Criminal Justice Policy Review

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*Criminal Justice Policy Review* 2008; 19; 349
DOI: 10.1177/0887403407307240

The online version of this article can be found at:
http://cjp.sagepub.com/cgi/content/abstract/19/3/349

Published by:
SAGE
http://www.sagepublications.com

On behalf of:
Department of Criminology at Indiana University of Pennsylvania

**Criminal Justice Policy Review**
Volume 19 Number 3
September 2008 349-367

10.1177/0887403407307240
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# Structuring Police Discretion

## The Effect on Referrals to Youth Court

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This article examines the impact of the Youth Criminal Justice Act of 2002 on police discretion with apprehended young offenders in Canada. Data for 1986 to 2005 from the Canadian Uniform Crime Reporting Survey are analyzed using an interrupted time series design. The Youth Criminal Justice Act was successful in achieving its objective of reducing youth court referrals by structuring police discretion. It caused a substantial change in the exercise of police discretion with apprehended youth: a substantial decrease in the use of charges and a corresponding increase in the use of alternatives to charging. The substitution of extrajudicial measures for charges occurred in all four regions of Canada and was much greater with minor offenses than with serious youth crime. Possible reasons for the success of the Youth Criminal Justice Act are discussed.

***Keywords:*** *police discretion; youth court referrals; extrajudicial measures; young offenders; Youth Criminal Justice Act*

> State legislation is logically an obvious source of influence on police programs and operations . . . so obvious that it has not motivated as much research as has other topics. . . . There is clearly scope for a great deal of additional research on the impact of legislation on the activities of police and other criminal justice agencies.
>
> —Committee to Review Research on Police Policy and Practices, 2004, p. 205

According to K. C. Davis (1969), the originator of the term, to "structure" administrative decision making means "to regularize it, organize it, produce order in it" (p. 97; see also Davis, 1971; 1975). Policymakers and police administrators structure police discretion, or try to, for various reasons. Some initiatives are intended to reduce bias, especially racial bias, in the exercise of police discretion (Committee to Review Research on Police Policy and Practices, 2004: 253-255; Grosman, 1975; Holdaway, 2003; Poyser, 2004). Other measures aim to increase the use of formal action, such as making arrests or laying charges, for certain offenses, as in crackdowns on drunk driving (Jacobs, 1989; Mastrofski & Ritti, 1992), spousal assault (Chesney-Lind, 2002;

**Authors' Note:** The research reported here extends earlier work supported by the Youth Justice Policy Section of the Department of Justice Canada (Carrington & Schulenberg, 2005). Preparation of this article was supported by a research grant from the Social Sciences and Humanities Research Council of Canada.

Dugan, 2003), or youth crime (Kemp & Gelsthorpe, 2003; McCluskey, Varano, Huebner, & Bynum, 2004). Finally, some initiatives are intended to *reduce* the use of formal action by police. The provisions of the Youth Criminal Justice Act (YCJA) concerning police discretion fall into the last category. One of the major objectives of this Canadian law, which came into effect in 2003, was to reduce formal action by police, namely referrals to youth court, by "structuring" police discretion (Barnhorst, 2004, p. 235; Department of Justice Canada, 2003). This article reports an evaluation of the extent to which the YCJA achieved this objective during the first 3 years that it was in force. More generally, this article addresses the issue of the efficacy of legislation to structure police discretion.

## Canadian Legislation Governing Police Discretion

The myth of full enforcement (Allen, 1976; Davis, 1975; H. Goldstein, 1977; Williams, 1983, 1984; Wilson, 1968) has never had the same power in Canada as in the United States. The provincial legislatures in Canada have not enacted the kinds of full enforcement statutes favored by some of their American counterparts (Cordner, Scarborough, & Sheehan, 2004, p. 30; J. Goldstein, 1960, pp. 557-559). Although there are considerable variations from province to province in the degree of legal autonomy enjoyed by chiefs of police and police officers (Stenning, 1981a, 1981b), the provincial statutes and municipal by-laws which govern policing in Canada generally refer to the duty to enforce the law; but none requires that charges be laid whenever sufficient grounds exist (Hornick et al., 1996, pp. 31-32).

For example, the Police Services Act (1990) of the province of Ontario lists the following as the duties of a police officer in Ontario:

> (a) preserving the peace; (b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention; (c) assisting victims of crime; (d) apprehending criminals and other offenders and others who may lawfully be taken into custody; (e) laying charges and participating in prosecutions; (f) executing warrants that are to be executed by police officers and performing related duties; (g) performing the lawful duties that the chief of police assigns; (h) in the case of a municipal police force . . . , enforcing municipal by-laws; (i) completing the prescribed training.

None of these duties, as specified, requires full enforcement, and their broadness and vagueness are in stark contrast to the specificity of the state policing laws cited by J. Goldstein (1960): "It shall be the duty of the police . . . to apprehend any and all persons in the act of committing any offense against the laws of the state . . . to make complaints . . . of any person known or believed by them to be guilty of the violation of the ordinances of the city or the penal laws of the state . . . " (p. 557). Similarly, a textbook on young offenders law, written by a lawyer employed in the Ontario Ministry of the Attorney General, begins the chapter on police procedures

with a section titled "The Discretion Not to Invoke the Criminal Process" (Platt, 1995, p. 167), which cites with approval the following judicial remarks concerning the exercise of police discretion:

> It is sometimes overlooked that the police are also entitled to exercise their discretion whether to invoke the criminal process against a particular person. The extent of the police discretion has not, perhaps, been clearly articulated. (Hon. G. Arthur Martin, 1993, cited in Platt, 1995, p. 167)

Why have the Canadian public and legislators been more acquiescent than Americans in less-than-full enforcement by the police? This issue has not been addressed, but possible reasons for this differential policy response could include the high level of public confidence in the police in Canada (Forcese, 1996, p. 210; Grosman, 1975; Seagrave, 1997, pp. 7-8); the fact that the roots of Canadian policing and the foundation for the authority to use discretion are based on legal powers based on the British common law tradition of the independent constabulary (Hornick et al., 1996; Schulenberg, 2004; but cf. Stenning, 1981a); the growth of police professionalism, which discourages interference by "amateurs" such as politicians and citizens (Stenning, 1981c, p. 190); or perhaps the Canadian historical tradition of "respect for . . . law and order" (Lipset, 1963) and "deference to authority" (Friedenberg, 1980), although the present-day force of that supposed tradition has been disputed (Baer, Grabb, & Johnston, 1993).

## Canadian Legislation Governing Police Discretion With Young Offenders

The organization of law enforcement with young persons in Canada differs in substantial ways from that in the United States. First, the criminal law applying to young persons and to adults—the Criminal Code (1985)—is federal legislation that applies uniformly across the entire nation. However, whereas criminal law is a federal responsibility under the Canadian Constitution, the administration of justice, including the provision of police services, courts, and correctional services, is a provincial responsibility, and this inevitably introduces provincial variations into the way the Criminal Code is enforced.

Second, the successive laws setting out the principles and procedures to be observed by police, courts, and corrections in relation specifically to young persons accused of lawbreaking are also federal legislation applicable everywhere in Canada. However, because the administration of justice is a provincial responsibility, these federal laws have been interpreted and implemented differently in different provinces. For instance, the youth justice system in the province of Quebec is quite different from that in the other provinces because of a provincial statute (Youth Protection Act, 1977) that created an integrated child welfare and youth justice system in that province (Bala, 2003, p. 146; Federal-Provincial-Territorial Task Force, 1996, p. 158).

Third, the legal procedure that initiates court proceedings against a young person accused of lawbreaking is the same as that used with adults: a person (invariably a police officer) lays criminal charges against the young person or adult by swearing an information before a justice of the peace. Procedures for compelling the appearance of the accused in court, such as arrest and pretrial detention, or noncustodial alternatives such as the summons, appearance notice, and promise to appear,[1] are used with both adults and young persons. Although the basic procedures of laying a charge and compelling appearance are the same for young persons as for adults, the federal legislation governing youth justice has modified these procedures by enunciating principles applicable specifically to accused young persons and introducing additional procedural modifications that recognize the special status of young persons.

Fourth, in most provinces and the territories, charges are laid against adults and young persons by the police acting on their own authority and usually without consultation with the prosecutorial authorities (crown attorneys or crown prosecutors, who are agents of the provincial attorneys general). The exceptions are the provinces of New Brunswick, Quebec, and British Columbia, in which charges are recommended by police and then screened by the crown attorney before being laid.

From 1984 to 2003, juvenile justice was governed by the Young Offenders Act (YOA; 1985). It had several provisions that authorized and/or encouraged informal action by police and other decision makers. Section 3(1)(d) in the Declaration of Principle stated:

> Where it is not inconsistent with the protection of society, taking no measures or taking measures other than judicial proceedings under this Act should be considered for dealing with young persons who have committed offences.

Section 4 of the YOA authorized the establishment of formal diversion programs called "Alternative Measures" programs, which were

> operated by social workers, probation officers or members of the community under the direction and authority of the provincial/territorial Attorney General, and were intended to be less intrusive than adjudication and sentencing in youth court. The nature of these programs varied across jurisdictions in their mode of referral (pre-charge, post-charge, or both), eligibility (types of offences, prior record, etc.), the degree of record-keeping, and availability. (Carrington & Schulenberg, 2005, p. 3)

Although the YOA explicitly authorized, and appeared to encourage, the use by police of alternatives to formal charges with apprehended youth, its coming into force in 1984 led to a substantial *increase* in the police use of charges and *decrease* in the use of alternatives to charging, which persisted throughout most of the period of its jurisdiction (Carrington 1999). Although several explanations for this puzzling phenomenon have been proposed, none have been satisfactorily demonstrated (Carrington, 1998, 1999; Carrington & Moyer, 1994; Carrington & Schulenberg, 2004;

Gabor, 1999; John Howard Society of Ontario, 1994; Markwart & Corrado, 1995; Moyer, 1996; Schulenberg, 2004).

The YOA was replaced by the YCJA, which came into force on April 1, 2003. The YCJA terms all alternatives to laying a charge against an apprehended youth "extrajudicial measures."[2] Laying a charge is classified as a "judicial measure"; all other police dispositions of a youth against whom a charge could be laid are classified as extrajudicial measures. The issue of less-than-full enforcement is defined away: police dispositions such as taking no further action or giving an informal warning, which have traditionally been seen as nonenforcement, are redefined as a form of law enforcement. According to Section 4 of the YCJA:

> (a) extrajudicial measures are often the most appropriate and effective way to address youth crime;
>
> (b) extrajudicial measures allow for effective and timely interventions focused on correcting offending behaviour;
>
> (c) extrajudicial measures are presumed to be adequate to hold a young person accountable for his or her offending behaviour if the young person has committed a non-violent offence and has not previously been found guilty of an offence; and
>
> (d) extrajudicial measures should be used if they are adequate to hold a young person accountable for his or her offending behaviour, and, if the use of extrajudicial measures is consistent with the principles set out in this section, nothing in this Act precludes their use in respect of a young person who
>
> (i) has previously been dealt with by the use of extrajudicial measures, or
> (ii) has previously been found guilty of an offence.

Legislating the exercise of police discretion is a risky business for any Canadian legislature because of the significance of police independence in the British tradition of policing, from which Canadian policing developed (Hornick et al., 1996; but cf. Stenning, 1981a). It is doubly so for the federal legislature (Parliament) because, under the Canadian Constitution, policing is a provincial responsibility. The YCJA both legislates in the area of police discretion, and does not. It requires a police officer who is considering laying a charge against a young person to first consider using an extrajudicial measure, and creates a presumption that an extrajudicial measure is appropriate in certain well-defined circumstances. On the other hand, it provides no procedure for enforcing this requirement on police, and explicitly rules out failure by police to comply with this requirement as a ground for invalidating a resulting charge (see YCJA, s.6[1-2]).

Thus, the YCJA gives statutory authority and statutory regulation, or "structure" at least, to traditional forms in which police have always exercised their discretion to respond to youthful lawbreaking without invoking the criminal process. One

would think that the provisions of the YCJA pertaining to police procedures had been drafted with H. Goldstein's (1977) strictures in mind:

> Because police discretion has been covert and disavowed, no system exists for structuring and controlling it. So the police really suffer the worst of all worlds: they must exercise broad discretion behind a facade of performing in a ministerial fashion; and they are expected to realize a high level of equality and justice in their discretionary determinations though they have not been provided with the means most commonly relied upon in government to achieve these ends. If discretion is to be exercised in an equitable manner, it must be structured; discretionary areas must be defined; policies must be developed and articulated. . . . There is plenty of room for narrowing discretion without eliminating it. . . . At a minimum it would seem desirable that discretion be narrowed to the point that all officers in the same agency are operating on the same wavelength. (pp. 110-112)

However, even Goldstein did not anticipate an attempt to make all officers in an entire nation operate on the same wavelength.

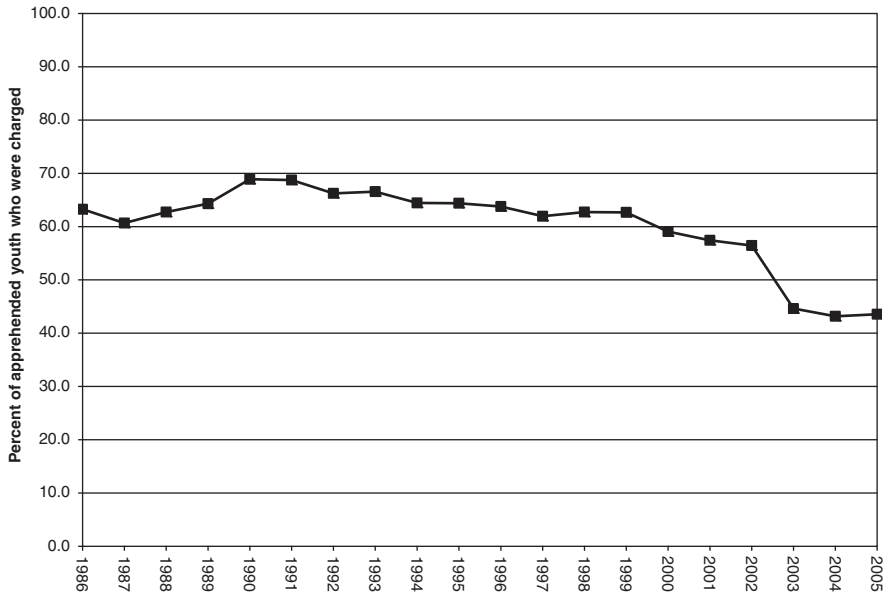
## Data and Methods

This article reports a preliminary assessment of the impact of the YCJA on the exercise of police discretion with apprehended youth in Canada. Data from the Canadian Uniform Crime Reporting Survey were analyzed to determine whether the use of formal action (judicial measures, or charging) has decreased, and whether the use of informal action and diversion (extrajudicial measures) has increased, as a result of the YCJA. The analysis also examines the issues of net widening and proportionality in the use of police discretion. The research uses the interrupted time series design. The levels and trends of annual time series of indicators of youth crime and police action are examined from January 1, 1986, to December 31, 2005. The series are "interrupted" by the coming into force of the YCJA on April 1, 2003. No statistical tests are employed because of the small number of data points.

In Canada, the UCR is operated by the Canadian Centre for Justice Statistics, a division of Statistics Canada. National coverage of the UCR is practically 100%. UCR data are released annually on a calendar year basis, generally about 8 or 9 months after the end of each calendar year. At the time when the research was done, data for 2005 were the most recent available.

Unlike the American UCR, the Canadian UCR does not capture the number of young persons arrested. Rather, it captures the number of young persons who were charged,[3] as well as the number who were "chargeable" but not charged. The sum of these is the number of chargeable youth. A chargeable person[4] is defined by the UCR as one who "has been identified by police as being involved in a criminal incident and against whom an information [i.e., charge] could be laid as a result of sufficient evidence/information" (Canadian Centre for Justice Statistics, 2004, p. 80).[5] Other

**Figure 1**
**Proportions of Apprehended Youth Who Were Charged, by Year, Canada, 1986-2005**



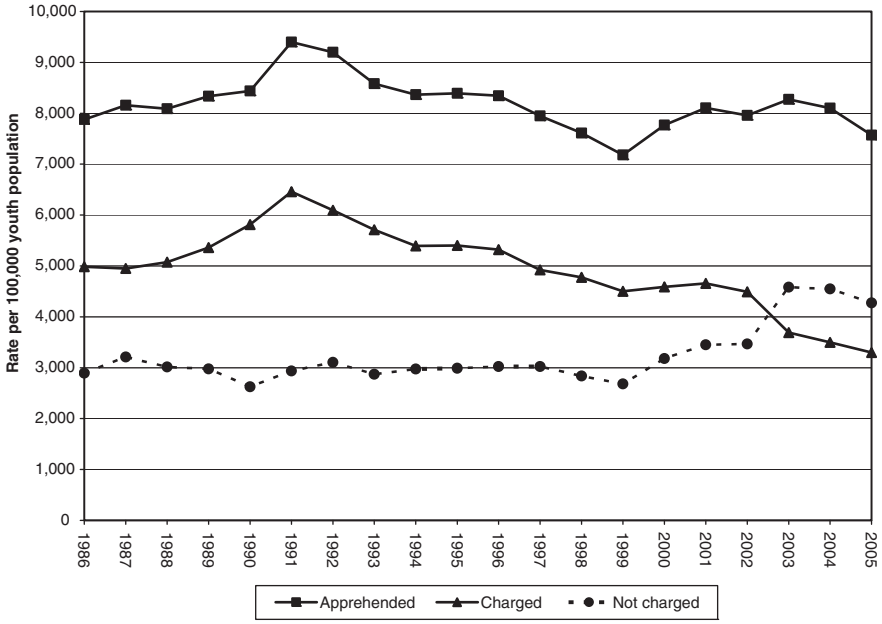

Source: Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

things being equal, a change in the *charge ratio*, or proportion of chargeable youth who were charged, is an indication of a change in the use of police discretion with apprehended youth. However, changes in the proportion of apprehended youth charged may simply reflect changes over time in the youth crime rate (the per-capita rate of youth apprehended). Alternatively, a decrease in the charge ratio could reflect an increase in the rate of youth dealt with by extrajudicial measures but no change in the rate of apprehended youth charged (i.e., net-widening). Therefore, changes in the charge ratio must be interpreted in the light of changes in per capita rates of youth charged and not charged.[6] Consequently, our analyses use multiple indicators (charge ratio, per-capita rates of young persons charged and of young persons not charged, and young persons who were chargeable) to control for these possibilities.

## Analysis and Results

Figure 1 shows annual charge ratios, or proportions of apprehended youth who were charged, for Canada from 1986 to 2005. The charge ratio rose to a high of 69% in 1990, then slowly declined to 56.4% in 2002—an average decrease of approximately

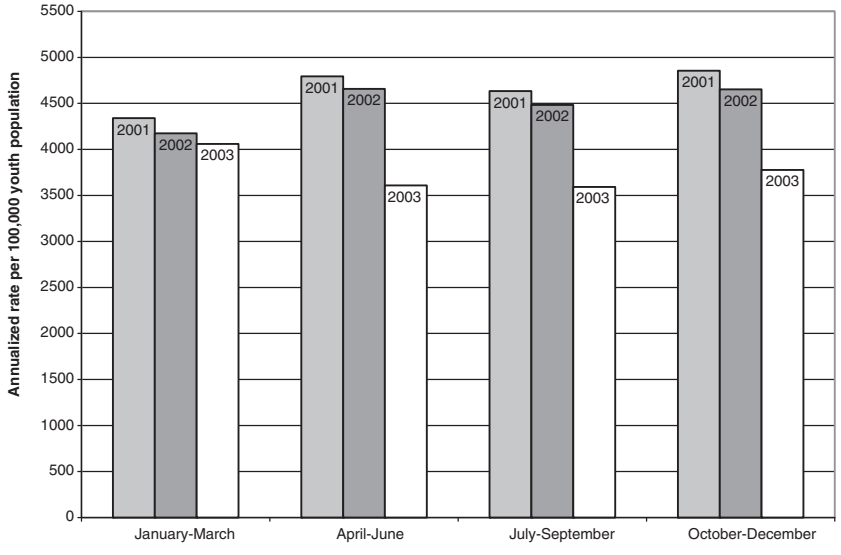
**Figure 2**
**Annual Rates per 100,000 of Young Persons Apprehended, Charged, and Not Charged, Canada, 1986-2005**




Source: Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

1% per year. The decline accelerated between 1999 and 2002 to approximately 2% per year. In the single year of 2003, it fell by 11.8% to 44.6%, and by 2005 was at 43.5%. This is a drop of 13% in absolute terms, and 23% relative to the 2002 level. A drop in the proportion of apprehended youth charged could reflect the substitution of informal (extrajudicial) measures for charges, or it could reflect an increase in the use of informal measures without any change in the level of charging—that is, net-widening—which has resulted from the introduction of juvenile cautioning and diversion schemes in other jurisdictions (Bottomley & Pease, 1986, pp. 118-127; Farrington & Bennett, 1981; Kemp & Gelsthorpe, 2003; Lundman, 1993, p. 99; Walters, 1996). Figure 2 shows the annual rates per 100,000 youth population from 1986 to 2005 of young persons who were (a) apprehended (i.e., chargeable), (b) charged, and (c) not charged. There is no evidence of net-widening. The overall rate of apprehended youth actually decreased slightly: from 7,959 per 100,000 in 2002 to 7,573 in 2005. The increase in the use of extrajudicial measures was balanced by a decrease in the use of charges.

**Figure 3**
**Rates of Young Persons Charged, by Quarter, Canada, 2001-2003**

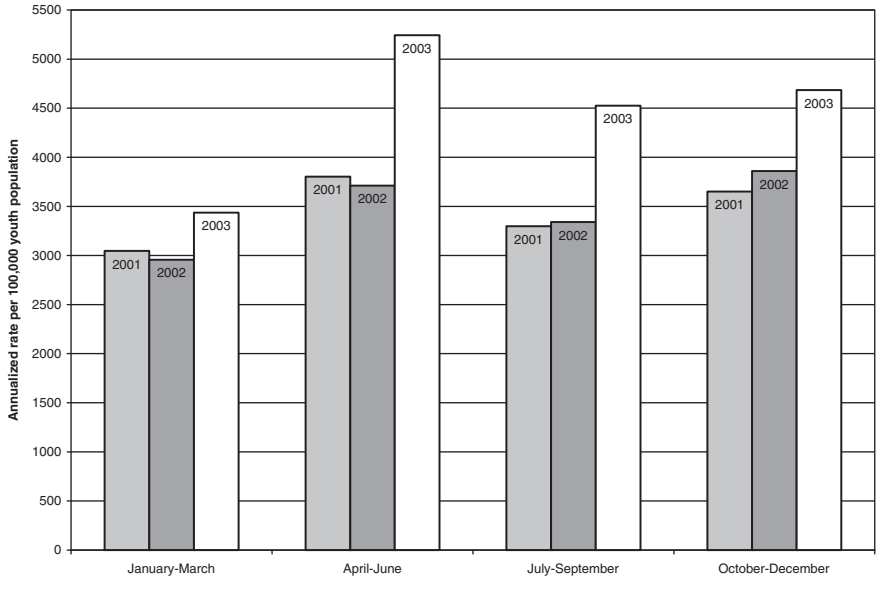



Note: The quarterly rates were annualized by multiplying by 4.
Source: Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

The rate of young persons charged declined gradually from a peak of 6,460 per 100,000 in 1991 to 4,492 in 2002—an average decrease of approximately 3% per year. In 2003, it fell by 18% to 3,692 per 100,000, although the youth crime rate increased slightly (Figure 2). The rate of use of informal measures with apprehended youth fluctuated in a narrow band around 3,000 per 100,000 from 1986 to 2000, and then increased to 3,450 in 2001 and 3,467 in 2002. In 2003, it increased by 32% to 4,582 per 100,000 (Figure 2). This was the first year since youth crime data have been collected that the recorded number of apprehended youth dealt with informally in Canada exceeded the number charged.[7]

Figures 1 and 2 make the prima facie case for the success of the YCJA in bringing about the intended change in the exercise of police discretion with apprehended young persons.[8] They leave open the question whether something else happened in 2003 which could account for the observed changes in police action with apprehended youth. Figures 3 and 4 show quarterly rates of youth charged and dealt with informally for 2001 to 2003.[9] Clearly, the large drop in charging and the corresponding increase in the use of informal action occurred in the second quarter of 2003. The YCJA came into effect on April 1, 2003. A rival explanation for these major changes in police action would have to invoke an event of national scope that occurred, or at least had its effect, suddenly in the second quarter of 2003. The authors are not aware of any such event, other than the coming into effect of the YCJA.

**Figure 4**
**Rates of Apprehended Young Persons Not Charged, by Quarter, Canada, 2001-2003**




Note: The quarterly rates were annualized by multiplying by 4.
Source: Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

One of the other major objectives of the YCJA was that youth be held accountable for offenses in a "fair and proportional" manner (s. 3[1][b][ii]; see also Barnhorst, 2004, p. 234; Department of Justice Canada, 2003; but cf. Roberts, 2004). This implies that the police should use informal action (i.e., extrajudicial measures) more with minor offenses than with serious ones. Of course, the relationship between offense seriousness and police discretion is commonplace in research on police discretion (e.g., Gaines & Kappeler, 2005, p. 265; Committee to Review Research on Police Policy and Practices, 2004, p. 115). Table 1 shows that the YCJA had an impact on this relationship that was consistent with the principle of proportionality. Charge ratios fell by 33% to 42% for the less serious categories of offenses such as minor theft, minor vandalism, and minor drug-related offenses;[10] but they fell by only 9% to 14% for major property and violent offenses. The major exceptions to this general pattern are the offenses against the administration of justice—mainly, violations of probation and bail conditions, as well as failure to appear for court—which are relatively minor offenses, but whose charge rates and ratios did not decrease substantially (Table 1).

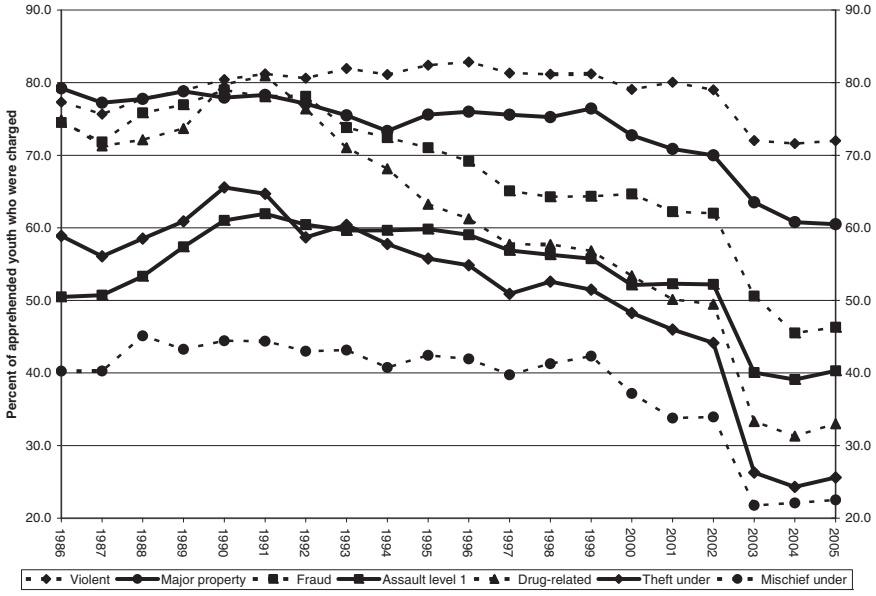
**Table 1**
**Changes from 2002 to 2005 in Annual Rates and Proportions of Young Persons Charged, Not Charged, and Apprehended, by Major Offense Category, Canada**

| Offense Category | Change in Proportion Charged | Change in Rate Charged | Change in Rate Apprehended |
|---|---|---|---|
| All offenses | –23% | –27% | –5% |
| Theft under (minor theft) | –42% | –50% | –13% |
| Mischief under (minor vandalism) | –34% | –25% | 13% |
| Drug-related | –33% | –35% | –2% |
| Fraud | –25% | –36% | –13% |
| Possess stolen property | –24% | –21% | +4% |
| Assault level 1 | –23% | –26% | –3% |
| Other Criminal Code | –22% | –19% | +4% |
| Major property | –14% | –34% | –23% |
| Violent | –9% | –4% | +5% |
| Probation violations | –8% | –9% | –1% |
| Bail violations and fail to appear | –5% | –7% | –2% |

Note: Change in proportion charged is relative to the 2002 level, i.e.,
$$(\text{proportion}_{2005} - \text{proportion}_{2002})/\ \text{proportion}_{2002}.$$
Theft under: The Criminal Code distinguishes between theft of property under and over a threshold value, which is adjusted periodically. The threshold was $1,000 up to 1994 and $5,000 thereafter. Theft over is included in "Major property" offenses.
Mischief under: Like theft and fraud, mischief (property damage) is classified as over or under the threshold value. Mischief over is included in "Major property" offenses.
Drug-related: Included are possession, trafficking, cultivation, importation, etc. of narcotics and other restricted substances; but the great majority of youth-related incidents involve possession of marijuana.
Fraud: Included are both fraud over and fraud under the threshold value, but the great majority of youth-related incidents are consumer-related fraud under.
Assault level 1: The Criminal Code distinguishes three levels of assault: Level 1 (common assault), Level 2 (with a weapon or causing bodily harm), and Level 3 (aggravated).
Other Criminal Code: Included are all criminal offenses not against the person or property (except criminal traffic offenses such as impaired driving, which are not reported for young persons in the UCR Survey).
Major property: Includes break and enter (burglary), motor vehicle theft, theft over, and mischief (vandalism) over.
Violent: Included are all offenses against the person except Level 1 assault; for example robbery, Assault levels 2 and 3, all sexual assaults, homicide, and attempted murder.
Source: Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

The large decreases in charge ratios for the less serious types of offenses occurred in 2003 and persisted in 2004 and 2005 (Figure 5). Even though the charge ratios for most categories of offenses had previously been declining, the drops in 2003 were relatively precipitous for the less serious types of offenses. For example, the charge ratio for drug-related incidents decreased from 81% to 50% over the 11 years from 1991 to 2002—but it fell to 33% in a single year in 2003. Similarly, the charge ratio for minor theft declined from 66% in 1990 to 44% in 2002—then fell to 26% in 2003.

**Figure 5**
**Proportions of Apprehended Youth Who Were Charged, by Year and Selected Type of Offense, Canada, 1986-2005**




Note: For clarity, the following offense categories are omitted: probation violations, possession of stolen property, other Criminal Code, bail violations.
Source: Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

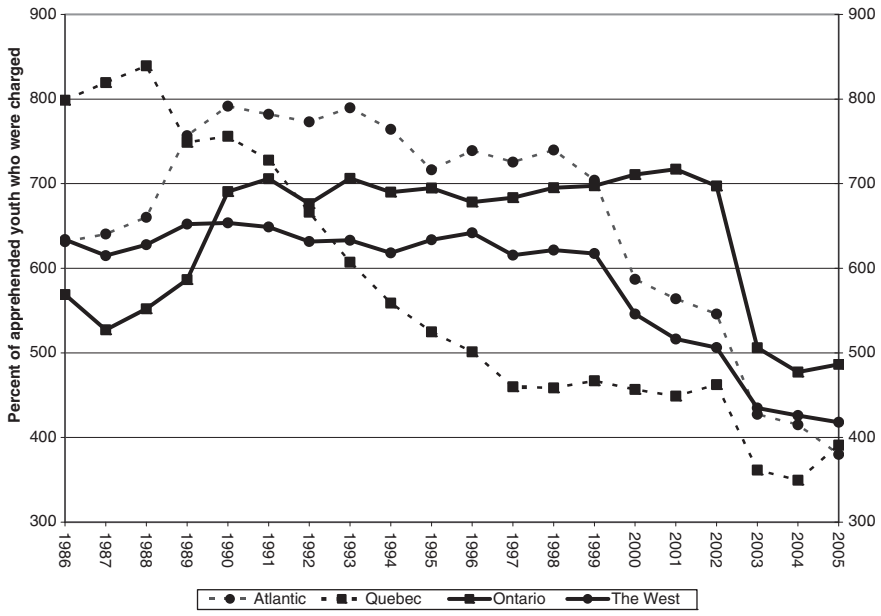
The YCJA is a federal statute that applies everywhere in Canada. However, the administration of justice, including policing, is a provincial, not a federal, responsibility. Were the changes shown in Figures 1 to 4 widespread in Canada or localized? Table 2 shows that charge rates and ratios decreased substantially in all regions of Canada. Figure 6 shows the trends over time in regional charge ratios. The largest impact of the YCJA was in Ontario, which had by far the highest charge ratio in 2002. After fluctuating around 70% since 1990, the charge ratio in Ontario dropped to 51% in 2003 and to 49% in 2005. In the other three regions, charge ratios had been declining since the late 1980s in Quebec and the late 1990s in the Atlantic provinces and the West. The average annual decreases during the 1990s in these three regions were in the range of 3% to 5%. By 2002, charge ratios in these three regions were already at historically low levels, ranging from 46% in Quebec to 55% in the Atlantic provinces. In the single year of 2003—the year that the YCJA came into force—the charge ratios fell from these already-low levels by 7% in the West, 10% in Quebec, and 12% in the Atlantic provinces. In three of the four regions, there were further decreases between 2003 and 2005, but in Quebec, there was a small increase.

**Table 2**
**Changes from 2002 to 2005 in Annual Rates and Proportions of Young Persons Charged, Not Charged, and Apprehended, by Region**

| Region | Total Population in Millions (2005) | Change in Proportion Charged | Change in Rate Charged | Change in Rate Apprehended |
|---|---|---|---|---|
| Canada | 32.3 | –23% | –27% | –5% |
| Atlantic | 2.3 | –30% | –31% | 0% |
| Quebec | 7.6 | –15% | –12% | + 4% |
| Ontario | 12.6 | –30% | –24% | + 8% |
| The West | 9.8 | –17% | –28% | –13% |

Note: Change in proportion charged is relative to the 2002 level, that is
$$(\text{proportion}_{2005} - \text{proportion}_{2002})/\ \text{proportion}_{2002};$$
Atlantic = Newfoundland and Labrador, Prince Edward Island, Nova Scotia, and New Brunswick; The West = Manitoba, Saskatchewan, Alberta, British Columbia, Yukon Territory, Northwest Territories, and Nunavut Territory.
Source: Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

**Figure 6**
**Proportions of Apprehended Youth Who Were Charged, by Year and Region, Canada, 1986-2005**




Source: Uniform Crime Reporting Survey, Canadian Centre for Justice Statistics, Statistics Canada.

In summary, the YCJA had a substantial impact on the exercise of police discretion with apprehended youth in all four regions of Canada. As a result of these changes, interregional variations in charge ratios were considerably less in 2005 than in 1986. There was a spread of 23% in 1986 between Ontario, which had the lowest charge ratio (57% of apprehended youth charged) and Quebec, where 80% of apprehended youth were charged. In 2005, the difference was only 11%, between Ontario, which now had the highest charge ratio—49%—and the Atlantic region, which now had the lowest charge ratio—38% of apprehended youth charged.

## Discussion

One of the main objectives of the YCJA was to reduce referrals to youth court in Canada. Part 1 of the YCJA structures police discretion; that is, it provides explicit and fairly detailed guidance to police officers on what measures to apply to apprehended young persons under what circumstances. The statute makes clear that measures other than laying a charge—extrajudicial measures—such as taking no action, giving an informal warning or formal caution, or diverting to a program, are entirely appropriate forms of law enforcement with young offenders. Indeed, according to the YCJA, these are "often the most appropriate and effective ways to address youth crime" (s. 4[a]).

Data from the UCR Survey show that immediately after the YCJA came into force on April 1, 2003, the proportion of apprehended youth who were charged decreased substantially, as did the per capita rate of young persons charged, whereas the proportion and rate of apprehended youth dealt with by extrajudicial measures increased substantially. The proportion of apprehended youth who were charged had been declining by about 1% per year since 1990 and by about 2% per year since 1999, but the drop of almost 12% in 2003 was precipitous by comparison.[11] 2003 is the first year on record in Canada in which the number of apprehended youth who were dealt with informally exceeded the number charged. The changes in the exercise of police discretion occurred in all regions of Canada. There is no known explanation for these changes in 2003 other than the coming into force of the YCJA. Consistent with the emphasis of the YCJA on proportionality in the response to youth crime, charge rates and ratios decreased much more for minor offenses, such as minor theft and drug-related offenses, than for major crimes.

These results suggest that the YCJA has been remarkably successful in structuring the use of discretion by police to reduce referrals to youth court. This success raises two questions. One is whether the reduced levels of charging will persist, or whether charge rates and ratios will climb in future years. The other question is how and why the YCJA was so successful in immediately achieving its objectives in relation to police discretion. A recent wide-ranging report on police procedures with apprehended youth under the previous legislation, the YOA, noted that the YOA also expressed the intention that the use of alternatives to youth court should increase, but

"it seems that the implementation of the YOA was singularly unsuccessful in legitimating, for both the police and the public, the use by police of informal action with youth" (Carrington & Schulenberg, 2004, p. x). Why, then, did the YCJA succeed where the YOA failed? This question is particularly important in view of the recent comments by Stephen Mastrofski (2004) on the massive review of American police research undertaken by the Committee to Review Research on Police Policy and Practices:

> Readers of *Fairness and Effectiveness in Policing: The Evidence* will readily observe that the report has a lot to say about the importance of controlling police discretion and little to say about how to do it effectively or wisely. . . . For democratic policing, accountability means little without the capacity to control police discretion. This could hardly be a more compelling priority than now. (pp. 115-116)

We have suggested in this article that part of the reason for the success of the YCJA lies in the explicit and creative drafting of the sections of the statute dealing with extrajudicial measures. Many authors have commented on the need for clear, explicit drafting of legislative or administrative guidelines for police discretion (Davis, 1975; Gaines & Kappeler, 2005, p. 295; H. Goldstein, 1977; Williams, 1984). However, this can only be part of the answer. Perhaps the doctrine of extrajudicial measures in the YCJA was an idea whose time had come. The data presented in Figure 1 point to a slightly accelerated decline since 1999 in police charging of youth in Canada; apparently, then, forces were already at work at the end of the 1990s that favored acceptance by the police of the increased use of extrajudicial measures.[12] In contrast, the YOA had the misfortune to come into force (in 1984) at the beginning of a 7-year rising trend in recorded youth (and adult) crime. Many commentators have suggested that this rising crime trend led to exaggerated public fear of crime and punitiveness which, along with other factors, led police to "get tough" with young offenders (Bala, 2003, pp. 13-15; Corrado & Markwart, 1992; Hogeveen & Smandych, 2001; Sprott, 1996; Trépanier, 2004, pp. 283-285). We suspect that another part of the answer lies in the way the implementation of the YCJA was handled, which may have been more felicitous than that of the YOA. However, although there is a considerable body of research on the development, adoption, and implementation of the YOA (e.g., Corrado, Bala, Linden, & Le Blanc, 1992; Federal-Provincial-Territorial Task Force, 1996; Hudson, Hornick, & Burrows, 1988; Winterdyk, 1996, chaps. 3-6), there is a dearth of similar material on the YCJA. In the absence of a published evaluation of the process by which the YCJA was implemented, this suggestion must remain speculative.

## Notes

1. These are equivalent to citations in the United States. The appearance notice is issued by a police officer and is similar to a traffic ticket or "field citation" (Committee to Review Research on Police Policy and Practices, 2004, p. 161). The summons is issued by a justice of the peace at the request of a police

officer who is laying an information (charge). The promise to appear is used for release at the police station or lockup, like a "station citation" or "jail citation" (Committee to Review Research on Police Policy and Practices, 2004, p. 161).

2. The formal diversion programs, which were called "alternative measures" in the previous legislation, are renamed "extrajudicial sanctions" and are also included in the category of extrajudicial measures.

3. Or recommended by police to be charged, because in three provinces, the decision whether to lay a charge against a young person is made by the crown prosecutor, on receipt from police of a recommendation to charge (Canadian Centre for Justice Statistics, 2004, p. 79).

4. The term used by the Canadian Centre for Justice Statistics is "charged/suspect–chargeable (accused)," which we have shortened to *chargeable*. We use the terms *chargeable* and *apprehended* interchangeably in this article.

5. There has been some disagreement about the validity and reliability of UCR data on numbers of chargeable youth who were not charged; see, for example, Carrington, 1995, 1999; Federal-Provincial-Territorial Task Force on Youth Justice, 1996; Hackler & Don, 1990; Hackler & Paranjape, 1983, 1984; Markwart & Corrado, 1995. We agree with the position that any biases in reporting are sufficiently stable over time that the data can be used in time series analyses, especially when aggregated to the level of the province or nation (Carrington, 1999; Scanlon, 1986).

6. Numbers of youth charged and not charged were converted to rates per 100,000, using annual youth population estimates supplied by the Canadian Centre for Justice Statistics, Statistics Canada. A "young person" under the YOA and YCJA is a person who, at the time of the alleged offense, is at least 12 years old but younger than 18 years old. Although the YOA came into effect on April 1, 1984, we chose 1986 as the first year for the time series because April 1, 1984, to March 31, 1985, was designated as a grace period during which the provinces adapted their youth justice systems from the various age jurisdictions that they had under the previous legislation, the Juvenile Delinquents Act, to the uniform age jurisdiction required by the YOA; in consequence, the youth population of the provinces and of Canada, and therefore the per capita rates, is difficult to establish for 1984 and 1985.

7. Data for 1977-1986 are published in Carrington (1999).

8. It is possible that the slightly accelerated decrease in the charge ratio from 1999 to 2002 was due to the government's Youth Justice Renewal Initiative, which was launched in May, 1998, and of which the YCJA was a "key element" (Department of Justice Canada, 2005). Although the statute came into force in April 2003, it was first introduced in Parliament as Bill C-68 in March 1999 (Bala, 2003, p. 22). During the period between the introduction of the bill and its coming into force, the government conducted an extensive and intensive educational campaign to prepare police and other system actors for its implementation.

9. These 3 years were selected for the comparison of quarterly rates to show the sharp drop in the second quarter of 2003.

10. In Canada, the great majority of drug-related offenses involving young persons are possession of *Cannabis*.

11. The accelerated decline since 1999 may also have been related to the YCJA; see Note 8 above.

12. These forces could have included government initiative; see Note 8 above.

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