incarcerated on remand – that is, while awaiting trial, or during trial – constitute a substantial proportion of all youth incarcerated in Canada. In fiscal 2000/01, remand admissions of young persons accounted for 39% of custodial admissions (Marinelli, 2002; not all provinces reported to the survey on which this report is based). Due to the relatively short stays of remanded youth, they accounted for a smaller, yet still substantial, proportion (22%) of young persons held in custodial facilities on an "average day" in 2000/01 (ibid.).[16]

Studies of bail hearings in youth court have found that judges sometimes stretch the interpretation of the Criminal Code grounds in ordering detention for young people, especially for youths who come from unstable or deleterious home situations. Yet, as many writers have pointed out, detention before conviction –that is, of persons presumed innocent – is an undesirable expedient whose use should be minimized, particularly in the case of young persons, who are especially vulnerable to its ill effects (Bala et al., 1994b; Task Force, 1996; Doob and Cesaroni, 2002; Varma, 2002). Unless it is absolutely necessary, pre-trial detention of young persons would appear to be contrary to the intent of the Bail Reform Act (see Law Reform Commission of Canada, 1988), the Young Offenders Act, with its emphasis on minimal interference in the freedom of the young person (Platt, 1991: 80), and the United Nations Convention on the Rights of the Child (Task Force, 1996). Also, detention before trial in criminal court has been found by several researchers to increase the probability of conviction and a custodial sentence (Griffiths and Verdun-Jones, 1994: 226).

Attempts to explain the surprisingly high rates of pre-trial detention of young persons in Canada have been directed mainly to the bail hearing itself (e.g. Gandy, 1992 (cited in Doob and Cesaroni, 2002, pp. 139-146); Varma, 2002). However, police are the "gatekeepers" of pre-trial detention, because it is they who make the initial decision to arrest, and the subsequent decision whether to release or to hold for a JIR (Judicial Interim Release) hearing. Although we have no data on this, it seems likely that a substantial proportion of youth who are being held at any given time in pre-trial detention are in police custody, i.e. have not yet had a JIR hearing. Furthermore, only those youth who are arrested and not released by police come to the attention of bail courts: thus, police constitute the initial "screening" mechanism for pre-trial detention. Also, it seems likely (although we have no data on this) that the Crown's position and arguments at the bail hearing are heavily influenced by input from the police.

According to Grosman:

> When the Bail Reform Act was first introduced in Canada in 1972, police officers were concerned about the wide discretion given them under this new legislation. The police officer was given the task of deciding whether it was

[16] Doob and Cesaroni (2002: 142-143) report that in fiscal 1998/99, remand admissions accounted for 60% of youth custody admissions, and 18% of average daily counts of youths in custody in Canada (excluding some non-reporting provinces).

> "in the public interest" to take a suspect into custody….Accordingly, rather than run this risk [of misinterpreting "the public interest"], police officers refused to take suspects into custody unless they were found committing or about to commit a serious crime. They refused to exercise the broad discretion given to them. (1975: 49)

The only Canadian research which we could find on police decision-making concerning the *detention* specifically of young persons was the study done by Carrington, Moyer and Kopelman (1986; 1988), using data collected when the Juvenile Delinquents Act was still in force. They found that rates of detention at arrest in five major cities in 1981-82 varied widely, from detention of 18% of juveniles arrested in Toronto to 63% in Edmonton. Factors affecting the probability of detention included "legal" variables (the prior record of the juvenile, the seriousness of the offence, and a history of failure to appear for court); a "socio-legal" variable ("lack of community roots"), and "extra-legal" variables (the gender and age of the juvenile, whether s/he had previously been detained, and, in Winnipeg only, whether s/he was an aboriginal).

If the youth is not arrested, attendance at court can be compelled by an Appearance Notice (issued by police and later confirmed by a Justice of the Peace, when the charges are laid), or by a summons issued by a Justice of the Peace when the charges are laid.

If the youth is arrested, in considering whether the (continued) detention of a youth is appropriate, the Criminal Code requires the arresting officer (S. 497) or the Officer In Charge of the police custody facility (S. 498) to assess whether detention is required to:

> (i) establish the identity of the person,
> (ii) secure or preserve evidence of or relating to the offence,
> (iii) prevent the continuation or repetition of the offence or the commission of another offence,

or because the officer has reason to believe

> (b) that, if the person is released from custody, the person will fail to attend court….

In making this assessment, the police typically consider the personal history of the accused (any prior breaches, education, family, and employment), the circumstances of the specific charge, and the victim's reaction (Bala et al., 1994a). One Canadian study found that an "uncooperative" accused is more likely to be held in custody by the police (Hagan & Morden, 1981). Accused persons who are not released from detention by the police are supposed to be brought before the court for a judicial interim release ("bail") hearing within 24 hours, or "as soon as possible" thereafter. According to Bala, "in

practice, some youths may be detained for a few days before being brought before the court" (1997: 137).

As an alternative to continued detention, there are three different methods police can use to release an accused youth from custody. These methods, and the criteria for their use, are the same for young offenders as for adults. These various release methods exhibit substantial variability in the degree of intrusiveness (what Klinger (1996) calls "the amount of law applied"). First, police may release the youth on an Appearance Notice, which the youth should sign, or with the intention of having a summons issued. Second, they may release the youth by way of a Promise to Appear, which is signed by the accused. Third, the police can release on a Recognizance which requires the suspect to formally acknowledge a debt to the Crown for an amount up to $500 which may or may not require a deposit. Both the Promise to Appear and the Recognizance can be accompanied by an Undertaking, in which the youth agrees to conditions on the release such as a curfew, limitations on movement, or parental supervision.

We questioned police in detail concerning the options available to them for compelling the attendance at court of young persons whom they had charged, and the circumstances and considerations which influenced their decision-making.

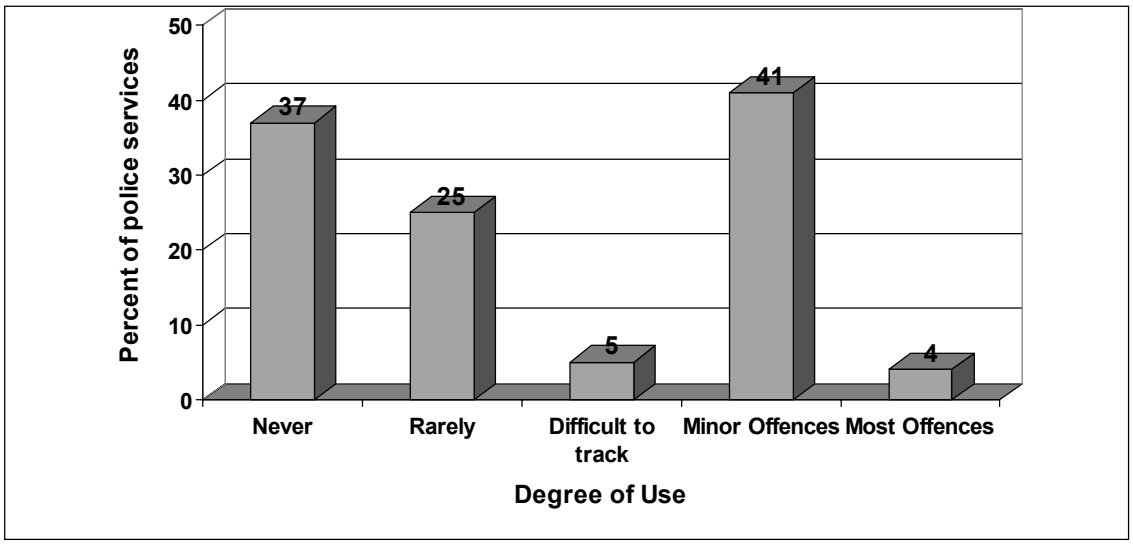
7.1 The summons and appearance notice

The summons and appearance notice are the only methods of compelling appearance that do not require arresting the young person and bringing him or her back to the police station. Therefore, their use would appear to be particularly appropriate with young persons, consistent with the YOA principle of "least possible interference with freedom." However, according to our interviewees, they are rarely used in Canada with young offenders. Figure II.18 summarizes the answers we received when we asked officers about their use of *summonses* with young persons (percentages add to more than 100% because multiple answers were permitted).

Almost two-thirds (62%) of the police agencies interviewed never use summonses with young persons, or do so rarely. 41% said that they used summonses for minor offences. Only 4% use them with most offences.

When we asked why the summons was not used, or rarely used, with young persons, many officers offered no reason except that it was not the procedure used in their police service.

Figure II.18 Use of the summons with young persons



When reasons were given for arresting rather than using summonses with young persons, the main one cited was the need to take him or her to the police station in order to conduct a proper investigation. This would typically involve establishing identity, taking a statement, possibly fingerprinting, possibly notifying the parents, and completion of one or more forms, all of which can be done much more satisfactorily in a police station than in the street or police car.

Another reason given for not using summonses was the difficulty of tracking the youth in order to serve the summons (which must be done by an officer in person, not by mail). This reason was cited more often in large metropolitan police services, which deal with significant numbers of transient youth. Over half (53%) of the police agencies who said that they never use a summons with young persons, came from metropolitan areas.

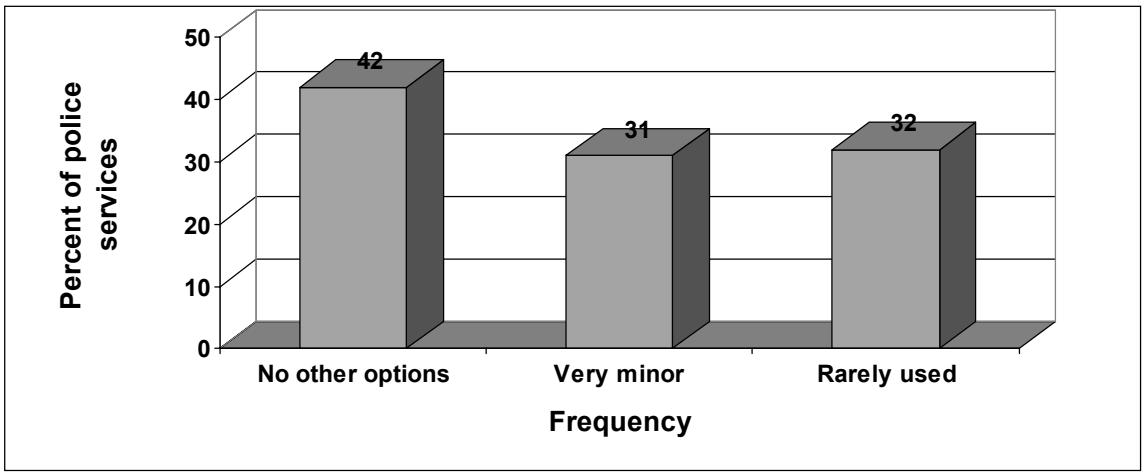
Although the majority of respondents indicated that they do not use summonses with young persons, OPP officers are much more likely to summons a young person (64%) than the other types of police forces (38%). OPP officers indicated that, for most of the crimes committed by young persons, it is the most appropriate method of compelling appearance. They do not feel they need to bring a young person to the police station for minor offences (e.g. mischief, shoplifting, offences on school property).

Summonses appear to be used with young offenders much more frequently in the Atlantic provinces and the Territories than elsewhere in Canada: only 33% of police services in the Territories, and 45% of those in the Atlantic region, said they *rarely or never* used summonses with young persons, compared with 83% in Ontario, 88% in the Prairies, and 92% in British Columbia.[17]

[17] There were too few responses from police services in Quebec to analyze.

Responses to our questions about the use of *appearance notices* with youth fell into three groups. *Used when none of the other options apply* indicates agencies that use an appearance notice if the youth-related incident is not appropriately dealt with by detention, a Promise to Appear (PTA), an undertaking, or a summons. Police agencies whose answers fell into this category tended not to use summonses for young persons, and therefore would use an appearance notice for minor offences when there is no need to arrest and no concern about attendance in court. In provinces that have post-charge alternative measures, an appearance notice is commonly used if the officer feels the youth will probably be diverted from youth court. *For very minor offences* indicates those agencies that said they will use an appearance notice only in circumstances where they have defined the incident as very minor. The officer's classification of the offence as "very minor" may also be influenced by the youth's prior contacts with the police (interactions that did not result in formal action being taken). Finally, some police services indicated that they *rarely use* appearance notices with youth. Figure II.19 shows the distribution of answers (percentages add to more than 100% since multiple answers were permitted).

Figure II.19 Use of the Appearance Notice with young persons



It is noteworthy that *none* of the police services which we interviewed said that they use appearance notices "frequently," or "with many offences." Their answers universally exhibit a lack of enthusiasm for the appearance notice, as for the summons, as a means of compelling attendance of young persons, and vary only in the degree of disinterest.

As with the summons, the main reason given for the non-use of appearance notices is the need to arrest and bring the youth to the police station in order to investigate the incident. Another reason cited was that often a youth is apprehended in the company of peers, and it is necessary to arrest in order to separate him or her from the others in order to elicit

some degree of co-operation, since youth are generally reluctant to be seen co-operating with police.

A third reason for the preference for making the arrest was not stated explicitly, but seems to us to be implicit in officers' views that taking the youth to the police station represents a form of informal action (i.e. an alternative to diversion or charging). It seems that, in some circumstances, arresting the youth and taking him or her to the police station, then releasing without charge, is seen by some officers as more of a "consequence" than releasing at the scene but less than referring to alternative measures or laying a charge. It is, in effect, a form of "formal warning", which may impress the youth with the unacceptability of his or her conduct, without the necessity of subjecting him or her to a formal charge. (Of course, the arrest as informal action is only an option when legal grounds for arrest exist.)

Finally, officers in 31% of the police services said that they use appearance notices in "very minor" cases. To some extent, this limitation is mandated by the Criminal Code, which says (S. 496) that the Appearance Notice (unlike the summons) may be used only with summary, hybrid, and minor indictable offences (the "absolute jurisdiction" indictable offences in S. 553, such as theft, fraud, and possess stolen goods). However, offences for which the Criminal Code allows the use of the appearance notice comprise the vast majority of youth crime: theft under, most frauds, mischief, common assault, bail violations, fail to appear, and drug possession are hybrid offences, and fail to comply with a disposition under the YOA is a summary offence. Thus, the only offences committed with any substantial frequency by young persons for which the use of the appearance notice is precluded by S. 496 are break and enter (dwelling) and robbery.

Arresting the youth and taking him or her to the police station do not preclude the use of a summons or appearance notice, since they can also be used when releasing from the station; but officers usually prefer other methods of compelling appearance on release: these are discussed below.

There are some variations among police forces in their use of the appearance notice.

Police agencies in rural areas and small towns are especially unlikely to use appearance notices. They were less likely to say they used appearance notices with youth "for minor offences" (16% said this, compared with 32% of suburban/exurban, and 32% of metropolitan police services). They were also less likely to say that they use an appearance notice when no other options apply (32%, versus 51% of suburban and metropolitan services). They were more likely to say they "rarely used" appearance notices with youth (43%, compared with 22% of suburban and metropolitan police services).

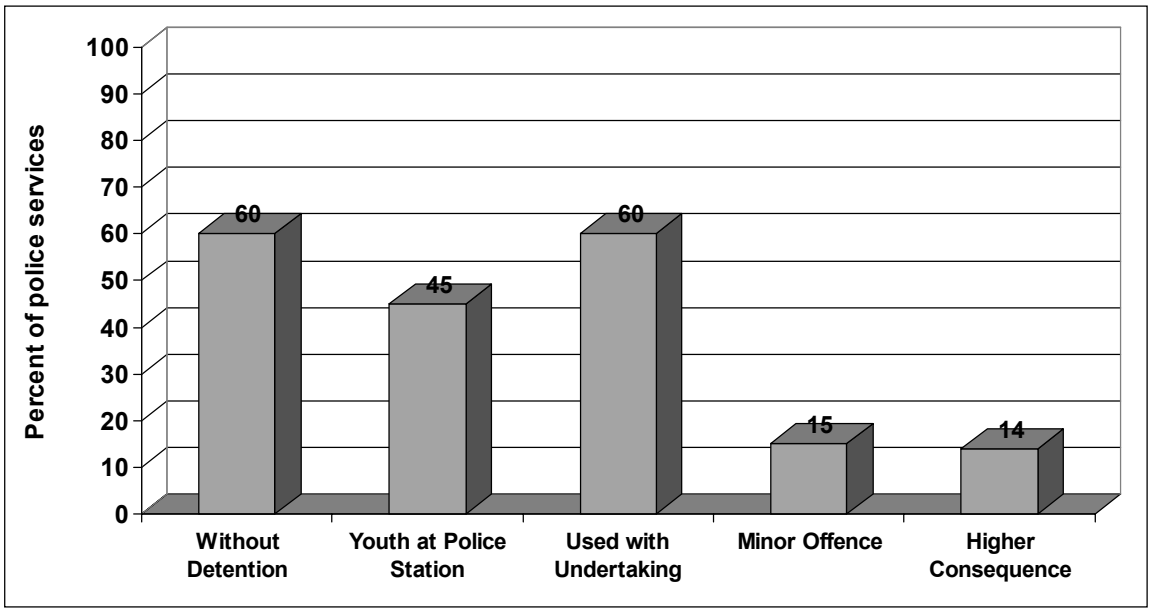
Consistent with these differences by type of community in the use of appearance notices, provincial police detachments (including the OPP and RCMP), which tend to police rural and small town jurisdictions, were much more likely to say that they use appearance notices rarely with youth (50%, versus 20% of independent municipal services); and

much less likely to say that they use appearance notices even for minor offences (23%, versus 40% of independent municipal services).

7.2 Release on a Promise to Appear (PTA)

Many police agencies rely on the Promise to Appear to compel the attendance at court of young persons who have been arrested and taken to the police station. Explanations which were offered for the use of the PTA are summarized in Figure II.20 (percentages add to more than 100% because multiple answers were given).

Figure II.20 Reasons for release on a Promise to Appear



A majority (60%) of police agencies said that they release on a PTA whenever they have taken a youth into custody temporarily, but continued detention is unnecessary. Officers in 45% of the police agencies gave a similar explanation: that the PTA was the usual method of release from the police station. This confirms the finding reported above, that summonses and appearance notices are rarely used as a method of release at the police station. A major reason for this is suggested by the 60% of officers who said that the PTA is used in conjunction with an Officer In Charge (OIC) Undertaking (discussed below), which imposes conditions on the accused, and which cannot be used with release on a summons or appearance notice.

Small numbers of interviewees (15%) indicated that the PTA is appropriate for "minor offences" – the implication presumably being that detention for a JIR hearing was more appropriate for major offences.

Small numbers (14%) identified release on a PTA, especially with an Undertaking, as a "higher consequence" than release on a summons or appearance notice. This is reminiscent of the view (discussed above) that arresting the youth, taking him or her to the station, then releasing without charge is, in itself, a form of "consequence": a useful element of the police officer's repertoire of dispositions. In effect, the arrest/release process becomes a form of sanction, or consequence, in its own right, independent of any subsequent action by the court.

Provincial police detachments (including RCMP and OPP) were more likely to say that they use a PTA to release without detention (73%) than independent municipal agencies (54%). This occurs more frequently with detachments and agencies located in the Prairies (82%) and Ontario (83%), compared to the Atlantic provinces (27%), where the summons is used more often to compel appearance (see above). Finally, officers with 5 years or less experience were more likely to say that they release young persons on a PTA (71%) than officers with 6 years or more experience (44%).

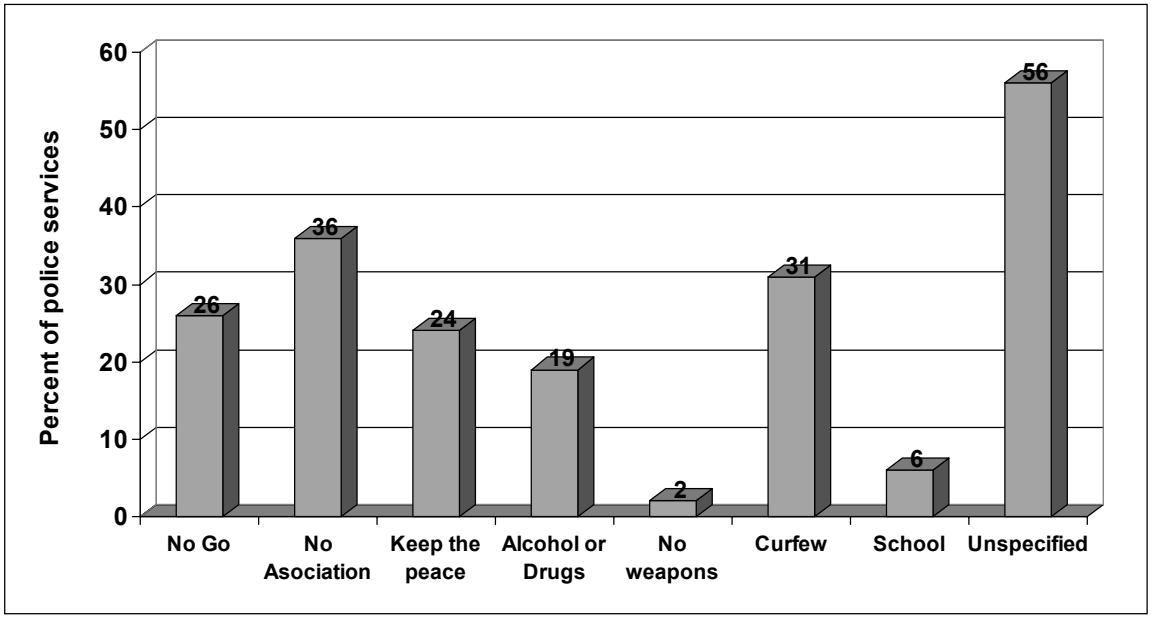
Agencies located in metropolitan areas (23%) were the most likely to say that they use a PTA as a "higher consequence", compared with rural and small town agencies (9%) and those located in suburban/exurban jurisdictions (11%).

7.3 Release on an Officer In Charge undertaking

Sixty percent of the agencies in our sample said that they use a Promise to Appear with an OIC undertaking. This led us to explore the types of conditions that are attached and how frequently they are used. Interviewees' responses are summarized in Figure II.21 (percentages add to more than 100% because multiple answers were permitted).

The *no go* condition refers to a youth being restricted from going to a certain place or area. This could include places such as donut shops, schools, neighbourhoods, or shopping malls. About one-quarter (26%) of those agencies that use undertakings told us they commonly attach a "no go" clause. Further, provincial police detachments (including the RCMP and OPP) are twice as likely (40%) to attach a "no go" clause as independent municipal agencies (18%). Not surprisingly, only 9% of the police agencies in the Atlantic provinces said that they include a "no go" clause. This is consistent with the previous finding that the police officers in the Atlantic provinces are less likely to use a PTA with an undertaking than police in other regions in Canada.

Figure II.21 Conditions of OIC Undertakings



The condition of *no association* refers to the youth being restricted from coming in contact with certain specified individuals. For example, this clause may be added in cases of assault (to stay away from the victim), gang-related crime (to stay away from fellow gang members), or crimes committed in groups (to separate the co-accused). Just over one-third (36%) of police agencies indicated they commonly attach a "no association" clause to the undertaking. Again, provincial police detachments (including the RCMP and OPP) are more likely (45%) to attach this condition than independent municipal agencies (32%). This clause is also used more often in the Prairies (47%) and Ontario (53%) than in the other regions in Canada.

Undertakings commonly include the clause, *keep the peace and be of good behaviour*. Our data suggest the precise meaning is somewhat contentious. Many officers indicated that it is a very difficult clause to enforce as it is open to almost any interpretation. About one-quarter (24%) of police agencies told us they commonly attach this condition. However, we suspect it occurs much more frequently. We speculate that it was not mentioned on a more consistent basis, due to the degree of importance officers assign to the various conditions. Since this clause can have a myriad of interpretations, in the cases where officers did reply affirmatively, it was as an afterthought. They frequently told us that this clause could mean anything. For example, if a young person did not go to school or obey their parents, they could be in breach of this clause. Most officers wanted the conditions in the undertaking to be much more offender- and offence-specific. 40% of the provincial police detachments interviewed indicated that they commonly attached this condition, compared to only 14% of independent municipal agencies. Further, agencies located in rural and small town jurisdictions were much more likely to attach this condition (32%) than other community types (18%). This may be a reflection

of the higher social cohesion characteristic of rural areas and small towns, in which the police are more likely to know the young person, their friends, and their families. Finally, as expected the agencies in the Atlantic provinces were the least likely (9%) to attach this condition to an undertaking.

Officers also attach a condition stipulating *no alcohol or drugs* to their undertakings with youth. This condition is meant to control a young person's substance abuse. It is commonly attached when the young person committed the crime under the influence of either alcohol or drugs. 19% of the agencies indicated that they commonly attach this condition to youth-related undertakings. Provincial police detachments (including the RCMP and OPP) are twice as likely (28%) to attach "no alcohol or drugs" to the undertaking than independent municipal agencies (14%). This may be a reflection of the types of youth crime and social issues in the jurisdictions that the RCMP and OPP police. This condition is attached more often in the Prairies (35%), Ontario (30%), and the Territories (22%) than in other regions of the country.

The condition referred to as *no weapons* restricts youth to not being in possession of a weapon. Only 2% of the agencies in our sample indicated they commonly attach this condition. Many officers indicated this condition is much more frequently used with adults than with youths.

The condition of *curfew* refers to a time limit set for the young person to be at home. The curfew is usually set with specific starting and stopping times, such as dawn to dusk or 7:00 pm to 7:00 am. We were repeatedly informed by officers that they do not have the legal authority to attach a curfew to an OIC undertaking - that it can only be ordered by a Justice of the Peace. Despite many of our respondents across the country indicating they were not legally empowered to attach a curfew, 31% commonly did so. Some interviewees informed us that the judges commonly uphold the curfew conditions which they have included in Undertakings.[18] Others said they need to "control" the young person to ensure that the offence is not repeated prior to the first court appearance. As with the other conditions, provincial police detachments were more likely (38%) to attach the condition of a curfew than independent municipal agencies (28%), although the difference is not large. There appears to be a distinct relationship between the imposition of a curfew and the type of community. Of the metropolitan police agencies, 40% indicated that they attached curfews, compared to 32% of suburban/exurban and 25% of rural/small town agencies. This suggests that it is not necessarily the type of police force that determines the extent of use of the curfew, but the type of jurisdiction which is being policed. The condition of curfew is more commonly attached in the Prairies (47%), Ontario (43%), and the Territories (33%).

Another condition that interviewees mentioned is the requirement to *attend school*. In some cases, the youth is committing crimes during school hours, and, upon consultation with the school, officers have discovered the youth is frequently absent. In those circumstances, officers indicated they will attach a condition of attending school.

[18] Cf. "bail" conditions in Section 7.6 below.

However, in most cases these are not patrol officers but School Liaison officers that also conduct investigations within their schools.

The final category of *conditions unspecified* includes those police agencies that indicated they did use undertakings with conditions for youth-related incidents, but did not clearly specify which conditions they most commonly use. 56% of police forces in our sample fell into this category. Some of these police forces were coded under this category as well as another category, because the interviewee made it clear that they commonly attached unspecified conditions in addition to the specified one(s).

Many officers seemed to attach considerable significance to the conditions contained in an undertaking. They see these conditions as relatively precise, immediate, enforceable constraints on the young person's future behaviour, and immediate, concrete consequences (sanctions) for the youth's criminal act. These are contrasted with what they see as the remote, delayed, unpredictable, and perhaps inappropriate constraints and sanctions which may (or may not) be imposed eventually by the Youth Court and correctional system.

7.4 Release on a Recognizance

The Criminal Code provides that the arresting officer or Officer In Charge may release a young person (or adult) on the person's "entering into a recognizance…in an amount not exceeding $500" (S. 498). Unless the person lives more than 200 km. from the place of custody, no deposit can be required. Like the Promise to Appear, the Recognizance may be accompanied by an Undertaking specifying conditions.

When we asked interviewees about the use of the recognizance with young persons, every one said that they are not used with young persons. No reasons were offered – that is simply "how things are done here" – but we would speculate that the use of the financial condition is seen as inappropriate with young persons. This mirrors the apparent views of Youth Court judges, who rarely assess a fine as a disposition. Perhaps also, there would be a legal impediment to enforcing a recognizance, since it is a debt instrument, with a person under 16 years of age.[19]

7.5 Summary: Methods of compelling appearance without detaining

Before embarking on a discussion of the use of detention, we will summarize our findings concerning the various other methods used by police to compel attendance at court. These include: the summons and appearance notice, which can be used either instead of arrest, or as a method of release after arrest; and release on a Promise to Appear (PTA), with or without an Undertaking involving conditions. Theoretically,

[19] For the enforcement of debts against children, see Bala and Clarke (1981: 223-225).

police can also release a young person on a Recognizance, but this is apparently never done.

Although the use of the summons or appearance notice without arrest would seem to be particularly desirable with young offenders, because of the non-intrusiveness of these measures, they are in fact rarely used. There are several reasons. The main reason appears to be that when an officer contemplates laying a charge or referring to pre-charge Alternative Measures, s/he needs to obtain enough evidence to support a prosecution (whether or not a prosecution actually takes place). This would typically involve establishing identity, taking a statement, possibly fingerprinting, possibly notifying the parents, and completion of one or more forms, all of which can be done much more satisfactorily in a police station than in the street or police car. Another reason is that arresting the youth and taking him or her to the police station prior to laying a charge are seen as ways of impressing the seriousness of the situation upon the youth, who might not take a summons or appearance notice as seriously. Related to this is the necessity, in some circumstances, of establishing control of the situation, and of separating the youth from his or her peers, in order to elicit cooperation. A final reason is the difficulty, in some circumstances and jurisdictions, of serving a summons.

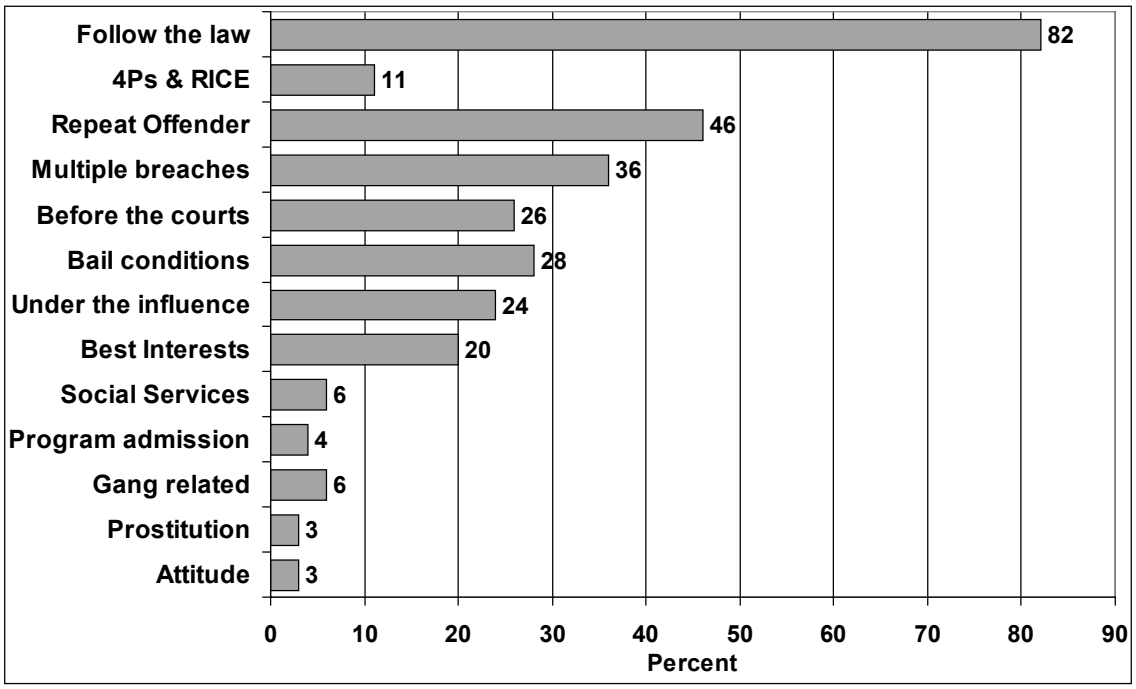
Following arrest and temporary custody, most officers prefer the Promise to Appear to the summons or appearance notice as a method of release. The main reason is that the PTA can be accompanied by an Undertaking which specifies conditions of release. Many officers seem to attach considerable significance to the conditions contained in an undertaking. They see these conditions as relatively precise, immediate, enforceable constraints on the young person's future behaviour, and immediate, concrete consequences (sanctions) for the youth's criminal act. These are contrasted with what are seen as the remote, delayed, unpredictable, and perhaps inappropriate constraints and sanctions which may (or may not) be imposed eventually by the Youth Court and correctional system.

7.6 Detention for a judicial interim release hearing

The final, and most intrusive, option for compelling appearance is detention for a Judicial Interim Release (JIR) hearing. The explanations given by police for the use of continued detention are summarized in Figure II.22 (percentages add to more than 100% since multiple answers were permitted).

A large majority of police agencies (82%) indicated that they *follow the law* when determining whether a young person will be detained or released. This category captured all of those interviewees who answered by saying that they do not detain a young person unless the law gives them the authority to do so. They tended to characterize the decision to detain or release as relatively non-discretionary, determined by the provisions of the Criminal Code. However, further discussion of the issue often elicited additional considerations, and the decision began to appear more complex.

Figure II.22 Reasons for detention for a JIR hearing



The *4 Ps and R.I.C.E.* is an acronym commonly referred to by police officers in Ontario. The acronym itself is not listed in the Criminal Code; however, the content originates from Criminal Code Sections 497 (1.1) and 498 (1.1). The "4 Ps" are used to teach new recruits when they cannot release an adult or young offender. They represent: (1) Protection of the public interest, (2) Protection of the accused,[20] (3) Protection of property, and (4) Prevent a breach of the peace. The acronym "R.I.C.E." represents:

R = Repetition (of the offence)
I = Identity (of the accused)
C = Court (likelihood of appearing for)
E = Evidence (protection of).

If there is no concern about the accused repeating the offence, the identity of the accused, whether s/he will appear in court, or destroy the evidence, then the police officer must release the young person. 11% of police agencies indicated the "4Ps and R.I.C.E." as one of the reasons they use to detain young persons. These agencies were predominantly independent municipal services, which suggests that the training programs for the RCMP and the OPP do not use these acronyms.

[20] This is what we were told, and the example was given of a notorious (alleged) criminal such as Paul Bernardo, who would not be safe from public vengeance if he were released; however, Sections 497 and 498 do not mention protection of the accused; only protection of any victim or witnesses.

Almost half of the police agencies (46%) consider detaining a young person who is a repeat offender. Some officers indicated this consideration would come into play if the youth had committed the *same* crime previously. However, the clear majority suggested that any lengthy prior record would make them more likely to detain. Although this was not mentioned explicitly, the implicit rationale here seems to be that there is an indication of a propensity to re-offend if released. However, some officers took the rather different view that it was a necessary measure, since the young person *obviously* did not understand the seriousness of his or her actions and perhaps spending a night in jail might impress this upon them. As in the discussion of other measures, we see here the use of detention by police as a practical, immediate sanction or "consequence" for the youth's illegal behaviour, or in response to the youth's apparent lack of respect for the law. RCMP officers were more likely to suggest that they will detain a repeat young offender (65%) than other types of police services (42%). Police agencies in metropolitan areas were much more likely to cite repeat offending as a reason for detention (63%) than suburban/exurban (37%) and rural/small town jurisdictions (41%).

A special type of repeat offender is one who has a record of *multiple breaches* which can include breaches of probation, undertakings, or bail conditions. 36% of the police agencies indicated that they considered this as a reason to detain a young person. Similar rationales were provided to those given for detaining a repeat offender. Provincial police detachments (including the RCMP and OPP) are slightly more likely to detain a young person for multiple breaches (45%) than independent municipal agencies (32%). As with detention of repeat offenders, police agencies in metropolitan areas are more likely to detain for multiple breaches (50%) than those in other types of communities (30%).

The category *if they are before the courts* refers to youths who are detained because they still have charges before the courts. In other words, they were released on a prior offence and have committed another offence before their first court appearance, or during their trial, for the previous offence. 26% of the police agencies indicated they would detain a young person for this reason. Police agencies in metropolitan and suburban/exurban jurisdictions (35%) are much more likely than those agencies policing rural and small town jurisdictions (18%) to indicate that they detain for this reason. Police agencies working in Ontario are much more likely (43%) than those in any of the other regions in Canada to detain because a youth is before the courts.

Some police agencies indicated that they would detain a young person in order to get *bail conditions* at the JIR hearing: that is, in expectation that the youth will be released on conditions by the judge or JP. Agencies which detain for this reason tend not to use OIC undertakings. 28% of the police agencies in our sample indicated getting "bail conditions" as one of the reasons they detain a youth for a JIR hearing. Some other officers indicated that the conditions assigned by a judge or JP are much more "binding" than those given under an OIC undertaking. They also added that a judge or JP can assign an enforceable curfew for high-risk offenders. It should be noted that organizations with a high-risk offender monitoring program (e.g. SHOP, SHOCAP) rely on bail conditions and probation conditions to monitor their clients. Almost all of these programs occur in independent municipal police forces, which is probably why

independent municipal agencies are more likely to detain to get bail conditions (38%) than other types of police agencies (20%). Similarly, agencies in metropolitan areas are much more likely (50%) than suburban/exurban (37%) and rural/small town jurisdictions (11%) to detain for bail conditions.

Almost one-quarter of the police agencies indicated they would detain a young person who was intoxicated or under the influence of drugs *(under the influence)*. In several instances, officers indicated they did not have any other place to put the young person, as the parents could not take care and control of the young person, since they were themselves intoxicated, and/or that there were no detoxification facilities for youth in their jurisdiction. This scenario was cited by police in all types of community and in virtually all provinces and territories. In many cases, police expressed great concern about releasing a young person who was intoxicated, on grounds of the youth's own safety. In jurisdictions that have high rates of adolescent drug and alcohol consumption, officers also expressed concern about their own legal liability in releasing an intoxicated young person without parental supervision. They suggested that they put the young person in danger of victimization as well as an increased likelihood of committing an offence. Agencies in metropolitan areas are much more likely to detain a young person because of intoxication (37%) than in other types of communities (19%). Further, 55% of agencies in the Atlantic provinces indicated they detain young persons for this reason. This was considerably higher than the other regions in Canada which ranged from 0% to 30%.

A rationale for detaining a young person which is closely related to intoxication is the *best interests of the youth (no responsible adult)*. Officers in 20% of police agencies gave this as a reason for detention. Other circumstances (than intoxication) that would fall under this category would be an officer unable to find a responsible adult, or to make arrangements with social services, to take care and control of a young person. In some provinces and territories, once a young person reaches the age of 14, it can be difficult for the police to have social services place the young person in a foster home if s/he has never been previously placed. Several officers indicated that social services will not take a young person into custody who is over the age of 14. This was mentioned more often by police in metropolitan areas (40%) than in other types of communities (11%). As with intoxication, police agencies in the Atlantic provinces are much more likely (55%) to detain young persons for their own good (other areas range from 0% to 27%). This is clearly, as with the previous category, a social welfare issue, and raises the question of the adequacy of social services coverage in many jurisdictions. 6% of police agencies explicitly cited the *lack of social services support* (e.g. foster care) as a reason for detaining young persons. Similarly, 4% of police agencies indicated they had to detain a young person *in order to get them admitted to a program* (e.g. substance abuse program). One officer stated that, unless he detains them first to "dry out," he is unable to refer youths to any of the substance abuse programs operating in the big city in which he works, because youths had to be sober and substance-free for at least 72 hours to be accepted – a condition which is next to impossible for youths who are addicted to heroin and living on the streets.

Several other kinds of reasons for detention of youth were given less frequently. 3% of police agencies indicated they detained a young person *to remove them from prostitution*. These agencies were all in metropolitan areas. Another 3% indicated they detained young persons due to their *attitude*. Finally, 6% of agencies indicated they would detain a young person if the incident was *gang-related*. These agencies are almost entirely in big cities in the Prairies and Ontario.

The reasons given by police officers for detaining youth fall into three broad categories. The first includes reasons related to law enforcement, narrowly defined, and are exemplified by "the 4 P's and RICE". The second group of reasons could be summarized as "detention for the good of the youth". These include detaining youth who are intoxicated, who do not have a safe or secure home to be released to, and whom social services will not or cannot accommodate, or who are prostitutes. In these circumstances, police find themselves acting, not as law enforcement officials, but as staff of the "only 24-hour emergency service in town".[21]

The third type of rationale treats detention as another kind of police disposition – that is, as another in the repertoire of measures which police can take in order to administer a sanction or "meaningful consequence" for a youth's illegal behaviour. This view seems to underlie some officers' statements that they will detain a repeat offender or a youth with multiple breaches, or a youth with a "bad attitude", or a youth in a gang-related incident. A variant of this is the use of detention and the JIR hearing to get judicial bail conditions, in order to impose immediate control on the young person, and, in some cases, to facilitate the work of monitoring programs for high-risk youth, such as SHOP and SHOCAP.

7.7 Offences that almost always result in arrest and detention

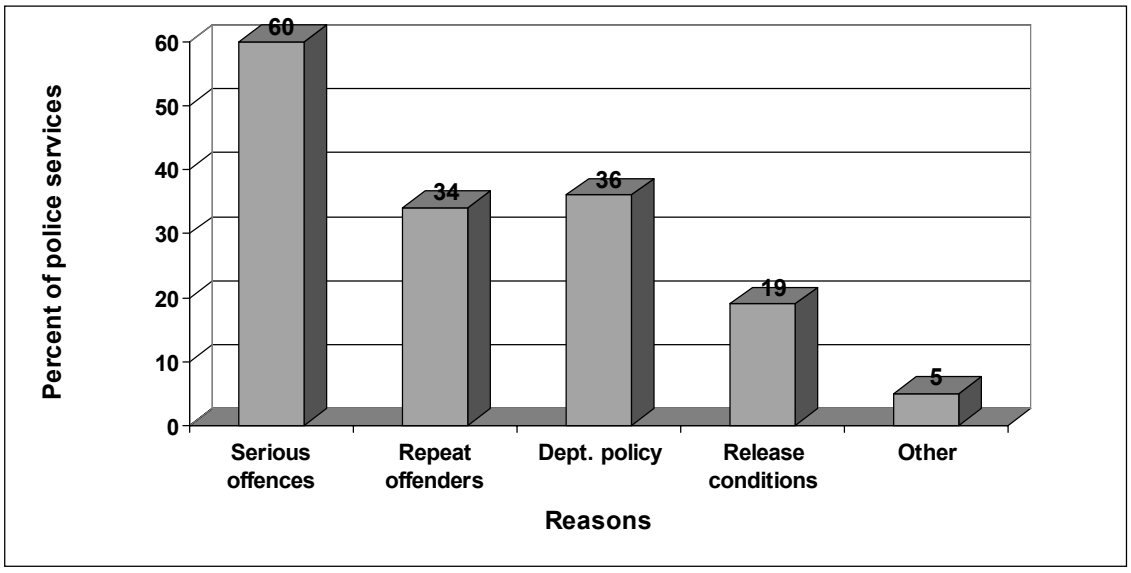
We attempted to simplify the complexity of the reasoning behind the detention/release decision by asking if there were any offences which would *almost always* result in detaining the young person for a judicial interim release hearing. We met considerable resistance to this question, as many of our interviewees insisted that these decisions are case-specific: that is, they are made on the basis of a constellation of factors which are specific to each case. Figure II.23 summarizes the responses we received.

Over half (60%) of the police agencies in our sample indicated that they almost always arrest and detain young persons for serious offences. However, it was extremely difficult to elicit a succinct definition of "serious offence". The example that officers gave most often involved assault causing bodily harm and most offences that involve a weapon. Police agencies in metropolitan areas are more likely (73%) to say that they almost always arrest and detain for serious offences than those in suburban/exurban (63%) and rural/small town areas (52%). In the Territories, the police are the least likely (22%) to

[21] Similar considerations arise at judicial interim release hearings; research on this is reviewed in Doob and Cesaroni, 2002, pp. 139-146.

say that they almost always arrest and detain for serious offences. We speculate that this is due to the lack of custodial facilities within reasonable travel distance, as a significant proportion of the detachments in the Territories are remote and isolated.

Figure II.23 Offences for which police almost always arrest and detain



Almost one-third (34%) of the agencies indicated they would almost always arrest and detain repeat offenders. Most officers indicated that these types of offenders are what they consider their "regular clientele". In most circumstances, these repeat offenders are detained because of both the nature of the offence and their prior record.

Over one-third (36%) of the police agencies indicated that they almost always arrest and detain *due to departmental policy,* as set out in departmental guidelines. For example, the OPP lists fifteen Criminal Code offences as "benchmark" crimes, for which the accused is always arrested and detained (e.g. murder). 93% of the OPP detachments which we interviewed indicated that they "almost always" arrest and detain young persons *only* in cases of benchmark crimes.

A reason provided by 19% of our respondents for "almost always" arresting and detaining was *to get release conditions*. As noted above, the majority of these respondents do not routinely use OIC undertakings. The remainder would detain for release conditions if the youth had previously breached an OIC undertaking. Independent municipal police agencies are more likely (26%) to say that they almost always arrest and detain to get conditions than other types of police agencies (12%).

Finally, a small proportion (5%) of police agencies indicated that they would almost always arrest and detain young persons for alcohol- or drug-related offences.

8.0 Summary

Our discussions with police concerning their use of discretion in decisions whether to arrest, whether to charge, use informal action, or divert, and how to compel appearance at court when a charge is laid, suggest to us that police officers (and police services) tend to see their powers as providing, in combination, a multidimensional repertoire of options for "resolving", or disposing of, an incident. Within the limitations imposed by the law and provincial policy, police choose among these options on the basis of a myriad of case-related factors, which are so complex as to defy analysis. During interviews, officers repeatedly resisted our attempts to induce them to disentangle their decision-making process into discrete, prioritized, factors, and instead insisted that their disposition of each case depended on its own, unique, set of circumstances.

Police officers appear to have two main objectives in deciding upon a disposition for an incident. One is to satisfy the requirements of traditional law enforcement: to investigate the incident, identify and apprehend the perpetrator(s), and assemble the necessary evidence if there is to be a prosecution. Their other, less explicit, objective appears to be to deliver an appropriate sanction, or "consequence", semi-independently of the Youth Court and correctional system. Officers repeatedly stressed the importance of youths' experiencing appropriate consequences for their illegal actions, and many, but by no means all, expressed scepticism about the ability of the courts and correctional system to do so; and therefore, the necessity of their dispensing street-level justice. This is not to suggest any impropriety or illegality in the actions of police, but rather to suggest that their own view of the police function in preventing, responding to, and suppressing youth crime is somewhat more expansive than the traditional view of police merely as law enforcement agents.

Particularly in metropolitan jurisdictions, police officers tended to contrast unfavourably the perceived remoteness of the Crown and Youth Court, and the cumbersome and slow nature of their proceedings, with their own proximity to the reality of street crime, their own ability to deliver swift sanctions, and their familiarity with the circumstances and needs of individual young offenders. In rural areas and small towns, officers were more likely to have closer working relationships with the Crown and court officials, and therefore more confidence in the ability of these agencies to resolve youth crime satisfactorily; and officers in rural/small town RCMP detachments in particular were more likely to have confidence in the ability of the local community and/or local diversion agencies to deal with young offenders, thus reducing their own felt need to resolve the situation entirely themselves.[22]

On the basis of our discussions with police, it is possible to construct a list of the consequences, or sanctions, usually applied by police in dealing with a young person who they believe on reasonable grounds has committed an offence. From least to most severe, these are:

[22] This contrast between policing youth crime in metropolitan and rural/small town jurisdictions is explored in Chapter III, Section 4.1.

1. Take no further action.
2. Give an informal warning.
3. Involve the parents.
4a Give a formal warning; and/or
4b. Arrest, take to the police station, and release without charge.
5a. Arrest, take to the police station, and refer to pre-charge alternative measures; or
5b. Lay a charge without arrest by way of an appearance notice or summons, then recommend for post-charge alternative measures.
6. Arrest, charge, and release on an appearance notice, a summons, or (more commonly) a PTA without conditions.
7. Arrest, charge, and release on a PTA with conditions on an OIC Undertaking.
8. Arrest, charge, and detain for a JIR hearing.

(The severity of options 6, 7, and 8 could be mitigated by recommending post-charge alternative measures.)

Apart from these two main objectives – law enforcement and informal sanctioning – a third objective of police action arises from what police see as their crime prevention and social welfare responsibilities – responsibilities which in some cases they would prefer not to assume, but feel that they are forced to do so by the inadequacy of existing social services. On some occasions, police will refer a youth to a diversion program, not as a sanction, but in order to address the youth's perceived needs – whether these needs are directly related to the crime, or are seen as problems with which the youth needs assistance. Furthermore, when a youth has been arrested, an officer may feel, in some circumstances, that it would be irresponsible to release the youth back "out on the street", but is unable to contact the parents, or the parents are unable, unwilling or unsuitable to take custody, and no agency can be found that will take the youth in. Circumstances which are seen as involving a risk to the youth's well-being include intoxication, involvement in prostitution, or a dangerous home environment. In these circumstances, the officer feels constrained to detain the youth; and research on bail hearings suggests that the judge may then approve continued detention, also for welfare reasons (Doob & Cesaroni, 2002: 139-146). In many jurisdictions, police said that this expedient is forced on them by the lack of suitable facilities and agencies for youth.