

# Youth Probation Officer Pre-Sentence Report Recommendations

Karla Gronsdahl, MA, Ph.D. (ABD)

## Introduction

The pre-sentence report (PSR) has traditionally been a distinct and essential document to assist judges in determining appropriate sentencing outcomes in Canada. Utilizing the focal concerns theory (e.g. blameworthiness, protection of the community and practical constraints and consequences) this study tests the hypothesis that there is a strong agreement between youth probation officers (YPOs) sentencing recommendations and judicial sentencing decisions despite the challenges of interpreting a highly complex law such as the Youth Criminal Justice Act (YCJA).

## Methods

147 YPOs from British Columbia read five case studies and were asked to select the appropriate sentencing options they would have hypothetically recommended to the court in their PSRs. The YPOs also checked off factors they considered when making their recommendations. The 26 factors were grouped according to the three focal concerns (see Table 2).

## Results

To simplify the YPO data, values lower than 50% are not shown in Table 1. In the first case (Kara), the YPOs and judge agreed with a community sentence, but the type of sentence was very different. Yet, as shown in Table 2 the focal concern factors that affected YPO and judicial decisions in this case are almost identical.

In more serious cases (Carlos & Amir) there was considerable agreement between the YPOs suggestions and final sentencing decisions (e.g. a custodial sentence followed by some form of community supervision).

While in the other two cases (Edward & Andy), the YPOs and judges agreed on custody being part of the sentencing process, however, it was the type of custody imposed that was different. The judges preferred a type of custody that is served in the community called a deferred custody and supervision order (DCSO), whereas the YPOs suggested a custodial sentence in a youth facility.

**Table 1. Comparison of YPO and Judicial Sentencing Options**

Options	Case 1 (Kara)		Case 2 (Carlos)		Case 3 (Edward)		Case 4 (Andy)		Case 5 (Amir)	
	YPO	Judge	YPO	Judge	YPO	Judge	YPO	Judge	YPO	Judge
Conference	76.0%		53.0%	✓			53.5%			
Reprimand		✓								
Driving or Weapon Prohibition								✓		✓
Probation	68.7%		66.2%	✓	72.2%		72.8%	✓	63.1%	
ISSP	54.7%		80.1%		85.3%		66.7%			✓
Custody & Supervision in Community			80.8%	✓	54.7%		71.4%		68.5%	✓
DCSO						✓		✓		

**Table 2. Factors Considered by YPO's and Sentencing Judge**

Factors	Case 1 (Kara)		Case 2 (Carlos)		Case 3 (Edward)		Case 4 (Andy)		Case 5 (Amir)	
	YPO	Judge	YPO	Judge	YPO	Judge	YPO	Judge	YPO	Judge
<b>Blameworthiness</b>										
Proportionality	77.0%	✓	94.7%	✓	88.8%	✓	90.2%	✓	95.4%	✓
Offence is Violent	71.7%		91.4%		99.3%	✓	54.3%		54.3%	✓
Prior Record	80.9%	✓	97.4%	✓	95.4%	✓	82.4%		60.3%	
Degree of Participation			94.7%	✓	80.9%	✓	84.3%		74.8%	✓
No Remorse				✓	97.4%	✓			86.1%	✓
<b>Community Protection</b>										
Family Background	89.5%	✓	90.8%	✓	87.5%		94.1%	✓	67.5%	✓
Education History			59.9%				53.6%	✓		✓
Employment History								✓		
Alcohol & Drug History of Youth			86.8%	✓	74.3%		92.2%	✓	80.8%	✓
Peer Associations			90.1%	✓		✓	55.6%			
Response to Previous YJ Services	80.3%	✓	96.7%	✓	86.3%	✓	66.7%			
Failure to Comply with Community Sentence(s)			91.4%		52.0%					
Victim Impact	67.1%	✓	90.8%	✓		✓	95.4%	✓	79.5%	✓
Impact on Victim's Family			55.3%				64.1%	✓	97.4%	✓
Public Protection			84.9%		89.5%		60.1%		66.9%	
Deterrence		☒	64.5%	☒	50.7%		54.9%	☒	74.2%	☒
<b>Practical Constraints and Consequences</b>										
Accountable & Responsible	66.4%	✓	87.5%				89.5%	✓		
Acknowledges Harm to Victim	75.7%	✓	80.9%				97.4%	✓		
Acknowledges Harm to Community										
Best Interest/Needs of Young Person	92.8%	✓	82.2%		67.8%					
Youth is Aboriginal							77.1%	✓		
Youth's Physical & Mental Health History	96.7%	✓	52.0%		87.5%	✓	77.2%			
Mental Health History of Family Members						✓				
Victim Reparation				✓						
Remand Custody			74.3%	✓				✓		
Sentence not greater than adult sentence			53.3%	✓				✓		✓

Note. A checkmark (✓) indicates what factors were deemed important by the judge in the sentencing decision. An "☒" indicates the judge commented or ruled against deterrence being a principle in sentencing youth under the YCJA.

## Discussion

Across the five cases there was a modest level of agreement between the YPO recommendations and final judicial sentences. When judges deviated from YPOs it was most often in favor of a lighter sentence. However, in cases involving serious and violent offences, legal variables (e.g. offence type, severity and prior record) had a very strong influence on YPO recommendations and the judges' final sentencing outcomes. This is consistent with the focal concerns perspective that suggests legal variables do influence perception of blameworthiness and dangerousness.

Extralegal variables such as gender, family background and socio-economic status were not influential in the five cases. Yet, mental health concerns were important in Kara's case as she had a history of assaulting staff after repeated attempts to physically restrain her. The judge sentenced her to a reprimand, the most lenient sentencing option under the YCJA. This was a deliberate and purposeful message by the judge that under this Act, a more punitive consequence in order to curb assaultive behaviour will no longer be available for youth with mental health issues who are in the care of social service professionals.

In another case, race was important for three-quarters of the YPOs, however, it was not as salient as the nature of the offence (aggravated assault) and subsequent victim impact. Similarly, the judge noted the offence superseded family and cultural ancestry. This result was very surprising given the YCJA includes mandatory provisions for sentencing Aboriginal young offenders.

## Conclusion

The hypothesis that YPOs and final judicial sentences would align found moderate agreement. Given the YCJA is highly prescriptive and unambiguous when sentencing serious and violent offenders, there is an expectedly high correspondence between YPO recommendations and related judicial sentencing decisions in these types of cases. For other less serious offences, the YPOs and judges more frequently differed in terms of their focal concerns because of the complex interaction between the various extralegal factors (e.g. family, mental health, substance use) making it difficult for YPOs to align their recommendations with the actual sentences given by the judges.