

CCRA 5 YEAR REVIEW

JUDICIAL DETERMINATION

February 1998

Ce rapport est disponible en français

This report is part of a series of 24 research/evaluation reports (listed below) that were prepared as background to the Consolidated Report of the Working Group studying the provisions and operations of the Corrections and Conditional Release Act and related Consultation Paper.

The Working Group is composed of representatives from the following agencies:

Correctional Service Canada
National Parole Board
Correctional Investigator
Justice
Department of the Solicitor General

Research/Evaluation Reports:

Information about Offenders
Security Classification of Inmates
Judicial Determination
The Temporary Absence Program: A Descriptive Analysis
Personal Development Temporary Absences
Work Release Program: How it is used and for what purposes
Day Parole: effects of the CCRA (1992)
Case Management: Preparation for Release and Day Parole Outcome
Accelerated Parole Review
Statutory Release and Detention Provisions
Community Supervision Provisions
Provisions Relating to Victims
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Urinalysis Testing Program
Inmate's Input in Decision-making
Information to Offenders
Aboriginal Offenders
Health Services
Women Offenders

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CCRA REVIEW

JUDICIAL DETERMINATION

INTRODUCTION

The *Corrections and Conditional Release Act (CCRA)*, implemented November 1, 1992, with the intent of further protecting the public, allows judges to lengthen the time that offenders who have committed violent or serious drug offences must serve in custody prior to parole eligibility.

Section 203 of the *CCRA* amended the *Criminal Code* of Canada (§743.6) providing the sentencing judge with the authority to order that an offender, sentenced to a term of imprisonment of two years or more, serve one half or ten years of the sentence, whichever is less, before eligibility for full parole, that is, when certain conditions are present: conviction for one or more offences set out in Schedules I (violent offences and crimes against the person) and II (offences under the *Narcotics Control Act* and the *Food and Drugs Act*) of the *CCRA* that were prosecuted by indictment, and where it is assessed considering the character and circumstances of the offender and the nature of the commission of the offence, that for the “expression of society’s denunciation of the offences...” a longer period of parole ineligibility is required.

The purpose of this paper is to contribute to, and support the requirement to undertake a comprehensive review of the provisions of the Act five years after its coming into force, as required by § 233 of the *CCRA*.

Given the nature and scope of the legislation, it is anticipated that those offenders who receive a judicial determination will remain in custody for a greater proportion of their sentence than was previously the case. It is also possible that a greater number of these offenders will be subject to statutory release and/or will be referred for detention by CSC to the NPB and ordered detained past their statutory release date as opposed to those offenders, who did not receive a designation of judicial determination but who, nonetheless, were sentenced for a schedule I or II offence.

Subsection 743.6(2) of the *Criminal Code* stipulates that for greater certainty, the paramount principles that are to guide the court under this section, are denunciation and specific or general deterrence, with rehabilitation of the offender, in all cases being subordinate to those paramount principles. Much of *CCRA* concerned itself with the government’s attempt to better protect the public, of which § 203 is a prime example. Judicial determination satisfies the twin need to confine the offender for the protection of the public and to denounce the behaviour. The effect of either general or specific deterrence is less certain. The role and function of the courts in the determination of guilt or innocence and, in the latter instance, the disposition to be imposed differs from that of

the mandate of the CSC and NPB. CSC's task, among others, is to assess the risk/needs of the offender in preparation for a NPB review, wherein the Board will decide whether the offender will be released on a form of conditional release or be denied, be subject to either statutory release or be ordered detained. In that regard, there is a difference between the role of the court to sentence and order confinement and the CSC's and the Board's role to assess the risk/needs that the offender would present upon release into the community.

RESEARCH DESIGN

A historical design has been employed. That is, the focus is the temporal succession of events, in point, a case study. The study will follow those offenders, who have been judicially determined by the courts. The design is intended to identify areas of concern which may lead to further study. There has been no manipulation of the variables, but rather a descriptive account of the quantitative data, with regard to certain issues, that have been extracted from the Offender Management System (97.05.15). Scheduled offenders without a judicial determination have been compared with scheduled offenders with a judicial determination, as this will provide a more accurate interpretation of the findings as opposed to comparison with the overall offender population¹. Where possible, data has been broken down by region, by Aboriginal offender/non-Aboriginal, and by gender.

As a caveat, the reader is advised to exercise caution in generalizing from this study as many of the cells are often small precluding generalization which is likely to lead to an accurate interpretation. Notwithstanding, when the data collected is taken as a whole, it is possible to make some statements with respect to direction.

METHODOLOGY

Review of Literature

- Review of Parliamentary proceedings of C-36
- Results of regional consultations

Data Collection

- Ongoing and continuous, through the OMS database
- Data centrally extracted at NHQ validated through regional offices

¹ with the exception of women offenders where the overall population has been selected.

Issues to be Considered

Does the legislation capture high risk\high needs offenders resulting not only in longer period of parole ineligibility at the front end but also are those offenders more often:

- serving a longer period of time past their parole eligibility dates;
- denied full and day parole;
- subject to statutory release; and
- more often referred for, and ordered detained than those offenders who have been convicted of a schedule I or II offence but have not received a judicial determination.

***ANALYSIS OF DATA: OBSERVATIONS AND FINDINGS
(SINCE FISCAL YEAR 92-93)***

TABLE 1 Scheduled federal offenders sentenced with/without judicial determination by type of schedule² November 1, 1992 to March 31, 1997			
	No Judicial Determination	Judicial Determination	TOTAL
Schedule I	13,653	559	14,212
%	96.1	3.9	
Schedule II	3,886	73	3,959
%	98.8	1.8	
TOTAL	17,539	632	18,171
%	96.7	3.5	

Table 1 provides a comparison of judicially determined offenders with schedule I and II offences and those scheduled offenders who did not receive a judicial determination. As anticipated, it is evident from Table 1 that the majority of offenders who have been judicially determined are schedule I offenders, where there has been a direct sexual or violent offence against person. Less than 2 percent are schedule II offenders. Overall, less than 4 percent of scheduled offenders received a judicial determination.

² Offenders convicted of offences on both schedules are included in Schedule 1

Provincial Distribution

Overall, most provinces and territories appear to be making limited use of judicial determination. The number of offenders sentenced with judicial determination has progressively reduced since the first full year of implementation of the *Act* (1993-94). Between 1993-94 and 1996-97, the numbers declined by almost 50 percent.

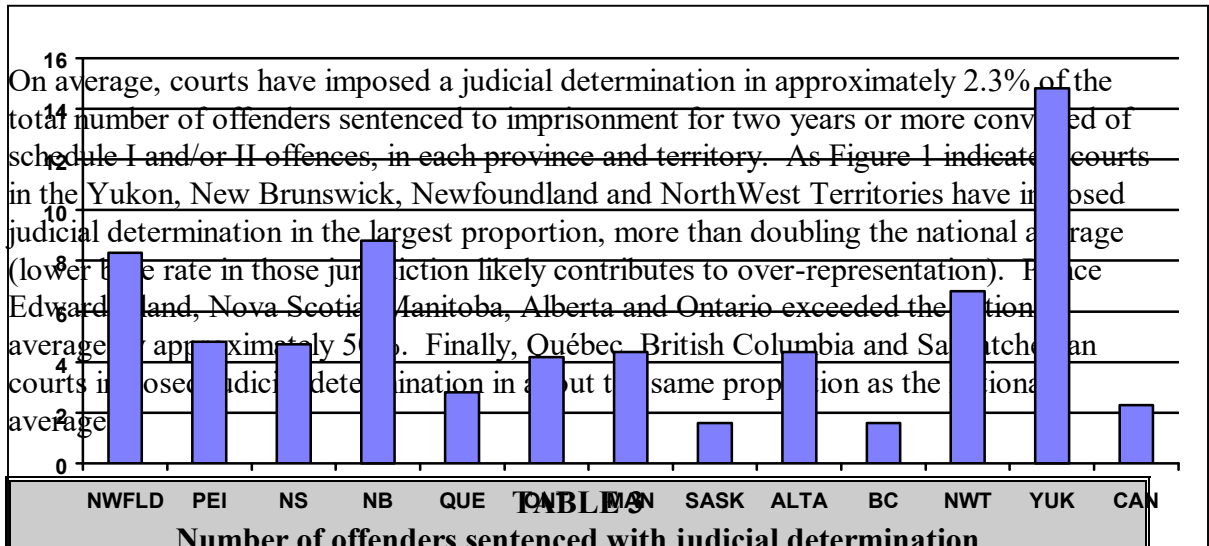
TABLE 2						
Number of offenders sentenced with judicial determination						
by year of admission to federal custody (WOC)						
by sentencing province/territory						
	92-93	93-94	94-95	95-96	96-97	TOTAL
Newfoundland	4	16	5	1	2	28
Prince Edward Island	---	2	1	---	1	4
Nova Scotia	4	19	12	3	3	41
New Brunswick	7	14	7	4	5	37
Québec	17	48	16	16	22	119
Ontario	11	57	56	32	32	188
Manitoba	---	5	13	7	5	30
Saskatchewan	1	3	5	4	5	18
Alberta	4	36	30	22	28	120
British Columbia	3	6	13	4	3	29
NorthWest Territories	1	---	7	2	3	13
Yukon	---	4	1	---	---	5
Canada	52	210	166	95	109	632

Source: OMS 97.05.15

Table 2 indicates the number of offenders sentenced with judicial determination, by sentencing province or territory, by year of admission on their Warrant of Committal (WOC)³. Ontario courts have made the largest use of judicial determination, for every year, except in the first 5 months of implementation (fiscal year 1992-93) where Québec ranked first. Québec courts were ranked second in 1993-94, while Alberta has made the second largest use of this sentencing disposition in the subsequent fiscal years.

³ If one were to consider total admissions, then the universe would constitute 692. However, of this universe there would be 60 odd offenders who would have been counted at least twice due to revocations or terminations of conditional release. Therefore, in order to evade a double count of offenders only those offenders admitted on a warrant of committal were selected for inclusion in the study.

FIGURE 1
Percentage of judicial determination imposed for scheduled offences



Number of offenders sentenced with judicial determination by year of admission to federal custody (WOC) by current administrative region						
Year	Atlantic	Québec	Ontario	Prairie	Pacific	Canada
92-93	12	19	11	7	3	52
93-94	47	53	55	37	18	210
94-95	23	17	54	54	18	166
95-96	7	15	33	35	5	95
96-97	11	22	31	43	2	109
TOTAL	100	126	184	176	46	632

Source: OMS 96.10.21 from 92-93 to 95-96 and OMS 97.05.15 for 96-97.

Table 3 provides the number of offenders sentenced with judicial determination, by current **administrative region**⁴, by year of admission. Ontario, Prairie and Québec regions have the largest number. Of interest, there appears to be more than twice as many offenders serving a sentence with judicial determination in the Atlantic region than in the Pacific. This finding is consistent however, with the proportionately higher representation of judicial determination imposed by courts in Atlantic provinces, as illustrated in Figure 1.

Gender

As Table 4 reveals, the vast majority of judicial determination is ordered against male offenders (more than 98%). Since women offenders represent approximately 3 percent of

⁴ Administrative region, as per the organizational structure of CSC and NPB.

admissions to federal custody⁵, it would appear that judicial determination is being applied in similar proportions to both genders.

TABLE 4		
Number of offenders sentenced with judicial determination by year of admission to federal custody (WOC) by gender		
Year	Men	Women
92-93	51	1
93-94	204	6
94-95	164	2
95-96	94	1
96-97	107	2
TOTAL	620	12

⁵ Total offenders are used for comparison due to small base rate for women offenders and also because a greater proportion of women offenders are serving a life or an indeterminate sentence.

Aboriginal Offenders

Table 5 represents a breakdown between Aboriginal and non-Aboriginal scheduled offenders with a judicial determination.

TABLE 5		
Number of offenders sentenced with judicial determination by year of admission to federal custody (WOC)		
Aboriginal/non-Aboriginal		
YEAR	ABORIGINAL	NON-ABORIGINAL
92-93	6	46
93-94	28	182
94-95	36	130
95-96	19	76
96-97	20	89
TOTAL	109	523

Aboriginal offenders appear to be somewhat over-represented among the offender population sentenced with judicial determination. According to Table 5, Aboriginal offenders represent more than 17 percent of the total number of offenders whose parole eligibility dates were set at ½ by the sentencing judge. Aboriginal offenders represent approximately 12 percent of all offenders under federal jurisdiction⁶. However, recent research literature confirms that Aboriginal offenders are more frequently convicted of assaults (including homicide, manslaughter and major assaults) and sexual offences than non-Aboriginals (cf.: CCRA Review Report on Aboriginal Offenders).

⁶ Source: EIS

TABLE 6				
Scheduled offenders sentenced with/without judicial determination by type of schedule, Aboriginal/non-Aboriginal				
	Aboriginal		Non-Aboriginal	
	No Judicial Determination	Judicial Determination	No Judicial Determination	Judicial Determination
Schedule I	2,313	104	11,340	455
%		4.5		4.0
Schedule II	127	5	3,759	68
%		3.9		1.8
TOTAL	2,440	109	15,099	523
%		4.5		3.5

Table 6 provides a breakdown between scheduled (I & II) Aboriginal offenders who have received a judicial determination and those that have not received such. Approximately 4.5% of Aboriginal offenders convicted of a scheduled offence are judicially determined compared to 3.5% of non-Aboriginal offenders. Table 6 further demonstrates that Aboriginal offenders, like all scheduled offenders, are most likely to be imposed judicial determination for Schedule I offences as opposed to Schedule II offences.

Pre-Release Decisions

Since November 1, 1992, approximately 26% of the offenders sentenced with judicial determination were conditionally released as of March 31, 1997, for a total of 166 offenders. According to Table 7, almost 70% of those offenders were first released on statutory release (SR), compared to about 36% for the non-judicially determined scheduled offenders.

TABLE 7					
First release of scheduled offenders with/without judicial determination by type of release					
	Day Parole	Full Parole	Stat Release	Total Released	Total Detained
Judicial Determination	26	25	115	166	57
%	15.7	15.1	69.2		
No Judicial Determination	1,475	4,398	3,347	9,220	1,653
%	16.0	47.7	36.3		

Evidence that the application of the judicial determination appears to be targeting high risk offenders is further supported by the relatively high number of offenders with judicial determination that have been detained. Table 7 suggests that for every 3 offenders with judicial determination that were conditionally released in the community, 1 was ordered detained until warrant expiry date (WED). This compares to 1 for almost every 6 conditionally released scheduled offenders without judicial determination.

Table 7 further indicates that the proportion of scheduled offenders first released on full parole is 3 times higher for those without judicial determination. The proportion of scheduled offenders first released on day parole appears to be similar. This trend is further confirmed by Table 8 which indicates that the grant rate for full parole is almost double for scheduled offenders without judicial determination. Whereas, the grant rate for day parole does not appear to be significantly different.

TABLE 8		
Day and full parole grant rates for scheduled offenders with/without judicial determination		
	Judicial Determination	No Judicial Determination
Day Parole	60.2%	64.9%
Full Parole	20.3%	36.0%

Post-Release Decisions

These results must be considered preliminary and indicative at best, as the majority of offenders with judicial determination have not yet reached eligibility for conditional release (almost 2/3 according to Table 7). In that context, very few have also had the opportunity to receive a post-release decision from the NPB. Further research, at a later point in time, will be required to provide further information regarding the outcome of releases for offenders with judicial determination.

MAJOR KEY FINDINGS

- Less than 4 percent of scheduled offenders have received a judicial determination;
- Since the first full year of implementation (1993-94) the rate at which judicial determination is applied is declining;
- More than 98 percent of judicially determined offenders are schedule I;
- Ontario and Prairie Regions appear to have the highest proportion of judicially determined offenders;
- Judicial determination appears to be applied equally to both genders;
- Aboriginal offenders appear to be somewhat over represented among the offender population sentenced with a judicial determination (17%);
- Since implementation, at least 2/3rds of judicially determined offenders have not yet reached their eligibility dates;

- Judicially determined offenders are most likely to be first released on statutory release (70 percent have been first released subject to statutory release and this compares with 36 percent of non-judicially determined scheduled offenders);
- Judicially determined offenders are more likely to be detained (for every three offenders with a judicial determination that were released conditionally, 1 was detained until warrant expiry date. This compares to 1 for almost every 6 scheduled offenders without a judicial determination released conditionally).

On the basis of the aforementioned, it appears that the application of judicial determination is consistent with the intent of the legislation to protect the public.