

**Sociology 3395: Criminal Justice & Corrections**  
**Class 26: Age and Crime**

**PART I: Legal Frameworks:**

Today we will begin our review of youth crime in Canada by considering the evolution of various legal frameworks that have evolved over the years to deal with this matter. In particular, we will look at :

- (1) The old Juvenile Delinquents Act
- (2) Youth court procedure under the Young Offenders Act;
- (3) The new Youth Criminal Justice Act

**(1) The old Juvenile Delinquents Act and Emergence of the Young offender's Act:**

(See separate handout: "Youth Justice vs. Criminal Justice" pp.309-12)

**(2) Youth Court Procedure under the Young Offenders Act:**

Providing effective treatment and rehabilitation of young offenders, and ensuring the safety of Canadian communities are primary objectives of the youth justice system. The Young Offenders Act (YOA), proclaimed in 1984, introduced rights for adolescents previously guaranteed for adults only; recognized the special needs of youths due to varying levels of maturity; the necessity for youths to accept the responsibility for unlawful action; and the right of society to protection from illegal behavior.

To set the stage for our discussion today, I will begin by outlining the current youth justice process (see chart, p.94).

In order for youths to become involved in the justice system, the police must detect or be notified that a crime may have been committed. If the police are satisfied that an offence has occurred, they may use one of three options:

- (a) The police may charge the youth with a crime;
- (b) If it is a minor offence, the police may use discretion to divert the youth out of the formal justice system. This may involve speaking to the youth's parents about the incident and/or requiring the youth to apologize to the victim;
- (c) The youth may be diverted into an Alternative Measures program. The youth will be required to fulfil an alternative measures agreement either before or after charges have been laid. Some AM programs currently in use include apologizing to the victim, counseling and restitution. It is important to note that the current restorative justice program in Nova Scotia fits in here as well,

but goes beyond traditional AM programs;

(d) Should the youth fail to meet any of the conditions of the agreement, the charges may be reinstated and the cases referred back to the formal court process;

(e) Once charges are laid, a decision will be made about detention. Youth arrested by police on suspicion of a serious crime may be held in custody to await a hearing. A youth accused of a minor crime is likely to be served with an appearance notice at the scene of the crime instructing the youth when to appear in court or released into his or her parent's custody with a promise to appear at a hearing. An arrest warrant can be issued if the accused is known by police but has not been apprehended. Several factors, including the seriousness of the offence, the criminal history of the accused, and the province or territory within which the offence occurred will affect what happens at this stage.

(f) Most youths are dealt with in youth courts. These are provincial/territorial courts that have special expertise and facilities. However, depending on the age of the youth, his or her background, and the type of crime, a hearing may be conducted to determine if the youth should be transferred to adult court. Any youth age 14 and over who has been charged with a serious (indictable) offence can be transferred. In such cases, the Crown must apply to have the case moved. All 16 and 17 year olds charged with a serious violent offence (1st-2nd degree murder, attempted murder, manslaughter and aggravated sexual assault) are transferred automatically. However, the youth's lawyer or the Crown can apply to have the case stay in youth court.

(g) In youth court, all trials are conducted by a youth court judge. The only exception is the offence of murder, where the accused has the option of a judge and jury trial. In adult court, the youth is treated as an adult. For most serious offences, adults can select trial by judge or trial by judge and jury.

(h) If the court decides that the youth is guilty, the judge will determine an appropriate disposition or sentence.

(i) If found guilty in adult court, youths face the same sentences as adults, except that youths sentenced to life in prison are eligible for parole earlier. At most, youths serve 10 years before becoming eligible for parole, whereas adults may have to serve up to 25 years.

(j) Youths found guilty in youth court can be sentenced to secure custody, meaning that they serve time in a youth detention, correctional facility. This is the most severe kind of sentence and is generally reserved for violent, repeat and older offenders. A less severe form of incarceration is open custody. These sentences are usually served in community group homes. Non-custodial sentences include absolute discharge, conditional discharge, probation, fines, compensation to the victim, or community service.

Two years in custody is the maximum penalty for offences not punishable by life under the

Criminal Code (youths found guilty of more than 1 of these offences can be sentenced to a maximum of 3 years in custody). For offences punishable by life, such as robbery, the maximum penalty is 3 years in custody. The maximum penalty for 2nd degree murder is 7 years (4 in custody, 3 under supervision), and 10 years (6 in custody, 4 under supervision) for 1st degree murder.

(k) Sentences expire when the youth has fulfilled all of the requirements set out by the judge or when the judge changed the sentence at a review hearing. Otherwise, the youth may be sent back to the court for failing to complete the sentence.

Depending on the seriousness and the frequency of the offences, young offenders who do not become re-involved in the justice system for 3-5 years after successfully completing their sentence will have their criminal records destroyed. For young offenders who become re-involved in the justice system before this time, their records will be considered during sentencing for all subsequent offences, including those committed as an adult.

As noted above, the federal government has recently replaced the Young Offenders Act. By way of introduction, under the new Youth Criminal Justice Act, among other things:

\*Custodial sentences would only be used for violent or repeat offenders (an attempt to reduce disproportion of youths incarcerated relative to adults)

\* All custodial sentences will be followed by a period of community supervision

\*The age limit is lowered from 16 to 14 for youth who commit serious offences and are automatically sent to adult court

\* The names of young offenders may be published if an adult sentence is imposed, the youth is dangerous or at large, or a youth sentence is imposed for a presumptive offence (e.g. murder, aggravated sexual assault).

\* Victim involvement is encouraged in the sentencing process (e.g. RJ model).

### **(3) The new Youth Criminal Justice Act:**

(See separate sheets pp.322-325)

## **PART II:**

### **Gender, Age and Crime:**

Now that we have looked at the legal framework governing youth crime in Canada, today we will review:

- (1) Youth Court statistics;
- (2) Trends in youth crime;
- (3) Correlates of delinquency.

#### **(1) Youth Court Statistics:**

(see separate sheets pp.314 +)

#### **(2) Trends in Youth Crime:**

In 1991, after 6 years of steady increases following the new YOA, police-reported youth crime in Canada reached the highest level ever recorded - a statistic that aroused considerable controversy. However, when it fell from 1991-1996, this received little attention. While scholars didn't attribute the earlier rise to the YOA, it did encourage debate about how much youth crime exceeded that seen under the old Juvenile Delinquents Act (JDA). Now, the government is again considering legislative changes in response to public concern over youth crime. Thus, this is an opportune time to review fluctuations in youth crime over time and to evaluate the change, if any, that is due to the YOA.

Earlier researchers have examined UCR data on youth crime for the periods before and after the implementation of the YOA (1980-84 + 1985-90), and have argued that the average per-capita rate of police-reported youth crime was the same, but that the average rate of young persons charged was 21% higher following the YOA. Similarly, others found a 29% increase in the rate of young persons charged between two periods (1986-92 vs. 1980-83), but a statistically insignificant increase of 5% in apprehensions.

This raises the question of what accounts for these figures. Some argue that this reflects an increased propensity for the police to charge young people, particularly since the number of young people apprehended has changed little. However, this may be due to a pre-existing police practice of charging 16-17 year old suspects in higher proportions than 12-15 year olds. When 16-17 year olds were added, for the first time in many provinces, to the youth justice system, the average per capita rate of youths charged would increase. Hence, because of the legal redefinition of 16-17 year olds as young persons, this increase in charging may be more statistical than real. All the same, other researchers claim that this is only part of the story, and that up to half of this increase in charges may reflect actual changes in police behavior.

Ultimately, however, no researchers come right out and claim that changes in youth crime figures are the effect of the YOA, but allude to broader social factors. The present study we will be reviewing (Carrington, 1999) attempts to detect the effects, if any, of the YOA on youth crime through an “interrupted time series experiment.” It uses annual UCR data on young persons apprehended and charged during 1977-96 (omitting 1985-86 because of data problems in those years).

In conducting this study, it is important to recognize that UCR data are not perfect, that many cases youths are not charged, and many of those are not “cleared” by police (38% not cleared). Changes in UCR statistics may very well not reflect increases in youth crime but changes in police charging practices. Hence, in this study, “young persons charged” is seen as precisely that. Similarly, data on “young persons apprehended” is seen as a larger figure including those apprehended and not charged plus those apprehended and charged. While a more valid indicator of changes in the level of youth crime than the number charged, they are less reliable since the criteria for classifying a person as apprehended but not charged are much less precise, and may vary among police departments. Indeed, these systematically underestimate the amount of youth crime known to the police because police tend to under-report minor incidents involving young persons. Moreover, there is the problem of making accurate comparisons between recorded rates under different legal definitions of “Young person” (12-17 under the YOA; 7 to 15, 16, or 17 under the JDA, depending on the province).

Keeping these qualifications in mind, the results of this analysis show that the per capita rate of youth apprehended by police increased rapidly during the late 1970's - the last years of a rising trend in officially recorded crime since the 1960's. From 1980-88 youth crime remained at about the same level, then rose to a peak in 1991 before falling back to its earlier level (p.107). For our purposes, the rate of youths apprehended during 1986-96 showed a statistically significant increase of 7% over the earlier 1980-83 stable period under the JDA. Thus, the rate of police-reported youth crime was a little higher during the first decade under the YOA than during the last few years under the JDA.

The question arises: was this increase due to the YOA itself? If this was so, we would expect to see either a jump after 1984-85, or a rising trend after this time that had not existed previously. However, there was no jump after 1984-85, and no statistically significant increase in the period immediately before that. While between 1986-96 there were fluctuations (e.g. the “hump” in the early 1990's), we cannot be confident that any statistically significant trends emerged in the end. Indeed, the spike in the early 1990's occurred more than half a decade after the implementation of the YOA, and was mirrored in other countries, so is unlikely to have been “caused” by the YOA.

Looking at data from other provinces and territories, we find that:

\* Atlantic Canada appears to have a rising trend in youth crime during the entire period 1977-96, with a temporary break in the early 1990's. New Brunswick is the only province to show a small

jump after 1984-85. Thus, the higher crime rate here appears to be the result of a pre-existing trend, not the YOA.

\* In Quebec, the rate of youth crime was significantly lower during 1986-96 than 1980-83. This was due to a sudden drop, not a rising trend. It likely reflects a change in the screening procedures for young offenders in Quebec in 1984, which could have affected the number of young persons reported to the UCR as apprehended.

\* In Ontario, there was a substantial 11% drop in police reported youth crime in 1986, and little trend thereafter.

\* In Manitoba, Alberta and B.C. rates of police reported youth crime were fairly stable from 1980-83, then rose steadily from 1988 till the early 90's, from which they declined until 1996. With the possible exception of a 1986 "hump" in B.C., this pattern suggests that they are not related to the YOA.

\* In Saskatchewan, there was a unique - and spectacular - one time jump in the rate of official youth crime after 1986. Indeed, the average 1986-96 rate was 55% higher than during 1980-83, and the highest among the 10 provinces. However, it is impossible to determine the extent to which this was due to the YOA vs. changes in police enforcement and apprehension activity.

\* The territories experienced somewhat erratic downward trends in police-reported youth crime from 1980-96, and no jump after 1984-85.

Ultimately, this survey of provincial trends over two decades show Saskatchewan and B.C. as the only provinces in which there was a substantial increase in recorded youth crime immediately after the YOA was introduced. Other provinces' increases appear to be due to pre-existing trends (N.S. and Manitoba), while the two largest provinces, Ontario and Quebec, actually showed drops in youth crime (possibly due to recording practices). In the other provinces or territories, any trends appear unrelated to the YOA.

Next, when we examine the rate of young persons *charged* by police from 1977-96, we can see that there was a jump across the board in 1986 that did not occur in apprehensions (p.111). As a result, the average charge rate during 1986-96 was 27% higher than during 1980-83, compared with the 7% increase in young persons apprehended. Hence, most of the 27% increase was due to an increase in the charge ratio. More apprehended youths were being charged and less police discretion exercised to deal with youth through informal means. It seems likely that this jump in charging apprehended youth was due to the YOA: it occurred immediately after the YOA came into effect, and the charge ratio was relatively stable over the rest of the two decades examined.

When broken down by province, Quebec is the only province in which fewer apprehended young persons per capita were charged after 1984-85 than during 1980-83. This is

shown in a strong downward trend in its charge ratio (the % of apprehended youths charged) between 1986-96. Indeed, since its introduction of the Youth Protection Act (a unique system for the diversion of young offenders), Quebec went from being the province with the highest rate of apprehended youth charged to the lowest.

The other provinces and territories all experienced increases after 1985 in the rates of young persons charged. These ranged from 10-30% in B.C., Newfoundland, Manitoba and the Territories, to 70-110% in the rest of the provinces except Saskatchewan (where the rate actually tripled).

Indeed, one of the most striking aspects of the transition from the JDA to the YOA is the sudden change in 1986 from charging relatively low proportions of apprehended youths to charging high proportions. This timing, and the fact that other studies show that this occurred across *the entire YOA age range*, suggests the influence of the YOA.

In the end, this research has shown that there is no basis in fact for public concern about increased levels of youth crime or the supposed failure of the YOA to control youth crime. Apart from a temporary jump in the early 1990's, the level of police reported youth crime in Canada has changed very little since 1980. Indeed, the 7% average increase in youth crime during the first decade of the YOA can largely be accounted for by this early 1990's "hump," particularly in the western provinces.

However, the rate of youths *charged* by police was 27% higher during 1986-96 than 1980-83. Unlike the rate of young persons apprehended, the charge rate jumped immediately after the YOA came into effect. In an otherwise stable time series, this reflects a sudden drop in police diversion of young offenders. This suggests the effect of a discrete event: the YOA. This was especially noticeable in jurisdictions that had previously been characterized by charging a relatively low proportion of apprehended youth (i.e. much use of police discretion).

Ironically, while the principles outlined in the YOA encourage the "least possible interference" in the lives of young persons accused of crimes, its application does not seem to bear this out in practice. Ottawa is currently considering changes to clear up this inconsistency - a course of action this research suggests is needed.

### **(3) Correlates of Delinquency: A Look at Gender Differences:**

In this final piece, we will look at how criminological research challenges many fundamental assumptions about female delinquency. While earlier approaches may have been biased in their reliance on personal and family problems, male-based risk factors have not been fully examined. Thus, it is important to clearly identify risk factors for delinquency among female youth.

Female delinquency has historically been perceived as relatively rare and less serious than

male delinquency. For example, early studies showed between 3 to 7 male delinquents for each female, and females were seen as committing relatively mild offences such as running away, truancy, and sexual acting out. Personal maladjustment was viewed as the fundamental cause of problem behavior among female youth, including reference to psychological problems, inadequate performance of the proper sex role, and a problematic home life. In contrast, early male delinquency theories focused on peer groups, social class, and lack of educational/occupational resources.

Since the mid-1970's research has challenged some of these traditional views. For example, the sex ratio of male to female delinquency has been shown to be no more than 3:1. Recent research has also shown that female youth are involved in a broad range of criminal behaviors, not just minor offences (with the exception that physical aggression is much less common among females).

Contemporary research, in an attempt to explain and predict delinquency, has moved beyond past formulations and now considers personal, interpersonal, and structural factors (e.g. personality, peers, and educational contexts respectively). Moreover, there has been an emerging interest in female delinquency, and studies of risk have begun including both genders in their research samples.

The specific study discussed here involves an extensive literature review of published/unpublished articles from the mid 1960's until the early 1990's. Not only did this assist in comprehensively tabulating a wide range of risk factors, it enabled the researchers to examine those not typically investigated among male samples. Two basic questions were posed:

- (1) What are the important risk factors for each gender?
- (2) Are specific risk factors more important for a particular gender?

Using "meta analysis," data from selected studies was combined and an average result computed separately for each risk factor in relation to males and females. This then indicated the degree of association between delinquency and a particular risk factor. In each case, male and female youth were sampled, each was examined on the same risk factor, and the data for each gender were reported separately. This ensured that male-female comparisons were based on the same delinquency and risk measures, eliminating biases that could result from using different measures for each gender. 60 studies met these requirements and provided 464 correlations between delinquency and risk factors. These were then grouped into 8 general risk categories based on previous reviews and common themes in the literature (p.245).

From this process, it was discovered that, for female youths, the most important risk factors, in descending order, were:

\* Antisocial peers or attitudes



- \* Temperament or misconduct problems (psychopathy, impulsivity, substance use)
- \* Educational difficulties (poor grades, dropout)
- \* Poor parent-child relations (attachment, supervision)
- \* Minor personality variables (empathy, moral reasoning)

Personal distress, family structure, and lower social class did not appear to be strongly related to delinquency. Indeed, there were no statistical or substantive differences across gender. The general risk factors that were important for male delinquency were also important for female delinquency.

In practical terms, these data suggest that knowing a youth's socioeconomic status or family structure would provide little information about his or her risk of delinquency. However, information indicating difficulties in the area of family relations, conduct or peers would provide valuable information.

To be sure of these findings, it was necessary to introduce control variables to determine whether particular aspects of these 60 studies contained systemic biases. The researchers considered 15 separate aspects of these studies and their samples, but found that, while influencing the size of the correlations, the overall ranking of risk factors did not change.

Of course, while this review suggests that the same risk factors are important for male and female youths, it may be that gender differences exist for other factors not captured by the 8 areas examined. To explore this possibility, the authors grouped 96 correlations not captured by the 8 general risk factors into 10 additional risk areas and evaluated them for gender differences (p.247). The outcome of this procedure was that two further categories of risk were identified: (1) lack of attachment to convention and (2) sexual behavior.

Lack of attachment to convention was a broader risk factor than those above, referring to an individual's lack of affiliation with multiple prosocial people such as parents and teachers, or institutions such as family, school and church. This factor was associated with delinquency for each gender.

Sexual behavior was also associated with delinquency, although it remained unclear whether there were gender differences in this regard. Indeed, since the studies showing this as a problem were much older, it remains to be seen whether they would hold up in contemporary times when sexual activity among youth is relatively more widespread and socially acceptable.

In addition to these two additional risk factors, sex role orientation was found to be statistically unrelated to delinquency, but the data to date were inconclusive on factors such as victimization, illegitimate opportunity, lack of hobbies/involvement, accommodation problems, and self-concept issues. Additional research needs to be conducted in these areas before any conclusions can be drawn.

In conclusion, the results of this literature review are clear. The risk factors that are important for male delinquency are also important for female delinquency. The most important are anti-social peers or attitudes, temperament or misconduct problems, educational difficulties, poor parent-child relations, and minor personality variables. In contrast, lower social class, family structure/ parental problems, and personal distress are not strongly related to delinquency for either gender. These results support recent social psychological models of criminal conduct that suggest a variety of personal, interpersonal and structural factors are related to delinquent behavior in males and females.

However, these results seriously challenge the value of early delinquency theories. Most importantly, early notions of female delinquency as exclusively symptomatic of personal distress or familial difficulties have been found inadequate. Early male theories which focused on lower social class can also be questioned.

Several challenges remain for criminologists in this area. These results do not remove the possibility that other factors are associated with delinquency in one or both genders. Future research, for example, should explore personality variables, sexual behavior, sexual abuse and victimization. Secondly, these correlational findings should lead to reformulated ideas about theory and research on female delinquency. Causal factors noted in contemporary male delinquency literature may help to better inform comparative studies of female delinquency - and determine, ultimately, whether we need gender specific or gender-neutral theories of delinquency.

To a few researchers, who have noted similarities in male and female risk factors for years, these aggregate results may not be surprising. However, careful, future research is needed to comprehensively inform us about the role gender plays with respect to predictors and theories of criminal conduct.