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Indigenous People in Criminal Court in Canada:

An Exploration Using the Relative Rate Index

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Executive Summary

This report presents findings on the representation and outcomes of Indigenous people as accused in Canadian criminal courts. This is the first time that national statistics on Indigenous accused in criminal courts are reported in Canada.

This study addresses four key objectives:

- Identify whether the criminal court process itself contributes to the overrepresentation of Indigenous people in the criminal justice system (CJS);
- Identify disproportionality in court outcomes of Indigenous accused, compared to White accused, at key stages/decision points of the criminal court process;
- Identify whether other sociodemographic variables (e.g., sex and age group) affect the level of disproportionate outcomes experienced by Indigenous people at key stages/decision points of the criminal court process; and,
- Identify areas that warrant further exploration and data development.

This study was a collaborative effort between the Research and Statistics Division at the Department of Justice Canada and the Canadian Centre for Justice and Community Safety Statistics at Statistics Canada. The data used in this study were obtained through a data linkage whereby records from Statistics Canada's 2016 Census of Population long-form (Census) and the Integrated Criminal Court Survey (ICCS) were linked together to obtain the Indigenous identity of accused. The linked data were used to generate two types of metrics: 1) proportions of Indigenous and White accused in criminal courts; and 2) the Relative Rate Index (RRI).

RRIs were calculated to measure the likelihood of Indigenous accused encountering specific court outcomes relative to White accused. The study examines five key court outcomes (i.e., stages/decision points within the court process): 1) whether a preliminary inquiry occurred; 2) whether a trial occurred; 3) the final court decision (e.g., found guilty, acquitted); 4) the type of sentence received (e.g., custody, probation); and 5) the length of custodial sentence. The RRI method involves calculating the rate of Indigenous and White accused experiencing a specific court outcome based on the number of Indigenous and White accused "at risk" of experiencing that court outcome.

Key findings indicate that Indigenous people are overrepresented as accused in criminal courts relative to their representation in the Canadian population. Further, compared to their White counterparts, Indigenous accused are:

- more likely to have a preliminary inquiry;
- less likely to go to trial;
- less likely to encounter a withdrawal, dismissal or discharge and to be acquitted, and more likely to encounter a stay of proceedings and to be found guilty (including guilty pleas);
- less likely to receive a fine and probation, and more likely to receive a conditional sentence and to be sentenced to custody; and
- less likely to receive long-term custodial sentences of two or more years.

These findings suggest that Canadian criminal courts are contributing to differential and disproportionate outcomes for Indigenous accused. Some of these outcomes (e.g., more likely to be found guilty) result in prolonged involvement with the CJS, including entry into correctional supervision.

The report identifies a number of areas in which further research is necessary to better understand why disproportionality is occurring at specific stages/decision points in the criminal court process, most notably around findings of guilt. In addition, further analyses are required to better understand the representation of Indigenous people at other key stages/decision points in the criminal court process (e.g., bail, guilty pleas).

1. Introduction

Canada is home to three distinct Indigenous peoples, namely First Nations, Inuit and Métis. Indigenous peoples have faced numerous challenges resulting from the country's colonial history. Today, they continue to be confronted by the legacy of this history, which has lead to marginalization and systemic discrimination in various social spheres.

The overrepresentation of Indigenous people as both victims/survivors and convicted persons in the criminal justice system (CJS) is well documented (Boyce 2016; Roy & Marcellus 2019; Malakieh 2020). However, there are important information and data gaps pertaining to the representation of Indigenous people in certain areas of the CJS, namely at the policing and criminal court stages.

This study contributes to the existing literature by providing the first estimates of Indigenous representation among accused in Canadian criminal courts. This work also provides an indication of the extent to which Indigenous accused experience different and disproportionate outcomes, relative to White accused, at various stages of the Canadian criminal court process. The research addresses four key objectives: 1) identify whether the criminal court process itself contributes to the overrepresentation of Indigenous people in the CJS; 2) identify disproportionality in court outcomes of Indigenous accused, compared to White accused, at key stages/decision points of the criminal court process; 3) identify whether other sociodemographic variables (e.g., sex and age group) affect the level of disproportionate outcomes experienced by Indigenous people at key stages/decision points of the criminal court process; and 4) identify areas that warrant further exploration and data development.

This work was part of the Department of Justice Canada's commitment to review the CJS and broader efforts to identify and address data gaps that hinder evidence-based decision-making. This work also aims to respond to the Truth and Reconciliation Commission of Canada's Call to Action 30, to monitor, evaluate, and report on progress made in addressing the issue of Indigenous overrepresentation in the CJS (TRC 2015a).

Relative rate indexes (RRIs) were calculated to compare court outcomes of Indigenous accused to those of White accused[1] at key stages/decision points of the criminal court process. The RRI method involves comparing the rate with which a selected group (Indigenous accused) experiences a court outcome (e.g., guilty finding, custodial sentence) to the rate of a comparison group (White accused) experiencing that same outcome. For each court stage/decision point, the RRI provides an indication of the extent to which the rate at which Indigenous accused experience a particular court outcome is higher than, similar to or lower than the rate for White accused.

This method has been used in different countries to assess the disproportionate level of contact of minority ethnic groups with the CJS. For example, the United States has used the RRI method to identify and monitor the extent of disproportionate contact of ethnic minority youth with the youth justice system (Rovner 2014). The United Kingdom also recently used this method to identify the extent of

[1] The White comparison group included predominantly White people. Any reference to the term "White" in the report includes individuals who identified as neither Indigenous nor as a visible minority on the 2016 Census of population long-form (see methodology for more information). An analysis of the court outcomes of visible minority groups will be conducted separately.

disproportionate contact of ethnic minority groups at key stages of the CJS (Uhrig 2016). This is the first time that this method has been applied to Canada's CJS.

Finally, it is important to note that RRIs only indicate the level of representation at specific junctures of the criminal court process. They do not take into account various factors that may explain the results, such as individual or offence characteristics that may have an impact on the court outcomes examined. For instance, this study did not assess whether Indigenous and White accused differed in the types of offences they allegedly committed, which may also affect the likelihood of encountering a court outcome, such as being sentenced to custody. Furthermore, the national level RRIs do not account for jurisdictional differences in court proceedings and reporting standards of court outcomes. Finally, RRIs do not provide an explanation of why disproportionality may be occurring at specific stages of the criminal court process. To address these questions, the report references existing studies that provide insight as to why the observed outcomes may be occurring. In other instances, the report identifies the need to undertake additional studies to better understand the outcomes.

Context of the overrepresentation of Indigenous people in the criminal justice system[2]

The focus of this report is not to examine the issue of overrepresentation of Indigenous people in the CJS compared to their representation in the Canadian population, but rather to better understand the differential and disproportionate outcomes of Indigenous accused compared to White accused in criminal courts. However, it remains important for readers to understand the broader context in which these disproportionate outcomes may be occurring, including the factors that have led to overrepresentation.

Indigenous people are overrepresented in Canada's CJS as both victims/survivors and convicted persons. They are more likely than White people to self-report being victimized (Boyce 2016).[3] Indigenous people are also overrepresented among victims and accused of homicide (Roy & Marcellus 2019). Data also show that Indigenous people are overrepresented in custody compared to their representation in the general population (Malakieh 2020). The issue has been the subject of multiple commissions, inquiries, task forces,[4] academic studies, Supreme Court decisions,[5] legislative amendments[6] and social programs[7] for the past several decades.

[2] The content of this section is largely based on the content presented in the *State of the Criminal Justice System Dashboard* of the Department of Justice Canada. For more contextual information on the overrepresentation of Indigenous people in the CJS, see: https://www.justice.gc.ca/socjs-esjp/en/ind-aut/lm-sp

[3] Self-reports pertained to victimization that occurred in the previous 12 months and were specific to eight types of offences measured by the General Social Survey on victimization: sexual assault, robbery, physical assault, break and enter, motor vehicle/parts theft, theft of household property, vandalism, and theft of personal property.

[4] Key federal commissions, inquiries and task forces include: the Canadian Task Force on the Reintegration of Aboriginal Offenders as Law-Abiding Citizens, led by the Ministry of the Solicitor General (1988); the Royal Commission on Aboriginal Peoples (1996); the Truth and Reconciliation Commission (2015a); and, the National Inquiry into Missing and Murdered Indigenous Women and Girls (2017).

[5] Key Supreme Court decisions include: *R v Gladue* (1999); *R v Wells* (2000); and, *R v Ipeelee* (2012).

[6] Some of the key legislative amendments include amendments to section 81 and 84 of the *Corrections and Conditional Release Act*, and amendments to section 718.2(e) of the *Criminal Code*.

[7] Key federal Indigenous justice programs include: the Aboriginal Community Reintegration Program; the Indigenous Courtwork Program; and, the Indigenous Justice Program.

The overrepresentation of Indigenous people in the CJS is a complex issue that can only be understood through consideration of the social context in which it is occurring. It is impossible to detail in the scope of this report all of the contextual factors which have contributed to the current overrepresentation situation. However, a number of studies and literature reviews have identified key contributors, namely Canada's colonial history, socio-economic marginalization, systemic discrimination and cultural differences (i.e., Indigenous cultures and worldviews differing from the western philosophy of the CJS) (Clark 2019; RCAP 1996; Rudin n.d.).

Colonial history

Colonialism has been reported as one of the most fundamental underlying causes of Indigenous overrepresentation in the CJS (RCAP 1996). Canada's colonial history has led to territorial dispossession, intergenerational trauma, socio-economic marginalization, systemic discrimination and cultural alienation (Chansonneuve 2005; Clark 2019; Hansen 2012; Jackson 1988; RCAP 1996; Rudin n.d.). The implementation of assimilation policies and practices, such as the residential school system, the removal of Indigenous children from their families and ongoing child welfare practices, have led to the loss of family and community ties. The intergenerational impacts of this colonial history continue to have profoundly negative consequences on the lives of Indigenous people today, which for some have resulted in high rates of physical and mental health issues, substance use and addiction, cognitive impairment, interpersonal violence, suicide, and involvement in the CJS (Chansonneuve 2005; Clark 2019; Ross n.d.).

Socio-economic marginalization

Although many people involved in the CJS face high levels of socio-economic marginalization, Indigenous people experience marginalization that is compounded by the impact of colonialism (RCAP 1996). Indigenous people have a higher unemployment rate and lower levels of education attainment relative to White people (Moyser 2017). The literature also shows that Indigenous people are disadvantaged in terms of housing conditions (Statistics Canada 2017) and health care (Clark 2019). All these factors, also known as social determinants of crime,[8] have resulted in differential social outcomes among Indigenous people, including limiting their opportunities and making them at greater risk for involvement in the CJS (Clark 2019; LaPrairie 1990; RCAP 1996; Rudin n.d.; Wesley-Esquimaux & Smolewski 2004).

Systemic discrimination

Systemic discrimination within the CJS has been identified as a serious issue by the Supreme Court of Canada (*R v Gladue* 1999; *R v Wells* 2000; *R v Ipeelee* 2012) and various commissions and inquiries. Although available data are limited, findings from various studies have highlighted the impacts of systemic discrimination at various stages of the system. For the most part, these have resulted in

[8] The notion of "social determinants of crime" is drawn from the concept of "social determinants of health," which can be defined as follow: "[t]he social determinants of health are the conditions in which people are born, grow, live, work and age. These circumstances are shaped by the distribution of money, power and resources at global, national and local levels. The social determinants of health are mostly responsible for health inequities (…)" (World Health Organization n.d.). Similarly, social determinants of crime (or social determinants of justice) can be understood as social factors (e.g., income, employment, education) that lead to exclusion and discrimination, and ultimately to inequities in justice outcomes (Institute for Research on Public Policy 2018).

differential outcomes for Indigenous people, contributing to their overrepresentation in the CJS. For example, Indigenous people have been found to be over-policed, meaning that police are more actively present in Indigenous communities than other communities, resulting in Indigenous people being more likely to be arrested and charged (Clark 2019; Rudin n.d.). They have also been found to be under-protected in that Indigenous people do not have the same access as White people to police assistance and support when required (McGlade 2010; National Inquiry into Missing and Murdered Indigenous Women and Girls 2017). Indigenous people are also more likely to be admitted to custody than White people (Malakieh 2020). While in custody, they spend a disproportionate amount of time in segregation, are more likely to be classified as higher risk and to be denied parole (Office of the Correctional Investigator Canada 2014; Department of Justice 2017a).

Cultural differences

Western and Indigenous worldviews on justice, although similar in some regards (i.e., they include similar principles of deterrence, denunciation, and rehabilitation), differ in their perceptions of wrongdoing or harm and the approaches to justice (Chartrand & Horn 2016). Indigenous justice focuses on relationships, restoring peace and balance within the community, and addressing harm through healing and reintegration (Chartrand & Horn 2016; Clark 2019; Commission on First Nations and Métis Peoples and Justice Reform 2004). In comparison, although Western approaches can include restorative justice principles, they generally tend to be less relational as crimes are considered to be committed against the State and not the individuals harmed. These different views and concepts of justice have lead to further trauma and overrepresentation of Indigenous people in the CJS (Clark 2019; RCAP 1996; Rudin n.d.).

2. Method

Procedures and measures

This project was a collaborative effort between the Research and Statistics Division at the Department of Justice Canada and the Canadian Centre for Justice and Community Safety Statistics at Statistics Canada. The data presented in this report were obtained through a data linkage: records from Statistics Canada's 2016 Census of Population long-form (Census)[9] and the Integrated Criminal Court Survey (ICCS)[10] were assessed and linked based on the probability that they belonged to the same person. Both the ICCS appearance and charge files were required to complete the linkage since each file contained specific information on the court outcomes examined in this study. More specifically, data from the ICCS

[9] The Census (long-form) is a sample-based and mandatory survey, conducted every five years, that provides demographic, social and economic information on Canada's population. The Census excludes Canadian citizens living temporarily in other countries, full-time members of the Canadian Forces stationed outside Canada, persons living in institutional collective dwellings such as hospitals, nursing homes and penitentiaries, and persons living in non-institutional collective dwellings such as work camps, hotels and motels, and student residences.

[10] The ICCS collects data from administrative court records on an annual basis, and maintains a national database of statistical information on appearances, charges and cases in both youth and adult criminal courts. The Survey covers only provincial and superior courts and excludes Appeal courts, federal courts and the Supreme Court of Canada.

appearance file with personal identifiers were first sent to the Social Data Linkage Environment (SDLE)[11] to identify unique individuals. These individuals were then linked back to the ICCS charge file, which is comprised of charges for completed court cases (i.e., cases where all charges received a final decision).[12] To obtain the Indigenous identity of ICCS accused, individuals from the ICCS charge file were linked to the Census, which was administered to 25% of the Canadian population. The ICCS cohort had a linkage rate of 13%. In order to make inferences to the entire population of ICCS individuals, Census weights were adjusted to match the complete ICCS cohort.[13] Within the ICCS cohort, only individuals who had a completed court case and were linked to the Census were retained for this study, along with their weights and Indigenous identity.

The data obtained through the data linkage procedure are national in scope and include information from 11 provinces/territories. Data from Quebec and Alberta were excluded since the personal identifiers required for linkage were not available in the ICCS.[14]

The "Aboriginal identity" and "Visible minority group" variables in the Census were used to create two study groups: Indigenous accused and White accused. While the Census uses the term "Aboriginal," the term "Indigenous" will be used throughout the report, and includes individuals who identified as First Nations, Inuit and/or Métis, or as registered Indians or as having membership in a First Nations or Indian band. For the purpose of this study, the term "White accused" includes individuals identified as neither Indigenous, nor as a visible minority[15] in the Census.

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[11] The SDLE at Statistics Canada promotes the use of existing administrative and survey data to address important research questions and inform socioeconomic policy through record linkage. The SDLE expands the potential of data integration across multiple domains, such as health, justice, education, and income through the creation of linked analytical data files without the need to collect additional data from Canadians.

[12] A final decision consists of a finding of guilt (including guilty pleas), an acquittal, a stay of proceedings, charges being withdrawn by the prosecution, a case being dismissed or an accused being discharged, a verdict of not criminally responsible, and other decisions, such as mistrials, special pleas (e.g., *autrefois acquit*) and being unfit to stand trial.

[13] The maximum linkage rate possible was 25% since only 25% of the Canadian population received the Census long form questionnaire. Census weights were used to represent the entire population based on the information gathered from the sample, such as sociodemographic information. The ICCS cohort had a 13% linkage rate to the records of the Census. Census weights were re-adjusted to represent the remaining 87% of the cohort that did not link using information available in the ICCS dataset. This means that each person from the cohort who linked to the Census represents a certain number of persons in the total cohort based on specific characteristics, which include the age, the sex, the region, and the common offence classification grouped.

[14] As of 2005-06, all provinces and territories report provincial court data to the ICCS. Most provinces and territories also report superior court data, with the exception of Prince Edward Island, Ontario, Manitoba and Saskatchewan.

[15] Visible minority is defined by the Employment Equity Act as "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour." The visible minority population consists mainly of the following groups: South Asian; Chinese; Black; Filipino; Latin America; Arab; Southeast Asian; West Asian; Korean, and Japanese. The "not a visible minority" category predominantly consists of White people, but also includes individuals that identified themselves as both White and a small subset of visible minority groups (i.e., White and Latin American or White and Arab). These individuals represent less than 1% of the "not a visible minority" category in the Census.

The linked data for Indigenous and White groups were used to generate two types of metrics: 1) proportions of Indigenous and White accused in criminal courts; and 2) Relative Rate Index.

1) Proportions of Indigenous and White accused in criminal courts

To obtain the representation of Indigenous people as accused in criminal courts, proportions of both Indigenous and White accused were calculated based on the total number of accused in the ICCS. These were contrasted with the proportions of Indigenous and White people in the Canadian population, which were calculated using the total Census population. For comparison purposes, individuals under 12 years of age were excluded from the Census population counts, as individuals within this age group are excluded in the ICCS. Proportion data (both ICCS- and Census-based) were generated for the three most recent Census years for which there were exact population counts: 2006, 2011 and 2016.[16]

2) Relative Rate Index

The RRI method measures the likelihood of a selected group (Indigenous accused) encountering an outcome (e.g., guilty finding, custodial sentence) relative to a reference group (White accused) encountering the same outcome. In this study, RRIs were calculated by dividing the rate of Indigenous accused experiencing a court outcome by the rate of White accused experiencing the same outcome (see Annex 1). These rates are based on the number of Indigenous and White accused experiencing a court outcome out of the total number of Indigenous and White accused, respectively, "at risk" of experiencing the outcome. The term "at risk" refers to the different stages of the criminal court process; only those accused present in the court system at the previous stage are "at risk" of moving through to the next stage. For example, only those convicted—as opposed to all accused—are "at risk" of receiving a custodial sentence.[17] Consequently, RRIs represent the level of disproportionality at key stages/decision points of the criminal court process, independent of any disproportionality that may have occurred at an earlier stage in the court process.

This RRI study examines the representation of Indigenous accused relative to White accused at five key stages/decision points in the criminal court process: 1) preliminary inquiry; 2) trial; 3) court decisions;[18] 4) sentencing;[19] and 5) length of custodial sentences.[20] In addition to the RRIs, for information purposes,

[16] For 2006 counts, all individuals (ICCS and Census population) with an invalid Indigenous identity indicator were excluded. The 2016 Census counts were compared to 2015-16 ICCS data.

[17] For certain key stages (i.e., preliminary inquiry and trial), RRIs were calculated based on all accused at previous stages, since the data did not allow to identify the "at risk" group. Rates were only calculated where 30 or more individuals were "at risk" of experiencing the event or the outcome or where 10 or more individuals experienced a specific court stage/decision point. In cases where the White group had zero individuals, the RRI could not be calculated.

[18] Court decisions include: guilty; acquitted; stay of proceedings; withdrawn, dismissed and discharged; and, other (e.g., not criminally responsible, unfit to stand trial, special pleas, and waived out of province or territory).

[19] Sentence types include: custody; conditional sentence; probation; fine; and, other (e.g., absolute and conditional discharge, suspended sentence, community service order, and prohibition order).

[20] Other relevant court outcomes could not be included in this study due to data unavailability. These include bail hearings and decisions, as well as other pre-trial hearings, such as Charter challenges hearings.

data on the length of custodial sentences are also presented using the median length of custodial sentences in days as a measure (see Annex 2, Table 11 and Table 12).[21]

RRIs were generated for each of the years from 2005-06 to 2015-16.[22] To limit the scope of the report and facilitate reporting of results for Indigenous and White accused, RRIs are primarily presented in the text of the report as a single average across the 11-year period (i.e., rather than as 11 separate data points). Unless otherwise stated, RRIs are reported only if the data were available for each year of the 11-year period. This allowed for consistency in the reporting timeframe across court outcomes (e.g., court decisions and sentence types), as well as sub-outcomes (e.g., guilty finding and stay of proceedings or custodial sentence and probation). Since the average RRI may hide important variations from year to year, charts presenting the yearly RRIs are included for each court outcome examined, and notable trends are discussed.

The key RRI data presented in the report capture the total ICCS population. The RRI data were broken down by age groups (adults and youth), by sex (male and female), by type of offence (violent and non-violent) and by jurisdiction. RRIs for these groups are presented in the text where the data show a different trend than that of the Indigenous population as a whole or where disproportionality is more pronounced at a specific juncture of the criminal court process when additional variables are taken into account. These breakdowns are reported as an average over the 11-year period. In some cases, there were important variations over time within each breakdown category, particularly within jurisdictions. It should be noted that certain breakdowns, namely jurisdictional and youth data, resulted in low sample sizes and certain data points had to be suppressed to ensure data quality and the confidentiality of individuals.[23] These breakdowns are therefore unavailable for certain years. In these cases, a note was made in the report. Finally, data reported in the text of the report focus on the most notable results; complete data tables, including all available breakdowns, are presented in Annex 2.

Interpretation of RRI results

For each court outcome and breakdown, the average RRI of Indigenous accused is established in comparison with their White counterparts, which constitute the reference group. For example, the likelihood of Indigenous female accused receiving a preliminary inquiry is established in comparison to White female accused receiving a preliminary inquiry. A RRI of 1.00 means there is no disproportionality compared to the reference group. A RRI over 1.00 means that Indigenous accused are more likely to encounter a court outcome than the reference group. A RRI lower than 1.00 means that Indigenous accused are less likely to encounter a court outcome than the reference group.

For the purpose of this report, these thresholds were slightly adjusted. RRI values that were within four percent of the reference category (i.e., 1.00 +/- 0.04) were considered to present no disproportionality. For instance, Indigenous accused and White accused are considered equally likely to encounter a court

[21] The median represents the point at which half of all cases had longer custodial sentence lengths and half had shorter custodial sentence lengths.
[22] A case year refers to a twelve-month duration beginning April 1 and ending March 31, and represents the year in which all charges in the case reached a final decision. Individuals can appear across multiple years for different cases.
[23] Census suppression rules are applied to prevent direct or residual disclosure of any information deemed confidential that could identify respondents. Consequently, jurisdictions with a population below a certain threshold are not disclosed.

outcome, when the RRI value is situated between 0.96 and 1.04. A RRI of 0.95 (or -5%) or less would indicate that Indigenous accused are less likely than White accused to encounter a court outcome. A RRI of 1.05 (or +5%) or more would indicate that Indigenous accused are more likely than White accused to encounter a court outcome.

Table 1: Reporting and interpretation of RRI results

RRI value	Data reporting	Data interpretation
1.05 or more	+5% or more	Indigenous accused are more likely than White accused to encounter an outcome
0.96 to 1.04 **(1.00 = Reference)**	-4% to +4%	Indigenous and White accused are equally likely to encounter an outcome
0.95 or less	-5% or less	Indigenous accused are less likely than White accused to encounter an outcome

In this report, RRI values are presented as percentages (see Table 1). For example, a RRI value of 1.20 would be reported as 20% more likely or +20%. The same applies to RRI values that are less than 1.00. For example, a RRI value of 0.85 would be reported as 15% less likely or -15%. RRI values of 2.00 or greater can also be reported in multiples. For example, a RRI of 2.00 (or +100%) would be reported as twice as likely. However, charts plotting the RRI data trend over an 11-year period (presented in the findings) use the RRI values, rather than percentages.

3. Results

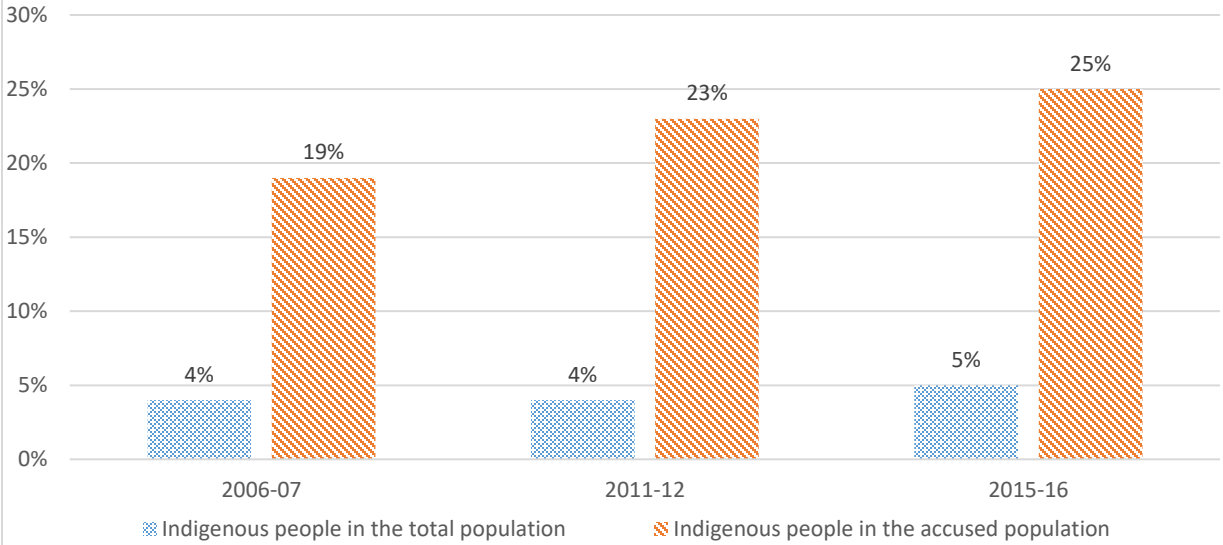
3.1 Proportion of Indigenous Accused in Criminal Court

Indigenous accused overrepresented in criminal court

In 2015-16, there were 199,895 accused with a completed criminal court case. As shown in Chart 1a, Indigenous people made up 25% of all accused (adults and youth), while representing only 5% of the Canadian population, which means they were overrepresented by a factor of five.[24] The Chart also shows that overrepresentation of Indigenous accused in criminal courts increased steadily, from 19% a decade earlier in 2006-07, even though the proportion of Indigenous people in Canada's population remained fairly stable over that decade. In comparison, White people accounted for 55% of all accused, representing a decrease from 63% a decade earlier in 2006-07 (see Chart 1b).

[24] Based on 2016 Census data. Individuals under 12 years of age were excluded from the Census population counts, as individuals within this age group are excluded in the ICCS.

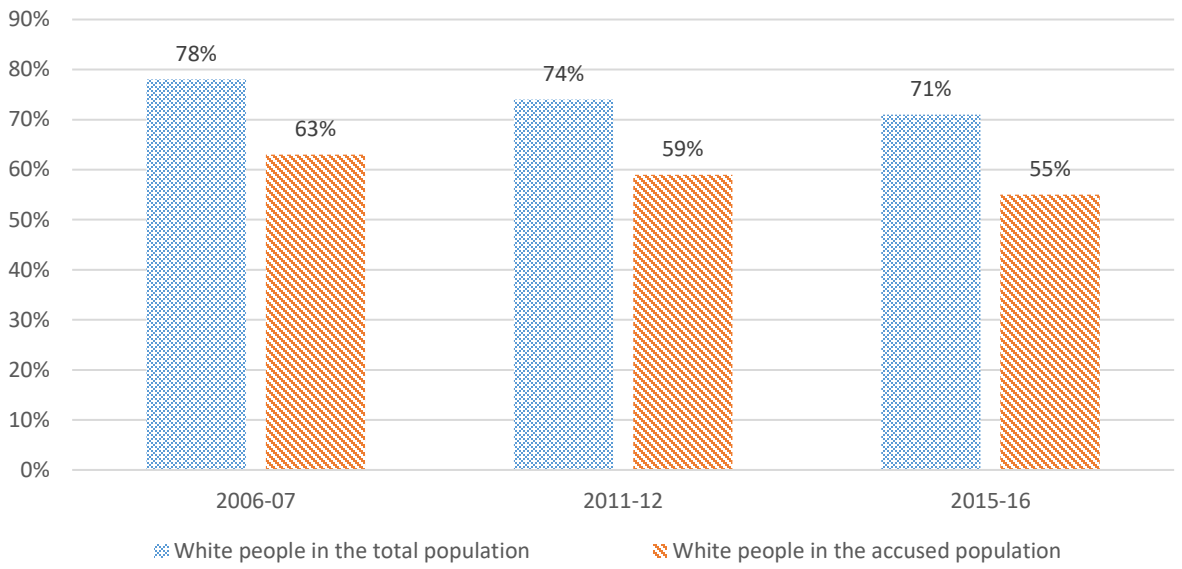
Chart 1a: Indigenous people as percentage of the total population and accused population with a completed court case, Canada, 2006-07, 2011-12, 2015-16



Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2006-07, 2011-12, 2015-16; Statistics Canada, Census of population, 2006, 2011, 2016. Custom tabulation by Department of Justice Canada.

Note: Total ICCS accused based on adjusted Census weights, total Census population counts based on Census weights. The following individuals were excluded from the total Census population count as similar individuals were excluded from the ICCS cohort: All individuals under 12 years of age, all individuals from QC and AB. For 2006 counts, all individuals (ICCS and Census population) with an invalid Indigenous indicator were excluded. 2016 Census counts were compared to 2015-16 ICCS data. Indigenous people includes First Nations, Inuit and Métis.

Chart 1b: White people as percentage of the total population and accused population with a completed court case, Canada, 2006-07, 2011-12, 2015-16



Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2006-07, 2011-12, 2015-16; Statistics Canada, Census of population, 2006, 2011, 2016. Custom tabulation by Department of Justice Canada.
Note: Total ICCS accused based on adjusted Census weights, total Census population counts based on Census weights. The following individuals were excluded from the total Census population count as similar individuals were excluded from the ICCS cohort: All individuals under 12 years of age, all individuals from QC and AB. 2016 Census counts were compared to 2015-16 ICCS data. White people includes those who identified as neither Indigenous nor as a visible minority.

Overrepresentation in criminal courts mirrored what has been found in the adult correctional services system. In 2015-16, Indigenous adults (18 years and older) accounted for 26% of admissions to provincial and territorial correctional services and 27% of admissions to federal correctional services (Reitano 2017), while representing approximately 4% of the Canadian adult population (Statistics Canada n. d.). A higher level of overrepresentation was observed in the youth correctional services system where Indigenous youth (aged 12 to 17), who represented 8% of the Canadian youth population (Statistics Canada n. d.), accounted for 35% of admissions in nine reporting jurisdictions (Malakieh 2017).[25]

3.2 Relative Rate Indexes

This section presents findings using the RRI method. The purpose of these analyses is to understand whether the criminal court process produces differential and disproportionate outcomes for Indigenous accused at different junctures (stages/decision points) of the process.[26] The results presented are based

[25] Data for Nova Scotia, Quebec, Saskatchewan and Alberta are not reported due to the unavailability of data.
[26] In this report, the judicial terms used to refer to the different stages and decision points of the process—such as preliminary inquiry, trial, guilty plea, withdrawal, dismissal, discharge, stay, acquittal, finding of guilt and

on different "at risk" groups, depending on the court stages/decision points. For this reason, the disproportionality found at each stage is considered independent of the disproportionality occurring at previous stages.

3.2.1 Court Proceedings (Preliminary Inquiries and Trials)

This sub-section presents findings on the different court proceedings experienced by individuals accused in criminal courts. Specifically, these analyses looked at all accused (group at risk) to identify whether Indigenous accused were more or less likely than White accused to: 1) have a preliminary inquiry; and 2) have a trial.

Indigenous accused more likely than White accused to have a preliminary inquiry

A preliminary inquiry is a judicial hearing where the court determines whether there is sufficient evidence in a case to commit the accused to trial (*R v Hynes* 2001). It essentially serves a screening function (ibid.). This procedure is reserved for cases where the accused is charged with an indictable offence (*Criminal Code* s 535).[27] Preliminary hearings are optional; either the accused or the Crown prosecutor must elect to have a preliminary inquiry in order for it to occur (Ibid. s 536 (2)).[28] There are a number of benefits to having a preliminary inquiry for both the accused and the Crown prosecutor, including the discovery of evidence, which allows for an informal review and better preparation before the trial (Paciocco 2003; Gold & Presser 1996).

Indigenous accused were on average 36% more likely than White accused to have a preliminary inquiry from 2005-06 to 2015-16. This disproportionality was more pronounced in earlier years (2007 to 2011) compared to more recent years (see Chart 2). A greater chance of encountering this outcome was observed among Indigenous male accused, Indigenous adult accused, Indigenous people accused of non-violent offences, and more notably, Indigenous people accused of violent offences (+67%), relative to their White counterparts.[29] However, Indigenous and White female accused were equally likely to

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sentence—are defined or intended in accordance to their meaning in the *Criminal Code*. These terms apply to both the adult and youth criminal justice system. As stipulated in section 2 of the *Youth Criminal Justice Act,* "[u]nless otherwise provided, words and expressions used in this Act have the same meaning as in the *Criminal Code*."

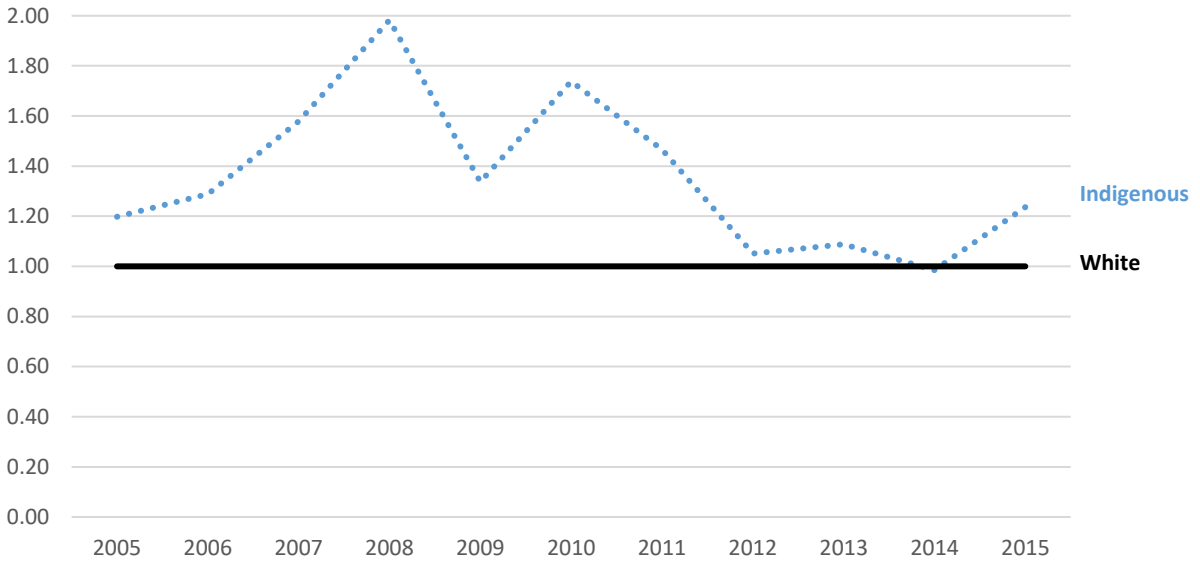
[27] There are three types of offences in the *Criminal Code* and other federal statutes (e.g., *Controlled Drug and Substance Act*), namely indictable offences, summary offences and hybrid offences (where the Crown prosecutor can elect to proceed by indictment or by summary conviction). Indictable offences differ from summary offences in that they are more serious offences and carry more severe sentences. Examples of indictable offences include robbery and homicide.

[28] In September 2019, Parliament passed former Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other acts and to make consequential amendments to other acts*, which restricted the availability of preliminary inquiries to offences punishable by imprisonment for a term of 14 years or more. This change occurred after the timeframe covered in this study and therefore does not apply to these data, but may affect future findings and trends. Data on admissions to federal custody between 2007-08 and 2016-17 show that about 4% of all individuals admitted received a sentence of 14 years or more, of which 25% were Indigenous (Correctional Service of Canada, special request - Custom tabulation prepared by the Department of Justice Canada).

[29] RRIs for Indigenous youth are not reported due to the unavailability of data.

have a preliminary inquiry (Indigenous = -3%). Findings varied between jurisdictions.[30] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 1 and Table 6.

Chart 2: Indigenous accused relative to White accused (RRI) who received a preliminary inquiry, Canada, 2005-06 to 2015-16



Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.
Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority.

These findings suggest that Indigenous accused are generally more likely than White accused to have a preliminary inquiry. The RRI does not account for potential differences in the types of offences (i.e., indictable or summary) for which Indigenous and White people were accused. This could be an important consideration, if Indigenous or White people are more or less likely to be accused of criminal offences that qualify for a preliminary inquiry. However, further breakdown of the RRI suggests that the extent of disproportionality is even more pronounced in the case of a violent offence, which warrants further exploration.

It should also be noted that these findings provide information only on the likelihood of Indigenous and White accused electing or receiving a preliminary inquiry, and not on the outcome of such a hearing (i.e., whether a decision was made to commit the accused to trial or to discharge the accused pursuant to section 548(1) of the *Criminal Code*). Previous research has examined the likelihood of an accused being committed to a trial following a preliminary inquiry, but there have been mixed results. The findings of Webster (2005) suggest that the likelihood of a trial decreased when a preliminary inquiry

[30] Compared to their White counterparts, Indigenous accused were more likely to have a preliminary inquiry in Manitoba, less likely in British Columbia, and equally likely in Ontario. Due to the unavailability of data, RRIs are not reported for New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan, and Yukon.

was conducted.[31] In contrast, the Department of Justice Canada (2010) found that a preliminary inquiry did not affect the likelihood of an accused being committed to trial.[32] Differences in the time period and methodology of these studies may explain these seemingly contradictory findings.

Indigenous accused less likely than White accused to have a trial

In the regular course of criminal court procedures, a trial will be held when the accused enters and maintains a plea of "not guilty," which calls upon the prosecutor to establish the guilt of the accused beyond a reasonable doubt, and a judge or jury to render a verdict as to the guilt of the accused. A trial may not be held if the accused encounters, for example, one of the following outcomes that put an end to the court proceedings: a stay of proceedings, a withdrawal, a dismissal or a discharge.

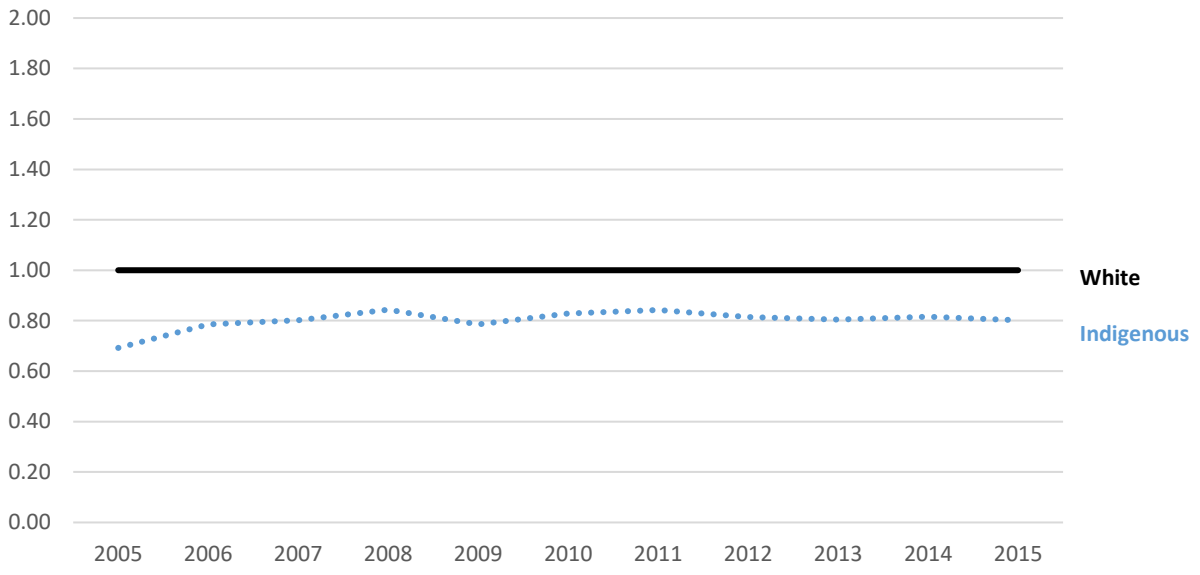
Indigenous accused were on average 20% less likely than White accused to have a trial from 2005-06 to 2015-16 (see Chart 3). A lesser chance of encountering this outcome was observed regardless of the sex, age group or offence type of the accused. There were notable differences among jurisdictions.[33] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 1 and Table 6.

[31] This study is based on adult criminal courts data in 11 Canadian jurisdictions, not including Manitoba and Nunavut, between 1998-99 and 2002-03, accounting for more than 2.2 million cases.

[32] This study examined the impact of former Bill C-15A on preliminary inquiries in Canada. It is based on criminal courts data from the Canadian Centre for Justice and Community Safety Statistics, specifically indictable cases that were closed in 2006-07 for Newfoundland and Labrador, New Brunswick, Ontario, Manitoba, Alberta, British Columbia, Northwest Territories, Nunavut and Quebec. The study examined cases where a preliminary inquiry was held between June 1, 2003 and May 31, 2005.

[33] Compared to their White counterparts, Indigenous accused were more likely to have a trial in Manitoba, New Brunswick, Nova Scotia, Northwest Territories, and Yukon; less likely in British Columbia, Nunavut, and Saskatchewan; and equally likely in Newfoundland and Labrador, and Ontario. Due to the unavailability of data, RRIs are not reported for Prince Edward Island.

Chart 3: Indigenous accused relative to White accused (RRI) who received a trial, Canada, 2005-06 to 2015-16



Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.
Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority.

These findings suggest that overall, among all accused, Indigenous accused are less likely to have a trial. However, notable variations were observed between jurisdictions. Further exploration of the possible reasons for this differential outcome is required to better understand if, for example, Indigenous accused are more likely to plead guilty or more likely to be diverted through alternative mechanisms. Data on guilty pleas and diversion cannot be examined specifically due to unavailability. However, the next section examines the outcomes of the disposition of cases, including whether Indigenous accused were more likely than White accused to have their charges withdrawn, their case dismissed, be discharged, or have their case stayed.

3.2.2 Court Decisions

This sub-section presents findings on the different court decisions encountered by individuals accused in criminal courts. Specifically, these analyses looked at all accused (group at risk) to identify whether Indigenous accused were more or less likely than White accused to: 1) make a guilty plea; 2) have their

charges withdrawn, their case dismissed, or be discharged; 3) have their case stayed; 4) be acquitted; and 5) be found guilty.[34]

Indigenous accused less likely than White accused to encounter a withdrawal, dismissal and discharge and to be acquitted, and more likely to have their case stayed and to have a finding of guilt

Guilty pleas

When charged with an offence, accused are required to either plead guilty or not guilty when they first appear in court (*Criminal Code* s 606 (1)). If an accused pleads guilty, the judge will inquire about the validity of the plea (Ibid. s 606 (1.1)). If the plea is accepted, the accused will proceed to the sentencing phase of the process. If an accused pleads not guilty, the judge will set a trial date and in certain circumstances, a date for a preliminary inquiry.

Data on guilty pleas are inconsistently collected across and within jurisdictions, rendering them unreliable for reporting. Further, administrative court data do not distinguish between a guilty plea and a finding of guilt when registering a final court decision. For this reason, guilty pleas are captured under findings of guilt in the section below entitled *Guilty finding*. This gap highlights the need for better data collection and reporting across courts administrations in order to understand whether Indigenous accused are more likely than White accused to plead guilty.

Withdrawal, dismissal, and discharge

In criminal court, charges may be withdrawn, a case dismissed, or an accused discharged. These dispositions all put an end to criminal court proceedings. A Crown prosecutor has the discretion to withdraw charges, which means that they do not place the charges before the judge and they discontinue the prosecution (*Krieger v Law Society of Alberta* 2002; *R v Forrester* 1976). This may arise in cases where there is no reasonable prospect of conviction (Roach n.d.).[35] Additionally, the judge has a discretionary power to dismiss a case by not allowing it to proceed after charges are filed (*R v Fletcher* 1990). This may occur in various circumstances, including lack of prosecution (i.e., failure to take appropriate actions to properly prosecute the accused). An accused may also be discharged upon a preliminary inquiry where the court decides not to commit the accused for trial on the basis that there is insufficient evidence to prosecute (*Criminal Code* s 548).[36] For the purpose of this analysis, these three outcomes were combined.

Indigenous accused were on average 55% less likely than White accused to encounter a withdrawal, dismissal or discharge from 2005-06 to 2015-16 (see Chart 4). A lesser chance of encountering this

[34] In cases where there are two or more charges, a case is represented by the most serious decision. Decisions are ranked from most to less serious as follows: guilty; acquitted; stay of proceedings; withdrawn, dismissed and discharged; and other (e.g., not criminally responsible, unfit to stand trial, special pleas, and waived out of province or territory). Other decisions were not specifically examined in this study due to their lower occurrence.
[35] Withdrawals for alternative measures, such as completion of a diversion program under *Criminal Code* s 716 and 717, are captured under *Stay of proceedings*.
[36] Cases where an accused is discharged after being found guilty (absolute or conditional discharge) are captured under *Guilty finding*.

outcome was observed regardless of the sex, age group and offence type of the accused. Results varied by jurisdiction.[37] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 2 and Table 7.

Stay of proceedings

A stay is an order by the judge or the Crown prosecutor that prevents any further action on a prosecution, either temporarily or permanently (*R v Jewitt* 1985; *Criminal Code* s 579). A judge may enter a stay as a form of remedy under section 24(1) of the *Canadian Charter of Rights and Freedoms* when the rights of an accused have been infringed or denied (*R v O'Connor* 1995). A Crown prosecutor may also enter a stay, for example, for the purpose of protecting the identity of an informant (*R v Scott* 1990), or conducting further investigation that was previously unforeseen (Roach n.d.). In this study, data on the decision to stay the proceedings may also include instances where charges are stayed or withdrawn due to alternative measures, extrajudicial measures or other diversion programs. It is currently not possible to distinguish between these various decisions due to data limitations.

Indigenous accused were on average 47% more likely than White accused to have their case stayed from 2005-06 to 2015-16 (see Chart 4).[38] A greater chance of encountering this outcome was observed regardless of the sex, age group and offence type of the accused. The magnitude of disproportionality was more pronounced in the case of a violent offence; Indigenous people accused of violent offences were more than twice as likely (+113%) than their White counterparts to have their case stayed. Results varied by jurisdiction.[39] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 2 and Table 7.

Acquittal

An accused may be acquitted when a judge or jury returns a verdict of not guilty. Indigenous accused were on average 33% less likely than White accused to be acquitted from 2005-06 to 2015-16 (see Chart 4).[40] A lesser chance of encountering this outcome was observed regardless of the sex, age group and offence type of the accused. Results varied by jurisdiction.[41] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 2 and Table 7.

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[37] Compared to their White counterparts, Indigenous accused were more likely to encounter a withdrawal, dismissal or discharge in Yukon; less likely in British Columbia, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Ontario, and Saskatchewan; and equally likely in New Brunswick. Due to the unavailability of data, RRIs are not reported for Manitoba, Nunavut, and Prince Edward Island.

[38] The yearly RRIs showed some important variations; they were much higher in earlier years and in the last year, which may affect the average RRI.

[39] Compared to their White counterparts, Indigenous accused were more likely to have their case stayed in Nova Scotia, Northwest Territories, and Yukon; less likely in British Columbia, Manitoba, Nunavut, and Saskatchewan; and equally likely in Ontario. Due to the unavailability of data, RRIs are not reported for New Brunswick, Newfoundland and Labrador, and Prince Edward Island.

[40] The yearly RRIs showed some important variations; they were higher in 2007-08 and 2008-09, and lower in 2009-10, which may affect the average RRI.

[41] Compared to their White counterparts, Indigenous accused were more likely to be acquitted in Nova Scotia; and less likely in British Columbia, Manitoba, and Ontario. Due to the unavailability of data, RRIs are not reported for New Brunswick, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan, and Yukon.

Guilty finding

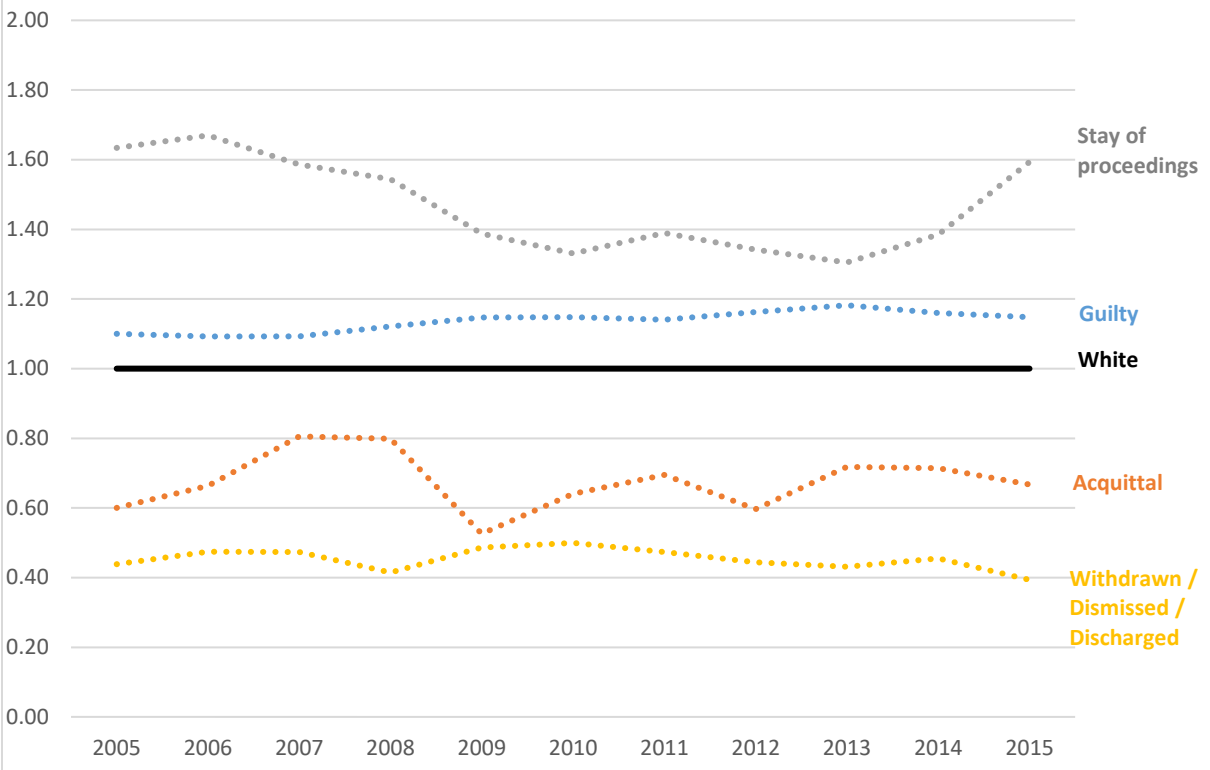
Upon undergoing a trial, an accused may be found guilty and convicted of an offence. Used here, the term "guilty finding" includes both findings of guilt[42] by the court and guilty pleas, since the current data do not allow for the examination of guilty pleas on their own. Guilty findings are the most frequent type of court outcome. In 2016-17, guilty findings represented 63% and 54% of all completed cases in adult and youth criminal court, respectively, and has remained fairly stable over the past decade (Miladinovic 2019).

Indigenous accused were on average 14% more likely than White accused to be found guilty (includes guilty pleas) from 2005-06 to 2015-16 (see Chart 4). A greater chance of encountering this outcome was observed regardless of the sex, age group and offence type of the accused. Results varied by jurisdiction.[43] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 2 and Table 7.

[42] Guilty findings include findings of guilt for the charged offence, but can also include findings of guilt for an included offence, an attempt of the charged offence, or an attempt of an included offence, as well as cases where an absolute or conditional discharge has been imposed.

[43] Compared to their White counterparts, Indigenous accused were more likely to plead or be found guilty in British Columbia, Manitoba, Northwest Territories, Nunavut, Ontario, Prince Edward Island, and Saskatchewan; less likely in Yukon; and equally likely in New Brunswick, Newfoundland and Labrador, and Nova Scotia.

Chart 4: Indigenous accused relative to White accused (RRI), by court decision, Canada, 2005-06 to 2015-16



Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.
Note: Includes 11 provinces and territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. Guilty includes guilty findings by the court and guilty pleas. Stay of proceedings includes judicial stay, prosecutorial stay, and stay or withdrawn due to alternative measures, extrajudicial measures or other diversion program.

In sum, these findings indicate that Indigenous accused are generally less likely than White accused to encounter a withdrawal, dismissal or discharge, or to be acquitted. Conversely, they are generally more likely to encounter a stay of proceedings and to be found guilty or to plead guilty. However, there were a few exceptions among jurisdictions where a different trend was observed for these court outcomes.

Previous research has suggested that Indigenous accused may be more likely to plead guilty, even when they are factually innocent (i.e., false guilty pleas; Bressan & Coady 2017). A number of factors have been identified to explain this finding, including: Indigenous people having a limited understanding of the CJS or wanting to get their court proceedings over with, being denied bail, wanting to obtain a lesser charge or reduced sentence, social vulnerabilities, and conflicts between Indigenous cultures and world

views and the philosophy of the CJS (ibid.).[44] In this context, findings indicating a greater likelihood of Indigenous accused being found guilty may be an indication of a greater issue surrounding the fair administration of justice. Further exploration of data specific to guilty pleas would be required to better understand this issue.

Additionally, the data presented in this report do not distinguish between judicial stays, prosecutorial stays or stays for other reasons, including alternative measures, extrajudicial measures or other diversion programs. Considering the different reasons for which a case may be stayed and the fact that Indigenous people are more likely to encounter this outcome, this is an important area for further examination to determine if these findings represent a positive or negative outcome for Indigenous people. For example, if Indigenous accused are more likely to encounter stays related to infringements of rights, this would point to systemic discrimination issues within the CJS. Conversely, if Indigenous accused are more likely to encounter stays for diversion purposes, this could be indicative of efforts to reduce overrepresentation within the CJS.

3.2.3 Sentencing Outcomes

This sub-section presents findings on the different sentencing outcomes of criminal court cases with a guilty disposition. Specifically, these analyses looked at all accused who were found guilty (group at risk) to identify whether Indigenous accused were more or less likely than White accused to obtain: 1) fines; 2) probation sentences; 3) conditional sentences; and, 4) custody sentences.

Among those found guilty, Indigenous accused less likely than White accused to receive fines and probation sentences, and more likely to receive conditional sentences and custody sentences

Upon being found guilty of an offence, an individual receives a sentence based on a number of factors and principles (*Criminal Code* s 718, s 718.1 and s 718.2). Possible sentences, in order of seriousness from less to most, include fines, probation, conditional sentence and custody.[45]

Fines

A judge may impose that an accused pays a fine as their sentence. Among all those found guilty, Indigenous accused were on average 14% less likely than White accused to receive a fine from 2005-06 to 2015-16 (see Chart 5). A lesser chance of encountering this outcome was observed for Indigenous male accused, Indigenous adult accused, and Indigenous people accused of non-violent offences, relative to their White counterparts. However, different outcomes were observed when considering

[44] This qualitative study was based on interviews that were held between November 2016 and January 2017, with 25 justice system professionals located across all provinces and territories, with the exception of New Brunswick and Newfoundland and Labrador. Participants were asked multiple questions regarding their knowledge and experience of Indigenous people in the CJS, including questions about the circumstances under which Indigenous people plead guilty.

[45] These findings are based on the most serious sentence in a case. Other sentences include, among others, absolute and conditional discharge, suspended sentence, community service order and prohibition order. Other sentences, which are the least serious sentence types, are often used in combination with other more serious sentences. These were not specifically examined in this study due to their lower occurrence as a most serious sentence.

other characteristics. Indigenous and White female accused were equally likely to receive a fine (Indigenous = +1%). Among youth, Indigenous accused were more likely (+11%) than White accused to receive a fine. Additionally, Indigenous people accused of violent offences were more than twice as likely (+144%) than their White counterparts to receive a fine. Finally, Indigenous accused were consistently less likely to receive a fine than their White counterparts across all reporting jurisdictions.[46] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 3 and Table 8.

Probation sentences

A probation sentence entails a judge allowing an individual to be released into the community under certain conditions that are prescribed in a probation order (*Criminal Code* s 731). In 2016-17, probation continued to be the most common sentence type imposed in both adult and youth criminal court, representing 44% and 57% of guilty cases, respectively (Miladinovic 2019).

Among all those found guilty, Indigenous accused were on average 13% less likely than White accused to receive probation from 2005-06 to 2015-16 (see Chart 5). A lesser chance of encountering this outcome was observed for Indigenous male and female accused, Indigenous adult accused, and both Indigenous people accused of violent and non-violent offences, relative to their White counterparts. However, Indigenous and White youth accused were equally likely to receive probation (Indigenous = 0%). Results varied greatly by jurisdiction, where a number of provinces and territories reported the inverse trend.[47] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 3 and Table 8.

Conditional sentences

A conditional sentence is a sentence that is served in the community under strict conditions (*Criminal Code* s 742.1).[48] Conditional sentences were introduced by Parliament in 1996 as part of sentencing reforms (former Bill C-41) in an attempt to lessen the use of custody sentences in Canada.

[46] The average RRI for Nunavut should be used with caution, as the RRI was not available in 2013-14 and was calculated based on a ten-year period. Due to the unavailability of data, RRIs are not reported for Prince Edward Island.

[47] Compared to their White counterparts, Indigenous accused were more likely to receive probation in British Columbia, New Brunswick, Northwest Territories, Nunavut, Yukon, and more notably, in Manitoba; and equally likely in Newfoundland and Labrador, Nova Scotia, Ontario, and Saskatchewan. The average RRI for the Northwest Territories should be used with caution, as the RRI was not available in 2014-15 and was calculated based on a ten-year period. Data for Northwest Territories should be used with caution, as the number of custody orders have been under-reported; the majority of custody orders were captured as probation. Due to the unavailability of data, RRIs are not reported for Prince Edward Island.

[48] While a conditional sentence may be similar to a probation sentence in that they are both served in the community, they present multiple differences. A probation sentence is primarily a rehabilitative sentencing tool, while a conditional sentence seeks to fulfill punitive and rehabilitative sentencing objectives (*R v Proulx* 2000).

Among all those found guilty, Indigenous accused were on average 11% more likely than White accused to receive a conditional sentence from 2005-06 to 2015-16 (see Chart 5).[49] A greater chance of encountering this outcome was observed for Indigenous male accused, Indigenous adult accused, and more notably, Indigenous people accused of violent offences (+60%), relative to their White counterparts.[50] However, Indigenous accused of non-violent offences were less likely (-5%) than White accused to receive a conditional sentence. Indigenous and White female accused were equally likely to receive a conditional sentence (Indigenous = -3%). Results varied by jurisdiction.[51] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 3 and Table 8.

Custody sentences

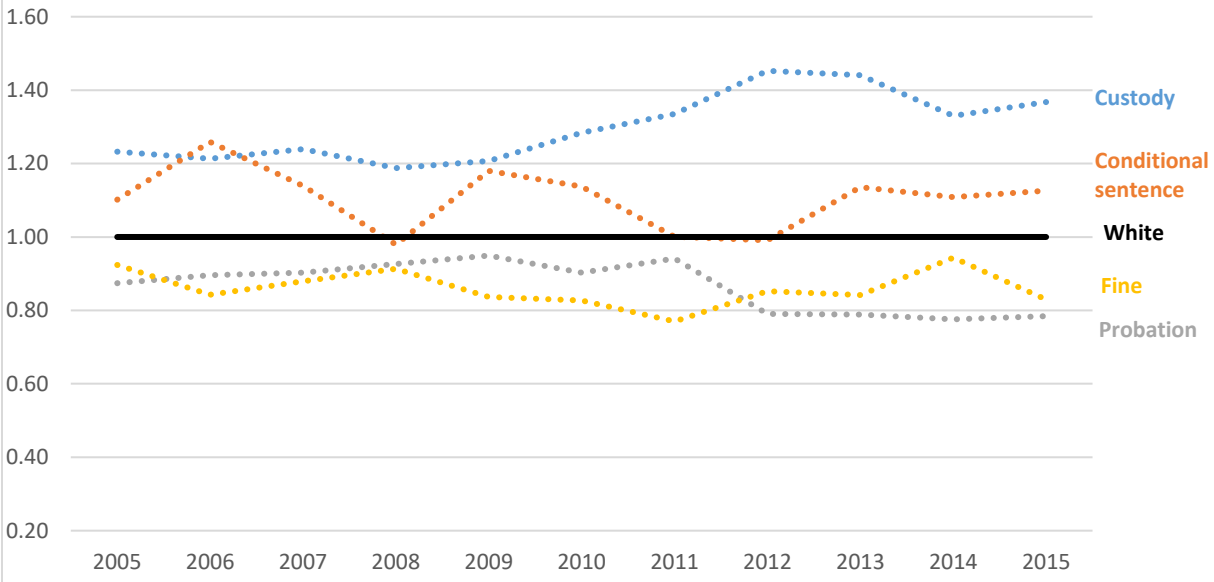
As detailed in the *Criminal Code* (s 718.2(e)), a custody sentence should be imposed as a last resort and all available sentences, other than imprisonment, should be considered, with particular attention given to the situation of Indigenous offenders. Among all those found guilty, Indigenous accused were on average 30% more likely than White accused to receive a custody sentence from 2005-06 to 2015-16 (see Chart 5).[52] A greater chance of encountering this outcome was observed regardless of the sex, age group and offence type of the accused. Additionally, a greater chance of encountering this outcome was observed across all reporting jurisdictions to a varying degree, with the exception of Prince Edward Island, where Indigenous and White accused were equally likely to receive a custody sentence.[53] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 3 and Table 8.

Additional analyses were conducted to better understand the likelihood of Indigenous accused to obtain a conditional sentence over a custody sentence. Among accused who received either a custody sentence or a conditional sentence, Indigenous accused were on average 11% less likely than White accused to receive a conditional sentence from 2005-06 to 2015-16. A lesser chance of encountering this outcome was observed for Indigenous male and female accused, Indigenous adult accused and Indigenous people accused of non-violent offences, relative to their White counterparts.[54] Conversely, Indigenous people accused of violent offences were more likely (+17%) than their White counterparts to receive a

[49] The yearly RRIs showed important variations; they were much lower in 2008-09, 2011-12 and 2012-13, which may affect the average RRI. The Northwest territories do not report conditional sentencing at this time.
[50] Due to the unavailability of data, RRIs are not reported for Indigenous youth.
[51] Compared to their White counterparts, Indigenous accused were more likely to receive a conditional sentence in New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, and Saskatchewan; and less likely in British Columbia, Manitoba, and Yukon. The average RRI for Yukon should be used with caution as it was not available in 2013-14 and was calculated based on a ten-year period. Due to the unavailability of data, RRIs are not reported for Northwest Territories, Nunavut, and Prince Edward Island.
[52] The yearly RRIs showed an upward trend in more recent years, which may slightly affect the average RRI.
[53] Compared to their White counterparts, Indigenous accused were more likely to receive a custodial sentence in British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Ontario, Saskatchewan, and more notably, in Yukon. The average RRI for Prince Edward Island should be used with caution as it was not available in 2011-12 and was calculated based on a ten-year period. Data for Northwest Territories should be used with caution, as the number of custody orders have been under-reported; the majority of custody orders were captured as probation. Due to the unavailability of data, RRIs are not reported for Nunavut.
[54] Due to the unavailability of data, RRIs are not reported for Indigenous youth.

conditional sentence. Results varied by jurisdiction.[55] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 4 and Table 9.

Chart 5: Indigenous accused relative to White accused (RRI), by type of sentence, Canada, 2005-06 to 2015-16



Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016
Note: Includes 11 provinces and territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. The Northwest Territories do not report conditional sentences at this time. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority.

In sum, of the individuals who were found guilty, Indigenous accused were less likely to receive a fine, with the exception of Indigenous female accused, Indigenous youth accused and Indigenous people accused of a violent offence. They were also less likely to receive a probation sentence, with the exception of Indigenous youth and Indigenous accused in a few jurisdictions. Conversely, Indigenous accused were more likely to receive a conditional sentence, with the exception of Indigenous female accused and Indigenous accused in a few jurisdictions. Finally, Indigenous accused were consistently more likely to receive a custody sentence, a finding which is consistent with trends in admissions to correctional services data (Malakieh 2020).

Indigenous accused were therefore more likely to obtain more serious sentences with greater restrictions (custody or conditional sentences) and less likely to obtain less serious sentences (probation or fine), in comparison to White accused, when only considering those found guilty. Further, of the

[55] Compared to their White counterparts, Indigenous accused were more likely to receive a custodial sentence in Ontario; less likely in British Columbia, Newfoundland and Labrador, Nova Scotia, and more notably, in Manitoba; and equally likely in New Brunswick and Saskatchewan. Due to the unavailability of data, RRIs are not reported for Northwest Territories, Nunavut, Prince Edward Island, and Yukon.

accused who received a more serious sentence (i.e., conditional sentence or custody sentence), Indigenous accused were less likely to receive a conditional sentence compared to White accused, with the exception of Indigenous people accused of violent offences. These findings remain consistent with previous research and statistical data showing a more prominent use of custody sentences over conditional sentences for Indigenous people (Reid 2017).

A note on Gladue principles

In 1999, the Supreme Court of Canada set out sentencing principles to be applied to Indigenous accused, which are known today as Gladue principles (*R v Gladue* 1999).[56] The Gladue principles issued from this crucial decision, and reaffirmed in other subsequent decisions (*R v Ipeelee* 2012), require that all sentencing judges take into account a number of unique systemic and background factors that may have contributed to the Indigenous individual appearing in court. These factors refer to the history of discrimination against Indigenous peoples in Canada, which have resulted in systemic discrimination. Accordingly, a judge must consider the types of sentencing procedures and sanctions that may be most appropriate for Indigenous people given their Indigenous heritage.

Gladue principles do not prescribe an automatic reduction of a sentence solely based on the Indigenous identity of an individual, but rather a careful consideration of the circumstances surrounding the Indigenous individual, in order to render the appropriate sentence. In light of these principles, a judge may consider alternative sanctions to custody and conditional sentence, such as probation.

Although there are no national data available on the number and outcome of Indigenous court cases where Gladue principles were taken into consideration during sentencing (e.g., through Gladue reports[57] or specialized courts), it has been reported that Gladue principles are inconsistently applied (Iacobucci 2013; Pfefferle 2008; Roach 2009). Furthermore, available research on the consideration of Gladue factors in sentencing decisions has produced contradictory findings.[58] Given the current study's finding

[56] In *R v Gladue* (1999), the defendant, an Indigenous woman, was charged with manslaughter for the killing of her common-law husband, to which she pleaded guilty. In determining the appropriate sentence, the trial judge considered mitigating and aggravating factors, as well as the sentencing objectives of denunciation, deterrence and rehabilitation. The sentencing judge did not give any special consideration to the circumstances surrounding the Indigenous status of the defendant as both the accused and the victim lived off-reserve in an urban area. The sentencing judge concluded that a sentence of three years' imprisonment was appropriate in the circumstances. The main question in litigation was whether the trial judge applied correctly the sentencing principles. While the Supreme Court of Canada acknowledged that the trial judge erred in not giving special consideration to the Indigenous status of the defendant, the court dismissed the appeal considering that a sentence of three years' imprisonment was appropriate in the circumstances.

[57] Gladue reports are produced by caseworkers at the request of the Crown prosecutor, defendant, or the judge to provide the sentencing judge with information on the life circumstances of the Indigenous offender that may have brought them before the court, as well as to make recommendations as to what would constitute an appropriate sentence (Rudin n.d.; Department of Justice Canada 2017a).

[58] For example, Barnett and Sundhu (2014) found that the majority (76%) of offenders who had a Gladue Report received a shorter sentence compared to Indigenous offenders that did not have a Gladue Report completed when sentenced for a repeat offence. Conversely, Welsh and Ogloff (2008) found that Indigenous status alone was not a significant predictor of the likelihood of receiving a custodial sentence. Aggravating and mitigating factors (offence

that among those found guilty, Indigenous accused were more likely to receive a custody sentence compared to White accused, this may indicate that Gladue principles are not sufficient in themselves to address over incarceration of Indigenous people. Rather, they should be considered as one of many mechanisms that contribute to the broader efforts required to tackle the issue (Department of Justice Canada 2017a). In addition, considering this study's finding that among all those receiving a custody or a conditional sentence, there is a more prominent use of custody sentences for Indigenous accused compared to White accused, further research would be required to understand how Gladue principles are being considered during sentencing.

3.2.4 Length of Custodial Sentences

This sub-section presents findings on the length of custodial sentences. Specifically, these analyses looked at all accused who were sentenced to custody (group at risk) to identify whether Indigenous accused were more or less likely than White accused to obtain varying custodial terms. The ICCS categorizes custodial terms into six groups: 1) "1 month or less"; 2) "greater than 1 month to 3 months"; 3) "greater than 3 months to 6 months"; 4) "greater than 6 months to 12 months"; 5) "greater than 1 year to less than 2 years"; and, 6) "2 years or more."[59,60] For the purpose of this report, these custodial terms have been grouped under three categories: long-term custodial sentence ("greater than 1 year to less than 2 years" and "2 years or more"), medium-term custodial sentence ("greater than 3 months to 6 months" and "greater than 6 months to 12 months"), and short-term custodial sentence ("1 month or less" and "greater than 1 month to 3 months").

The length of custodial sentences determines which correctional service will have jurisdiction over an individual. Provincial or territorial correctional services have jurisdiction over an individual that is sentenced to a custodial term of less than two years, while federal correctional services have jurisdiction over individuals sentenced to a custodial term of two years or more.

Among those sentenced to custody, Indigenous accused less likely to receive a long-term custodial sentence of two years or more

Short-term custodial sentence

Among all those sentenced to custody, Indigenous and White accused were on average equally likely to receive a short-term custodial sentence of "1 month or less" (Indigenous = 0%) from 2005-06 to 2015-16 (see Chart 6a). A similar chance of encountering this outcome was observed for both Indigenous male and female accused, Indigenous adult accused and Indigenous people accused of non-violent offences, relative to their White counterparts. However, Indigenous youth accused and Indigenous people accused of violent offences were less likely to encounter this outcome relative to their White counterparts (-22% and -15%, respectively). Results varied by jurisdiction, with a number of provinces

seriousness, prior criminal history and the offender's plea) or sentencing objectives cited by judges appeared to be better predictors.

[59] The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custodial sentence represents the full sentence.

[60] Data on the length of custodial sentences are not available for Manitoba.

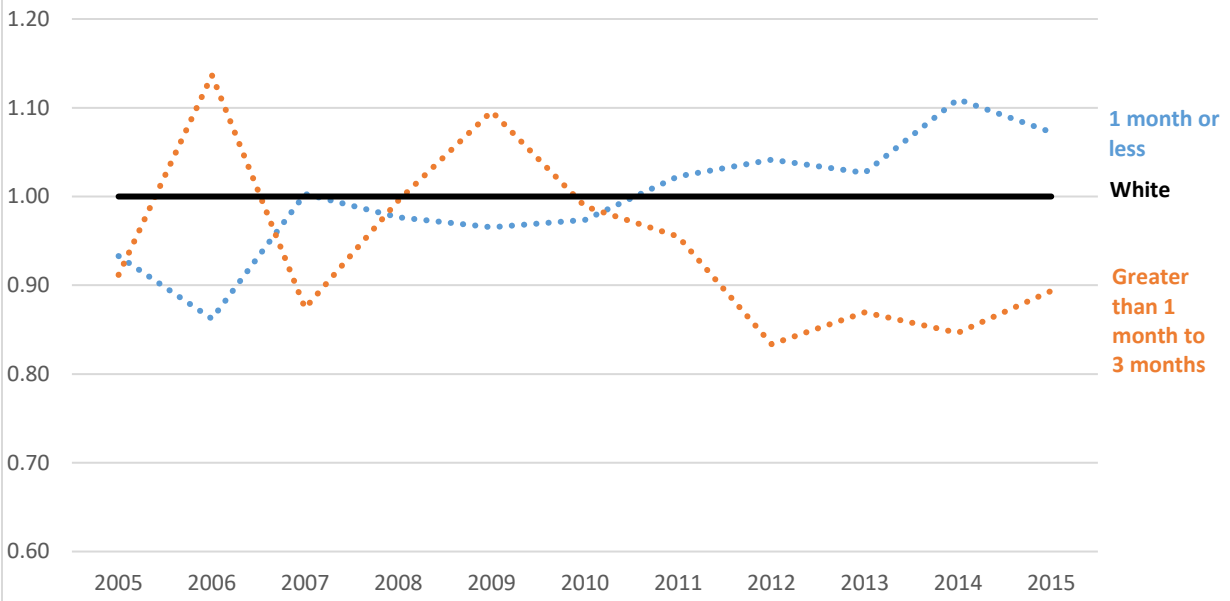
and territories reporting a different trend.[61] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 5 and Table 10.

Furthermore, among all those sentenced to custody, Indigenous accused were on average 5% less likely than White accused to receive a short-term custodial sentence "greater than 1 month to 3 months" from 2005-06 to 2015-16 (see Chart 6a). A lesser chance of encountering this outcome was observed for Indigenous male accused, Indigenous adult accused and Indigenous people accused of violent or non-violent offences, relative to their White counterparts. Conversely, Indigenous youth accused were more likely (+27%) than their White counterparts to encounter this outcome. Indigenous and White female accused were equally likely to encounter this outcome (Indigenous = +4%). Results varied by jurisdiction.[62] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 5 and Table 10.

[61] Compared to their White counterparts, indigenous accused were more likely to receive a short-term custodial sentence of "1 month or less" in British Columbia, Newfoundland and Labrador, Nova Scotia, Ontario, Saskatchewan, and more notably, in Yukon; and equally likely in New Brunswick. Due to the unavailability of data, RRIs are not reported for Manitoba, Northwest Territories, Nunavut, and Prince Edward Island.

[62] Compared to their White counterparts, Indigenous accused were more likely to receive a short-term custodial sentence "greater than 1 month to 3 months" in Newfoundland and Labrador; and less likely in British Columbia, Nova Scotia, Ontario, and Saskatchewan. The average RRI for Nova Scotia should be used with caution as the RRI was not available in 2007-08 and was calculated based on a ten-year period. Due to the unavailability of data, RRIs are not reported for Manitoba, New Brunswick, Northwest Territories, Nunavut, Prince Edward Island, and Yukon.

Chart 6a: Indigenous accused relative to White accused (RRI) who received a short-term custodial sentence, Canada, 2005-06 to 2015-16



Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.
Note: Includes 10 provinces and territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Data on the length of custodial sentences are not available for Manitoba. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence.

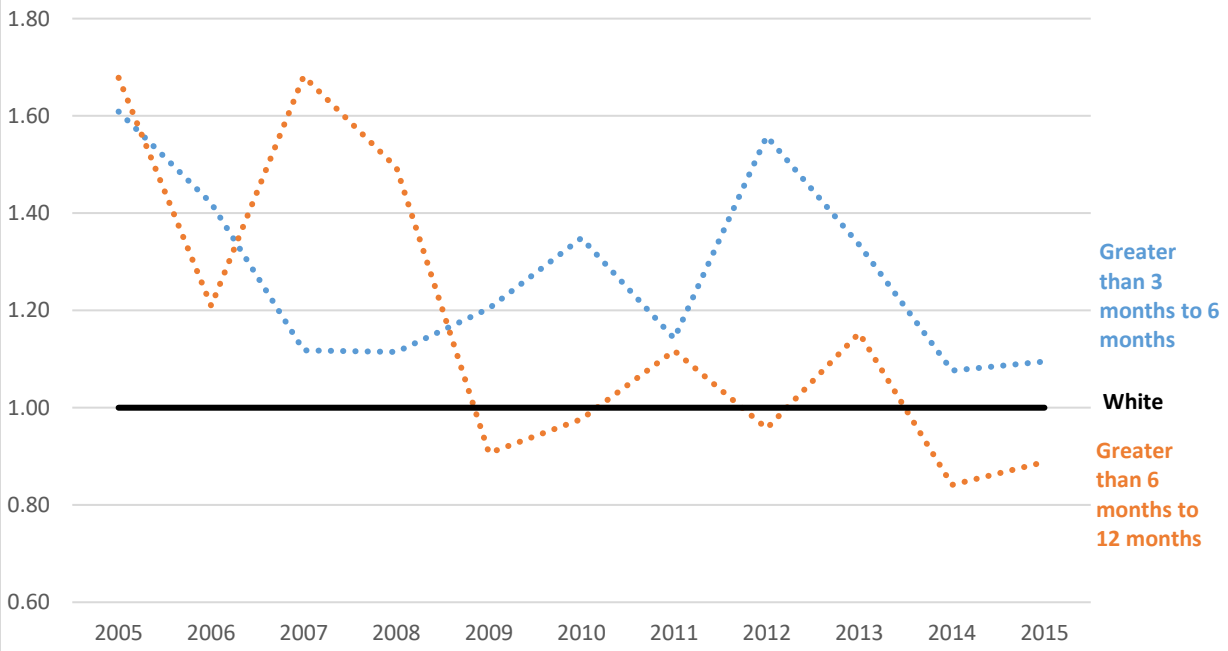
Medium-term custodial sentence

Overall, a different trend was observed for medium-term custodial sentences. Among all those sentenced to custody, Indigenous accused were on average more likely than White accused to receive a medium-term custodial sentence "greater than 3 months to 6 months" (+27%)[63] and "greater than 6 months to 12 months" (+17%),[64] from 2005-06 to 2015-16 (see Chart 6b). A greater chance of encountering these outcomes was observed regardless of sex and age group. Notably, Indigenous female accused[65] and Indigenous youth accused[66] were both more than twice as likely to receive a

[63] The yearly RRIs for medium-term custodial sentences "greater than 3 months to 6 months" showed important variation; they were much lower in recent years and much higher in 2005-06 and 2012-13, which may affect the average RRI.
[64] The yearly RRIs for medium-term custodial sentences "greater than 6 months to 12 months" showed important variation; they were much lower in recent years and much higher in 2005-06 and 2007-08, which may affect the average RRI.
[65] The average RRI for Indigenous female should be used with caution as there was a strong deviation in 2006-07.
[66] The average RRI for Indigenous youth should be used with caution as the RRI was not available in 2006-07 and was calculated based on a ten-year period.

medium-term custodial sentence "greater than 6 months to 12 months," relative to their White counterparts (+178% and +119%, respectively). Indigenous people accused of violent offences were more likely to encounter these outcomes relative to their White counterparts. In the case of non-violent offences, Indigenous accused were more likely to receive a medium-term custodial sentence "greater than 3 months to 6 months," but equally likely (-2%) as their White counterparts to receive a medium-term custodial sentence "greater than 6 months to 12 months." Results varied by jurisdiction.[67,68] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 5 and Table 10.

Chart 6b: Indigenous accused relative to White accused (RRI) who received a medium-term custodial sentence, Canada, 2005-06 to 2015-16



Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.
Note: Includes 10 provinces and territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Data on the length of custodial sentences data are not available for Manitoba. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence.

[67] Compared to their White counterparts, Indigenous accused were more likely to receive a medium-term custodial sentence "greater than 3 months to 6 months" in Saskatchewan; less likely in British Columbia; and equally likely in Ontario. Due to the unavailability of data, RRIs are not reported for Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Prince Edward Island, and Yukon.
[68] Compared to their White counterparts, Indigenous accused were less likely to receive a medium-term custodial sentence "greater than 6 months to 12 months" in British Columbia; and equally likely in Ontario and Saskatchewan. Due to the unavailability of data, RRIs are not reported for Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Prince Edward Island, and Yukon.

Long-term custodial sentence

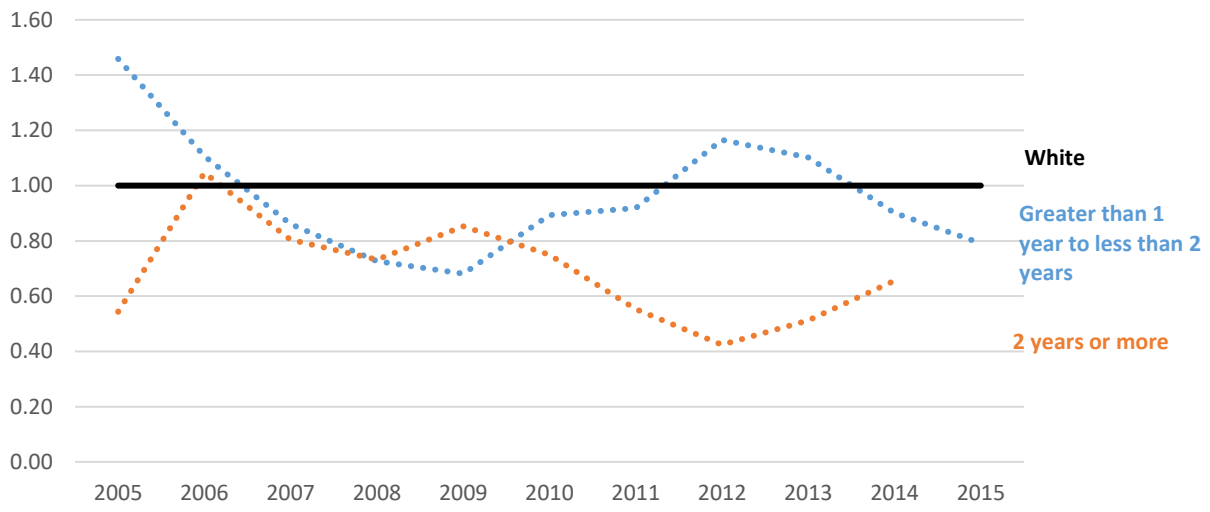
Among all those sentenced to custody, Indigenous and White accused were equally likely (Indigenous = - 4%) to receive a long-term custodial sentence "greater than 1 year to less than 2 years" from 2005-06 to 2015-16 (see Chart 6c). The yearly RRIs for this custodial term showed important variation; they were much lower in 2009-10 and much higher in 2005-06 and 2012-13, which may affect the average RRI. An equal chance of encountering this outcome was observed for Indigenous male accused and Indigenous adult accused, relative to their White counterparts.[69] However, Indigenous people accused of violent offences were more likely (+19%) than their White counterparts to receive a long-term custodial sentence "greater than 1 year to less than 2 years," while those accused of non-violent offences were less likely (-30%) than their White counterparts to encounter this outcome. A lower chance of encountering this outcome was observed for reporting jurisdictions, namely British Columbia and Ontario.[70] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 5 and Table 10.

When considering long-term custodial sentences of "two years or more," among all those sentenced to custody, Indigenous accused were on average 31% less likely than White accused to encounter this outcome from 2005-06 to 2015-16 (see Chart 6c).[71] A lesser chance of encountering this outcome was observed for Indigenous male accused, Indigenous adult accused, and both Indigenous people accused of violent and non-violent offences, relative to their White counterparts.[72] Similarly, Indigenous accused were less likely than their White counterparts to encounter this outcome in Ontario.[73] RRI data broken down by accused characteristics and jurisdiction are provided in Annex 2, Table 5 and Table 10.

It should be noted that while Indigenous accused (of all those sentenced to custody) are less likely to receive a long-term custodial sentence of "two years or more," this does not mean that Indigenous people are not overrepresented in federal custody in comparison to their representation in the Canadian population. This only suggests that decisions on custodial sentence length do not appear to be further contributing to their overrepresentation.

[69] Due to the unavailability of data, RRIs are not reported for Indigenous youth and Indigenous females.
[70] Compared to their White counterparts, Indigenous accused were less likely to receive a long-term custodial sentence "greater than 1 year to less than 2 years" in British Columbia and Ontario. The average RRI for both British Columbia and Ontario should be used with caution; the RRI was not available in 2015-16 for British Columbia and 2010-11 for Ontario, and thus both were calculated based on a ten-year period. Due to the unavailability of data, RRIs are not reported for Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan, and Yukon.
[71] The average RRI should be used with caution as the RRI was not available in 2015-16 and was calculated based on a ten-year period. The yearly RRIs showed important variation; they were much lower in 2012-13 and much higher in 2006-07, which may affect the average RRI.
[72] The average RRI should be used with caution as the RRI was not available in 2015-16 and was calculated based on a ten-year period. Due to the unavailability of data, RRIs are not reported for Indigenous youth and Indigenous females.
[73] The average RRI should be used with caution as the RRI was not available in 2015-16 and was calculated based on a ten-year period. Due to the unavailability of data, RRIs are not reported for British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan, and Yukon.

Chart 6c: Indigenous accused relative to White accused (RRI) who received a long-term custodial sentence, Canada, 2005-06 to 2015-16



Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.
Note: Includes 10 provinces and territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Data on the length of custodial sentences data are not available for Manitoba. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence.

In sum, among those sentenced to custody, Indigenous accused were either equally or less likely than their White counterparts to receive a short-term custodial sentence, with a few exceptions when considering other variables, namely sex, age group, offence type and jurisdiction. Additionally, Indigenous accused were more likely than their White counterparts to receive a medium-term custodial sentence, with a few exceptions when considering the offence type and the jurisdiction. Finally, Indigenous accused were either equally or less likely than their White counterparts to receive a long-term custodial sentence, with a few exceptions when considering the offence type.

The RRI method does not take into account the multiple factors that may affect the length of custodial sentences, such as aggravating and mitigating factors, the criminal record of an accused and the severity of the offence. In fact, the findings above could be further explained by differences between Indigenous and White accused in the severity of offences or in the offences being subject to mandatory minimum penalties. Previous research has shown that the proportion of Indigenous people admitted to federal custody for an offence punishable by a mandatory minimum penalty as the most serious offence in the case increased from 14% in 2007-08 to 26% in 2016-17 (Department of Justice 2017b).

Although further research is required to better understand the current study's findings, they may show cause for concern. Individuals serving sentences in provincial and territorial custody (i.e., sentences less than two years) are not provided with the same breadth of programming opportunities as individuals in federal custody, which may impact their successful community reintegration (TRC 2015b). In fact,

previous research has indicated that Indigenous people were much more likely than their White counterparts to have a subsequent contact with the police following their correctional involvement (Brennan & Matarazzo 2016). This does not suggest that Indigenous people should be given longer sentences. Rather, it may be worth exploring if other sentencing alternatives, such as probation, would be more appropriate in some cases.

4. Conclusion

The overrepresentation of Indigenous people in the CJS is a complex issue, for which the causes are deeply rooted in Canada's history of colonialism. Over the years, this issue has been primarily examined using data from correctional services. This study provides national statistics on Indigenous people in criminal court for the first time. Specifically, this study provided an indication of whether the criminal court process itself contributes to the overrepresentation of Indigenous people in the CJS. The RRI analysis also pinpointed key stages/decision points where Indigenous and White accused experience different court outcomes. Finally, this study identified areas that warrant further exploration and data development with regards to Indigenous people in criminal courts.

The data show that Indigenous accused are overrepresented in criminal court relative to their representation in the Canadian population. Additionally, the proportion of Indigenous accused in court has increased since 2005-06, while the proportion of White accused has decreased. These findings are consistent with trends in correctional services data. In fact, data on the proportions of Indigenous people in criminal courts and in custody show a slight increase between the two stages of the CJS. Although small, this increase may indicate that criminal courts are contributing to overrepresentation. At the very least, they are not reducing the issue of Indigenous overrepresentation. There may be opportunity to explore how criminal courts can further contribute to addressing this issue.

The findings from this study suggest that Indigenous accused are more likely than White accused to have a preliminary inquiry and less likely to have a trial. In addition, Indigenous accused are less likely to encounter a withdrawal, dismissal or discharge or to be acquitted, and more likely to encounter a stay of proceedings or to be found guilty. Of the accused who were found guilty, Indigenous accused are less likely to receive a fine and probation, and more likely to receive a conditional sentence and a custodial sentence. Finally, of the accused who received a custody sentence, Indigenous accused were overall less likely to receive a long-term custodial sentence of two or more years. A visual representation of key findings is provided in Annex 3.

In sum, these findings suggest that Canadian criminal courts are contributing to differential and disproportionate outcomes for Indigenous people. Not all differential and disproportionate outcomes present an inherently negative impact on Indigenous accused (e.g., being more likely to have a preliminary inquiry). However, some of them (i.e., being more likely to be found guilty and more likely to be sentenced to custody) can be described as contributing to the overrepresentation of Indigenous people in the CJS by prolonging their involvement with the CJS.

This report provides an indication of where Indigenous people are experiencing disproportionate outcomes at specific junctures of the criminal court process, but cannot alone explain why this may be occurring. Additional research is needed to better understand the reasons behind these differential outcomes. In addition, further analysis is required to better understand the representation of

Indigenous people at other key stages/decision points in the criminal court process. For example, bail appearances and decisions constitute a key criminal court stage/decision point, but could not be examined in the current study due to the unavailability of data. Furthermore, the data on guilty findings in this study do not distinguish between guilty verdicts and guilty pleas. In addition, the offence type in the current study was limited to two groups, namely violent and non-violent offences. Further analysis is required on specific types of offences as the severity of an offence constitute a key factor in judicial decision-making, particularly around the decision to remand the accused to custody, to proceed with a preliminary inquiry and to select an appropriate sentence. Criminal history also constitutes another key factor in judicial decision-making which could not be examined in the current study due to the unavailability of data. Lastly, future studies may help better understand the representation of Indigenous people in the CJS by examining their proportion at the police stage.

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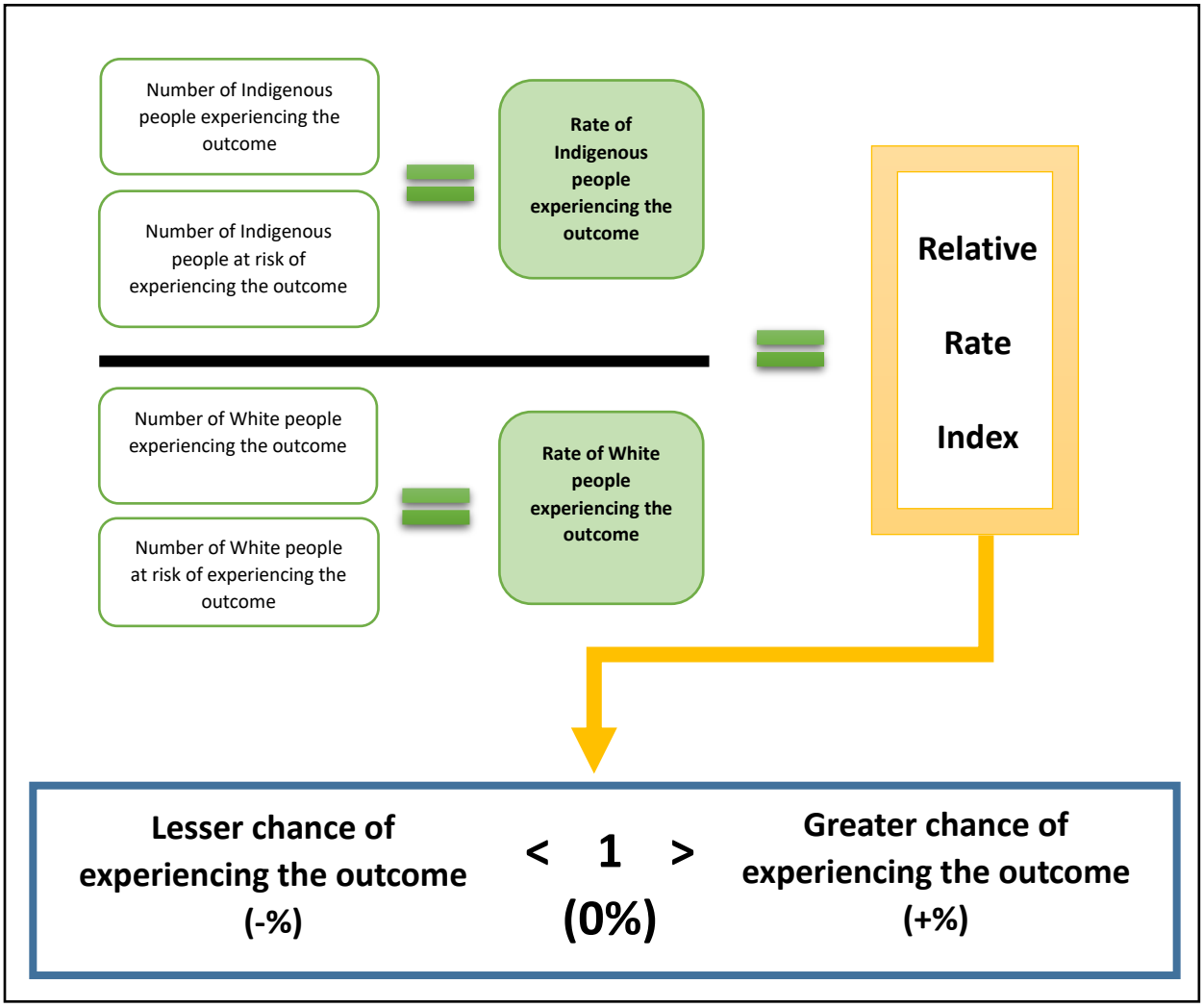
Annex 1. Relative Rate Index Calculation



Annex 2. Data Tables

Table 1: Indigenous accused relative to White accused (average RRI, shown as a +/- %) that received a preliminary inquiry and a trial, by selected characteristics, Canada, 2005-06 to 2015-16

Selected characteristics	Preliminary inquiry	Trial
All	+36%	-20%
Male	+41%	-17%
Female	-3%	-16%
Adult	+38%	-19%
Youth	..	-15%
Violent	+67%	-6%
Non-violent	+11%	-31%

.. : not available

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority.

Table 2: Indigenous accused relative to White accused (average RRI, shown as a +/- %), by court decisions and selected characteristics, Canada, 2005-06 to 2015-16

Selected characteristics	Guilty	Acquittal	Stay of proceedings	Withdrawn/ Dismissed/ Discharged	Other
All	+14%	-33%	+47%	-55%	-19%
Male	+14%	-28%	+38%	-55%	-10%
Female	+20%	-25%	+34%	-49%	-15%
Adult	+14%	-33%	+52%	-57%	-23%
Youth	+15%	-7%	+17%	-44%	..
Violent	+9%	-21%	+113%	-59%	-10%
Non-violent	+16%	-47%	+19%	-53%	-24%

.. : not available

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. Guilty includes findings of guilt for the charged offence, an included offence, an attempt of the charged offence, or an attempt of an included offence, as well as guilty pleas and cases where an absolute or conditional discharge has been imposed. Stay of proceedings includes judicial stay, prosecutorial stay, and stay or withdrawn due to alternative measures, extrajudicial measures or other diversion program. Other includes, among others, not criminally responsible, unfit to stand trial, special pleas, and waived out of province or territory.

Table 3: Indigenous accused relative to White accused (average RRI, shown as a +/- %), by type of sentence and selected characteristics, Canada, 2005-06 to 2015-16

Selected characteristics	Custody	Conditional sentence	Probation	Fine	Other
All	+30%	+11%	-13%	-14%	+34%
Male	+38%	+20%	-15%	-16%	+16%
Female	+30%	-3%	-13%	+1%	+26%
Adult	+34%	+15%	-19%	-11%	+44%
Youth	+20%	..	0%	+11%	-6%
Violent	+30%	+60%	-20%	+144%	+15%
Non-violent	+30%	-5%	-12%	-13%	+41%

.. : not available

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. The Northwest Territories do not report conditional sentencing at this time. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. Other includes, among others, absolute and conditional discharge, suspended sentence, community service order and prohibition order.

Table 4: Indigenous accused relative to White accused (average RRI, shown as a +/- %), conditional sentences vs. custody sentences, by selected characteristics, Canada, 2005-06 to 2015-16

Selected characteristics	Conditional sentences (vs. custody sentences)
All	-11%
Male	-11%
Female	-17%
Adult	-11%
Youth	..
Violent	+17%
Non-violent	-22%

.. : not available

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 10 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. The Northwest Territories do not report conditional sentences at this time. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority.

Table 5: Indigenous accused relative to White accused (average RRI, shown as a +/- %), by length of custodial sentences and selected characteristics, Canada, 2005-06 to 2015-16

Selected characteristics	1 month or less	Greater than 1 month to 3 months	Greater than 3 months to 6 months	Greater than 6 months to 12 months	Greater than 1 year to less than 2 years	2 years or more
All	0%	-5%	+27%	+17%	-4%	-31% [i]
Male	-2%	-5%	+32%	+17%	+1%	-27% [i]
Female	0%	+4%	+10%	+178% [ii]	..	..
Adult	+1%	-7%	+26%	+16%	-4%	-31% [i]
Youth	-22%	+27%	+27%	+119% [i]	..	..
Violent	-15%	-7%	+52%	+43%	+19%	-14% [i]
Non-violent	+4%	-5%	+16%	-2%	-30%	-51% [i]

.. : not available

i. The average RRI should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

ii. The average RRI should be used with caution as there was a strong deviation in 2006-07.

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 10 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Data on the length of custodial sentences are not available for Manitoba. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence.

Table 6: Indigenous accused relative to White accused (average RRI, shown as a +/- %) that received a preliminary inquiry and a trial, by jurisdiction, Canada, 2005-06 to 2015-16

Jurisdictions	Preliminary inquiry	Trial
British Columbia	-11%	-7%
Manitoba	+9%	+19%
New Brunswick	..	+8%
Newfoundland and Labrador	..	-1%
Nova Scotia	..	+34%
Northwest Territories	..	+10%
Nunavut	..	-42%
Ontario	+4%	-2%
Prince Edward Island	..	..
Saskatchewan	..	-22%
Yukon	..	+78%

.. : not available

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority.

Table 7: Indigenous accused relative to White accused (average RRI, shown as a +/- %), by court decision and jurisdiction, Canada, 2005-06 to 2015-16

Jurisdictions	Guilty	Acquittal	Stay of proceedings	Withdrawn/ Dismissed/ Discharged	Other
British Columbia	+8%	-18%	-16%	-43%	..
Manitoba	+9%	-63%	-11%	..	..
New Brunswick	+2%	..	..	-1%	..
Newfoundland and Labrador	+3%	..	..	-13%	..
Nova Scotia	+1%	+39%	+53%	-5%	..
Northwest Territories	+12%	..	+15%	-30%	..
Nunavut	+81%	..	-17%	..	..
Ontario	+14%	-31%	+1%	-25%	+52%
Prince Edward Island	+5%	..	..	..	..
Saskatchewan	+11%	..	-20%	-8%	..
Yukon	-6%	..	+64%	+65%	..

.. : not available

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. Guilty includes findings of guilt for the charged offence, an included offence, an attempt of the charged offence, or an attempt of an included offence, as well as guilty pleas and cases where an absolute or conditional discharge has been imposed. Stay of proceedings includes judicial stay, prosecutorial stay, and stay or withdrawn due to alternative measures, extrajudicial measures or other diversion program. Other includes, among others, not criminally responsible, unfit to stand trial, special pleas, and waived out of province or territory.

Table 8: Indigenous accused relative to White accused (average RRI, shown as a +/- %), by type of sentence and jurisdiction, Canada, 2005-06 to 2015-16

Jurisdictions	Custody	Conditional sentence	Probation	Fine	Other
British Columbia	+46%	-9%	+9%	-32%	-21%
Manitoba	+81%	-42%	+87%	-17%	-27%
New Brunswick	+14%	+8%	+10%	-16%	-6% [i]
Newfoundland and Labrador	+64%	+7%	-2%	-30%	-35%
Nova Scotia	+39%	+14%	+4%	-22%	[i] +22%
Northwest Territories	+47%	..	+53% [i]	-10%	..
Nunavut	..	..	+30%	-69% [i]	..
Ontario	+28%	+54%	+2%	-36%	-17%
Prince Edward Island	0% [i]	..	..	..	..
Saskatchewan	+57%	+42%	-1%	-23%	+6%
Yukon	+130%	-5% [i]	+29%	-37%	..

.. : not available

i. The average RRI should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Data for Northwest Territories should be used with caution as the number of custody orders have been under-reported and the number of probation have been over-reported; the majority of custody orders were captured as probation. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. Other includes, among others, absolute and conditional discharge, suspended sentence, community service order and prohibition order.

Table 9: Indigenous accused relative to White accused (average RRI, shown as a +/- %), conditional sentences vs. custody sentences, by jurisdiction, Canada, 2005-06 to 2015-16

Jurisdictions	Conditional sentences (vs. custody sentences)
British Columbia	-29%
Manitoba	-57%
New Brunswick	-4%
Newfoundland and Labrador	-28%
Nova Scotia	-12%
Northwest Territories	..
Nunavut	..
Ontario	+15%
Prince Edward Island	..
Saskatchewan	-3%
Yukon	..

.. : not available

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority.

Table 10: Indigenous accused relative to White accused (average RRI, shown as a +/- %), by length of custodial sentences and jurisdiction, Canada, 2005-06 to 2015-16

Jurisdictions	1 month or less	Greater than 1 month to 3 months	Greater than 3 months to 6 months	Greater than 6 months to 12 months	Greater than 1 year to less than 2 years	2 years or more
British Columbia	+16%	-14%	-12%	-9%	-21%[i]	..
Manitoba	..	..	..	..	..	..
New Brunswick	-2%	..	..	..	..	..
Newfoundland and Labrador	+10%	+25%	..	..	..	..
Nova Scotia	+16%	-9%[i]	..	..	..	..
Northwest Territories	..	..	..	..	..	..
Nunavut	..	..	..	..	..	..
Ontario	+6%	-6%	+4%	-2%	-28%[i]	-29%[i]
Prince Edward Island	..	..	..	..	..	..
Saskatchewan	+20%	-10%	+37%	+4%	..	..
Yukon	+61%	..	..	..	..	..

.. : not available

i. The average RRI should be used with caution as the average RRI was calculated based on a ten-year period due to the unavailability of data in a given year.

Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.

Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence, However, in certain jurisdictions, the length of custody represents the full sentence.

Table 11: Average median length of custodial sentences (in days) of Indigenous accused relative to White accused, by selected characteristics, Canada, 2005-06 to 2015-16

Selected characteristics	Indigenous	White
All	30	30
Male	32	30
Female	18	19
Adult	30	30
Youth [i]	56	36
Violent	84	64
Non-violent	29	30

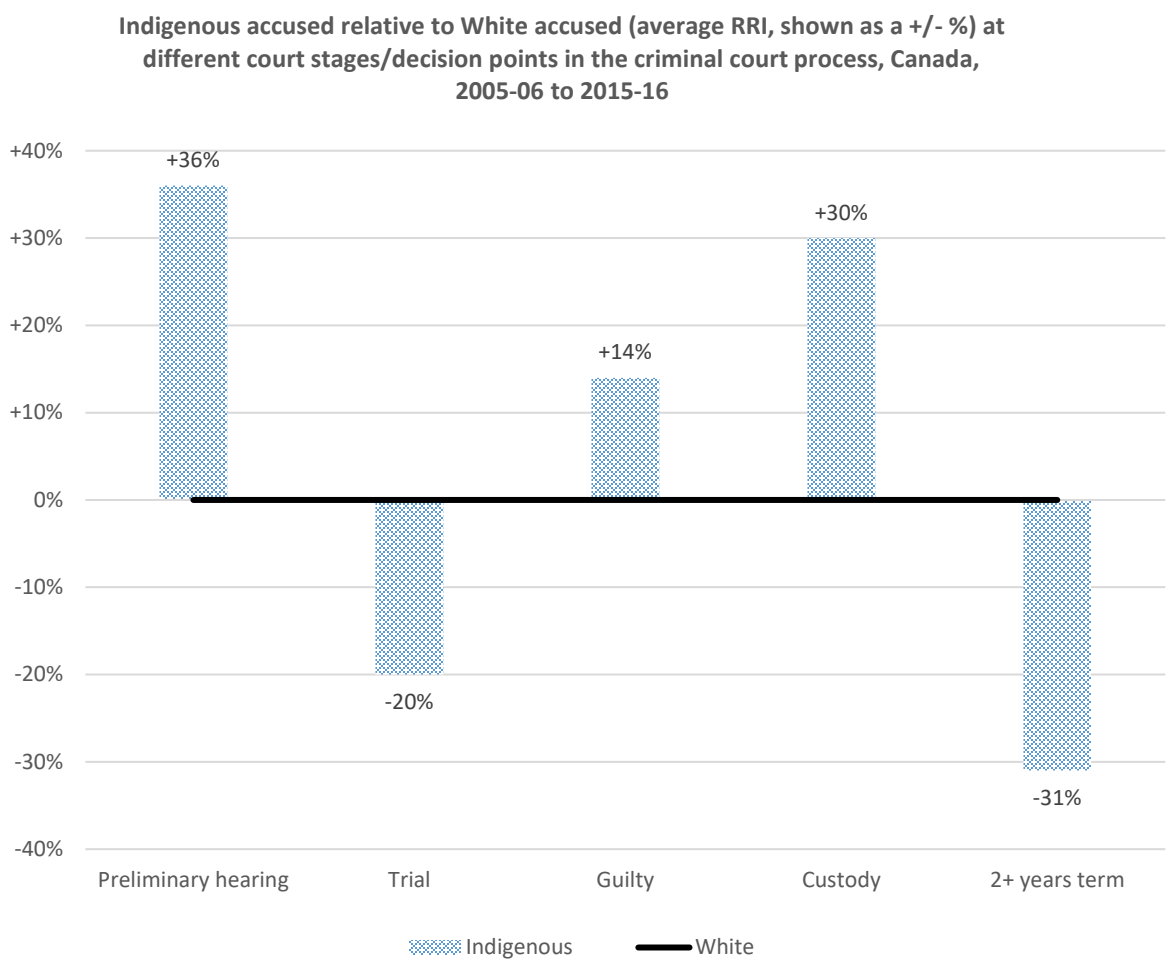
i. Caution should be used when looking at median lengths, especially on the youth file as the counts were low but did not meet requirements of Census suppression rules.
Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.
Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence, However, in certain jurisdictions, the length of custody represents the full sentence. The median represents the point at which half of all cases had longer custodial sentence lengths and half had shorter custodial sentence lengths. Weighted medians were calculated using adjusted Census weights.

Table 12: Average median length of custodial sentences (in days) of Indigenous accused relative to White accused, by jurisdiction, Canada, 2005-06 to 2015-16

Jurisdictions	Indigenous	White
British Columbia	18	26
Manitoba	..	..
New Brunswick	50	43
Newfoundland and Labrador	29	29
Nova Scotia	23	31
Northwest Territories	34	63 [i]
Nunavut	40	..
Ontario	30	30
Prince Edward Island	35 [i]	11
Saskatchewan	50	56
Yukon	33	32 [i]

i. The average median length of custody should be used with caution as the average median length was calculated based on a ten-year period due to the unavailability of data in a given year.
Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.
Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. The length of custodial sentences refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence. The median represents the point at which half of all cases had longer custodial sentence lengths and half had shorter custodial sentence lengths. Weighted medians were calculated using adjusted Census weights.

Annex 3. Graphical Summary of Key Findings



Source: Statistics Canada, Canadian Centre for Justice and Community Safety Statistics, Integrated Criminal Court Survey, 2005-06 to 2015-16; Statistics Canada, Census of population, 2016. Custom tabulation by Department of Justice Canada.
Note: Includes 11 provinces/territories. Quebec and Alberta were excluded as the requisite personal identifiers required for linkage were not available. Indigenous accused includes First Nations, Inuit and Métis. White accused includes those who identified as neither Indigenous nor as a visible minority. Guilty includes findings of guilt for the charged offence, an included offence, an attempt of the charged offence, or an attempt of an included offence, as well as guilty pleas and cases where an absolute or conditional discharge has been imposed. 2+ years term refers to the length of time that remains to be served at sentencing, and not the entire length of the custodial sentence. However, in certain jurisdictions, the length of custody represents the full sentence. The average RRI for 2+ years term should be used with caution, as the RRI was not available in 2015-16 and was calculated based on a ten-year period. 2+ years term excludes Manitoba as data on the length of custody sentences are not available.