

# DETENTION OF JUVENILES

## A follow-up study of a cohort of entering prisoners

The analysis presented here is part of an investigation conducted by the CESDIP on time spent in custody, based on a follow-up study of individuals incarcerated in February 1983. This cohort was initially subjected to a sample study concentrating on its socio-demographic and criminal structure, length of prison stays, analysis of pretrial detention, of types of sentence-serving and of release (Barré, Tournier, 1990).

The construction of the sample implied that it included few juveniles. To obviate this drawback, we have completed the representative sample of all entering prisoners by establishing an exhaustive record of juveniles incarcerated in February 1983 (507 individuals). The different factors previously published for the group of entering prisoners as a whole could then be reexamined in this particular sub-cohort, and be completed by an analysis of the judicial history of these juveniles subsequent to their release (Tournier, 1991).

Follow-up of the cohort was based on the computerized statistical records for the prison population (statistique informatisée de la population pénale, SIPP), for which, in turn, the court clerk's documents are used. At the end of a 27-month observation period, 99 % of juveniles had been released.

7 % of the cohort were women and 30 % were foreigners, 21 % were under age 16 (age at incarceration), 96 % of incarcerations were for pretrial detention, in the framework of a "correctionnel" procedure (for moderately serious offences, with no jury) in 9 cases out of 10. In the latter instance the decision to imprison was usually made by an examining judge (69 %).

The offence leading to incarceration was usually theft (77 %), followed by rape (4.5 %), deliberate assault (4.3 %), aggravated theft (2.6 %), drug trafficking (2.4 %) and destruction/deterioration of property (2.0 %). These six counts cover 93 % of situations.

### 1 - LENGTHS OF DETENTION

78 % of detentions were ended by a release order (RO). This type of release does not have the same meaning depending on whether imprisonment was tied to a single affair or to several affairs. For one thing, when detention is tied to several affairs and is ended by an RO, it does not necessarily involve pretrial detention only. When single affairs only are considered (94 % of records), the proportion of RO is 82 %. When suspended prison sentences and sentences covered by pretrial detention are added, the number of detentions exclusively constituted by pretrial detention rises to 86 % :

- 25 % of juveniles were released within 9 days (in other words, 25 % of detentions lasted less than 9 days and 75 % lasted 9 days or more) ;
- 50 % were released within 17 days (the median for the distribution) ;

- 3 - 75 % within 2 months and 4 days ;
- 90 % within 5 months.

### \* Pretrial detention

81 % of the prison days served by juveniles as a whole were spent in pretrial detention. This proportion was 98 % for custodies lasting less than one month and 78 % for those lasting three months or more. The mean duration of pretrial detention was 42 days.

Detentions in the framework of a *correctionnel*<sup>1</sup> procedure - for a single affair - and ended by an RO were investigated more thoroughly. They represent 70 % of cases, and are characterized by exclusive pretrial detention lasting from 1 day to 4 months :

- 25 % spent less than 7 days in prison ;
- 50 % less than 11 days (median) ;
- 75 % less than 23 days ;
- 90 % less than 52 days.

Imprisonments ordered by an examining judge apparently last longer : the median duration was 14 days (versus 9 days for juvenile court judges), and the proportion of detentions lasting less than 10 days was 34 % (as against 69 % for juvenile court judges).

It should be recalled, however, that the youngest group, under age 16, could not be subjected to more than ten days of pretrial detention for a "correctionnel" affair (the December 1987 law put an end to pretrial detention for juveniles under age 16 in "correctionnel" cases and unconditionally for those under 13).

The difference may therefore be explained by an age factor : there was a higher proportion of under-16s among juveniles incarcerated by order of a juvenile court judge (34 % versus 21 %). Actually, the same difference prevails for the "age 16 and over" group : the proportion of less than 10 days duration was 59 % for juvenile court judges versus only 25 % for examining judges.

Furthermore, the two groups have rather similar structures with respect to the offence committed. The difference is therefore a real one.

### \* Detention of under-16s

An RO put an end to 96 % of imprisonments of juveniles under age 16 (at incarceration). In this sub-cohort, 98 % of cases involved a single affair. 97 % of these were terminated by an RO. The mean for prison stays was 27 days, but 76 % of minors spent 10 days or less, and 82 % less than one month in prison.

Follow-up, conducted until release for both the under-16 and over-16 groups, shows that most juveniles left prison without having been tried. This follow-up therefore required pursuit beyond release, using individual criminal records, so as to determine the outcome of the affair motivating the February 1983 incarceration.

1 - In French law, moderately serious offenses are called *déliés* and are judged by *tribunaux correctionnels*.

This led us to attempt to answer the following questions : did the affair end in sentencing ? If so, what was the nature of the sentence ? Last, if the sanction included an unsuspended prison term, was there a link between the length of the term and the duration of prior pretrial detention ?

## 2 - BENEFICIARIES OF A RELEASE ORDER : outcome of the case

The state of the individual criminal record on July 1st 1988 was examined. Most of these juveniles had spent less than six months in prison (97 %). This means that about 5 years separated release from examination of the criminal record. This is practically the longest feasible lapse of time, given the July 20, 1988 amnesty. Considering the amount of time between sentencing and its recording on the criminal record, the inventory of the most recent sanctions is necessarily incomplete. However, the length of the observation period should logically make this bias minor.

Juveniles who benefitted from a release order and who were imprisoned for a single affair may be classed as follows, according to the post-release decision :

- 28 % were not sentenced (no mention on their criminal record) ;
- 29 % were sentenced, but with no unsuspended prison sentence :
  - educational measure ..... 3 %
  - fine ..... 1 %
  - substitution measure ..... 1 %
  - prison with total suspension of imprisonment .... 24 %
- 43 % were given an unsuspended prison sentence.

For a majority of them (57 %), then, pretrial detention was not followed by an unsuspended prison sentence.

Sentenced juveniles were judged within a mean period of one year following their release, with 37 % sentenced more than one year after their discharge from prison. Furthermore, an average of 15 months separated the offence from sentencing, with a period exceeding one year in 47 % of cases.

The proportion of unsentenced individuals, which, as we have seen, was 28 % as a whole, decreased as the length of pretrial detention increased, ranging from 37 % for "5 to 10 days" of detention to 22 % for a duration of "6 months or more".

60 % of those sentenced were given an unsuspended prison sentence (with or without partial suspension of imprisonment). This proportion increased considerably with the duration of pretrial detention : it ranged from 27 % following detention for "less than 5 days" to 82 % for detentions lasting "between 1 and 6 months".

1/3 of juveniles given an unsuspended prison sentence (with or without partial suspension of imprisonment) had spent more time in pretrial detention than prescribed by the unsuspended prison sentence. This overall figure covers a broad range of situations depending on the duration of pretrial detention : it increases with the length of detention,

4 rising from 3 % for stays of "less than 10 days" to 71 % for those lasting "3 months or more".

The influence of the duration of pretrial detention on the length of the unsuspended prison sentence is even more evident in the cross-tabulation shown below. In this table, 70 % of the population are located on the diagonal (pretrial detention and length of sentence in the same class). Further, the link is increasingly strong as pretrial detention increases.

Juveniles incarcerated in February 1983 : detentions ending with a release order (single affairs), sentencing following release = unsuspended prison sentence.

| Pretrial detention   | - 10 d. | 10 d. - 30 d. | 1 mo. - 3 mo. | 3 mo. or + |
|----------------------|---------|---------------|---------------|------------|
| Amount unsuspended : |         |               |               |            |
| Less than 10 d.      | 50,0    | 1,9           | 0,0           | 0,0        |
| 10 - 30 d.           | 13,2    | 67,9          | 2,8           | 0,0        |
| 1 month - 3 months   | 21,0    | 17,0          | 80,5          | 0,0        |
| 3 months or more     | 15,8    | 13,2          | 16,7          | 100,0      |
| Total                | 100,0   | 100,0         | 100,0         | 100,0      |

Of all of the pretrial detention days served by juveniles released on an RO, 43 % were not deducted from a sentence : "no sentence" = 26 %, "sentence with no unsuspended prison term" = 13 %, "amount lower than pretrial detention" = 4 %.

In short, the study of the outcome of juveniles released on RO arrived at the following conclusions :

- the longer the pretrial detention, the larger the proportion of sentenced individuals ;
- for sentenced individuals, longer pretrial detention corresponds to a greater proportion of unsuspended prison terms ;
- and in the latter case, the length of the unsuspended prison term is closely linked to the duration of pretrial detention.

## 3 - AFFAIRS SUBSEQUENT TO RELEASE

Consultation of individual criminal records provided an opportunity to look into affairs occurring following release, punished by a sentence entered on the criminal record before July 1st 1988. This second follow-up phase, beyond release, covered the entire cohort. 98 % of juveniles spent less than one year in prison : this means that about 5 years elapsed between release and scrutiny of the criminal record.

A two-phase approach was used : first, there was the question of whether any affair resulting in sentencing had occurred subsequent to release, independently of the nature of the sentence or the type of judgement. If so, the characteristics of the sentence were studied, for the first new affair. Next, the analysis confined itself to definitive unsuspended prison sentences (with or without partial suspension) and studied the characteristics of the first affair sanctioned in this way.

#### \* All new affairs

77 % of released juveniles were involved in another affair leading to sentencing within a period of approximately 5 years after their release. This figure underestimates the frequency of actual sentencing for two reasons :

- some judgements may have been erased from the criminal record in application of paragraph 770 of the code of criminal proceedings (decision of the juvenile court, after a three-year period, "when rehabilitation is deemed successful") ;
- some of the most recent cases cannot have been exhaustively inventoried, owing to the time lapses between the offence and sentencing, on the one hand, and between sentencing and inscription on the criminal record, on the other hand.

The proportion of subsequent sentences varies with some demographic and penal characteristics of these released juveniles. It is practically the same for "under 16s" and "16-18 year-olds", but is higher for French citizens than for foreigners : 80 % versus 69 %. There are twice as many males as females (79 % versus 40 %).

The proportion of sentences varies considerably with the type of offence motivating the February 1983 incarceration : 57 % for major offences, 66 % for personal offences, 80 % for thefts. However, the most discriminating variables pertain to sentencing prior to the February 1983 imprisonment. In case of a prior sentence, the figure is 91 % (versus 63 % otherwise), and it reaches 97 % in case of a previous unsuspended prison sentence (as against 73 % otherwise).

An average of 9 months elapse between release and the following offence, with the distribution concentrated around the first months : 40 % of offences are committed within the first 3 months. The next sentencing takes place 11 months after the offence was committed, on the average, and within 6 to 18 months in 50 % of cases.

Most new offences were thefts (2/3 of cases), followed by personal offences (13 %) and traffic offences (11 %). In the vast majority of cases (67 %), the court sentenced the offender to prison, with no or only partial suspension. Fines did represent 18 % of sentences, and educational measures (as the main measure) 12 %.

\* New affairs punished by definitive sentencing to an unsuspended prison term (with or without partial suspension).

Within 5 years of leaving prison, 60 % of released juveniles were again punished by an unsuspended prison sentence for a second affair. The previously observed variations in overall percentages (irrespective of the nature of the sentence) were also seen here. However, the effect of sentences prior to the February 1983 incarceration was even more pronounced : the rate was 78 % in case of prior sentencing (versus 43 % otherwise), and over 92 % in case of a prior unsuspended prison sentence (as against 54 % otherwise).

The average time lapse between release and the next offence is 11 months, with 50 % of offences committed less than 6 months after leaving prison. The subsequent unsuspended

5 prison sentence was pronounced within 10 months of the offence, on the average. Most of these sanctioned thefts (78 % of cases).

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While satisfactory long-term post-release follow-up was feasible here because of the remote incarceration date of this cohort, similar conditions will not prevail for another few years (a period of more than 5 years with no amnesty), this compellingly raises the question of the up-dating of information on the detention of juveniles. Several laws have been passed in this area in recent years, the purpose of which was to reduce recourse to custody and the length of pretrial detention<sup>2</sup>. These changes have been somewhat effective in decreasing the number of juveniles placed in pretrial custody : 2,090 in 1990 versus 4,903 in 1985.

452 juveniles were held in custody in metropolitan France as of October 1st 1991, as against 965 in October 1986 : this represents a decrease of over 50 % in 5 years. It would therefore be interesting to determine the evolution of the detention-related parameters studied in the present paper (structure of incarcerations, length of detention, weight of pretrial detention...). The feasibility of an investigation establishing a diachronic perspective of this sort will depend on the work currently under way at the statistics department of the Chancellery, the purpose of which is the improvement of correctional statistics.

Pierre Tournier

#### References :

Barré, M.D. ; Tournier, P., *Le temps carcéral, Revue de science criminelle et de droit pénal comparé*, 1990, 2, 379-387.

Tournier, P., *La détention des mineurs, observation suivie d'une cohorte d'entrants*, Paris, CESDIP, *Études et données pénales*, n° 62, 1991.

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2 - The December 30, 1985 law, in application since February 1, 1986 : consultation of public educational agencies for the judicial protection of juveniles is compulsory before any pretrial detention may be ordered (a written report is required, containing all useful information on the juvenile's situation, along with an educational proposal ;

\* The December 30, 1987 law, in application since March 1, 1989: elimination of pretrial detention for juveniles under age 16 in "correctionnel" court cases and unconditionally for those under age 13.

\* The July 6, 1989 law, in application since December 1, 1989 : pretrial detention of juveniles aged 16 to 18, for moderately serious cases ("correctionnel") is limited to one month, renewable once, when the sentence incurred does not exceed a 7-years prison term.