



**Pre-Trial Detention
Under the *Young
Offenders Act*:
A Study of Urban
Courts**



**DEPARTMENT OF
JUSTICE CANADA**

YOUTH JUSTICE RESEARCH



Pre-Trial Detention Under the *Young
Offenders Act*.
A Study of Urban Courts

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*The views expressed herein are solely those of the author
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Justice Canada.*



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Executive Summary

This report presents data on pre-trial detention and bail proceedings in five large urban areas from the last years of the *Young Offenders Act*. Data from youth court, police and Crown Attorney files on pre-trial detention practices in Halifax-Dartmouth, downtown Toronto and Scarborough, Winnipeg, Edmonton, and downtown Vancouver and Surrey were collected and analysed. A random sample of 1,843 youth court cases was obtained for cases that had their first appearance dates between April 1, 1999 and March 31, 2000. This time frame was selected because most court and correctional processing would be completed by the time of data collection.

The objectives of this research are

- to describe, in both quantitative and qualitative terms, the pre-trial detention experiences of young persons who come into conflict with the law;
- to determine what factors affect pre-trial detention at arrest and detention by the court; and,
- to find out if pre-trial detention affects the plea and the sentences imposed by the youth court.

Police Detention at Arrest

The police act as the primary gatekeepers to the pre-trial detention process although the courts (for fail to appear charges) and probation personnel (for failure to report or abide by other conditions they supervise) also play a part. Overall, 45 percent of young persons were arrested and detained by the police for a bail hearing. The range by court location was 28 to 56 percent.¹

With regard to the charges involved in detention processing, the police most often held young persons accused of indictable drug offences, indictable offences against the person, and offences against the administration of justice. A number of accused were held by police because there was a warrant out for their arrest, often because of an (alleged) offence against the administration of justice.

The more serious the current charge, the greater the likelihood that the accused was released on a police undertaking, which is the most “serious” form of police release.

¹ Excluding the anomalous downtown Vancouver youth court where eight out of ten young persons were held for a bail hearing.

About 13 percent of the total sample were released by police on conditions, most often not to communicate with victims or others and to avoid a specified area. The analysis of the factors affecting the selection of specific release conditions found few significant relationships between case and personal characteristics and each condition. We conclude that typical police practices may contribute to the selection of conditions imposed in police undertakings.

Grounds for Pre-trial Detention

In section 515, the *Criminal Code of Canada* sets out three grounds for pre-trial detention, two of which are pertinent to youth cases – to ensure the attendance of the youth at court (primary grounds) and to protect the public because of the likelihood that the person will re-offend if released (secondary grounds). The use of primary grounds was most pronounced in the study sample. The courts have interpreted primary grounds to include characteristics of the accused such as employment status, family relationships and permanence of living arrangements: what we have termed “socio-legal” characteristics of the young person. These characteristics address the extent to which the accused has “ties to the community” which are believed to reduce the risk of flight and increase the likelihood of court attendance when required.

The Judicial Interim Release Process

A person detained by the police should have a bail hearing within 24 hours or as soon as possible thereafter. Nine out ten cases met that standard and another five percent had a hearing within two calendar days of their arrest. We speculate that some or all of the remaining five percent whose first hearings were recorded three to five days after arrest may actually have had an earlier hearing but it was not noted in the court or Crown file.

The majority of young persons were released at their bail hearings. The proportions ranged from 52 to 75 percent, depending on the court. The most common form of release was an undertaking to appear except in Toronto where recognizances are typically used. The latter requires a surety, a friend or relative, willing to be responsible for the accused’s court attendance and often commit themselves financially. The “responsible person” provisions in the *Young Offenders Act* were infrequently used (6 to 13 percent) and never used in the Edmonton and the Toronto-area courts.

At most judicial interim release (JIR) proceedings, it is up to the Crown to show why the young person should be detained. Reverse onus cases, where the accused has to show why she or he should be released, typically arise when the young person is already on bail and is charged with another offence, or when the youth has failed to attend court or has not complied with release conditions. Up to 60 percent of cases involved reverse onus, although there were large differences among the courts.

A defence lawyer, either duty or retained counsel, was almost always present at JIR hearings.

The length of detention stays is best summarized by the median number of days detained (i.e., the midpoint of a distribution). In the sample overall, those who were not released until their case



was completed were held in custody for a median of three weeks. Among these detainees, the longest stays occurred in Winnipeg (a median of 34 days) and the shortest in Surrey (a median of 6 days). Young persons who were released on bail had a median stay of one day.

The Crown attorney can release the accused on consent. Data on consent releases were not available to this research. Other research in the Toronto courts, adult and youth, has indicated that 60 percent or more of cases are released on consent.

The courts most often detained youth accused of indictable person offences other than robbery and other offences against the administration of justice, including fail to attend court (FTA) and fail to comply with an undertaking (FTC) as well as escape custody. Least often detained by the court were breaches of probation and hybrid, or less serious, offences against the person.

The conditions of bail release vary greatly by court and are almost certainly dependent on the “usual practices” in each location. For example, house arrest ranged from 0 percent in Surrey to almost 30 percent in the two Toronto youth courts; area restrictions ranged from 11 percent to 54 percent, depending on the court. The average number of release conditions also differed – Edmonton and Halifax cases had the fewest conditions and Toronto, Scarborough and Vancouver had the largest average number.

Researchers have often hypothesized that police recommendations play a large role in bail decisions. In Halifax and Toronto, where more detail on pre-trial detention was collected, the police suggested that 62 percent of the young persons be detained. Their recommendation was followed in just less than 50 percent of cases. Police recommendations on the release conditions were more successful: recommendations were followed in 60 to 80 percent of cases.

Violating Bail Conditions

Bail violations occur with some frequency. Among youth who had outstanding charges at the time of their entry into the study sample, one-third had an FTC/FTA charge. Among the persons who were released at their bail hearings, about 40 percent were later charged with failure to comply.

The curfew condition is most often violated. Residence-related conditions were the second most frequent category of conditions violated.

Multivariate Analysis of Factors Influencing Police Detention Decisions

Age affected police decisions in two courts but in opposite directions – older youth were more likely to be held in Halifax, whereas younger persons were held in downtown Vancouver. Race, being black or Aboriginal, was positively associated with police detention in Toronto. Those living with parents or other family were significantly less likely to be detained than were those in less conventional situations.

With regard to legal factors, several were significantly associated with detention by police although the type varied from court to court. In the total sample, more serious current charges,

more current charges, more serious or numerous prior convictions, having a current bail violation, having an arrest warrant, more numerous outstanding charges and unconventional living arrangements increased the likelihood of being detained.

Multivariate Analysis of Factors Influencing Detention Decisions by the Youth Court

In the sample overall, more factors were related to detention: mention of primary or secondary grounds or both, having an indictable current charge, having a long and serious prior record, a current charge of fail to attend court or failure to comply with bail conditions, the number of outstanding charges, age (older) and unconventional living situations.

The prior offence history of the accused was more influential in bail decision-making by the youth court than were the characteristics of the current charges when the courts are analysed separately.

Multivariate analysis was also employed to determine the personal and case characteristics associated with specific release conditions. Being black or Aboriginal increased the likelihood of having a “do not communicate with the victim” and “do not carry or possess weapons” conditions, even when other factors were controlled. No factors explained the imposition of curfews, leading us to conclude that curfews are imposed for reasons other than the legal characteristics of the case. Since curfews so often precipitate bail charges, their use should be reconsidered by system decision-makers.

An examination of the role of race in Toronto bail decisions found that race predicted the use of recognizances versus other means of court release even when other factors were controlled. Because of their requirement for a surety, recognizances require that the young person have a resource in the community, a more burdensome requirement than undertakings. Race was marginally related to the number of bail conditions in the Toronto youth courts.

Pre-trial Detention by the Youth Court Has Negative Effects

Staying in pre-trial detention disadvantages the accused person both in terms of increasing the likelihood of pleading guilty, and hence being found guilty, and in terms of receiving a custodial sentence.

Multiple Stays in Detention

Earlier sections described the main features of the pre-trial detention experiences of the young persons who were detained by police *at their arrest* – that is, at the time of their instant charges (i.e., the charges that brought the youth into the sample). This section looks at *all stays in detention throughout the court process*.

With the exception of one court, more than one-half of the samples were detained one or more times if post-arrest detention stays are taken into consideration. Only 38 percent of the overall sample had no period in pre-trial detention. The more stays in detention is related to a longer



court process likely because of the longer the period that the young person is “at risk” of being detained. About 70 percent of the police detentions after the youth’s initial arrest resulted from an offence against the administration of justice (FTA, FTC and probation breaches). Almost one-quarter occurred because the youth had allegedly committed a new substantive offence.

Secondly, we looked at whether the form and conditions of police and court release at the initial arrest of the sample were related to later periods in detention. If there are no relationships we may be able to assume that the form/conditions of release did not affect bail violations. The form of release by police at initial arrest had no relationship to the number of detention stays. The conditions of police undertakings were also unrelated. The type of court release was, however, associated with subsequent periods in detention – young persons released to a “responsible person” were more likely to return to detention than others. The main finding of the analysis of conditions of court release was that youth with a curfew were much more likely to have multiple detention stays than were those without a curfew. We conclude that curfew violations precipitate subsequent stays in detention.

Implications

Additional policy development on the relationships between bail conditions and the characteristics of the alleged offence should be considered. A second review could be the role of primary and secondary grounds in setting bail conditions. More education or information could perhaps help to change the “usual practices” of police and the courts, since some of these practices seem to generate the “revolving door” syndrome.



1.0 Introduction

Young persons suspected of offences are detained to ensure their appearance at court and to protect the public. In the past, under both the *Juvenile Delinquents Act (JDA)* and the *Young Offenders Act (YOA)*, youth advocates suggested that pre-trial detention was used inconsistently and inappropriately. In particular, young persons were believed to be detained for child welfare reasons (e.g., they were seen as being in need of protection by the system, more than for legal reasons). The lack of uniformity in decision-making was also of concern. Finally, critics argued that detention disadvantaged young persons in terms of their relationship to their family and to the community at large and in their subsequent legal proceedings.

1.1 This Report

This report presents data on pre-trial detention and bail proceedings in five large urban areas in fiscal year 1999/2000. The objectives of this research are:

- to describe, in both quantitative and qualitative terms, the pre-trial detention experiences of young persons who come into conflict with the law;
- to determine what factors affect pre-trial detention at arrest and detention by the court; and,
- to find out if pre-trial detention affects the plea and the sentences imposed by the youth court.

1.2 Method

The data were collected in 2002 and 2003 for research entitled “Young Offender Case Processing in Five Urban Communities”, also known as the “Baseline Study”. This research randomly sampled 1,843 young offender cases from the court files of Halifax-Dartmouth (341), downtown Toronto (233), Scarborough (165), Winnipeg (369), Edmonton (416), downtown Vancouver (167) and Surrey (152). The sample had first appearance dates between April 1, 1999 and March 31, 2000. This time frame was selected because it was assumed that most court and correctional processing would be completed by the time of data collection. In addition to the court files, the sample was followed up in Crown files and, where possible, in probation and custody files as well.

A special sub-study on pre-trial detention was undertaken in Halifax-Dartmouth and Toronto specifically for this research. Its purpose was to collect data on multiple detention stays – that is stays that occurred after the youth entered the study sample.

In-person and telephone interviews were conducted with Crown attorneys and defence counsel in several courts. Additional interviews were done with police in Halifax-Dartmouth and Toronto.

The emphasis in this report is on the analysis of quantitative data. The data were analysed using a standard social science software package. Multivariate analysis – linear regression and logistic regression – was employed to assess the effects of the demographic, social and legal characteristics of the sample on major detention decisions.

1.3 Report Organization

Primarily descriptive, Section 2 includes discussions of the pre-trial detention process including the police input to the courts, the main features of judicial interim release hearings such as their timing and outcome, police recommendations to the Crown attorney, the conditions of release, and charges arising from bail violations. Sections 3 and 4 present the by-site bivariate and multivariate analyses of police and court detention (respectively). Section 5 contains data on the effects of pre-trial detention on guilty pleas and on sentencing. In Section 6, the limited data available on multiple detention stays are described. Section 7 summarizes the main findings of the report. The Appendix contains the supporting tables for the multivariate analyses.



2.0 The Pre-trial Detention Process

2.1 Police Detention at Apprehension

Police have several decisions to make when they apprehend a youth: whether to release the young person or to hold him or her; if released, in what form; and if detained, what information and recommendations should be provided the Crown with regard to continued detention. Even though police function as the gatekeepers to pre-trial detention, little is known about the police decisions made during the process.

The criteria for police detention are similar to those for detention by the youth court: the officer has reasonable grounds to believe that the person will not appear at court; detention is in the public interest because of the need to identify the accused, the need to secure or preserve evidence, or the need to prevent another offence. Under circumstances specified in the *Criminal Code*, the police may hold the accused person until he or she appears before a justice for a bail hearing. In the sample as a whole, police detained 45 percent of young persons (Table 2.1). Almost eight out of ten Vancouver youth were detained for a bail hearing compared to about three out of ten youth in Halifax-Dartmouth. The other courts fell between these two extremes.

The mode of release varied from court to court. In Halifax-Dartmouth, youth tended to receive either an appearance notice or a summons. In Toronto and Scarborough, police undertakings, followed by promises to appear, were most common. There was almost an equal division in Winnipeg among appearance notices, summons, promises to appear and undertakings. The primary mode of release in Edmonton was an appearance notice. In Surrey, promises to appear were most frequent, followed by summons and undertakings. In Vancouver, because the municipal police preferred to pass the release decision along to the youth court, only a few youth received appearance notices or summonses.

The officer in charge, usually the station or custody sergeant, may release accused persons with an undertaking to appear with or without conditions. All or almost all youth released on undertakings to appear had conditions imposed. As Table 2.2 shows, released youth were most often ordered not to communicate with victims, witnesses or others such as co-accused (76 percent). Over one-half of the total sample were ordered to stay away from specified areas, such as malls, schools or the victim's home. Firearm prohibitions were infrequent in all courts. Abstention from alcohol and drugs was also relatively rare except in Edmonton where almost three out of ten cases were so ordered. In Winnipeg, where curfew monitoring by police is available, 27 percent of released youth were ordered to maintain a curfew as an "any other condition", which is notably different from the other courts. Not shown in table form because of their relatively low frequency were two additional "other conditions" – attend school and reside in a specified location. See Table 2.6 for the conditions of court release.

TABLE 2.1:
POLICE DETENTION DECISIONS BY COURT LOCATION

	Hal/Drt	Tor	Scar	Wpg	Edm	Van	Sur	TOTAL
Detained	27.5%	56.0%	47.3%	48.4%	36.6%	79.4%	35.1%	44.5%
Released	72.5%	44.0%	52.7%	51.6%	63.4%	20.6%	64.9%	55.5%
Appearance notice	19.2%	9.1%	9.7%	12.0%	31.0%	7.9%	2.0%	15.8%
Summons	24.0%	0.9%	5.5%	9.8%	9.8%	6.7%	16.2%	11.1%
Promise to appear	5.4%	12.9%	10.9%	10.7%	6.6%	1.2%	18.9%	8.9%
Recognizance	0%	0%	0.6%	0.3%	0%	1.2%	8.1%	0.9%
Police undertaking	13.2%	17.7%	26.1%	14.8%	9.6%	0%	12.2%	13.2%
Unknown release type	10.2%	1.3%	0%	2.5%	3.7%	2.4%	6.1%	4.1%
Not applicable	0.6%	2.2%	0%	1.6%	2.7%	1.2%	1.4%	1.5%
Total number of cases	334	232	165	366	407	165	148	1817

1. Chi-square=149.03, df=5, p<.001 (detained versus released by court location).
2. The forms of release are listed in order of seriousness.
3. A recognizance with or without sureties and deposit is issued when the accused lives out of the jurisdictions.
4. An undertaking can only be issued by the officer-in-charge and usually contains conditions (see Table 2.2).
5. Hal/Drt=Halifax/Dartmouth; Tor=Toronto; Scar=Scarborough; Wpg=Winnipeg; Edm=Edmonton; Van=Vancouver; Sur=Surrey.

TABLE 2.2:
POLICE RELEASE CONDITIONS BY COURT LOCATION

	Hal/Drt	Tor	Scar	Wpg	Edm	Van	Sur	TOTAL
Notify police of address employment changes	34.1%	56.8 %	81.0%	63.6%	15.8%	0%	20.0%	48.9%
Non communication with victim/others	77.3%	73.0 %	85.7%	78.2%	65.8%	100%	65.0%	75.5%
Area restrictions	47.7%	59.5 %	73.8%	47.3%	42.1%	0%	55.0%	53.6%
Weapons restrictions	0%	0%	2.4%	10.9%	2.6%	0%	5.0%	3.8%
Report to police/other at specified times	13.6%	2.7%	38.1%	3.6%	18.4%	0%	5.0%	13.9%
Abstain from alcohol/drugs	9.1%	10.8 %	14.3%	18.2%	28.9%	0%	15.0%	16.0%
Curfew	11.4%	0%	0%	27.3%	2.6%	0%	0%	5.9%
Total number of cases	44	37	42	55	38	1	20	237

1. Hal/Drt=Halifax/Dartmouth; Tor=Toronto; Scar=Scarborough; Wpg=Winnipeg; Edm=Edmonton; Van=Vancouver; Sur=Surrey.



In summary, 45 percent of the total sample were detained by police at their initial arrest, and there were substantial variations by youth court. Young persons released on a police undertaking were obliged to meet conditions such as no contact with specified persons and geographical restrictions.

2.2 Grounds for Detention

Under the *Young Offenders Act*, judicial interim release, or bail, of young persons was primarily governed by the *Criminal Code* which in subsection 515(10) sets out three grounds on which an accused may be held in custody prior to trial. Using these grounds, it is in most cases up to the Crown to "show cause" why an accused's detention is necessary prior to trial. Although ss. 515(10) provides criteria for release, it does not list the factors which may be taken into account. Case law has established what factors may be relevant.² Detention may be justified on the *primary ground* where the accused's detention is necessary to ensure his or her attendance in court. Trotter (1999) defined the factors associated with primary grounds, which included:

- the nature of the offence and potential penalty;
- the strength of the evidence against the accused;
- community ties of the accused;
- the character of the accused;
- the accused's record of compliance with court orders on previous occasions;
- the accused's behaviour prior to apprehension; and,
- evidence of flight.

Therefore, the indicators of attending, or not attending, future court dates include prior failures to attend court and ties to the community. For adults, ties to the community are often measured by stability in employment and residence, home ownership and family obligations. For young persons, community ties may be measured by whether the accused is attending school or is employed, the stability of his/her home situation, and whether parents or guardians are able to adequately supervise or "control" the young person. The following is an example of primary grounds from a police report:

The accused has no family, home or ties in Toronto. She has two convictions for fail to appear and two for fail to comply. She is on two separate probations which she completely ignores.

² Bail prediction studies are rare. No relevant research could be found that examined whether the "indicators" or "criteria" for primary and secondary grounds are valid predictors of attending court and committing an offence while on bail.

Secondary grounds justify detention because it is necessary for the protection or safety of the public, including a substantial likelihood that the accused will, if released, commit a criminal offence. According to Trotter (1999), factors associated with secondary grounds are:

- criminal record;
- whether the accused is already on bail or probation;
- the type of offence – it has been suggested that a person charged with specific offences is more likely to commit further offences if released (e.g., break and enter, drugs) because they are crimes that are assumed to be closely related to the accused’s source of livelihood; and,
- whether the accused is addicted to drugs or alcohol.³

Indicators include the length of the accused’s prior record and the type of prior convictions; similarity of past and present offences also indicates a propensity for future criminal acts. The Crown is required to provide a strong case of “very bad conduct” resulting in serious harm or the potential for serious harm.⁴ The following quotation from a police report is an example of the way in which secondary ground can be interpreted.

Accused has no lawful means of support. Has been arrested for trafficking in the past and for smoking drugs [marijuana] in a city park today. She will no doubt continue her drug-related activities if released.

Tertiary grounds refer to any other “just cause” being shown, where detention is necessary in order to maintain confidence in the administration of justice. The court is to consider the apparent strength of the prosecution’s case, the gravity of the charge, the circumstances surrounding its commission and the potential for a lengthy jail term. To justify pre-trial detention on this ground, the Crown must show that the sensibilities of the community would be so affected that the accused’s release could lead to “real harm to the administration of justice or to the accused”.⁵ When interviewed, Crown attorneys said that this ground is infrequently used in the youth court. Files of detained cases cited tertiary grounds in ten percent of cases.

The differences by court location in the mention of primary and secondary grounds found in Table 2.3 are remarkable and may be related as much to the usual practices of the police and Crown as to the “actual” behaviour of the young person. For example, almost half of the Winnipeg case files contained a mention that the youth would likely continue the criminal activity if released whereas in Edmonton, Vancouver and Surrey, this factor was almost never mentioned. Similarly almost one-half of Halifax-Dartmouth cases were labelled as “out of control” but elsewhere this categorization was quite rare.

Primary grounds predominated in Halifax, Toronto and Surrey. The mentions of primary and secondary grounds were roughly equal in Winnipeg and Edmonton. In Vancouver, mentions of secondary grounds outweighed primary grounds by a considerable margin.

³ This part of the secondary ground was upheld by the Supreme Court of Canada in *R. v. Morales*.

⁴ Annotations on the grounds for detention (ss. 510(10)), *Martin’s Criminal Code*, 2002.

⁵ *Ibid.*



**TABLE 2.3:
REASONS FOR DETENTION BY COURT LOCATION**

	Hal/Drt	Tor/Scar	Wpg	Edm	Van	Sur	TOTAL
Primary Grounds							
Previous FTA/UA charges	13.6%	18.5%	21.3%	8.2%	4.3%	0%	15.6%
Previous bail violations or probation breaches	31.8%	15.1%	31.5%	8.2%	21.7%	14.3%	20.5%
A history of "running" from home/foster home	0%	5.0%	4.6%	3.3%	4.3%	7.1%	4.3%
No fixed address or living on the street	27.3%	18.5%	14.8%	9.8%	0%	7.1%	14.7%
Deemed out of control	45.5%	15.1%	6.5%	1.6%	4.3%	14.3%	11.2%
No responsible/willing parent or guardian	27.3%	7.6%	3.7%	6.6%	0%	14.3%	7.2%
Primary grounds (unspecified)	0%	24.4%	12.0%	39.3%	17.4%	42.9%	21.9%
Outstanding charges	22.7%	26.9%	24.1%	14.8%	17.4%	7.1%	22.2%
Secondary Grounds							
Significant prior record	31.8%	16.0%	23.1%	16.4%	26.1%	7.1%	19.6%
Similarity of offence to prior offences	13.6%	14.3%	7.4%	4.9%	17.4%	14.3%	10.7%
Seriousness of current offence	27.3%	17.6%	22.2%	4.9%	13.0%	14.3%	17.0%
Likely to continue criminality if released	31.8%	28.6%	49.1%	8.2%	8.7%	0%	29.1%
Tertiary Grounds	9.1%	6%	6.5%	54.1%	65.2%	28.6%	29.1%
Tertiary grounds (unspecified)	0%	18.5%	2.8%	16.4%	8.7%	0%	10.7%
Other Grounds							
A history of mental health Problems	9.1%	1.7%	0.9%	0%	4.3%	7.1%	2.0%
Total number of reasons	22	119	108	61	23	14	347

1. Reasons were located in a minority of cases; those that were available were found in both Crown and police files and therefore the date may refer to either or both the police and court detention decisions. In Toronto/Scarborough all reasons were in police briefs to the Crown.
2. Some reasons in the primary grounds panel are our interpretation of primary grounds for young persons – we argue that a history of "running" and a label of "out of control" can be used as reasons why the youth might not attend court.
3. Hal/Drt=Halifax/Dartmouth; Tor/Scar=Toronto/Scarborough; Wpg=Winnipeg; Edm=Edmonton; Van=Vancouver; Sur=Surrey.

Bala (1994), citing Gandy's (1992) study of bail in three Ontario communities in the 1980s, has written that youth were sometimes detained because of lack of accommodation, neglect, abuse or other child welfare reasons. This issue, that detention is used as substitute for child welfare

beds, is of continuing concern to policy makers. Of the 51 cases in the overall sample where it was stated that the young person had no stable place to live, only 6 persons or 12 percent had no other grounds mentioned. This suggests that there may be relatively few youth detained *only* for child welfare reasons. Conversely, it is also possible that the flexibility of the interpretation of primary and secondary grounds is so great that other grounds can be readily found for youth with a previous offence history.

The distinction between the primary and secondary grounds for detention is blurred because the indicators for the two grounds are sometimes identical. This overlap has been described by Morgan and Henderson (1998). The use of the same factors suggests that “when they make a remand decision, decision-makers do not separate out the risk of failing to appear from the risk of re-offending, but rather make a judgement of the risk of whether either is likely”. Golish (2003), a Windsor, Ontario lawyer, has made a similar point.

What is interesting is that the factors taken into consideration in any given case usually apply to both grounds. For instance, one can see how all the following factors will affect the decision to release or detain on both grounds: ties to the community; support of family and friends; work and school history, current employment or school enrolment; criminal record, its age, seriousness, etc.; and, the age of the accused or defendant, etc.

2.3 Judicial Interim Release

2.3.1 The Timing of the First Bail Hearing

The *Criminal Code* requires that accused persons be brought before a justice within 24 hours of arrest or as soon as possible thereafter. This is achieved by the 24 hour availability of justices of the peace who hold bail hearings in detention centres and police stations as well as in the courts.

A question for this research was “how often is the 24-hour goal actually achieved?”⁶ During the study period (1999/2000), at least one study location (Halifax-Dartmouth) did not have 24 hour, 7 day a week coverage by justices of the peace.⁷

Almost always, the court file is the sole source of information on the timing of the first hearing. Data on the date of entry to detention and the date of first hearing probably under-report first hearings held at detention centres and police stations because there are no court support staff present to record the information. Possibly, some if not all of those whose first appearances were apparently not made until three or more days after detention had bail hearings that were *not* recorded in the court file.⁸

⁶ Research done in three Ontario communities in the 1980s (Gandy 1992) reported that young offenders often did not have their bail hearing until six or more days after arrest.

⁷ There are now justices of the peace available either in person or by speakerphone.

⁸ A Crown mentioned that justices of the peace “are called in (to the police station) to decide on release or remand” but he was “not sure you would call it a bail hearing – more of a rubber stamp”.



In all courts combined, 91 percent of young persons had their first hearing on the same or the next calendar day of their entry into detention (i.e., within the 24 hour period specified in the *Code*). An additional 5 percent had their first hearing within two calendar days of arrest and detention. Halifax-Dartmouth cases were slightly less likely than those in other courts to have had their first hearing within one calendar day of detention. An examination of individual cases found that several cases that waited three to five days for their first hearing had been detained before long weekends and holidays such as Easter and Christmas.

**TABLE 2.4:
NUMBER OF DAYS FROM DETENTION TO FIRST HEARING**

	Hal/Drt	Tor	Scar	Wpg	Edm	Van	Sur	TOTAL
Number of Days								
0 to 1 day	80.0%	94.8%	96.2%	85.9%	88.5%	97.0%	96.2%	90.7%
2 days	11.1%	3.0%	2.6%	9.6%	3.4%	1.5%	1.9%	5.0%
3 days	7.8%	0.7%	0%	4.0%	5.4%	0.8%	1.9%	3.1%
4 days	1.1%	1.5%	1.3%	0%	1.4%	0%	0%	0.7%
5 days	0%	0%	0%	0.6%	1.4%	0.8%	0%	0.5%
Total number of cases	90	134	78	177	148	133	53	813

1. When the table is reduced to 0 to 1 days versus 2 to 5 days, by court location, chi-square is significant: chi-square=31.34, df=6, p<.001.
2. Hal/Drt=Halifax/Dartmouth; Tor=Toronto; Scar=Scarborough; Wpg=Winnipeg; Edm=Edmonton; Van=Vancouver; Sur=Surrey.

2.3.2 Release on Bail and the Form of Release

The majority of young persons detained at arrest by police were released by the court, usually on an undertaking to appear (Table 2.5). Youth were remanded into custody until the conclusion of their case most often in the downtown Toronto court (48 percent)⁹ and least often in Surrey (26 percent), Vancouver (30 percent) and Halifax-Dartmouth (31 percent). Recognizances were most utilized in Toronto and Scarborough. This is because sureties from a parent or other person were often conditions of release. Interviews suggest that the routine use of sureties in the Toronto courts can disadvantage young persons who lack support systems. Some youth who were released on a recognizance according to the court file may not have been released because they failed to locate a relative or friend willing to sign the surety. A similar finding is reported by

⁹ In the downtown Toronto court, Varma (2002) found that almost 70 percent of her sample received bail compared to our finding of 52 percent, in the same court two to three years later. Whether the difference is due to sampling methods or to an actual decrease in releases on bail is not known.

Kellough and Wortley (2002) who considered sureties a “supervisory” condition. Others consider the recognizance with sureties similar to release to a responsible person.

2.3.3 Release to Responsible Persons

Section 7.1 of the *Young Offenders Act* stated that youth may be released to a “responsible person” if both that person and the youth consent and, if it were not for the section, the youth would be detained.¹⁰ In the study period (1999/2000), the two Toronto courts and the Winnipeg court did not use the responsible person provisions; elsewhere, from 6 to 13 percent of cases were released to a responsible person. Respondents mentioned that releases to responsible persons are similar to the use of sureties in recognizances. Recognizance releases involving a surety were the norm in Toronto and Scarborough, two of the three courts where section 7.1 was not used. In other words, sureties were apparently viewed as a substitute for “responsible persons”. The use of sureties may not be an adequate alternative if the parents or other surety lack resources.

	Hal/Drt	Tor	Scar	Wpg	Edm	Van	Sur	TOTAL
Detained	30.8	48.1	41.6	39.5	37.0	29.5	26.4	37.2
Released	68.2	51.9	58.4	60.5	63.0	70.5	74.6	62.8
To a responsible person	5.5	0	0	0	13.0	6.8	13.2	5.0
Undertaking to appear	45.1	9.6	5.2	50.6	31.5	62.9	56.6	37.6
Recognizance	14.3	39.3	48.1	4.1	14.4	0.8	1.9	16.5
Unknown release type	4.4	0.7	1.3	3.5	4.1	0	1.9	2.4
Not applicable	0	2.2	3.9	2.3	0	0	0	1.2
Total number of cases	91	135	77	173	146	132	53	806
1. Chi-square = 15.6 df= 6 p<.02 (detained versus released by court location). 2. Hal/Drt=Halifax/Dartmouth; Tor=Toronto; Scar=Scarborough; Wpg=Winnipeg; Edm=Edmonton; Van=Vancouver; Sur=Surrey.								

Other reasons for the lack of use of these provisions were:

- Someone has to make arrangements with the responsible person and if the young person has duty counsel representation and there is no court-based youth worker, this may not occur;
- From the perspective of a Crown, “the Crown gets the brief in the morning and is unsure of who the responsible people are”; and,

¹⁰ A similar provision is found in the *Youth Criminal Justice Act*.



- Parents or guardians may be unwilling to sign the undertaking or there may be no available parents or guardians.

Young persons released under section 7.1 were more likely to have multiple stays in detention (59 percent) than were youth released on an undertaking to appear (40 percent) or a recognizance (31 percent).¹¹ This finding suggests that the youth subject to this provision may have been a higher risk group, at least in terms of their short-term non-compliance.

2.3.4 Adjournments of Bail Hearings

On average there were two adjournments before the bail issue was decided (i.e., three hearings) (see Table 2.6). Reasons for prolonged processing were provided in interviews.

- Perhaps the most common reason is that parents or social workers are not available.
- There is no release plan. A defence counsel said: “if I have a youth who has no plan to present, especially those who are suffering from a mental illness, I’ll ask for an adjournment. A good example is a parent who is refusing to take the child and the [child protection agency] is reluctant to take the kid. I need an adjournment to see whether or not the kid can get into the early release project”.
- The young person wants to wait until his/her lawyer is available rather than rely on duty counsel. Adjournments because counsel are not available has become an issue in the Winnipeg youth court.¹²
- Because parents are angry at the youth, they refuse to sign the recognizance (in the Toronto courts).
- The case is complex (e.g., a serious violent charge) and requires the calling of witnesses at the show cause hearing.
- Judge or justice of the peace shopping:¹³ “you may want to adjourn for a day or two when you can get someone better”.
- Court workload: overloaded dockets sometimes mean that the court runs out of time to hear all bail matters.
- The Crown requires more information. With regard to this point, a defence counsel complained that “the Crown often asks for a three day remand, but it is an abuse – they never have any further evidence”.

¹¹ Data not shown in table form. See also section 6.2.

¹² Manitoba Aboriginal Justice Implementation Committee 2001.

¹³ That is, requesting an adjournment in the expectation or hope that a more agreeable justice or judge will be sitting.

TABLE 2.6:**CHARACTERISTICS OF JUDICIAL INTERIM RELEASE PROCEEDINGS BY COURT LOCATION**

	Hal-Dart	Tor	Scar	Wpg	Edm	Van	Surrey	Total sample
Percentage of cases where bail hearing adjourned	39.5%	66.4%	76.6%	75.5%	41.4%	34.1%	40.4%	54.6%
Total number	86	134	77	155	140	129	52	773
Average number of bail adjournments per case	1.2	2.0	2.1	2.5	2.2	1.5	2.4	2.1
Total number	28	87	55	115	58	41	21	405
Percentage of reverse onus cases	20.2%	48.4%	61.7%	41.8%	52.2%	11.7%	11.1%	35.4%
Total number	84	91	47	158	92	111	45	628
Presence and type of legal representation:	Column percentages							
No legal counsel	1.5	0	0	6.9	13.6	1.5	2.0	3.9
Duty counsel	4.4	74.8	60.0	26.4	35.2	50.0	26.0	42.2
Other defence counsel	94.1	25.2	40.0	63.9	39.8	48.5	72.0	51.9
Other e.g., parent	0	0	0	2.8	11.4	0	0	2.1
Total percent	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.1%
Total number	68	123	70	144	88	130	50	673

Notes: In all courts but Toronto, legal aid staff lawyers act as both duty counsel and retained counsel. In Toronto and Scarborough, staff lawyers function primarily as duty counsel.

Whether the case was a reverse onus matter was not known in 23 percent of cases.

2.3.5 The Need for a Release Plan

Young persons who are in the care of the child protection agency or who are otherwise without community supports can be especially challenging to defence because of the need to develop a workable release plan. A substantial number of these young persons have “exhausted” the available community placements because of running or other behaviour. According to a defence lawyer:

You have a kid who is a runner and has some minor charges. The [child protection agency] will say that they don't have a placement because the kid is a runner. They convince the Crown to not allow the kid out. The Crown goes to duty counsel and says he will consent to release only upon finding a placement. But the agency is not rushing to find that placement. So then kids stay in detention too long.

2.3.6 Reverse Onus

Under most circumstances the onus is on the Crown to prove that the accused should be detained. However, reverse onus situations (i.e., where the defence counsel must prove that the accused should be released) arise in a substantial proportion of bail matters. Overall, one-third of cases involved reverse onus. The most frequent reasons for reverse onus, at least for young people, are: the young person is alleged to have committed an indictable offence while on bail



for another indictable offence; or the youth is alleged to have failed to attend court or to attend for fingerprinting or has not complied with conditions of the release, either police or court-ordered. Interviews with Crown attorneys and defence counsel show that, even in reverse onus cases, the Crown may occasionally release the young person on consent. This can occur, for example, if the violation is minor and the youth is not perceived as a danger to the community.

There are noticeably fewer reverse onus cases reported in Halifax-Dartmouth and the two Vancouver-area youth courts: 20 percent or less compared to 40 percent or more in the other cities (Table 2.5). This may be accounted for by organizational or procedural factors. In Halifax-Dartmouth, the municipal police do not usually lay charges of failure to attend court or failure to attend for fingerprinting, which elsewhere are common reasons for reverse onus situations. In Vancouver and Surrey, bail reviews are used to deal with non-compliance on bail, not charges. Furthermore, in the downtown Vancouver court, breaches of probation are common (e.g., one-half of the Vancouver sample had a breach charge during the study period and almost one-half were on probation at the time of entry to the sample). In this city, breach of probation charges were the most frequent mechanisms used to attempt to control the behaviour of the young person, even though the youth was on bail as well as on probation. In the two Toronto courts and in Winnipeg, conversely, charges of non-compliance with undertakings and failure to attend court were the preferred approach to control. The effect of reverse onus situations on bail decision-making is further discussed in Section 4.

Defence counsel are usually present at bail hearings where bail is contested. Unfortunately, it was impossible to determine whether accused were released on consent when no legally trained advocate was present.

2.3.7 Days in Detention

Over all court locations, the average days detained prior to trial was 16 days; the median or midpoint was much lower at 3 days.¹⁴ As with most other characteristics of bail, there were large variations by court. In Winnipeg, the average was 23 days in detention, compared to 9 days in Edmonton and only 7 days in Surrey. The medians or midpoints went from 1 day in Halifax, Vancouver and Surrey to a high of 9 days in the Scarborough court (see Table 2.7).

Days detained are, of course, greatly affected by whether the young person was released before sentence. Those who received bail spent four days in detention on average (a median of one day) and there was little variation by court location. Overall, young persons who were *not* released spent five weeks in detention on average, and the median was three weeks. Other than in Edmonton and Surrey, which had the shortest detention stays, the mean days in pre-trial custody for the not released group was about five weeks or more and the median days ranged from three to five weeks.

¹⁴ Unlike the mean, the median is not affected by extreme values. The median or midpoint is in fact the statistic to use to determine the “typical” situation.

2.3.8 Bail Programs¹⁵

During the period covered by this study, bail programs were available in most study courts although Halifax-Dartmouth lacked a program and the bail alternative in Toronto only dealt with 16 and 17 year olds. In 17 percent of police-detained cases, there was some discussion in case files of referral to a bail program.¹⁶ Most referrals, over 90 percent, actually entered the program. Information on completion rates was especially difficult to locate; of the known cases, 36 percent successfully completed the program.

TABLE 2.7:
AVERAGE AND MEDIAN DAYS DETAINED, BY FORM OF RELEASE, BY COURT LOCATION

	Hal-Dart		Tor		Scar		Wpg		Edm		Van		Surrey		Total sample	
	Mean	Med.	Mean	Med.	Mean	Med.	Mean	Med.	Mean	Med.	Mean	Med.	Mean	Med.	Mean	Med.
Detained by the court until case over	45	26	40	22	32	28	51	34	18	9	34	17	20	6	36	21
Released by the court:	2	1	5	2	8	2	5	3	4	1	2	1	2	1	4	1
To a responsible person	2	2	na	na	na	na	na	na	9	3	5	3	2	1	6	2
Undertaking to appear	2	1	10	2	10	11	4	3	2	1	1	1	2	1	3	1
Recognizance	1	1	4	2	4	2	4	2	4	0	8	8	2	2	4	1
Released, not known how	0.7	1	1	1	42	42	3.5	3.5	0.6	1	na	na	0	0	4	1
Other e.g., already in detention or custody	na	na	6	5	42	13	9	6	na	na	na	na	na	na	18	7
Anova (means): F=38.81 p<.001																
Total mean/median days by court	15	1	22	4	18	7	22	5	9	2	12	1	7	1	16	3
Total number of cases	89		134		78		176		145		134		51		807	
Anova (means): F=3.41 p=<.01																

Notes: na=not applicable; no cases in the category.

The mean is the arithmetic mean or average while the median is the midpoint of the distribution (i.e., one-half of the cases fall above this point and one-half fall below).

2.3.9 Appeals and De Novo Hearings

Although our analysis was hampered by missing data, we estimate that roughly 10 percent of detained cases requested a review or made an appeal.¹⁷ Twenty percent of Toronto¹⁸ and 15

¹⁵ In every court, it was difficult to locate information on alternatives to pre-trial detention. There is no assurance that the data on bail programs in this section are reliable.

¹⁶ In Winnipeg, police officers referred cases to the Bail Management program. Because this situation had not been anticipated, no details of these referrals were obtained.

¹⁷ Data not shown in table form.



percent of Edmonton detainees asked for a review, but elsewhere the numbers were negligible. Approximately two-thirds of reviews or appeals were successful.

2.3.10 Crown Decision-making

Little attention has been paid to the study of bail from a decision-making perspective, particularly the decisions made by the Crown attorney. British research on adult accused found that “the effective decisions are made out of court by professional participants, prior to the court hearing” (Hucklesby, 1997b). Barnford (1999) concluded that the judicial role is “largely supervisory and [the magistrate] only an active actor in a small proportion of the remand in custody decisions”. The lack of contested show cause hearings was raised by Hucklesby. He estimated that only 9 percent of adult cases appearing before magistrates had a contested hearing (Hucklesby, 1997b), 85 percent were released on consent of the Crown, and the remainder were not contested by the accused. This proportion of unopposed bail is similar to figures in other British studies (cited in Barnford, 1999).

The study done in a large Toronto court by Varma (2002) utilized both qualitative and quantitative methods. As have the British researchers cited above, she emphasized the importance of the Crown in detention decision-making: 60 percent of her sample were released on consent. Her multivariate analysis showed that having a prior record and school status had independent effects on the likelihood of consent releases. Living with parents versus other arrangements was not significant.

A study of adult bail courts in Toronto found that almost two-thirds of the sample were released by the Crown attorney on consent (Kellough, 2003).

The present project was unable to collect reliable data on consent releases. Neither court nor Crown files contained this information in any consistent fashion.¹⁹

2.4 Charges on which Young Persons were Detained²⁰

The charges on which the young persons were detained or not detained by the police and the court are shown in Table 2.8.²¹ Robbery, indictable property offences other than break and enter, indictable drug offences, and administration of justice offences other than probation breach were more likely to involve police detention. A large difference was found in the hybrid (i.e., less serious) property offence category. These charges were more likely to fall into the “not detained” group (37 versus 16 percent for police detention). With regard to court detention, youth accused

¹⁸ Interviews support the Toronto finding.

¹⁹ This is an advantage of an observational method such as the one Varma undertook.

²⁰ See also Sections 3 and 4.

²¹ The “most serious” charge is based on the categorization of the offence in the *Criminal Code*. If there was more than one charge at the initial arrest, the most serious was selected. In order from most to least serious the offences are: indictable offence against the person, indictable offence against property, indictable drug offences, hybrid offences against the person, hybrid (and a few summary) offences against property, other almost all victimless offences, breach of probation, and all other offences against the administration of justice. This hierarchy is a rough approximation of the seriousness of the offence.

of hybrid property and person offences were more likely to be in the “not detained” group whereas youth charged with administration of justice offences other than probation breach more likely to be detained.

TABLE 2.8: THE PROPORTION OF DETAINED AND NOT DETAINED YOUNG PERSONS BY THE MOST SERIOUS CHARGE AT ARREST (MAJOR OFFENCE CATEGORY), POLICE AND COURT DETENTION				
	Police detention		Court detention	
	Detained	Not detained	Detained	Not detained
	Column percentages			
Total indictable offences vs. the person	10.0	2.6	11.0	9.3
Robbery	8.8	2.3	9.0	8.5
Other indictable person offences	1.2	0.3	2.0	0.8
Total indictable offences vs. property	20.8	13.3	20.0	20.4
Break and enter	7.8	6.8	6.3	8.1
Other indictable property offences	13.0	6.5	13.7	12.3
Indictable drug offences	6.6	1.0	6.0	6.9
Total hybrid offences vs. the person	17.8	24.9	13.0	21.8
Assault level 1	9.4	12.2	7.0	11.5
Other hybrid person offences	8.4	12.7	6.0	10.3
Total hybrid offences vs. property	16.2	36.9	13.7	17.8
Theft under \$5,000	8.1	22.2	7.7	8.3
Other hybrid property offences	8.1	14.7	6.0	9.5
Other charges e.g., hybrid drugs, weapons, traffic	6.1	7.8	6.7	6.0
Breach of probation	10.0	9.6	11.3	9.3
Other offences vs. the administration of justice	12.5	3.8	18.3	8.4
Fail to attend court and fail to comply with an undertaking	9.3	3.2	11.0	7.5
Other charge type e.g., escape custody	3.2	0.6	7.3	0.8
Total percent	100.0	99.9	100.0	99.9
Total number of cases	807	780	300	504

Notes: Offences against the person include not only the assaults and sexual assaults but also harassment, threatening bodily harm or death, intimidation and “cause fear” (“where injury or damage feared”, section 810 of the *Criminal Code*).

As a result of coding conventions, the breach of probation and other offences against the administration of justice are underestimated.

The most serious charge at apprehension or arrest was closely associated with the police decision to detain (Table 2.9). Young persons accused of indictable drug offences, mainly trafficking, were most likely to be detained (84 percent), followed by indictable charges against the person (76 percent) and administration of justice charges excluding probation breaches (74 percent). Hybrid property charges were least likely to precipitate pre-trial detention by police (26 percent).



**TABLE 2.9:
DETENTION BY POLICE AND THE COURT BY THE MOST SERIOUS CHARGE AT ARREST (MAJOR OFFENCE
CATEGORY)**

	Police detention		Court detention	
	% detained by police	N of cases	% detained by the court	N of cases
All offence categories	45.2%	1788	37.3%	805
Total indictable offences vs. the person	75.7%	107	41.3%	80
Robbery	75.5%	94	38.6%	70
Other charge type	76.9%	13	60.0%	10
Total indictable offences vs. property	55.9%	297	37.3%	161
Break and enter	48.5%	130	31.7%	60
Other charge type	61.7%	167	40.6%	101
Total indictable drug offences	84.4%	64	33.3%	54
Total hybrid offences vs. the person	37.4%	390	25.8%	151
Assault level 1	39.1%	197	26.3%	80
Other charge type	35.8%	193	25.4%	71
Total hybrid offences vs. property	26.4%	492	31.3%	131
Theft under \$5000	23.0%	283	35.4%	65
Other charge type	31.1%	209	27.3%	66
Other e.g., hybrid drugs, weapons, traffic	39.2%	125	40.0%	50
Breach of probation	46.3%	175	24.0%	81
Other offences vs. the administration of justice	73.2%	138	56.7%	97
Fail to attend court and fail to comply with an undertaking	70.8%	106	46.5%	71
Other charge type e.g., escape custody	81.3%	32	84.6%	26

The differences by charge type are not as marked at the court decision stage. Among those charged with offences against the person, 41 percent of indictable but only 26 percent of hybrid person cases were detained after a judicial interim release hearing. Among those charged with offences against the rights of property, there was less difference – 37 percent of indictable compared to 31 percent of hybrid cases involved detention. Breach of probation charges were much less likely than other charges against the administration of justice to receive detention (24 compared to 57 percent).

Thus, police were most likely to hold young persons charged with serious drug offences, followed by those accused of serious person offences and offences against the administration of justice such as failure to comply with an undertaking. The court detention decision showed a different pattern; drug charges were least likely of the indictable cases to result in court-ordered

detention, and failure to attend court or to comply with bail conditions as well as other justice-related offences such as escape custody involved detention in larger proportions than did indictable person charges. Probation breaches were the least likely to result in detention after a bail hearing.

2.5 Conditions of Release

This section presents the data on bail conditions imposed by the court. It is worth noting that 26 percent of the total sample received conditions from the court and an additional 13 percent received police-imposed conditions.²² That is, almost four out of ten persons (26 plus 13 percent of the study sample) were legally obliged to abide by conditions such as area restrictions and curfews.

Almost all court-imposed undertakings and recognizances (97 percent) contained conditions in addition to the obligation to attend court and “to keep the peace and be of good behaviour”. Interviews suggest that the information provided by police is critical to Crown recommendations regarding conditions. Release conditions may also be developed in consultation with defence. However, Crown and defence often lack the time to become acquainted with the accused’s situation other than through police reports. As will be discussed in Section 2.6, the police seem to have a degree of influence on the actual conditions imposed, at least in Halifax and Toronto.

Crowns said that there are both routine and fact-specific conditions. Examples of routine conditions are reside at a specific location, attend school, and have no contact with the victim and/or the co-accused. Other conditions depend on the charge or the behaviour of the youth, for example: no weapons, area restrictions and counselling (e.g., anger management, bullying, substance abuse, life skills). While one Crown said that she would request a curfew only if the incident occurred at night, some defence counsel were sceptical about the appropriateness of conditions such as curfews. “Many times kids are breached on a bail when there are conditions that should never have been on the bail order, conditions that had nothing to do with the crime.” In Toronto, defence counsel were critical of both curfews and house arrest. “A paternalistic attitude causes curfew conditions, which are insane and house arrests, which cause more problems within the family.” “Crowns began to ask for house arrest and then all of a sudden it becomes the norm in the courthouse culture”. House arrest “allows for the young person to be breached at every turn”.

There is some quantitative evidence on the relevance of bail conditions to the characteristics of the charge or the young person.²³ As might be expected from the Crown’s comments cited above about routine conditions, actual school enrolment and employment status had no relationship to the attend school/work condition. Youth who reportedly had substance abuse problems were twice as likely as those with no apparent problem to receive an abstention condition. Area restrictions were most likely to be placed on alleged drug offenders and least likely to be placed on those accused of indictable property and administration of justice charges. Youth accused of

²² These figures are only for the matters that brought the youth into the study sample – i.e., the “instant” charges. As is discussed in Section 6, many accused experienced subsequent stays in detention.

²³ Data not shown in table form. See also 6.2.



indictable person offences had twice the likelihood of receiving house arrest as did persons accused of other crimes.

Varma (2002) reported on the conditions that accompanied court release from detention in a large downtown Toronto youth court in 1997. She found that conditions to reside and to attend school were frequently imposed, and suggested that the imposition of these conditions is related to their potential for supervision, especially for younger persons. In this research there was no relationship between age and residence and curfew conditions.

2.5.1 Specific Conditions Imposed

As Table 2.10 shows, by far the most common condition is to stay at a specified residence (e.g., live with mother) or as directed by probation – the proportions were 69 to 94 percent depending on the location. A curfew was ordered in just over 50 percent of all cases, with a range of 43 to 71 percent. Almost 30 percent of downtown Toronto and Scarborough cases were ordered to remain at home at times when not attending school or working (house arrest). Over 90 percent of the youth dealt with by two Vancouver-area courts were required to report to probation on a regular basis; a routinized system of reporting to probation has long been available in British Columbia.

Well-established “courthouse culture” or existing practices probably account for many of the variations in the grounds by court location – depending on the court, the attend school/work condition went from 5 to 64 percent, and the no weapons condition was found from 1 to 48 percent of released cases. The magnitude of these differences suggests that they cannot be accounted for by differences in case characteristics. This finding is very similar to the finding regarding the stated grounds for detention discussed in 2.2 and shown in Table 2.3. That is, usual practices of the court contribute to the choice of specific grounds and conditions – rather more than does the behaviour of the young person.

TABLE 2.10:**RELEASE CONDITIONS IMPOSED BY THE YOUTH COURT, BY COURT LOCATION**

	Hal-Dart	Tor	Scar	Wpg	Edm	Van	Surrey	Total sample
	Percent of released youth having each condition							
Non-communication with victim	42.4%	20.9%	40.5%	20.2%	17.6%	27.9%	38.5%	27.5%
Non-communication with others	55.9%	35.8%	38.1%	49.0%	41.9%	36.5%	25.6%	41.6%
Report to police/other at specified times	10.2%	4.5%	0	10.0%	13.5%	93.0%	92.3%	31.0%
Area restriction	40.7%	53.7%	38.1%	27.3%	10.8%	48.8%	25.6%	35.0%
Attend school or work	5.1%	44.8%	64.3%	30.3%	25.7%	19.8%	20.5%	28.8%
Reside at a specified location	69.5%	94.0%	88.1%	90.0%	68.9%	89.5%	76.9%	83.3%
Abstain from alcohol, non-prescription drugs	30.5%	37.3%	4.8%	29.0%	21.6%	9.4%	15.4%	22.3%
No firearms or other weapons	10.2%	32.8%	47.6%	19.0%	1.4%	24.4%	30.8%	21.6%
Curfew	47.5%	43.3%	45.2%	71.0%	58.1%	47.7%	56.4%	54.2%
House arrest	11.9%	29.9%	28.6%	8.1%	5.4%	1.2%	0	11.2%
Motor vehicle restriction(s)	0	1.5%	14.3%	4.0%	0	24.7%	10.3%	7.7%
Counselling, anger management, etc.	0	25.4%	19.0%	4.0%	12.2%	7.1%	5.1%	9.9%
Total number of cases	59	67	42	99	74	85	39	465
Mean number of conditions per youth	3.2	4.3	4.4	4.0	2.9	4.4	4.1	3.9
	Anova: F=10.3 p<.001							

2.5.2 The Mean Number of Conditions

There were differences in the average number of conditions by court; cases from Halifax and Edmonton had significantly fewer conditions than in other courts (see last two rows of Table 2.10). The nature of the most serious current charge was related to the number of conditions. Youth accused of indictable offences against the person had an average of almost 5 conditions, whereas at the other extreme those charged with administration of justice offences had an average of 3.5 conditions or less. Having prior convictions was also significantly related to the number of conditions ordered by the youth court.²⁴

2.5.3 A Comparison of the Bail Conditions Imposed on Young Persons and Adults

Bala (1994) suggested that youth are frequently released on “relatively stringent restrictions on their behaviour that would not be imposed on adults”. There is evidence from Toronto that supports this speculation. A recent paper by Kellough and Wortley (2002) provides details of release conditions for Toronto adults dealt with in the mid-1990s. They summarized bail

²⁴ The data in the last two sentences are not shown in table form. The anova of the major offence category is: F=5.41, p<.001; for prior convictions (no or yes), it is F=15.73, p<.001.



conditions into three categories – supervisory, offence-related and life style-related. Employing the same criteria, we compared the conditions imposed by two Toronto youth courts with those imposed by two Toronto adult courts. Youth received more conditions in the offence and life style-related categories than did adults: 58 versus 38 percent (offence-related); and 81 versus 39 percent (life style-related).

Furthermore, the number of release conditions differed for adults and youth. In the two Toronto youth courts, the mean number of bail conditions was 4.3 and the median was 4. In the two adult courts in the same city, the mean number was 3.2 per person and the median was 3.

Therefore, the suppositions of critics of youth detention practices were supported by these Toronto data on bail releases in youth and adult courts – that is, young persons released on bail are dealt with more severely than are adults.

2.6 Police Recommendations

A recent Australian report (Barnford, 1999) has commented on the lack of information on the part played by police in the bail process. “Police decision-making is recognized as important at the judicial stage of the process, particularly in terms of recommendations to prosecutors, but that is not a well understood process.” This section tries to illuminate the process using data from Halifax and Toronto, where more information, including police recommendations to the Crown regarding bail, was collected.

2.6.1 Police Recommendations on Bail

In almost 60 percent of police-detained cases, the investigating officer suggested that the Crown *not* release the young person on consent. Table 2.11 shows what actually happened when officers did and did not recommend continued detention. When police *did not* recommend detention, two-thirds (68 percent) were released. When the investigating officer *did* recommend detention 54 percent were released. Therefore, police were slightly less successful in recommending pre-trial detention than they were when they were either silent on the subject or recommended release. This suggests that Crown attorneys are less likely to follow detention recommendations than they are release recommendations.

TABLE 2.11: POLICE DETENTION RECOMMENDATIONS AND ACTUAL DETENTION OUTCOMES, HALIFAX-DARTMOUTH AND TORONTO SUB-SAMPLES		
Actual detention outcome	Police did not recommend pre-trial detention	Police did recommend pre-trial detention
	Column percentages	
Detained by court	32.1	46.1
Released by court	67.9	53.9
Total percent	100.0%	100.0%
Total number	78	128
	Chi-square = 3.96 df=1 p<.05	

2.6.2 Police Release Condition Recommendations

Police made recommendations for specific conditions in 40 percent of cases in this sub-sample. The relationship between police recommendations and the actual conditions imposed on the young person is shown in Table 2.12. For the most part, the recommended conditions became part of the bail order. For almost every condition, the police recommendation to include the condition was followed in a large majority of cases. When the police did not recommend a specific condition, it was not often imposed; the exception was the residence condition, which as indicated previously is a routine condition. A condition to report was rarely recommended and rarely imposed.

These data indicate that Crowns rely on police comments for this aspect of bail and that the court relies on the Crown.

The second column of Table 2.12 (“% of conditions recommended by police”) shows the police preferences with regard to conditions. The conditions most popular with Halifax and Toronto police were area restrictions (51 percent) and curfews (54 percent). These conditions were actually imposed in the majority of cases, 79 percent and 62 percent, respectively.

We conclude that, while Crown attorneys (as well as the court) may not accept the police recommendation to detain an accused young person, they are more likely to agree to the specific conditions recommended by police. Because these data were limited to Halifax and the two Toronto courts, the generalizability of the findings is unknown.

Major bail release conditions	% of conditions recommended by police	Outcome of police recommendation	
		Did not recommend condition but condition imposed	Recommended and condition imposed
Non-communication with victim	31.7% (83)	19.5% (41)	68.4% (19)
Non-communication with others	41.0% (83)	13.3% (78)	70.8% (24)
Report to police/other at specified times	20.5% (83)	2.1% (48)	15.4% (13)
Area restriction	50.6% (83)	21.4% (28)	78.8% (33)
Attend school or work	33.7% (83)	29.7% (37)	66.7% (24)
Reside at a specified location	27.1% (83)	81.0% (42)	89.5% (19)
Abstain from alcohol, non-prescription drugs	24.1% (83)	10.4% (48)	84.6% (13)
No firearms or other weapons	26.5% (83)	23.4% (47)	78.6% (14)
Curfew	54.2% (83)	22.2% (27)	61.8% (34)
House arrest	10.8% (83)	19.6% (56)	60.0% (5)

Notes: The numbers in parentheses are the numbers on which the percentages are based. Other than the “report”, “reside” and “house arrest” conditions, the relationships in columns three and four are significant at the $p < .01$ level.



2.7 Bail Violation Charges

Bala (1994) likened charges of non-compliance with release conditions to “status offences”; that is, offences that are peculiar to the age group. For example, truancy was a status offence under the predecessor legislation to the *Young Offenders Act*.

2.7.1 Bail Violations at Entry into the Study Sample

Excluding Vancouver and Surrey,²⁵ 13 percent of young persons had a failure to attend court or a failure to comply with an undertaking among their instant charges.²⁶ The largest proportion, 21 percent, was found in Winnipeg. However, these proportions are misleading. Not all youth were “eligible” for a failure to comply with a bail condition charge (FTC) or a charge of failure to attend court (FTA) – only those who had outstanding charges were “eligible”. One-third of the sample fell into the eligible category. When the sample is restricted to those who had an FTC/FTA charge at arrest and were known to have outstanding charges, 40 percent had only the one charge (i.e., the FTC or FTA offence), and 60 percent had the FTC/FTA and other charges. In other words, of the group with an FTC/FTA charge at arrest, about 40 percent of youth were charged only with FTC/FTA and nothing else, while the majority were accused of other offences as well.²⁷

2.7.2 Bail Violations after Release by the Court

Almost 60 percent of accused youth who had judicial interim release hearings were released on bail, almost always with conditions. Among those released on bail, 40 percent were charged with fail to comply with a release condition.²⁸ The proportion of young persons charged varied by court location:²⁹

- 28 percent in Halifax-Dartmouth;
- 27 percent in Toronto and 18 percent in Scarborough;
- 57 percent in Winnipeg; and,
- 49 percent in Edmonton .

These differences by location are influenced by at least three factors – police (and probation in some communities) practices with regard to enforcing bail violations, the length of the court process (the longer the process, the greater the opportunity for violations to occur), and the number and type of conditions. For example, the conditions may not be placed on the national or

²⁵ Vancouver and Surrey were excluded because bail violations are normally dealt with as bail reviews.

²⁶ “Instant” offences are those that brought the case into the study sample.

²⁷ These findings should be viewed cautiously because of the coding and sampling conventions of this research as well as variations in court operations. In some courts, the FTC/FTA charges were dealt with independently of the charges to which they relate; in others, all charges merged and were disposed at the same hearing.

²⁸ Or with failure to attend court. Practices differed with regard to charging failure to attend court; some jurisdictions laid section 145(3) whereas others laid section 145(2). Section 145(3) is also used for failure to comply charges.

²⁹ Vancouver and Surrey are excluded because FTC charges are rarely laid.

local police information system in a timely manner. Both Winnipeg and Edmonton have police programs to verify compliance with curfews *and* have higher percentages of bail violators.

Therefore, substantial percentages of young persons released with conditions were charged with violating their conditions.

2.7.3 The Types of Conditions Violated

Curfew violations predominated, at 34 percent of the known bail charges (Table 2.13). About 18 percent of violations involved the various residence conditions. The non-substantive violation of “keep the peace and be of good behaviour” – laid in conjunction with a new substantive charge such as break and enter – was found in 9 percent of charges. None of the remainder of the conditions contributed more than five percent to the total number of violations.

TABLE 2.13: THE TYPES OF RELEASE CONDITIONS WHERE CHARGES LAID	
Condition violated:	%
Keep the peace and be of good behaviour	9.2
Non-communication with victim	1.7
Non-communication with others	6.9
Report to police/other at specified times	5.3
Area restriction	2.5
Attend school/work	2.7
Reside with parent or guardian	4.0
Reside where directed by youth worker/provincial director	11.2
Reside in group home	2.2
Stay in jurisdiction; report change of address	1.0
Abstain from alcohol, non-prescription drugs	4.7
No firearms or other weapons	0.7
Curfew	34.2
Attend program incl. intensive supervision, counselling, drug treatment	3.7
House arrest	2.5
No cell phone or pager	0.7
Other condition	6.7
Total percent	99.9%
Total number of conditions violated	403

Notes: The unit of count is the bail condition that resulted in a charge.

When we change the unit of analysis to the case, similar findings are evident. Almost one-third (32 percent) of youth who were released by the court with a curfew condition were charged with breaching that curfew. Thirteen percent of releasees with a reside condition were charged with violating that condition. Failure to attend court is also a “bail” violation since all accused are required to attend their court hearings whatever their form of police or court release. Roughly 7 percent of the sample who were released by the court were charged with FTA. Slightly more young persons, 13 percent, who were not detained by police failed to attend one or more court hearings and were charged as a result. Overall, about 10 percent of young persons were charged with failure to attend court.



2.8 Summary

The police act as the primary gatekeepers to the pre-trial detention process although the courts (for fail to appear charges) and probation personnel (for failure to report or abide by other conditions they supervise) also play a part. Overall, 45 percent of young persons were arrested and detained by the police for a bail hearing, with a range by court of 28 to 56 percent.³⁰ Another 13 percent were released by police but on conditions, most often not to communicate with victims or others and to avoid a specified area.

In section 515, the *Criminal Code of Canada* sets out three grounds for pre-trial detention, two of which are pertinent to youth cases – to ensure the attendance of the youth at court (primary ground) and to protect the public because of the likelihood that the person will re-offend if released (secondary ground). The use of primary grounds was most pronounced. Only Vancouver cases had more mentions of secondary than primary grounds in Crown files. The courts have interpreted primary grounds to include characteristics of the accused such as employment status, family relationships and permanence of living arrangements: what we have termed “socio-legal” characteristics of the young person. These characteristics address the extent to which the accused has “ties to the community” which are believed to reduce the risk of flight and increase the likelihood of court attendance when required.

A person detained by the police should have a bail hearing within 24 hours or as soon as possible thereafter. Nine out ten cases met that standard and another five percent had a hearing within two calendar days of their arrest. We speculate that some or all of the remaining five percent whose first hearings were recorded three to five days after arrest may actually have had an earlier hearing but it was not noted in the court or Crown file.

The majority of young persons were released at their bail hearings, with a range of 52 to 75 percent depending on the court. The most common form of release was an undertaking to appear except in Toronto where recognizances are typically used. The latter requires a surety, a friend or relative, willing to be responsible for the accused’s court attendance and often commit themselves financially. The “responsible person” provisions in the *Young Offenders Act*, similar in a sense to recognizance releases, were infrequently used (6 to 13 percent) and never used in the Edmonton and the Toronto-area courts.

At most judicial interim release (JIR) proceedings, it is up to the Crown to show why the young person should be detained. Reverse onus cases, where the accused has to show why she or he should be released, typically arise when the young person is already on bail and is charged with another offence, or when the youth has failed to attend court or has not complied with release conditions. Up to 60 percent of cases involved reverse onus, although there were large differences among the courts.

Legal counsel, either duty or retained counsel, were almost always present at JIR hearings.

³⁰ Excluding the anomalous downtown Vancouver youth court.

The length of detention stays is best described by the median number of days; the median is the midpoint of a distribution. In the sample overall, those who were not released until their case were held in custody for a median of three weeks. Among those who were not released, the longest stays occurred in Winnipeg (a median of 34 days) and the shortest in Surrey (a median of 6 days). Young persons who were released on bail had a median stay of one day.

As mentioned above, the Crown attorney can release the accused on consent. Data on consent releases were not available to this research. Other research in the Toronto courts, adult and youth, has reported that 60 percent or more of cases are released on consent.

With regard to the charges involved in detention processing, the police most often hold young persons accused of serious drug offences, indictable or serious offences against the person, and offences against the administration of justice. The courts most often detained youth accused of indictable person offences other than robbery and other offences against the administration of justice, including fail to attend court (FTA) and fail to comply with an undertaking (FTC) as well as escape custody. Least often detained by the court were breaches of probation and hybrid, or less serious, offences against the person.

The conditions of bail release vary greatly by court and are almost certainly dependent on existing practices in each location. For example, house arrest ranged from 0 percent in Surrey to almost 30 percent in the two Toronto youth courts; area restrictions ranged from 11 percent to 54 percent, depending on the court. The average number of release conditions also differed – Edmonton and Halifax cases had the fewest conditions and Toronto, Scarborough and Vancouver had the largest average number.

Researchers have often hypothesized that police recommendations play a large role in bail decisions. In Halifax and Toronto, where more detail on pre-trial detention was collected, the police suggested that 62 percent of the young persons be detained. Their recommendation was followed in just less than 50 percent of cases. Police recommendations on the release conditions were more successful: recommendations were followed in 60 to 80 percent of cases.

Bail violations occur with some frequency. Among youth who had outstanding charges at the time of their entry into the study sample, one-third had an FTC/FTA charge. Among the persons who were released at their bail hearings, about 40 percent were later charged with failure to comply. Winnipeg and Edmonton accused were charged most often, about 50 percent or more; the proportions were roughly half that size in the Halifax and the Toronto courts.

The curfew condition is most often violated. The several residence-related conditions were the second most frequent conditions resulting in charges.



3.0 Characteristics of Youth Detained by Police: What Factors Affect Police Decisions to Detain?

Past research has found that both socio-demographic characteristics of the accused and legal characteristics relating to the alleged crime and the criminal record of the accused affect police decisions to arrest and detain youth.³¹ Police also listen to the wishes of the victim – with regard to, for example, restrictions on victim-accused contact. In addition, observational studies have found that the “demeanour” of the young person as presented to the investigating officer influences police actions. Furthermore, some young persons are held for a bail hearing because, in effect, the police lack discretion to release – this is the case when there is a warrant for the youth’s arrest.

In addition to personal and case characteristics, policies and typical practices of police services are influential. In this research, in one community, 80 percent of young persons were detained by police (Table 3.1). This high detention rate suggests that the pre-trial detention of young persons is normative.³²

3.1 Demographic and Social Characteristics of the Young Person

Table 3.1³³ shows the social characteristics of police-detained youth in Halifax-Dartmouth, both Toronto courts, Winnipeg, Edmonton, Vancouver and Surrey³⁴ as well as the sample as a whole. Although every effort was made to obtain socio-demographic data on all cases, this proved impossible. Moreover, the “not knowns” are not randomly distributed. More information on social characteristics was available for youth who went further into the system so that, for example, almost no information was available for persons who had all charges terminated without a sentence. Most information was available for youth who were the subject of pre-disposition (now pre-sentence) reports and those whose probation and custody files were accessible.

3.1.1 Gender, Age and Race

In Halifax-Dartmouth, but in no other court, males were detained in larger proportions than females, 30 percent compared to 15 percent. There was a tendency for larger percentages of females to be detained in the two Vancouver-area courts.

³¹ See, for example, Carrington et al. (1988).

³² The reasons for the police detention rate in this community are not known but could include: unfamiliarity with police arrest powers in the *Criminal Code*; a desire to avoid the accountability for the detain-release decision by passing it on to the court; or a desire to frighten or penalize young persons by placing them, temporarily at least, behind bars.

³³ Table 3.1 and subsequent tables with the same format are to be interpreted as follows. The number in brackets is the number upon which the percentage is based. For example, in Halifax, 30.1 percent of the 279 males in the sample were detained at arrest; 15.1 percent of the 53 females were detained by the police.

³⁴ In this analysis, Vancouver and Surrey were not combined as were the downtown Toronto and Scarborough courts because of the very large differences in police detention rates in the two British Columbia cities.

TABLE 3.1: DEMOGRAPHIC AND SOCIAL CHARACTERISTICS OF YOUNG PERSONS DETAINED BY POLICE AT APPREHENSION, BY COURT LOCATION							
	Halifax-Dartmouth	Toronto (2 courts)	Winnipeg	Edmonton	Vancouver	Surrey	Total sample
% detained by police at apprehension							
All cases^b	27.7% (332)	53.1% (392)	49.2% (360)	37.6% (396)	80.4% (163)	35.6% (146)	45.2% (1789)
Gender							
Male	30.1% (279)	54.1% (320)	50.4% (276)	36.6% (303)	78.0% (123)	34.2% (117)	45.3% (1418)
Female	15.1% (53)	48.6% (72)	45.2% (84)	40.9% (93)	87.5% (40)	41.4% (29)	44.7% (371)
Age							
12-13 years	10.5% (38)	41.7% (48)	46.7% (45)	27.9% (43)	90.0% (20)	33.3% (15)	38.3% (209)
14-15 years	26.5% (117)	50.4% (131)	49.3% (140)	33.1% (148)	85.7% (42)	41.5% (65)	43.2% (643)
16-17 years	33.7% (169)	57.3% (211)	50.6% (160)	42.6% (202)	79.3% (92)	31.3% (64)	48.8% (898)
Race							
White	30.8% (208)	53.0% (185)	38.7% (119)	38.9% (126)	74.7% (75)	38.5% (104)	43.2% (817)
Aboriginal	50.0% (2)	75.0% (8)	57.9% (190)	48.1% (108)	92.3% (39)	44.4% (9)	58.7% (356)
Black	26.9% (67)	61.0% (118)	63.6% (11)	28.6% (7)	100.0% (4)	0% (3)	49.0% (210)
Other	20.0% (15)	39.1% (69)	38.5% (13)	59.1% (22)	82.1% (39)	22.7% (22)	47.2% (180)
Not known	15.0% (40)	41.7% (12)	33.3% (27)	24.8% (133)	50.0% (6)	37.5% (8)	26.1% (226)
Living arrangements							
With 1-2 parents or with parents but N not known	28.0% (149)	46.2% (238)	45.5% (209)	45.1% (122)	81.4% (79)	30.1% (83)	43.1% (929)
With other relatives/guardian	57.1% (14)	89.5% (19)	62.5% (24)	22.2% (9)	71.4% (7)	0% (1)	63.5% (74)
In foster/group home	13.0% (23)	70.4% (27)	58.7% (63)	35.2% (54)	90.3% (31)	45.0% (20)	52.8% (218)
With friends, independently	50.0% (12)	75.0% (4)	0% (5)	50.0% (2)	100.0% (2)	50.0% (2)	48.1% (27)
No stable residence, nfa	62.5% (16)	90.9% (44)	91.3% (23)	46.9% (32)	76.9% (13)	57.1% (7)	74.1% (135)
Not known	8.6% (58)	23.5% (51)	18.5% (27)	30.6% (118)	72.5% (40)	39.4% (33)	30.6% (379)
Active in school or work?							
No	38.3% (94)	82.0% (89)	59.1% (93)	50.0% (96)	79.6% (54)	39.5% (43)	58.0% (469)
Yes	28.4% (162)	45.8% (238)	46.7% (229)	39.4% (104)	83.6% (73)	29.7% (64)	44.0% (870)
Not known	13.2% (76)	40.0% (65)	39.5% (38)	30.5% (196)	75.0% (36)	41.0% (39)	34.2% (450)
Gang association							
No known association	na	na	41.3% (150)	na	na	na	45.2% (759)
Suspected association			64.7% (153)				63.9% (219)
Not known			28.1% (57)				40.2% (811)

Notes:

The numbers in brackets are the numbers on which the percentages are based.

na The proportion of “not knowns” is very high.

^b The “all cases” percentages and numbers differ from those in Table 2.1 because the small number of cases where the youth was already in detention or custody have been removed for this analysis.

Age, while clearly a demographic variable, differs from gender and race in that older youth are regarded as more accountable and responsible for their actions than younger persons. Age



therefore combines both social and legal elements. In three of the six locations in Table 3.1, the likelihood of pre-trial detention increased with age of the accused.

Race was operationalized as white, Aboriginal Canadian, black or African Canadian and other races such as south or east Asian. In one-third of Edmonton cases, race was not specified. Overall, Aboriginal Canadians were detained in larger proportions than whites, and this was especially noticeable in the western Canadian cities other than Surrey. In Toronto, young persons of “other” race were detained least often (39 percent), followed by whites (53 percent), blacks (61 percent) and Aboriginal Canadians (75 percent³⁵).

3.1.2 Social Variables

While this report distinguishes between social and legal variables, bail decisions – by virtue of the case law on the indicators of primary grounds – are more blurred than the distinction would suggest. For adults, the existence of community ties is an important indicator of likelihood of court attendance as required. Roots in the community are operationalized by such factors as employment status, family ties and substance abuse. We term these factors “socio-legal”.

Living arrangements of young persons may be associated with police decisions for two quite different reasons. First, those who live in a family setting may be perceived as more likely to attend court because they have closer supervision. Second, police may assume that youth not living with their families are in need of child protection services – that is, detention may be seen as necessary because of the lack of a suitable residence. The data in Table 3.1 show that detention rates for different living situations tend to vary by location:

- Persons living with one or two parents³⁶ are less likely to be detained than those living with other relatives or a guardian.
- In three locations, a larger percentage of residents of foster or group homes were detained, when compared to those in familial settings. In Halifax and Edmonton, they were detained in smaller proportions.
- Young persons who have no fixed address were by far the most likely to be held for a bail hearing in four locations (the exceptions were Edmonton and Vancouver).
- Overall, persons living with friends or independently were detained in the same proportion as those living with their families.

We earlier speculated that the activity status of young persons might be associated with bail decision-making. This is because youth who neither attend school nor work may be seen as candidates for detention on the grounds that “idle hands beget the devil’s work” and/or that they are insufficiently “tied” to the community. The following quotes from two police reports prepared for judicial interim release proceedings seem to support this speculation.

He is neither attending school nor working and as a result seems to have plenty of spare time on his hands and obviously no one to ensure that he is under control.

³⁵ Six out of eight Aboriginal cases.

³⁶ There was no discernible difference in detention rates between one and two parent homes.

He advises that he intends on enrolling at high school this fall. He is unemployed and has no source of income. ... If the courts see fit to release this youth it is suggested that he be entered into some type of youth program to help occupy his time.

In every court but downtown Vancouver, inactive youth were detained in higher proportions than persons who were going to school or working.

In Winnipeg, police reports contain an item on the officer's assessment of the young person's involvement in a gang. Mention of gang associations was infrequent in the other sites and is not reported. In Winnipeg, 65 percent of those with suspected gang involvement were detained by police compared to 41 percent of those with no known association.

3.2 Legal Characteristics of the Case

3.2.1 Arrest Warrants

Warrants for the arrest of young persons are typically issued when they have breached a court order by failing to attend court or violating terms of probation, not because of a new substantive offence. Data on warrants were overlooked during most of the data collection process. Later in the process it was realized that this variable is an important feature of detention processing. For example, breaches of probation orders in the Vancouver-area courts frequently seem to result in a bench warrant.³⁷

In some locations, the system has a mechanism that gives the youth leeway when a court order is breached (usually the "attend court" condition). Although the terminology differs by court, the effect is the same: a warrant is issued but not "activated" immediately. This gives time for the defence counsel to locate the young person or for the young person to remember to contact the court about his/her missed court date.

A Halifax Crown attorney explained:

Occasionally if we have an excuse [from the youth], the judge will issue a warrant and hold it. They hold the warrant for two weeks and then send out the warrant. If no excuse, then a warrant is issued.

In Toronto a defence counsel said:

If you can impress upon the court that you know how to get hold of the youth, you ask for three to ten days for a return date. They are usually prepared to do that and issue a bench warrant with discretion. If the kid does not return then there is a straight bench warrant issued. Sometimes duty counsel will be contacted by the youth and the kid will appear the next day and the bench warrant is rescinded. ... Bench warrants with discretion have been done [in Toronto] from a common law

³⁷ This information was obtained from interviews and file reviews done in 2003 for another project.



point for the last 20 years.

Procedures with the same effect existed in the Halifax-Dartmouth and Edmonton youth courts.

When a bench warrant was issued, almost all young persons were detained by police (Table 3.2). The small number that was not detained may have been the subjects of the flexibility described above.

3.2.2 Presence and Characteristics of Prior Record

Prior record is defined as prior findings of guilt (or convictions). The presence of a record was related to being detained everywhere but downtown Vancouver. There was a direct relationship between *the number* of past convictions and the likelihood of being held by the police for a judicial interim release. That is, the larger the number of convictions, the greater the likelihood that the youth was detained. The relationship was especially pronounced in Halifax and Toronto.

Because interviews and case law suggested that the history of the youth with regard to breaches of court orders affected detention processing, the total number of administration of justice offences was calculated. This analysis is confined to young persons with prior findings of guilt, so that the “none’s” in Table 3.2 are to be interpreted as cases that had previous convictions but none of this type.

The total number of administration of justice offences was associated with being detained by police in Halifax-Dartmouth, Winnipeg and the total sample.³⁸

Legal status of the youth was related to detention in several jurisdictions. The current status of the young person was prioritized as follows: no or only minimal current involvement (e.g., Alternative Measures), awaiting trial on outstanding charges,³⁹ on probation, and in custody, detention or unlawfully at large. Typically, persons with no current involvement were much less likely to be held than were others. In the total sample, those with no current involvement with the justice system were half as likely as others – those with outstanding charges or currently on probation – to be detained by police.

Some interview respondents believed that previous custodial sentences were influential in detaining young persons. This was the case in all locations other than the two British Columbia courts. The relationship was especially notable in Toronto, Winnipeg and downtown Vancouver where 70 percent or more of those with past custodial sentences were detained by police.

³⁸ Similar findings were apparent when the number of prior offences was collapsed into none versus some.

³⁹ An attempt was made to differentiate outstanding charges with and without conditions of release. Because of the need to go to other files to find out this information, the information was difficult to find and the data are unreliable.

TABLE 3.2:**LEGAL CHARACTERISTICS OF YOUNG PERSONS DETAINED BY POLICE AT APPREHENSION, BY COURT LOCATION**

	Halifax-Dartmouth	Toronto (2 courts)	Winnipeg	Edmonton	Vancouver	Surrey	Total sample
	% detained by police at apprehension						
All cases ^b	27.7% (332)	53.1% (392)	49.2% (360)	37.6% (396)	80.4% (163)	35.6% (146)	45.2% (1789)
Warrant for arrest?							
No	25.4% (319)	49.3% (361)	47.6% (347)	34.0% (373)	80.1% (161)	35.0% (93)	42.7% (1702)
Yes	84.6% (13)	96.9% (32)	100.0% (13)	100.0% (23)	100.0% (2)	66.7% (3)	95.4% (87)
	Prior record variables						
Any prior convictions?							
No	19.9% (151)	36.4% (198)	39.9% (153)	28.1% (114)	77.8% (63)	25.0% (68)	34.9% (747)
Yes	37.0% (162)	73.3% (180)	58.5% (195)	43.5% (232)	81.3% (96)	42.9% (70)	55.1% (935)
Number of prior convictions							
None	19.2% (156)	37.1% (202)	39.7% (156)	28.8% (118)	77.3% (66)	24.6% (69)	35.1% (767)
1 or 2	30.1% (73)	72.1% (61)	39.0% (59)	44.7% (76)	80.0% (30)	37.9% (29)	48.2% (328)
3 – 5	38.2% (34)	66.7% (39)	60.5% (43)	37.3% (59)	72.7% (22)	50.0% (18)	52.1% (215)
6 – 10	48.3% (29)	79.2% (48)	68.4% (57)	40.4% (52)	88.9% (18)	50.0% (10)	62.1% (214)
11 or more	57.9% (19)	80.0% (25)	80.0% (25)	52.8% (36)	90.5% (21)	50.0% (10)	69.1% (136)
Number of prior bail violations/fail to attend court^c							
None	31.6% (114)	71.7% (92)	43.1% (102)	39.4% (127)	80.5% (82)	39.2% (51)	49.5% (568)
1	57.7% (26)	75.0% (48)	63.5% (52)	50.9% (53)	87.5% (8)	61.5% (13)	63.3% (199)
2 or more	40.9% (22)	75.6% (41)	88.1% (42)	46.2% (52)	83.3% (6)	33.3% (6)	63.7% (168)
Number of prior breaches of probation^c							
None	33.0% (109)	70.3% (145)	58.4% (149)	44.6% (139)	77.6% (49)	40.0% (18)	53.9% (636)
1	41.4% (29)	88.9% (27)	59.4% (32)	46.4% (56)	73.7% (19)	58.3% (12)	58.3% (175)
2 or more	50.0% (24)	75.0% (8)	57.1% (14)	35.1% (37)	92.9% (28)	38.5% (13)	56.5% (124)
Total number of prior offences against the administration of justice^c							
None	29.2% (89)	70.1% (87)	44.8% (87)	41.9% (54)	77.6% (49)	35.9% (39)	48.9% (444)
1	48.1% (27)	72.5% (40)	61.1% (54)	42.0% (50)	73.3% (15)	66.7% (12)	58.1% (198)
2 or more	45.7% (46)	79.2% (53)	77.8% (54)	46.1% (89)	90.6% (32)	42.1% (19)	62.5% (293)
Legal status at arrest							
No current or minor involvement	16.1% (161)	24.3% (169)	31.0% (129)	21.1% (113)	75.0% (64)	25.0% (68)	27.8% (704)
Outstanding charges	38.3% (47)	89.1% (64)	58.4% (77)	51.1% (92)	70.6% (17)	21.4% (14)	58.5% (311)
On probation	45.6% (103)	72.5% (131)	62.2% (135)	44.4% (135)	86.1% (72)	51.9% (54)	59.7% (630)
In custody/UAL	0	84.6% (13)	83.3% (6)	55.6% (9)	0	0% (1)	72.4% (29)



**TABLE 3.2: (SUITE)
LEGAL CHARACTERISTICS OF YOUNG PERSONS DETAINED BY POLICE AT APPREHENSION, BY COURT LOCATION**

	Halifax-Dartmouth	Toronto (2 courts)	Winnipeg	Edmonton	Vancouver	Surrey	Total sample
% detained by police at apprehension							
Most serious prior sentence^{cd}							
Discharge, fine, restitution	20.0% (10)	60.0% (5)	25.0% (8)	40.7% (27)	0	0% (1)	35.3% (51)
Probation	32.9% (76)	69.0% (58)	44.3% (79)	37.8% (111)	81.6% (38)	40.0% (45)	46.9% (407)
Custody	47.8% (69)	75.9% (112)	72.4% (98)	51.2% (86)	84.9% (53)	52.2% (23)	65.8% (441)
Current charge variables							
Outstanding charges at arrest							
None	21.9% (210)	38.7% (238)	41.9% (217)	30.9% (181)	79.3% (87)	30.4% (79)	37.4% (1012)
1 or 2	37.7% (61)	83.1% (77)	56.7% (67)	53.2% (94)	71.4% (28)	37.0% (27)	57.9% (354)
3 or more	56.0% (25)	92.7% (41)	75.0% (40)	50.0% (36)	87.5% (8)	33.3% (6)	69.9% (156)
Not known	25.0% (36)	38.9% (36)	50.0% (36)	29.4% (85)	87.5% (40)	47.1% (34)	43.8% (267)
Number of charges at arrest							
1 charge	15.1% (159)	41.2% (182)	42.3% (208)	28.0% (236)	76.0% (96)	32.5% (80)	36.6% (961)
2 charges	25.5% (98)	52.1% (117)	55.6% (72)	42.7% (96)	85.2% (54)	32.4% (37)	47.5% (474)
3 or more charges	57.3% (75)	77.4% (93)	61.3% (80)	65.6% (64)	92.3% (113)	48.3% (29)	65.5% (354)
Most serious charge type at arrest							
Indictable person charge	64.7% (17)	81.1% (37)	77.8% (27)	68.8% (16)	100.0% (7)	33.3% (3)	75.7% (107)
Indictable property charge	56.7% (60)	42.6% (68)	52.2% (69)	66.7% (48)	89.3% (28)	46.2% (26)	56.2 (299)
Indictable drugs	60.0% (10)	87.0% (23)	50.0% (1)	86.7% (15)	100.0% (12)	100.0% (1)	84.1% (63)
Hybrid person charge	20.7% (82)	37.3% (110)	41.2% (68)	29.8% (57)	96.4% (28)	34.1% (44)	37.3% (389)
Hybrid property charge	13.1% (122)	46.9% (64)	37.3% (83)	15.3% (137)	52.6% (38)	25.0% (48)	26.4% (493)
Other charges, e.g., hybrid drugs, weapons, traffic	11.8% (17)	53.3% (45)	41.2% (17)	15.4% (26)	81.8% (11)	33.3% (9)	39.2% (125)
Probation breach	17.6% (17)	47.4% (19)	45.0% (40)	28.0% (50)	79.5% (39)	60.0% (10)	46.3% (175)
Other offences against the administration of justice	42.9% (7)	96.2% (26)	64.8% (54)	78.7% (47)	0	25.0% (4)	73.2% (138)
Any current fail to comply with an undertaking/fail to attend court or fingerprinting at arrest?							
No	25.6% (305)	47.4% (350)	44.0% (282)	31.4% (341)	80.4% (163)	35.7% (143)	41.4% (1586)
Yes	51.9% (27)	100.0% (43)	69.2% (78)	78.2% (55)	0	66.7% (3)	74.9% (203)
Any current car theft?							
No	25.8% (310)	53.0% (347)	49.7% (312)	36.3% (361)	77.2% (136)	33.6% (128)	43.8% (1594)
Yes	54.5% (22)	53.3% (45)	45.8% (48)	51.4% (35)	96.3% (27)	50.0% (18)	56.9% (195)
Any current shoplifting?							
No	31.9% (276)	53.9% (375)	50.9% (338)	39.4% (348)	84.9% (152)	39.7% (121)	48.2% (1610)
Yes	7.1% (56)	35.3% (17)	22.7% (22)	25.0% (48)	18.2% (11)	16.0% (25)	18.4% (179)

Notes: The numbers in brackets are the numbers on which the percentages are based.

^{na} The proportion of “not knowns” is very high.

^b The “all cases” percentages and numbers differ from those in Table 2.1 because the small number of cases where the youth was already in detention or custody have been removed for this analysis.

^c This variable includes only those who had prior convictions.

3.2.3 Current Charges

Under certain circumstances, the existence of outstanding charges can trigger a reverse onus situation. The presence and number of outstanding charges is strongly associated with police detention, except in the two Vancouver-area courts.

The number of charges laid against the youth at the time of the arrest on the “instant” offence was related to detention in all courts other than in downtown Vancouver and Surrey.

The most serious charge at the time of arrest on the “instant” offence(s) was associated with police detention. In Toronto and Winnipeg, persons suspected of indictable person charges were more likely to be held than indictable property offenders. Youth charged with indictable drug offences were detained in high proportions in Toronto, Edmonton, Vancouver and Surrey. Although not invariably,⁴⁰ a smaller percentage of those accused of hybrid person and property offences were held by police, when compared to their counterparts charged with indictable person and property offences. Variations by court in police detention were particularly noticeable for youth accused of hybrid offences against property: the proportion detained ranged from 13 percent in Halifax-Dartmouth to 47 percent in downtown Toronto. Excluding Vancouver and Surrey, probation breaches were less likely to be detained than were cases that allegedly failed to attend court or failed to abide by bail conditions. Overall, these other offences against the administration of justice resulted in pre-trial detention by police in the same percentages as indictable offences against the person, 73 and 76 percent, respectively (see the last column of Table 3.2).

The presence at arrest of charges of fail to comply with an undertaking or fail to attend court or for fingerprinting was also determined. This variable is different from the “most serious charge type” discussed in the last paragraph: it is calculated by looking at *all* charges at initial arrest to find out whether an FTC or FTA charge had been laid. Note that if the person had multiple charges, some substantive and others justice-related,⁴¹ the most serious charge would be one of the substantive offences. Having such a charge substantially increased the likelihood of being detained by police. In Toronto, all youth with these charges were held for a bail hearing.⁴²

3.3 Multivariate Analysis of Factors Influencing Police Detention at Arrest

Multivariate analysis permits conclusions on the effects of each variable in the model while simultaneously controlling for the effects of all other variables. The bivariate analyses in the two preceding sections do not allow us to determine what factors account for police detention at arrest. Our objective is to determine an appropriate combination of predictor or independent variables to help explain the variance in police detention practices.

⁴⁰ For example, in Toronto, the hybrid property and indictable property accused were detained in about the same proportions.

⁴¹ A substantive charge is defined as all offences other than those involving the administration of justice.

⁴² A police officer, in the course of arguing in favour of continued detention, wrote that the youth “has been given an opportunity by the courts to take control of his life and has chosen to tell the courts to go to hell on more than one occasion (FAIL TO APPEAR CHARGES)”. The emphasis is in the original.



3.3.1 Logistic Regression

Logistic regression is appropriate when the dependent, or predicted, variable has two categories. In the following analysis of police detention at arrest (held by police versus released), logistic regression models the natural logarithm of the odds of being in the category of interest as a linear function of the independent variables (details of the regression results are in Tables A.1 to A.8 in the Appendix to this report). The findings are summarized in Table 3.3.

3.3.2 Operationalizing the Independent Variables

Because of the large variations in findings by court location and (secondarily) in the type of data available, each location has a slightly different model. In addition, the independent variables are operationalized in different ways. “Seriousness or type of current charges” is variously operationalized, including the most serious charge at arrest (see Section 2.4), whether there were indictable offences at arrest or whether the accused was charged with shoplifting or auto theft. Prior record was also operationalized differently depending on the court; in one case it was simply whether the accused had a prior record, in another it was the number of previous convictions, and for other locations, it was a composite variable based on the score generated by a factor analysis of the prior record variables.⁴³

3.3.3 The Influence of Social and Socio-legal Characteristics on Police Detention

The age of the accused affected police detention decisions in Halifax and Vancouver but in opposite directions. In the former city, younger persons were less likely to be detained whereas in the latter, younger persons were more likely to be held by police, regardless of their other characteristics. The Vancouver finding suggests that child welfare considerations may be a factor in police detention. The race of the young person was associated with police decision-making in Toronto; when other known factors were controlled, black youth were disproportionately detained. Neither age nor race was significant predictors of detention in the total sample. Living with a parent reduced the likelihood of detention in Toronto and Winnipeg and in the sample overall.

In summary, the variables that predicted police detention tended to be legal factors such as the seriousness of the current charges, the number of current charges and the prior record of the young person.

3.3.4 The Influence of Legal Characteristics on Police Detention

Legal factors associated with the young person had a greater likelihood of influencing police decisions than did demographic or social characteristics of the young person.

The seriousness or type of current charge was most often associated with pre-trial detention, even when all other factors were controlled. This factor was statistically significant in five of the six court locations, Winnipeg being the exception. Even in Vancouver, where 80 percent of the sample were detained, there was a significant relationship between hybrid property charges and

⁴³ For a more detailed discussion of the construction of the composite prior record variable, see the Appendix.

police detention decisions: those accused of these less serious property offences were detained in lower proportions than were others. The same variable was also significant in Surrey. In Toronto, the sole type of charge variable that affected detention was whether the current offences involved shoplifting – fewer alleged shoplifters were held compared to other offence types. In Halifax, Edmonton and the total sample, having an indictable offence increased the likelihood of being detained.

In four locations, the number of charges laid at apprehension affected decisions. The Vancouver-area courts showed no relationship between this number and police detention.

Prior record was significant in two courts, even though at the bivariate level the prior record of the accused was significantly related to detention in five courts. In Toronto, the greater the past involvement, the more likely the young person would be detained. In Winnipeg, larger numbers of prior convictions and having a “bad” bail history increased the probability of detention. Similar, but not identical to prior record, is the variable “legal involvement at arrest”. In Edmonton those who had no current involvement were detained in significantly lower proportions than were those who had outstanding charges or were on probation. Probationers were detained more often in Surrey than were those with other legal statuses. Thus, indicators of prior convictions were significantly related to police detention in all courts but Halifax-Dartmouth and Vancouver.

As discussed in the last section, information on bench warrants was not routinely captured except in Halifax and Toronto, where (as one would expect) having a warrant significantly contributed to the detention decision. A bail violation among the charges at arrest affected police detention decisions in Edmonton and in the total sample.

In contrast to the bivariate findings in Table 3.2, the number of outstanding charges was significantly related to police detention only in Toronto and the sample as a whole.



TABLE 3.3:
SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL CHARACTERISTICS AND POLICE DETENTION,
CONTROLLING FOR ALL FACTORS SIMULTANEOUSLY, BY COURT LOCATION

	Hal-Dart	Tor & Scar	Wpg	Edm	Van	Surrey	Total sample
<i>Non-legal (social) factors</i>							
Being female							
Age	*				*		
Race (black or Aboriginal)		**		na			
<i>Socio-legal factors</i>							
Living outside family setting		***	**				***
<i>Legal factors</i>							
Seriousness or type of current charges	***	*		***	***	*	***
Number of current charges	***	***	*	**			***
Prior convictions		***	**				***
Bail history or prior custody sentence			***				
Currently involved with youth justice system (on probation etc.)				***		*	
Current bail violation							***
Warrant at arrest	**	*			na	na	***
Presence or number of outstanding charges		***		na			***
Estimate of variance explained by each model (Nagelkerke r ²)	.48	.52	.25	.41	.33	.16	.33

Notes:

*** p<.001, **p<.01, *p<.05. If the cell is blank, then the factor was not statistically associated with the decision. na = not applicable. The variable was not included in the model because of missing data.

All but one model in this analysis was statistically significant at the p<.001 level. In Surrey, the model was significant at the p<.05 level. (See Tables A.1 to A.8 in the Appendix.) The statistic “Nagelkerke r²” in the bottom row of Table 3.3 shows that the amount of variance explained by each model ranged from .16 (16 percent) to .52 (52 percent). The values of the r-squared statistic are more than respectable for Halifax-Dartmouth (.48), Toronto (.52) and Edmonton (.41). The explained variances in Winnipeg and particularly in Surrey are lower than the other courts.

Even though legal factors were thoroughly covered in the regression models, as well as social characteristics of the accused to a lesser extent, they did not explain, or predict, the outcomes in all courts. We must conclude that there are probably other factors affecting police decision-making that were not available to this research.

One possibility is that the operationalization of the independent variables in the regression models was faulty in some way, although this is not likely. A second possibility is that missing data affected our findings. Finally, it is possible that organizational or other environmental characteristics, not capturable in this type of research, contributed to detention decisions. The demeanour of the young person at apprehension, police knowledge of the young person, the area where he or she was apprehended, and the customary practices of police may be among the environmental factors affecting this decision.

3.4 Factors Associated with the Form of Police Release and Police Release Conditions

3.4.1 Type of Offence

Table 3.4 shows the relationships between the form in which young persons were released by police and the nature of the most serious offence at arrest. The major offence categories are ordered in rough order of seriousness. It is immediately apparent that there are strong relationships between the most serious charge and the type of police release. For example:

- Young persons accused of indictable offences against the person are very much more likely to be released on a police undertaking (71 percent) than are other young persons. The next highest usage of undertakings involved hybrid offences against the person (51 percent).
- Persons alleged to have committed an indictable offence against property were also above average in the use of police undertakings with conditions (43 percent).
- The above percentages can be compared with hybrid property and other (“victimless”) offences, where fewer than 15 percent of the sample were released on a police undertaking. One-half of these young persons were released at the scene of the alleged offence with an appearance notice.
- In the majority of cases where administration of justice was the most serious charge, the young person was released on a summons.

Therefore, the form of police release was closely associated with the seriousness of the alleged offence.

TABLE 3.4: THE FORM OF RELEASE BY POLICE AND THE MOST SERIOUS CHARGE AT ARREST (MAJOR OFFENCE CATEGORY)								
	Indictable person	Indictable property	Indictable drugs	Hybrid person	Hybrid property	Other offences	Administration of justice	Total sample
	Column percentages							
Released by police:								
Appearance notice	16.7	11.5	11.1	20.9	50.7	49.3	12.4	31.7
Summons	4.2	10.7	0	17.4	20.8	12.7	61.1	22.3
Promise to appear	8.3	34.4	55.6	8.7	15.4	22.5	22.1	17.9
Recognizance	0	0.8	0	2.2	2.4	1.4	0.9	1.8
Police undertaking	70.8	42.5	33.3	50.9	10.7	14.1	3.5	26.4
Total percent	100.1%	99.9%	100.1%	100.1%	100.0%	100.0%	100.0%	100.1%
Total number of cases	24	122	9	230	337	71	113	906
	Chi-square=365.13 df=24 p<.001							

3.4.2 Factors Associated with Police Release Conditions

In Section 2, we reported that 13 percent of the total sample were released on a police undertaking. The most common conditions were non-communication with a specified person, a restriction on the places where the youth could go (area restriction), and a requirement to notify the police if the youth moved or changed schools or employment. Using logistic regression, the



factors affecting each major release conditions were explored. Table 3.5 shows that few factors were associated with the conditions. Being black or of Aboriginal background was associated with the requirement to notify police of changes in address etc. and with the area restriction condition when other factors were controlled. Prior record only influenced the prohibition against weapons. Having a current offence against the person was strongly related to no-contact conditions – the accused was not supposed to contact the victim or a co-accused. None of the available factors explained the requirement to report to police or probation. Having a current indictable offence was the sole legal factor associated with the prohibition against alcohol and non-prescription drugs. The socio-legal factor, alleged substance abuse, was not associated with the “no alcohol/no drugs” condition.⁴⁴

TABLE 3.5: SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL CHARACTERISTICS AND POLICE RELEASE CONDITIONS, CONTROLLING FOR ALL FACTORS SIMULTANEOUSLY						
	Notify police	Non- comm.	Area rest.	No weapons	Report	No alcohol/ drugs
% of cases with each condition	49%	75%	54%	4%	14%	16%
<i>Non-legal (social) factors</i>						
Being female						
Age – 15 years or more						
Race (black or Aboriginal)	*		*			
<i>Socio-legal factors</i>						
Living outside family setting						
Alleged substance abuser						
<i>Legal factors</i>						
Presence or length of prior record				*		
Person charge at arrest		***				
Current charge indictable						**
Estimate of variance explained by each model (Nagelkerke r ²)	.07	.20	.07	.15	.10	.17

Notes:

*** p<.001, **p<.01, *p<.05. If the cell is blank, then the factor was not statistically associated with the decision.

The estimates of the variance explained by each model, in the bottom row of Table 3.5, are very low, indicating that factors other than case characteristics explain the selection of release conditions. Habitual or idiosyncratic practices of police in each community probably account for the selection of conditions to impose on young persons released on a police undertaking.

3.5 Summary

Two-way and multivariate analyses of police detention decisions were undertaken for the sample as a whole and for each court individually. Several social characteristics of the persons apprehended by police were related to police detention in the two-way tables, but were omitted from the multivariate analysis because of the large number of missing values. Of the social and

⁴⁴ In this analysis, the not knowns were assumed to be not abusers.

socio-legal factors, only sex, age, race and living arrangements were routinely entered into the logistic regressions.

Age affected police decisions in two courts but in opposite directions – older youth were more likely to be held in Halifax, whereas younger persons were held in downtown Vancouver. Race, being black or Aboriginal, was positively associated with police detention in Toronto. Those living with parents or other family were significantly less likely to be detained than were those in less conventional situations.

With regard to legal factors, several were significantly associated with detention by police although the type varied from court to court.

- In Halifax-Dartmouth, more serious current charges, larger numbers of current charges, and the existence of a warrant increased the likelihood of police detention. Older youth were also more likely to be held by police.
- In Toronto and Scarborough (combined), more serious current charges, larger numbers of current charges, the length and seriousness of the prior record, the existence of a warrant, and having outstanding charges all raised the probability of police detention. Race – being black – and living in unconventional arrangements independently influenced the decision when all other variables were controlled.
- Police detention in Winnipeg was affected by the number of current charges, the length and seriousness of the prior record, the bail history/prior custody experience of the youth, and by living arrangements.
- In Edmonton, more serious current charges, larger numbers of current charges, having a bail violation charge at arrest, and having some current legal involvement increased the likelihood of pre-trial detention.
- In Vancouver, where eight out of ten cases were detained, those with more serious charges and younger persons had a greater likelihood of being held by police.
- In Surrey, only serious current charges and having some current legal involvement influenced the detention decision.
- In the total sample, more serious current charges, more current charges, more serious or numerous prior convictions, having a current bail violation, having an arrest warrant, more numerous outstanding charges, and living arrangements increased the likelihood of being detained.

Thus, in four of the six courts, variables related to the accused's prior record had no influence whereas in all six locations, at least one characteristic of the current charges raised the likelihood of police detention.

An examination of the amount of variance explained by the variables employed in the regression models found that, in most sites, the models were moderately successful in “explaining” variations. It is probable that other factors not available to the research affected police detention.

There was a strong relationship between the form of police release and the seriousness of the current charge. The more serious the current charge, the greater the likelihood that the accused was released on a police undertaking, which is the most “serious” form of police release.



The analysis of the factors affecting the selection of specific release conditions found few significant relationships between case and personal characteristics and each condition. We conclude that typical police practices may contribute to the selection of conditions imposed in police undertakings.



4.0 Judicial Interim Release: What Factors Affect Court Decision-making?

An analysis of pre-trial detention data from a multi-site study conducted in the last years of the *Juvenile Delinquents Act* found that factors such as a history of failing to attend court and lack of community ties were most influential in detention decisions by the court (Carrington et al, 1988). This multivariate analysis found that legal factors were also important. More recently, Gandy's much less complex analysis (1992) of a small sample of bail hearings in three Ontario cities found that the offence histories of the young persons appeared to be the most important factor in detention.

As in the last Section, the first two sections examine the bivariate relationships between social and legal factors and the release decision by the youth court. In the third section, findings from the multivariate analyses are presented. Section four looks at the factors related to specific release conditions imposed on young persons who were released by the youth court.

4.1 Demographic and Social Characteristics of the Young Person

Table 4.1 presents the socio-demographic characteristics of the youth that were detained as a result of judicial interim release proceedings. The two Toronto and Vancouver-area courts are combined in order to increase the number of cases. As in the analyses in Chapter 2, detention by the court is defined as cases where the youth was not released until the proceedings were completed.

4.1.1 Gender, Age and Race

Gender is unrelated to court decision-making at bail hearings. In Toronto the likelihood of 16 and 17 year olds being detained was twice as great as the 12 and 13 year olds. Race is associated with the court decision in the sample as a whole: Aboriginal and black Canadians were detained in larger proportions than are others. When race is re-categorized as Aboriginal Canadians compared to others, Winnipeg and Vancouver Aboriginal Canadians were disproportionately held by the youth court until their case was over. The Manitoba Aboriginal Justice Implementation Committee (2001), after citing the original Inquiry, commented that "the high number of young people in pre-trial detention is of concern to many in the justice and child welfare system".

4.1.2 Social and Socio-legal Variables

In the sample overall and in several courts, young persons who had no stable residence were detained in greater proportions than were those with other living arrangements. The very small numbers of youth living independently or with friends were also especially likely to be held by the court.

There was a tendency in all court locations but Toronto for youth with current or previous involvement with the child protection agency to be held more than those with no involvement. Activity status was associated with pre-trial detention by the youth court except in Edmonton; inactive youth were considerably more likely to be detained.

Mention of suspected association with a gang was related to pre-trial detention by the court in the total sample – 46 percent of those with some involvement were detained, compared to 34 percent of persons with no reported involvement.

The most notable associations between personal characteristics and detention by the court were living arrangements and activity status. These socio-legal factors are considered as grounds for detention for youth. Those not living with parents or others able to supervise their behaviour could be considered as liable not to attend court (primary ground). Those who were inactive – they neither went to school or worked – could be viewed as both unsupervised and lacking community ties, which is another indicator of the primary ground.

The other notable finding is that proportionately more Aboriginal Canadians than persons of other ethnic backgrounds were detained in Winnipeg and Vancouver. It must be emphasized, however, that this finding may – and indeed does – change when other factors are controlled (section 4.3).

TABLE 4.1: DEMOGRAPHIC AND SOCIAL CHARACTERISTICS OF YOUNG PERSONS DETAINED BY THE COURT, BY COURT LOCATION						
	Halifax- Dartmouth	Toronto (2 courts)	Winnipeg	Edmonton	Vancouver (2 courts)	Total sample
	% detained by the court until case over					
All cases	30.8% (91)	45.8% (212)	39.5% (172)	37.0% (146)	28.6% (181)	37.2% (806)
Gender						
Male	30.1% (83)	45.8% (177)	42.2% (135)	38.5% (109)	28.8% (139)	38.1% (643)
Female	37.5% (8)	45.7% (35)	29.7% (37)	32.4% (37)	28.3% (46)	33.7% (163)
Age						
12-13 years	25.0% (4)	20.0% (20)	35.0% (20)	36.4% (11)	26.1% (23)	28.2% (78)
14-15 years	30.0% (30)	43.3% (67)	37.3% (67)	36.2% (47)	25.4% (63)	35.0% (274)
16-17 years	31.6% (57)	50.8% (124)	40.0% (80)	37.2% (86)	32.6% (95)	39.8% (442)
Race						
White	31.7% (63)	42.4% (99)	26.7% (45)	46.8% (47)	25.5% (98)	34.4% (352)
Aboriginal	0% (1)	50.0% (6)	46.7% (107)	36.5% (52)	45.0% (40)	43.7% (206)
Black	38.9% (18)	48.6% (72)	33.3% (6)	100.0% (2)	0% (4)	45.1% (102)
Other	0% (3)	53.3% (30)	20.0% (5)	15.4% (13)	21.1% (38)	30.3% (89)
Not known	16.7% (6)	20.0% (5)	33.3% (9)	28.1% (32)	40.0% (5)	28.1% (57)



**TABLE 4.1:
DEMOGRAPHIC AND SOCIAL CHARACTERISTICS OF YOUNG PERSONS DETAINED BY THE COURT,
BY COURT LOCATION**

Living arrangements						
With 1 or 2 parents or with parents but number not known	26.3% (57)	37.3% (110)	36.3% (91)	29.1% (55)	23.8% (84)	31.5% (397)
With other relatives/guardian	25.0% (8)	31.3% (16)	43.8% (16)	50.0% (2)	0% (5)	31.9% (47)
In foster/group home	33.3% (3)	15.8% (19)	37.1% (35)	55.6% (18)	34.2% (38)	35.4% (113)
With friends, independently	66.7% (6)	66.7% (3)	0	0% (1)	33.3% (3)	53.8% (13)
No stable residence, nfa	50.0% (10)	72.5% (40)	35.0% (20)	57.1% (14)	53.8% (13)	57.7% (97)
Not known	20.0% (5)	50.0% (12)	60.0% (5)	29.4% (51)	28.6% (42)	32.2% (115)
Active in school or work?						
No	42.9% (35)	61.8% (76)	45.3% (53)	37.0% (46)	45.9% (61)	48.3% (271)
Yes	23.9% (46)	32.4% (108)	36.5% (104)	48.8% (41)	16.0% (81)	30.8% (380)
Not known	20.0% (10)	53.6% (28)	40.0% (15)	28.8% (59)	27.9% (43)	33.5% (155)
Gang association						
No known association	na	na	32.2% (59)	na	na	34.2% (336)
Suspected association			43.9% (98)			46.0% (139)
Not known			40.0% (15)			36.6% (331)

Notes:

The numbers in brackets are the numbers on which the percentages are based.

na The proportion of “not knowns” is very high.

4.2 Legal Characteristics of the Case

4.2.1 Bail-related Factors

In all courts, the cases where there was evidence of reverse onus were more likely to be detained. Although Crowns said that they would on occasion release reverse onus cases on consent, such cases were roughly twice as likely to be detained by the court when compared to others. Mention of either primary or secondary grounds was related to detention by the court. In most locations, police and Crown files mentioned primary and secondary grounds in relatively few cases. It is probable that the grounds are mentioned in files only when the police or Crown attorneys are against release.⁴⁵

4.2.2 Presence and Characteristics of Prior Record

Everywhere, youth with prior findings of guilt were more likely to be held by the court. Moreover, the larger the number of findings, the greater the likelihood of court detention.

⁴⁵ This is not true in Toronto where the only data source of grounds was police reports to the Crown on youth that police had held for a bail hearing. Police discussion of the grounds on which the persons were held are routine, or almost so, for all police-detained youth.

When all prior offences against the administration of justice are considered, the patterns were strong and consistent across court locations: the presence and number of prior convictions increased the likelihood of detention.

Youth who had no current involvement with the youth justice system or only minor involvement (Alternative Measures) were much less likely than others to be held. Persons with outstanding charges but no convictions were detained in about equal proportions as those who were on probation.

With regard to the most serious prior sentence, compared to those with prior convictions but no custody, a larger proportion of persons who had been sentenced to custody in the past were detained.

TABLE 4.2: LEGAL CHARACTERISTICS OF YOUNG PERSONS DETAINED BY THE COURT, BY COURT LOCATION						
	Halifax-Dartmouth	Tor & Scar	Winnipeg	Edmonton	Van & Surrey	Total sample
	% detained by the court until case over					
All cases	30.8% (91)	45.8% (212)	39.5% (172)	37.0% (146)	28.5% (181)	37.2% (806)
Bail-related variables						
Reverse onus?						
No	26.9% (67)	32.8% (64)	28.1% (89)	25.6% (43)	24.6% (138)	27.2% (401)
Yes	52.9% (17)	57.5% (73)	50.0% (64)	53.2% (47)	38.9% (18)	52.5% (219)
Not known	14.3% (7)	45.9% (74)	58.8% (17)	30.9% (55)	41.4% (29)	40.7% (182)
Any primary grounds cited?						
No	27.4% (73)	40.3% (134)	37.7% (106)	30.2% (116)	26.1% (165)	32.3% (594)
Yes	44.4% (18)	55.1% (78)	42.4% (66)	63.3% (30)	50.0% (20)	50.9% (212)
Any secondary grounds cited?						
No	24.4% (78)	40.8% (125)	42.7% (103)	28.0% (107)	24.7% (162)	32.0% (575)
Yes	69.2% (13)	52.9% (87)	34.8% (69)	61.5% (39)	56.5% (23)	50.2% (231)
Both primary & secondary grounds cited?						
No grounds mentioned	24.6% (69)	36.4% (99)	41.8% (79)	24.2% (95)	22.5% (151)	29.0% (493)
Either primary or secondary ground mentioned	38.5% (13)	47.2% (53)	31.1% (45)	57.6% (33)	37.5% (16)	43.1% (160)
Both primary and secondary grounds mentioned	56.7% (9)	56.4% (55)	42.2% (45)	70.6% (17)	61.5% (13)	54.7% (139)
Prior record variables						
Any prior convictions?						
No	10.0% (30)	26.4% (72)	19.0% (58)	3.2% (31)	10.4% (67)	15.9% (258)
Yes	40.7% (59)	55.9% (136)	50.0% (112)	51.0% (100)	37.0% (108)	48.0% (515)



**TABLE 4.2:
LEGAL CHARACTERISTICS OF YOUNG PERSONS DETAINED BY THE COURT, BY COURT LOCATION**

Number of prior convictions						
No prior convictions	10.0% (30)	26.7% (75)	20.3% (59)	6.1% (33)	10.1% (69)	16.5% (266)
1 or 2	27.3% (22)	27.3% (44)	26.1% (23)	45.5% (33)	14.7% (34)	28.2% (156)
3 – 5	38.5% (13)	53.6% (28)	39.1% (23)	33.3% (21)	23.1% (26)	37.8% (111)
6 – 10	38.5% (13)	74.4% (39)	61.5% (39)	50.0% (22)	50.0% (22)	59.3% (135)
11 or more	72.7% (11)	85.7% (21)	66.7% (21)	78.9% (19)	78.3% (23)	76.8% (95)
Number of prior bail violations/fail to attend court^b						
None	30.6% (36)	40.0% (65)	39.5% (43)	43.8% (48)	33.3% (87)	37.3% (279)
1	64.3% (14)	59.5% (37)	59.4% (32)	59.3% (27)	53.3% (15)	59.2% (125)
2 or more	44.4% (9)	82.9% (35)	54.1% (37)	56.0% (25)	50.0% (6)	62.2% (111)
Number of prior breaches of probation^b						
None	33.3% (36)	48.5% (103)	43.4% (83)	49.2% (61)	16.1% (56)	40.4% (339)
1	36.4% (11)	76.9% (26)	65.0% (20)	53.8% (26)	42.9% (21)	57.7% (104)
2 or more	66.7% (12)	85.7% (7)	77.8% (9)	53.8% (13)	71.0% (31)	69.4% (72)
Total number of prior offences against the administration of justice^b						
None	26.9% (26)	38.3% (60)	36.8% (38)	43.2% (37)	15. (52)	31.9% (213)
1	38.5% (13)	56.7% (30)	51.6% (31)	52.4% (21)	36.8% (19)	49.1% (114)
2 or more	60.0% (20)	78.7% (47)	60.5% (43)	57.1% (42)	67.6% (37)	65.4% (188)
Legal status at arrest						
No current or minor involvement	19.2% (26)	14.6% (41)	12.5% (40)	8.7% (23)	9.1% (66)	12.2% (196)
Outstanding charges	27.8% (18)	49.1% (57)	42.9% (42)	37.8% (45)	31.3% (16)	41.0% (178)
On probation	39.1% (46)	49.5% (95)	48.1% (81)	45.0% (60)	36.7% (90)	44.1% (372)
In custody/UAL	0	100.0% (15)	100.0% (6)	100.0% (5)	100.0% (1)	100.0% (27)
Most serious prior sentence^b						
Discharge, fine, restitution	0% (2)	33.3% (3)	50.0% (2)	36.4% (11)	0	33.3% (18)
Probation	24.0% (25)	35.0% (40)	26.5% (34)	46.3% (41)	12.8% (47)	29.3% (187)
Custody	56.3% (32)	67.4% (89)	61.4% (70)	59.1% (44)	57.6% (59)	61.6% (294)
Current charge variables						
Outstanding charges at arrest						
None	23.9% (46)	36.2% (94)	32.6% (89)	31.5% (54)	17.9% (95)	28.6% (378)
1 or 2	36.4% (22)	45.5% (66)	43.2% (37)	40.0% (50)	25.8% (31)	39.8% (206)
3 or more	50.0% (14)	65.8% (38)	42.9% (28)	47.1% (17)	70.0% (10)	55.1% (107)
Not known	22.2% (9)	57.1% (14)	61.1% (18)	36.0% (25)	42.9% (49)	44.3% (115)
Number of charges at arrest						
1 charge	25.0% (24)	44.9% (78)	38.8% (85)	37.9% (66)	24.2% (99)	34.9% (352)
2 charges	24.0% (25)	41.9% (62)	31.7% (41)	32.5% (40)	32.2% (59)	33.9% (227)
3 or more charges	38.1% (42)	50.0% (72)	47.8% (46)	40.0% (40)	37.0% (27)	44.1% (227)
Most serious charge type at arrest						
Indictable person charge	45.5% (11)	48.4% (31)	31.6% (19)	10.0% (10)	66.7% (9)	41.3% (80)
Indictable property charge	36.4% (33)	39.3% (28)	40.0% (35)	36.7% (30)	32.4% (37)	36.8% (161)
Indictable drugs	16.7% (1)	45.0% (20)	100.0% (1)	23.1% (13)	30.8% (13)	34.0% (53)
Hybrid person charge	11.8% (17)	40.9% (44)	27.6% (29)	27.8% (18)	14.3% (42)	26.0% (150)
Hybrid property charge	31.3% (16)	36.7% (30)	32.3% (31)	33.3% (21)	24.2% (33)	31.3% (131)
Other charges e.g., hybrid drugs, weapons, traffic	50.0% (2)	44.0% (23)	42.9% (7)	25.0% (4)	33.3% (12)	40.0% (50)

TABLE 4.2: LEGAL CHARACTERISTICS OF YOUNG PERSONS DETAINED BY THE COURT, BY COURT LOCATION						
	Halifax-Dartmouth	Tor & Scar	Winnipeg	Edmonton	Van & Surrey	Total sample
Probation breach	33.3% (3)	55.6% (9)	44.4% (18)	50.0% (14)	35.1% (37)	42.0% (81)
Other offences against the administration of justice	33.3% (3)	68.0% (25)	56.3% (32)	52.8% (16)	0% (1)	56.7% (97)
Any car theft?						
No	25.3% (79)	48.4% (188)	40.7% (150)	36.4% (129)	27.5% (149)	37.4% (695)
Yes	66.7% (12)	25.0% (24)	31.8% (22)	41.2% (17)	33.3% (36)	36.0% (111)
Any shoplifting?						
No	29.9% (87)	46.1% (206)	40.1% (167)	37.3% (134)	28.7% (178)	37.4% (772)
Yes	50.0% (4)	33.3% (6)	20.0% (5)	33.3% (12)	28.6% (7)	32.4% (34)
Any fail to comply with an undertaking/fail to attend court or for fingerprinting at arrest?						
No	27.3% (77)	43.2% (169)	35.2% (125)	34.0% (106)	28.4% (183)	34.2% (660)
Yes	50.0% (14)	55.8% (43)	51.1% (47)	45.0% (40)	50.0% (2)	50.7% (146)

Notes:

The numbers in brackets are the numbers on which the percentages are based.

na The proportion of “not knows” is very high.

^b This variable includes only those who had prior convictions.

4.2.3 Current Charges

As already discussed, outstanding charges can be grounds for reverse onus proceedings, so that it is not surprising that youth with charges in process when they entered the sample were more likely to be held, especially if they had three or more outstanding charges.⁴⁶

The number of current charges was not related to court detention decisions except in the total sample.

The most serious charge at arrest shows no clear pattern across court locations. Looking at the entire sample, hybrid person offences and hybrid property offences were least likely to result in pre-trial detention, 26 percent and 31 percent respectively. Detention rates were 40 percent or more for indictable offences against the person, other (mostly victimless) charges, probation breaches, and other offences against the administration of justice.

A current charge of fail to attend court or non-compliance with bail conditions opens the way to the Crown treating the matter as reverse onus. All youth courts showed the same pattern: breaching this type of court order meant that the probability of detention increased.

⁴⁶ Winnipeg stood out here: persons with outstanding matters were not much more prone to being detained than were those with no such charges.



4.3 Multivariate Analysis of Factors Influencing Detention by the Youth Court

The procedures in this section parallel those used for the multivariate analysis of police detention decisions in section 3.3. Logistic regression models were developed based on the bivariate relationships identified in Tables 4.1 and 4.2. The dependent variable is whether the young person is released at his or her judicial interim release proceeding (“not released” versus “released”). As in the last section, if a factor is not significant in any location, it was omitted from Table 4.3. For details of the regression models, see Tables A.9 to A.13 in the Appendix.

Varma (2002) analyzed the decision by the downtown Toronto youth court using regression analysis. The type of charge and Crown consent were significantly associated with the granting of bail. Less serious property and “other” *Criminal Code* offences were less likely to result in bail than were violent charges, drug charges, and break and enter. Prior record, living arrangements and school attendance were not independently related to release from custody. However, the Crown’s earlier decision to contest bail was based on prior convictions and involvement in school.

No other pertinent multivariate analyses of youth court bail decisions could be located. However, the study by Kellough and Wortley (2002) undertaken in two Toronto adult courts provides information on the relative importance of several personal and case characteristics. Of demographic variables, both gender (male) and race (black) were related to receiving a detention order. The socio-legal factor that was significant was having no permanent address. Number of past convictions, the number of current charges and “other negative legal information” also significantly affected the decision to detain or release adult accused in Toronto.

4.3.1 The Influence of Social and Socio-legal Characteristics on Detention by the Youth Court

Gender and race were unrelated to the court release decision. Age was significantly related in all courts combined; 17 year olds were significantly more likely to be held than younger youth. The living arrangements of the young person affected the bail decision in Halifax and Toronto as well as in the sample as a whole.

4.3.2 The Influence of Legal Characteristics on Detention by the Youth Court

The only bail-related factor affecting bail hearing outcomes was whether the case files mentioned primary or secondary grounds or both. The factor was significant in the sample as a whole and in Edmonton. Reverse onus – significant at the bivariate level – was not significant in any court.

As other research has found, the prior record of the accused person⁴⁷ was the most consistently influential factor in determining the outcome of bail hearings. The nature of the charges at arrest played a much lesser role. This can be contrasted with the findings on the factors affecting police detention decisions, which seemed to focus more on the alleged offences than on prior

⁴⁷ That is, the longer the prior record and the more severe the sentence received in the past increased the likelihood of not being released by the court.

convictions. However, it must be realized that the police have already screened the cases that the court deals with, and in their screening they used the nature and seriousness of the charges at arrest as criteria for detention. Thus, in a way, the nature of the charges has been taken into consideration by the previous stage in bail decision-making.

In the sample overall, when young persons were alleged to have committed an indictable offence, they were detained in significantly larger proportions. In addition, a current charge of failure to attend court or failure to comply with release conditions reduced the likelihood of being released in Halifax-Dartmouth and in the total sample.

Thus, the most salient factor that predicted bail decisions was the length or seriousness of the prior record of the young person. Having an indictable current charge was significant when all courts were combined.

Each model was significant at the $p < .001$ level (Tables A.8 to A.13 in the Appendix). The amount of variance in the dependent variable that is explained by the models (the Nagelkerke r^2) varied by court with a range of .33 to .48 (Table 4.3). The data available to this research were moderately successful in explaining judicial interim release decisions made by the youth court. Our inability to collect and quantify factors other than personal and legal characteristics, such as courthouse culture (i.e., the usual practices of judges, Crowns and defence) probably contributes to, and perhaps even explains, the lower than desirable predictive accuracy of the models.

	Hal-Dart	Tor & Scar	Wpg	Edm	Van & Surrey	Total sample
<i>Non-legal (social) factors</i>						
Being female						
Age: 12 to 16 years old vs. 17 years old						*
Race (black/Aboriginal)				na		
<i>Socio-legal factors</i>						
Living outside family setting	*	*				*
<i>Legal factors</i>						
Mention of primary or secondary grounds or both				***		**
Seriousness – indictable current charge						**
Length and seriousness of prior record	***	***			***	***
Bail history or prior custody sentence			*	*		
No legal involvement at arrest vs. some involvement			**			
Current bail violation	*					**
Presence or number of outstanding charges				na		**
Estimate of variance explained by each model (Nagelkerke r^2)	.37	.35	.33	.48	.38	.37

Notes:

*** $p < .001$, ** $p < .01$, * $p < .05$. If the cell is blank, then the factor was not statistically associated with the decision. na = not applicable. The variable was not included in the model because of missing data.



4.4 Factors Associated with the Form of Court Release and Conditions of Court Release

4.4.1 Type of Offence

Unlike police release conditions there was little or no relationship between type of charge and the form of court release (Table 4.4). This may be partly because the form of youth court release was closely associated with the court location – recognizances were used primarily in downtown Toronto and Scarborough. Data not shown in table form indicate that recognizances in the Toronto-area courts were particularly likely to be used for persons charged with indictable offences.

4.4.2 Factors Associated with Court Release Conditions

This analysis used linear regression⁴⁸ to determine what case characteristics affected the court’s decision to impose specific conditions. There are two interests here – first, whether non-legal factors influenced decisions and second, the effects of the nature of the (alleged) offence on the selection of release conditions. Table 4.5 shows the results of the analysis for the total sample. Two conditions are omitted from the analysis: the “reside” condition, which is given to almost every person, and “report”, which is mainly used in the two British Columbia courts.

The age of the young person affects two conditions but in different directions. Younger persons were more likely to be ordered to attend school, and older children more likely to be ordered to abstain from alcohol and drugs. Being black or Aboriginal increased the likelihood of having a “do not communicate with the victim” and “do not carry or possess weapons” even when other factors were controlled. Alleged substance abuse increased the likelihood of being ordered to abstain.

	Indictable person	Indictable property	Indictable drugs	Hybrid person	Hybrid property	Other offences	Administration of justice	Total sample
	Column percentages							
Released by the court:								
To a responsible person	11.4	10.2	12.5	6.5	8.4	3.3	7.3	8.4
Undertaking to appear	50.0	55.1	53.1	72.0	66.3	60.0	73.2	63.7
Recognizance	38.6	34.7	34.4	21.5	25.3	36.7	19.5	27.9
Total percent	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0 %
Total number of cases	44	98	32	107	83	30	82	476
	Chi-square=16.98 df=12 p=.15 (n.s.)							

⁴⁸ Ordinary least squares regression was used because the numbers in the analysis by court location were quite low and in this situation the utility of logistic regression becomes questionable.

An offence against the person precipitated the no-contact victim condition. The presence of co-accused young persons greatly increased the likelihood of being ordered not to contact other persons; youth living outside of their families, and those with more prior convictions and current charges were also more likely to have a no-contact condition. Area restrictions were most influenced by the nature of the most serious charge at arrest: those with indictable person or administration of justice offences were most likely to be prohibited from certain areas or buildings. The multivariate analysis was unsuccessful in explaining why certain youth were ordered to attend school (or work); as noted, the sole significant factor was age. Abstention conditions disproportionately affected older youth, persons with alleged substance abuse problems, and those with a current “other” offence such as weapons or *Criminal Code* traffic charges. Blacks or Aboriginal youth, those with more numerous prior convictions, and those accused of a person or “other” offence were most likely to be ordered not to carry or possess weapons. Curfew conditions are of special interest because of the number of bail violations for violating curfews. Having a current property charge was the only case characteristic associated with curfew orders. Finally, although house arrest was used sparingly in this sample other than in Toronto and Scarborough, past bail violations and a current indictable offence against the person increased the likelihood of being required to stay at home other than when at work or school.

Therefore, being black or Aboriginal influenced the selection of two release conditions – do not communicate with the victim and do not possess weapons. A measure of the type of current charge was significantly associated with six of the eight conditions. The exceptions were non-communication with others such as co-accused and attend school or work.

We also looked at the same data separately for each court location (Tables A.14 to A.21 in the Appendix) in order to find out if relationships were being obscured in the total sample.

- In each of the five courts, having an offence against the person among the current charges greatly increased the likelihood of a “*no-contact victim*” condition. Being Aboriginal was significantly associated in Winnipeg.
- “*No-contact other person*” is mostly explained by the presence of a co-accused although having a person offence affected the selection of this condition in two courts.
- Being given an “*area restriction*” is not well explained by the data. In Toronto and Scarborough, however, having a property charge was moderately related to this condition.
- Similarly, the requirement to “*attend school or work*” is not well explained. In Toronto and Scarborough, black youth, those with no prior convictions and those with property charges were especially likely to have this condition imposed. In Edmonton, age (being younger) was associated with the condition.
- In two courts being an alleged substance abuser was unrelated to the “*abstain*” condition.
- “*Prohibitions against possessing a weapon*” while on bail were associated with race (being black) in Toronto. In the four courts where the analysis could be undertaken, having an offence against the person was the most influential factor.
- “*Curfews*” are not at all explained by the factors available to this research. This finding means that curfew conditions are related to the usual practices of the court and/or the predilections of the decision-maker.



- The most intrusive bail condition – “house arrest” – was most often found in the two Toronto-area courts. The only factor associated with being ordered to remain at home most of the time was having a person charge at arrest.

**TABLE 4.5 A:
SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL CHARACTERISTICS AND CONDITIONS OF COURT UNDERTAKINGS, CONTROLLING FOR ALL FACTORS SIMULTANEOUSLY**

	Non-comm. victim	Non-comm. other	Area rest.	Work or school	No alcohol /drugs	No weapons	Curfew	House arrest
<i>Non-legal (social) factors</i>								
Being female								
Age				*	*			
Race (black/Aboriginal)	*					*		
<i>Socio-legal factors</i>								
Living outside family setting		**						
Alleged substance abuser	-	-	-	-	*			
<i>Legal factors</i>								
Having a co-accused	-	***	-	-	-	-	-	-
Number of prior convictions		**				***		
Having prior bail violations	-	-	-	-	-	-	-	*
Number of current charges		*						
Person charge at arrest	***	-	-	-	-	-	-	-
Property charge at arrest	-		-	-	-	-	**	-
Current charge is indictable person	-	-	-	-	-	-	-	***
Current charge is either indictable person or administration of justice	-	-	***	-	-	-	-	-
Current charges is probation breach	-	-	-	-	-	-	-	-
Current charge is “other” offence e.g. drinking & driving	-	-	-	-	**	-	-	-
Current charge is either person or “other” offence	-	-	-	-	-	***	-	-

Notes:

*** p<.001, **p<.01, *p<.05. If the cell is blank, then the factor was not statistically associated with the condition. “-“ means that the variable was not included in the model.

In summary, being black (in Toronto) or Aboriginal (Winnipeg) increased the likelihood of receiving specific bail conditions. Also important is the finding that the very frequently imposed curfew condition could not be explained by personal or case characteristics. Of all conditions, violations of curfew most often bring the young person back to court on a bail violation (Table 2.13). If there are no offence- or other case-related rationales for the imposition of this condition, as these data suggest, there may be a need to reconsider the use of curfews for young persons on bail.

4.5 Factors Affecting the Number of Release Conditions and Type of Release: Race in Toronto

The research by Kellough and Wortley (2002) encouraged us to compare youth and adult bail processing in the Toronto courts. Their study examined the effects of demographic and legal variables on releases at bail hearings, the number of bail conditions and the type of release (i.e., whether the accused was released on a recognizance as opposed to a less serious mode of release). The main interest of Kellough and Wortley was the influence of race. This research reproduced both the dependent and independent variables used by Kellough and Wortley in order to find out if the same or similar findings applied to the youth court.

We first analyzed the factors affecting the number of bail conditions imposed by the two Toronto youth courts. Black youth⁴⁹ had an average of 4.2 bail conditions (median of 4), and those of other races had a mean of 3.5 (median of 3) – a difference in means that was statistically significant.⁵⁰ At the multivariate level, race was close to significance ($p=.06$) when legal factors were included in the regression model. Being female, living independently or with no fixed address, having more prior convictions and being charged with a violent offence were significantly associated with the number of bail conditions imposed on Toronto-area young persons.

The second analysis involved the issue of recognizance releases, which require a surety, usually a friend or a relative, and a monetary commitment. This form of release is in contrast to undertakings, which while often onerous in terms of conditions, lack the surety requirement. In the Toronto youth courts, race was related to being released on a recognizance: 71 percent of whites and other races but 95 percent of black youth were released on a recognizance ($p<.01$). When all variables were controlled, race and living arrangements (living independently or no fixed address) were the only factors significantly associated with the use of a recognizance. When Kellough and Wortley applied logistic regression to their adult dataset, black accused were three times as likely to be released on a recognizance as other races; sex, employment status, having a permanent address, number of current charges, serious violent charges and being charged with failure to appear also affected recognizance releases.

Thus, in one of the two instances examined in this section, the impact of race in the youth court was similar to its impact in adult courts in the same city: black youth had to locate a surety to be released more often than did others regardless of the characteristics of their current charges or prior record.

⁴⁹ There were 36 black young persons in the Toronto-area sample.

⁵⁰ Anova F value = 10.42, $p=.001$



TABLE 4.5 B:
SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL CHARACTERISTICS AND THE NUMBER OF BAIL CONDITIONS AND THE USE OF RECOGNIZANCES, CONTROLLING FOR ALL FACTORS SIMULTANEOUSLY, TORONTO COURTS ONLY

	Number of bail conditions	Recognizance vs. other forms of release
<i>Non-legal (social) factors</i>		
Being female	*	
Age – being 15 or more years		
Being black		*
<i>Socio-legal factors</i>		
Living independently or no fixed address	*	*
<i>Legal factors</i>		
Number of prior convictions		
Number of current charges, including outstanding charges		
"Violent" charge at arrest	*	
FTC/FTA charge at arrest		
Number of prior "violent" convictions		
Adjusted r ² and Nagelkerke r ² respectively	.18	.29

Notes:

*p<.05. If the cell is blank, then the factor was not statistically associated with the dependent variable.

4.6 Summary

At the bivariate level, an array of factors were associated with youth court bail decisions. Compared to police detention, fewer socio-demographic and legal variables were related to pre-trial detention by the court. In particular, the presence of outstanding charges, the number of charges at arrest and the most serious current charge were associated with court detention. In contrast, most of the indicators of prior record were related. What we termed the bail-related charges such as reverse onus and number of mentions of primary and secondary grounds tended to be associated with the court decision.

The multivariate analysis, which controlled for all factors simultaneously, found the following significant relationships:

- The longer and more serious the prior record, the more likely Halifax youth were detained by the court. A current charge of fail to appear or fail to attend was also statistically significant. Young persons not living in a family setting were more likely to be detained.
- In the two Toronto courts combined, the longer and more serious the prior record and unconventional living situations increased the likelihood of court detention.
- In Winnipeg, a history of "bad" behaviour on bail or a prior custody sentence, and some legal involvement at arrest, were the only factors associated with detention.
- In Edmonton, the longer and more serious the prior record and a history of "bad" bail behaviour/prior custody sentence raised the probability of detention by the youth court.
- In Vancouver and Surrey youth courts, only the length and seriousness of the prior record

- of the accused affected detention use.
- In the sample overall, more factors were related to detention: mention of primary or secondary grounds or both, having an indictable current charge, having a long and serious prior record, a current charge of fail to attend court or failure to comply with bail conditions, the number of outstanding charges, age (older) and unconventional living situations.

Thus, the prior offence history of the accused was more influential in bail decision-making by the youth court than were the characteristics of the current charges when the courts are analyzed separately. However, indicators of prior and current offences were significant in the total sample.

The regression models for this decision point were less successful than were the models developed for police detention. Factors other than personal and case characteristics probably influence court bail decisions.

Multivariate analysis was employed to try to determine the personal and case characteristics associated with specific release conditions. Being black or Aboriginal increased the likelihood of having a “do not communicate with the victim” and “do not carry or possess weapons” conditions, even when other factors were controlled. No factors explained the imposition of curfews at bail, leading us to conclude that curfews are imposed for reasons other than the legal characteristics of the case. Since curfews so often precipitate bail charges, their use should be reconsidered.

An examination of the role of race in Toronto bail decisions found that race predicted the use of recognizances versus other means of court release even when other factors were controlled. Because of their requirement for a surety, recognizances require that the young person have a resource in the community, a more burdensome requirement than undertakings. Race was marginally related to the number of bail conditions in the Toronto youth courts.



5.0 The Effects of Detention at Arrest on Court Processing

Research suggests that there are a number of disadvantages associated with pre-trial detention including an increased likelihood of being found guilty and receiving a more severe sentence (Brignell, 2002; Kellough and Wortley, 2002). This Section examines the extent to which being detained by the youth court affects the plea – and hence the adjudication of the young person – and the sentence imposed.⁵¹ The dependent variables in this Section are the plea, adjudication and sentence for the charge that represents the case.⁵²

Earlier, detention was the dependent variable. Here, it becomes one of several independent variables in the logistic regression equations. The detention variable was initially categorized into three categories: not detained at arrest, detained at arrest but released by the youth court, not released by the youth court until the case was over. In all courts combined, about 56 percent of the sample were not detained at arrest, 28 percent were detained and subsequently released and 16 percent (300 of the 1,843 cases in the sample) were held by the court.

The interest in this chapter is to determine if pre-trial detention affects the dependent variables, the nature of the plea and community versus custodial sentences. Unlike the analysis in Sections 3 and 4, we are not especially interested in the prediction or explanatory power of the logistic regression models. For the sake of brevity, there is no discussion of the bivariate relationships to the dependent variables and the analysis is not-by-court – that is, it is confined to the total sample.

5.1 Does Pre-trial Detention Affect the Final Plea and Adjudication?

Final plea was divided into no plea or not guilty plea compared to guilty pleas (in other words, guilty pleas versus all other situations). Table 5.1 shows that pre-trial detention was associated with the nature of the plea and, of course, the adjudication. Although the pleas of the not detained and the detained-but-released groups were very similar, the not released youth were significantly more likely to plead guilty to the charge that represented their case – 64 percent versus 51 to 54 percent.

As a result of this finding, the detention variable was categorized as “not detained” and “detained but released” versus “not released by the youth court”.

⁵¹ Plea is very closely associated with the adjudication – if the accused pleads guilty he or she is found guilty.
⁵² This charge was selected by selecting the offence that received the most severe sentence and if there was no sentence by selecting the offence with the most serious offence type with indictable offences against the person being most serious and other offences against the administration of justice classified as least serious. These calculations were done for all charges that had the same date of sentence as the “instant” offences – that is, they include charges that merged with the “instant” offence at adjudication and/or sentence.

Analyses not reported here found that all reliable demographic and social factors, the presence and number of prior convictions, other characteristics of the prior record, the seriousness or nature of current charge, and most bail-related variables were *unrelated* to making a final plea of guilty when other factors were controlled. They are therefore omitted from the model.

TABLE 5.1: FINAL PLEA AND ADJUDICATION BY PRE-TRIAL DETENTION			
	Not detained by police	Detained but released by the youth court	Not released by the youth court
	Column percentages		
Final plea			
No plea or not guilty plea	49.4	45.8	36.3
Guilty plea	50.6	54.2	63.7
Total percent	100.0%	100.0%	100.0%
Total number	1012	496	295
	Chi-square = 15.92 df=2 p<.001		
Adjudication			
No finding of guilt	47.2	43.2	34.5
Finding of guilt or transfer to adult court	52.8	56.8	65.5
Total percent	100.0%	100.0%	100.0%
Total number	993	502	290
	Chi-square = 14.99 df=2 p<.001		

Notes: The final plea and adjudication were made on the charge selected to represent the case, which was calculated by determining the most serious sentence and if no charge went to the dispositional stage, by selecting the most serious offence type.

Court location was included as an independent variable because of the differences by court in the nature of the final plea. The number of current charges, the bail and custody history of the accused, and whether there was a bail violation among the current charges were added in subsequent steps. The two last variables included in the model were whether the accused had been detained by the court at his or her detention at arrest, and the number of detention stays during the court process. See Appendix, Table A.22, for the details of the regression model.

Pre-trial detention by the youth court increased the likelihood of a guilty plea even when these other factors were controlled. The relationship is statistically significant ($p < .01$). However, detention by the youth court did not contribute to the accuracy or explanatory value of the model or its ability to explain the variance in the nature of the plea.

Other findings worth remarking on are:

- The court location contributes the most to the variance in the nature of the plea.
- The larger the number of current charges, the more likely it is that the accused pleads guilty.
- Having a current charge of fail to attend court or a fail to comply with bail conditions increases the likelihood of a guilty plea.



- Accused who had current charges involving hybrid property offences or breaches of probation were more likely to plead guilty.
- The more detention stays of the accused, the more likely he or she would plead guilty.

The regression equation, while statistically significant, did not explain the variance in the dependent variable and had little or no predictive accuracy. This should not be surprising, since the nature and quality of the evidence against the accused and the ability of defence counsel to bargain with the Crown were not captured in this analysis.

Exactly the same results were found when the same factors were applied to *the nature of the adjudication* on the most serious charge, defined as no adjudication versus found guilty or transferred to adult court. That is, a disproportionate number of youth who are not released by the court are found guilty.

We speculate that detained young persons may plead guilty in order to get out of detention or because – as will be seen next – they are strong candidates for a custodial sentence.

5.2 Does Pre-trial Detention Affect Sentencing?

Research on adult court processing has found that persons who are not released at their bail hearing receive harsher sentences. A study in the Toronto youth court drew similar conclusions (cited in Varma, 2002).

In this dataset, young persons held by the court were three times as likely to be sentenced to custody as were those who were not detained by police or had been released at their bail hearing (Table 5.4). Sixty percent of detained youth received an open or secure custody sentence whereas only about 18 to 20 percent of other young persons received custody.

TABLE 5.4: CUSTODIAL SENTENCES BY PRE-TRIAL DETENTION			
	Not detained by police	Detained but released by the youth court	Not released by the youth court
	Column percentages		
No custodial sentence	81.9	79.6	40.5
Open or secure custody sentence	18.1	20.4	59.5
Total percent	100.0%	100.0%	100.0%
Total number	524	284	185
Chi-square = 127.46 df=2 p<.001			

Notes: The custodial sentence was imposed on the charge selected to represent the case, which was calculated by determining the most serious sentence and if no charge went to the dispositional stage, by selecting the most serious offence type.

This remarkably strong two-way relationship was explored further by means of logistic regression. At first we constructed regression models that included an array of independent

variables that were associated with custodial sentences. Upon reducing the number of independent variables by eliminating those with low or insignificant coefficients we found that identical predictive accuracy and the amount of variance explained could be achieved with a much smaller number of factors. They were: the composite measure of prior record; the number of current charges; the nature/seriousness of the most serious current charge; whether the accused was released at his bail hearing (yes/no); and the number of detention stays during the court process.

Two indicators of detention experience were statistically significant. If the accused had been kept in detention until his or her case was over, it was more likely that open or secure custody would be imposed. The number of detention stays during court processing was even more closely related to custody: the larger the number, the greater the likelihood of being sentenced to custody.

Other findings that independently affected the decision to impose custody, even when all other factors are controlled, were as follows:

- Prior record – its length, nature and seriousness of past sentences – was most influential in the decision to impose custody.
- The number of current charges affected the custody decision.
- If the current charge was an indictable offence against the person, the probability of custody was increased.

Therefore, this analysis confirms that the detention experience of young persons affects the likelihood of receiving the most severe sentence. Those that are not released by the court after being detained at their “first” arrest⁵³ are disproportionately sentenced to custody as are those who have multiple stays in pre-trial detention. This finding remains even when other factors such as prior record are controlled.

5.3 Summary

This Section has reproduced the findings of others. Staying in pre-trial detention disadvantages the accused person both in terms of increasing the likelihood of pleading guilty, and hence being found guilty, and in terms of receiving a custodial sentence.

⁵³ First in terms of the first arrest in our sample.



6.0 Multiple Detention Stays

Thus far the focus of this report has been on the police and court detention that occurred at arrest on the charges that brought the case into the study sample. However, in addition, a substantial number of young persons were detained after their initial apprehension or were detained both at apprehension and subsequently. “Multiple detention stays” refer to the total number of police detentions during the court process.

The first part of this Section describes what is known about these stays for the sample as a whole. Section two looks at the forms of release by the police and the court as well as the relationships between the conditions of release and subsequent stays in pre-trial detention. More detailed information on the detention experiences of the sample were collected for accused persons in Halifax-Dartmouth and Toronto. This information is analyzed in the third section of this Section.

6.1 The Total Number of Stays in Police Detention

When post-arrest detention stays are taken into consideration we find that the use of pre-trial detention takes a substantial leap in numbers.

- Young persons who were never detained during their court process comprised 38 percent of the sample.
- Youth were only detained at arrest make up 33 percent of the sample.
- Some accused were detained at arrest and were also subsequently detained: 13 percent.
- Others were not detained at arrest but were detained later in the process: 16 percent.

Therefore, almost three out of ten young persons were held after their initial arrest, during the court process.

As the “Total” column in Table 6.1 shows:

- In the entire sample, 38 percent were never detained by police;
- 44 percent had one stay;
- 13 percent had two stays; and,
- 5 percent had three or more stays.

Of the seven court locations in Table 6.1, Vancouver had the largest number of detention stays. The normative practice for police of detaining youth at apprehension partly accounts for the finding and partly because warrants are frequently issued for breaches. The next highest use of detention was in Winnipeg. Halifax-Dartmouth had by far the fewest stays.

TABLE 6.1: TOTAL NUMBER OF DETENTION STAYS, POLICE DETENTION, BY COURT LOCATION							
	Hal-Dart	Tor & Scar	Wpg	Edm	Van	Surrey	Total sample
	Column percentages						
No police detention during youth court process	58.2	35.5	29.8	40.8	10.7	46.5	38.4
1 detention stay	32.0	51.4	45.2	42.1	63.5	31.0	43.9
2 detention stays	8.2	10.8	20.2	12.1	14.5	16.2	13.3
3 or more detention stays	1.5	2.3	4.8	4.9	11.3	6.3	4.4
Total percent	99.9%	100.0%	100.0%	99.9%	100.0%	100.0%	100.0 %
Total number of cases	328	389	352	387	159	142	1757
	Chi-square=162.43 df=15 p.<.001						

These data are startling. Except in Halifax, the majority of cases experienced detention by police during their court process and in Toronto and Winnipeg, two-thirds of cases had one or more periods in detention.

The procedural reasons for the stays after the initial arrest are listed in Table 6.2. One-third of the stays involved a failure to attend court as required, 28 percent involved non-compliance with one or more release conditions, and 24 percent had occurred because the young person had acquired a new substantive charge (i.e., other than an administration of justice offence).

Therefore, almost seven out of ten stays were precipitated by an administration of justice charge.

TABLE 6.2: THE PROCEDURAL REASON FOR POLICE DETENTION AFTER INITIAL ARREST		
Reason for stay	Column percentage	Cumulative percentage
Failure to comply with bail conditions	28.2	28.2
Fail to appear in court	33.1	61.3
Probation breach	8.1	69.4
New substantive charge	23.9	93.3
Other reason	6.7	100.0
Total percent	100.0%	
Total number of detention stays	595	

6.2 Subsequent Police Detentions by Form of Release and Conditions Imposed by Police/Court

6.2.1 Police Detention and the Conditions Imposed

The question examined here is whether the type of release of police, in particular the imposition of a police undertaking with conditions, had any relation to the number of subsequent detention stays. If police undertakings are more likely to involve subsequent detention periods, then we can tentatively conclude that violations of the conditions may have precipitated the later police detention. Subsequent, post-arrest stays in detention are a surrogate indicator for subsequent bail



violations. (Unfortunately, we cannot tackle directly the question, “what conditions, if any, resulted in subsequent bail violations”.) In fact, there is no relationship between the form of release by police and the number of periods in detention. For example, 29 percent of those initially released on an appearance notice and 26 percent of persons released on a police undertaking were subsequently detained. We also looked to see if specific conditions were more likely to result in later detention and, again, there was no difference in the number of detention stays by the type of condition. These data are not shown in table form.

Therefore, there are no relationships between the type of release by police or the conditions of police release and later periods in detention. It is reasonably safe to assume that police undertaking conditions did *not* increase the likelihood of bail violations.

6.2.2 Form of Release and Conditions Imposed by the Court

Young persons released to a responsible person (section 7.1 of the *YOA*) were more likely than others to be later detained by police. Almost 60 percent of those released to a relative or other person returned to detention during their court process, compared to 40 percent of those released on an undertaking and 31 percent of youth released on a recognizance.

Next, we explored whether any of the conditions imposed by the court were more likely to result in another detention stay. Overall, 40 percent of youth released on conditions were later detained one or more times by police. When we compare youth with and without a curfew condition, it is apparent that young persons with curfews were significantly more likely to return to detention. Comparing those with and without a no-contact victim condition, it is apparent that those ordered not to contact a victim were less likely than their counterparts to experience a later detention stay (Table 6.3). We conclude from this analysis that having a curfew may work to the disadvantage of youth.

TABLE 6.3: PERCENTAGE OF CASES THAT EXPERIENCED SUBSEQUENT POLICE DETENTION BY THE COURT CONDITIONS IMPOSED AT FIRST RELEASE										
	Non-comm. victim	Non-comm. other	Report police other	Area rest.	Work or school	Reside as specified	No alcohol /drugs	No weapons	Curfew	House arrest
% <i>with</i> this condition that were subsequently detained by police	32.8% (128)	40.5% (190)	40.6% (143)	35.6% (160)	38.3% (133)	39.0% (382)	42.7% (103)	37.4% (99)	46.0% (248)	47.1% (51)
% <i>without</i> this condition that were subsequently detained by police	43.2% (331)	40.1% (269)	40.1% (317)	42.8% (299)	41.1% (326)	46.2% (78)	39.6% (356)	41.0% (361)	33.5% (212)	39.6% (407)
Significance level	*	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.	**	n.s.

Note: *p<.05 **p<.01 n.s. = not statistically significant

6.3 Detention Stays in Halifax and Toronto

Most second and third detention stays were the result of a bench warrant whereas fewer than 20 percent of the first stay involved a warrant (the first panel in Table 6.4). The larger the number of detention stays the greater the likelihood that the young person was detained by the youth court (Table 6.4). In both Halifax and Toronto, the likelihood of the youth being charged with a new substantive offence increased between the second and third (or more) police detention. There was a corresponding decrease in the incidence of failure to attend court between the second and third stays. In Toronto, there was a considerable increase in charges involving non-compliance with bail. There was no difference in the average number of days detained across the detention stays.

TABLE 6.4: CHARACTERISTICS OF MULTIPLE STAYS IN DETENTION, DETENTION BY POLICE, HALIFAX-DARTMOUTH AND TORONTO						
	Halifax-Dartmouth			Toronto (2 courts)		
	1 st stay	2 nd stay	3 + stays	1 st stay	2 nd stay	3 + stays
% of stays precipitated by an arrest warrant	17.1%	59.6%	38.5%	16.1%	72.2%	50.0%
Total number	70	47	13	205	79	22
Detained or released?	Column percentages					
Detained by the court	30.8	41.5	61.5	42.0	54.3	69.2
Released by the court	69.2	58.5	38.5	58.0	45.7	30.8
Total percent	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Total number	91	53	13	212	81	26
Procedural reason for stay						
Failure to comply with bail conditions		26.9	16.7		19.3	42.3
Fail to appear in court		30.8	16.7		48.2	19.2
Probation breach		0	0		3.6	0
New substantive charge		20.0	58.3		21.7	38.5
Other reason		3.8	8.3		7.2	0
Total percent	na	100.0%	100.0%	na	100.0%	100.0%
Total number of stays where reason known		52	12		83	26
Mean number of days detained	15	11		19	17	15
Total number of cases where days detained known	89	50	0	212	80	27

Presumably, because in most cases the stays were caused by offences against the administration of justice, the use of non-communication conditions decreased as the number of stays increased (Table 6.5). This was also true of area restrictions in Toronto. The use of house arrest rose precipitously in Toronto between stays one and three, likely because the patience of the court was exhausted.



TABLE 6.5
RELEASE CONDITIONS FROM THE COURT, MULTIPLE DETENTION STAYS, HALIFAX-DARTMOUTH AND TORONTO

	Halifax -Dartmouth			Toronto (2 courts)		
	1 st Stay	2 nd Stay	3 + Stays	1 st Stay	2 nd Stay	3 + Stays
	Percent of youth having each condition					
Non-communication with victim	42.4%	12.5%	0	28.4%	25.0%	11.1%
Non-communication with others	55.9%	37.5%	0	36.7%	25.0%	22.2%
Report to police/other at specified times	10.2%	12.5%	0	2.8%	15.6%	11.1%
Area restriction	40.7%	37.5%	0	47.7%	25.0%	22.2%
Attend school or work	5.1%	25.0%	0	52.3%	50.0%	11.1%
Reside at a specified location	69.5%	50.0%	0	91.7%	93.8%	88.9%
Abstain from alcohol, non-prescription drugs	30.5%	0	0	24.8%	21.9%	0
No firearms or other weapons	10.2%	12.5%	0	38.5%	34.4%	11.1%
Curfew	47.5%	62.5%	0	44.0%	28.1%	22.2%
House arrest	11.9%	12.5%	100.0%	29.4%	37.5%	55.6%
Motor vehicle restriction	0	0	0	16.3%	0	0
Counselling, anger management, etc.	0	24.8%	0	25.0%	9.4%	0
Total number of cases where condition known	59	8	1	109	32	9

6.4 Summary

Earlier sections of this report described the main features of the pre-trial detention experiences of the young persons who were detained by police at their arrest – that is, at the time of their instant charges, the charges that brought the youth into the sample. This Section first looks at all stays in detention throughout the court process. The second part of the Section determines whether the form and conditions of police and court release were related to later periods in detention. If there are no relationships we may be able to assume that the form/conditions of release did not affect bail violations. In the third section, additional details of subsequent post-arrest detention in Halifax, Scarborough and downtown Toronto, where more detention-related information was collected.

With the exception of one court, more than one-half of the samples were detained one or more times if post-arrest detention stays are taken into consideration. Only 38 percent of the overall sample had no period in pre-trial detention. The more stays in detention is related to a longer court process likely because of the longer the period that the young person is “at risk” of being detained. About 70 percent of the police detentions after the youth’s initial arrest resulted from an offence against the administration of justice (FTA, FTC and probation breaches). Almost one-quarter occurred because the youth had allegedly committed a new substantive offence.

The form of release by police had no relationship to the number of detention stays; the conditions of police undertakings were also unrelated. The type of court release was, however, associated with subsequent periods in detention – young persons released to a “responsible person” were more likely to return to detention than others. The main finding of the analysis of conditions of court release was that youth with a curfew were much more likely to have multiple detention stays than were those without a curfew. We conclude that curfew violations precipitate subsequent stays in detention.

In the Halifax-Dartmouth and the Toronto courts, being detained by the court increased the likelihood that the youth would be held by the court until his or her case was over. By the second and third stays, bench warrants were more likely to precipitate the police detention. The number of days detained did not differ by the number of detention periods. Because multiple detention stays were usually caused by offences against the administration of justice, the pattern of bail conditions changed – there were, for example, fewer “non-communication” conditions than there were at the first detention.



7.0 Discussion

This report has presented data on the pre-trial release decisions made by youth courts in five provinces before the inception of the *Youth Criminal Justice Act*. Data on a random sample of cases that had their first court hearing in fiscal year 1999-2000 in Halifax-Dartmouth, two courts in Toronto, Winnipeg, Edmonton, Vancouver and Surrey were analyzed.

7.1 Jurisdictional Variations

One theme immediately stands out – the vast differences among the courts in almost all aspects of bail decision-making. The second theme, related to the first, is that in many cases we cannot explain jurisdictional variations by the differences in the social and legal characteristics of the young persons. The local legal culture which includes the “usual practices” of police, Crown attorneys, and members of the bench contributes to the differences by court location.

The most obvious examples of the usual practices are the differences by court in the percentages detained by police and detained by the youth court after a bail hearing:

- Depending upon the youth court, from 28 to 79 percent of young persons were detained at their apprehension by police. Downtown Vancouver was the anomalous court – there, 79 percent were detained – while the next greatest use of police detention, at 56 percent, was in downtown Toronto.
- The range for detention by the youth court was not quite as large: from 26 percent to 48 percent of youth were held until their charges were disposed of.

Other examples of practices that are not explainable by the available data include:

- The mean number of conditions imposed on youth released on bail goes from 2.9 in the Edmonton youth court, to 4.4 in Scarborough and downtown Vancouver.
- The variations by court in the release conditions themselves are considerable. For example, area restrictions were imposed on 11 to 54 percent of released youth, and no firearms or weapons imposed on 1 to 48 percent of cases.

Just as the percentages of the various decisions differ from city to city, so do the factors related to those decisions. The implication for this and other research in the youth justice area is that court location should be taken into consideration as an important factor.

7.2 Determinants of Pre-trial Detention Decisions

7.2.1 Detention Decisions by Police at Initial Apprehension

There was a strong association between the type of police release and the most serious offence of the young person. The more serious the offence, the greater the likelihood that the young person was given a police undertaking as opposed to other less serious modes of release such as an appearance notice or summons.

Police undertakings can include conditions. There were few relationships between social and legal factors and specific conditions:

- non-communication with the complainant or other person was affected by the presence of an offence against the person; and,
- race – being black or Aboriginal – increased the likelihood of the undertaking including notify of change in address, employment and area restriction conditions.

We suggest that “usual practices” may be paramount in the decisions to impose specific conditions in police undertakings.

In this study, 45 percent of youth were detained for a bail hearing. The multivariate analysis revealed that the factors that had the strongest relationship to police detention were the seriousness or type of the current charges, the number of current charges and various measures of prior offence history. Of the social and socio-legal characteristics of the case, only unconventional living arrangements increased the probability of being detained by police. The race of the accused was not associated with police detention in the sample overall, but in Toronto black youth were significantly more likely to be held by police for a bail hearing even when other factors were controlled.

7.2.2 Judicial Interim Release Decisions

It should be emphasized that, while the youth court (either a justice of the peace or a judge) is formally responsible for deciding on bail, in actual fact it is the Crown attorney who makes most of the decisions. Other research has found that the majority of cases are released from detention “on consent” of the Crown. The information sources for the Crown are the police report and, less often, defence counsel and probation or program staff.

Unlike police detention, there was no relationship between the form of court release and the seriousness of the current charges. Although the relationships were not strong, the types of conditions were influenced by age, race, prior record and the type of current offence.

As in police detention, young persons in living arrangements that appeared to offer less potential for supervision were more likely to be held, when all other factors were controlled. Seventeen year olds were held significantly more often than those 16 years of age and younger. Significant legal factors included the seriousness of the current charge, the presence of a current FTA/FTC charge and the existence of outstanding charges. However, the likelihood of a detention order most often depended on the prior record of the young person – the lengthier and more serious the



offence history, the more often the accused is held until his or her case disposition is reached. Kellough (2003) argued that the emphasis on past behaviour “served to prevent [accused] from presenting contradictory information that would place them in a more positive light”.

In conclusion, the youth courts place greater weight on prior record than on the characteristics of the current offence in making their bail decisions. This is probably related to the prediction aspect of the decision – past behaviour is usually regarded as the best predictor of future behaviour.

7.3 Socio-legal and Non-legal Factors Affecting Pre-trial Detention

Release and detention decisions are made on the grounds first developed for adult accused and, after the proclamation of the *Young Offenders Act*, adapted to young persons.⁵⁴ The case law that has evolved since the early seventies includes both social and legal factors in the determination of grounds, especially primary grounds. The extent to which the accused has ties to the community is an indicator of likelihood of attending court and is measured by employment status, family ties, homelessness versus owning or renting. The juvenile correlates of these factors are school or activity status and family status (e.g., living with parents versus other circumstances). As Kellough and Wortley (2002, footnote 6) commented:

The argument could be made that variables such as employment status, home address and citizenship are actually personal identity characteristics and should not be considered indicators of flight risk. However the Canadian courts [reference removed] have often accepted that these are indicators of flight risk...

The report of the implementation commission of the Aboriginal Justice Inquiry in Manitoba emphasized that the use of personal factors especially disadvantages Aboriginal youth. When granting bail,

*criminal justice officials will frequently consider factors such as whether the young person has a job or is involved in an education program. The court considers whether the young person's parents are employed. It considers the perceived "stability" and resources of the family and the community, the presence of alcohol or drug problems, whether the youth or the youth's parents have a fixed address and, if so, how long they have lived at that address. Decisions made on the basis of these types of factors discriminate against Aboriginal people, because those factors are linked directly to the marginal social, cultural and economic place of Aboriginal people in society.*⁵⁵

Thus, what seem to be “personal identity characteristics” are converted to legal considerations in

⁵⁴ The *Bail Reform Act* (1971) which introduced the legislative framework for bail decisions into the *Criminal Code*, was not widely used under the *Juvenile Delinquents Act*, although some juvenile courts used its provisions (e.g., downtown Toronto, one of the study sites) before the *YOA* came into effect. Work by Carrington et al. (1988) found that even in courts that did not explicitly use the *Criminal Code*, many decisions seemed in keeping with its bail provisions.

⁵⁵ Cited in the Manitoba Aboriginal Justice Implementation Commission, 2001.

the case law. In addition, there is no evidence that grounds for detention in the case law predict court attendance and re-offending on bail.

7.3.1 Detention for Child Welfare Purposes

The use of detention for child welfare reasons is a persistent issue. Unfortunately, the criteria for detention are the same criteria that one would use to identify detention decisions made for child welfare reasons, e.g., homelessness or unconventional living situations. Consequently, to differentiate between decisions made on the basis of the “socio-legal” factors and child welfare concerns becomes impossible.⁵⁶ In this report, the finding that living with persons other than family members independently predicts detention by police and by the court does not necessarily mean that the decision-makers were influenced by child welfare considerations.

7.3.2 The Role of Age, Gender and Race

Of demographic factors, age is a special case. It is unlikely that decisions influenced by age would be regarded as discriminatory because older youth are perceived to be more responsible and accountable for their actions. The multivariate analysis found that police detained older youth more often in Halifax and younger persons more often in downtown Vancouver.

Decisions affected by sex and racial background are more clearly discriminatory. Multivariate analyses found that the gender of the accused person did not affect either police or court detention decisions when other factors were controlled. The decline in gender as a factor in police decision-making has been reported by others (e.g., Carrington, 1998).

Race, which was operationalized as blacks and Aboriginal Canadians versus all others, affected several decisions. In Toronto, being black made it more likely that

- police would hold the young person for a judicial interim release hearing;
- the young person was released by the court on a recognizance requiring sureties rather than on less onerous modes of release; and,
- the young person would have more court-imposed bail conditions than did others.

In the sample as a whole, being black or Aboriginal affected the imposition of specific conditions on both police and court undertakings even when other factors were controlled.

In summary, race affected some decisions by police and the courts in a manner that most observers would view as discriminatory.

7.4 Predicting Risk

If one is to acknowledge the maxim of “innocent until proven guilty”, restrictions on pre-trial liberty must be justified on the basis of risk: risk that the accused will

⁵⁶ In the study by Moyer and Basic on Crown decision-making (2004), interviews with Crown counsel found that some decisions were clearly influenced by child protection concerns (e.g., a 15 year old prostitute with drug problem).



fail to appear for court, risk that they will endanger the community and, on a broader ground, the risk that a wrong decision will undermine confidence in the proper administration of justice. Risk assessment is a controversial issue: the accuracy of predictions has been called into question on numerous occasions and, as such, the area is fertile ground for debate.⁵⁷

7.4.1 Adequacy of the Information Available to Bail Decision-makers

The information at hand to the decision-maker may be limited or of questionable reliability. U.K. research (Morgan and Henderson, 1998, Henderson, 2002) reported that bail decision-makers frequently complained about lack of reliable information. This does not seem to be a major problem in Canadian youth courts. For example, according to interviews of police and Crowns, details of the prior convictions of the accused are always or almost always available at arrest and at bail hearings. The police and Crowns use a variety of sources including the information systems of the courts, the local police and youth corrections. Details of the current offence are always included in reports. Information on living arrangements and school or employment status is sometimes collected in arrest reports. (Defence counsel would probably argue that the accuracy of the latter information is questionable.)

Thus, lack of information on the accused's current offence, prior convictions and other justice system involvement does not appear to be a problem in Canadian youth courts. However, the low use of the "responsible person" bail section of the *YOA* – along with the comments made by Crowns and defence counsel – suggests that there is inadequate information available at bail hearings on this alternative to detention. Unless the young person has his or her own defence counsel, or there are other program personnel to inquire about the availability of a responsible person, this option tended to be overlooked.

7.4.2 Are Risk Prediction Instruments Required?

In some United States jurisdictions, standardized risk assessment tools are used to predict behaviour while on bail (Annie E. Casey Foundation, no date). The trend towards the use of standard instruments in predicting risk of re-offending has been questioned (e.g., Hannah-Moffat, 1999). The objections include the tendency towards over-prediction and imprecision in general, and that too great reliance is placed on static predictors such as prior record. However, standardized tools cannot predict the extent to which police and probation staff are proactive in laying non-compliance charges.

7.5 Failure to Attend Court and Non-Compliance with Bail Conditions (FTA/FTC)

Bail conditions are imposed in order to manage pre-trial risk – the risk of non-appearance at court and of committing further offences. At the same time, they also provide new opportunities for offending. Young persons received more numerous bail conditions than did adults in the same community (Toronto), in roughly the same period. This finding suggest that the courts

⁵⁷ Brignell, 2002: 6.

view youth as requiring more supervision, surveillance and control while on bail than do adults.

Many young persons do not attend all their scheduled court hearings as required and/or do not comply with their conditions of release. In the total sample, about one out of ten young persons failed to attend court at least once and in some courts, the proportion was much higher (up to one-quarter of cases). Failure to comply with bail conditions was more common with about 40 percent of the group released on bail being charged with this offence.

It was clear from the analysis that there was often little or no relation between the types of conditions imposed and the offence. The most frequently violated conditions were curfew, followed by one of the various “reside” conditions. Being charged with these offences often results in the youth’s case being treated as reverse onus, with the consequence that being detained until sentencing becomes more likely. Furthermore, the accumulation of these administration of justice offences influences decision-makers in later brushes with the law. These relatively minor violations can have serious and long term consequences. Youth justice personnel might wish to reconsider the utility of numerous (and often onerous) conditions, especially when there is no evidence that their imposition reduces the risk of re-offending and non-attendance at court.

7.6 The Effects of Pre-trial Detention on the Nature of the Plea and the Sentence

7.6.1 Findings of Guilt

In this research, almost two-thirds of detained young persons were found guilty on one or more of the charges on which they were held at arrest. Most of the remaining one-third were convicted of other charges later in their court process.

Guilty pleas and hence adjudications of guilt were affected by pre-trial detention. Detained youth were much less likely than others to have all their charges dropped. Similar to the findings of Kellough and Wortley (2002) in their analysis of bail decisions in two adult courts in Toronto, our regression analysis found that the odds of pleading guilty were much higher for those who were detained than those who were released. Interviews with adult detainees provided reasons for the effect of detention on guilty pleas, including the desire to avoid “dead time” in jail, the belief that fighting the charges at trial was futile, and the belief that they would not receive custody when sentenced (Kellough 2003).

7.6.2 Sentences Received by Detained Youth

The multivariate analysis of the effects of being detained before trial on sentencing found that, controlling for other factors, detention independently affected the likelihood of a custody sentence.

The sentencing patterns showed variations by court. Sixty percent of detained youth received custody. Only about one-half of detainees in Toronto and Edmonton were sentenced to open or



secure custody, compared to about 80 percent in Halifax and the two Vancouver-area courts.

In summary, being detained at the initial bail hearing disadvantages the young person both in terms of the likelihood of being convicted (as a result of a guilty plea) and of receiving custody.

7.7 Further Research

Using this dataset, the following bail-related research should be considered:

- the characteristics of youth who pleaded out soon after being detained;
- the use of “time served” as a sentence, especially when it is the sole sentence;
- the factors related to multiple detention stays during the court process; and,
- the relationship between bail and probation conditions in each court, and the breaches arising from both bail and probation.



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Appendix: Method and Supporting Tables

Operationalizing Prior Convictions

The composite prior record variable was constructed by placing all prior record variables – including presence/absence of a record, number of past convictions, number of FTA/FTC charges, number of other administration of justice charges, total number of administration of justice charges, the most serious prior sentence (i.e., custody or probation or other), whether the youth is on probation or has outstanding charges – in a factor analysis and using the values of coefficients generated for each case as the composite index. The composite index is highly correlated with its component parts but at the same time takes a variety of indicators into account.

TABLE A.1:
THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON POLICE DETENTION AT ARREST, ALL COURTS COMBINED

Dependent variable = police detention (detained vs. released)				
Variable	Model 1		Model 2	
	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	.527 (.085)	.000	1.411 (.161)	.000
12 to 16 years old vs. 17+	-.293 (.127)	.022	-.206 (.147)	.160
White/other vs. Aboriginal/black	-.452 (.117)	.000	-.216 (.135)	.110
Living outside family setting	-.720 (.138)	.000	-.700 (.157)	.000
Warrant at arrest (no/yes)			-2.455 (.544)	.000
Number of outstanding charges			-.199 (.054)	.000
Prior record (composite)			-.426 (.072)	.000
Number of current charges			-.304 (.065)	.000
Shoplifting (no/yes)			1.284 (.267)	.000
No indictable vs. 1+ indictable current charge			-.751 (.154)	.000
FTC/FTA charge at arrest (no/yes)			-1.033 (.226)	.000
Model chi-square (df)	48.96 (3) ***		368.97 (13) ***	
Block chi-square (df)	48.96 (3) ***		320.01 (10) ***	
% correct predictions detained	38%		65%	
% correct predictions released	79%		79%	
Overall correct predictions	60%		72%	
Nagelkerke's R ²	.05		.33	
<i>Notes:</i> N=1308				
Cut value=.50				



**TABLE A.2:
THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON POLICE DETENTION AT ARREST,
HALIFAX-DARTMOUTH**

Dependent variable = police detention (detained vs. released)				
Variable	Model 1		Model 2	
	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	5.673 (1.740)	.001	8.705 (2.358)	.000
Being female	.801 (.455)	.078	.346 (.142)	.536
Age at offence	-.301 (.109)	.006	-.362 (.142)	.011
White/other vs. Aboriginal/black	-.264 (.338)	.434	.588 (.464)	.205
Living outside family setting	-.639 (.343)	.062	-.650 (.439)	.139
Number of current charges			-.670 (.161)	.000
Prior record (composite)			-.106 (.202)	.600
Warrant at arrest (no/yes)			-2.722 (.924)	.003
Number of outstanding charges			-.283 (.134)	.035
Shoplifting (no/yes)			1.484 (.673)	.027
No indictable vs. 1+ indictable current charge			-1.838 (.378)	.000
Model chi-square (df)	14.71 (4) **		108.28 (10) ***	
Block chi-square (df)	14.71 (4) **		93.57 (6) ***	
% correct predictions detained	7%		60%	
% correct predictions released	97%		92%	
Overall correct predictions	71%		83%	
Nagelkerke's R ²	.08		.49	
Notes: N=260				
Cut value=.50				

TABLE A.3: THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON POLICE DETENTION AT ARREST, TORONTO (BOTH COURTS)				
Dependent variable = police detention (detained vs. released)				
Variable	Model 1		Model 2	
	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	1.777 (1.284)	.166	2.152 (1.689)	.194
Being female	.596 (.328)	.069	-.227 (.389)	.561
Age at offence	-.096 (.082)	.243	-.015 (.103)	.882
White/other vs. Aboriginal/black	-.713 (.253)	.005	-.893 (.3103)	.004
Living outside family setting	-1.863 (.373)	.000	-1.501 (.450)	.001
Number of outstanding charges			-.831 (.196)	.000
Warrant at arrest (no/yes)			-2.445 (1.103)	.027
Prior record (composite)			-.782 (.200)	.000
Number of current charges			-.658(.151)	.000
Shoplifting (no/yes)			2.295 (.878)	.009
Model chi-square (df)	41.77 (4) ***		164.85 (9) ***	
Block chi-square (df)	41.77 (4) ***		123.08 (5) ***	
% correct predictions detained	59%		79%	
% correct predictions released	75%		86%	
Overall correct predictions	66%		82%	
Nagelkerke's R ²	.16		.52	
Notes: N=331				
Cut value=.50				



**TABLE A.4:
THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON POLICE DETENTION AT ARREST, WINNIPEG**

Dependent variable = police detention (detained vs. released)				
Variable	Model 1		Model 2	
	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	1.369 (1.300)	.292	1.448 (1.450)	.318
Being female	.326 (.292)	.264	.312 (.320)	.329
Age at offence	-.053 (.083)	.522	.009 (.091)	.917
White/other vs. Aboriginal/black	-.692 (.255)	.007	-.386 (.278)	.166
Lives with parents/1 or 2 parents not known vs. other	-.659 (.260)	.011	-.804 (.292)	.004
No outstanding charges vs. 1 or more outstanding charge			-.471 (.291)	.105
Both bail history and prior custody (no/yes)			-.721 (.181)	.000
Number of current charges			-.214 (.107)	.045
Indictable person or other administration of justice current charge (no/yes)			-.607 (.350)	.082
Model chi-square (df)	18.14 (4) **		59.75 (8) ***	
Block chi-square (df)	18.14 (4) **		40.94 (5) ***	
% correct predictions detained	74%		67%	
% correct predictions released	55%		70%	
Overall correct predictions	64%		68%	
Nagelkerke's R ²	.08		.25	
Notes: N=291				
Cut value=.50				

TABLE A.5: THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON POLICE DETENTION AT ARREST, EDMONTON				
Dependent variable = police detention (detained vs. released)				
Variable	Model 1		Model 2	
	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	3.640 (1.310)	.005	5.858 (1.601)	.001
Being female	-.311 (.249)	.211	-.508 (.316)	.097
Age at offence	-.197 (.084)	.019	-.195 (.100)	.052
No current involvement vs. some legal involvement			-1.033 (.289)	.001
Number of current charges			-.429 (.144)	.003
Auto theft (no/yes)			.261 (.498)	.600
No indictable vs. 1+ indictable charge			-2.083 (.338)	.000
FTC/FTA charge at arrest (no/yes)			-2.443 (.389)	.000
Model chi-square (df)	6.23 (2) *		137.43 (7) ***	
Block chi-square (df)	6.23 (2) *		130.80 (5) ***	
% correct predictions detained	5%		59%	
% correct predictions released	96%		87%	
Overall correct predictions	62%		77%	
Nagelkerke's R ²	.02		.41	
Notes: N=385 Cut value = .50				



TABLE A.6:
THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON POLICE DETENTION AT ARREST, VANCOUVER

Dependent variable = police detention (detained vs. released)				
Variable	Model 1		Model 2	
	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	-4.125(2.628)	.117	-4.831(2.790)	.083
Being female	-.447 (.601)	.457	-.592 (.670)	.384
Age at offence	.181 (.166)	.274	.366 (.184)	.047
White/other vs. Aboriginal/black	-1.100 (.657)	.095	-1.330 (.724)	.067
No current involvement vs. some legal involvement			-.416 (.514)	.419
Hybrid property vs. other charges at arrest			-2.400 (.554)	.000
Auto theft (no/yes)			-2.443 (1.125)	.030
Model chi-square (df)	6.53 (3)		28.52 (7)***	
Block chi-square (df)	6.53 (3)		22.01 (4)***	
% correct predictions detained	100%		96%	
% correct predictions released	0%		38%	
Overall correct predictions	83%		86%	
Nagelkerke's R ²	.07		.33	
Notes: N=154 Cut value = .50				

TABLE A.7:
THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON POLICE DETENTION AT ARREST, SURREY

Dependent variable = police detention (detained vs. released)				
Variable	Model 1		Model 2	
	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	.428 (2.007)	.831	1.206 (2.280)	.597
Being female	-.126 (.452)	.870	-.435 (.496)	.380
Age at offence	.021 (.130)	.870	.068 (.148)	.648
Living with family vs. other	-7.05 (.435)	.105	-.687 (.472)	.146
Currently on probation (no/yes)			-.897 (.390)	.021
Hybrid property current charge (no/yes)			-.974 (.432)	.024
Number of current charges			-.171 (.192)	.374
Auto theft (no/yes)			-.653 (.583)	.262
Model chi-square (df)	3.03 (3)		17.92 (7) *	
Block chi-square (df)	3.03 (3)		14.89 (4) **	
% correct predictions detained	14%		33%	
% correct predictions released	95%		95%	
Overall correct predictions	65%		73%	
Nagelkerke's R ²	.03		.16	
Notes: N=142 Cut value = .50				

TABLE A.8: THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON RELEASE FROM DETENTION, ALL COURTS COMBINED				
Dependent Variable=Was youth released from detention by the youth court? (no/yes)				
Variable	Model 1		Model 2	
	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	1.023 (.196)	.000	2.317 (.262)	.000
12 to 16 years old vs. 17+	.202 (.196)	.302	.551 (.234)	.019
White/other vs. Aboriginal/black	-.532 (.178)	.003	-.194 (.209)	.353
Other living arrangements vs. lives with friends or no fixed address	-1.246 (.240)	.000	-.740 (.289)	.010
Warrant at arrest (no/yes)			-.823 (.340)	.101
Number of outstanding charges			-.201 (.064)	.002
Any grounds cited (no/either primary or secondary/both)			-.364 (.129)	.005
Prior record (composite)			-.946 (.115)	.000
Number of current charges			-.142 (.082)	.085
Indictable current charge (no/yes)			-.590 (.229)	.010
Any FTC or FTA current charge (no/yes)			-.757 (.270)	.005
Model chi-square (df)	29.86 (3) ***		191.64 (10) ***	
Block chi-square (df)	29.86 (3) ***		161.78 (7) ***	
% correct predictions detained	24%		66%	
% correct predictions released	90%		81%	
Overall correct predictions	68%		76%	
Nagelkerke's R ²	.07		.37	
Notes: N=608				
Cut value=.60				

TABLE A.9: THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON RELEASE FROM DETENTION, HALIFAX-DARTMOUTH		
Dependent Variable=Was youth released from detention by the youth court? (no/yes)		
Variable	B (s.e.)	Sign.
Constant	2.001 (.441)	.000
Other living arrangements vs. lives with friends or no fixed address	-1.615 (.696)	.020
Reverse onus (no/yes)	.142 (.148)	.338
Any grounds cited (no/either primary or secondary/both)	-.712 (.433)	.100
Prior record (composite)	-.977 (.303)	.001
Any FTC or FTA current charge (no/yes)	-1.506 (.724)	.038
Model chi-square (df)	27.30 (5) ***	
% correct predictions detained	67%	
% correct predictions released	79%	
Overall correct predictions	75%	
Nagelkerke's R ²	.37	
Notes: N=89		
Cut value=.70		



**TABLE A.10:
THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON RELEASE FROM DETENTION,
TORONTO (BOTH COURTS)**

Dependent Variable=Was youth released from detention by the youth court? (no/yes)				
Variable	Model 1		Model 2	
	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	3.206 (1.901)	.092	3.523 (.2.330)	.130
Age at offence	-.166 (.122)	.174	-.103 (.146)	.481
Lives with friends or no fixed address (no/yes)	-1.234 (.418)	.003	-1.195 (.503)	.018
Any grounds cited (no/either primary or secondary/both)			-.177 (.221)	.424
Number of outstanding charges			-.376 (.262)	.151
Prior record (composite)			-.924 (.215)	.000
1-2 vs. 3+ current charges			-.618 (.371)	.096
Current person charge (no/yes)			-.638 (.389)	.101
Any FTC or FTA current charge (no/yes)			-.793 (.471)	.092
Model chi-square (df)	14.37 (2) **		54.00 (8) ***	
Block chi-square (df)	14.37 (2) **		39.63 (6) ***	
% correct predictions detained	31%		61%	
% correct predictions released	90%		81%	
Overall correct predictions	66%		73%	
Nagelkerke's R ²	.10		.35	
Notes: N=182				
Cut value=.50				

**TABLE A.11:
THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON RELEASE FROM DETENTION, WINNIPEG**

Dependent Variable=Was youth released from detention by the youth court? (no/yes)				
Variable	Model 1		Model 2	
	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	.893 (.292)	.00	3.000 (.674)	.000
Being female	.708 (.432)	.102	.552 (.495)	.264
All other "races" vs. Native Canadian	-.800 (.351)	.023	-.636 (.393)	.106
No current legal involvement vs. some involvement			-1.535 (.633)	.015
Reverse onus (no/yes)			-.088 (.080)	.274
Warrant at arrest (no/yes)			-1.305 (.828)	.115
Both bail history and prior custody (no/yes)			-.624 (.252)	.013
1-2 vs. 3+ current charges			-.723 (.414)	.081
Hybrid current charge (no/yes)			.421 (.414)	.308
Model chi-square (df)	8.04 (2) *		45.99 (8) ***	
Block chi-square (df)	8.04 (2) *		37.94 (6) ***	
% correct predictions detained	62%		74%	
% correct predictions released	61%		70%	
Overall correct predictions	62%		71%	
Nagelkerke's R ²	.07		.33	
Notes: N=164				
Cut value=.60				

TABLE A.12: THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON RELEASE FROM DETENTION, EDMONTON		
Dependent Variable=Was youth released from detention by the youth court? (no/yes)		
Variable	B (s.e.)	Sign.
Constant	4.383 (1.229)	.000
Lives with parents vs. others	.448 (.501)	.371
No current legal involvement vs. some involvement	.115 (1.084)	.916
Any grounds cited (no/either primary or secondary/both)	-1.486 (.388)	.000
Both bail history and prior custody (no/yes)	-.695 (.310)	.025
Any prior convictions (no/yes)	-2.853 (1.217)	.019
Number of current charges	-.118 (.200)	.555
Model chi-square (df)	54.20 (6) ***	
% correct predictions detained	81%	
% correct predictions released	72%	
Overall correct predictions	75%	
Nagelkerke's R ²	.48	
Notes: N=125		
Cut value=.65		

TABLE A.13: THE EFFECTS OF SOCIAL AND LEGAL VARIABLES ON RELEASE FROM DETENTION, VANCOUVER AND SURREY		
Dependent Variable=Was youth released from detention by the youth court? (no/yes)		
Variable	B (s.e.)	Sign.
Constant	2.550 (.613)	.000
White/other vs. Aboriginal/black	-.825 (.450)	.067
Secondary grounds cited (no/yes)	-.946 (.542)	.081
1-2 vs. 3+ current charges	.357 (.554)	.519
Number of prior convictions	-.819 (.153)	.000
Model chi-square (df)	52.29 (4) ***	
% correct predictions detained	78%	
% correct predictions released	81%	
Overall correct predictions	81%	
Nagelkerke's R ²	.38	
Notes: N=170		
Cut value=.70		



TABLE A.14:
B VALUES AND SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL CHARACTERISTICS
AND COURT UNDERTAKINGS NOT TO COMMUNICATE WITH THE VICTIM, BY COURT LOCATION

	Hal-Dart	Tor & Scar	Wpg	Edm	Van & Surrey
% of cases where non-communication with victim was a condition	42%	28%	20%	18%	31%
<i>Non-legal (social) factors</i>					
Being female	-	.07	-.08	-.07	-.01
Age	-.21	.07	.20 *	-.01	.10
Race (black/Aboriginal)	-	.15	.26 **	na	-.02
<i>Socio-legal factors</i>					
Living outside family setting	-	-.14	-.07	-.12	-.01
<i>Legal factors</i>					
Number of prior convictions	.01	-	-	-.10	-.05 *
Having prior custody disposition	-	-.07	-.07	.02	-
Number of current charges	-.07	-.01	-.08	-.09	.03
Person charge at arrest	.49 ***	.45 ***	.31 ***	.41 ***	.74 ***
Number of cases	57	104	94	71	116
Statistical significance of the anova	**	***	***	**	***

Notes:

*** p<.001, **p<.01, *p<.05. If the cell is blank, then the factor was not statistically associated with the condition. “-“ means that the variable was not included in the model. “na” means that the variable was excluded because of missing values.

The first value in the cell is the unstandardized B coefficient.

TABLE A.15: B VALUES AND SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL CHARACTERISTICS AND COURT UNDERTAKING NOT TO COMMUNICATE WITH OTHER PERSONS, BY COURT LOCATION					
	Hal-Dart	Tor & Scar	Wpg	Edm	Van & Surrey
% of cases where non-communication with other person was a condition	56%	37%	49%	42%	33%
<i>Non-legal (social) factors</i>					
Being female	-.22	-.12	.25 *	.13	-.11
Age	-.20	.07	.03	-	.10
Race (black/Aboriginal)	.04	.11	.03	na	-.06
<i>Legal factors</i>					
Having a co-accused	.26	.37 ***	.24 *	.19	.38 ***
Presence or number of prior convictions	.01	-	-	-	-.10
Having prior probation breaches	-	.22	-.07	-.13	-
Having prior administration of justice charges	-.01	-	-.05	-	-
Number of current charges	-	.15 *	-.00	-	.03
Person charge at arrest	-.33 *	-	-	-.44***	.28 **
Bail violation at arrest	-	-	-	-.50 **	-
Current charge is indictable	-	-.06	.28 *	-	-
Number of cases	57	105	95	72	116
Statistical significance of the anova	*	***	**	***	***

Notes:

*** $p < .001$, ** $p < .01$, * $p < .05$. If the cell is blank, then the factor was not statistically associated with the condition. “-” means that the variable was not included in the model. “n.a.” means the variable was excluded because of missing values.

The first value in the cell is the unstandardized B coefficient.



TABLE A.16: B VALUES AND SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL CHARACTERISTICS AND COURT UNDERTAKING WITH AN AREA RESTRICTION, BY COURT LOCATION					
	Hal-Dart	Tor & Scar	Wpg	Edm	Van & Surrey
% of cases where area restriction was a condition	41%	48%	27%	11%	42%
<i>Non-legal (social) factors</i>					
Being female	-.45	-.17	-.13	-.08	.09
Age	.33	.16	-	-.17	.08
Race (black/Aboriginal)	-	-.02	.15	na	.17
<i>Socio-legal factors</i>					
Living outside family setting	.30	-.29 **	-.16	-	.04
<i>Legal factors</i>					
Having prior custody disposition	-	-	-.19	-	-
Having prior bail violations	-.13	-.18 *	-	-.01	-.09
Property charge at arrest	-.01	-.23 *	-	-	-
Shoplifting charge at arrest	-	-	.42	.21	-
Current person	-	-	-	-	.15
Any car theft?	-	-	-	-	-.30 *
Number of cases	56	104	94	72	120
Statistical significance of the anova	n.s.	**	*	n.s.	*

Notes:

*** $p < .001$, ** $p < .01$, * $p < .05$. If the cell is blank, then the factor was not statistically associated with the condition. “-“ means that the variable was not included in the model. “n.a.” means the variable was excluded because of missing values. The first value in the cell is the unstandardized B coefficient.

TABLE A.17: B VALUES AND SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL CHARACTERISTICS AND COURT UNDERTAKING TO ATTEND SCHOOL (OR WORK), BY COURT LOCATION					
	Hal-Dart	Tor & Scar	Wpg	Edm	Van & Surrey
% of cases where attendance at school or work was a condition	5%	52%	30%	26%	20%
<i>Non-legal (social) factors</i>					
Being female	-.07	.20	-.12	-.15	-.12
Age	.08	-.02	-.17	-.35 *	-.10
Race (black/Aboriginal)	-.01	.20 *	-.09	na	-.03
<i>Socio-legal factors</i>					
Living outside family setting	-	-.03	.11	-	-.03
<i>Legal factors</i>					
Presence or number of prior convictions	.01	-.21 *	.08	.15	-
Having prior bail violations	.25 ***	-	-	-	.16
Property charge at arrest	-	.31 **	-	.12	-
Administration of justice charge at arrest	-.07	-	-	-	.05
Current charge is indictable	-	-	.22 *	-	-
Number of cases	54	103	93	61	121
Statistical significance of the anova	***	**	n.s.	*	n.s.

Notes:

*** $p < .001$, ** $p < .01$, * $p < .05$. If the cell is blank, then the factor was not statistically associated with the condition. “-“ means that the variable was not included in the model. “n.a.” means the variable was excluded because of missing values. The first value in the cell is the unstandardized B coefficient.



**TABLE A.18:
B VALUES AND SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL
CHARACTERISTICS AND COURT UNDERTAKING TO ABSTAIN FROM DRUGS AND ALCOHOL,
BY COURT LOCATION**

	Hal-Dart	Tor & Scar	Wpg	Edm	Van & Surrey
% of cases where abstain from drugs/alcohol was a condition	31%	25%	29%	22%	11%
<i>Non-legal (social) factors</i>					
Being female	-	-.18	.13	-.09	-.09
Age	.27	.19	.16	-.11	.05
Race (black/Aboriginal)	-	-.06	-.07	na	.03
<i>Socio-legal factors</i>					
Living outside family setting	.33 *	-.13	.12	-	.02
Alleged substance abuser	.24 *	.23	.29 **	.03	.06
<i>Legal factors</i>					
Having prior bail violations	.13	.06	-.14 *	.06	.12
Person charge at arrest	-	-	-	.17	-
Property charge at arrest	-	-	-.06	-	-
Administration of justice charge at arrest	-.26 *	-	-	-	.04
Current charge is "other" offence e.g. drinking & driving	-	.26 *	-	-	-
Number of cases	56	104	95	72	120
Statistical significance of the anova	***	*	**	n.s.	n.s.

Notes:

*** $p < .001$, ** $p < .01$, * $p < .05$. If the cell is blank, then the factor was not statistically associated with the condition. “-“ means that the variable was not included in the model. “n.a.” means the variable was excluded because of missing values. The first value in the cell is the unstandardized B coefficient.

TABLE A.19: B VALUES AND SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL CHARACTERISTICS AND COURT UNDERTAKING PROHIBITING POSSESSION OF WEAPONS, BY COURT LOCATION					
	Hal-Dart	Tor & Scar	Wpg	Edm	Van & Surrey
% of cases where no weapons was a condition	10%	39%	19%	1%	26%
<i>Non-legal (social) factors</i>					
Being female	.21	-.07	.10		-.22 *
Age	.07	-.07	.09		.07
Race (black/Aboriginal)	-	.25 **	-.05		.14
<i>Socio-legal factors</i>					
Living outside family setting	.18	-.16	.02		.15
<i>Legal factors</i>					
Having prior custody disposition	-	-	-.13		-
Having prior bail violations	-.07	-.10	.03		-.19 *
Person charge at arrest	.21 **	.26 **	.39 ***		.47 ***
Number of cases	56	104	95		121
Statistical significance of the anova	**	***	***		***

Notes:

*** p<.001, **p<.01, *p<.05. If the cell is blank, then the factor was not statistically associated with the condition. “-“ means that the variable was not included in the model. “n.a.” means the variable was excluded because of missing values.

The first value in the cell is the unstandardized B coefficient.



TABLE A.20:
B VALUES AND SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL CHARACTERISTICS AND COURT UNDERTAKINGS WITH A CURFEW CONDITION, BY COURT LOCATION

	Hal-Dart	Tor & Scar	Wpg	Edm	Van & Surrey
% of cases with a curfew condition	48%	44%	71%	58%	50%
<i>Non-legal (social) factors</i>					
Being female	.25	-.08	.17	.09	.09
Age	.11	.07	-.14	.13	-.13
Race (black/Aboriginal)	-.24	-.08	.05	na	-.08
<i>Socio-legal factors</i>					
Living outside family setting	-.38	-.19	.01	-	.05
Alleged substance abuser	-	-.08	-	-	.16
<i>Legal factors</i>					
Having prior bail violations	-	-.05	-.14 *	.08	-.05
Number of current charges	-	.05	.01	.10	.12
Property charges at arrest	-	-	.12	.18	.10
Administration of justice charge at arrest	-.16	-	-	-	-
Current charge is indictable	-	.09	-	-	-
Number of cases	52	104	95	72	121
Statistical significance of the anova	n.s.	n.s.	n.s.	n.s.	n.s.

Notes:

*** $p < .001$, ** $p < .01$, * $p < .05$. If the cell is blank, then the factor was not statistically associated with the condition. “-“ means that the variable was not included in the model. “n.a.” means the variable was excluded because of missing values.

The first value in the cell is the unstandardized B coefficient.

TABLE A.21: B VALUES AND SIGNIFICANT RELATIONSHIPS AMONG SOCIAL, SOCIO-LEGAL AND LEGAL CHARACTERISTICS AND COURT UNDERTAKINGS WITH A HOUSE ARREST CONDITION, BY COURT LOCATION					
	Hal-Dart	Tor & Scar	Wpg	Edm	Van & Surrey
% of cases with a house arrest condition	12%	29%	8%	5%	1%
<i>Non-legal (social) factors</i>					
Being female	.15	-.18	-.06		
Age	-.14	-.07	.06		
Race (black/Aboriginal)	.14	-	-.04		
<i>Socio-legal factors</i>					
Living outside family setting	-	-.16	-.02		
<i>Legal factors</i>					
Having prior bail violations		.07	-		
Number of current charges	.06	-	-		
Person charge at arrest	.07	.19 *	-		
Administration of justice charge at arrest	-	-	.26 **		
Number of cases	54	107	94		
Statistical significance of the anova	n.s.	*	n.s.		

Notes:

*** $p < .001$, ** $p < .01$, * $p < .05$. If the cell is blank, then the factor was not statistically associated with the condition. “-“ means that the variable was not included in the model. “n.a.” means the variable was excluded because of missing values.

The first value in the cell is the unstandardized B coefficient.



**TABLE A.22:
EFFECTS OF LEGAL AND COURT PROCESSING VARIABLES ON THE FINAL PLEA, CONTROLLING FOR ALL FACTORS
SIMULTANEOUSLY**

Dependent variable = final guilty plea (no vs. yes)						
	Model 1		Model 2		Model 3	
Variable	B (s.e.)	Sign.	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	.855 (.126)	.000	.927 (.156)	.000	.785 (.166)	.000
Halifax (no/yes)	-.891 (.168)	.000	-.914 (.172)	.000	-.791 (.169)	.000
Toronto (no/yes)	-.835 (.161)	.000	-.827 (.167)	.000	-.782 (.169)	.000
Winnipeg (no/yes)	-1.167 (.167)	.000	-1.275 (.175)	.000	-1.232 (.176)	.000
Edmonton (no/yes)	-.582 (.164)	.000	-.681 (.166)	.000	-.608 (.168)	.000
Number of current charges			-.155 (.046)	.001	-.192 (.047)	.000
"Bad" bail history and/or prior custody			.187 (.068)	.006	.083 (.074)	.258
FTC/FTA charge at arrest (no/yes)			.412 (.181)	.023	.396 (.182)	.030
Current charge of hybrid property or probation breach (no/yes)			.263 (.105)	.012	.298 (.106)	.005
Detention (no or released vs. not released by court)					.449 (.153)	.004
Number of detention stays during court process					.151 (.066)	.022
Model chi-square (df)	57.10 (4) ***		92.72 (8) ***		107.09 (10) ***	
Block chi-square (df)	57.10 (4) ***		35.70 (4) ***		14.37 (2) **	
% correct predictions no plea or not guilty plea	44%		55%		56%	
% correct predictions final guilty plea	68%		65%		66%	
Overall correct predictions	57%		60%		61%	
Nagelkerke's R ²	.04		.07		.08	
N=1716 Cut value=.50						

Notes:

The final guilty plea was made on the charge selected to represent the case, which was calculated by determining the most serious sentence and if no charge went to the dispositional stage, by selecting the most serious offence type.

TABLE A.23:
EFFECTS OF LEGAL AND COURT PROCESSING VARIABLES ON CUSTODIAL SENTENCES, SENTENCED CASES ONLY, CONTROLLING FOR ALL FACTORS SIMULTANEOUSLY

Dependent variable=open or secure custody (no/yes)						
Variable	Model 1		Model 2		Model 3	
	B (s.e.)	Sign.	B (s.e.)	Sign.	B (s.e.)	Sign.
Constant	-1.365 (.095)	.000	-1.837 (.295)	.000	-2.724 (.352)	.000
Prior record (composite measure)	1.127 (.092)	.000	1.160 (.106)	.000	1.034 (.111)	.000
1, 2 or 3+ current charges			-.463 (.111)	.000	-.374 (.116)	.001
Indictable person charge (no/yes)			1.902 (.546)	.000	2.002 (.568)	.000
Indictable property charge (no/yes)			.250 (.344)	.469	.544 (.355)	.126
Indictable drugs charge (no/yes)			.798 (.581)	.169	.806 (.587)	.170
Hybrid person charge (no/yes)			-.523 (.343)	.127	-.252 (.359)	.483
Hybrid property charge (no/yes)			-.864 (.303)	.004	-.483 (.313)	.122
Other charge e.g., hybrid drugs, weapons, traffic			-.609 (.363)	.093	-.296 (.379)	.436
Breach of probation charge (no/yes)			-.511 (.287)	.075	-.154 (.301)	.610
Detention (no or released vs. not released by court)					.798 (.220)	.000
Number of detention stays during court process					.589 (.122)	.000
Model chi-square (df)	189.38 (1) ***		249.37 (9) ***		286.00 (11) ***	
Block chi-square (df)	189.38 (1) ***		59.99 (8) ***		36.63 (2) ***	
% correct predictions no custody sentence	99%		98%		98%	
% correct predictions custody sentence	10%		16%		20%	
Overall correct predictions	77%		78%		79%	
Nagelkerke's R ²	.28		.36		.41	
N=891 Cut value=.75						

Notes:

The custodial sentence was imposed on the charge selected to represent the case, which was calculated by determining the most serious sentence and if no charge went to the dispositional stage, by selecting the most serious offence type.

We earlier suggested that the majority of pre-trial detention decisions are made by Crown attorneys – by their ability to release youth on consent – rather than the youth court.