

Understanding failure to comply convictions with young offenders: A snapshot of one Canadian courthouse¹

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Under the Young Offenders Act, and now the Youth Criminal Justice Act, failure to comply with a disposition is an offence, but we know little about it.

From easily available youth court statistics, we do know that the rate of bringing youths in to court for this offence and imposing custody for it has increased slightly over the years, resulting in 13% of the cases in youth court and 23% of the cases in custody (Doob & Sprott, 2004). We also know that most failure to comply (FTC) cases brought to youth court only have single or multiple charges of FTC but no other criminal charges (Sprott, 2004). And we know that, although administrative offences like FTC are victimless offences, they are actually more likely to result in a custodial sentence than any other summary or hybrid offence except sexual assault (Carrington & Moyer, 1995).

Given that the FTC “offence” often involves breaching a condition of probation (e.g., curfew, non-association order, reporting to youth worker) as opposed to committing a substantive criminal offence, sanctioning with a custodial sentence may appear overly punitive.

Beyond this, however, we know very little about FTC offences. We do not know, for example, what unfulfilled probation conditions typically result in FTC charges/convictions.

Given the high use of custody and the increasing rates of bringing these types of cases into youth court, it is worthwhile to take a closer look at the types of breached conditions that result in FTC convictions. Using a sample of FTC cases from Ontario, this study explores the types of probation conditions young people were convicted of breaching, leading to the FTC conviction. The three most commonly breached conditions will be investigated in detail in an attempt to understand what factors appear to be related to the FTC conviction.

Method

The sample of cases for this study was drawn using random sampling with replacement³ from a courthouse in southern Ontario, using cases disposed of in the year 2001 under the *Young*

Offenders Act. Young offenders’ files were examined by way of a content analysis. Only those offenders who were convicted of FTC were included in this study. In all, 69 young offenders’ files were used in the analysis of the data. The cases in this sample were examined for the following information: gender, age, presence of a co-accused, probation conditions violated, other charges and current disposition.⁴

FTC offences can include failing to comply with such conditions as a community service order, an order of restitution or, more frequently, an order of probation. Not surprisingly, all FTC convictions in this sample were for breaches of probation. In this context, it is important to note that all probation orders contain two mandatory conditions: 1) “keep the peace and be of good behaviour;” and 2) “appear in court when deemed necessary by the court.” All offenders convicted of an offence and given a disposition of probation must comply with these two conditions. A judge will add any other conditions she or he feels necessary to promote the goals and principles outlined in the youth justice legislation (e.g., protection of the public, accountability, rehabilitation).

Description of failure to comply cases

The sample of selected FTC cases in this study included approximately equal proportions of girls and boys: 46% girls (32 cases) and 54% boys (37 cases). This is somewhat different from what is found nationally, where boys constitute the majority of FTC cases (Sprott, 2004). The average age of all offenders at the time the offence was committed was 15 years of age. About 22% were 14 years of age or younger, 27% were 15 years old, 26% were 16 years old and 16% were 17 years old.⁵

All cases in this sample were convicted of FTC but most (60%) were also charged and convicted of a second offence. Once again, this finding is in contrast to what is found when looking at Canada overall, where only 10% of cases had a conviction for a criminal offence in addition to the FTC conviction (Sprott, 2004). Thus, in comparison to Canada overall, cases from this southern Ontario court appeared to involve more girls and more convictions for offences in addition to the FTC conviction.

Of the cases that resulted in conviction on charges other than the FTC charge, approximately half involved conviction for a property offence (predominantly theft under \$5,000), a third were convicted of a violent offence (mainly minor assaults) and 18% were convicted of an “other” offence (largely breaches of recognizance).

The most commonly breached probation conditions were: “keep the peace and be of good behaviour” . . . “obey the rules and discipline of the home or approved facility” . . . and “reside at an address approved by a youth worker” . . .

About two thirds of cases received custody as their new disposition, while the remaining third received a non-custodial sanction.⁶ Those cases that involved a violent offence conviction in addition to the FTC conviction were more likely to receive a custodial sentence than those involving property offences or “other” offences combined.

Understanding failed conditions of probation

The most commonly breached probation conditions were: “keep the peace and be of good behaviour” (52%); “obey the rules and discipline of the home or approved facility” (13%); and “reside at an address approved by a youth worker” (12%). The following discussion explores factors related to these most commonly breached conditions.

“Keep the peace and be of good behaviour”

The condition to “keep the peace and be of good behaviour” is of particular importance in this analysis as it is a mandatory condition that all young offenders must comply with when sentenced to probation. One can imagine the range this condition could have in monitoring, controlling or restricting a young offender. This condition could mean many things to judges, police officers or probation officers. Further, there is no clear definition of what this condition actually entails, and not complying with this condition could mean an offender was caught committing a number of different offences.

Analysis of the data suggests that convicting a youth with FTC for breaching this condition is systematically related to the number of other offences committed and the type of offences committed. The vast majority of young offenders

who were convicted of another offence had breached this condition. More specifically, 83% of young offenders convicted of a second offence were also convicted of failing to comply with this condition, compared to 7% of offenders who were not convicted of anything else except FTC (Chi-Square, corrected for continuity=35.317, $df=1$, $p < .001$).

Secondly, the nature of the second conviction was significantly related to this failed condition. All of the offenders convicted of violent offences and 95% of offenders convicted of property offences were also convicted of breaching this condition to keep the peace, compared to 43% of offenders convicted of “other” offences (Chi-Square=15.186, $df=1$, $p < .001$).

It appears that the more serious the accompanying substantive offence, the more likely an offender will be convicted of breaching this condition. If a young offender is convicted of a violent offence, a youth court judge may be reluctant to dismiss the other charge because this was a violent offence. More so, youth court judges may also be reluctant to dismiss the FTC charge as a means of making the punishment more severe for the more serious crimes. This condition may need a clear and concise definition so that judges, lawyers, police officers, probation officers and, most importantly, young offenders understand the nature of this condition.

“Reside at an address approved by a youth worker”

Gender was significantly related to convictions for breaching this condition. While only 3% of males were convicted of breaching this condition, 22% of females were convicted of breaching it (Chi-Square, corrected for continuity=4.425, $df=1$, $p = .035$). Interestingly, if an offender was *not* convicted of a second offence, she or he was more likely to be charged with breaching this residency condition. It could be that a breach of this condition is seen as serious enough to warrant official police and court responses.

It is unclear why girls were more likely than boys to be convicted of breaching this specific condition. It may be that girls are more likely to be given this condition in the first place and, therefore, would be the ones more susceptible to being convicted of breaching it. That is, youth court judges may impose this condition of probation more often with girls because girls are more likely to run away from home or an approved place of residence (Corrado, Odgers & Cohen, 2000). This reasoning can be linked to the finding that young women are more likely to be the victims of abuse in the home, and as a result run

away from the home to escape the abuse (Corrado, Odgers & Cohen, 2000).

Perhaps if girls are more often placed into group homes or foster care, they may be monitored more often than boys who live at home and are under the care of their parents. Police and group home facility workers would possibly report a breach of this condition more often than a parent or guardian would. It is possible that the police are more likely to officially respond to girls who breach this condition, perhaps seeing them in a paternalistic way, needing guidance and protection. Unfortunately, the data do not permit for an analysis of police discretion.

“Obey rules and discipline of the home or approved facility”

The age of the offender and whether or not the offender was convicted of a second offence were both significantly related to breaching this condition.

Younger offenders were more likely than older youths to be convicted of this offence. Roughly one third of young offenders who were 14 years of age or younger had breached this condition, compared to 11% of 15-year-olds, 6% of 16-year-olds and 0% of 17-year-olds (Chi-Square=8.271, df=3, $p = .041$).

Secondly, whether or not the offender was convicted of a second offence was significantly (though inversely) related to this condition. One quarter of offenders who were *not* convicted of another offence were convicted of breaching this condition, compared to only 5% of offenders who were convicted of another offence (Chi-Square, corrected for continuity=4.298, df=1, $p = .038$).

The relationship between age and breaching this condition to obey is unclear. One possible explanation focuses on the idea that younger offenders more often live in group homes, while older youth may live on their own. As a means of reinforcing the rules and regulations of the group home, the facility may call the police when a youth is misbehaving. Another possible explanation focuses

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on the level of policing. Specifically, the police may be more likely to officially respond to younger children. Police may perceive younger youth who are disobedient as more serious, requiring an official response. It could be that the response these officers have to younger children is also indicative of paternalistic perceptions of adolescence and youth. A final possible reason for this relationship focuses around the judicial use of this condition. It may be that youth court judges feel compelled to set out guidelines for younger youth to follow, similar to the police officers who bring in these offenders. Thus, it may be that younger youth are more likely than older youth to be given this condition and therefore are more susceptible to breaching it.

Perhaps youth courts should re-evaluate conditions that resemble parenting interventions, because the reality is that these conditions appear to be difficult for youth to comply with and they subsequently result in the costly sanction of custody.

If an offender was *not* convicted of a second offence, she or he was more likely to be convicted of breaching this condition to obey. Again, this may be linked to initial police contact and the perception that this condition is sufficiently serious, on its own, to warrant official intervention. If the police receive a call from parents or facility workers complaining of a young offender’s behaviour, the police can then charge this person with FTC. Therefore, there is no second offence committed, just the initial breach leading to the FTC conviction. However, the data did not permit for an investigation into police behaviour that would allow for a greater understanding of these relationships.

Conclusions and limitations

One of the most interesting findings to emerge from this investigation is that it appears the conditions of probation young people are charged and convicted of breaching are vague and very minor in nature. As previously discussed, the “keep the peace” condition is an ambiguous term that could encompass an infinite number of actions or behaviours. Clear and concise definitions may be required so that all judicial agents (judges, lawyers, probation officers and police officers) and, most importantly, young offenders understand the nature of this condition.

The other conditions that were most often breached – reside at an approved home or facility

and obey the rules and discipline of the home or facility – seem to be more paternalistic in nature. While these conditions appear to have the safety and well being of the young offender in mind, the courts are then imposing sentences of custody on youth who run away or disobey. It appears that young offenders pay a very high price for failing to comply with conditions that seem very minor. Perhaps youth courts should re-evaluate conditions that resemble parenting interventions, because the reality is that these conditions appear to be difficult for youth to comply with and they subsequently result in the costly sanction of custody.

There are likely many other factors both legal (e.g., previous record) and extralegal (e.g., police discretion) that could play an important role in determining the significance of these relationships. An investigation into judges' sentencing practices, police discretion and the role officers play in charging a young offender with FTC would contribute to a more comprehensive understanding of this offence. Unfortunately, due to the limited available data and small sample size, these

relationships could not be explored in greater detail in this study.

Perhaps this is where extrajudicial measures, like police warnings or cautions, could play a key role in reducing the number of cases brought to court and custody for failing to comply. Under the *Youth Criminal Justice Act*, police officers are to screen all cases they come into contact with and on many occasions are encouraged to sanction the young person without sending them to court. It is not clear whether the police use, or would use, extrajudicial measures for these types of cases. This requires further investigation.

Only more detailed research will allow for a greater understanding of the use of FTC under the *Youth Criminal Justice Act*. While this study was only a snapshot of FTC, it exemplifies the importance of understanding the judicial use of this sanction and the need to follow these cases through the youth justice system in order to fully comprehend why and when FTC is used and why custody is overwhelmingly used with young offenders who are convicted of FTC in Canada. ■

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³ For a detailed description of the sampling procedures used, refer to Pulis, J. (2003). *A critical analysis of probation for young offenders in Canada*. Unpublished Masters thesis, University of Guelph, Guelph, Ontario, Canada.

⁴ Previous record information could not be obtained from the young offenders' files included in this analysis. For a discussion of the significance of criminal history on current disposition, refer to Matarazzo, A., Carrington, P.J., & Hiscott, D.R. (2002). The effect of prior youth court dispositions on current disposition: An application of societal-reaction theory. *Journal of Quantitative Criminology*, 17, 169-200.

⁵ Information on the age of the offender was not available in six cases.

⁶ Non-custodial dispositions include: probation; probation and prohibition; probation, restitution and community service order (CSO); probation, prohibition and CSO; probation and CSO.

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