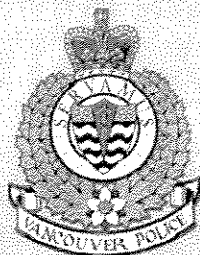




VANCOUVER POLICE DEPARTMENT



Assessing Sentencing across Criminal Careers: *An Examination of VPD's Chronic Offenders*

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June 17, 2008

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Glossary

CCJS	Canadian Centre for Justice Statistics
CMA	Census Metropolitan Area
COP	Chronic Offenders Program
COV	City of Vancouver
CPIC	Canadian Police Information Centre
DTES	Downtown Eastside
GO	General Occurrence (Report)
ICBC	Insurance Corporation of British Columbia
PRIME	Police Records Information Management Environment
RMS	Records Management System
VPD	Vancouver Police Department

Executive Summary

This report examines the sentencing patterns of a sample of offenders being monitored by the Vancouver Police Department's (VPD) Chronic Offenders Program (COP), and further draws attention to the issues surrounding the most prolific offenders in Vancouver by highlighting three case studies. This report analyzes for the first time, the sentences handed down to a sample of the most chronic offenders over the course of their criminal careers. The vast majority of Canadians assume that the more frequently an offender is convicted, the longer the sentence should be, but this does not generally appear to be the case. In fact, evidence shows that after 30 or more convictions the sentence actually decreases. Some of the main findings are highlighted below:

VPD Chronic Offenders Program

- Currently monitors 379 property offenders, including 27 "super chronics"
- Number of Recorded Police Contacts (2001-2006)
 - Average of 71 police contacts each (in total 26,755 police contacts)
 - Average of 33 charges each (in total 12,418 charges)
 - Most prolific offender has 305 police contacts and 154 charges
- Number of Convictions
 - Average Number per offender: 39
 - Top 25% have over 54 convictions each
 - Top 10% have over 77 convictions each
 - 6 offenders have over 100 convictions each

Analysis of Random Sample of 75 Chronic Offenders' Sentences

- Total offences for the group: 2,340
- Total convictions for the group: 1,169
- Average number of convictions: 17
- Length of Custodial Sentences after 10th Conviction

- 25% were for 1 day
- 27% were between 2 and 30 days
- 35% were between 1 and 6 months
- 6% were greater than 6 months to 1 year
- Only 3% received sentences greater than 1 year to 2 years less a day
- Only 4% received sentences of 2 years or longer

Recommendations

- Sentences for chronic offenders should be of sufficient length to:
 - Protect the public
 - Encourage change on the part of the offender (create motivations to successfully complete addiction treatment programs)
- Programs such as the COP should be used to monitor and track chronic offenders in Vancouver in order to:
 - Monitor compliance with court-imposed orders and restrictions
 - Advocate for remand to custody when charged and appropriate sentencing when convicted
 - Increase information on those offenders for the use of the courts
- Utilize strategies to support recommendations:
 - Encourage complete information transfer between police and Crown on these offenders in order to assist in building cases for bail hearings and trials
 - Support requests for more prosecutors for bail hearings
 - Support Crown in proceeding by way of indictment for hybrid offences
 - Encourage use of the appeal process for sentences when appropriate
 - Encourage the use of sentencing guidelines that emphasize protection of the public; amending legislation to do so if need be
 - Support increases in capacity to deliver mandatory programs and treatment for offenders

The main finding from this report suggests that while custodial sentences increase in length up to approximately the 30th conviction, they appear to decrease substantially after this point. The sentencing of chronic property offenders appears to be primarily assessed on the basis of the most recent charges before the courts. While this may satisfy the proportionality component of the sentencing guidelines set out in the *Criminal Code*, it offers little in the form of long term protection to the public from a persistent and frequent offender. The high level of emotional and financial harm done by these offenders to the community in terms of property lost or damaged and the lost sense of security cannot be understated. Sentencing should be commensurate with not only the current offences but also with the overall level of harm done by the offender. Lengthier sentences for hardcore chronic offenders are essential to meet the demand of the public to be protected, and would likely increase their access to addiction treatment while in custody.

Introduction

Despite significant decreases of more than 50 percent in property crime levels following a high in 1996, the Census Metropolitan Area (CMA)¹ and municipality of Vancouver continue to have some of the highest property crime levels in the country. The municipality of Vancouver holds a unique position within the Greater Vancouver area and the CMA, as it is the core city for the region, supporting population inflow for employment, shopping and entertainment. Vancouver is also home to the Downtown Eastside (DTES), an area that is known for homelessness, mental illness, poverty and, perhaps most significantly, drug addiction. It is the culmination of these and other factors that has led to the existence of some of the most prolific offenders within Vancouver's boundaries. These prolific offenders, also known as chronic offenders, significantly contribute to the rates of property crime, as well as violent crime. Their offending often directly supports their drug addiction, whereby thefts, break and enters and robberies are committed to obtain money or goods that can be sold to then purchase these drugs.

The burgeoning increase of these prolific offenders has led to the creation of a Chronic Offenders Program (COP) within the Vancouver Police Department, whose primary objective is to interrupt and suppress these individuals' offending patterns in order to reduce property and violent crimes in the City of Vancouver. One tactic utilized by the COP is advocacy for prison sentences that will remove the offender from the community for periods that will significantly impact their offending patterns; however, as these offenders tend to specialize in low-level property offences, their sentences tend to be relatively short. These short sentences do not serve to incapacitate them and protect the public for any significant period of time, nor, in most cases, are they long enough to allow for admission into appropriate addiction treatment programs. The objective of the following report is to highlight the offending patterns of these chronic offenders, discuss the impact of their crimes to the community and criminal justice

¹ CMA refers to the Census Metropolitan Area, which for Vancouver CMA, encompasses all jurisdictions in the Lower Mainland, excluding Abbotsford and Chilliwack. The municipality of Vancouver only encompasses approximately ¼ of the population in the entire Vancouver CMA.

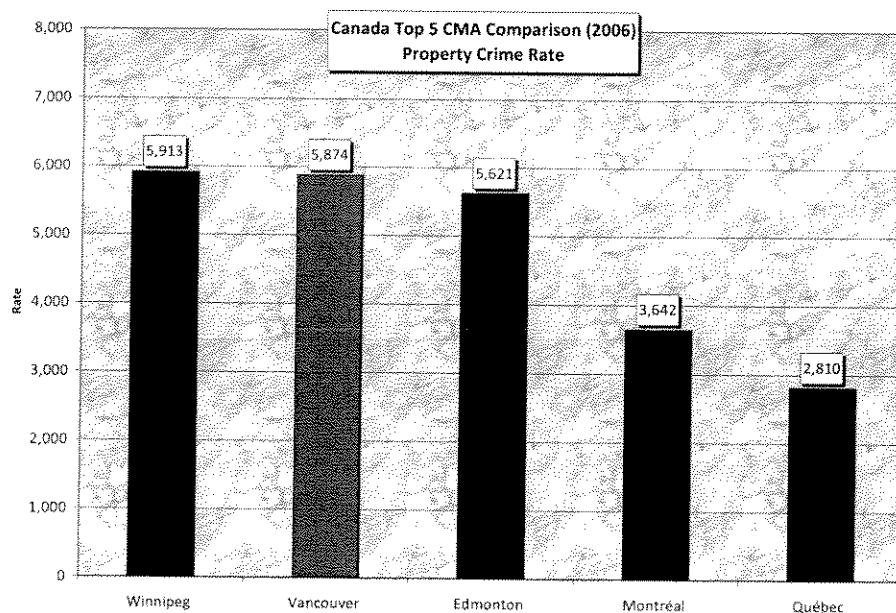
system, and highlight the need for sentences that reflect the harm done by their continued involvement in criminal activities over extended periods of time.

Crime in Vancouver

Reported Property Crime Rates

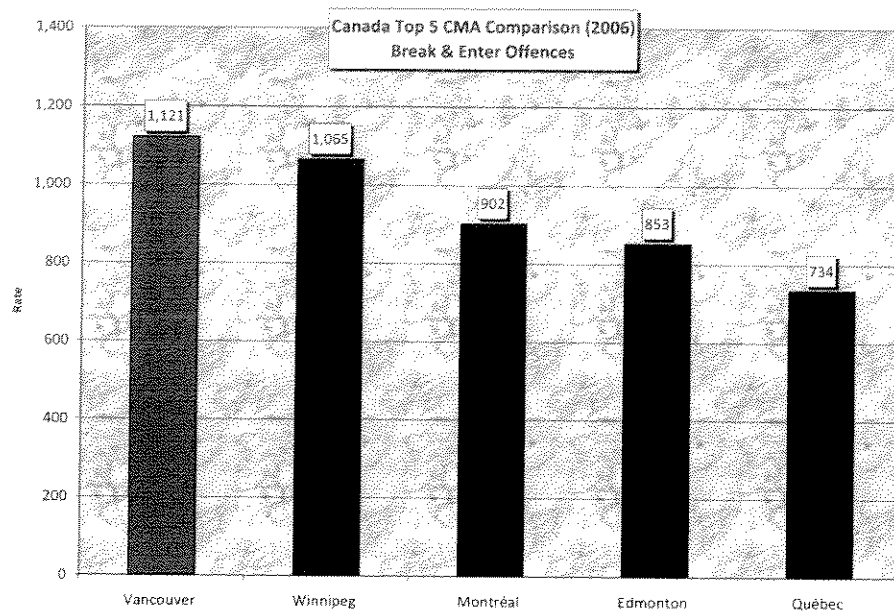
Although property crime is prevalent across the country, it tends to increase steadily as one moves west. Vancouver CMA ranks second behind Winnipeg among the top five largest CMAs in Canada, in terms of property crime, as shown in Figure 1; however, the Vancouver CMA ranks first among the largest CMAs in the country in terms of Break and Enter rates (see Figure 2):

Figure 1: Top 5 CMAs for Property Crime (2006)²



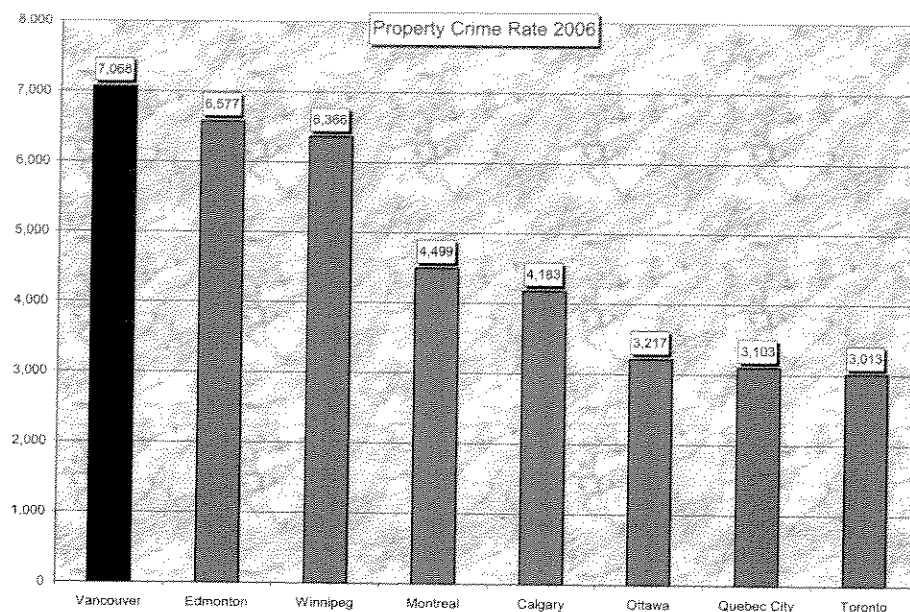
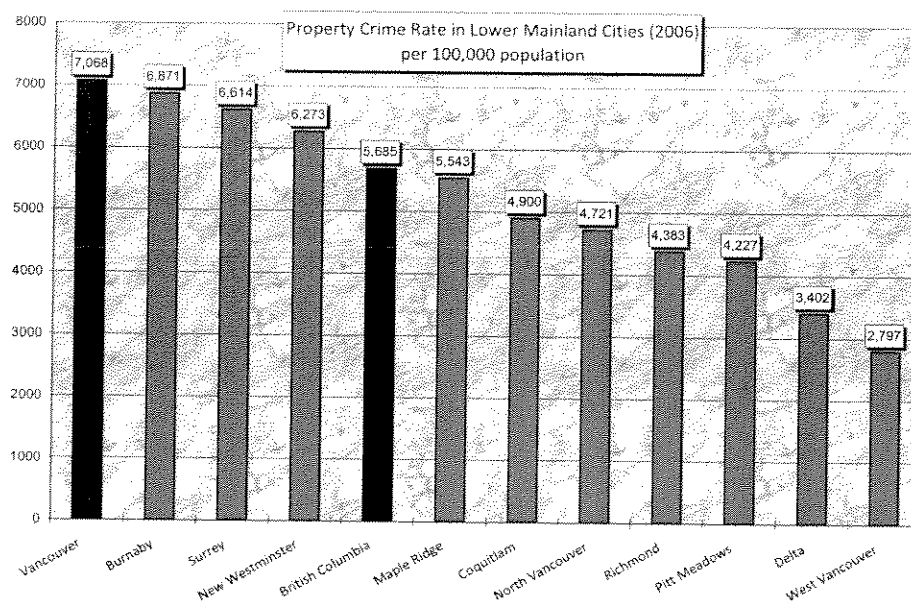
² Crime Statistics in Canada, 2006; Statistics Canada – Catalogue no. 85-002-XIE, Vol. 27, no. 5

Figure 2 - Break and Enter Rates for the Top 5 CMAs (2006)



In terms of the municipality of Vancouver, the trend is similar. In 2006, the municipality of Vancouver showed the highest property crime rate compared to the other major cities within Canada, with Edmonton and Winnipeg forming the remainder of the top three. Within just the Lower Mainland the same pattern is exhibited, with Vancouver having the highest property crime rate as compared to the other major cities, followed by Burnaby, Surrey and New Westminster, all of which had rates higher than the national average.³

³ According to Statistics Canada Victimization surveys, these numbers are likely *underestimates* of actual crime, as a large proportion of offences are never reported to police (estimates vary between 25-60% depending on crime type, with property crimes often showing the highest non-reporting rate)).

Figure 3: Property Crime Rate in Major Canadian Cities (municipalities) 2006⁴Figure 4: Property Crime Rate in Lower Mainland Cities 2006⁵

It is clear that Vancouver has one of the highest property crime rates, regardless of whether the comparison is between cities across Canada, or between cities across the Lower Mainland.

⁴ Canadian Centre for Justice Statistics: Crime statistics, All Police Services, 1977 to 2006 - PROPERTY CRIMES 2006

Although the cause of all property crime is multifaceted, a significant amount is committed by those identified as chronic offenders, many of whom reside in or frequent the DTES. The connection between the DTES and the chronic offender population is unique within Vancouver and likely nationally and internationally. A great deal of property crime in Vancouver is fuelled by drugs – in particular by those addicts who commit property crime to finance their addiction. What this has devolved into is a serious chronic offender population in Vancouver, who are prolific in property offending and, more often than not, have a serious drug addiction. The frequency and persistence of many of these drug-addicted chronic offenders in Vancouver is a trend that has taken hold over the past 15-20 years, as the majority are addicted to crack cocaine. It was not until the 1990s that crack cocaine began to make a significant impact on Vancouver and the DTES in particular. Unlike the opiate heroin, crack cocaine is a stimulant and produces behaviour in the users that is far more erratic and unpredictable. The high from crack cocaine, typically lasting around 10 minutes, requires that the serious addict will need to use numerous times per day in order to maintain that level of intoxication. Alongside this need to purchase drugs numerous times a day, is the need to obtain the money to pay for them. This reality has produced a far more prolific chronic offender than was previously seen in Vancouver.

Chronic Offenders in Other Jurisdictions

Many jurisdictions, particularly in the USA, either have a 'three strikes' policy that limits the length of an offender's 'career', or do not actively track chronic offenders' activities or the number of convictions they accumulate.⁶ Scottsdale, Arizona, noted they had one offender who had accumulated 29 convictions, although this was considered rare. Two other US jurisdictions indicated that the criminal records of their most prolific offenders consisted almost exclusively of alcohol-related offences. Similarly, in Sydney, Australia, most of their "frequent" offenders are weekend offenders who commit primarily alcohol-related offences. Reno,

⁵ Canadian Centre for Justice Statistics: Crime statistics, All Police Services, 1977 to 2006 - PROPERTY CRIMES 2006.

⁶ As is the case in Columbus, Ohio; El Paso, Texas; Memphis, Tennessee; Chicago, Illinois; Tucson, Arizona and Charlotte, North Carolina.

Nevada does maintain a watchlist noting how prolific and violent an offender may be, but in most cases focuses primarily on violent offenders.

Some jurisdictions in the UK have offenders who have accumulated a substantial record of offending, as one offender from Newcastle-under-Lyme was noted as having committed over 150 offences, culminating in 25 convictions, while another had committed 17 offences, resulting in 3 convictions. Again, the number of offenders reaching this level of frequency and persistence appears to be far fewer than is seen in Vancouver. The relatively new “Persistent and Prolific Offender” strategy in the UK may increasingly circumvent individuals achieving such an extensive criminal record, as offenders are becoming subject to a multitude of social programming, addictions treatment, and other rehabilitative strategies. In London, the attention is focused on community outreach programs and targeting disadvantaged youth who may have dozens of dealings with the police.

Other jurisdictions have police units dedicated to chronic young offenders, or to more dangerous offenders such as chronic sex offenders or those on long-term supervision orders, such as is the case with Calgary, Alberta, and Jacksonville, Florida. Some other Canadian cities⁷ anecdotally report that they have offenders who have more than 30 convictions; however, the number of these individuals appears to be far fewer than is seen in Vancouver. Winnipeg reported that although no chronic offender program is in place, they may have a group of individuals with more than 30 convictions. However, the offences this group commits are not strictly related to property crime. In Saskatoon, the offenders monitored generally have between 5 and 35 convictions, although most offenders are not at the high end of the range due to early interventions.

Based on discussions with other departments, it is apparent that although each jurisdiction has offenders who may have dozens of convictions, the factors surrounding these crimes are far

⁷ Victoria, British Columbia; Winnipeg, Manitoba; and Ottawa, Ontario.

different from the chronic offenders in Vancouver. The common pattern among the jurisdictions contacted in the US and Australia was the existence of offenders who show a pattern of alcohol-related offences, such as disorderly conduct, primarily committed on weekends. This 'chronic offender' is vastly different in impact and motivation from Vancouver's chronic offenders, whose offending is not limited to weekends, nor is solely limited to disorderly conduct brought on by alcohol consumption. Although all cities have offenders that commit crimes at higher rates than others, the prevailing research and discussions with other police departments both nationally and internationally, tends to support the assertion that Vancouver has a unique chronic offender problem, the likes of which has not been seen, or at least tracked, in any other jurisdiction.

The Chronic Offender Phenomenon

In 1972, Wolfgang et al published their seminal work on the Philadelphia cohort study. One of their primary findings was that a small percentage of offenders accounted for a large percentage of the total crimes. This group was arbitrarily defined as those with five or more police contacts, and was referred to as the 'chronic' or 'habitual offender' group (Wolfgang, Figlio, & Sellin, 1972). Since that time, many definitions have been used to separate this group from the general offender population in order to better understand their unique trajectories or 'criminal careers'.

The identification of this group typically arises from some cut-point in the number of arrests, convictions or police contacts. Although largely arbitrary, this distinction is generally set at five or six criminal contacts (Blumstein, Farrington, & Moitra, 1985; Wolfgang, Figlio, & Sellin, 1972). This group tends to vary in size, depending on the sample used (known offenders vs. general population). Size estimates from offender populations have been suggested as being 2 percent (Kryvsgaard, 2003), 6 percent (Wolfgang, Figlio, & Sellin, 1972), 7 percent (Dunford & Elliott, 1984), 18 percent (Blumstein, Farrington, & Moitra, 1985), and 32 percent of known offenders (Wolfgang, Thornberry, & Figlio, 1987). These offenders were responsible for varying proportions of all offences as well, from one-third of all offences (Kryvsgaard, 2003), to 52

percent of all arrests (Blumstein, Farrington, & Moitra, 1985), to upwards of 74 percent of all arrests and 82 percent of all index arrests (Wolfgang, Thornberry, & Figlio, 1987).

The chronic offenders in Vancouver are a unique group when compared to other 'chronic' groups that have been previously studied. The arbitrary cut-off of five or six police contacts would not describe the prolific nature of this group's offending. While it is not possible at the present time to ascertain what percentage of the criminal population these offenders make up, their contribution to the overall crime rate in Vancouver (and other areas of the Lower Mainland) is readily apparent by considering the number of police contacts and charges they have accumulated over the past

*Between 2001 and 2006,
this group of 379
offenders accounted for
26,755 police contacts,
and 12,418 charges on
PRIME*

several years. Between 2001 and 2006, this group of 379 offenders currently being monitored cumulatively accounted for 26,755 police contacts and 12,418 charges on the police records database⁸, with an average of 71 contacts and 33 charges each. Clearly, this group is far more prolific than those with simply 5 or 6 police contacts over their lifetime. This difference serves to limit much of the research on chronic offenders in terms of its applicability towards policy in Vancouver. This will be examined in greater detail in forthcoming sections.

Before examining the current research on chronic offenders in greater detail, the following will present three case studies of some of the most prolific offenders currently being monitored by the COP. As the sentencing analysis was conducted on a sample of the more 'typical' chronic offender, these case studies serve to highlight the impact that some of the worst chronic offenders have on the community, including both financial impacts and community safety and security.

⁸ This includes charges from other areas of the Lower Mainland on the police records system. However, it is estimated that approximately 95% of these charges are from Vancouver alone.

Case Studies

Super Chronic #1 (SC1)

Born in 1966 in Alberta, SC1's criminal career dates back to 1987, where he was convicted several times in Alberta for assault, drug possession, driving under the influence, robbery, theft, possession of stolen property, and failure to appear. Since 1998, his convictions have been exclusively in Vancouver, and now stand at over 80 on his CPIC Level II record.⁹ Although SC1 has not worked in 20 years, he is not on welfare and attests he is able to support himself sufficiently with the proceeds from his property crimes. SC1 has attempted rehabilitation for approximately four months in the past, although now he says he is "pretty content" with staying on drugs.

SC1 is an admitted crack cocaine addict, and indicates he purchases $\frac{3}{4}$ of an ounce per day, which has been corroborated through interviews with acquaintances. With current

In order to support his drug habit, SC1 is estimated to need to steal over \$1.2 million worth of goods each year, which does not include other living expenses

conservative estimates of \$900 per ounce¹⁰, this equates to a cost of approximately \$20,000 per month, or \$240,000 per year. With a typical return on the dollar for stolen goods being 10 percent, that would necessitate SC1 stealing approximately \$200,000 worth of goods each month, or close to \$2.4 million worth of goods each year simply to support his drug habit. However, a more reasonable estimate would be based on the amount of time he was not

incarcerated between 2002 and 2006, which is approximately 130 days per year on average.¹¹

With this estimate, SC1 would purchase approximately \$117,000 worth of crack cocaine per year, and would need to steal approximately \$1.2 million worth of goods per year. It should be

⁹ As strict summary conviction offences are usually not recorded on CPIC because fingerprints are not taken, the CPIC Level II may undercount the true convictions of each offender. Some estimates put this omission at approximately 25 percent of all offences, although this may be higher for chronic offenders who commit low-level property offences.

¹⁰ Estimate as per VPD Drug Squad: 1 ounce has a current cost of between \$900-\$1,200

¹¹ Estimates made using admission and release dates to custody from the Cornet database

noted that this estimate does not include his additional required income to provide for his cost of living.

SC1 has had extensive contact with the VPD (along with other agencies), culminating to date in over 214 police contacts and 112 charges recorded on PRIME¹² since 2001, the majority of which originated from offences committed in Vancouver. The earliest of these charges dates back to June 2001. SC1 has been convicted of 46 of these charges, with 16 still pending resolution. He has only been acquitted of 3 charges, but has had 35 charges result in a Stay of Proceedings and 12 charges result in 'no charge' by Crown. In addition, between 2002 and 2006, SC1 was identified as being either 'chargeable' or the suspect in an additional 38 property offences in Vancouver.

Looking at the offence information between 2001 and 2006, it is clear that his criminal record count of over 80 convictions is likely a *significant* underestimate of his actual offending, as even during this 6-year span, only approximately 50 percent of his charges would be counted on his CPIC Level II report, or perhaps even less if the 25 percent omission estimate is considered.

Self-reporting may also shed light on the true extent of SC1's offending proficiency. In interviews with the COP, SC1 has admitted to committing up to 35 property crimes per day in order to support his drug habit, with his preferred target for break and enters now being commercial establishments.¹³ This frequency and persistence has often been corroborated by other chronic offenders during interviews with the COP, and many attest they are able to commit upwards of 100 property offences before getting caught. Given that this estimate of 100 offences is likely inaccurate and overly inflated by bragging, a more realistic estimate is that SC1 commits 50 less serious offences for

Many chronic offenders, in interviews with COP, attest that they are often able to commit upwards of 100 crimes before getting caught.

¹² PRIME is now the records management system for the Vancouver Police Department (since 2001), and all other municipal and RCMP detachments within BC (roll-out between 2006 and the present).

¹³ Interview with the COP

each apprehension. SC1 was suspected or charged in 26 property crimes in 2006, a more accurate estimate of SC1's offending would consider his actual 'free time', by adjusting for the time spent in custody. In 2006, SC1 spent approximately 262 days in prison (either remanded to custody or serving a sentence), which would mean that in order to commit the estimated 1,300 offences in that he would have had to commit upwards of 13 offences per day on average (some days would be less and some would be more). Notably, this is far below his estimated daily offence rate. In other words, if SC1 was in custody for just one year, upwards of 4,000 victims could be spared (assuming multiple victims for property offences).

Super Chronic #2 (SC2)

Born in 1967 in Vancouver, SC2 is well known to the police, amassing 272 police contacts and 162 separate charges on PRIME since 2001. Since then, he has been convicted on 95 of these charges, and has had 45 charges result in a Stay of Proceedings and 10 charges noted as 'no charge' by Crown. He has been an active offender for more than 19 years, and since 1985 has accumulated an astonishing 154 convictions. SC2's charges are so numerous that his entire criminal history no longer fits electronically on the CPIC database system. To obtain the listing of his sentences prior to 1990, the RCMP (who administer CPIC) would need to prepare a separate printout of the missing convictions, along with the information concerning all of SC2's charges that were withdrawn or resulted in a Stay of Proceedings over the course of his criminal career.

The majority of SC2's offences are for Theft Under \$5000 (prior to 1994, Theft Under \$1000), a relatively low-level property offence. Looking at the nature of his convictions and the resulting

SC2's criminal record is so long that it no longer fits on the CPIC database. The full report now has to be ordered from the RCMP for this offender.

custodial time however, it is interesting to note that the maximum time he was sentenced to for his first 10 convictions of Theft Under was 91 days, with an average of 26 days. The lengthiest custodial sentence he received for his last 10 convictions of Theft Under was also 91 days, with an average of 42 days in prison. While his time spent in pre-trial custody prior to sentencing has increased

substantially following his 47th conviction (average of 17 days)¹⁴, he continues to spend relatively little time incarcerated considering his extensive criminal history.

Between the years 2003 and 2006, SC2 was in custody between 56 and 67 percent of the time, with an average of 135 'free' days per year. In 2005, while only free for 119 days, SC2 was charged or chargeable in 30 offences, and was a suspect in another 10. This translates into the reality that SC2 likely committed an offence that the police were aware of every three days. Again, it is likely that this number is much higher due to underreporting, particularly for the type of crime that SC2 specializes in, as the most recent figures from Statistics Canada only show a reporting rate to the police for Theft of approximately 30 percent of all occurrences.¹⁵

SC2 is known to be addicted to crack cocaine, and commits minor thefts and shoplifting offences to support this habit. Even with a substantially lower impact compared to SC1 in terms of cost (commercial break and enter vs. shoplifting), it is likely he steals upwards of \$500 per day, based on only a very modest estimate of his drug use. Over the course of a typical year's 'free' time (135 days), this would equal the theft of upwards of \$67,000 of goods per year. This 'cost' to his victims is approximately equal to the cost of housing SC2 in a provincial facility for one year. Additional significant cost-savings would be realized in terms of policing, courts, corrections and health care costs dedicated to SC2.

Super Chronic #3 (SC3)

Born in 1961, SC3's adult criminal record dates back to 1979 in Ontario, where he committed dozens of property, violent, and administrative offences. In 1991 he moved west and began offending in the Lower Mainland, most often in Vancouver, but with a handful of offences in Surrey and Port Coquitlam. SC3 has amassed 65 charges on PRIME since 2001, 32 of which have resulted in a conviction, and 28 in a Stay of Proceedings. Over his 27-year criminal career, he has amassed over 140 convictions, over 100 of which are for property offences such as Theft

¹⁴ This may be a direct result of court scheduling constraints, or the point at which a guilty plea is entered.

¹⁵ Criminal Victimization in Canada, 2004; Statistics Canada – Catalogue no. 85-002-XPE, Vol. 25, no. 7

Under, Mischief and Break and Enter. He has continually broken the terms of his probation, and has been formally convicted of breaches and failure to comply with conditions 13 times, and failure to attend court 12 times. His sentences, however, have not noticeably increased in tandem with his growing criminal record.

In 1979, SC3 was convicted of a Break and Enter in Toronto, for which he received a custodial sentence of 60 days. In 1982, he was convicted of the same offence, and was sentenced to one year in custody. However, seven years later, again in Toronto, his conviction for another Break and Enter was back down to a 5 month sentence. This highlights the possible disparity in sentencing even for the same offence in the same jurisdiction (although aggravating and mitigating factors may explain some variation). In another example, in 1991 and 1992 he was convicted of Theft Under in Port Coquitlam, and sentenced to 2 months and 3 months respectively.

SC3 has been offending for 27 years, and has amassed over 140 convictions during this time. Since 2001, he has 65 charges on PRIME.

In 1993, he was convicted numerous times of the same offence in Vancouver, but received sentences of 1 month, 14 days, and 21 days. After being convicted of Theft Under and Attempted Theft Under in Vancouver in 1997 for which he received 17 days, SC3 went on to be convicted in Surrey on two separate occasions of Theft Under, for which he received 90 days for each offence. However, after 2000, SC3's record in Vancouver shows an increase both in the length of custody (on average between 30 and 90 days for Theft Under), and an increased incidence of pre-trial custody. Despite these marginal increases in the length of his sentences for similar offences, SC3 continues to offend, and is not likely to stop.

Case Study Discussion

Obviously the offending persistence of many in this group places a significant strain on police, health, and other social service resources. Although these offenders are often not considered 'dangerous' in the same way as serious violent offenders, their impact on the public should not be minimized. In terms of cost, these offenders may have a significant effect on the citizens of Vancouver, and may affect a larger number of individuals than violent offenders. In order to

show this impact in monetary terms, the typical costs of property offences are estimated using data from the Insurance Corporation of British Columbia (ICBC) and Canadian Direct Insurance (CDI). ICBC places the average cost of a motor vehicle theft at \$4,000, and the average cost of a theft from auto at \$750. In addition, CDI estimates the average cost of a residential Break and Enter to be \$5,200, and the average cost of a residential theft to be close to \$2,000. Even if an

*When SC1 was asked
by COP how many
offences he has
gotten away with,
his reply was,*

***"Oh...
THOUSANDS".***

offender such as SC1 specialized only in theft from auto offences and stayed away from higher-cost offences such as Break and Enters, his total cost to the public in 2006 could be estimated at just under \$2 million dollars in lost property and insurance claims. Even if only one-quarter of his offences were Break and Enters, this would push that estimate to close to \$5 million dollars, which may be more accurate as SC1 is known to prefer commercial Break and Enters (which typically result in even higher costs in terms of loss). Depending on whether estimates of the cost of his impact are calculated using the amount of offending required to pay for his drug use or the *actual* amount of his offending and the subsequent insurance estimates, both put his relative impact per year at over \$2 million dollars. Conversely, the cost of imprisoning SC1 in provincial jail is estimated at approximately \$52,000 per year, with federal prison costing \$88,000 per year.¹⁶ What should not be lost in this discussion, however, is the impact these offenders have on their victims. With this type of frequent offending, victims may number in the thousands. These victims are not only left with the monetary impact in terms of lost or damaged property, but likely also with a sense of fear which affects their feelings of personal safety and their trust in the justice system. Those victims who have been repeatedly victimized by break and enters (in particular) may also be unable to obtain insurance after multiple claims, forcing home owners to go without insurance, and possibly forcing some business owners to shut down, or move to other areas of the Lower Mainland. This erodes public confidence in the justice system, negatively impacts communities, and increases fear and frustration among citizens.

¹⁶ www.prisonjustice.ca: 2004/2005 estimates

VPD Chronic Offender Program

Description

The VPD created the Chronic Offenders Program (COP) in 2004 in order to identify and target those criminals causing the most societal harm as a result of their persistent offending patterns. This harm to society includes physical harm through violent offences, but also the monetary cost incurred by the actions of these few, including loss of property, police costs and court costs.

Early on, the COP realized that using the arbitrary cut-off of five criminal charges to define the chronic offender population would be unmanageable. If this criteria were followed today, Vancouver would have a chronic offender group of over 5,000 offenders who have had contact with the VPD since 2005. If the criteria were set at only 5 negative police contacts, this group would rise to over 21,000 offenders who have had contact with the VPD since 2005. It became clear that this definition would do little to explain the most prolific group operating within Vancouver. Consequently, when the program first started, the definition of a 'chronic offender' was set at five convictions in four years, or five charges in the past year. Although far more exclusive than typical cut-points, this designation garnered a group of over 800 offenders, which was still not manageable by the COP. Therefore, a far more limited definition was introduced, which included the following criteria:

*As of 2008,
Vancouver has
5,000 offenders
with over 5
charges, and over
21,000 offenders
with over 5
negative contacts*

1. Property criminal with twelve or more charges in the past twelve months and/or,
2. Identified by the Operations Division as a significant property offender and/or,
3. Property criminal with a history of non-compliance with court orders

This current definition encompasses 379 individuals, separated between 'active targets' (or mid-level chronic offenders), and 'super chronics'. One of the primary goals of the Program was to seek purposeful sentencing of these offenders in order to significantly disrupt their offending patterns, thereby resulting in both societal and offender harm reduction. The

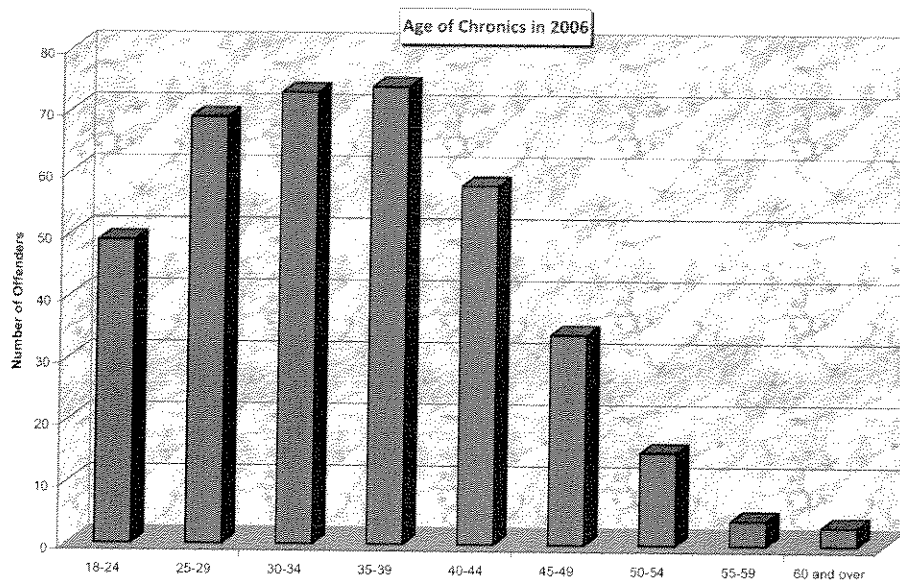
primary tool was the presentation of the sentencing history of these offenders to the judge, to use when considering the punishment bestowed on these offenders, and to advocate for these offenders being remanded to custody prior to trial. At least anecdotally, the sentencing of offenders has focused on proportionality to the offence¹⁷. On this basis, these chronic offenders – who tend to specialize in low-level property offences – would receive relatively short custodial sentences, even with the demonstration of a lengthy record.

Demographics

As of 2007, there were 379 offenders that met the criteria for monitoring by the COP. Of these, 7 percent (or 27 individuals) were considered “super chronics”. The majority (84 percent) were born in Canada, with 21 percent born in Vancouver. This group is predominantly Caucasian, with over 70 percent of the offenders being identified as such. As of the end of 2006, nearly 70 percent of the chronic offenders were over the age of 30, and 30 percent were over 40 years of age. The average age of this group in 2006 was 35. These chronic offenders often have a long history of criminal activity; the top 50 offenders within this group, on average, have been offending for over 20 years.

¹⁷ It is important to point out that, at this point, a detailed examination of the judges’ reasons for sentencing has not been done. Though proportionality is clearly an important component in sentencing any offender, it is likely that the decision making process by the judge incorporates far more factors than simply proportionality to the severity of the offence.

Figure 5: Age of VPD's Chronic Offenders in 2006



Of this group, 78 percent were noted on PRIME as having a drug and/or alcohol addiction, while 25 percent were noted as having some form of mental disorder (whether officially diagnosed or not). What is interesting to note is that a number of chronic offenders have some indications of anti-social personality disorder; in addition, none of the offenders being monitored by the COP have, according to police records, ever been deemed by a health care worker or a court to be incapable of understanding right from wrong or have been deemed unfit to stand trial.¹⁸

*The most prolific offender amassed over **305 police contacts and 154 charges** in just 6 years.*

This group has had extensive contact with police, and estimates suggest that the majority of the contacts have been with the VPD. In that time (up to the end of 2006), these offenders have each had an average of 71 contacts with police, and have each accumulated an average of 33 charges. The most prolific offender in the six years under examination

¹⁸ Det/Cst Pitt-Payne

had 305 police contacts, and 154 charges.¹⁹ Altogether, this group accounted for 26,755 VPD contacts and 12,418 charges in approximately 6 years. As well, 72 percent of this group have been noted as 'violent' by police on PRIME.

Number of Convictions

Although the examination of their police contacts and charges on PRIME enable a view of their more recent activities, the criminal records of these offenders illustrate a more holistic view of their offending history. Although not all offenders being monitored by the COP have a criminal record (due to qualifying under a condition other than conviction history), most have had numerous convictions over their lifetime. The average number of convictions for this group is 39; however, the top 25 percent of the offenders under the COP supervision have 54 or more. Additionally, the top 10 percent of the offenders have 77 or more convictions, and 6 offenders in this group have over 100 convictions. These 6 offenders had been offending on average for 28 years, and had an average age of 46 in 2006.

Six offenders in this group have over 100 convictions, and have been offending for an average of 28 years.

Sample Description

This analysis began with a random sample of 75 of the 'active targets' among the chronic offenders. Those offenders identified as 'super chronics' were excluded from the current analysis, as the objective was to obtain a more normative view of sentencing and offending patterns. Inclusion of the super chronics would undoubtedly skew any results that were found, due to their extensive offending, and would not represent the 'typical' chronic offender. These 75 offenders' CPIC Level II records were coded from the first conviction up to the end of 2006, according to a pre-set outline of coding rules. Because of the timing of the study and awareness of delays in CPIC processing, using 2006 as a cut off was thought to include the most reliable and complete record of criminal convictions. Of the 75 offenders sampled, 7 did not have a

¹⁹ As all jurisdictions in the Lower Mainland are now on PRIME, these numbers do not solely represent VPD contacts or charges, although it is estimated that 95% of contacts and charges arise from Vancouver.

Level II criminal record on CPIC, often due to the conviction cut-off of 2006 (i.e., many had convictions starting in 2007). This may also be due to these individuals satisfying one of the criteria that qualified them for inclusion under the COP, but not having an extensive conviction history.

Convictions and Offences

Number of Convictions

As a group, this sample accounted for an exceedingly high number of convictions, which encompassed an even greater number of offences within those convictions (see Table 1 in Appendix A: Tables and Figures). In total, this group of 68 offenders accumulated over 1,100 convictions by the end of 2006, which represented convictions for 2,340 separate offences. Of these over 2,300 offences, 54 percent were for property offences, 18 percent for administrative offences (e.g., fail to comply with probation order, fail to attend court), 12 percent for 'other' offences, 8 percent for violent offences, and 8 percent for drug offences.

Two offenders had over 50 convictions, and 5 had over 40 convictions.²⁰ In total, these five offenders accounted for 265 convictions representing 476 offences overall. The earliest conviction for this group dated back to 1973. The majority of convictions occurred in Vancouver (59 percent), with 17 percent occurring in other cities in the Lower Mainland, and 24 percent occurring in jurisdictions outside of the Lower Mainland and BC.

Number of Offences within a Conviction Set

Over 79 percent of convictions were for two or less offences, with over 56 percent of convictions only being for a single offence. Just over 20 percent of convictions were for 3 or more included offences, while 11 offenders had 10 or more included offences within the conviction (see Table 2).

²⁰ Although two offenders had over 50 convictions, in general the analysis was limited to the first 42 convictions, as the low numbers of those individuals who were convicted more than 42 times was too small to enable reliable statistical analysis.

Stay of proceedings

CPIC does not record which charges within a conviction set received a stay of proceedings, but does provide a list of all charges for that particular individual over the course of their career that were stayed, withdrawn, dismissed, or found not guilty. This sample of offenders had a significant number of charges stayed over the course of their criminal career – 860 charges in total. In addition, this group had over 150 charges withdrawn or dismissed, but were only acquitted of 24 charges overall as a group (see Table 3).

Sentencing Chronic Offenders

In July of 1995, Bill C-41 presented a legislated statement of the purposes and principles of sentencing. The fundamental purpose was to contribute to a just, safe and peaceful society by imposing sanctions adhering to objectives of denunciation, deterrence (either specifically deterring the offender, or deterring the public at large), separation, rehabilitation, reparation and responsibility on the part of the offender. While judges are ultimately left on their own to give independent weight to each of these principles, in general, the sentencing decision is often a choice between rehabilitation and deterrence (Nadin-Davis, 1982: 27).

Criminal Code Purpose and Principles of Sentencing

Purpose

- s. 718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
- (a) to denounce unlawful conduct;
 - (b) to deter the offender and other persons from committing offences;
 - (c) to separate offenders from society, where necessary;
 - (d) to assist in rehabilitating offenders;
 - (e) to provide reparations for harm done to victims or to the community; and

- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

Fundamental principle

s. 718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Sentencing Principles in Practice

It is recognized that one of the overarching rules in sentencing, particularly for those with prior offending history, is that their criminal record may not be used as a justification to increase the length of sentence over that which would be appropriate for the particular offence. However, a lengthy record may allow the judge to place the offender's sentence at the high-end of the unofficial 'range', thereby reducing any benefit to be gained via judicial clemency or leniency (Nadin-Davis, 1982). This is not the case in all countries, particularly in the USA, where the offender's criminal history plays a large role in sentencing (Bushway and Piehl, 2007). Many States have adopted policies that either espouse 'three strikes', or resemble it by incrementally increasing an offender's sentence upon subsequent convictions. As of 1985 in the USA, 33 States had enacted or strengthened sentencing laws relating to habitual offender laws, which were often applied to those with more than 3 convictions (Roberts, 1997). Other legal theorists have also espoused that a lengthy criminal record can, and should, be used in sentencing as it demonstrates increasing "blameworthiness" of the offender (Ulmer and Kramer, 1996). In Canada, this 'blameworthiness' concept is related to the fundamental sentencing principle, whereby the sentence should be proportionate to "the degree of responsibility of the offender".

Although these sentencing principles encompass a broad range of objectives for the judiciary to weigh, their utility comes into question when directly examining the criminal histories of the more prolific and incorrigible offenders who appear neither deterred nor rehabilitated by any previous sentence. Certainly, the group of chronic offenders in Vancouver would fit in this category of those who are not deterred or rehabilitated by their previous sentences. The

following analysis examines the sentencing outcomes for the sample of chronic offenders in Vancouver.

Sentencing Outcomes

Most Serious Offence

For adult court sentences, 25 percent of their convictions had Theft Under and 12 percent of the convictions had Break and Enter as the most serious offence. Failing to comply with probation was the most serious offence in a conviction set 8 percent of the time while assaults encompassed only 5 percent of the total number of convictions in adult court (see Table 4).

Violent Offences

Although the majority of convictions for this group were for property-related and administrative offences, they did commit a large amount of violent crime. In all, over 63 percent of the offenders had at least one conviction for a violent offence, while nearly 50 percent of offenders had two or more convictions for violence. The most common violent offence (as the most serious offence) was Common Assault, in 46 percent of convictions that included offences of violence. Robbery was the most serious offence in 22 percent of those convictions that included offences of violence. All serious assaults – including Assault Causing Bodily Harm, Sexual Assault, Assault with a Weapon, Aggravated Assault and Spousal Assault – were the most serious offence in 19 percent of convictions that included offences of violence.

Criminal History and Pre- and Post-Sentencing Outcomes

Offenders were held in pre-trial custody in 24 percent of convictions ($n = 278$). The association between the number of prior convictions (representing length of criminal record) and whether pre-trial custody was ordered was a weak but significant positive correlation, indicating that offenders were more likely to be held in pre-trial custody the more convictions they had ($r = .186$, $\text{sig} = 0.001$). The association between the number of prior convictions and whether prison was ordered upon conviction showed a stronger positive correlation, still significant at the 0.001 level ($r = .235$, $\text{sig} = 0.001$). This also demonstrates that offenders with longer criminal histories were more likely to be sentenced to prison. The length of probation was not

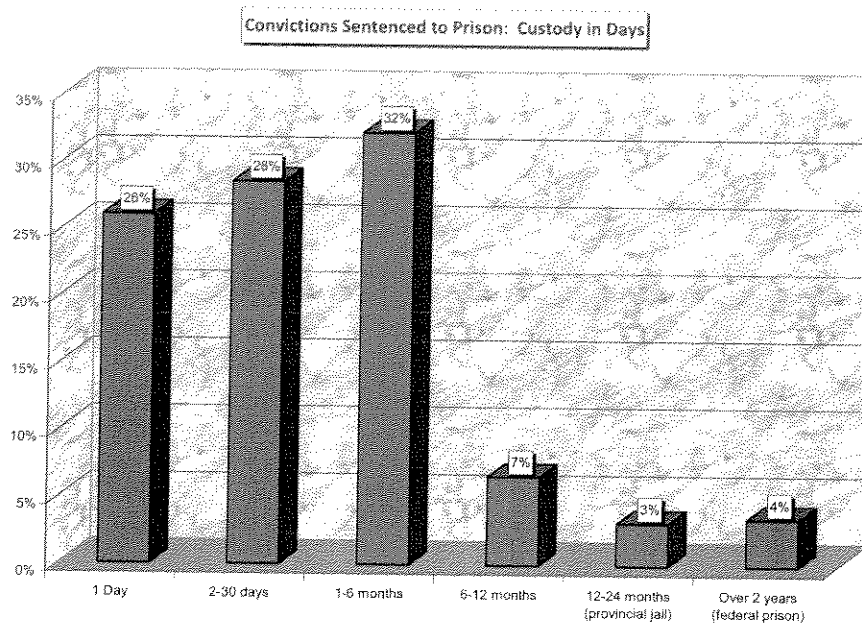
significantly related to the number of prior convictions when all convictions were considered; however, when only the first 42 convictions were considered, the length of probation showed a weak positive relationship ($r = 0.122$, $\text{sig} = 0.05$). Interestingly, the relationship between their number of prior convictions and the existence of probation was not significant for all convictions, indicating that the decision to give probation was not solely based on the length of criminal record. Although for the most part all these outcomes showed relatively weak associations, they were in the direction that intuitively one would expect – prison sentences upon conviction and pre-trial custody were more likely, and probation was longer, when the offender's prior record was long.

This particular group of offenders also seemed to be convicted and sentenced more frequently as their careers progressed; however, this may be a direct result of police targeting practices insofar as these individuals become well-known to officers, and thus, are more likely to be monitored and apprehended (particularly if they are included in the COP).

Length of Custody

For this sample, 62 percent of all convictions resulted in custodial sentences of less than 2 months. In addition, 5 percent of convictions received no jail time (either by net time conversion or time served), and 26 percent of cases were sentenced to only 1 day in jail.

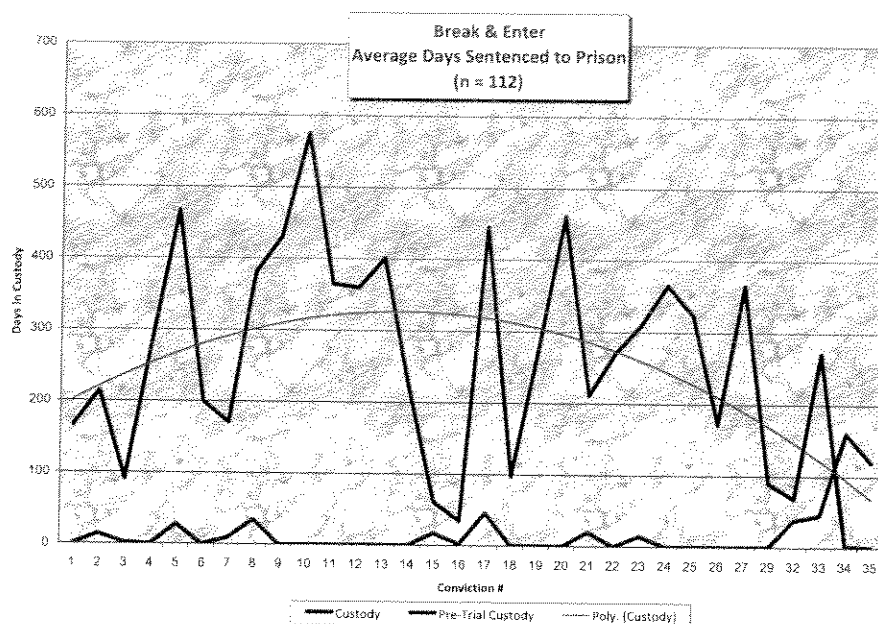
Figure 6: Length of Custodial Sentences



This is not an unexpected result if the relative severity of these individual's offending patterns is considered, as again, these 'chronics' are generally more involved in relatively low-level property offences rather than serious violent crimes.

Although there was not a significant linear relationship between the length of custody and the number of prior offences (or criminal history), this relationship may also be examined by looking at only one crime type. Taking only convictions for Break and Enter, it becomes apparent that sentence lengths (on average) are not increasing the more convictions the offenders accumulate, which is likely contrary to what many would expect. In fact, the sentence lengths, on average, appear to be declining with more convictions (see Figure 6).

Figure 7: Average Custody for Break and Enter



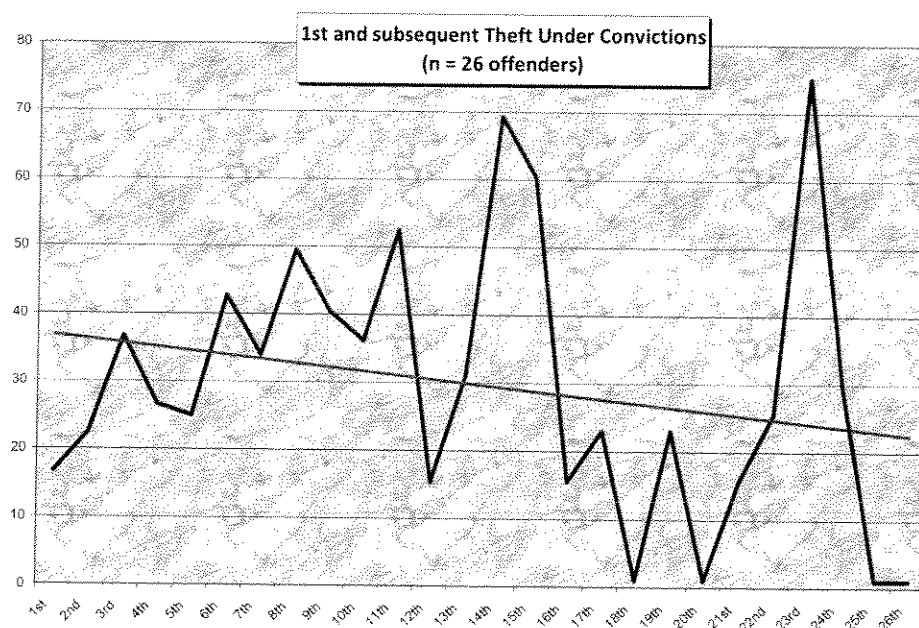
Although the average length of custody for Break and Enter for this group is over 8 months, 6 months was the most common sentence for this offence for this group. While this is slightly above the median estimate of 150 days (5 months) for Vancouver in general, a noticeable increase in length is not apparent over the entire duration of the career as might be expected.

When examining the pattern for first and subsequent Break and Enter offences, there is the expectation that for subsequent offences of the same type, sentence severity should increase.²¹ For first and subsequent Break and Enter offences (n = 17 offenders with at least three Break and Enters in their career), this does appear to be the trend (only for subsequent Break and Enter offences).

²¹ "Your record is here and there is a step-up progression, and you are only going to get more time. You are never going to get less." *R. v. Everitt*, 2002 BCPC 0075

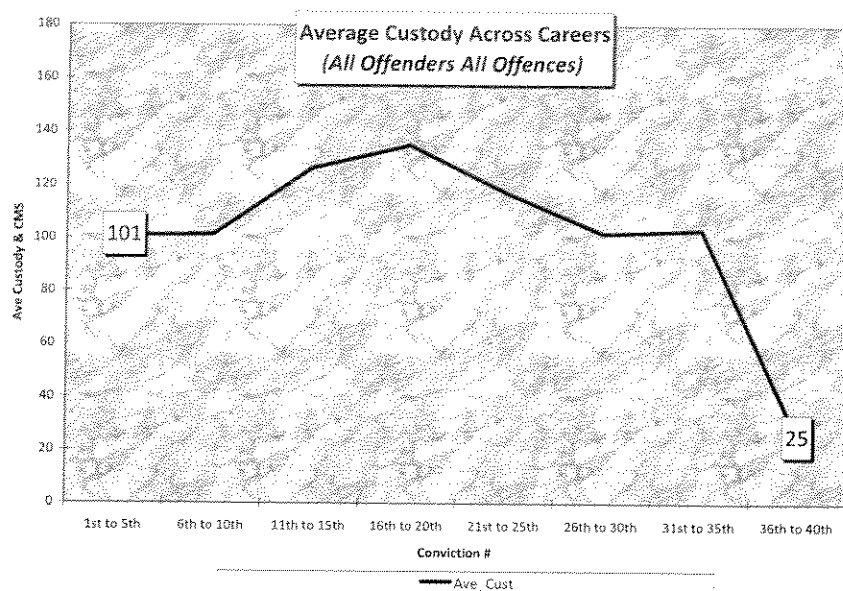
However, this trend does not always hold true for other offences, notably Theft Under, which is the most prominent offence in this group of offenders' criminal history. Again, this group consisted only of those offenders who were convicted of Theft Under over three times in their criminal history. Although the trend is highly variable due to differences in the number of included offences and other aggravating or mitigating circumstances, on the whole, this group of offenders does not appear to be systematically receiving higher penalties for Theft Under over the course of their career (see Figure 8)

Figure 8: Sentence Lengths for 1st and Subsequent Theft Under Offences



Interestingly, analysis of all convictions across all offences showed a very particular pattern. Overall, it appears that offenders who have reached approximately the 30th conviction begin to see decreases in their length of sentence (see Figure 9). As suggested by the previous figures regarding Break and Enter and Theft Under offences, this trend may differ depending on the type of offences committed.

Figure 9: Custody across Career



Federal Prison Time

Very few offenders were ultimately sentenced to federal time in this group. Only 16 offenders were sentenced to federal time for 30 separate convictions, of which only 6 resulted in pre-trial custody credit. The most common offence sentenced to federal time was Robbery (12 convictions), followed by Break and Enter (8 convictions). The remaining offence types included Sexual Assault, Common Assault, Assault Causing Bodily Harm, Forcible Confinement, Narcotics Trafficking, Possession of Stolen Property (Over \$5000), and Theft Over (\$5000).

Net Time and One Day Sentences

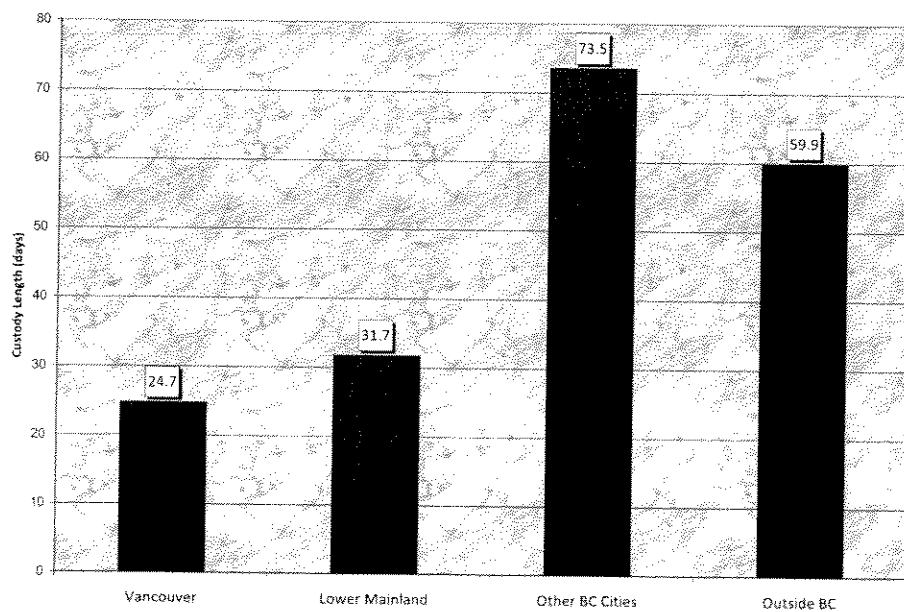
Those sentences recorded as custody for one day in all likelihood do not represent actual jail time on the part of the offender. However, these sentences do not always indicate that the offender has been held in pre-trial custody prior to trial – at times, these one-day sentences are the only sentence ordered, with no evidence of the offender being granted time served or any pre-trial custody credit. For this sample of offenders, this was the case in just under half of the convictions that received a one-day sentence. In most cases, if an offender receives no additional net time, it is likely they have been held in pre-trial custody prior to trial, as is the

case in 74 percent of those convictions sentenced to prison but without additional jail time. However, 26 percent of the convictions garnered no additional net prison time, and were not held in custody prior to their sentencing (see Table 5). These convictions represent those custodial sentences that, in reality, did not result in additional net incarceration time – likely as a direct result of being sentenced to custody “concurrent to sentence serving”, which due to the current incarceration that the offenders may be under, will not result in additional prison time.

Time in Other Jurisdictions

The jurisdiction where an offender was convicted may also play a significant role in determining how long they are sentenced to prison. For this group of offenders, it appears that being convicted outside of Vancouver results in longer sentences, even when considering the severity of the offence and the extent of their criminal record. Figure 10 demonstrates that Vancouver has been the most lenient sentencing jurisdiction for this group of offenders. This analysis was applied only to adult offenders after their 10th conviction (to establish ‘chronicity’), and offence seriousness was controlled for.

Figure 10: Comparing Mean Sentence Lengths inside and outside Vancouver (n = 336)



However, as the average length of pre-trial custody in Vancouver was approximately 12 days for the group used in this analysis (versus one day in other jurisdictions), the distinction between Vancouver and the rest of the Lower Mainland in terms of *actual* time in custody more or less disappears. Vancouver's use of pre-trial custody will be discussed in greater detail below.

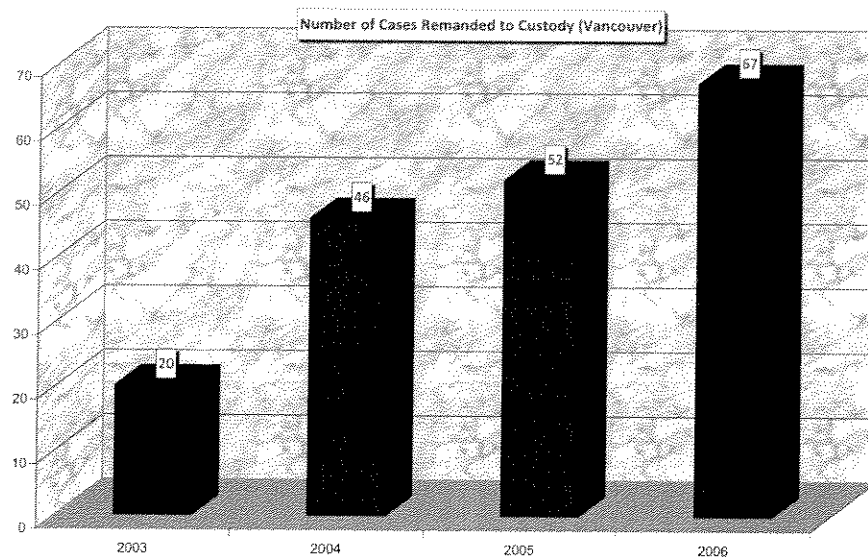
Pre-Trial Custody

As a general practice, an offender's time spent in pre-trial custody before trial is factored into the final sentence length determination. Typically the credit for time served is a 2-for-1 calculation, and, despite the Supreme Court advocating this ratio as 'reasonable' (Justice Renaud, 2004), this is not mandated or legislated in any official sense. The decision to grant time-served credit is ultimately left to the sentencing judge; however, the denial of this credit appears to be relatively rare. In *R. v. Ferguson*, the sentencing judge responded to the offenders' appeal for time-served credit by stating, "I am exercising my discretion, Mr. Ferguson, in these circumstances, not to give you any credit for your time in custody" (*R. v. Ferguson*, 2005 BCSC 548). The circumstances surrounding this case (out of New Westminster), echoed cases involving chronic offenders brought continually before the Vancouver courts – this was a seasoned offender who had accumulated a substantial criminal record, and who showed little chance of rehabilitation due to the length of his criminal career. Similarly, in *R. v. Hawkins*, the sentencing judge outlined that, "Where the accused, because of his previous incarceration history, would be unlikely to obtain early release or the accused was in custody because he repeatedly breached the conditions of his release or the accused is seen as a serious danger to society, courts have either departed from the 2:1 ratio or denied credit for pre-sentencing custody altogether" (*R. v. Hawkins*, 2005 BCSC 247).

For the most part, however, offenders are generally granted this 2-for-1 time served credit. For this group of offenders, there was no significant relationship found between the length of pre-trial custody and the length of post-conviction custody, when considering all convictions (see Table 6). This indicates that, although it may be intuitive to suspect that increased time in pre-

trial custody would lead to decreased time in custody, this is not necessarily a linear relationship. However, when examining only those convictions that received custodial time under 240 days (which encompassed approximately 90 percent of convictions), this association does become significant, although it is weakly correlated (see Table 7). For this group of convictions (up to 240 days), pre-trial custody time shows a significant negative correlation to custodial time, indicating that the longer these individuals spend in pre-trial custody, the shorter their custodial sentences in jail. The disappearance of this association with longer sentences may be due to the recognition that for more serious offences, judges will not necessarily consider pre-trial custody credit in their determination of the appropriate length of sentence. As stated previously, however, there was a significant (although weak) positive correlation ($r = 0.166$, $\text{sig} = 0.001$) between the number of prior convictions (prior record) and whether pre-trial custody was ordered at all. This indicates that those with lengthier criminal histories are more likely to be held in pre-trial custody.

The issue of pre-trial custody is particularly relevant when discussing the Vancouver chronic offenders, as since 2004, the COP has actively sought pre-trial custody time for the offenders they monitor when they are arrested. It would appear that for this group of chronics, this advocacy has been successful, as more offenders are being remanded to custody more often. These results indicate an increase of 235 percent in number of cases with pre-trial custody time credit on CPIC (see Figure 11). Prior to 2003 for this group of chronics, only one case resulted in any pre-trial custody time credit.

Figure 11: Number of Cases Remanded to Custody – 2003-2006 (Vancouver)

Discussion

Presenting these offenders' criminal histories in the aggregate provides some context of their sentencing patterns as a whole, and enables the examination of broad trends with greater clarity. One issue that is often raised with respect to sentencing is the apparent disparity that exists between jurisdictions, and even judges. As shown by the analysis in the previous section, the sentencing of chronic offenders is not reflective of the expectation that sentences will lengthen with subsequent convictions for similar offences.

In April of 2007, the Courtwatch program submitted a memo to the Vancouver Police Board which identified several issues they saw with the court sentencing process, particularly in relation to the chronic offenders being monitored by the COP. While their observations of sentences for one day and time served have been highlighted in the data, other observations often go unnoticed in the aggregate, but are of significant concern. One example of this is their observation that in some cases, it appeared an offender was allowed to double-dip into his pre-

trial custody time for future offences, in effect being granted 'time served' for two unrelated events:

One individual appeared on 2 separate files, each of which included multiple charges. He had been in jail for 2 months and when he appeared in court he was convicted of all the charges and sentenced to time served plus a day. Two days later he was back in court on 2 other files. Again he was found guilty of the charges and again, he was sentenced to time served plus a day. As our observers noted, he was allowed to 'double dip' and there were essentially no consequences for this second cluster of crimes (Taulu and Mosca, 2007).

The public confidence in the transparency of the system is further eroded when 'actual time' spent in custody is considered vis-à-vis their 'sentenced time'. While not delving too deeply into correctional and parole policies concerning early release (or the necessity of doing so), it is difficult at times to understand the disparity that may exist when an offender serves only a percentage of their overall sentence, particularly if there is a sentiment that that particular sentence was too lenient to begin with. This was found in some cases for the Courtwatch group.

Policies and Prior Research

Typically, when discussing sentencing of chronic offenders, the question arises as to 'what to do' about this population, and what official responses can be harnessed to control their criminal activity and protect the public. Generally, there is an appeal for obtaining lengthier sentences for these offenders, as incarceration for long periods of time is often thought to be the sound route to proceed. The question then becomes, how feasible is this option? Is it desirable, or are there additional elements that should be considered? The research in this area has examined two primary issues in response to calls for selective incapacitation (i.e., securing long jail sentences for only certain individuals), 1) the phenomenon of desistance (ceasing criminal behaviour) and 2) the logistics of implementing a selective incapacitation scheme. The research in this area will be highlighted below, along with a discussion of the applicability of these findings to the Vancouver chronic offenders.

Selective Incapacitation

The research in this area is concerned with not only identifying the small group of offenders that offend at disproportionately high rates, but to be able to identify them prior to the offending beginning (Piquero, Blumstein, Brame, Haapanen, Mulvey, & Nagin, 2001) in order to intervene with treatment or incapacitation strategies. The argument is that the identification and prosecution of these most troublesome offenders would result in substantial decreases in crime (Cohen, 1983), if incapacitation strategies can be enlisted at optimal times in these offenders' careers (Blumstein, 1983; Blumstein & Cohen, 1987; Cohen, 1983; deLisi, 2005; Petersilia, 1980).

Although it is tempting to assume that incapacitating the small number of chronic offenders will result in a vast reduction in crime, this has simply not been found to be the case in the populations studied. In some opinions, selective incapacitation is actually less effective than collective incapacitation (Mathiesen, 1998). Advocacy for selective incapacitation rests on the idea that prospective identification of high-rate offenders early in their career is possible; however, "no convincing evidence exists that this is possible" (Auerhahn, 1999, p. 726). Results from many studies estimating the crime prevention effect of selective incapacitation strategies have not been positive (Spelman, 1994). Most findings are of limited utility due primarily to issues concerning the accuracy of prediction and the recognition of high false positive rates (i.e. identifying an individual as a repeat offender when he or she is not) (Blumstein, Farrington, & Moitra, 1985; Chaiken & Chaiken, 1982).

It seems unlikely that this strategy would be beneficial in light of the fact that many chronic offenders in Vancouver are far more prolific than what is typically included in studies of the efficacy of selective incapacitation. Additionally, selective incapacitation studies have, to date, focused on prospective identification of high-rate offenders early in their career, while COP-identified offenders often have a long established history of continuous offending. In the case of Vancouver, it is unlikely that there would be a problem of identification or false positives as the offenders are well known. As such, the issues around selective incapacitation for the

chronic offenders in Vancouver are more related to the appropriate timing of the incapacitation (i.e. should it occur after 10, 15, 20 or more convictions/charges?) At any rate, the effect of removing some of these identified chronic offenders from the general public may have a significant impact on (in particular) property crime in Vancouver.²²

Desistence

While the age-crime curve generally shows a pattern of desistance for all individuals as they age, an attempt was made to ascertain whether there is a distinct offender group whose offending remains stable with increasing age, such as might happen with the VPD's chronic offenders. Despite intuitive suppositions that some offenders would remain active (Laub & Sampson, 2001), some research has found that even active offenders and those considered 'persistent' eventually desisted from crime later in life (Blokland & Nieuwbeerta, 2005; Sampson & Laub, 2003, p. 301). This conclusion was also reached in earlier work, as the evidence pointed towards a trajectory of desistance for all offenders (Piquero, Brame, Mazerolle, & Haapanen, 2002). These findings tend to support the contention that, regardless of individual differences, all offenders will commit fewer crimes as they age (Gottfredson and Hirschi, 1990). However, despite the recognition of a sharp decline in offending at age 30 on the aggregate level, other research has found that there is a small contingent of offenders that do remain active, and whose career only sometimes begins to decline in their 40s (Blumstein & Cohen, 1987). One study found that 7.2 percent of the population did not appear to be on a trajectory towards zero offences, and asserted that this was the only obvious class of non-desisters in their sample (Piquero, Blumstein, Brame, Haapanen, Mulvey, & Nagin, 2001). This finding was also supported by a recent study that identified a small group of persistent offenders, making up less than 2 percent of the sampled population, whose offending trajectory remain relatively flat, at about 2 to 2.5 convictions per year from age 30 onward (Blokland & Nieuwbeerta, 2005).

²² Anecdotally, many District Commanders have noticed instances of crime rise and fall in their Districts when chronic offenders are incarcerated or released.

This is certainly true of many of the chronic offenders being monitored by the COP, as nearly 70 percent of this group were over 30 in 2006, and 30 percent were over 40 years old in 2006. This observation shows that the typical definition of a chronic offender does little to describe the COP group, both in terms of number of police contacts and desistance from crime over time, and as such, generalizations regarding the cessation of criminal activity by these offenders are inappropriate.

Along with the findings suggesting that most offenders mature out of crime (Dunford & Elliott, 1984), it has been suggested that offenders who are still active in their thirties are more likely to be active for longer than those in their twenties. The residual career length for those still active in their thirties is ten years, as opposed to the five years for those in their twenties (Blumstein, 1983). Individuals who remain active in offending tend to do so at a relatively stable rate across various periods of the life course (Farrington, 1987). Although this is a small subset, again, it demonstrates that for these chronic offenders, it is the length of their careers as well as the frequency of their offending that impacts society (Blumstein, Cohen, Roth, & Visher, 1986).

Goals and Strategies

In general, convictions for property crimes in Canada result in prison sentences that are shorter than those for violent crimes, with the median sentence length of the latter being 60 days, and the former being 45 days. While this is a valid distinction in terms of physical harm to individuals being viewed as more serious than harm to property, this may not place enough weight on the impact on the sheer number of people touched by property crime every day. As discussed, in Vancouver, a great deal of property crime is driven by drug addiction, a cycle that is highly prevalent in the chronic offender population. With the recognition that their offending cycles are often entirely linked to the necessity of fuelling their drug addiction, the policy recommendations become more difficult than simply stating “lock them up”. An effective policy, in the unique case of the chronic offenders in Vancouver, should consider both the needs of the general public in terms of protection from these offenders as well as encourage opportunities for change in the offender.

One of the principal problems with advocating for longer sentences that would both protect the public and have some chance at securing treatment for the offender, is the recognition that the courts are often bound by case law to limit their custodial sentences to an established range.²³ Going significantly outside this range opens up judges’ sentences to successful appeal, which likely dissuades the judiciary from stepping outside of this box.²⁴ According to legislation, the authority exists to greatly increase prison terms – even for property offences; however, the statutory maximum penalties are often well above what the appropriate ranges for offences are according to case law. For instance, the maximum penalty for a Break and Enter (of a dwelling house) under current Canadian law is life in prison. The median sentence length in Vancouver, however, is only five months. Fraud offences are another example of this

²³ This does not pertain to strict summary offences, which carry a maximum penalty of six months in custody.

²⁴ Although this is not always the case, as a recent case (2007) in North Vancouver saw the offender receive 5 years for a Break and Enter, which is far above the Canadian average, and even far above the average for this group of chronics (average < 1 year).

phenomenon, as the maximum penalty for such offences is 14 years; however, the median sentence length is only 90 days. Other disparities such as this are shown in Table 8 in Appendix A: Tables and Figures.

The time has come to move towards more meaningful sentences that address both the individual needs of the offender and places a higher value on protection of the public in order to prevent further harm from being done by these chronic offenders. Any policy recommendations must also be cognizant of the limitations and constraints on every element of the justice system. Before advocating for Crown to pursue by way of indictment (for example), additional resources would be needed to ensure they have the capacity to do so. Similarly, if a proposal for a Correctional treatment program were put forward, the provincial correctional system would require additional resources in order to develop and administer such a program. The most effective policy recommendation would include all aspects of the justice system in a collaborative manner, and would acknowledge the contribution and support needed from police, Crown, the judiciary, corrections, and all levels of government.

With those considerations in mind, the following recommendations or 'strategies' to address this issue are outlined below:

Recommendation

Sentences for chronic offenders who have been convicted of 30 or more offences should be of sufficient length to protect the public from future offending, and enable these offenders to participate in treatment programs either in provincial or federal facilities, with the aim of breaking the cycle of addiction and offending. To support this recommendation, several strategies that incorporate many factions of the criminal justice system should be considered.

Police Strategies

As evidenced by the high levels of administrative offences such as breach of probation and failure to appear and the level of risk of re-offending, it is clear that these chronic offenders are not suitable for community based court orders (such as probation or conditional sentence).

However, after serving time in custody, it is important that there are programs such as the COP that monitor and track the behaviour of these offenders to both reduce offending and increase the speed at which they are re-arrested for crimes they do commit while in the community.

Police should devote resources towards ensuring the most complete and useful information regarding chronic offenders is readily available to the courts for bail hearings and sentencing decisions via Crown Counsel. Programs like the COP are integral to this process. This entails providing Crown Counsel with briefing materials containing all the relevant background information on each chronic offender, including their offence history, sentencing history, drug use and other challenges, and any relevant information gleaned from interviews conducted with these offenders.

Police should also make a concerted effort to follow up with cases before the judiciary, and assess whether there are instances when it would be appropriate to urge Crown Counsel to appeal a particular sentence.

Other Agency Strategies

While the behaviour of these offenders in the community is important, it is clear from this report that these offenders are not being held in custody for periods of time representative of the level of harm they present to the community. These offenders need to be incarcerated to eliminate the threat to the public and provide opportunities for treatment. Importantly, additional resources for treatment programs and increased capacity for longer term custodial sentences are necessary to allow more opportunities for change in the offender. However, the system must support, both financially and legally, the capacity of all parties in the system to promote these changes.

By implementing the police strategy of providing more detailed information to the Crown, the Crown would be in a position to incorporate more information received from police into bail hearings as well as sentencing hearings. This would allow for a more holistic view of the

offender to be available to the judiciary in making sentencing decisions. In addition, supporting the Crown in proceeding by way of indictment for hybrid offences, and in appealing sentences that are not appropriate for chronic offenders would be beneficial. This may help to ensure that time spent incarcerated is long enough to meaningfully protect the public and encourage change on the part of the offender.

Due to the level of harm these chronic offenders are presenting to the community, custodial sentences that not only remove the offender from the community but also support the offender in making changes to his or her lifestyle are necessary. To do so, it is important to increase the capacity to house offenders for longer sentences in custody while also increasing the resources for treatment and programs appropriate for these offenders.

Conclusion

In summary, this report shows that chronic offenders in Vancouver are a unique group of offenders and as such are deserving of attention by the criminal justice system. The fact that offenders are accumulating such long criminal records due in large part to drug addiction, and are not being given successively longer sentences as the number of convictions increases, are issues which deserve further consideration. Collaboration in the criminal justice system in implementing appropriate ways to deal with this group are necessary to protect the public's property and sense of safety in their community.

References

- Auerhahn, K. (1999). Selective Incapacitation and the Problem of Prediction. *Criminology* , 37 (4), 703-734.
- Blumstein, A. (1983). Selective Incapacitation as a Means of Crime Control. *American Behavioral Scientist* , 27 (1), 87-108.
- Blumstein, A., Cohen, J., Roth, J., & Visher, C. (Eds.). (1986). *Criminal Careers and "Career Criminals"* (Vol. I). Washington, DC: National Academy Press.
- Blumstein, A., Farrington, D. P., & Moitra, S. (1985). Delinquency Careers: Innocents, Desisters, and Persisters. In M. Tonry (Ed.), *Crime and Justice: A Review of the Literature* (pp. 198-219). Chicago: University of Chicago Press.
- Canadian Centre for Justice Statistics (2006). Crime statistics, All Police Services, 1977 to 2006 - PROPERTY CRIMES.
- Chaiken, J. M., & Chaiken, M. R. (1982). *Varieties of Criminal Behavior*. Santa Monica, CA: Rand Corporation.
- Cohen, J. (1983). Incapacitation as a Strategy for Crime Control: Possibilities and Pitfalls. In M. Tonry, & N. Morris (Eds.), *Crime and Justice: A Review of the Research* (Vol. 5, pp. 1-84). Chicago: University of Chicago Press.
- Criminal Code, R.S.C. 1985, c. C-46, s. 718.1
- deLisi, M. (2005). *Career Criminals in Society*. Thousand Oaks, California: Sage Publications, Inc.
- Dunford, F. W., & Elliott, D. S. (1984). Identifying Career Offenders Using Self-Reported Data. *Journal of Research in Crime and Delinquency* , 21, 57-86.
- Farrington, D. P. (1987). Predicting Individual Crime Rates. In D. M. Gottfredson, & M. Tonry (Eds.), *Prediction and Classification: Criminal Justice Decision Making* (Vol. 9, pp. 53-103). Chicago: University of Chicago Press.
- Gottfredson, M. R. (2005). Offender Classifications and Treatment Effects in Developmental Criminology: A Propensity/ Event Consideration. *The Annals of the American Academy of Political and Social Science* , 602, 46-56.
- Gottfredson, M. R., & Hirschi, T. (1990). *A General Theory of Crime*. Stanford, CA: Stanford University Press.

- Justice Renaud, G. (2004). *Speaking to Sentence: A Practical Guide*. Toronto: Thompson Canada Limited.
- Kinney, B. (2005). Court Sentencing Patterns. *PhD Dissertation*. Simon Fraser University: School of Criminology.
- Kyvsgaard, B. (2003). *The Criminal Career: The Danish Longitudinal Study*. Cambridge: Cambridge University Press.
- Laub, J. H., & Sampson, R. J. (2001). Understanding Desistance from Crime. In M. Tonry (Ed.), *Crime and Justice: A Review of the Research* (Vol. 28, pp. 1-69). Chicago: University of Chicago Press.
- Nadin-Davis, P. (1982). *Sentencing in Canada*. Ottawa: The Carswell Company Limited.
- Petersilia, J. (1980). Criminal Career Research: A Review of Recent Evidence. In M. Tonry (Ed.), *Crime and Justice: A Review of the Research* (Vol. 2, pp. 321-379). Chicago: University of Chicago Press.
- Piquero, A. R., Blumstein, A., Brame, R., Haapanen, R., Mulvey, E. P., & Nagin, D. S. (2001). Assessing the Impact of Exposure Time and Incapacitation on Longitudinal Trajectories of Criminal Offending. *Journal of Adolescent Research*, 16 (1), 54-74.
- Piquero, A., Farrington, D. P., & Blumstein, A. (2003). The Criminal Career Paradigm. In M. Tonry (Ed.), *Crime and Justice: A Review of the Research* (Vol. 30, pp. 359-506). Chicago: University of Chicago Press.
- Pollard, N. (2004). Conditional Sentencing: An Exploratory Analysis of Utilization in Vancouver. *Master of Arts Thesis*. Simon Fraser University: School of Criminology.
- Roberts, J.V. (1997). The Role of Criminal Record in the Sentencing Process. *Crime and Justice*, 22, 303-362.
- Sampson, R. J., & Laub, J. H. (2003). Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70. *Criminology*, 41 (3), 301-337.
- Spelman, W. (1994). *Criminal Incapacitation*. New York: Plenum Press.
- Statistics Canada (2004). *Criminal Victimization in Canada, 2004*. No. 85-002-XPE, Vol. 25, no. 7
- Statistics Canada (2006). *Crime Statistics in Canada, 2006*. No. 85-002-XIE, Vol. 27, no. 5
- Taulu, C. and E. Mosca (2007). *Courtwatch Program Memo*. Presentation to the Vancouver Police Board, April 18, 2007.

- Ulmer, J. T., & Kramer, J. H. (1996). Court communities under sentencing guidelines: Dilemmas of formal rationality and sentencing disparity. *Criminology*, 34, 383-408.
- Weekes, J., Mugford, R., Bourgon, G., & Price, S. (2007). *Drug Treatment Courts FAQs*. Canadian Centre on Substance Abuse, Ottawa.
- Wolfgang, M. E., Figlio, R. M., & Sellin, T. (1972). *Delinquency in a Birth Cohort*. Chicago: University of Chicago Press.
- Wolfgang, M. E., Thornberry, T. P., & Figlio, R. M. (1987). *From Boy to Man, from Delinquency to Crime*. Chicago: University of Chicago Press.

Cases Cited:

- R. v. Hawkins*, 2005 BCSC 247
- R. v. Ferguson*, 2005 BCPC 548
- R. v. Everitt*, 2002 BCPC 0075

Appendix A: Tables and Figures

Table 1: Number of Convictions

<i>Number of Convictions</i>	
average convictions	17
median convictions	16
25th percentile	8
50th percentile	16
75th percentile	23
Total Convictions	1,169
Total Convicted Offences	2,340

Table 2: Total Offences within Each Conviction

<i>Total Offences within Convictions (Adult and Youth)</i>		
	Frequency	Percent
1	663	56.7
2	262	22.4
3	97	8.3
4	65	5.6
5	33	2.8
6	16	1.4
7	9	0.8
8	8	0.7
9	5	0.4
10	3	0.3
12	2	0.2
13	2	0.2
17	1	0.1
20	1	0.1
26	2	0.2
Total	1,169	100.0

Table 3: Charges Stayed or Otherwise Dropped

<i>N = 69</i>	<i>Stays</i>	<i>Withdrawn</i>	<i>Dismissed</i>	<i>Acquitted</i>
Mean	12.5	1.6	0.7	0.3
Minimum	0	0	0	0
Maximum	57	19	10	8
TOTAL	860	107	49	24

Table 4: Top Five Offences (Adult)

<i>Adult Court - MSO (Top 5)</i>		
	Frequency	Percent
Theft Under	294	25
Break and Enter	140	12
FTC w/ Probation	91	8
Assault	63	5
PSP Over	55	5

Table 5: 1 Day Sentences and Pre-Trial Custody

<i>Custody N = 270</i>	<i>Pre-trial custody</i>	
	<i>No</i>	<i>Yes</i>
No net time	26%	74%
1 day	49%	51%

Table 6: Correlation of Custody and Pre-Trial Custody - All Convictions

<i>All Convictions (n = 819)</i>		<i>Pre-trial custody</i>	<i>Custody</i>
Pre-trial custody & Custody	Pearson Correlation	1	.052
	Sig. (2-tailed)		.134

Table 7: Correlation of Custody and Pre-Trial Custody - Convictions with Jail < 240 days

<i>Convictions with Custody <240 days (n = 747)</i>		<i>Pre-trial custody</i>	<i>Custody</i>
Pre-trial custody Custody	Pearson Correlation	1	-.128(**)
	Pearson Correlation	-.128(**)	1

** Correlation is significant at the 0.01 level (2-tailed).

Table 8: Maximum Penalties and Median Sentences

<i>Property Crime²⁵</i>	<i>Maximum (years)</i>	<i>Median²⁶ (days)</i>
Break and Enter (dwelling house)	life	150
Fraud	14	90
Theft or Mischief over \$5,000	10	est. 75
Theft or Mischief under \$5,000	2	30
<i>Theft Over is estimated on the basis of PSP Over = 90 days, and PSP in general = 60 days</i>		

²⁵ Data from Statistics Canada Adult Criminal Court Survey

²⁶ Additional data from Kinney (2005), and Pollard (2004).