

Examining the Utility of Pre-Charge Youth Diversion Programs: A Canadian Context

Kanika Samuels

Submitted in partial fulfillment of the requirements
for the degree of Masters of Arts in the
Faculty of Social Science and
Humanities

University of Ontario Institute of Technology

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ABSTRACT

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The increase use of formal youth diversion programs in Canada coincided with the enactment of the Youth Criminal Justice Act in 2003. Following the tenets of the Labeling Theory, the statute sought a balance that would help limit formal court intervention to increase fairness and accountability for youth committing minor offences. Despite the perceived benefits, diversion programs have not escaped criticism. Some researchers contend pre-charge diversion programs that are based on police selection may suffer from selection bias. Critics have also argued that diversion programs are being used as a coercive tool to expand the number of youth into the justice system. Using police data from a local police service (N= 6479 cases) in Ontario Canada, this thesis conducts a bivariate analysis to explore the personal characteristics of youth (age, gender, race, and area of residence) and attempts to determine the probability of being charged or diverted for minor drug possession and minor thefts. Results suggest implementation of the formal pre-charge diversion program had an impact on the local police service's charging decisions. Furthermore, the data suggests there are minor variances in charging practices based on the characteristics examined.

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CHAPTER ONE: INTRODUCTION

In 2001, Leonard, identified as a happy, talented youth, got into a minor physical altercation with a fellow student at his school. Despite the non-serious nature of this incident, the police were called. Although this was his first encounter with the justice system, Leonard was formally charged with assault and causing a disturbance. As a result of these criminal charges he was also suspended from school. Those close to Leonard believe that this initial arrest set off a chain of events which caused him to become alienated from mainstream educational activities and more entrenched in a deviant lifestyle (Poisson and Powell, 2012).

In 2009, Mike, identified as “a really good kid”, was caught by police smoking marijuana. Mike admits to police that he is on a downward spiral and has been smoking marijuana every day for months. The officer offered him a youth diversion program rather than a formal criminal charge. Mike enthusiastically accepted the offer and was provided with the opportunity to complete a drug treatment program. He thus avoided the possible stigmatization that often accompanied a criminal record, while still getting the opportunity to receive counselling for his drug problem. . Ultimately, Mike attributed the “second chance” provided by this diversion with changing his life. Furthermore, with no criminal record to hold him back, Mike now has a steady part-time job and is college bound (Follert, 2011).

In both of the aforementioned cases, young offenders were caught engaging in very common, relatively minor offences. However, one youth was charged with a criminal offence and processed through the formal youth justice system. The other youth, in contrast, was offered a diversion program that seemingly prevented further criminalization. Why were the cases of Leonard and Mike handled so differently? Part of the answer may lie within the specific youth justice legislation that was in operation at the time of their respective offences. Leonard’s story,

for example, unfolded during a period of Canadian history when the youth justice system witnessed high charge rates and a high use of incarceration. Mike's story, on the other hand, took place after legislative changes to the youth justice system that promoted the use of extrajudicial measures for young people involved in minor forms of criminal behaviour

This thesis examines the utility of youth diversion programs under the Youth Criminal Justice Act. By reviewing a pre-charge program under a GTA police service, I intend to review whether the pre-charge diversion program is adhering to the principles identified in the Youth Criminal Justice Act. This chapter begins by providing a brief history of youth justice legislation in Canada and documents the development of diversion programs. Chapter Two of this thesis provides an extensive literature review. This review first documents research on Labeling Theory and discusses how this theoretical perspective relates to the development and implementation of contemporary youth diversion programs. Through the lens of Labeling Theory, I examine how the formal charging of youth with a minor criminal offence may lead to subsequent offending. I argue that Labeling Theory has been influential with respect to reforming Canada's youth justice system and promoting the potential benefits of diversion. I review the major principles and objectives of diversion programs and review issues related to effective implementation. The chapter concludes with a discussion of my major research question. This research question is explored through a study of youth diversion processes within a GTA police service. Chapter Three provides a detailed description of the specific diversion program that is the focus of this study. The details of my research methodology and plan of analysis are also reviewed. Chapter Four presents major study findings. The final chapter (Chapter Five) discusses the theoretical and policy implications of my findings. The strengths and weaknesses of this study are also discussed and future research needs highlighted.

Background of Youth Justice in Canada

From 1984 to 2003, youth crime and justice in Canada were regulated by the Young Offender's Act (YOA). Although the YOA focused on identifying the perceived needs of youth engaging in deviancy, it did not clearly define a youth justice philosophy that could assist youth justice practitioners (Tustin and Lutes, 2005). As a result, under the YOA, the system failed to adequately distinguish between serious and minor offences (Department of Justice, 2002). Critics maintained that the youth courts were overused with respect to minor crimes and that youth sentencing practices were both inconsistent and therefore unfair. (Department of Justice, 2002; Doob and Cesaroni, 2004). The YOA resulted in an unprecedented number of youth being placed under custody (Maclure et al., 2003; Department of Justice Canada, 1998). In fact, under the YOA, young offenders were given custodial sentences at a rate four times higher than adults (Department of Justice, 2002). This situation resulted in Canada having the highest youth incarceration rate in the Western world (Bala et al., 2003; Department of Justice Canada, 2002).

It is also important to note that, under the YOA, 80% of youth were incarcerated for non-violent offences. In other words, youth convicted of minor crimes were placed into the same custodial environments as peers with more serious offences. Some scholars have argued that this process increased the likelihood of future offending because it placed minor offenders into a social environment where they could learn criminal attitudes and techniques from more serious criminals (Tustin and Lutes, 2005). Critics also claimed that the use of court was not only inappropriate for many of these youth, it was also ineffective and costly (Maclure et al., 2003). The high rate of incarceration among youth also garnered concern as researchers frequently argued that involvement with the formal court system could have negative consequences – including labeling, stigmatization and high recidivism rates (Becker, 1973; Matza, 1969). It

became increasingly apparent that new legislation was needed to reduce the negative impacts associated with the YOA. It also became clear that the youth justice system required new rules or mechanisms that would limit the use of courts and incarceration.

Previous research has suggested that the impact of court on young offenders can be especially harsh for first time offenders (Davis and Tanner, 2003; Downs et al. 1997; Sweeten, 2006). For example, research suggested that youth who appeared in youth courts during their high school years were at an increased risk of dropping out (Davis and Tanner, 2003; Bernburg and Krohn, 2003). In addition, Bernburg and Krohn (2003) showed involvement in the youth justice system is significantly related to periods of unemployment in adulthood. Findings such as these supported the basic principles of Labeling Theory, which identified that tagging youth with negative labels early in their development contributed to a spiral down effect as they grew into adulthood. The following section addresses the perspective of labeling theory.

Labeling Theory

Early labeling theorists argued that the negative labels given to individuals who engage in deviancy can further impede their life chances (Tannenbaum, 1938; Lemert, 1951; Becker, 1963). The stigmatization of being formally charged and appearing in court can contribute to a “deviant self-concept” (see Sweeten, 2006 - pg. 477). In other words, the young person may begin to see themselves differently, and they may internalize or believe the deviant label. Formal labelling, it is argued, can be particularly detrimental to youth who have little or no history of delinquency. Youth develop their self-perceptions through interactions with parents, teachers, and peers. Thus, if a young person receives a deviant label, it might change or influence how social actors interact with them (Matsueda, 1992; Siegal and McCormick, 2010). Ultimately, researchers argued that the effects of a criminal charge or court appearance may lead to a

snowball effect of unemployment and increased criminality (Davis and Tanner, 2003; Bernburg and Krohn, 2003; Downs et al. 1997; Sweeten, 2006). In summary, judicial proceedings may have damaging effects on a youth's life chances and contribute to re-offending (McAra and McVie, 2007).

It has been argued that the YOA's reliance on criminal charges and the formal court system resulted in the labeling and stigmatization of youth apprehended for relatively minor crimes. Rather than deterring crime, official labeling processes may have significantly increased the likelihood of future offending for minor, first-time offenders. In response to the perceived inadequacies of the YOA and its failure to address the potential negative consequences of formal court proceedings, reforms to Canada's justice system were recommended by both academics and front-line practitioners. Eventually, the Youth Criminal Justice Act (YCJA) was implemented in 2003 with the intention of decreasing the use of youth court and restricting the use of custody (Barnhorst, 2004). This new federal statute provided the police and courts with an additional strategy – called extrajudicial measures -- for dealing with first-time young offenders. The new Act also established specific guidelines regarding how to deal with youth who were apprehended for the commission of minor crimes.

Diversion and the Youth Criminal Justice Act (YCJA)

In addition to increasing fairness and accountability for youth alleged to have committed minor offences, the YCJA sought a balance that would help limit formal court intervention while identifying and treating youth in their respective communities (Bala et al., 2009). The Declaration of Principle states the purpose of the Youth Criminal Justice Act is to ensure public safety by:

- i) holding young persons accountable through measures that are proportionate to the seriousness of the offence;
- (ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and
- (iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour (Youth Criminal Justice Act, 2003, Section 3)¹;

It should be noted that formal diversion procedures or alternative measures were included in the previous YOA legislation². However, the YOA provided little guidance with respect to what constituted diversion and how it should be used. Due to the lack of clarity, diversion strategies were not widely used during the YOA period (Carrington, 1998). The YCJA, however, remedied this situation by specifically identifying the importance of diversion with respect to addressing the problem of youth crime. The new Act specifically acknowledged that very few youth cases needed to go through formal court proceedings as there was very little benefit and it could be counterproductive (Tustin and Lutes, 2005). New language was incorporated into the Act, which provided further clarification. Under the YCJA, two types of alternative measures were identified: 1) An extra-judicial measure (EJM) or Pre-charge diversion in which a youth is apprehended by the police for an offence but not formally charged; and 2) An extra-judicial sanction (EJS) or Post-charge diversion in which a youth is first charged by the police but offered diversion by the Crown prosecutor at a later date. The YCJA placed great emphasis on the use of extrajudicial measures. Part One of the formal statute states:

¹ The Youth Criminal Justice Act can be retrieved from <http://laws-lois.justice.gc.ca/eng/acts/y-1.5/FullText.html>.

² The section of the The Young Offenders Act that addressed alternative measures can be retrieved from <http://www.parl.gc.ca/Content/LOP/researchpublications/8613-e.htm#C. Alternative-t>.

- (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) 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” (YCJA, 2003, Section 4)

In an effort to limit the use of courts and the negative consequences associated with the formal court process, the YCJA made it clear that youth justice practitioners (i.e. police, crown attorneys, court officials etc.) must consider alternatives to the regular court system. The statute acknowledged that courts were not necessary and informal measures were sufficient for “most” youth. Furthermore, in order to limit any misunderstandings and discrepancies in dealing with youth, the YCJA offered clear direction on how to deal with youth who encountered the justice system. As articulated by the Act, extrajudicial measures available to the Police and Crown Attorneys include (Department of Justice, 2002):

- taking no further action,
- informal police warnings,
- police cautions,
- police referrals to a program or agency in the community,
- Crown caution programs,
- Pre-charge screening programs,
- Youth justice committees, and
- Conferences

Consistent with the goal of reducing the use of courts among youth, the YCJA statute placed few limitations on the use of extrajudicial measures. The statute did not limit the use of extrajudicial measures. Even if a youth had been granted a previous diversion or had been found guilty of a previous offence, their chance of receiving an extrajudicial measure was not impacted. As a result of this new legislative direction the use of youth diversion programs in Canada increased dramatically over the past decade (Maclure et al., 2003; Bala et al., 2009; Greene, 2011)

Objectives of Diversion

Traditionally youth diversion programs have been used as a tool to prevent future delinquent behaviour by: 1) addressing the needs or risk factors that led the youth to delinquency; and 2) limiting the youth's entrenchment in the formal justice system. The belief is that formal court processes do not address the individual needs of youth and thus increase the risk of future re-offending (Lundman, 1976). The YCJA adopted these objectives and stressed that diversion may limit the stigmatization associated with a criminal record. In general, youth who successfully completed a pre-charge diversion program typically avoid both a court appearance altogether and the possibility of a criminal record. By contrast, youth who successfully complete a post-charge diversion still have to appear in court to have the charges withdrawn. Nonetheless, they still are able to avoid the stigmatization of a criminal record.

The YCJA placed emphasis on the use of community-based interventions to address delinquency. The YCJA stipulates that extrajudicial measures are intended to:

- (a) “provide an effective and timely response to offending behaviour outside the bounds of judicial measures;
- (b) encourage young persons to acknowledge and repair the harm caused to the victim and the community;
- (c) encourage families of young persons — including extended families where appropriate and the community to become involved in the design and implementation of those measures;
- (d) provide an opportunity for victims to participate in decisions related to the measures selected and to receive reparation; and
- (e) respect the rights and freedoms of young persons and be proportionate to the seriousness of the offence”.(YCJA, 2003, Section 5)

Unlike the YOA, the YCJA acknowledged that crimes committed by a youth (no matter how minor) impact not only society, but also families and the victims involved. The goal is for a youth to see the harm caused by their actions. Extrajudicial measures are thus meant to be more meaningful to the youth and their community to promote long-term, pro-social change. Many Canadian youth justice practitioners contended that the major objectives of youth diversion were to make youth more accountable for their actions while simultaneously avoiding the detrimental effects of a criminal label (Maclure et al, 2003).

Potential Problems with Diversion

Despite its perceived benefits, diversion has not escaped criticism. Some researchers contend that diversion is being used as a coercive tool to expand the number of youth under the control of the justice system (Sprott, Doob, and Greene, 2004; Alvi, 2012; Greene, 2011) Greene (2011), for example, argued that in the past, youth who are currently offered diversion programs

would not have entered the system at all. Criminologists often refer to this practice as “net widening” (Alvi, 2012). Similarly, in their evaluation of a Toronto-based pre-charge diversion program, Sprott, Doob, and Greene (2004) found that most diversion cases did not involve court bound youth. Rather they involved youth who normally would have just been given a warning or caution. Critics maintain that diversion programs can thus produce “net-widening” by capturing youthful behaviour that previously would have been ignored by the police or dealt with in an informal manner. Chan and Ericson (1981) argued, for example, that youth are “not diverted from, but into and within the system” (p.51). In light of these findings it is important to ask the question whether or not youth diversion programs are being used as a tool to informally draw youth into the justice system.

Another potential problem with pre-charge diversion programs involves the actual decision-making process. All pre-charge diversion decisions are made by frontline police officers. This leads to questions about the nature of police discretion. Are police officers exempt from bias? Are all youth equally likely to get diversion? How do the characteristics of youth offered diversion compare to the characteristics of youth formally charged with a crime? Conducting a study in Canada’s major cities during a one month period, Conly (1978) found that police play a “crucial role in determining the numbers and types of juveniles appearing in juvenile courts” (p.25). Implementation of the YCJA has not altered the role of police discretion, as additional research has shown that certain personal and situational factors can influence an officer’s decision to charge or divert (Schulenberg, 2003, Carrington and Schulenberg, 2003, 2005, 2008; Schulenberg and Warren, 2009; Marinos and Innocente, 2008). As one practitioner states “The problem with giving discretion to the police is that they [may] use it unfairly...The possibility for class, race, sex, every type of discrimination is there when you give that broad

discretion to the police” (Maclure et al. 2003, pg. 145). Since police discretion plays an important role in the decision to divert or charge an apprehended youth, it is important to acknowledge the impact of this practice. The use of discretion can lead to inconsistencies in the diversion selection process and thus may be causing inequalities within the youth justice system. As a result of these practices, police discretion may be interfering with the goals of the YCJA.

Research Questions

I am interested in exploring a series of questions about the youth diversion process. In accordance with the changes to the YCJA, the police service supporting this research has implemented a formal pre-charge youth diversion program for youth ages 12-17 apprehended for minor crimes. Based on police officer’s discretion, a youth may be offered the opportunity to complete counselling or a community based program rather than face criminal charges. Divertable offences include minor possession of marijuana, Theft Under \$5000, Assault, Mischief, and Break and Enter.

My main focus is to compare diverted youth to those formally charged for minor offences. This allows the opportunity to explore whether the youth diversion program operating within the jurisdiction of the police service providing the data is in fact achieving the goals set forth by the YCJA. The available data allows for the exploration of numerous questions related to the youth diversion process. More specifically my primary research questions are as follows:

- Comparing the personal characteristics of youth who are selected for diversion programs with youth who are formally charged with a criminal offence, are charged youth different than diverted youth?
- Comparing – over time the total number of youth warned or cautioned by the police, or cautioned by the police since the advent of formal diversion strategies? Has there been a drop in

the number of youth charged? To what extent has pre-charge diversion contributed to net-widening?

In order to address this question, I examine a sample of youth who have committed two common offences: Theft Under \$5000 and Minor Drug Possession. This is informed by recent findings, which suggest that Theft Under \$5000 and Minor Marijuana possession are the most common offences committed by Canadian youth (Sprott, 2013).

In order to add to the discussion of effectiveness, I aim to explore the identified concerns of diversion programs. I examine the role of police discretion during the youth diversion selection process and the probability of net-widening. My analysis compares the personal characteristics of youth charged with a crime to those offered a diversion program. Evidence may support the idea that inconsistencies within the youth justice system are having a negative impact on particular social groups within Canada.

The available data also allows for an examination of net-widening. An examination of traditional warning and caution practices may – or may not -- support the notion that the use of extrajudicial measures is a form of net-widening or is used as a coercive tool to get a youth's name into the criminal justice system (Alvi, 2012). There are few Canadian studies that directly examine the arrest/charge data of Canadian police services. This research study is an important contribution to the extant research on youth diversion programs in Canada.

CHAPTER TWO: LITERATURE REVIEW

Introduction

Since 1908, Canada has maintained a separate justice system to manage youth involved in crime (Doob and Cesaroni, 2004). Canada's earliest youth justice legislation, The Juvenile Delinquents Act (JDA), was implemented with the notion that delinquent youth were a product of parental neglect and social disadvantage. However, prior to this Act, Canada followed English law³. In relation to young offenders, English law followed the notion of *doli incapax* "the incapacity to do wrong". The idea held that youth under the age of 13 did not have the capacity to commit criminal acts. However, if a child was deemed to have the intelligence and ability to differentiate between right and wrong, then they were subject to the same punishments as an adult, which included hanging and prison sentences. Youth criminality was an issue, but was generally low level delinquency such as "vandalism, petty theft, acts of immorality, the breaking of local ordinances, the abandonment of indentured service contracts, brawling and swearing" (Department of Justice, 2015).

By the eighteenth century, there was growing concern over the treatment of young offenders. Initiated by the Age of Enlightenment, many intellectuals acknowledged the criminal justice system was flawed and required reform. Examination of poor disadvantaged youth (who often were the culprits of crime) revealed dire social environments. For the first time, the living conditions of youth were being seen as a root of youth criminality. This was apparent in a report prepared in 1836 by Charles Duncombe, a physician and politician elected to the Legislature of Upper Canada. Duncombe was tasked to report on the state of prisons and penitentiaries. He was

³ The historical background on the youth criminal justice system prior to the Youth Delinquency Act was retrieved from the Department of Justice -- The Evolution of Juvenile Justice in Canada: <http://www.justice.gc.ca/eng/abt-apd/icg-gci/jj2-jm2/sec01.html>.

one of the first to publicly state that Canada needed to steer away from old English law and view youth criminality in a different manner.

“The idle and miserable habits of numbers of children, most of whom are of an age suitable for schools, or for some useful employment. *The parents of these children, are, in all probability, too poor, or too degenerate to provide them with clothing fit for them to be seen in at school; and know not where to place them in order that they may find employment, or be better cared for.* Accustomed, in many instances, to witness at home nothing in the way of example, but what is degrading; *early taught to observe intemperance, and to hear obscene and profane language without disgust; obliged to beg, and even encouraged to acts of dishonesty to satisfy the wants induced by the indolence of their parents* - what can be expected, but that such children will in due time, become responsible to the laws for crimes, which have thus, in a manner, been forced upon them?” (*Emphasis added*, Department of Justice, 2015, Ch. 1).

Duncombe’s report would increase support for a specialized youth justice system. After many years of legislative debate, a separate youth justice system, the Juvenile Delinquents Act, was established in 1908. As a result of the concern over the social environments of troubled youth, the care and custody of delinquent youth became the focus of the youth justice system and the State came to play the role of “surrogate parent.” At the time, alternative options to the court did not exist as youth criminality was viewed as a “sickness”, and the court system was responsible for treating the ill (Caputo and Vallée, 2007). Separate detention centres were created with the intention of serving the individual needs of young offenders via the implementation of treatment programs designed to address the root causes of criminality (Doob & Cesaroni, 2004). During this period the youth justice system had a distinct welfare orientation. However, critics of the JDA noted that, because of the focus on individual background and needs, sentences varied widely among youth who had committed similar offences. Further reform was in order.

By the 1960s there was growing concern over the way youth were handled under the JDA. Furthermore, many U.S. youth justice systems had begun to focus on alternative court

measures. Many policies were being reformed based on the belief that youth courts were not effectively treating delinquency. There was growing concern that being involved in the justice system was in fact more harmful to youth. The belief was that entrenchment within the criminal justice system was helping to produce better criminals. Support was growing for less court interventions, specifically for minor acts of crime which many believed did not necessitate court intervention. As a result, critics of the U.S. youth criminal justice system argued that there was a need to develop better procedural protections for youth processed by the courts. In addition, it was necessary to identify cases that could avoid the entire formal court process. These alternative measures diverted youth from the courts and provided them with community-based services. Ultimately, as a result of growing support for less formal court interventions for young offenders, calls for reform also emerged in Canada.

In 1965, the Department of Justice Committee on Juvenile Delinquency -- established by Canada's Department of Justice -- released a comprehensive report addressing the state of Canada's Youth Justice System. For the first time, the use of diversion was being introduced as an alternative for police officers when dealing with apprehended youth. The report stated:

Police discretion in juvenile law enforcement has three aspects. First, there is the question whether a child should be charged or, alternatively, dealt with on an informal basis. Second, if it is decided to deal with the case informally the question then is whether the child should be referred to an agency other than the court or should be dealt with on the spot by police action alone. (Department of Justice, 1965, p110).

By the 1970's, the concept of youth diversion had established itself within the Canadian youth justice system (Bala, 2003). However there was little legislation promoting its use. The proposed act, the Young Offenders Act (YOA), continued to focus on the needs of the youth, however increased attention was placed on the offence itself. The use of diversion was again identified as an adequate measure. As stated by the Solicitor General (1975), one of the new goals of the act was to seek alternative measures to youth who had committed less serious offences.

“for less serious offences, alternative measures to the formal court process might be used. It has been recognized for some time that many young people are brought into court unnecessarily, when other effective ways to deal with them already exist in some provinces. These programs called diversion programs may entail community service, involvement in special education programs, counseling or restitution agreements; their common characteristic is that they are all voluntary” (Solicitor General, 1975, p. 4).

Diversion was formally introduced into the new youth legislation in 1984. Section 3(1)(d) of the YOA (1984) states: “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”. Although alternative measures had now been formally introduced into Canada's youth justice legislation, there was very little guidance on how to use it effectively. In fact, after the enactment of the YOA, criminal charges among youth increased substantially. Charges increased despite dire warnings from criminologists regarding the negative consequences of criminal labelling (Carrington and Schulenberg, 2008).

Criminologists held the belief that limiting a youth's involvement with the criminal justice system, reduced a youth's chance of adopting a criminal label. Consequently, the YCJA sought to reduce the use of youth courts by aggressively promoting alternative measures.

This chapter provides with an overview of the major principles of Labeling Theory. It will argue that this theoretical tradition greatly influenced the development and implementation of diversion programs within many jurisdictions, including the Canadian justice system. The contributions of early Labeling theorists -- including Frank Tannenbaum (1938), Edwin Lemert (1951) and Howard Becker (1963) -- will first be examined. I discuss the potential consequences of labeling and review research that both supports and challenges the major claims made by Labeling theorists. This section concludes with a discussion of how Labeling Theory informs my major research questions with respect to youth recidivism.

The chapter provides a detailed examination of research that has documented the effectiveness – or ineffectiveness -- of youth diversion programs. This discussion introduces various problems or issues associated with youth diversion programs. One major concern involves the potential for diversion programs to contribute to net-widening. A second major concern involves the possible presence of systemic biases that may determine which youth are offered diversion programs and which youth are charged and processed through the formal court system. The chapter concludes by highlighting the current study's major and secondary research questions and associated hypotheses.

The Foundations of Labeling Theory

The roots of Labeling Theory can be found in the basic principles of Symbolic Interaction Theory. George Herbert Mead (1934), Charles Cooley (1902) and Herbert Blumer (1969), were the original theorists behind Symbolic Interaction. This perspective maintained that people communicated via representational symbols including gestures, words, and images. These symbols let individuals know how others felt about them -- whether they are liked or disliked, loved or despised (Siegal and McCormick, 2010). People constantly interpret the symbolic

gestures they receive from others and incorporate them into their reflected appraisals of self (Siegal and McCormick, 2010). In other words, how others see us impacts our own self-image. I will use the examples of a police officer and a law breaker to illustrate this point. Traditionally, the role of a police officer is to maintain safety and order within their community. To most people, a police officer symbolizes protection and safety. By contrast, a law breaker is an individual that defies order and poses a risk to community safety. In sum, the “officer” represents a positive symbol and will thus be treated quite differently from the individual that has been identified as a “criminal threat.” Mead (1934) argued these symbols or representations dictated how one was treated, in turn, one would internalize and adopt these symbols as part of their own self-image. People become conscious of how they are judged by others through their social interactions.

This is the basic principle of the Labeling Theory. People are given labels, and it is these labels that dictate their place in society and how others treat them. Early labeling theorists argued that individuals are at risk of engaging in deviant lifestyles if they are labeled as deviants. This label causes an individual to be ostracized by mainstream society and in turn gravitate to others that have adopted similar labels (Siegal and McCormick, 2010). The criminal label thus, becomes internalized and consequently increases one’s risk of adopting a deviant lifestyle.

Early Theorists

Influenced by the societal interactions he observed, Frank Tannenbaum (1938) was one of the first theorists to apply a symbolic interactionist approach to youth criminality. In his book entitled *Crime and Community*, Tannenbaum (1938) argued that crime was defined by the reaction of the social audience -- not the act itself. As he states: “the young delinquent becomes bad because he is defined as bad and because he is not believed to be good” (p. 18). The basic

idea holds that the stigma associated with deviancy greatly influenced future criminal behaviour, since the public's response to an individual's criminality leads that individual into isolation (Adams, 1996). This isolation forces the individual to associate with others that are also shunned from the community. In response to public exile, these individuals are at an increased risk of adopting a deviant lifestyle. Tannenbaum (1938) referred to this as the "*dramatization of evil*".

"The process of making the criminal, therefore, is a process of tagging, defining, identifying, making conscious and self-conscious; it becomes a way of stimulating, suggesting and evoking the very traits that are complained of. If the theory of relation of response to stimulus has any meaning, the entire process of dealing with the young delinquent is mischievous insofar as it identifies him to himself or the environment as a delinquent person. The person becomes the thing he is described as being" (Tannenbaum 1938: 19-20).

In essence, Tannenbaum's (1938) ideas implied that apprehending youth was actually causing crime instead of reducing crime. The process of deviancy starts with categorizing a youth as deviant, resulting in the youth being ostracized by society. In turn, the youth is at risk of assimilating with other individuals that are part of the deviant subculture, placing the youth at risk of associating with older and wiser criminals (Deutshmann, 2007). Being a part of the deviant subculture influences self-perception and helps develop the idea that one is a true criminal. The basic principles of Tannenbaum's hypothesis can be summarized in the following way: 1) The application of the criminal label leads to negative stigmatization. Given a criminal label, a person will be treated differently by others (as a deviant, unworthy, untrustworthy, etc.) 2) Social stigmatization associated with the criminal label changes an individual's self-concept and how they see themselves. In other words, one may come to view themselves as bad or criminal through a process of reflected appraisal. As an end result, the labeled person has few opportunities to engage in socially accepted activities (including formal education and legal employment).

Unfortunately, Tannenbaum's early ideas gained relatively little attention from researchers or policy-makers. However, interest in the labeling process re-emerged with the work of Edwin Lemert (1951). Expanding on Tannenbaum's concept of the dramatization of evil, Lemert (1951) explained that youth criminality was a two-stage process. He argued that initial deviant acts are known as "*primary deviance*." Often these acts go unnoticed and are not considered a significant or defining aspect of a person's life. For example, jaywalking, an extremely common offence, is often rationalized as "something we all do" (DeKeseredy et al., 2005). It is not internalized nor does it become part of one's self-image. "*Secondary deviance*", however, is the result of sanctions and the application of the criminal label. Further deviance is a result of the stigmatization associated with criminality, notably the way one is treated and seen in society. Lemert (1951) argued that secondary deviance is a result of the label itself. According to Lemert's (1951) interpretation, if the label and subsequent stigma is not placed on a youth the first time they are apprehended for a crime, they will not experience "secondary deviance" or repeat criminality.

Expanding on Lemert's concept of deviance, Howard Becker (1963) introduced the idea that socially constructed "labels" are the driving force behind an individual's criminal behaviour. In his book entitled *Outsiders*, Becker argued that: "When a rule is enforced, the person who is supposed to have broken it may be seen as a special kind of person, one who cannot be trusted to live by the rules agreed on by the group. He is regarded as an outsider" (Becker, 1963, p. 1). Becker's book garnered much attention from criminal justice practitioners and reinforced the importance of examining the impact of assigning criminal "labels." This idea eventually provided the basis for youth diversion programs.

Like his predecessors, Becker acknowledged that a criminal label may increase a person's chances of engaging in further deviance. He contended that, if the criminal label was successfully applied, it plagued the individual and they lost the will to act in a conventional manner. When the criminal label stuck it defined the individual. Once an individual was caught committing an offence and identified as a criminal, the stigma of that label identified him/her as a "different person." Once labeled a criminal, one was expected to act that way again.

"To be labeled a criminal one need only commit a single criminal offence...the word carries a number of connotations specifying auxiliary traits characteristic of anyone bearing the label. A man who has been convicted of housebreaking and thereby labeled a criminal is presumed to be a person likely to break into other houses...further he is considered likely to commit other kinds of crimes as well...Thus, apprehension for one deviant act exposes a person to the likelihood that he will be regarded as deviant or undesirable in other respects" (Becker, 1963, pg. 33).

Becker argued that the criminal label becomes one's master status. It become one's identity. Becker, noted that some statuses held more importance and thus take precedence over others. For example, a young student from a middle class home was often disruptive in class and as a result was frequently disciplined. He was not trusted and treated as "different" among his teachers and peers. Despite other qualities within the student, the status of being disruptive and different (deviant) took precedence over any other label. In essence, the same holds true with a criminal label. If it is believed that one was capable of breaking the law, it was assumed that the individual is deviant and incapable of following moral standards. The criminal label takes precedence over ANY other characteristic. Ultimately this labeling process produced what Becker called a *self-fulfilling prophecy*. The individual became the type of person that people within society expect. A person who was labeled a deviant became ostracized by mainstream society. That individual was forced to associate with other individuals that have experienced the same label. As a result that individual finds pleasure being with other individuals that have

engaged in similar activity. This started the process of learning to be deviant and led to the establishment of a deviant career.

Becker (1963), however, argued that it was too simplistic for society to identify individuals that engage in criminal activity as “different.” Criminality was more complex, because it was defined by socially constructed rules. He questioned why acts could be considered deviant in one instance, but not in the next. Becker (1963) stressed the importance of acknowledging judgement as a variable in dictating deviance. In essence, society created deviance by dictating who would be identified as a deviant and who would be able to avoid that label. Becker argues “the social groups create deviance by making the rules whose infraction constitutes deviance” (pg. 9). Thus, rules were applied to particular people who consequently became “labeled” as outsiders. He captured this process when he stated:

“From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an “offender”. *The deviant is one to whom that label has successfully been applied; deviant behaviour is behaviour that people so label*” (emphasis added p. 9).

In essence, deviance is a consequence of rules set by society. Becker thus introduced a discussion regarding “who does the labeling” and “who is labeled”. Ironically, this aspect of the labeling perspective was rarely addressed within the context of the criminal justice system. Not everyone who was identified as deviant is actually deviant. In contrast, a group of individuals that have been identified as deviant may not include all those that have actually broken a rule. Many deviant offenders may escape apprehension and thus escape a deviant label. What Becker acknowledged was that a deviant label was selective. Becker (1963) argued that it was important to examine who decides “the rules” regarding what behaviour was criminal and what behaviour was not. Becker identified those who defined crime as *moral entrepreneurs*, groups or individuals who have the ability or power to control legal order and societal norms in order to

uphold their own moral values and protect their own interests (Siegal and McCormick, 2010). What “deviants” have in common is the fact that they have experienced being labeled a deviant – based on the rules set forth by *moral entrepreneurs*. How an act is interpreted and whether it would be treated as deviant greatly depended on who committed the crime and who felt harmed by it.

Societal rules are set by a select group and as a result Becker (1963) noted, “Rules tend to be applied more to some persons than others” (p. 12). Deviant labels are not randomly distributed. Becker (1963) stated that society was a complex system where specific groups are allotted the power to establish social rules. As a result, rules are differentiated among “social class lines, ethnic lines, occupational lines, and cultural lines” (Becker, 1963, p. 15). Therefore the powerless, poor, and disadvantaged are at an increased risk of acquiring a deviant label. To illustrate his point, Becker (1963) cited studies showing that boys from middle class backgrounds did not get entrenched within the criminal justice system to the same degree as boys from lower class backgrounds. Despite the fact that all these boys committed the same offence. Becker (1963) also acknowledged that the law was applied differently to black and white offenders in a society such as the US where race is demarked by color. Becker (1963) argued that race was a socially constructed master status. Race, much like a criminal label, took precedence over other personal characteristics. As a result, Becker (1963) argued that labels have a stronger impact on non-whites than others and these labels could contribute to differential treatment within the criminal justice system. In other words, holding criminal behaviour constant, Becker (1963) believed that poor people, racial minorities and other disadvantaged social groups were more likely to become criminally labelled than main stream, and more privileged members of society.

Critics of the labeling theory have argued that the concept of labeling is too simplistic. A number of early studies, for example, found that labeling theory does not account for deviance. It was difficult to conclude that after being labeled a deviant, an individual subsequently engaged in further deviance (Gibbs, 1966; Bordua; 1967; Akers, 1967). Interestingly, Becker did not react favourably to the idea that his concepts were identified as a theory. Becker (1967) later acknowledged that the concepts identified within his book and the concepts of others (Tannenbaum, 1938, Lemert, 1951) were simply to promote discussion about how the actions of others, mainly the reaction of social actors, can negatively impact an individual and influence deviance. Becker (1967)⁴ later clarified that individuals do not commit crime simply because they are labeled. He acknowledged that labels can “make it harder to continue the normal routines of everyday life and thus provokes the individual to abnormal actions (as when a prison record makes it harder to earn a living at a conventional occupation and so disposes its processor to move to an illegal one)” (pg. 179). Becker (1967) emphasized that the stigma associated with a criminal record could impact a youth’s future and their access to conventional opportunities. The following section will provide a brief examination of empirical studies that have identified the negative impacts of a criminal label.

The Impact of a Criminal Label

Will a criminal record impede a young person’s financial success and stability in the future and thus increase the risk of further delinquent behaviour? Numerous studies show that there is indeed a positive link between labeling and criminal behaviour (Sampson and Laub

⁴ Becker (1967) later argued that his concepts were being used to explain deviant behaviour, to which he never intended. He stressed the importance of not only looking at the deviant act, but to also look at all aspects of deviancy. He acknowledged that it was important to examine, simultaneously, the commission or non-commission of a given act, as well as the definition of that act as deviant or not. Becker (1967) argued that he wanted his concepts to be identified as the *interactionist theory of deviance*. I do not wish to disrespect his request however, due to popularity of the original term “labeling theory”, for the purpose of this study, the concepts identified by Tannenbaum (1938), Lemert (1951), and Becker (1963) will continue to be addressed as the labeling theory.

1990, 1992; Tanner, Davies, and O'Grady 1999; Thornberry and Christenson 1984). For example, Sampson and Laub (1993) acknowledged that a successful transition to adulthood is predicated on a good education and fruitful employment. They found that a formal criminal label initiated by the criminal justice system could directly cause employers to dismiss ex-offenders from employment opportunities. Similarly, in their study on the impact of formal intervention during adolescence, Bernburg and Krohn (2003) found that official involvement with the criminal justice system as a youth increased the risk of engaging in criminal behaviours as an adult. They argued that this was due to the youth justice system's negative impact on educational achievement and employment options.

Indeed, many researchers contend that employment problems among young adults often stem from their early involvement in the juvenile justice system (Bushway, 1998; Wiesner, Kim, and Capaldi, 2010). These theorists argue that employers reduce an individual to a criminal label and as a result labeled individuals are denied the opportunity to engage in meaningful employment. In some instances, it is reasonable for an employer to have access to criminal records in order to assess the suitability of a candidate. For example, to eliminate any candidates accused of child molestation from working in child care daycare or an individual accused of drunk driving from working as a public transit driver (Bushway, 1998). However, employers may use criminal records to determine trustworthiness (Bushway, 1998).

Numerous surveys have shown that some employers solely base their hiring decisions on the presence or absence of a criminal record (see Boshier and Johnson, 1974; Buikhuisen and Dijksterhuis, 1971; Tromanhauser, 1976). In a survey with US employers, Holzer (1996) found that 65 percent of employers admitted that they would intentionally not hire an individual with a criminal record (regardless of the offence). The results of those surveys exemplify the act of

labeling. Employers do label potential employees based on their past criminal history. In accordance with Becker's labeling perspective: "An employer who uses the existence of a criminal history record to exclude an individual from consideration for a job, without consideration of the applicants merits, would be effectively labeling an individual" (Bushway, 1998, p. 456).

Based on the potential impact of a criminal record on a youth's future, Bushway (1998) renewed interest in finding direct links of a youth's arrest to their employment opportunities. Bushway (1998) examined whether the stigma of an arrest caused harm to potential applicants for meaningful employment. Bushway (1998) compared first time arrests for minor crimes and job stability. Bushway (1998) found that youth apprehended for minor crimes had a harder time finding employment. This labeling effect did not diminish after statistically controlling for self-reported offending behaviour, age, residence and marital status. Bushway's (1998) findings suggested that the act of labeling -- not level of criminal behaviour -- was largely responsible for an increase in job instability following juvenile arrest.

These findings were replicated, more recently, in a study conducted by Wiesner, Kim, and Capaldi (2010). The researchers found that there was a positive correlation between number of arrests as a youth and unemployment. The positive correlation was only related to juvenile arrests and not arrests during adulthood. Therefore, involvement with the criminal justice as a youth was linked to poorer adult work outcomes, even when controlling for other factors including low self-control. Numerous researchers have found that arrests, convictions, and incarcerations in adolescence and early adulthood have harmful consequences for subsequent occupational opportunities and can lead to income instability, employment instability and blocked career opportunities (see Freeman 1991; Grogger 1995; Hagan 1993; Needels 1996;

Sampson and Laub 1990,1993; Tanner, Davies, and O’Grady 1999; Thornberry and Christenson 1984; Western 2002; Wiesner et al. 2003).

More recent studies have identified that labeling within school settings – as well as the criminal justice system – can also have a negative impact on employment and income-related outcomes (see Hirschfield, 2009). Davies and Tanner (2003), for example, found that both early school suspensions and imprisonment experiences (between the ages of 15-23 years) had a detrimental impact on subjects’ employment status and income at age 29-37 years. The negative relationship between labeling and economic outcomes remained statistically significant after controlling for social background, human capital, previous delinquent behaviour, family status, and local context (unemployment rate in the respondents local labour market and the crime rate). In other words, Davies and Tanner (2003) found that negative contacts with teachers, police officers, courts, and the prison system in adolescence have a detrimental effect on the quality of life as an adult. The findings support the general hypotheses first formulated by Becker (1967).

Sweeten (2006) offered additional support for the idea that negative labeling within informal institutions could have a detrimental effect on youth. Sweeten (2006) examined whether a first time arrest and court involvement during high school impacted the likelihood of high school graduation. Sweeten’s (2006) findings show that youth who experienced their first encounter with the justice system, particularly if it involves a court appearance, during their high school years were at an increased risk of dropping out. Sweeten (2006) theorized that the stigmatization of appearing in court led to a “deviant self-concept” (p. 477), and that this could be more detrimental to youth that have little to no prior delinquency. Sweeten (2006) argued that the effects of a court appearance could lead to a snowball effect of unemployment and increased criminality.

Critics have argued that Labeling Theory is too “deterministic” and gives too much weight to the idea that a person’s self- identity is completely shaped by the way that others identify and react to them (Akers, 1997). There is no concrete explanation, for example, for why some who have been labeled a criminal do not engage in subsequent deviancy. In addition, the theory cannot explain why some who have never been formally labeled a criminal continue to engage in criminal behaviour. Others point out that very few studies actually measure the actual application of labels and their subsequent impact. In fact there are no Canadian studies that measure the application of criminal labels (Bala, 2003). Such criticism contributed to the idea of reflected appraisals, which is discussed in the following section.

Role of Informal Labeling

In accordance with the original labeling theorists and their notion of the “deviant self- concept,” some scholars believe an informal label can also have a significant impact on criminal behaviour. Matsueda (1992) argued that individuals will use the actions and perceptions of those close to them including family members and friends to define their own identity. In essence, the actual appraisals (labels) held by those close to an individual – including teachers, parents and peers – are communicated through language, behaviour, and expressions. An individual will internalize these cues and in turn those cues become a self (or reflected) appraisal. The self- appraisal provides meaningful feedback about one’s identity and is used to guide behaviour (Asencio and Burke, 2011). Thus, if an individual close to us -- such as a parent, teacher, or peer -- identifies us as delinquent, it will have a large effect on our own actions and potentially increase our delinquent behaviour. Therefore, if those closest to an individual view him/her as a delinquent, that individual has a high probability of engaging in delinquent behaviour.

In his study, Matsueda (1992) found a strong correlation between a youth's self-appraisal and the reflected appraisals of parents, teachers, and peers. In conjunction with the original labeling theory, there was a high correlation of delinquency among youth who had parents that identified their adolescent child as a delinquent. This was highest among minority youth residing in urban settings. In turn, a youth who identified as delinquent was strongly influenced by their parents' appraisal. Zhang (1997) found similar results. He found that a parents label significantly affected their child's behaviour. Youth would engage in increased illegal activity if their parents blatantly labeled their child "a delinquent". There were significant associations between race, age, and level of education of the parent. Younger, minority youths, and youth with lower levels of educational attainment were more likely to be labeled a deviant by their parents.

The main research hypothesis introduced by Labeling Theory is that a criminal or deviant label can increase criminal behaviour rather than reduce it. There is a great deal of research that supports this general argument. So much so that theorists have concluded that "the labeling process...is a powerful criminogenic force that stabilizes participation into legal roles and turns those marginally involved in crime into chronic or career criminals" (Lilly, Cullen, and Ball, 2007, p. 131). This statement provides context to why the theory has had a strong influence on policies within the youth justice system. Labeling theorist, Edwin Schur (1973) argued that formal institutions must "leave kids alone whenever possible" (p. 155). Eventually youth justice practitioners and policy makers listened. The call for "less intervention" provided the foundation for youth diversion programs in Canada and other countries.

Diversion Programs: Definitions and Structures

In response to the potential dangers of criminal labeling theory, youth diversion programs aimed to: 1) reduce stigma; 2) reduce coercion and social control; 3) reduce recidivism; 4) provide treatment services to youth; and 5) reduce the costs and improve the efficiency of the juvenile justice system (Osgood and Weichselbaum, 1984). While the basic structure of individual diversion programs may differ, the founding principles are essentially the same. Diversion programs are used as an alternative to prevent youth from experiencing traditional court processing and the negative consequences of labeling.

Diversion programs initiated by the police are identified as *pre-charge diversion*. Upon commission of a criminal offence, police have the discretion to take no action, refer a youth to a diversion program or make an arrest. Alternatively, if a youth is arrested and sent through the court process, the court itself may initiate a *post-charge* diversion. Similar to the police, the courts have discretion to initiate the referral to a diversion program. Police and court diversions can range from unstructured, non- intervention strategies (caution programs) to more formal interventions involving intense counselling, educational programming or other rehabilitative efforts. Based on the diversion program, youth who participate in formal programming may be required to do community service, essays, an apology letter, participate in restorative justice circles, participate in educational programming or counselling (Bala, 2003). A program may have a brokerage design where a caseworker first completes a risk assessment before making a referral to an appropriate service. The caseworker will verify and record completion of the given tasks and communicate results with the police or courts. Alternatively, a diversion program may offer in-house services where all assessments and tasks are coordinated by a single organization (Bala, 2003).

Typically, if a youth does not complete the required tasks dictated by the diversion strategy, the youth is returned to the initial referral source (police or court). It is at the discretion of the initial referral source to decide what will be done. Consequences can range from no further action to incarceration (Bala, 2003; Wilson and Hoge, 2013). As stated in the introduction, this study focuses on pre-charge diversion programs in the Canadian youth justice system.

Pre-Charge Diversion under the Youth Criminal Justice Act

As discussed previously, under the YOA there was a heavy reliance on formal court processing. For those in youth justice, the principles of diversion offered an attractive alternative to formal court processing. The enactment of the most recent Canadian youth justice legislation stressed the importance of alternative measures. The YCJA (2003) explicitly states that alternative measures (i.e. diversion), “are often the most appropriate and effective way to address youth crime” (Section 4). Pursuant to the YCJA, Section 4 states that police must consider all options other than the use of court when dealing with youth who come into contact with law enforcement. Section 6 of the YCJA continues to state that police must consider alternative measures by way of “taking no further action, warning, or diversion”. Consequently, under the YCJA, diversion plays a crucial role in responding to youth crime. Although a number of Canadian communities have adopted the principles of diversion, there continue to be regional differences with respect to provincial policy, local attitudes towards diversion and program availability (Bala et al, 2009). It is evident that the main goal of the youth justice system is to reduce recidivism without the use of formal intervention (Bala, 2003). How effective youth diversion programs are at achieving this goal is discussed in the following section.

Youth Diversion Effectiveness

The success of a diversion program is often measured by the impact that it has had on the youth justice system – i.e. whether diversion has reduced re-offending (Osgood and Weichselbaum, 1984). The importance of recidivism lies in the idea that recidivism rates are “widely acknowledged to be a key indicator of the effectiveness of juvenile justice interventions” (Richards, 2011, p. 4). If a form of intervention limits the number of encounters with police, it is then hailed as a success. Fewer burdens on the criminal justice system seemingly increases community safety. While the question of recidivism only addresses one of the identified goals of diversion, examining recidivism rates may provide tangible evidence that diversion programs are a viable option within the youth justice system. In theory, those provided with a diversion option experience less stigma, less coercion, are offered youth services, and avoid the justice system, thus reducing costs associated with a court appearance. What does the research say about recidivism among youth who have participated in diversion programs?

Many researchers have acknowledged that there is a lack of research that thoroughly examines the impact of diversion programs on recidivism rates (Atilola, 2013). Not much is known about the difference in recidivism between youth involved in diversion compared to youth who are channelled through the court system. Very few studies have looked at pre-charge diversion programs that target first time youth offenders who have committed minor crimes. Most studies examine post-charge youth who suffer from serious problems, such as mental health and substance abuse problems. Generally, the results of studies of diversion programs are mixed⁵.

⁵ Due to the limited data that exclusively examined “pre-charge” diversion, the following section includes studies that examine “post-charge” diversion programs. The majority examine specialized programs (i.e. mental health and substance abuse issues)

Colwell, Villarreal, and Espinosa (2012) analysed the Front-end Diversion Initiative, which was based in four juvenile probation departments in Texas. The goal of the division initiative was to use identified 'best practices' to divert youth suffering from mental disorders away from the court system. Practices included specialized juvenile probation officers, low case loads, crisis intervention, access to community services, intensive behavioral management, and family engagement. The authors hypothesized that youth who received specialized attention were less likely to be adjudicated and showed significant improvement in emotional health and behaviour. The authors found that the youth involved in the specialized treatment program were less likely to face adjudication. The author concluded that specialized treatment that included individualized case planning, increased contact with a specialized probation officer, community services, and aftercare established a relationship with the youth and family which led to a decrease in adjudication.

Cuellar, McReynolds, and Wasserman (2006) examined the impact of mental health diversion programs on improvements in arrest outcomes among youth with mental disorders. The study compared 148 youth who were involved in a mental health diversion program to 151 youth who were selected for the program but placed on a waiting list. The authors' findings suggested that over half of the entire sample were re-arrested at least once. However, 46% of the treatment group were re-arrested during the evaluation period compared to 68% of the control group who did not receive any mental health services. Therefore the re-arrest rate was higher for the group that did not receive any treatment. The authors concluded that mental health diversion programs were an effective solution to prevent future criminality.

However, other studies place a caveat on such positive findings. Sullivan, Veysey, Hamilton, and Grillo (2007) examined twelve New York State diversion programs that focus on

youth who had significant mental health and substance abuse issues. The research project sought to find whether the diversion programs prevented youth from being subjected to out-of-community placement (placement in a juvenile detention centre) as well as prevented future criminality (recidivism). The researchers' findings showed that the youth involved in diversion programs had fewer numbers placed in juvenile detention centres as well as lower recidivism rates. The 4 researcher's findings also showed that youth who were involved in diversion programs were just as likely to be re-arrested compared to those not involved in diversion programs –particularly youth with significant substance abuse problems. The findings showed that prior behavior and the nature of the offence were a better predictor of recidivism than treatment. Findings supported other studies that had also identified prior behaviour and nature of offence as a factor in recidivism (see Rodriguez, 2007).

King, Holmes, Henderson, and Latessa (2001) conducted a study to evaluate an Afrocentric treatment program for male youth who have committed a felony offence in Hamilton Country, Ohio. Using a quasi-experimental design, the researchers compare 281 black males who were involved in the Community Corrections Partnership -- an Afrocentric diversion program -- to 140 males who were supervised by traditional probation. Results showed that youth involved in the Afrocentric program were less likely to be adjudicated for a new offence while under supervision in comparison to the youth not involved in the treatment program. However when examining the sample after completion of the program or supervision by a probation officer, many of the youth had committed an offence while being an adult; there was no significant difference between the experimental group and the comparison group with respect to adult arrest. Both groups reoffended at the same rate once they entered adulthood. The authors contributed the disappointing finding to duration of supervision. The program was limited to 4

months. The authors suggested results would have been more positive if the program continued to address individual risks, needs, and characteristics.

Sullivan, and Latessa (2011) examined recidivism rates among the participants in Ohio's RECLAIM program (Reasoned and Equitable Community and Local Alternative to the Incarceration of Minors). The final sample included 4,325 participants who were involved in any one of the 72 programs offered by RECLAIM. The 2 researcher's findings suggested that programs with a higher rate of recidivism included youth who were "high risk". As a result the researchers concluded that diversion programs were not the only factor that impacted recidivism. The authors noted that individual risk factors as well as individual characteristics such as age, sex, and race played a significant role in the probability of continued criminality.

While there are some identified positive outcomes, it is evident that the literature on the effectiveness of youth diversion programs is inconclusive. While some research offers support for the idea that diversion programs are a viable option to address youth's chances of recidivism (see Davidson, Redner, Blakely, Mitchell, & Emshoff, 1987; Palmer & Lewis, 1980; Quay & Love, 1977; Regoli, Wilderman, & Pogrebin, 1985), others include findings that suggest that diversion programs are not the sole reason behind lower recidivism rates (Colwell et al., 2012; Cuellar et al., 2006; Sullivan et al., 2007, 2011; and King et al. 2001).

There is very little research that specifically examines the utility and effectiveness of youth "pre-charge" or police diversion programs. Early studies conducted on pre-charge diversion programs found that diversion was no more effective in reducing re-offending than traditional court procedures (Gensheimer, Mayer, Gottschalk, and Davidson, 1986) More recently, Schwalbe, MacKenzie, Brewer, and Ibrahim (2012) conducted a meta-analysis testing the hypothesis that first time youth offenders diverted from the formal justice system into

alternative treatment programs will avoid the negative consequences of labeling and subsequently demonstrate lower recidivism rates than youth processed by the formal justice system. Overall, the authors found that the impact of diversion on recidivism is not statistically significant. In other words, youth diverted into treatment programs have similar recidivism rates as those processed through the regular youth court system. However, further analysis revealed that while case management and individual treatment programs were no more effective at reducing recidivism than youth court, diversion programs that involved either family counseling or a restorative justice approach were more effective than regular court processing. It is thus the type of programs included in diversion that impact the effectiveness of the program. The meta-analysis reinforced the importance of familial acceptance and thus the importance of their involvement during the intervention process. This finding confirmed the ideas proposed by Matsudea's (1992) work on youth's self-appraisal, where family involvement seemed to have impact on labeling, but in this case the impact is on the effectiveness of treatment.

Wilson and Hoge (2013) conducted a similar meta-analysis, examining both pre and post charge diversion. The study found that youth who completed a youth diversion program were less likely to offend than youth processed through the traditional court system. The form of the diversion did not matter. For example, formal interventions (i.e. educational programming, counselling, etc.) were no more effective than simple cautioning. However, the effectiveness of diversion was influenced by a number of variables. Their results show that the pre-charge programs that accepted "low risk" youth were significantly more effective than post-charge programs that involve youth who received programming after appearing in court. Wilson and Hoge (2013) suggested that this finding supported the notion that the further the youth is processed into the system, the greater the chance the youth will be "labeled" and subsequently

reoffend. This study also supported previous studies that stressed the importance of identifying the risk level of youth participants. Youth who were placed in programs that targeted their specific risk profiles (distinguishing between higher- and lower-risk youths) had a better chance to reduce recidivism than programs that did not (Andrews et al., 1990; Kleiman, Ostrom, & Cheesman, 2007; McGuire & Priestley, 1995; Rutter et al., 1998). This finding however, also brings an interesting issue surrounding the use of diversion to the surface. Wilson and Hoge (2013) acknowledged that there was no significant reduction in recidivism among “low risk” youth. Therefore, a simple caution was as effective as having a youth participate in a formal intervention.

In fact, Sullivan et al. (2007) stated that the youth selected for many diversion programs were generally youth that would normally not continue to reoffend, thus creating the illusion of program success. If this is the case, then are diversion programs achieving their goal of reducing the negative impact associated with a criminal record? Or are so called successful diversion programs targeting a group that would regardless mature out of their offending behaviour? This raises important questions about youth diversion programs. These include: Are diversion programs being used as a tool to “widen the net” of social control and not reduce reoffending? More precisely, are youth whose deviant behaviour would discontinue with a simple caution now being drawn into the justice system and forced to complete formal diversion programs? This issue is explored further in the next section.

Do Diversion Programs Result in Net Widening?

There are very few Canadian studies that examine pre-charge diversion programs. One of these studies raised important issues about possible net widening. Spratt, Doob, and Greene

(2004) examined the Toronto Police Service's Youth Referral Program. For youth who were arrested for committing minor crimes, officers were provided with the option of referring them to Operation Springboard, a community corrections agency. Operation Springboard was then responsible for determining an appropriate "treatment" and could make necessary referrals to other agencies. Sprott et al. (2004) found that the youth who were being referred to the program were in fact youth who traditionally would not have been sent to court. Compared to typical court bound youth, the youth who participated in the youth referral program were younger, female, and committed minor offences (the majority of offences were theft under \$5000). In fact, 77% of the officers interviewed as part of the study revealed that most of the cases referred to the Youth Referral Program would have otherwise received a caution.

The results of the above Toronto study echo the results of earlier diversion studies that also questioned the utility of formal intervention diversion programs (Osgood and Weichselbaum, 1984; Klein, 1979; Rutherford and McDermott, 1976, Polk, 1984). These researchers also noted that, in the absence of formal diversion programs, most diverted youth would have just been cautioned and released. This finding then bids the question: How can diversion strategies reduce the stigma of criminal labeling if targeted youth were never at risk of experiencing formal court procedures in the first place? The minimal research available appears to caution that diversion programs may not be removing youth from the justice system -- but bringing more youth under formal State control.

Decker (1985) examined a pre-charge diversion program in St. Louis, Missouri. The program targeted youths who had committed status offenses and who would otherwise have been referred to the Juvenile Court. A time-series design was employed to examine trends in processing young offenders over a four year time period. Referrals for all offense categories rose

significantly during the program years. A significant amount of net widening was found to occur following the introduction of the program as participants of the diversion program were not typical court bound youth. In terms of diversion programs implemented by judicial rule, researchers found that diversion programs were being used to increase social control. In a related study, Ezell (1989) found that, despite the goal to reduce judicial supervision, many judges used diversion strategies as an opportunity to increase youth supervision. Combined with the increased use of probation and residential programs, judges were ultimately able to increase their control over young offenders. These trends undermine the purpose and goals of youth diversion.

There is evidence to suggest that intervention strategies can prove to be more detrimental than beneficial (see Mackenzie, 2013). Joan McCord (1978) conducted a substantial longitudinal study which followed the participants of The 1936 Cambridge–Somerville Youth Study (CSYS). CSYS sought to identify the causes of delinquency and develop strategies that might prevent youth crime. At the beginning of the CSYS study, a sample of 500 at-risk children were randomly divided into a treatment group and a control group. Individuals within these groups were matched with respect to a number of variables including age, intelligence and family history. For the next six years, the treatment group participated in various social, educational and health services with the guidance of an adult mentor. The control group did not receive these services. McCord (1978) hypothesized that delinquent children were a product of their environment and that the treatment group would thus benefit from specialized social services and the guidance of a mentor.

The study however, only found marginal differences between the treatment and control group. McCord (1978) interviewed the original participants of the CSYS study, who were now

middle-aged, to examine long-term effects. Data collected from 1975 to 1981 included testimonials, court records, mental hospital records, alcohol treatment facilities records, and death records. McCord (1978) found that the treatment group -- who had received mentorship services -- were actually more likely to have engaged in serious street crime and were more likely to be treated for alcoholism, schizophrenia, and manic depression. McCord (1978) also found that the longer an adolescent was involved in the required program, the more negative the outcomes. Drawing youth into the criminal justice system – even by way of alternative measures, may have little impact on preventing recidivism.

As suggested by the findings of Sprott et al., (2004), many previous studies show that diverted youth are typically youth who would have been dealt with by way of caution or no further action by the police. Therefore, in many programs, the probability that diverted youth would have gone through the court system is minimal (see Vorenburg & Vorenburg, 1973; Klein, 1975; Klein and Teilmann, 1976; Blomberg, 1977). It can be argued that diversion may be a tool to gain control over a wider population of youth (see Blomberg, 1977

Nonetheless, despite the potential for net-widening, there is also evidence to show that the number of youth going to court has decreased significantly since the implementation of the YCJA. Bala, Carrington, and Roberts (2009), examine the impact of the Youth Criminal Justice Act, five years after its implementation. They maintain that changes to sentencing and the increased use of diversion programs have helped to achieve the goal to reduce the use of court and restrict the use of custody. It is also important to note that the Youth Criminal Justice Act has succeeded in reducing the use of court and custody without increasing youth crime rates. Results from Statistics Canada (Bala, 2009) show that there has been a significant drop in the number of youth charged by police and an increase in the use of discretionary diversion

programs by police agencies. In sum, while studies of specific youth diversion programs often produce evidence of net-widening, aggregate statistics suggest that the number of court-bound youth in Canada has declined significantly since the widespread adoption of diversion strategies. Clearly more research is required before the net-widening impact of youth diversion programs can be conclusively resolved.

Who Gets Diverted?

Selection bias is another issue that has been raised by critics of youth diversion programs. Numerous researchers criticized youth diversion programs for not achieving the goal of diverting all youth away from courts. Kilkelly (2011) argued that changes to Ireland's youth legislation in 2001 led to discriminatory practices. The Irish police are required to use diversion programs as an option for apprehended youth. Kilkelly (2011) critiqued the law, policy and practices of youth diversion programs as there was a lack of criteria to guide the decision makers involved in the process. As a result, decisions were based on police discretion which led to significant inconsistencies in the diversionary process. Similarly, Smyth (2011) argued that the implementation of youth diversion programs in Ireland increased the power of the police. Police decided the consequences of a youth that had committed a minor crime -- decisions that were traditionally handled by the courts, social workers, and probation officers.

Smyth (2011) also criticized the Irish diversion statutes for the lack of published information on the selection criteria for youth diversion programs. Similar to Kilkelly (2011), he argued that this led to bias in selection and enhanced the risk of discrimination against certain individuals. As a result, Smyth (2011) noted that diversion programs lacked fairness and consistency. Drawing on the Irish experience, could such a problem exist in the Canadian youth justice system? Does bias at the pre-charge stage play a role in deciding who gets diverted and

who is arrested, charged and processed through the formal youth justice system? If this is the case, then selection bias is not only undermining the goals of the YCJA, but is rendering diversion programs unfair and inconsistent.

Canadian researchers have long identified laws, policing practices and formal government policies that contribute to the differential treatment of racial minorities and the poor (Tator and Henry, 2006; Perry 2011; Mosher, 1998; also see Commission on Systemic Racism in Ontario Justice System). Marginalized and disadvantaged people have always been over-represented in Canadian criminal justice statistics (Perry, 2011). Although race, class and crime may be correlated with criminal offending, countless studies demonstrate that this correlation is insignificant after controlling for structural conditions such as poverty, unemployment, racism, inequality, and social alienation (Land, McCall, and Cohen, 1990; Bernburg and Krohn, 2003). Nonetheless, the poor and members of racialized communities continue to be disproportionately labeled as criminals. Overall, very little empirical research has explored potential biases within the Canadian youth criminal justice system. Although biases have been identified with respect to the treatment of adults, we do not yet know the extent to which differential treatment exists within the youth system.

Following an intense examination of the impact of the YCJA five years after enactment, Bala et al. (2009) found that the changes to sentencing and the use of diversion programs succeeded in reducing the use of youth courts and custodial sentences, without increasing crime rates. However, the use of remand to deal with young offenders had not decreased. Furthermore, recent Canadian youth correctional data show that racialized offenders are still highly over-represented within youth corrections facilities (Rankin and Winsa 2013). This leads to asking questions about

- 1) Whether it is possible that the changes brought about by the YCJA have had less of an impact on reducing pre-trial detention (remand) for minority offenders? As a result of police discretion, are youth from poorer communities less likely to be diverted than youth from middle and upper-class communities?
- 2) Are racial minority youth less likely to be diverted than white youth?

Maclure et al. (2003) found that Canadian youth justice specialists believe that discretion exercised by the police often leads to serious inconsistencies in the youth diversion process.

Unfortunately, although numerous Canadian studies have shown that police discretion does play a significant role in arrest practices, none have thoroughly examined the role race or economic status play in arrest or diversion decisions involving young offenders (Schulenberg, 2003; Schulenberg and Warren, 2009; Marinos and Innocente, 2008). Studies conducted in the U.S. show that police decisions greatly influence who is selected to participate in a youth diversion program. Furthermore, a number of studies suggest that the police can be influenced by their personal biases (Tapia, 2010; Lundman & Kaufman, 2003; Meehan and Ponder, 2002).

Several U.S. studies have identified race as a factor in youth diversion selections (Johnson, and Dipietro, 2012; Potter and Kakar, 2002; Lieber and Stairs, 1999). For example, in their study of offenders who were offered alternative sanctions in Pennsylvania, Johnson and Dipietro (2012) found that Black and Hispanic males were less likely to be diverted from prison than Whites. These findings are consistent with previous literature suggesting that judicial officials view minority males as more dangerous and more likely to reoffend (Engen et al., 2003; Gainey et al., 2005). These findings suggest that diversion is viewed as a lower form of social control and as a result the option is more often to be given to youth who are perceived to be less dangerous -- non-minority youth offenders.

In a similar study that examined youth in three jurisdictions in Iowa, Lieber and Stairs (1999) found a racial disparity in diversion-related decisions. Their findings show that, after

controlling for other legally relevant factors, Blacks were more likely to receive custodial sentences or probation orders with a higher number of release conditions than White offenders. Compared to Whites, Blacks were also subject to higher levels of court processing. By contrast, regardless of social class and previous criminal record, White youth were more likely than Black youth to be diverted out of the formal justice process.

The above research studies leave us with an important unanswered question regarding diversion programs in the Canadian context. Is there a pattern in who is being selected for pre-charge youth diversions? This thesis aims to review similarities or differences in the characteristics of the youth who participate a youth pre-diversion program and those that go through the traditional court system. It also explores whether diversion is being used as a tool to draw into the system low risk minority youth. Building onto the principles of net-widening, review of the prevalence of minorities within youth diversion programs may show that net widening is taking place as a form of social control for minority youth who engage in low risk criminal activity. To date, no Canadian study has been able to examine the prevalence of minority youth in diversion programs.

Primary Research Questions

Based on the critiques of youth diversion programs prevalent in the previous literature, I intend on examining two important research questions:

1. Have the implementation of formal diversion programs reduced the number of youth warned or cautioned by the police? Has the implementation of formal diversion programs reduced the number of youth arrested and charged by the police? Have diversion programs significantly reduced the caseload within the youth court?
2. Are youth offered pre-charge diversion programs different than youth who are charged and processed through the youth justice system?

Hypotheses

Based on the results of the above literature review, I hypothesize that the number of youth cases sent to court have been reduced, however, based on previous studies that show that marginalized communities are over-represented in the criminal justice system, I hypothesize that racial minority youth are not offered to participate in youth diversion programs at the same rate as their non-minority counterparts. My research will test two specific hypotheses:

1. Controlling for legally relevant factors, racial minority youth will more likely be charged and processed through the youth court. By contrast, White youth will more likely be offered a diversion in the program under study.
2. After the implementation of the diversion program under study, more youth were required to attend formal diversion programs versus receiving an informal warn or caution.

CHAPTER 3 – METHODOLOGY

Introduction

Prior to the Youth Criminal Justice Act (YCJA), Canada had one of the highest rates of youth in custody and the lowest rates of alternative measures to formal court proceedings in the Western world (Department of Justice Canada, 2002; Doob and Sprott, 2004). In response, a major goal of the YCJA was to implement effective strategies that would reduce the use of courts for minor offences and leave formal court proceedings for more serious youth crimes. For the first time in Canadian youth legislation, the use of alternative measures was emphasized. The YCJA specifically states procedures outside of the traditional court system are “the most appropriate and effective way to address youth crime” (YCJA, part 1, 4a).

After implementation of the YCJA in 2003, there was a drastic reduction in the use of courts and an increase in available programs to facilitate the use of diversion (Bala, Carrington, and Roberts, 2009). Creation of extrajudicial programs focused on providing the police and courts with alternative options to avoid traditional court procedures. Hailed as a “meaningful consequence” for youth who commit minor crimes, The Ontario government was at the forefront in creating programs to facilitate the changes outlined within the YCJA. In 2007, the Ontario government implemented 25 pilot projects that aimed to reduce youth in the traditional court process by increasing collaborations between local police services and community agencies. The Ministry of Children and Youth Services was designated the task to help develop and fund diversionary programs. The Ministry (2007) stated:

Through this preventive and rehabilitative program, we are providing early intervention and meaningful consequences for youth by diverting them from the formal court process to community programs...these and other community-based measures are helping youth

accept responsibility for their actions while providing the supports needed to make better choices. This, in turn, is helping to make our communities safer and stronger⁶.

A review of the literature in Chapter 2 suggests that there are mixed results regarding the success of diversion programs and some noteworthy critiques. Critiques of these programs include the intrusiveness of diversion programs but also the potential for net-widening. Data available from an established pre-charge diversion program in a regional police service in Greater Toronto form the basis of the research in this thesis. The GTA regional police service in this study was identified as a prime candidate for a diversion program. Implementation of the program was strongly supported by the local police service. At the onset of the pre-charge diversion program, the Chief of Police, at the time, stated "...the program is helping us to reduce re-offending rates by giving at-risk youth a better opportunity to succeed and become productive members of society"(Ministry of Children and Services, 2007). There were high expectations for the diversion program within the region.

Overview of the Greater Toronto Area Region

Population Setting

The Greater Toronto Area (GTA) Region under examination is comprised of 8 municipalities. Covering 2500 km of land, the region is a vast area of both urban and rural characteristics. In 2011 (the most current year of analysis) Statistics Canada indicated that the GTA region had a population of 608,124⁷. The Urban Municipalities, situated south of the

⁶ The following statement was made by Ministry officials during a press conference at the induction of the pre-charge program in the GTA region. <http://news.ontario.ca/archive/en/2007/05/17.html>.

⁷ Data provided by Statistics Canada http://www12.statcan.gc.ca/census-recensement/2011/dp-pd/prof/details/page_Map_Carte_Detail.cfm?Lang=E&G=1&Geo1=CD&Code1=3518&Geo2=PR&Code2=12&Data=Count&SearchText=&SearchType=Begins&SearchPR=01&B1=All&Custom=&TABID=2&geocode=3518.

region, comprises of 4 Municipalities. I will refer to them as Municipality A, P, W, and O. The Rural Municipalities, situated north of the region also comprises of 4 Municipalities. I will refer to them as C, S, B, and U.

Table A – Population by Municipality

Municipality	Population in 2011
GTA Region	607,124
A (urban)	109,600
P (urban)	88,721
W (urban)	122,022
O (urban)	149,607
C (rural)	77,800
S (rural)	21,569
B (rural)	11,341
U (rural)	20,623

Statistics Canada analyses age population in increments of 4, thus the numbers available are for persons within the age bracket of 10-14, followed by 15-19. While the age categories are not the same as those which define a youth under the YCJA, (12-17 years of age), they do provide an idea of the number of youth within the GTA Region. The highest number of youth reside within Municipality O with 18,720 (21.1%) of all youth aged 10-19 in the GTA Region. This is followed by Municipality W with 18,660 (21.1%) of all youth aged 10-19 in the GTA Region.

Table B: Age and Gender Population By Municipality

Persons Age 10-19	Total	Male	Female
GTA Region	88,335	45,160	43,175
A	16,975 (19.2%)	8,620	8,355
P	13,435 (15.2%)	6,985	6,450
W	18,670 (21.1%)	9,580	9,090
O	18,720 (21.1%)	9,415	9,305
C	12,990 (14.7%)	6,605	6,385
S	2,895 (3.3%)	1,515	1,380
B	1,470 (1.7%)	765	705
U	3,180 (3.6%)	1,675	1,505

This study intends to analyse the characteristics of the youth who encounter police, including race. Thus it is important to know the racial makeup of the GTA region. In 2011, visible minorities represented 20.5% of the GTA Region population, with Municipality A at the highest of 45.8% followed by Municipality P at 35.4%.

Table C – Visible Minority Population by Municipality

Municipality	Visible Minorities
A	49,995 (45.8%)
P	31,130 (35.4%)
W	23,125 (19.2%)
O	41,615 (11.8%)
C	4,695 (5.6%)
S	505 (2.4%)
B	210 (1.9%)
U	790 (3.9%)

Overview of the Greater Toronto Area Police Service Youth Diversion Program

Section 6 (1) of the YCJA states the following:

6. (1) “A police officer shall, before starting judicial proceedings or taking any other measures under this Act against a young person alleged to have committed an offence, consider whether it would be sufficient, having regard to the principles set out in section 4, to take no further action, warn the young person, administer a caution, if a program has been established under section 7, or, with the consent of the young person, refer the young person to a program or agency in the community that may assist the young person not to commit offences” (YCJA, 2003, emphasis added).

In 2007, the GTA police service under examination was provided annual funding to facilitate a formal pre-charge youth diversion program. The pre-charge diversion program aimed to provide support to youth in conflict with the law. The goal was to steer them from future criminological behaviour and become “productive citizens” (Ministry of Children and Youth Services, 2007).

In the initial year the program was implemented, the Ontario government invested nearly \$308,000 into developing the program. The creation of an established program provided officers a structured approach in using an alternative method to charging youth apprehended for minor crimes, instead of laying formal charges.

The rationale behind the program is that a youth is held accountable for their actions through participation in one or more community-based programs. If a youth does not comply with the extrajudicial measure, the police officer may proceed with laying charges (Ministry of Children and Youth Services, 2007). With the assistance of annual funding from the Ministry of Children and Youth Services, the GTA police service formulated a partnership with local community agencies aiming to “respond to the needs of youth in conflict with the law” (local service plan, GTA region, 2010). The funding allowed the GTA police service to hire a Youth Diversion Coordinator, who in essence acts as a liaison between the police and selected

community agencies. The funding also allowed designated community agencies to create programs that specifically catered to youth selected for diversion. Numerous options were available to diverted youth. Programming could entail personal counselling, restorative justice, anger management, anti-theft programming, mentorship, as well as a fire safety program. These programs will be explored in more detail in the following section.

Program Overview⁸.

The objectives outlined in the YCJA provided guidance for the GTA Police Service Youth Diversion Program. In accordance with the YCJA objectives, the GTA Youth diversion program aimed to provide a program that would:

- Provide effective/timely interventions to address offending behaviour,
- Encourage community involvement,
- Address the needs of the youth, and
- (Provide) Opportunities for victims to be involved in the process as well (local service place, GTA region, 2010).

In order to be eligible to participate in the program, an officer has to ensure the following:

- The young person was between the age of 12-17 (as required by the YCJA),
- The young person must accept responsibility for his/her actions,
- Young person must be informed of his rights and consent to participate in the program, and
- There must be sufficient evidence that the officer can proceed with charges against the youth for the offence

⁸ The program descriptions outlined in this section were provided by the GTA region's local service plan.

The offences eligible for diversion include:

- Theft Under,
- Mischief Under,
- Fraud Under,
- Minor Drug Possession,
- Cause a Disturbance,
- Minor Assaults/Threats,
- Take a Motor Vehicle without Consent, and
- Passenger in Stolen Auto.

All referrals to the diversion program are based on an officer's discretion. Once the arresting officer deems all criteria have been satisfied, and believe a diversion is appropriate, the officer will provide the youth with a contract indicating that they have been placed on a diversion. The Youth Diversion Coordinator is then responsible for assessing the youth, the criminal incident and identifying their needs which in turn assists in program selection.

Based on the assessment, the Youth Diversion Coordinator will refer the youth to one of the designated community programs. The Youth Diversion Coordinator is responsible to follow up with the community agencies on a regular basis to track a youth's progress. Programs generally take 1 to 3 months to complete, however, the process must be completed within 6 months of the commission of the offence. Once a youth has completed their selected program, the Youth Diversion Coordinator must notify the arresting officer and record completion in the local police record system. If a youth has not completed their selected program, the Youth Diversion Coordinator is responsible to inform the arresting officer. At that time, the arresting officer may proceed with charges. Below I discuss the programs in detail.

Restorative Justice Program

The Restorative Justice Process is often used when a tangible victim is involved and aims to repair the harm suffered by the victim and/or community. In essence the process is meant to restore the relationship between the accused youth, the victim, their families, and the community. Victims are encouraged to be involved in the process in order for them to have a voice and feel a sense of empowerment after being victimized. Parents of the accused as well as the parents of the victim are also encouraged to be involved in order to offer support.

All parties are brought together (often referred to as a conference) to discuss the incident. The purpose of the conference is for the youth to have a better understanding of the harm that has been caused through their actions. The youth is then required to complete tasks that are believed to repair the harm. Tasks can include an array of activities including community service, restitution, an apology letter from the youth, and/or additional programming in the community. Tasks given to the youth are individualized and unique to their circumstance.

Anti-Theft Program

The program entails group sessions run by certified counsellors once a week for a period of 4 weeks. Each session is approximately 90 minutes long. The youth who are required to participate in the anti-theft program learn about the consequences theft has on individuals and the greater community.

Anger Management Program

Similar to the Anti-theft program, youth selected for the Anger Management program attend group sessions run by certified counsellors once a week for a period of 4 weeks. The youth who

are required to participate in the anger management program learn about the consequences of angry behaviour.

Individual Counselling

Individual counselling is offered to youth referred to the Anti-Theft or Anger Management but are unable to attend group sessions and/or require a modified program. Individual sessions can also address additional issues such as self esteem, family/relationship issues, parental conflict, and/or peer relationships.

Drug Prevention Program

The Drug Prevention program entails attending group sessions run by certified counsellors once a week for a period of 4 weeks. Prior to the 4 sessions, the youth must meet with an assigned counsellor to complete an individualized assessment. The youth who are required to participate in the drug prevention program learn about the consequences drug use. Once a youth has completed the program, they must consult with their counsellor to decide on further treatment, if necessary.

Additional programs include the following:

Fire Prevention Program

The program is reserved for youth involved in arson related incidents. The program can entail counselling as well as fire education sessions with the youth and their family

Mental Health Assessment

If a youth displays significant mental health concerns, they may be referred to a local mental health centre to receive an assessment followed by the appropriate treatment. Family support is essential as the family is also involved in the treatment process.

Mentorship Program

The program pairs an at-risk youth with a mentor who spends a significant amount of time with the youth on a regular basis.

Data Collection Process

Initial Meeting with the Deputy Chief

On January 7, 2014, I met with the GTA Police Service Deputy Chief to discuss my proposed research. After discussion with the Deputy Chief, I was allowed access to all youth related police encounters. Therefore I was given access to the charge decisions with no identifiers of all youth who had been charged, warned, cautioned, or diverted from January 2007 to December 2013. Thus, the data provided for the study is secondary data from the GTA police service.

January 2007 was selected as a starting point for this study because it was the first year of implementation of the GTA youth diversion program under examination. This starting point allows for a thorough comparison of all forms of alternative measures. All data are stored within a records management system created for police services. The Deputy Chief directed me to the Crime Analyst Coordinator who would act as my point of contact. The Coordinator advised me that all data could be converted into a lengthy excel document which would outline all youth

incidents from my date of interest. After an exchange of emails outlining my points of interest, I was provided with 3 separate datasets with no identifiers to explore my thesis questions.

On January 9, 2014, I received the first dataset, a Word document that provided the total number of youth either warned, charged or diverted by the GTA police service from 1998 to 2012 (The full data is provided in Chapter 4). The total numbers were taken from records management system used by the GTA police service. The numbers were broken down further by offences involving Theft Under \$5000 and Marijuana Possession. This data provides the foundation for my question on whether the youth diversion program reduced the number of cases sent to youth court? The record provides sufficient data that allows me to review the number of youth charged, warned, or cautioned prior to the implementation of the diversion program (9 years to review), as well as compare and contrast the numbers post implementation (after 2007). In order to complete the analysis on net widening, a statistical test was not necessary since the data provided is based on the total population of cases and not a sample. Therefore, a review of the dataset identifies the changes in charging decisions over the years under examination.

On January 14, 2014, I received a second dataset. This document included youth involved in a Theft Under or Marijuana Possession from January 2007 to December 2013. This dataset included a total of 6,479 cases. Each record referred to an individual who was entered into a general occurrence with a youth accused role. Based on the first date of appearance, the dataset was prepared to include only first time youth offenders. Since there can be multiple accused persons per event, it was noted that there will be more records in the dataset than there are general occurrences. For each record there are the details of the incident: the offence, time, date, and location of the offence, as well as the badge number of the arresting officer. The dataset also included information pertaining to the youth that was accused: A PIN number (which is given to

every individual who encounters the police, therefore every individual receives a unique identifier) , Date of Birth, Municipality of Residence, Gender, Ethnicity and action taken by the police officer (e.g. caution, charged, diversion). In order to ensure anonymity, the Crime Analyst Coordinator removed all youth's names and addresses from the dataset. This information provided the foundation for my analysis on whether diverted youth are similar to those who are charged. The data allows for an analysis of the characteristics of the youth who encountered the police for Theft Under \$5000 as well as Possession of Marijuana. In order to compare the characteristics of youth (independent variable) to police charging decisions (dependent variable), a bivariate analysis was conducted. Chi-square statistics were used to identify statistically significant relationships.

The Deputy Chief had expressed interest in analysing recidivism. As a result, I was provided with an additional dataset on February 24, 2014. This dataset included all youth related offence data between 2007 and 2013 for the individuals contained in the initial file. Sixteen thousand seven hundred and eighty nine (16,789) cases were included for analysis. This dataset would provide sufficient data to analyze whether the kind of encounter with the criminal justice system (whether it be a charge, caution, or diversion) impacts recidivism. An important question regarding this dataset is whether young people who are offered diversion programs are less likely to reoffend than those who are arrested, charged and formally processed through the youth court system.

Defining and tracking recidivism however, often garners debate. Recidivism can be defined as re-offending by committing the same original offence or committing additional offences that are either less serious or more serious than the original (Richards, 2011). There is some question on whether or not there should be a specific time limit in which to analyze re-

offending and whether it is sufficient to review an offender a few months or a few years after commission of the original offence? The longer the time limit, the greater likelihood of reoffending. In addition, multiple factors can influence criminological behaviours and re-offending rates (Richards, 2011). For example, age may play a factor for youth, as most youth tend to “age out” of deviance and anti-social behaviour. The type of intervention, whether it be a simple caution, charge, or diversion (possibly even the type of diversion) may have an impact on a particular youth’s re-offending. Through a study of the impact of formal court processing is integral to the study of diversion programs, for the purposes of this thesis, recidivism data will not be analyzed, but will be considered an important part of my future research agenda.

CHAPTER 4 – RESULTS

IS DIVERSION WIDENING THE NET?

The Youth Criminal Justice Act states “extrajudicial measures are often the most appropriate and effective way to address youth crime” (YCJA, 2003, section 4a). Extrajudicial measures that are available to police officers range from a simple caution to participation in a structured pre-charge diversion program. As discussed previously, numerous studies (see Sullivan et al. 2007; Osgood and Weichselbaum, 1984; Klein, 1979; McCord, 1978) suggest that for a minor crime, a simple caution is a sufficient action that can aid in deterring a youth from continued criminality. If this is the case, then are pre-charge diversion programs too intrusive? Would youth who are diverted ever be sent to court? A previous study (see Sprott et al., 2004) suggests that in the absence of pre-charge diversion programs, many youth would have been dealt with by a simple caution and released. If pre-charge diversion programs act as an alternative to a caution as opposed to an alternative to formal charges, then arguably pre-charge diversion programs are in fact “widening the net”. In other words, diversion programs may be bringing more youth in the system, as opposed to “diverting” them out. If this is the case, are diversion programs really assisting in reducing the stigma associated with being involved in the criminal justice system?

This chapter reviews the aggregate statistics from 1998 to 2012 provided by the GTA Police Service under examination (please see Chapter 3 pg. 55). These numbers are used to explore the idea of “net widening” in multiple layers. First, the chapter will review the total number of youth either cautioned, charged, or diverted each year from 1998 to 2012 to assess whether the GTA service under examination has successfully reduced the number of youth sent to court. These numbers are further analysed to assess any trends associated with the

implementation of the formal pre-charge diversion program (i.e. starting 2007). The analysis will explore whether the implementation of the formal diversion program reduced the number of youth warned or cautioned by the police. Furthermore, the analysis will explore whether the implementation of the formal diversion program reduced the number of youth arrested and charged by the police. The same analysis will examine trends or differences of all youth apprehended for Theft Under \$5000 and Possession of Marijuana; the most common offences among youth in the examined GTA region.

Overall Number of Recorded Youth Cases

Table 1 outlines all youth cases recorded by the GTA police service under examination. The chart shows the police charge decision from 1998 to 2012. Table 2 shows the percentage of these youth cases recorded by the GTA police.

TABLE 1: Number of Young Offender Cases Recorded by the GTA Police Service, By Police Charge Decision, 1998 TO 2012

YEAR	CHARGED	CAUTIONED	DIVERTED	TOTAL CASES
1998	1,845	638	0	2,483
1999	1,813	552	0	2,365
2000	1,867	738	0	2,605
2001	2,215	779	0	2,994
2002	1,993	764	0	2,757
2003	1,745	1,461	0	3,206
2004	1,670	1,509	0	3,179
2005	1,432	1,106	0	2,538
2006	1,620	1,369	0	2,989
2007	1,682	1,003	603	3,288
2008	1,517	1,176	478	3,171
2009	1,372	1,181	453	3,006
2010	1,099	922	654	2,675
2011	1,092	767	564	2,423
2012	944	753	543	2,240

TABLE 2: Percent of Young Offender Cases Recorded by the GTA Police That Resulted in a Charge, Caution or Police Diversion, 1998 TO 2012

YEAR	PERCENT CHARGED	PERCENT CAUTIONED	PERCENT DIVERTED	TOTAL CASES
1998	74.3	25.7	0	2,483
1999	76.6	23.4	0	2,365
2000	71.7	28.3	0	2,605
2001	74.0	26.0	0	2,994
2002	72.3	27.7	0	2,757
2003	54.4	45.6	0	3,206
2004	52.5	47.5	0	3,179
2005	56.4	43.6	0	2,538
2006	54.2	45.8	0	2,989
2007	51.1	30.5	18.4	3,288
2008	47.8	37.1	15.1	3,171
2009	45.6	39.2	15.2	3,006
2010	41.1	34.5	24.4	2,675
2011	45.1	31.7	23.3	2,423
2012	42.1	33.6	24.2	2,240

Changes in Charging, Cautions and Diversions

The data suggest that the changes introduced in the Youth Criminal Justice Act had a major impact on the GTA police service under examination. Echoing the results from Bala, Carrington, and Roberts (2009) the GTA police service saw a drastic reduction in the number of youth cases sent to court. Prior to the act, the GTA police service had a high charge rate among its youth. For example, in 1998, the first year of examination, the data suggest that 3 out of 4 youth who encountered the police, were charged and sent to court with only 26% of youth cautioned. This trend continues until 2003. At that point there was a drastic decrease in the charge rate and increase in the caution rate. For example, in 2002, 72.3% of all apprehended youth were charged. By 2003 this had dropped to 54.4% of all youth. Conversely, cautioning

rose from 27.7% of all youth who were apprehended in 2002, to 45.6% in 2003. Therefore, following the implementation of the YCJA, the data suggest that the GTA police service under study appeared to adhere to the principles outlined in the new act. The downward trend among youths being sent to court continues each year as illustrated in Figure 1. Between 2003 and 2007, the charge rate is consistent at around 55% with the caution rate at around 45%.

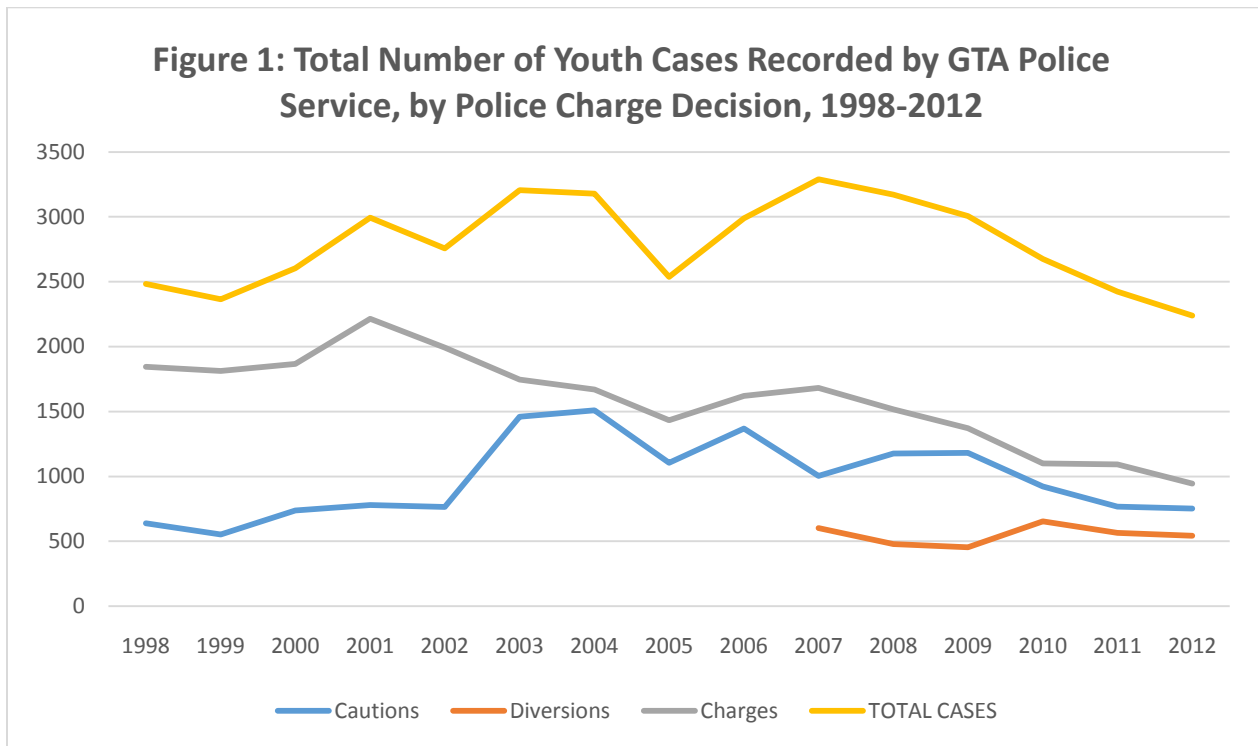
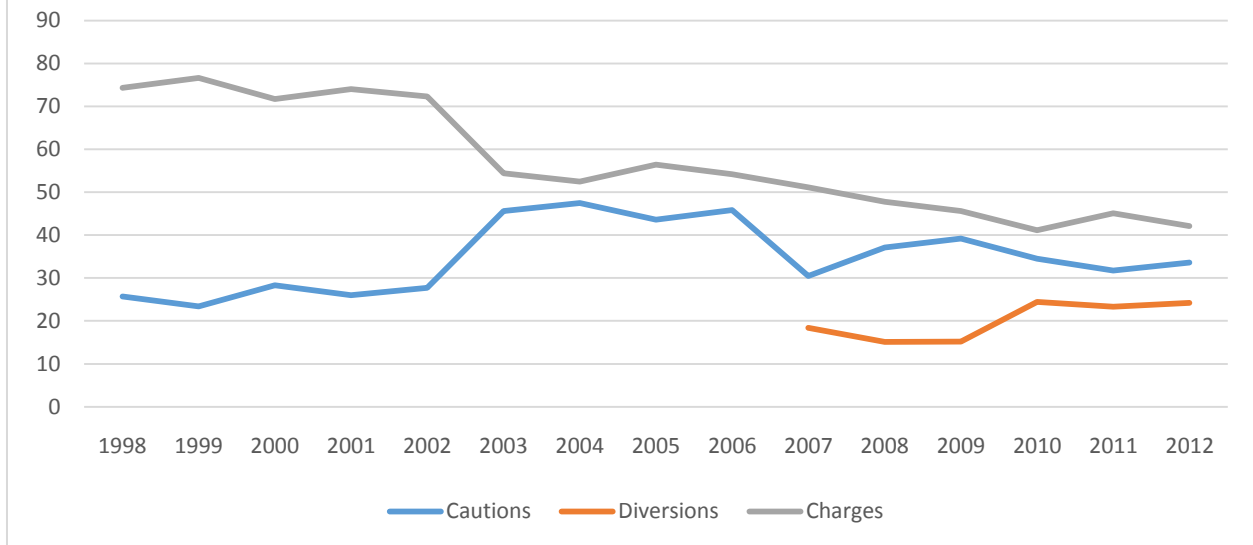


Figure 2: Percent of Youth Cases Recorded by the GTA Police Service By Police Charge Decision 1998 to 2012



There was a slight change once the diversion program was implemented in 2007 (See Figure 1 and 2). Interestingly, within the years in question, the total number of youth cases was highest in 2007. In that year the GTA police service recorded a total of 3,288 youth cases. This may just be annual fluctuation however, and not indicative of a long -term trend. In fact the data seem to substantiate the fact that this was an unusual and unrepresentative year. For example, there was a slight decrease in the number of charged youth in 2007. There was also a drastic decrease in the rate of cautions. Prior to the establishment of the pre-charge diversion program, cautions were around 45% of all youth cases. However, in 2007, the year the pre-charge diversion program was established, the use of cautions drastically dropped to 30.5% of all youth cases. Youth diversions represented 18% of all youth cases. This would seem to support the argument that the creation of the pre-charge diversion program produced net widening, as it appears that youth may have been drawn from those who were being cautioned. The data from the following year however, refutes this assertion. The rate of charges among youth steadily decreased following implementation of the pre-charge diversion program. Furthermore, the

number of cautions actually increased in 2008 and 2009, the two years following the first year of the diversion program. The number of cautions however, decreased from 2009-2012. The number of diversions are consistent from 2010-2012, representing around 24% of all youth cases. It is worth noting that overall contact with police also dropped from 3,288 in 2007 to 2,240 in 2012.

It is difficult to support or dismiss the idea of net widening. It appears that diversion reduced the percentage of all cases involving either charges or cautions. For example, in 2006, 54.2% of all youth cases involved charges. In 2012, five years after the introduction of the diversion program, this number dropped to 42.1%. Similarly, in 2006, 45.8% of all cases involved cautions. By 2012, this figure drops to 33.6%. The fact that the percentage of youth charged has declined would seem to suggest that there is no net-widening. However, the data implies that the percentage of youth who are being cautioned has also dropped thus, suggesting that a higher proportion of youth may be being dealt with in a semi-formal manner (i.e. via diversion). This in turn suggests net widening. In other words, diversions include youth who would have been charged prior to 2007, but they may also include youth who just would have been cautioned.

Offence Data – Number of Youth Cases involving Theft Under \$5000.

Table 3 shows youth cases involving Theft Under \$5000 recorded by the GTA police service under examination. The chart shows the police charge decision from 1998 to 2012. Table 4 shows the percentage of these youth cases recorded by the GTA police.

TABLE 3: Number of Young Offender Cases Involving Theft under \$5,000, Recorded by the GTA Police Service, By Police Charge Decision, 1998 TO 2012

YEAR	CHARGED	CAUTIONED	DIVERTED	TOTAL CASES
1998	385	255	0	640
1999	388	158	0	546
2000	337	265	0	602
2001	361	254	0	615
2002	378	287	0	665
2003	216	580	0	796
2004	205	578	0	783
2005	163	434	0	597
2006	132	530	0	662
2007	114	345	213	672
2008	126	443	132	701
2009	117	496	105	718
2010	78	276	229	583
2011	86	246	203	535
2012	83	347	109	539

TABLE 4: Percent of Young Offender Cases Involving Theft under \$5,000 Recorded by the GTA Police Service that Resulted in a Charge, Caution or Police Diversion, 1998 TO 2012

YEAR	PERCENT CHARGED	PERCENT CAUTIONED	PERCENT DIVERTED	TOTAL CASES
1998	60.2	39.8	0.0	640
1999	71.1	28.9	0.0	546
2000	56.0	44.0	0.0	602
2001	58.7	41.3	0.0	615
2002	56.8	43.2	0.0	665
2003	27.1	72.9	0.0	796
2004	26.2	73.8	0.0	783
2005	27.3	72.7	0.0	597
2006	19.9	80.1	0.0	662
2007	17.0	51.4	31.6	672
2008	18.0	63.2	18.8	701
2009	16.3	69.1	14.6	718
2010	13.4	47.3	39.3	583
2011	16.1	45.9	37.9	535
2012	15.4	64.4	20.2	539

A review of the data involving Theft Under \$5000 also suggests that prior to the YCJA, a high number of cases were sent to court. In 1998, Theft Under \$5000 represented 25.7 % of all youth cases. The data show that 60% of these youth were charged while 40% were cautioned. While these are considerably better figures than those for all youth cases, nevertheless it is evident that most youth faced a potential charge for theft. In 1999, these numbers look even more troubling. Theft Under \$5000 represented almost a quarter (23%) of all youth cases. The data show that the majority (71%) of these youth were charged, while 29% were cautioned. Evidently, in 1999, youth who were apprehended for theft were subject to harsher penalties. However, in 2000, we see a drastic reduction in charges and increase in cautions despite the fact that Theft Under \$5000 still represented almost a quarter (23%) of all youth cases. The data show that 56% of these youth were charged while 44% were cautioned in 2000. These numbers remain constant until 2003. Upon implementation of the YCJA, there was a dramatic change in how police handled youth apprehended for Theft. In 2003, Theft Under \$5000 represented 24.8% of all youth cases. Twenty seven percent (27.1%) of these youth were charged while 72.9% were cautioned. Compared to previous years, these figures show a reduction in the number of charges and an increase in the number of cautions. This trend continues until 2005. Youth are charged at a rate of around 27%, and a caution rate of around 73%. Interestingly, in 2006 there is a further reduction in the charge rate. Almost 20% percent of youth were being charged, while 80% of youth were being cautioned.

Figure 3: Number of Youth Cases Involving Theft Under \$5000, Recorded by the GTA Police Service, By Police Charge Decision, 1998 to 2012.

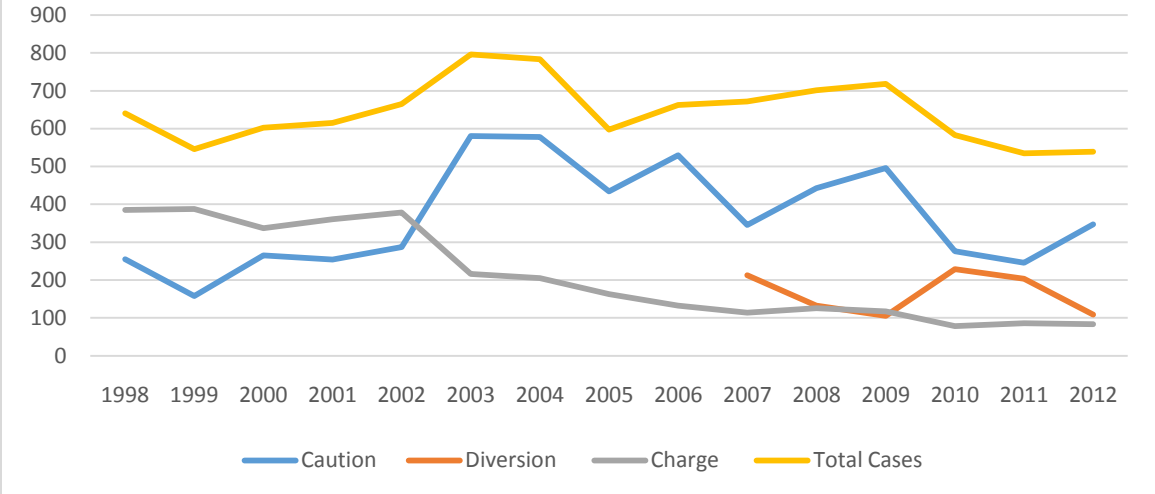
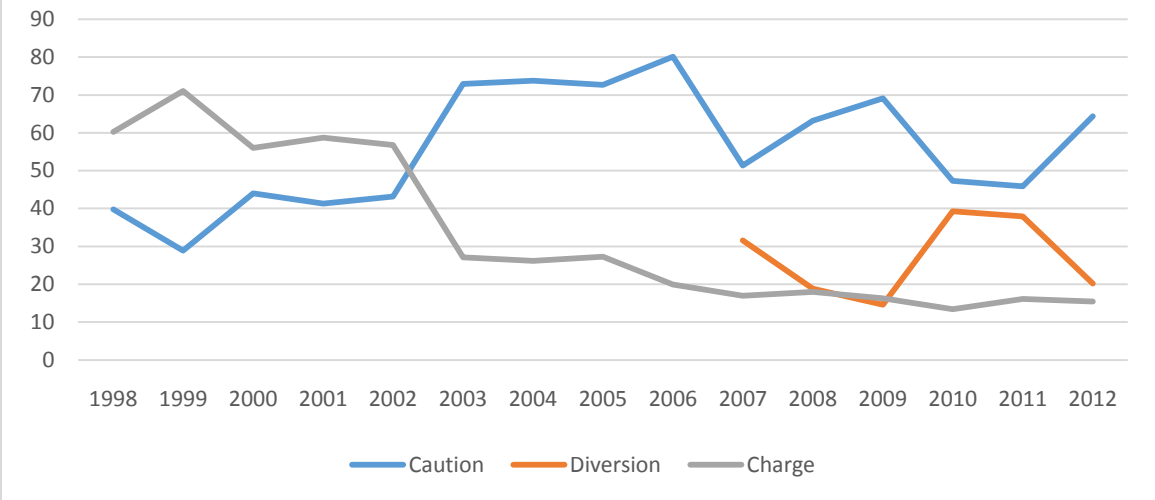


Figure 4: Percent of Youth Cases Involving Theft Under \$5000 Recorded by the GTA Police Service, By Charge Decision, 1998 to 2012.



The data suggest that the first year of the pre-charge diversion program had a significant impact on how police handled youth apprehended for Theft Under \$5000 (See Figures 3 and 4). In 2007, Theft Under \$5000 represented 20.4% of all youth cases. A decrease from previous years. The diversion program did not appear to have a significant impact on reducing the charge rate. The data suggest that the charge rate was already on a steady decline prior to implementation of the program. The program however, had a major impact on the caution rate.

In 2006, 80.1% of youth apprehended for Theft Under \$5000 were being cautioned. One year later, in 2007, 51.4% were being cautioned. Coincidentally, in the same year 31.6% of youth apprehended for Theft Under \$5000 were being diverted. In comparison to the previous year, the data suggest diverted youth were being drawn from those who were cautioned. This data seems to support the idea of net widening. In 2008 and 2009, Theft Under \$5000 represented 22% and 23.8% of all youth cases respectively. Interestingly, the rate of cautions increased to between 64-69%, while diversions represent 15%-18%. There was a significant decrease in the rate of diversions from its initial year of implementation, however the rate of caution never returns to the same rate prior to 2007. Evidence of net widening appears in 2010 and 2011 as data show a reduction in the caution rate. In 2010, 47% of youth were cautioned and 46% in 2011. During the same period there was a significant increase in the diversion rate. In 2010, 39% of youth were diverted and 38% in 2011. In 2012, the data show another change. The charge rate is consistent at around 15% however, the caution rate increases to 64% while the diversion rate decreases to 20%. While there may be a reduction in the use of diversion, the caution rate does not return to the same rates seen before the diversion program was implemented.

The data suggest that net widening may have taken place in some of the years examined. Throughout the years under examination, Theft Under \$5000 consistently represents between 20-

25% of all youth cases, confirming the fact that Theft Under represents a non-trivial number of apprehended youth, and that it remains a significant proportion of non-violent, minor offences. Evidently, police officers within the GTA police service did in fact follow the principles of the YCJA. Immediately after the Act was implemented, each year saw a decrease in the charge rate, and an increase in the caution rate. The trend however, changes immediately after the pre-charge diversion program was introduced. For example, in 2006, a year before the diversion program was implemented, 19.9% of youth were charged for Theft while 80% of youth were cautioned. Within all the years examined however, 2006 was the year that the caution rate was at its highest. In 2007, the charge rate had a minimal decrease to 17% while the caution rate was drastically reduced to 51.4% from 80%. The fact that the caution rate drastically reduced suggests net widening. The caution rate never returns to its peak level once the pre-charge diversion program was introduced as an option for police officers.

Offence Data – Number of Youth Cases involving Marijuana Possession.

Table 5 outlines youth cases involving Marijuana Possession recorded by the GTA police service under examination. The chart shows the police charge decisions from 1998 to 2012.

Table 5 shows the percentage of the youth cases recorded by the GTA police.

TABLE 5: Number of Young Offender Cases Involving Marijuana Possession, Recorded by the GTA Police Service, By Police Charge Decision, 1998 TO 2012

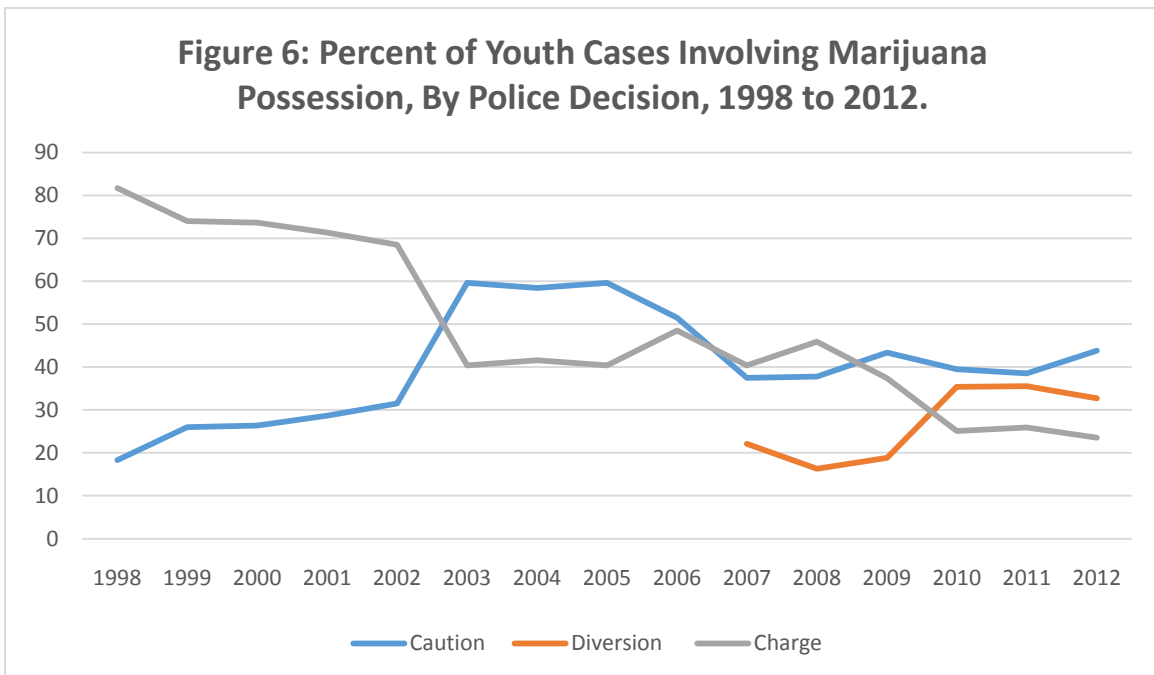
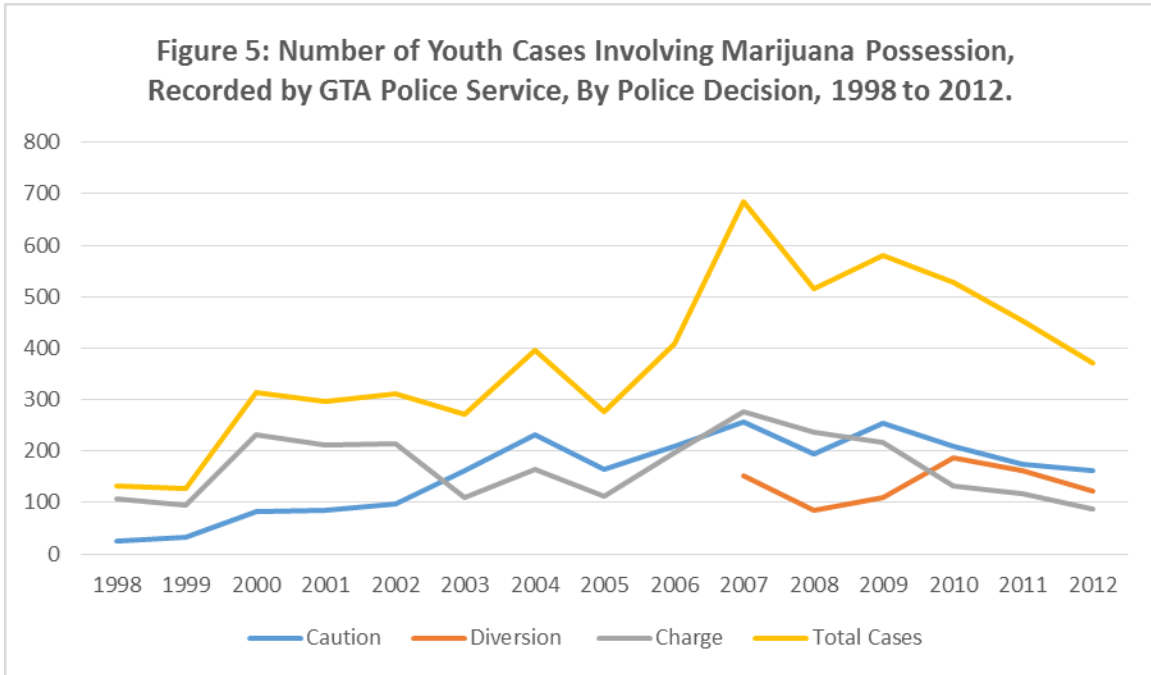
YEAR	CHARGED	CAUTIONED	DIVERTED	TOTAL CASES
1998	107	24	0	131
1999	94	33	0	127
2000	231	83	0	314
2001	211	85	0	296
2002	213	98	0	311
2003	110	162	0	272
2004	165	232	0	397
2005	112	165	0	277
2006	198	210	0	408
2007	277	257	151	685
2008	237	195	84	516
2009	217	255	109	581
2010	133	209	187	529
2011	118	175	161	454
2012	87	162	121	370

TABLE 6: Percent of Young Offender Cases Involving Marijuana Possession (Recorded by the GTA Police Service) That Resulted in a Charge, Caution or Police Diversion, 1998 TO 2012

YEAR	PERCENT CHARGED	PERCENT CAUTIONED	PERCENT DIVERTED	TOTAL CASES
1998	81.7	18.3	0.0	131
1999	74.0	26.0	0.0	127
2000	73.6	26.4	0.0	314
2001	71.3	28.7	0.0	296
2002	68.5	31.5	0.0	311
2003	40.4	59.6	0.0	272
2004	41.6	58.4	0.0	397
2005	40.4	59.6	0.0	277
2006	48.5	51.5	0.0	408
2007	40.4	37.5	22.1	685
2008	45.9	37.8	16.3	516
2009	37.4	43.4	18.8	581
2010	25.1	39.5	35.4	529
2011	25.9	38.5	35.5	454
2012	23.5	43.8	32.7	370

An examination of the data involving Marijuana Possession also confirms that prior to the YCJA, a high number of cases were sent through court. Evidently, youth apprehended for Marijuana Possession were subject to harsher penalties. For example, in 2008 Marijuana Possession represented only 5 % of all youth cases however, 81.7% were charged while 18.3% were cautioned. The charge rate among youth did see a decline and the caution rate increased after 1998. By 2002, 68.5% of youth apprehended for Marijuana Possession were charged and 31.5 % were cautioned. Interestingly, the number of youth being apprehended for Marijuana Possession increased. By 2002, Marijuana Possession represented 11.2% of all youth cases. In 2003, the year the YCJA was implemented, data suggests a shift in charging practices. Forty percent (40.4%) of youth were charged while 59.6% of youth were cautioned. These rates remain constant until 2006. In 2006, Marijuana Possession represented 13.6% of all youth cases, a

further increase since 2002. Despite the principles implemented by the YCJA, there is an increase in charges for youth apprehended for Marijuana Possession to 48.5% while 51.5% of youth are cautioned.



In 2007, the first year of the pre-charge diversion program, 20.8% of all cases involved Marijuana Possession, representing the highest number of youth who were apprehended for Possession within all the years under consideration (See Figure 5 and 6). In that year, the charge rate returned to 40.4%, while cautions decreased to 37.5% and diversions represented 22.1%. While the charge rate does in fact decrease from the previous year, in essence, there was no change as the rate returns to similar levels prior to the diversion program. There was however, a dramatic change in the caution rate. Prior to the diversion program, close to 60% of youth were being cautioned. However, once the diversion program was implemented; only 37.5% of youth were cautioned. The caution rate consistently stayed around approximately 40% each year after 2007. In 2010, the data suggest that the charge rate began to decline to around 25%. This trend continued until the last examined year in 2012. In contrast, the diversion rate increased to around 35%. Some may argue, this supports no net widening, however, the caution rate never returned to rates seen prior to the diversion program.

Some caution must be used in arguing that the diversion program produced net widening. However, the data does support the idea that the pre-charge diversion program did have an impact on police charging decisions overall. For example, in 2003, 40.4% of youth apprehended for Marijuana Possession were charged, while 59.6% were cautioned. These numbers were consistent until 2007. Once the diversion program was implemented in 2007, 40.4% of youth were charged, while only 37.5% were cautioned and 22.1% were diverted. In 2003, Marijuana Possession only represented 8.4% of all youth cases, by 2007, the number had drastically increased to 20.8% of all youth cases. In essence, the diversion program may have had no impact on the charge rate yet impacted the caution rate. This suggests the diversion program was being used as an alternative to a caution. The rate of diversion however, dropped in 2008 and 2009,

while the charge and caution rate stayed around the same. In 2010, the rate of diversion increased to 35.4% while the charge rate decreased to a low 25.1%. The caution rate stayed at around 40%. Again, much like incidents involving Theft Under \$5000, cautions which are the least intrusive, are seemingly no longer a predominant option for youth apprehended for Marijuana Possession after implementation of the youth diversion program.

The next section of this chapter will examine the characteristics of the youth who are cautioned, selected to participate in the pre-charge diversion program, and youth who are charged for their offence. The main discussion focuses on the question: Are there differences in the youth who are cautioned, diverted or charged?

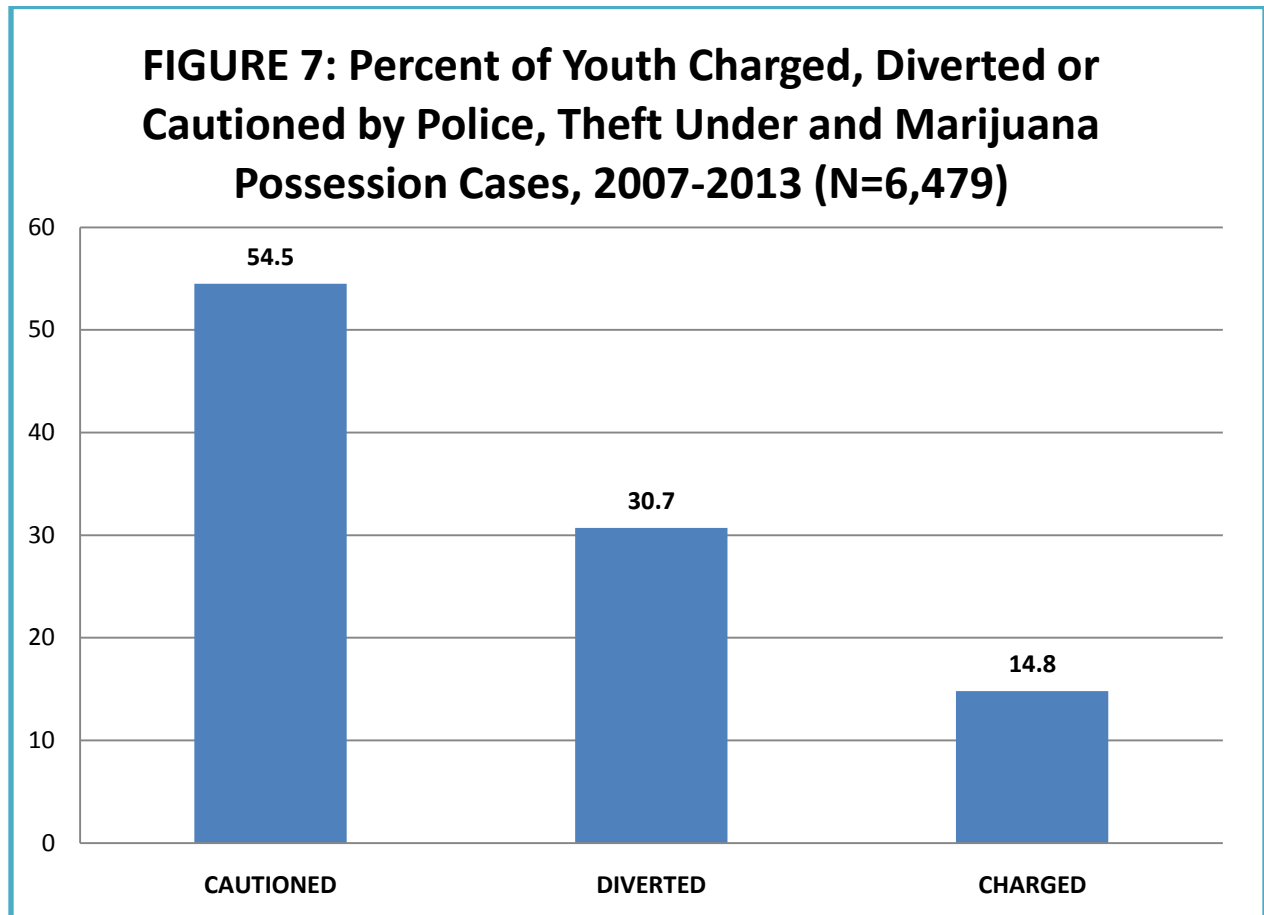
OFFENDER CHARACTERISTICS AND POLICE DISCRETION

Early labeling theorist, Howard Becker (1963) stated that “Rules tend to be applied more to some persons than others” (pg. 12). Becker’s expressed sentiment that the criminal justice system can be biased serves as the foundation for what follows in this chapter. This section of the chapter will examine whether young offender characteristics – including gender, age and racial background – impact police decision-making with respect to Theft Under \$5000 and Cannabis Possession. The chapter aims to answer the question: Are members of the GTA police service under examination more likely to formally charge some youth than others? Are they more likely to let some youth off with a caution or diversion order?

The data examined in this section includes all “first time” offenders (12 to 17 years of age) who were formally identified as involved in either Cannabis Possession or Theft Under \$5000 offences from January 2007 to December 2013. It should be stressed that the term “first time offender” is used to refer to individuals who have never before been charged with a crime. In other words, the analysis to be presented below already controls for criminal history – it only compares the outcomes of youth with no previous criminal background. It also should be stressed that this data only includes cases where one offence was recorded by the police. Cases involving multiple offences were excluded from the analysis. The final dataset include 6,479 youth cases. Over half of these cases (57.5%) involve Theft Under \$5,000 (n=3,725) and 42.5% involve Cannabis Possession (n=2,754). In the analysis below, a series of cross-tabulations are presented to examine whether the personal characteristics of young offenders impact the police decision to caution, divert or lay formal charges. Unfortunately, the data cannot capture instances in which the police identified a criminal offence but decided not to formally record the incident (i.e., they decided to ignore it or only issue an informal warning).

Police Discretion

The results presented in Figure Seven demonstrate considerable variability in how police officers dealt with young offender cases involving Theft Under \$5000 and Cannabis possession. In half of all cases (54.5%) the police simply let the youth off with a formal caution. In addition, since 2007 -- the year the diversion program was established -- almost a third of these cases (30.7%) received a formal diversion order. By contrast, only one out of every seven cases (14.8) resulted in a criminal charge.



These results suggest that -- at least for Theft Under \$5000 and Cannabis Possession -- the police service under study prefers to rely on alternative measures for youth rather than formal criminal charges. In other words, this particular GTA Police Service appears to be adhering to

the principles of the Youth Criminal Justice Act. Indeed, over 85% of the cases in the current sample were dealt with by extrajudicial measure. It should also be noted that these numbers only reflect cases that were officially recorded by the police. As noted above, it is also possible that, in some cases, the police identify a criminal offence but let the offender off without any official record of the encounter. In other words, to the extent that such “informal” processing occurs, the police use of “alternative measures” could be even more prevalent than identified by the current data.

Impact of Charge Type

The data suggests that offence type has a profound impact on police decision-making (see Table 7). In general, young offenders apprehended for Theft Under (58.8%) are more likely to get off with a caution than youth charged with Cannabis Possession (48.7%). By contrast, youth apprehended for Cannabis Possession are more likely to be formally charged than youth apprehended for Theft Under. Indeed, according to the data, one out of five youth (21.8%) apprehended for cannabis possession was charged with a crime, compared to only one out of ten youth (9.9%) charged with Theft under \$5000. The results suggest there is a positive statistically significant relationship between the type of offence and the charging decision⁹. Interestingly, type of offence does not seem to impact the decision to divert. About thirty percent of the youth from each charge category were offered diversion.

⁹ Please note that statistical significance is identified for each analysis under the appropriate table

TABLE 7: Percent of Youth Charged, Diverted or Warned by the GTA Police Service, by Type of Offence.

POLICE ACTION	CANNABIS POSSESSION (%)	THEFT UNDER \$5,000 (%)
Cautioned	48.7	58.8
Diverted	29.7	31.4
Charged	21.8	9.9
N	2,754	3,725

$$X^2=177.519; DF=2; p < .001$$

Impact of Police Division

The police service under study is divided into five different divisions. Divisions One (which serves Municipality A and P) and Two (which serves Municipality W) are located closer to the GTA and consist largely of middle-class, residential neighbourhoods. Division Three (Which serves Municipality O) is located in a mid-sized, working class Canadian city that has traditionally relied on the auto sector for employment. This city suffered an economic downturn as a result of the recent global recession and unemployment is thus relatively high compared to the other police divisions under study (Geobey, 2013). Divisions Four (Which Serves Municipality C) and Five (Which serves Municipality S, B, and U) consist of both small towns and rural, farming communities.

The data suggest young offenders caught in Divisions One and Two – the two divisions closest to Toronto and the most ethnically diverse -- are slightly more likely to be charged by the police than youth caught in the other three jurisdictions (see Table 8). Youth in Divisions Three and Four are most likely to receive a caution, followed closely by youth caught in Division One. Interestingly, although youth in Division Five (a largely rural jurisdiction) are less likely to be charged or cautioned – they are more likely to receive a formal diversion order. Overall, four out of ten youth caught in Division Five (41.3%) received a diversion, compared to 33.1% of youth

caught in Division Two, thirty percent (30.6%) of the youth caught in Division Three and less than thirty percent of the youth caught in Divisions One and Four received a diversion. The results suggest that there is a positive statistically significant relationship between the location of the police division and the charging decision.

Some American studies have suggested minorities are more likely to be arrested for minor crimes than whites (Gabbidon and Greene, 2005; Walker, Spohn, and Delone; Bowling and Phillips). The above observations may suggest some similarities in the Canadian context. The review of the charging decisions based on the GTA police location division suggests that the divisions responsible for the region’s most ethnically diverse population may have higher charging practices than the police divisions that are responsible for the areas with less ethnic diversity.

TABLE # 8: Percent of Youth Charged, Diverted or Warned by the GTA Police Service, by Police Division

POLICE ACTION	Division One (%)	Division Two (%)	Division Three (%)	Division Four (%)	Division Five (%)
Cautioned	54.5	49.5	56.5	59.5	47.1
Diverted	28.7	33.1	30.6	28.3	41.3
Charged	16.8	17.4	12.9	12.1	11.6
N	2133	1185	2013	808	329

$$X^2=55.073; DF=8; p < .001$$

Impact of Place of Residence

The dataset also includes information on the residence of the young offender. The data indicate that most of the young offenders in the current sample were apprehended within the same police division that they live. It is therefore not surprising that the patterns observed above with respect to police division are largely replicated when the analysis turns to the residential

location of the young offender (see Table 9). In general, youth who reside in Divisions One and Two are slightly more likely to be charged with a crime than youth who reside in Divisions Three, Four or Five. However, the data also reveal that youth who reside outside of this particular police jurisdiction are treated much more harshly than youth who reside within the jurisdiction. For example, 35.4% of the youth who were caught within this police jurisdiction – but live in Toronto – were charged with a crime, compared to only 9.1% of the youth who live in Division Five, 11.7% of the youth who live in Division Four, 12.0% of youth who live in Division Three, 17.0% of youth who live in Division Two and 16.8% of youth who reside in Division One. The charge rate is also relatively high (21.1%) for youth who do not live in Toronto -- but also live outside of the police jurisdiction under study. The results suggest that there is a positive statistically significant relationship between the place of residence of the young offender and the charging decision.

Why are “outsiders” more likely to be charged? One argument might be that the local police try to deter “outsiders” from travelling to their jurisdiction to commit crimes by treating them harshly if they get caught. A specific and general deterrence philosophy is not unusual in police approaches to youth crime. Another possibility is that the police believe – perhaps correctly – that it would be harder to enforce compliance with a diversion order for a youth who lives outside of their jurisdiction. Thus, for outside offenders, cautioning or charging may be viewed as the only viable option.

TABLE # 9: Percent of Youth Charged, Diverted or Warned by the GTA Police Service, by the Residential Location of the Offender

POLICE ACTION	Lives in Division One (%)	Lives in Division Two (%)	Lives in Division Three (%)	Lives in Division Four (%)	Lives in Division Five (%)	Lives in Toronto (%)	Lives Outside Area (%)
Cautioned	53.8	50.2	55.0	61.6	52.3	48.8	56.9
Diverted	29.4	32.8	33.1	26.8	38.7	15.9	22.0
Charged	16.8	17.0	12.0	11.7	9.1	35.4	21.1
N	2063	1220	1707	926	331	82	109

$$X^2=98.771; DF=12; p < .001$$

The Impact of Gender

Two out of three youth (66.9%) in the current dataset are male. This finding is consistent with both official (police) and survey data which suggest that males are more involved in criminal offending than females¹⁰. However, the data provides a little support for the “Chivalry Hypothesis” which predicts that women are treated more leniently by the justice system than men (Franklin and Fearn, 2008). The results presented in Table Ten suggest that gender only has a small – but nonetheless positive statistically significant -- impact on police decision-making (see Table Ten). Overall, for both theft under and cannabis possession, male youth are slightly more likely to face a formal criminal charge (16.7%) than female youth (11.1%). By contrast, females are slightly more likely to be cautioned (57.7%) than males (52.9%). Finally, the data also demonstrate that males (31.1%) and females (30.4%) are equally likely to be offered diversion for these two offences.

TABLE# 10: Percent of Youth Charged, Diverted or Warned by the GTA Police Service,

¹⁰ Statistics Canada 2011/2012 <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11803-eng.htm?fpv=2693>

by Gender

POLICE ACTION	FEMALE (%)	MALE (%)
Cautioned	57.7	52.9
Diverted	31.2	30.4
Charged	11.1	16.7
N	2,142	4,337

$X^2=36.991$; $DF=2$; $p < .001$

The Impact of Age

The data suggest that the age of the offender has a strong impact on police decision-making (see Table 11). This is consistent with data from other studies (See Doob and Cesaroni, 2004) In general, younger offenders are treated more leniently than older offenders. For example, 73.5% of 12 year-old offenders and 62.4% of 13 year-olds were cautioned by the police, compared to only 48.6% of 16 year-olds and 52.9% of 17 year-olds. Similarly, less than one percent of 12 year-olds and only three percent of 13 year-olds were formally charged with a crime, compared to over twenty percent of 16 and 17 year-old offenders. This is consistent with Statistic Canada data which show most youth court cases involve 16 and 17 year old offenders.¹¹ The results suggest that there is a positive statistically significant relationship between age and the charging decision. Interestingly, the diversion rate is lowest among offenders at both ends of the age spectrum. Only a quarter of 12 year-olds (25.9%) and 17 year-olds (24.3%) were offered a police diversion program. By contrast, the diversion rate climbs to over 30% for all other age groups. The data further suggest, however, that the low rate of diversion among 12 year-olds is due to the fact that they are more likely to be cautioned for their crimes than older youth. By

¹¹ <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11803-eng.htm?fpv=2693>

contrast, the low rate of diversion among 17 year-olds stems from the fact that they are more likely to face criminal charges.

TABLE # 11: Percent of Youth Charged, Diverted or Warned by the GTA Police Service, by Age of Offender

POLICE ACTION	12 YRS (%)	13 YRS (%)	14 YRS (%)	15 YRS (%)	16 YRS (%)	17 YRS (%)
Cautioned	73.5	62.4	61.2	62.3	48.6	52.9
Diverted	25.9	34.6	31.0	37.2	31.1	24.3
Charged	0.6	3.0	7.8	10.5	20.3	22.9
N	162	439	1019	1536	1652	1583

$$X^2=301.089; DF=10; p < .001$$

The Impact of Offender Race

For suspect description purposes, the police officers under study record the racial background of the young offenders they deal with. The racial categories included on official reports include White, Black, South Asian, Asian, South East Asian, Hispanic, East Indian, Middle Eastern, and Aboriginal. Almost two thirds of the cases in the current sample (64.7%) were classified by the police as White, 14.0% were classified as Black and 6.5% were classified as “Other Racial Minority” (including Asian, South Asian, South East Asian, East Indian, Hispanic and Aboriginal). Unfortunately, racial background is missing for 957 of the 6,479 (14.7%) cases.

A strong argument could be made that the vast majority of “Unknown” cases could be classified as “White.” According to the 2006 Canadian Census, only 16.8% of this region’s population are members of a racial or “visible” minority group. The other 83.2% were classified as “White”. Therefore, if we assume that the “Unknown” category is evenly distributed across the population, one would predict that 83.2% of the “Unknown” cases are in fact “White.”

Furthermore, anecdotally, personal discussions with a number of police officers reveals that “White” is often considered the “default” racial category in police reports. In other words, some officers do not systematically fill out the racial description field “unless” the offender happens to be a member of a racial minority group. If these assumptions are accurate, the “Unknown” category should probably be collapsed into the “White” category. Such a recoding would dramatically change the race-based results presented below – especially if you consider the fact that the youth in the “Unknown” category are treated much more leniently than others (see analysis below). Nonetheless, despite the fact that the vast majority of youth in the “Unknown Race” category are likely White, the following analysis will maintain “Unknown” as a distinct category. It is important to note that this rather conservative coding decision still yields important racial differences

The data reveal that Black youth may be over-represented in the current data and there is a positive statistically significant relationship. Although they represent only 6.0% of the region’s population¹², Blacks apparently represent 14.0% of the youth cautioned, diverted or charged with Theft Under \$5000 and Cannabis Possession between 2007 and 2012. By contrast, members of other racial minorities appear to be significantly under-represented. Although they represent a full tenth (10.8%) of the population, other minority groups represent only 6.5% of the cases in the current dataset. Nonetheless, as with gender, the data suggest that the race of the offender has only a slight impact on police decision-making. In general, the data suggest that black youth are treated somewhat more harshly. For example, 54.5% of White youth and 54.4% of Other Visible Minorities were given a caution during the study period, compared to 49.1% of Blacks. On the other hand, Black youth (19.2%) were slightly more likely to be charged than White youth

¹² Calculation based on statistics presented by the GTA Region Planning Department, 2006.

(16.0%) or youth from other racial minority backgrounds (16.6%). It is important to note, however, that only 4.9% of the youth in the “Unknown” category were formally charged with a crime. Thus, if most of these youth are in fact White, the White charge rate reported in Table 12 is artificially low. The results suggest there is a positive statistically significant relationship between the race of the offender and the charging decision.

TABLE# 12: Percent of Youth Charged, Diverted or Warned by the GTA Police Service, by Race of Offender

POLICE ACTION	RACE UNKNOWN (%)	WHITE (%)	BLACK (%)	OTHER MINORITY (%)
Cautioned	59.6	54.5	49.1	54.4
Diverted	35.5	29.5	31.7	29.1
Charged	4.9	16.0	19.2	16.6
N	957	4195	908	419

$$X^2=98.822; DF=6; p < .001$$

The Intersection of Race and Gender

Further analysis indicates that significant racial differences exist within both male and female sub-samples. The findings presented in Table 13, for example, suggest that Black (52.5%) and Other Minority females (52.6%) are slightly less likely to be given a caution than White (58.2%) or Unknown females (61.0%). By contrast, Black females are more likely to be given a diversion (36.0%) than white (29.5%) or Other Minority females (33.3%). Interestingly, the charge rate for Black females (11.5%) is actually lower than the charge rate for White females (12.3%) and females from other minority groups (14.0%). However, only 5.2% of females in the “Unknown Race” category were charged. I must be stressed -- again -- that the racial differences documented above would change dramatically if the majority of females in the “Race Unknown” category are, in fact, White.

TABLE # 13: Percent of Youth Charged, Diverted or Warned by the GTA Police Service, by Race (Female Offenders Only)

POLICE ACTION	RACE UNKNOWN (%)	WHITE (%)	BLACK (%)	OTHER MINORITY (%)
Cautioned	61.0	58.2	52.5	52.6
Diverted	33.8	29.5	36.0	33.3
Charged	5.2	12.3	11.5	14.0
N	364	1403	261	114

$$X^2=20.659; DF=6; p < .002$$

Overall, the results also suggest that black males are treated somewhat more harshly than males from other racial backgrounds (see Table 14). For example, less than half (47.8%) of the Black males in the dataset received a caution, compared to 52.7% of White males, 55.1% of males from other racial minority groups and 58.7% of those with an “unknown” racial origin. By contrast, 22.3% of Black males were charged with a crime, compared to 17.9% of White males, 17.4% of “Other Minority” males and only 4.7% of “Unknown Race” males. Clearly, the charge rate for Whites would drop even lower if those in the “Unknown” category were reclassified as White. The results suggest there is a positive statistically significant relationship between the race, gender and the charging decision.

TABLE # 14: Percent of Youth Charged, Diverted or Warned by the GTA Police Service, by Race (Male Offenders Only)

POLICE ACTION	RACE UNKNOWN (%)	WHITE (%)	BLACK (%)	OTHER MINORITY (%)
Cautioned	58.7	52.7	47.8	55.1
Diverted	36.6	29.5	30.0	27.5
Charged	4.7	17.9	22.3	17.4
N	593	2792	647	305

$$X^2=81.730; DF=6; p < .002$$

Race and Offence Type

The data above suggest that, in general, Black youth in this analysis are treated somewhat more harshly than others. Further analysis suggests that this is particularly true for cases of Cannabis Possession. For example, 13.5% of Black youth apprehended for Theft Under \$5000 were charged with a crime, compared to 11.4% of “Other” minorities, 10.4% of Whites and only 3.3% of those in the “Race Unknown” category (see Table 15). However, racial differences in the charge rate become more pronounced when we isolate Cannabis Possession cases (see Table 16). Indeed, more than a third of the Black youth (36.1%) apprehended for Cannabis Possession were charged with a crime, compared to 26.0% of “Other” minorities, 22.0% of Whites and only 7.7% of youth in the “Unknown” category. Furthermore analysis reveals that, for both crime types, Black youth are less likely to be given a caution than youth from other racial backgrounds.

The situation with respect to diversion is somewhat more complicated. The data suggest, for example, that Black (34.7%) and “Other” minority youth (33.3%) are somewhat more likely to be diverted for Theft Under \$5000 than White youth (29.4%) (see Table 16). On the other hand, White youth (29.5%) are more likely than Black (22.9%) and “Other” minority youth (21.2%) to be diverted for Cannabis Possession (see Table 16). Of course this situation could change if the youth in the “Unknown Race” category could be properly classified. For both Cannabis Possession and Theft Under, over a third of the “Unknown Race” youth were granted a diversion. The results suggest there is a positive statistically significant relationship between the race, the offence type and the charging decision.

TABLE # 15: Percent of Youth Charged, Diverted or Warned by the GTA Police Service, by Race (Theft Under Cases Only)

POLICE ACTION	RACE UNKNOWN (%)	WHITE (%)	BLACK (%)	OTHER MINORITY (%)
Cautioned	63.1	60.2	51.8	55.3
Diverted	33.6	29.4	34.7	33.3
Charged	3.3	10.4	13.5	11.4
N	607	2164	681	273

$$X^2=51.963; DF=6; p < .001$$

TABLE # 16: Percent of Youth Charged, Diverted or Warned by the GTA Police Service, by Race (Cannabis Possession Cases Only)

POLICE ACTION	RACE UNKNOWN (%)	WHITE (%)	BLACK (%)	OTHER MINORITY (%)
Cautioned	53.4	48.4	41.0	52.7
Diverted	38.9	29.5	22.9	21.2
Charged	7.7	22.0	36.1	26.0
N	350	2031	227	146

$$X^2=76.805; DF=6; p < .002$$

The Intersection of Gender, Race and Offence Type

The next step of the analysis examines how the intersection of race, gender and offence type may impact police decision-making. The results presented in Table 17 suggest that for Theft Under \$5000 cases, race matters for both males and females. In general, both Black males and Black females are less likely to be cautioned for Theft Under \$5000 than their White counterparts. On the other hand, Black males and females are slightly more likely to be charged or diverted than White males and females. However, for Cannabis Possession cases, statistically significant racial differences exist only for males – not for females (see Table 18). For example, the Cannabis charge rate for Black females (10.8%) is only slightly higher than the charge rate

for White females (9.0%). However, both Black males (37.9%) are much more likely to be formally charged with Cannabis Possession than both “Other” minority males (28.1%) and White males (22.4%). On the other hand, White males are much more likely to be cautioned or diverted (77.6%) than Black males (62.1%). Overall, these findings are consistent with previous research which suggests that Black males are treated more harshly with respect to North America’s War on Drugs (Tonry, 2004; Provine, 2011; Bobo and Thompson, 2006).

TABLE# 17: Percent of Youth Charged, Diverted or Warned by the GTA Police Service, by Race and Gender (Theft Under Cases Only)

POLICE ACTION	RACE UNKNOWN (%)		WHITE (%)		BLACK (%)		OTHER MINORITY (%)	
	Female	Male	Female	Male	Female	Male	Female	Male
Cautioned	64.7	61.7	60.2	60.2	52.9	51.2	52.1	57.1
Diverted	32.5	34.6	30.8	28.3	36.3	33.8	33.3	33.3
Charged	2.8	3.7	9.0	11.5	10.8	15.0	14.6	9.6
N	283	324	998	1166	240	441	96	177

Female Sample= $X^2=22.579$; DF=6; $p < .001$

Male Sample= $X^2=33.488$; DF=6; $p < .001$

TABLE# 18: Percent of Youth Charged, Diverted or Warned by the GTA Police Service, by Race and Gender (Cannabis Possession Cases Only)

POLICE ACTION	RACE UNKNOWN (%)		WHITE (%)		BLACK (%)		OTHER MINORITY (%)	
	Female	Male	Female	Male	Female	Male	Female	Male
Cautioned	48.1	55.0	53.3	47.2	47.6	40.3	55.6	52.3
Diverted	38.3	39.0	26.4	30.3	33.3	21.8	33.3	19.5
Charged	13.6	5.9	20.2	22.4	19.0	37.9	11.1	28.1
N	81	269	405	1626	21	206	18	128

Female Sample= $X^2=6.259$; DF=6; $p > .395$

Male Sample= $X^2=79.477$; DF=6; $p < .001$

CHAPTER 5 – SUMMARY AND CONCLUSIONS

The preceding analysis explored whether the implementation of the formal diversion program reduced the number of youth warned or cautioned by the police, thus suggesting net widening. Analysis also explored whether the implementation of the formal diversion program reduced the overall number of youth arrested and charged by the police (especially in respect to the offences of Theft Under \$5000 and Possession of Marijuana). I also examined whether the personal characteristics of young people impact police decisions to charge, divert or caution. The analysis focussed on a sample of first-time offenders apprehended for Theft Under \$5000 and Cannabis Possession between 2007 and 2012. The results show the following:

Net widening

Data suggest that the GTA police service is following the principles of the YCJA. Numbers show that the percentage of youth charged and formally processed through the youth court system has drastically decreased since implementation of the Act. Thus informal measures have now become the predominant form of intervention for youth apprehend for minor youth crimes. However, there is some evidence that supports the notion that implementation of the pre-charge youth diversion program may have had an impact on the number of youth dealt with by a caution, the least intrusive form of intervention. For example, when analysing youth apprehended for Theft Under \$5000 there was a huge reduction in the number of youth dealt with by way of caution once the diversion program was created. Within the first year of the diversion program, the number of cautions dropped. However, in 2008 (second year of the youth diversion program) and 2009 (third year of the youth diversion program), cautions had a drastic increase, while the rate of diversions decreased. But in 2010 (four year of the youth diversion

program) and in 2011 (fifth year of the youth diversion program), cautions decreased while diversions increased. Fluctuations in the rate of diversion may coincide with fluctuations in the caution rate.

When analysing Marijuana Possession, it is interesting to note that the number of cases steadily increased each year under examination (the highest number recorded in 2007, the first year of the diversion program). The charge rate does not see a decline until 2010 (four year of the youth diversion program), and it is at this point, the data suggests diversion is used as a popular alternative measure, which further suggests that there is no evidence of net widening. The caution rate however was highest (between 50-60%) between 2003-2006, after implementation of the YCJA, and prior to the pre-charge diversion program. The caution rate never returns to similar rates once the diversion program is implemented.

Police Decisions

	Diversion	Caution	Charge
Overall Results	A third of youth were offered a diversion	About half of all youth are given a caution	Only a small portion of youth are charged with a crime
Age	The data suggest youth between the age of 13-15 are more likely to receive a diversion	The data suggest that younger youth are more likely to receive a caution	The data suggest that older youth are more likely to be charged
Gender	The data suggest an equal proportion of males and females are offered a diversion	The data suggest female youth are slightly more likely to receive a caution	The data suggest male youth are slightly more likely to be charged than females.

Police Division	The data suggest that youth apprehended in Divisions Five are mostly likely to be diverted. This division oversees rural and farming communities.	The data suggest that youth apprehended in Diversion Four are slightly more likely to receive a caution. This division oversees rural communities but is steadily increasing in population size.	The data suggest that youth apprehended in Divisions One or Two are slightly more likely to be charged. These divisions two divisions are within an urban area and are more ethnically diverse
Residential Location	The data suggest youth residing in Division Five are more likely to be diverted.	The data suggest youth residing in Division Four are more likely to receive a caution	The data suggest youth who reside outside of the GTA Region are more likely to be charged.
Race	The data suggest that Black youth are slightly more likely to be offered a diversion.	The data suggest that White youth are more likely to receive a caution.	The data suggest Black youth are slightly more likely to be charged.

The above findings should only be interpreted as preliminary. Clearly there are many other factors – including youth social class, youth demeanor, neighbourhood crime, the presence of co-offenders, the presence of witnesses, officer disposition, etc. – that could also impact police decision-making. Nonetheless, the above findings suggest that personal characteristics can still impact police discretion and thus deserve further research attention. The following section conclude this thesis with a discussion of the findings, limitations of the study, and future directions.

Conclusion

As a consequence of the growing concern over how the Canadian justice system handled youth involved in minor crimes, the federal government enacted a specific change to youth justice legislation (Bala et al, 2003). Extrajudicial measures were introduced as an alternative to the traditional court system. They were highlighted as a significant addition to the Youth Criminal Justice Act and hailed as the “most appropriate and effective way to handle youth crime” (YCJA,2003, Section 4a). Since its emergence in the 1970’s, the utility and effectiveness of youth diversion programs have been widely debated (Greene, 2010). Many researchers are interested in identifying whether youth diversion programs have an impact on future criminal offending (Osgood and Weichselbaum, 1984). I however, became interested in other questions surrounding the diversion process. I developed an interest in those youth who were not diverted out of the court system but were instead formally charged.

My concern stemmed from the fact that the decision to divert youth away from the justice system is based primarily on the discretion of individual police officers. As a result of police discretion, there is potential for inconsistencies in the diversion selection process. The available data allowed me to explore varying charging practices among youth from urban communities compared to youth from rural communities, older youth compared to younger youth, racial minority youth compared to white youth, as well as female youth compared to male youth. Examination of these differences is important to explore as findings may demonstrate that there are inequalities and inconsistencies in the application of the Canadian Youth Criminal Justice Act.

American researchers have long identified systematic biases within the criminal justice system, negatively impacting racial minorities and the poor. Canadian researchers have also

identified similar biases where policing strategies, identified laws, and formal government policies have negatively impacted the number of marginalized peoples involved in the justice system (Tator and Henry, 2006; Perry 2011; Mosher, 1998; also see Commission on Systemic Racism in Ontario Justice System). Very few Canadian studies have explored racial bias within the youth justice system despite expressed concerns. While numerous Canadian studies have identified that police discretion does play a significant role in arrest practices, few have thoroughly examined whether race or economic status plays a factor in arrest or diversion decisions involving young offenders (Marinos and Innocente, 2008). The current study fills a gap within Canadian research literature by offering insight into some of the characteristics, including race, of youth involved in the justice system.

The phenomena of “net widening” also became a point of interest. Whether the implementation of diversion programs in Canada has reduced youth involvement in the criminal justice system or merely expanded the extent of control over the lives of young people? Critics of youth diversion programs argue that the programs are used as a tool to increase state control. In one of the few Canadian studies to examine youth diversion programs; Spratt, Doob, and Greene (2004) found that the youth selected for diversion in their study, typically would have been cautioned and not charged. Such a practice undermines the intentions of the Youth Criminal Justice Act. Youth diversions programs are intended as an alternative to court, not a caution – in essence implying diversion programs are increasing the control of criminal justice officials. The present study expands on Spratt et al., (2004) analysis and examined the differences in police charging decisions before and after implementation of the GTA police service’s youth diversion program.

What have we learned?

Net widening

Concurrent with Bala et al's. (2012) findings, results from my analysis suggest that the GTA police service under study appears to be adhering to the principles of the YCJA. After implementation of the YCJA, the GTA police service drastically reduced the number of cases sent to youth court. To illustrate, currently over 85% of first time offenders involving Theft Under \$5000 and Marijuana Possession were dealt with through an extrajudicial measure. Based on this sample, at 54.5%, cautioning a youth is the most used intervention.

In relation to my study, net widening assumes that in absence of a pre-charge diversion program, youth would have been handled by a caution. Therefore, the argument would be that if youth are given a diversion instead of a caution, state control and monitoring has in fact increased. Interestingly, based on the fluctuations of police decisions year by year, my analysis cannot support or deny net-widening. Analysis appears to show that implementation of the youth diversion program reduced the percentage of both charges and cautions. For example, in 2006 (a year prior to implementation of the diversion program), 54.2% of all youth cases involved charges. In 2012, five years after the introduction of the diversion program, this number dropped to 42.1%. Similarly, in 2006, 45.8% of all cases involved cautions. By 2012, this figure drops to 33.6%. The fact that the percentage of youth charged has declined would seem to suggest that there is no net-widening. However, the percentage of youth who are being cautioned has also dropped which would seem to suggest that the diversion program had an impact on the caution rate. In essence, this would then suggest net widening. The data cannot conclude for certain one or the other. In other words, diversions include youth who would have been charged prior to 2007, but they may also include youth who just would have been cautioned. Further research into

these fluctuations as well as the phenomenon of net-widening is required to understand its impact on diversion programs.

Police Selection

Many Canadian studies have been limited to exploring only a few of the characteristics of the youth involved in youth diversion programs (See Green 2010; Sprrott et al., 2004). I was fortunate enough to have a GTA police service that willingly provided all the available data of youth who were apprehended by their police officers. Sprrott et al., (2004) found the youth involved in diversion programs were younger and female. When only analysing gender and age, my study found no major difference in gender. For example, males (31.1%) and females (30.4%) are equally likely to be offered diversion for Theft Under \$5000 and Marijuana Possession. Furthermore, my analysis suggests younger offenders are more likely to receive a caution. The data suggests that young offenders between the ages of 13-15 were more likely to receive a diversion.

To me, it was quite interesting to see the data suggest youth who reside outside of the GTA region experience harsher charging decisions than those who reside within the GTA region. For example, 35.4% of the youth who were caught within the GTA – but live in Toronto – were charged with a crime, compared to only 9.1% of the youth who live in Division Five, 11.7% of the youth who live in Division Four, 12.0% of youth who live in Division Three, 17.0% of youth who live in Division Two and 16.8% of youth who reside in Division One. These charging practices are worth further exploration.

Concurrent with many American studies, my analysis suggest Black youth are dealt with more harshly than their White counterparts. Despite some missing data (as noted previously, the

unknown category), there are still minor discrepancies in the data involving Black youth. My analysis suggests that race has a small but statistically significant effect on police decisions. In general, Black youth are more likely to be charged and less likely to be cautioned than White youth and youth from other racial backgrounds. In particular, treatment appears to be harsher for Black males accused of Cannabis Possession. For example, 54.5% of White youth and 54.4% of Other Visible Minorities were given a caution, compared to 49.1% of Blacks. On the other hand, Black youth (19.2%) were slightly more likely to be charged than White youth (16.0%) or youth from other racial minority backgrounds (16.6%).

When factoring in gender my analysis suggests Black (52.5%) and Other Minority females (52.6%) are slightly less likely to be given a caution than White (58.2%) or Unknown females (61.0%). In relation to diversionary selection, Black females are more likely to be given a diversion (36.0%) than white (29.5%) or Other Minority females (33.3%). Interestingly, the charge rate for Black females (11.5%) is actually lower than the charge rate for White females (12.3%) and females from other minority groups (14.0%). The most significant variation occurs for males apprehended for marijuana possession. More than a third of the male Black youth (36.1%) apprehended for Cannabis Possession were charged with a crime, compared to 26.0% of “Other” minorities, 22.0% of Whites and only 7.7% of youth in the “Unknown” category. These figures may show a discrepancy in police decisions for male black youth apprehended for marijuana possession. However, further analysis is required.

Limitations

The study provides limited quantitative analysis using official police statistics. The analysis was limited to examining bivariate relationships between police charging decisions and selected independent variables (i.e. gender, race, residence area, and age). Future research should

provide a multivariate analysis predicting police charging decisions using a wider variety of theoretically relevant predictor variables such as social class, number of offenders, demeanor towards police officers, location of the offence (i.e public or private setting) and so on.

Furthermore, the current study lacks a qualitative component which may have provided further insight into an officer's decision. Another option may be to involve the observation of police decisions during ride alongs to gain a better perspective on the factors that influence police decisions.

Future Directions

Future research should examine police perspective on youth diversion and charging practices. My analysis suggests minor variations in police decisions based on location of the police division, the offence, youth's residence, age, as well as race. In order to gain a better understanding of these variations, it is important to include the perspectives of the police. It is also important to examine recidivism. There are few Canadian studies that have access to the arrest/charge data of a Canadian police service and can directly compare the recidivism rates of diverted youth and charged youth. Examining recidivism would be an important contribution to the research on youth diversion programs in Canada. Results from these additional analyses may provide further insight into the factors that influence program effectiveness. If used properly, my research demonstrates that diversion programs have the potential to reduce the number of cases sent through the criminal courts. To an extent, the examined GTA police service demonstrated this impact. Future research should also examine the ability for diversion programs to reduce the public costs that are associated with court.

Final Thoughts

Why is it important to evaluate the utility of pre-charge youth diversion programs? The stories of Leonard and Mike, who were introduced at the beginning of this thesis may illustrate it best. Hypothetically, my analysis suggests that young Black males who reside in urban areas are handled differently than young White males who reside in rural communities. If Leonard, the young Black male who was charged for a minor assault, were afforded the same opportunity as Mike, who took part in a diversion, would Leonard's future have been different? Albeit, there may have been many factors that could have influenced Leonard's trajectory into crime. However, being given the opportunity to avoid a criminal record may have had a positive influence in the young man's life. The YCJA (2003) aggressively promotes the use of extrajudicial measures and contends alternative measures are "the most appropriate and effective way to address youth crime" (Part 1a, Section 4). Youth who have been apprehended for a minor crimes should be offered that chance, despite gender, race, area of residence, or age. Police services should take note as their decisions may influence the trajectory of a youth's future. Inconsistencies in charging decisions not only undermine the principles of the youth justice system, but can also undermine the potential for a youth to thrive in the future.

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