Ministry of the Attorney General

Criminal Court System

1.0 Summary

The Criminal Code of Canada is the federal legislation that sets out criminal law and procedure in Canada, supplemented by other federal and provincial statutes. Crown attorneys prosecute accused persons under these laws on behalf of the Criminal Law Division (Division) of the Ontario Ministry of the Attorney General (Ministry).

The Ontario Court of Justice (Ontario Court) and the Superior Court of Justice (Superior Court) received approximately 240,000 criminal cases in 2018/19, an increase of 10% since 2014/15. Over 98% of criminal cases in Ontario are received by the Ontario Court; the remainder, which generally constitute more serious offences such as murder and drug trafficking, are heard by the Superior Court.

The Division operates from its head office in Toronto, six regional offices, four divisional prosecution and support offices and 54 Crown attorney offices across the province. Over the past five years, the Division's operating expenses have increased by 8%, from $256 million to $277 million, mainly because the number of Crown attorneys has increased by 8%.

In July 2016, a landmark ruling by the Supreme Court of Canada in *R. v. Jordan* significantly affected the Ministry's obligation to deliver timely justice. The ruling required that if a case is not disposed within 18 months (for cases tried in Ontario Court) or 30 months (for cases tried in Superior Court), it is presumed that the delay is unreasonable, and Crown attorneys have to contest the presumption and prove otherwise or the charge will be stayed (legal proceedings against the accused are discontinued).

Our audit found that the backlog of criminal cases we noted in our previous audits of Court Services in 2003 and 2008 continues to grow. Between 2014/15 and 2018/19, the number of criminal cases waiting to be disposed increased by 27% to about 114,000 cases.

One result of this backlog is the increasing age of the cases pending disposition, as cases pending disposition for more than eight months increased by 19% from 2014/15 to about 37,000 cases in 2018/19. Of these 37,000 cases, about 6,000 exceeded 18 months. Since the Jordan decision, according to information provided by the Division, 191 provincially prosecuted cases were stayed at the request of the defence by judges who ruled that the prosecution or the court system had been responsible for unreasonable delay. In these cases, justice was denied for the victims.

Another result of the backlog is that accused persons who did not seek or were not granted bail may remain detained in remand for long periods. Approximately 70% of inmates in correctional institutions, amounting to a daily average of over 5,000 inmates in 2018/19, are in remand and have not yet been convicted of the current charges filed against them. This backlog and systemic delay in resolving criminal cases jeopardizes the right of accused

persons to be tried within a reasonable time. Delays also have a significant impact on victims of crime and their families, who may feel they are denied timely justice, and on public confidence in the justice system.

Although the Division has taken a number of initiatives to alleviate these backlogs, the success of these initiatives has been limited and they have been unable to reverse the increasing trend of criminal cases waiting to be disposed.

During our audit, we experienced significant scope limitations in our access to key information related to court scheduling (see Court Operations, **Chapter 2** of this volume). As a result, we were unable to assess whether public resources, such as courtrooms, are scheduled and used optimally to help reduce delays in resolving criminal cases. Also, in our review of the criminal court system, we were refused full access to 175 sampled case files maintained by Crown attorneys. Instead, the Division summarized some of the details for the 175 case files, including reasons for delays, for our review.

Our other significant audit findings include:

- **Criminal cases awaiting disposition are taking longer to resolve.** The Ontario Court of Justice received about 237,000 cases in 2018/19, a 10% increase over 2014/15. Yet the number of cases disposed increased by only 2%. The result is a 27% increase in cases waiting to be disposed—about 114,000 as of March 2019, compared to about 90,000 in March 2015. Between 2014/15 and 2018/19, the average number of days needed to dispose a criminal case increased by 9% (from 133 to 145 days). For the same period, the average appearances in court before disposition increased by 17% (from 6.5 to 7.6 appearances). Based on our own review of readily available judicial decisions on 56 cases stayed as a result of the Jordan decision, we noted that delays were mainly due to lack of timely disclosure of evidence, difficulty in obtaining court dates and/or delays attributed to Crown attorneys.
- **Reasons for aging cases require formal and regular analysis to be done centrally.** The Division has not done formal and regular analysis of aging cases at an aggregate level, that is, at the level of court location, region or the province. This includes, for example, categorizing the reasons why cases are pending disposition or are stayed, and distinguishing whether delays were caused by the defence or by the prosecution or were "institutional"—related to court scheduling, for example. These higher-level analyses can be used to generate regular reports for senior management to highlight areas of concern that have a systemic impact on the criminal court system as well as to help to inform the Division so that Crown resources can potentially be allocated and reallocated proactively.
- **The number of cases disposed has remained nearly constant, although the number of Crown attorneys has increased since 2014/15.** The 8% increase in full-time-equivalent Crown attorneys did not result in a proportional increase in the total number of cases disposed, which was only 2%. The number of cases disposed per Crown attorney varied significantly across the province, from a low of 160 in Toronto region to a high of 354 in West region, against a provincial average of 274 cases. The Division lacks appropriate benchmarks for key performance indicators, such as workloads and average time taken by Crown attorneys to dispose cases, and complete information in determining case complexity for assigning equitable caseloads to its Crown attorneys.
- **The Criminal Law Division and police services lack formally agreed-upon roles and responsibilities for the disclosure of evidence.** In 1999, the Criminal Justice Review Committee recommended a directive to be developed that comprehensively sets out the disclosure responsibilities of the police and prosecutors. Twenty years later, the Division

and police services still could not agree upon a formal policy that clearly defines the roles and responsibilities for timely disclosure. In November 2016, the Division began to engage police services to sign a framework memorandum of understanding (MOU) for the disclosure of evidence. The Division revised the MOU in June 2019. However, at the time of our audit, not all police services had signed the MOU. We were told that this was mainly because of limited police resources and their inability to commit to the increased requirements under the revised MOU.

- **About 85% of bed days are used by inmates who are in remand for more than one month, and some for over a year.** Two factors contribute to the size of the remand population: the number of accused entering remand custody and the length of time inmates spend in remand custody. The Ministry has not regularly analyzed the reasons for accused persons remaining on remand. Based on the summary prepared by the Division on a sample of 30 case files (in lieu of giving us full access to the files) and our interviews of a sample of 24 remand inmates, we found these main reasons: the inmates were dealing with other charges; they remained by their own choice (for example, advised by counsel not to apply for bail or wanted to earn enhanced credit for pretrial custody); they were having ongoing plea discussions with the prosecution; or they could not produce a surety (guarantor) to supervise them while out on bail.
- **Time needed to decide bail applications has increased over the past five years.** Cases where people charged with crimes went through bail courts increased by 4% between 2014/15 and 2018/19, from 91,691 to 95,574. As well, the average number of days needed to reach a bail decision increased, which we estimated resulted in about 13,400 additional inmate bed days in remand over the same period. In contrast to some other provinces, such as British Columbia and Alberta, bail hearings in Ontario are scheduled from 9:00 a.m. to 5:00 p.m., Monday to Friday, with limited use of teleconferences and videoconferences. Ten weekend and statutory holiday courts are available for bail hearings in Ontario, with hours determined solely by the judiciary.
- **Twenty-seven of 32 courthouses where we noted above-average delays in disposing criminal cases also operated less than the Ministry's optimal average of 4.5 hours per day.** There are 68 Ontario Court of Justice courthouses that hear criminal matters. In 2018/19, criminal cases used 67% of total courtroom operating hours. Although courtroom operating hours do not capture working hours for judicial officials or court staff, and Crown attorneys, we noted that the difficulties in obtaining court dates contribute to the systemic delays in resolving many criminal cases in Ontario, as mentioned above. When we attempted to examine the scheduling information that was often maintained by the trial co-ordinators, who are paid by the Ministry but work under the direction of the judiciary, the Offices of the Chief Justices of the Ontario Court of Justice and the Superior Court of Justice refused our request for the information. As a result, we were unable to determine if courtrooms were scheduled optimally to accommodate criminal cases, or reasons why some courtrooms were underutilized.

Mental Health Courts

Twenty-nine of Ontario's specialized courts hear cases for accused persons with mental health conditions. Mental health courts have been in operation since 1997 with the aim of dealing with issues of fitness to stand trial and, wherever possible, slowing down the "revolving door" of

repeated returns to court by these accused, through diversion programs and other appropriate types of treatment.

Our audit found that the benefits of Ontario's mental health courts are unknown. Procedures are not clearly outlined, there is lack of proper data on their operations, and definitions of mental health courts' objectives and intended outcomes are imprecise. In particular:

- **Ontario mental health courts lack specific goals and measurable outcomes.** The mandate and goals set for mental health courts are broad and general, and without specific measurable outcomes, neither the Ministry nor the Ontario Court is able to measure the courts' success in achieving these goals. In contrast, Nova Scotia has set key objectives for its mental health court and evaluated the court's success in reducing recidivism relative to the regular criminal justice system. During our audit, when we inquired of the Office of the Chief Justice of the Ontario Court of Justice whether any reviews have been done on the scheduling and operations of the mental health courts in Ontario, a representative from the Office of the Chief Justice responded that these matters relate to judicial independence and fall outside the scope of the audit. As a result, we cannot confirm to the Legislature that such reviews have been conducted. Ontario has not published any evaluations similar to the Nova Scotia evaluation.
- **Key data is not available to track the users of mental health courts and their case outcomes.** The Ministry's information systems do not distinguish between accused persons who go through a mental health court and those who go through a regular court on the basis of data such as the number of cases received, disposed and pending disposition; time taken to resolve cases; and details of case disposition. As a result, neither the Ministry nor the Ontario Court is able to identify and quantify the number of individuals and cases that were received in mental health courts and their case dispositions.
- **The Division lacks standardized processes for mental health courts.** While the Division's Crown Prosecution Manual contains three separate directives about cases involving mentally ill accused, there are no specific and consistent policies and procedures for the operations of mental health courts. For example, there are no policies to specify who should be accepted into a mental health court and in what circumstances, when a psychiatric assessment is required, or when a formal community-based program or other plans are needed.

This report contains 10 recommendations, consisting of 23 actions, to address our audit findings.

Overall Conclusion

Overall, the Ministry does not have effective systems and procedures in place to know if its resources are being used or allocated efficiently and in a cost-effective way and to support the timely disposition of criminal cases. These are important issues to address in a criminal justice system with long-term and increasing delays in resolving cases and a backlog of remand inmates detained in correctional institutions.

The limitations placed on the scope of our audit left us unable to determine if courtrooms were scheduled and used efficiently and effectively to help reduce backlogs in disposing criminal cases.

The Ministry lacks the key data it needs to measure and publicly report on the results and effectiveness of the operations of mental health courts in Ontario.

OVERALL MINISTRY RESPONSE

The Ministry's Criminal Law Division is committed to ensuring public safety through the provision of effective and efficient prosecution services to the citizens of Ontario.

The prosecution service upholds the public's confidence in the administration of criminal justice by ensuring that prosecutors are strong and effective advocates for the prosecution and also ministers of justice with a duty to ensure that the criminal justice system operates fairly to all: the accused, victims of crime and the public. A prosecutor's role excludes any notion of winning or losing and is exercised openly in public. A prosecutor is a public representative, whose demeanour and actions should be fair, dispassionate and moderate, and unbiased and open to the possibility of the innocence of the accused person.

The Division continuously strives to enhance and improve delivery of core services. Many of the opportunities for improvement highlighted within the report are consistent with actions the Division has undertaken to date and its commitment to deliver highly effective prosecutions and a justice system that is responsive to the changing needs and demands of Ontarians. The recommendations provide confirmation that the areas where the Division has strategically chosen to invest resources and dedicate its efforts will continue to be integral in transforming and modernizing the justice system while demonstrating fiscal prudence and value for money.

2.0 Background

2.1 The Criminal Justice System in Ontario

Ontario's criminal justice system operates under the Criminal Code of Canada (Criminal Code), the federal legislation that sets out criminal law and procedure in Canada, supplemented by other federal and provincial statutes. Crown attorneys employed by the province prosecute accused persons under the Criminal Code and other provincial statutes as agents of the Ontario Ministry of the Attorney General (Ministry). The Public Prosecution Service of Canada prosecutes matters under other federal legislation, such as the *Controlled Drugs and Substances Act*.

Charges for offences that range from homicide, assault, impaired driving, break and enter, and drug trafficking to failure to comply with court, bail and/or probation orders are laid by Ontario Provincial Police, the RCMP, municipal/regional police services and First Nations police. Accused persons may seek the assistance of defence or duty counsel; their case may be disposed through a guilty plea, by the charges being withdrawn or stayed or by a finding of guilty or not guilty at a trial before a judge (and sometimes a jury). If appropriate, a case may also be moved out of the regular criminal justice process to a mental health or other specialized court.

Pending the disposition of a case, the accused may be released on bail or held in remand in a correctional institution. A guilty finding may lead to either a custodial sentence or a non-custodial sentence such as probation, a fine or a period of community service.

In addition to those already mentioned, other key stakeholders in the criminal justice system include corrections staff under the Ministry of the Solicitor General, Legal Aid Ontario, court staff under the Ministry's Court Services Division, and various community support agencies funded by the Ministry of Health, as well as any witnesses or victims. The Ministry's ability to fulfill its mandate to provide a fair and accessible justice system across the province depends significantly on the work performed by all of these stakeholders. For example, the Crown attorney's ability to prosecute a case relies on the timely, complete and admissible evidence collected by police services through their investigative work.

Appendix 1 lists the key participants and their roles within the criminal justice system. **Appendix 2** contains a glossary of terms used in this report.

2.1.1 Key Steps in the Criminal Court Process

The first step in the criminal court process starts with police officers investigating criminal offences and making the decision to lay charges. The accused may be detained while awaiting their bail appearance, typically at the police station or correctional institution, or they may be released from the police station on a condition that requires them to attend court. An accused who was released from the police station must attend court in person for their scheduled court appearance.

An accused person detained by the police appears at a bail hearing. The justice of the peace can either issue a detention order requiring the accused person to remain in remand or issue a bail order releasing the person back into the community while their case is awaiting disposition, or can adjourn the case to a later date. Accused who are being held in a correctional institution may be transported from the facility to the court and back for their appearances in court; in some cases these hearings may be done through video link.

These court appearances may have various purposes, including determining if the accused has engaged legal counsel for their defence, providing initial disclosure of evidence to the defence by the prosecution, and discussing the prosecution and defence positions on the case and if prosecution and defence (the accused, usually aided by counsel) are ready for trial.

When there is a trial, the accused attends and the prosecution presents the evidence in the case. The defence may choose to present evidence in response, but is not required to do so. At the conclusion of the trial, a judge or jury reaches a verdict. If the accused is found not guilty, any conditions or orders that bound them come to an end, and if they were detained in custody they will be released. If there is a guilty verdict, the judge passes a sentence and informs the convicted defendant of the sentence they will face. Sentencing options include one or a combination of custodial and non-custodial sentences.

If, at any time during the course of the court process, the prosecution withdraws the charges or directs a stay of proceedings, or the accused pleads guilty and is sentenced, the case is considered disposed.

Figure 1 illustrates the key steps in an accused person's journey through the criminal court system.

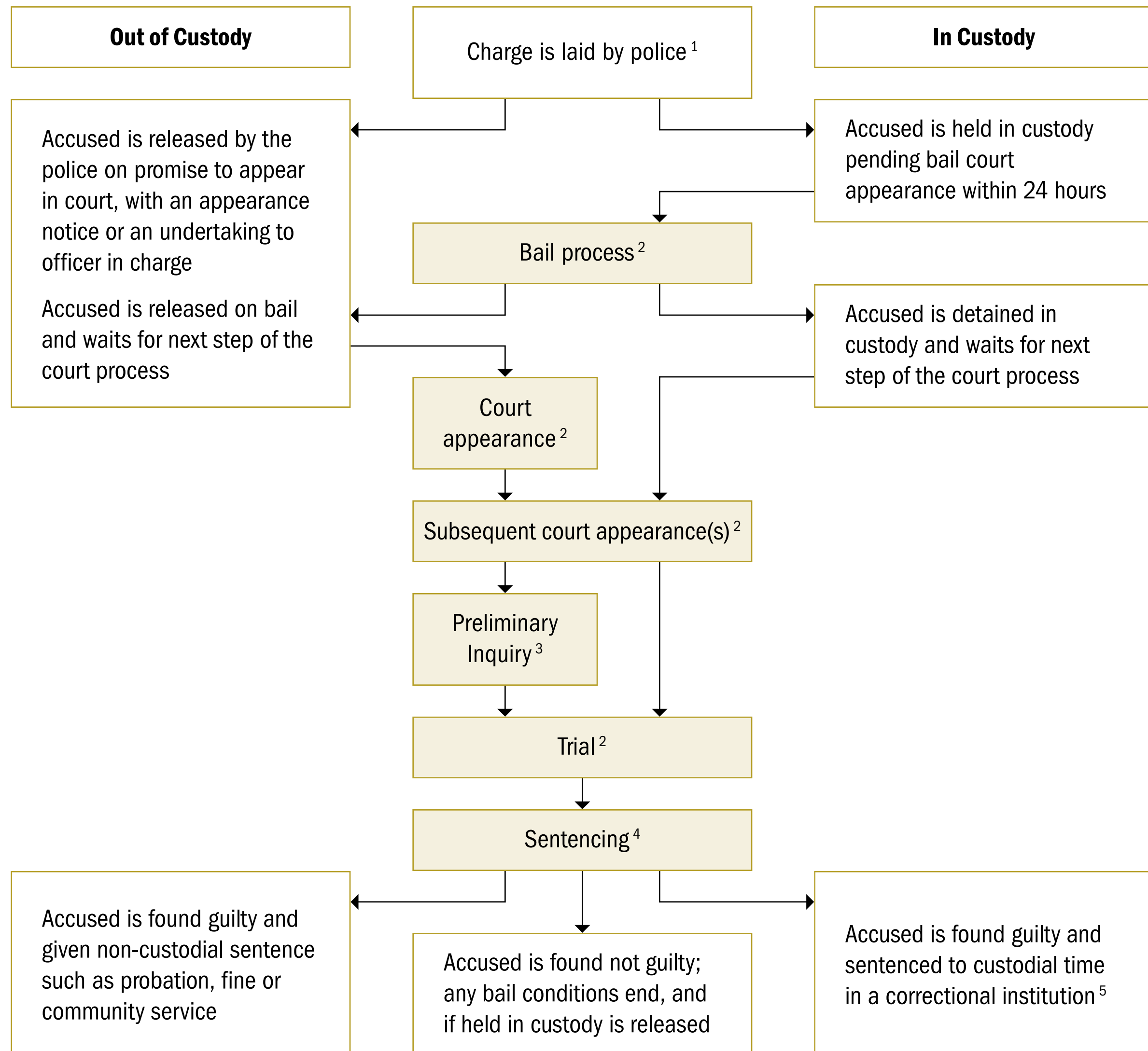
2.1.2 Case File Information System—Integrated Court Offences Network (ICON)

The Ministry's ICON system, serviced by Information and Information Technology's Justice Technology Services cluster (part of the Treasury Board Secretariat), provides case administration support to the Ontario Court of Justice, which hears more than 98% of all criminal matters. Court services staff, under the Ministry's Court Services Division, are responsible for inputting key data into ICON, such as the name of the accused person, date of birth, date of charge(s) laid, type of offence(s), date of court appearance(s) and type of case disposition. A case is recorded as "received" in ICON once the justice of the peace has sworn and/or confirmed the "Information" that is filed by the police in court. A case is recorded as "disposed" in ICON when any of the following happens at any stage of the court process:

- an accused is found guilty before or during a trial and sentenced;
- an accused is found guilty at the conclusion of a trial and sentenced, or is found not guilty and, if in custody, is released;
- an accused's case is diverted, for example, to a mental health court or away from the regular court process, and the accused has successfully completed diversion;
- the case is withdrawn by a Crown attorney if there is no reasonable prospect of conviction or it is not in the public interest to continue the prosecution, or as part of an agreement between the prosecution and the defence;

Figure 1: Overview of Criminal Court Process, Ontario Court of Justice

Prepared by the Office of the Auditor General of Ontario



These matters are scheduled by trial co-ordinators under the direction of the judiciary. See **Section 3.0** for scope limitation on court scheduling.

1. In the Integrated Court offences Network (ICON) system, a case is recorded as "received" when one or more charges are laid by police.
2. In ICON, a case is recorded as "disposed" when one of the following takes place:
   - accused is found guilty before or during a trial and sentenced;
   - accused is found guilty at the conclusion of a trial and sentenced, or is found not guilty and, if in custody, is released;
   - accused's case is diverted, e.g., to mental health court or away from the regular court process, and the accused has successfully completed diversion;
   - case is withdrawn by Crown attorney if there is no reasonable prospect of conviction or it is not in the public interest to continue the prosecution or as part of an agreement between the prosecution and the defence; or
   - judge stays the proceedings, e.g., if the case has exceeded the Jordan timelines and the judge holds the prosecution or the court system ("institutional delay") responsible for the delay.
3. Following a preliminary inquiry, an accused person can be committed for trial in the Superior Court of Justice or can be discharged.
4. Sentencing options include one or a combination of custodial and non-custodial sentences.
5. Provincial system: if accused is sentenced to less than two years. Federal system: if accused is sentenced to two years or more.

- a judge stays (discontinues) the proceedings, for example, if the case has exceeded the Jordan timelines and the judge holds the prosecution or the court system responsible for the delay.

2.2 Ontario's Criminal Courts and Their Caseload

2.2.1 Judicial Responsibility

The judiciary is a separate and independent branch of the government. While members of the judiciary work with the Ministry to administer justice, they have distinct responsibilities as set out in the *Courts of Justice Act* (Act). Under the Act, the regional senior judges and their delegates, under the direction and supervision of the Chief Justices, are responsible for preparing trial lists, assigning cases and other judicial duties to individual judges, determining workloads for judges, determining sitting schedules and locations, and assigning courtrooms.

The Chief Justices of the Ontario Court of Justice (Ontario Court) and Superior Court of Justice (Superior Court) have each signed a publicly available memorandum of understanding with the Attorney General of Ontario that sets out areas of financial, operational and administrative responsibility and accountability between the Ministry and the courts. In particular, the Attorney General and the Chief Justices agree to have timely communication regarding significant matters that affect the mandate of each, such as staffing and facilities issues as well as policy and legislative changes. Further, the memoranda indicate that the judiciary has ownership of court-derived statistical information and documents, such as case files, courtroom operating hours and caseloads, and that the judiciary must approve any access to such information by a third party.

2.2.2 Criminal Caseload

Over 98% of criminal cases in Ontario are received by the Ontario Court. The Superior Court hears the remaining cases, which generally constitute more serious offences such as murder and drug trafficking.

The number of criminal cases received by the Ontario Court in 2018/19 was 236,883, a 10% increase in caseload since 2014/15. **Figure 2** shows the number of cases received and disposed in the Ontario Court from 2014/15 to 2018/19.

The main reason for the increased caseload was an 8% increase in the number of people charged with crimes in Ontario for calendar years 2014–18, according to Statistics Canada figures. Over the same period, Statistics Canada reported a 17% increase in crime incidents reported by police in Ontario. As well, in 2018, Ontario had the second-highest percentage of individuals charged per crime incident (31%) in Canada, equal to Quebec.

Figure 3 shows the five-year trend in the number of criminal cases received:

- administration of justice offences increased by 25%, making up 31% of the caseload;
- crimes against persons increased by 14%, making up 27% of the caseload; and

Figure 2: Number of Criminal Cases Received and Disposed in the Ontario Court of Justice, 2014/15–2018/19

Source of data: Ministry of the Attorney General

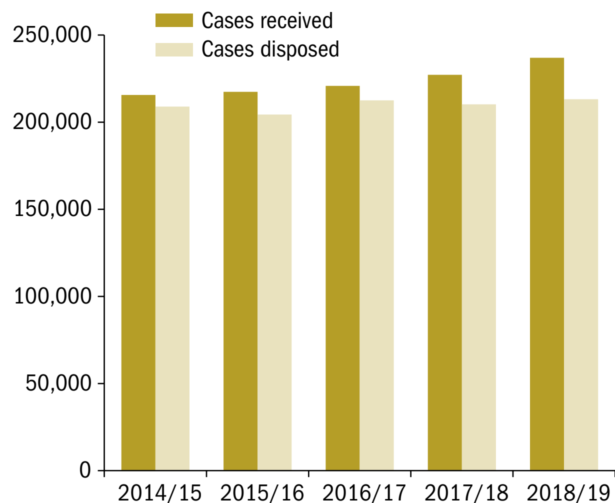


Figure 3: Number of Criminal Cases Received by Offence Type in the Ontario Court of Justice, 2014/15–2018/19
Source of data: Ministry of the Attorney General

	# of Cases Received					% Change	
Offence Group	2014/15	2015/16	2016/17	2017/18	2018/19	2014/15–2018/19	2018/19 % of Total
Administration of justice[1]	57,834	59,714	63,248	67,911	72,176	25	31
Crimes against the person[2]	56,500	57,659	59,363	60,706	64,578	14	27
Crimes against property[3]	49,179	49,689	49,901	51,773	55,274	12	23
Federal statute[4]	24,586	22,318	20,121	19,177	16,019	(35)	7
Criminal Code—traffic[5]	17,682	17,635	17,488	17,094	17,327	(2)	7
Other Criminal Code[6]	9,898	10,341	10,634	10,503	11,509	16	5
Total	**215,679**	**217,356**	**220,755**	**227,164**	**236,883**	**10**	**100**

1. Includes failure to appear before a court, breach of probation, being unlawfully at large, failure to comply with a court order and other offences.
2. Includes homicide, attempted murder, robbery, sexual assault, other sexual offences, major and common assaults, uttering threats, criminal harassment and other crimes.
3. Includes theft, break and enter, fraud, mischief, possession of stolen property and other property crimes.
4. Includes drug possession, drug trafficking, and offences under the *Youth Criminal Justice Act* and other federal statutes.
5. Includes impaired driving and other Criminal Code traffic offences.
6. Includes weapons, prostitution, disturbing the peace and other criminal offences.

- crimes against property increased by 12%, making up 23% of the caseload.

These increases were offset by a 35% decrease in offences under federal statutes and a 2% decrease in traffic-related offences received.

The Superior Court heard 3,298 criminal cases in 2018/19, 9% less than in 2014/15. This decrease was primarily due to receiving 17% fewer appeals against Ontario Court decisions and 37% fewer drug-related cases, offset by a 6% increase in other Criminal Code cases. Together, these three types of cases constituted 96% of the court's caseload in 2018/19. The number of cases awaiting disposition in Superior Court decreased by 10% over the same period.

2.3 Prosecution and Disposition of Criminal Matters

As agents of the Ministry, Crown attorneys in the Criminal Law Division (Division) conduct prosecutions and appeals of accused persons under the Criminal Code of Canada and other criminal laws as part of their overall mandate. The Division operates from its head office in Toronto, six regional offices, four divisional prosecution and support offices and 54 Crown attorney offices across the province. **Appendix 3** presents an organization chart for the Division.

The Division's operating expenses totalled $277.6 million in 2018/19, 87% of which was spent on staffing. It employed 1,570 full-time-equivalent staff, including 1,023 Crown attorneys and 547 other professional staff (including regional directors, managers and support staff). Over the past five years, operating expenses have increased by 8%, mainly because the number of Crown attorneys has increased by 8% (see **Figure 4**). Additional Crown attorneys were hired primarily to meet the demands resulting from the Jordan decision (discussed further in **Section 2.3.4**) and other provincially approved initiatives including the Bail Action Plan, Ontario's Sexual Violence and Harassment Action Plan and cannabis legalization.

2.3.1 Charge Screening Standard

The Crown Prosecution Manual contains Ontario's prosecution policies issued by the Attorney General in the form of directives. It provides mandatory

Figure 4: Criminal Law Division Expenditures and Staffing, 2014/15–2018/19

Source of data: Ministry of the Attorney General

Criminal Law Division	2014/15	2015/16	2016/17	2017/18	2018/19	% Change
# of Crown attorneys[1]	951	963	977	1,019	1,023	8
# of other professional staff[1,2]	541	537	535	547	547	1
Total	**1,492**	**1,500**	**1,512**	**1,566**	**1,570**	**5**
Expenditures ($ 000)	255,896	257,429	263,368	267,630	277,574	8

1. Full-time equivalents.
2. Including regional directors, managers and support staff.

direction, advice and guidance to Crown attorneys on the proper exercise of their discretion. The charge screening directive, which provides the standard that the prosecution must adhere to when proceeding with a charge, states that Crown attorneys must only proceed with a charge (or all charges in a case) where there is a reasonable prospect of conviction and if prosecution is in the public interest.

The Crown attorney has a duty at every stage in the proceeding to assess the reasonable prospect of conviction. If at any stage the Crown attorney determines that there is no longer a reasonable prospect of conviction, the prosecution must be withdrawn. In making this determination, Crown attorneys are instructed to consider various factors such as the availability of evidence; the admissibility of evidence implicating the accused; and an assessment of the credibility and competence of witnesses.

The public interest factor must be considered only after it is determined that there is a reasonable prospect of conviction. No public interest, however compelling, can warrant a prosecution where there is no reasonable prospect of conviction.

2.3.2 Collection of Evidence and the Disclosure Process

The prosecution has a duty to provide the defence with (or disclose) all the relevant evidence that the police have collected during the investigation of the charges in a case. "Disclosure" refers to both the copy of the evidence as well as the manner in which the defence receives a copy of that evidence. Both police and Crown attorneys in Ontario have a responsibility when it comes to disclosure. The police must provide complete disclosure to the Crown attorneys in a timely manner, who in turn must review and vet all evidence, and provide all relevant evidence in their control to the accused or their counsel. This is subject to limits such as various types of privilege. It is the accused's constitutional right, guaranteed by section 7 of the Canadian Charter of Rights and Freedoms (Charter), to know the evidence that will be used against them. Failure to disclose the evidence in a case would be a violation of this right, and risks miscarriage of justice. For these reasons, the duty to make full disclosure is one of the most important obligations in the criminal justice system.

As the first point of contact in a criminal case, the police investigate, make the arrest, charge the accused person and continue to collect evidence. The police are responsible for providing all necessary disclosure documents to the Crown attorney, so that the Crown attorney can make informed decisions on the case in light of all of the evidence and decide whether or not the case can be prosecuted. The Crown attorney usually hands the accused person or their counsel a disclosure package at the accused's first appearance in court or, in some circumstances, before their first appearance. The disclosure package usually includes documents such as:

- copies of police officers' notes;
- witness statements;

Figure 5: Number of Criminal Cases Disposed and the Estimated Number of Accused Persons in Custody

Source of data: Ministry of the Attorney General

	# of Cases Disposed, 2018/19	% of Total Cases	Yearly Range of Accused Persons in Remand,* 2014–18
Before a trial takes place	188,924	89	20,000–22,000
During the trial proceedings	15,890	7	1,000–1,100
Following a trial	8,360	4	520–650
Total	**213,174**	**100**	

* While the number of the accused in remand (detained in custody) is not readily available, the Ministry of the Attorney General has indicated that these numbers were the best estimated yearly range between 2014 and 2018.

- other visual, audio and/or electronic evidence such as CCTV videos/stills, text messages, photographs, DVDs and CDs; and
- a Crown charge screening form that states what charges the Crown is proceeding on and the sentencing position of the prosecution, such as whether the Crown attorney will ask for a custodial sentence if there is a guilty plea or a guilty verdict after a trial.

2.3.3 When a Criminal Case Can Be Disposed

A criminal case can be disposed at any point in a criminal proceeding:

1. before a trial takes place, when either the prosecution withdraws the charges or the accused pleads guilty;
2. during the trial proceedings, when the case collapses on the first day of the trial or another day during the trial, before a verdict is rendered; or
3. following a trial that concludes with a verdict of either guilty or not guilty.

A significant number of accused persons who are still presumed innocent are kept in remand (detained in custody) pending disposition of their cases. **Figure 5** shows the number and percentage of cases disposed in 2018/19 as noted above, and the best estimate for the average number of accused persons in remand between 2014 and 2018.

2.3.4 The Jordan Decision on "Unreasonable" Delay of Trial

The timely disposition of a trial in criminal court is not only a fundamental right of accused persons, entrenched in section 11(b) of the Charter, but also an essential element of public confidence in the criminal justice system.

Timely disposition of criminal matters is also critical for witnesses, victims and their families impacted by crime. It assists the court process with the accurate recollection of information related to the crime and its investigation, and it allows for emotional and psychological closure for the persons affected.

In July 2016, the Supreme Court of Canada ruled in *R. v. Jordan* that the pretrial delay caused by the prosecution (49.5 months in this case) was a breach of the "right to trial within a reasonable time" as guaranteed by the Charter. Consequently, the Court set out a new framework for calculating delay when an application for section 11(b) is filed. It imposed a presumptive ceiling such that if a case is not disposed within 18 months (for cases tried in the Ontario Court) or 30 months (for cases in the Superior Court), the delay is presumed to be unreasonable, and the Crown attorney has to contest this presumption or else the charges will be stayed (legal proceedings against the accused will be discontinued).

Between July 2016 and August 2019, 791 applications were filed by the defence in Ontario to have the court consider cases under the Jordan timeline

and, based on information provided by the Division, 191 provincially prosecuted cases were stayed by the judiciary in Ontario on account of unreasonable delay.

2.4 Mental Health Courts

Ontario has 56 criminal courts that can hear cases where the accused person may have mental health issues. Included in these 56 are 15 dedicated mental health courts and 14 community or drug treatment courts, staffed by psychiatrists and mental health support workers. The amount of sitting time scheduled for hearing mental health–related cases at each court varies; it is determined by the Ontario Court judiciary. **Appendix 4** contains a list of these courts, the year when they were established (since 1997) and their scheduled sitting time.

At any time after charges have been laid, any criminal court participants, including defence counsel, police, the judge, the accused or the Crown attorney, or family members of the accused, can seek to have the Crown attorney refer the case to a mental health court. One of three scenarios typically follows the laying of charges when the mental health of the accused is in question:

- Accused pleads guilty and requests that treatment and participation in ongoing programming for their mental health condition be considered at sentencing. They may receive any sentence the judge determines is appropriate, which may include an absolute discharge; a conditional discharge that binds the accused to meet certain conditions or face possible imprisonment; a fine; a conditional sentence that is to be served in the community; or a jail sentence.
- If the accused person's case is eligible for diversion outside the regular court system, a mental health court support worker will work with the person to develop a program that may include community support, supervision and/or treatment and regular check-ins with support workers and the court. The charges may be withdrawn upon successful completion of the program.
- At any stage of the proceedings, a person may be deemed unfit to stand trial if they have a mental illness that prevents them from understanding what happens in court or the possible consequences of the court proceedings, or communicating with and instructing their lawyer. The judge may order the person to receive treatment in order to return to a "fit" state. If the person is found fit after treatment, their case typically moves back to a regular court unless the accused wishes to avail themselves of some of the assistance of the mental health court workers in that court.

Appendix 5 shows the typical process for an accused person who goes through a mental health court in Ontario.

3.0 Audit Objective and Scope

Our audit objective was to assess whether the Ministry of the Attorney General (Ministry) had effective systems and procedures in place to:

- utilize Ministry resources for courts efficiently and in a cost-effective way;
- support the resolution of criminal law matters on a timely basis, with consistent delivery of court services across the province, in accordance with applicable legislation and best practices; and
- measure and publicly report periodically on the results and effective delivery of court services in contributing to a timely, fair and accessible justice system.

Before starting our work, we identified the audit criteria we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and procedures, and internal and external studies. Senior management at the Ministry reviewed and agreed with our objective and associated criteria as listed in **Appendix 6**.

Our audit work was conducted primarily at the Ministry and the seven courthouses that we visited from January to August 2019. These courthouses cover all seven regions into which the Ontario Court of Justice is divided for administrative purposes, and are the Barrie, Brampton, College Park, Cornwall, Fort Frances, Kitchener and Sudbury courthouses. We based our selection of these seven courts on factors including the number of cases received and the trend in the number received, average days needed to resolve a criminal case, the number of cases waiting to be disposed, and other observations we made throughout our audit that prompted further examination.

We obtained written representation from the Ministry, effective November 14, 2019, that it has provided us with all the information it is aware of that could significantly affect the findings of this report, except for the effect of the matters described in the scope limitation section.

The majority of our document review went back three to five years, with some trend analysis going back 10 years. We reviewed relevant research from Ontario and other Canadian provinces, as well as foreign jurisdictions.

We conducted the following additional work:

- Interviewed senior management and appropriate staff, and examined related data and documentation at the Ministry's head office and the seven courthouses.
- Spoke to the senior management at the Office of the Chief Justice of the Ontario Court of Justice, Office of the Chief Justice of the Superior Court of Justice and the Court of Appeal, presided over by the Chief Justice of Ontario.
- Spoke to representatives from stakeholder groups, including defence counsel from the Criminal Lawyers' Association and the Canadian Council of Criminal Defence Lawyers, Legal Aid Ontario, Ministry of the Solicitor General, Ontario Provincial Police and Toronto Police Services, to gain their perspectives on criminal court services in particular.
- Engaged an expert advisor from Alberta with legal and academic background and expertise in criminal law and procedure, evidence, and law and technology, to gain the expert's perspective on overall issues and concerns regarding criminal courts, including court delays, reasons for withdrawal of cases by Crown attorneys, matters to be considered due to the Jordan decision and court efficiencies.
- Considered the relevant issues reported in our 2003 and 2008 audits of Court Services and our 2012 audit of Criminal Prosecutions.
- Reviewed the work conducted by the Ministry's internal audit and considered the results of these audits in determining the scope of this value-for-money audit.

Scope Limitation

The *Auditor General Act* requires the Auditor General, in the annual report for each year, to report on whether the Auditor received all the information and explanations required to complete the necessary work. Section 10 of the *Auditor General Act* states, in part, "The Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by a ministry, agency of the Crown, Crown controlled corporation or grant recipient, as the case may be, that the Auditor General believes to be necessary to perform his or her duties under this Act." As well, under the *Auditor General Act*, a disclosure to the Auditor General does not constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege.

Although Ministry staff were co-operative in meeting with us during our court visits, we experienced significant scope limitations in our access to key information and documents that would be required to complete the necessary audit work, as follows:

- **Criminal case files maintained by Crown attorneys**—We asked to review case files maintained by Crown attorneys on a sample basis to obtain case details such as the reasons for delays in resolving some criminal cases. The Ministry's Criminal Law Division (Division) restricted our full access to the selected files, citing various privileges such as litigation privilege (referring to files containing information regarding prosecution strategy and publication bans, for example) and confidential informer privilege (referring to files containing names of confidential informants, whose identity prosecutors have a legal duty to protect by ensuring no disclosure occurs that might tend to reveal the identity of an informer or their status as an informer).

  However, the Division was unable to identify, on a timely basis, how many of the 175 files we selected contained information on confidential informers at the time of our audit. Instead, the Division gave us its summarized case details, including reasons for delays, from the case files we had selected to review.
- **Court scheduling**—In **Section 4.3**, we noted certain courthouses that experienced delays in resolving criminal cases where the courtrooms were not used to the optimal average as defined by the Ministry. We requested access to the court scheduling for these courts, but our request was denied by the Ministry because it did not have approval from the Offices of the Chief Justices of the Ontario Court of Justice and the Superior Court of Justice to provide this information to us, even though Ministry staff have access to the information.

  A representative of the Chief Justice of the Ontario Court responded:

  > *Judicial administration of the Ontario Court of Justice ("OCJ") is constitutionally and legislatively independent of the government, and as such, the OCJ is not subject to the* Auditor General Act.

  A representative of the Chief Justice of the Superior Court also

  > *reiterate[d] the constitutional and legislative independence of the court and its exclusive jurisdiction over all matters related to judicial administration, including case scheduling. Moreover, as the OCJ [Ontario Court of Justice] already noted, the courts are not subject to the* Auditor General Act *nor its operations the subject of this audit.*
- **Review of mental health courts**—In preparing **Section 4.7.1**, when we inquired whether a review of the scheduling and operations of mental health courts in the Ontario Court had been done in the past, the representative of the Office of the Chief Justice of the Ontario Court responded:

  > *The establishment of specialized courts (including mental health courts) and any judicial review of these specialized courts fall within the exclusive jurisdiction and responsibility of the Chief Justice and her RSJ [Regional Senior Judge] delegates for judicial scheduling. As such, these are matters relating to judicial independence and fall outside the scope of the audit team.*

Once again, we were unable to confirm whether such a review had been done in the past, or to determine if the courts were being operated as intended, even though it is Ontario's taxpayers who pay the cost of operating the courts.

The *Courts of Justice Act* states, in part, *"The administration of the courts shall be carried on so as to … promote the efficient use of public resources."* However, without complete access to the information and documents requested, we are unable to assess and determine, on behalf of the Members of the Legislative Assembly and taxpayers, whether public resources, such as courtrooms, are used efficiently and cost-effectively to help reduce delays in some criminal cases.

Our Office did not intend to question verdicts or judges' and Crown attorneys' judgment or opinions in the criminal cases that come before the court. We found this denial of access unusual given that the Chief Justice of the Ontario Court of Justice signed a memorandum of understanding with the Attorney General in 2016. The memorandum's Section 3.4 reads as follows:

> *Provincial Auditor*
> *The financial and administrative affairs of the Ontario Court of Justice, including the Office of the Chief Justice, may be audited by the Provincial Auditor as part of any audit conducted with respect to the Ministry.*

Appendix 7 lists some of the criminal court information pertinent to our audit that is publicly available as well as criminal court information that is not publicly available. For the latter, we further list the specific information to which we received access alongside the information to which we were denied access during our audit. For each area where we were not given access, we explain why we needed the information for our audit purposes and the impact on our audit that resulted from not getting this information. As noted in **Appendix 7**, there were inconsistencies in the rationale for what was or was not provided to us.

4.0 Detailed Audit Observations

4.1 Number of Criminal Cases Awaiting Disposition Continues to Increase

4.1.1 New Cases Received Exceeded Cases Disposed

The backlog of criminal cases we noted in our previous audits of court services continues to grow. The Ontario Court received 236,883 cases in 2018/19, a 10% increase over 2014/15. Yet the number of cases disposed increased by only 2% over the same period. The result is a 27% increase in criminal cases waiting to be disposed —about 114,000 cases as of March 2019 compared to about 90,000 in March 2015. Another result of this backlog is the increasing age of the cases awaiting disposition. **Figure 6** indicates that, between 2014/15 and 2018/19, cases pending disposition for more than eight months increased by 19%, from about 31,000 to about 37,000.

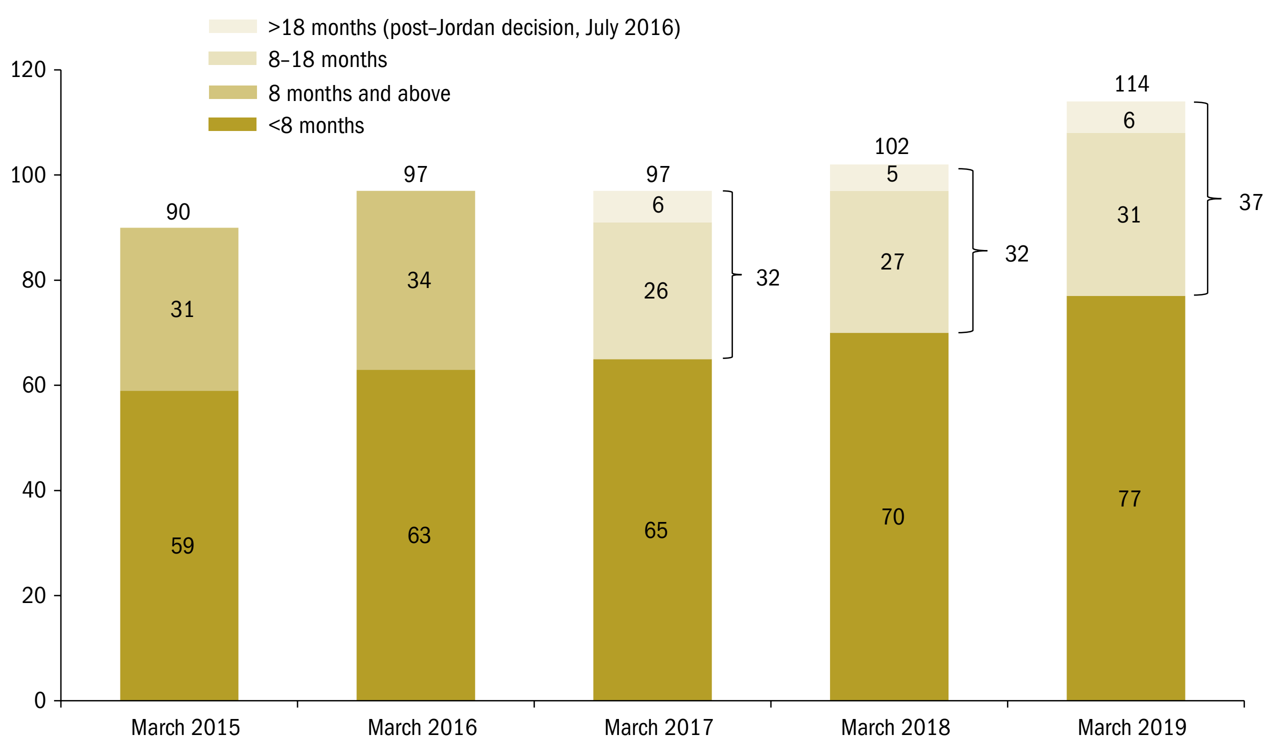
This backlog and systemic delay in resolving criminal cases negatively impacts the Charter right of accused persons to be tried within a reasonable time. Accused who did not seek or were not granted bail may remain detained in remand for long periods; if a case drags on longer than the Jordan timelines the charges may be stayed (permanently by the court). Over time, witnesses may become unavailable and memories may fade. Delays owing to inability to manage and resolve criminal cases on a timely basis also have a significant impact on victims and their families, who may feel they are denied justice, and on public confidence in the justice system.

In August 2016, following the Supreme Court's Jordan decision (**Section 2.3.4**), the Criminal Law Division (Division) began to track cases pending disposition for more than 18 months. As **Figure 6** shows, the number of these cases ranged from about 5,000 to about 6,000 (from 5% to 7% of total pending cases) between March 2017 and March 2019.

We selected a sample of 30 case files where the cases were pending disposition for more than 18 months. We were not given full access to the files. Instead, the Division summarized the reasons for delays in these cases for our review. Using their summaries, we noted that of the 30 files, only 27 contained sufficient information and were pertinent to our analysis. In these 27 cases, the Division's information indicated that both the defence and the prosecution could be responsible for the delays in a single case, in addition to "institutional delays" such as difficulty in obtaining court dates. Multiple

Figure 6: Ontario Court of Justice—Number of Criminal Cases Pending Disposition (000s), by Average Age, March 2015–March 2019

Source of data: Ministry of the Attorney General



reasons were noted for the delay for each case; we noted the three top reasons:

- 25 cases had delays caused by the defence, such as unavailability of defence counsel or change of defence counsel (this is not within the control of the Ministry and is not considered by the judge in calculating Jordan timelines and staying the charges);
- 21 had delays caused by the prosecution, such as lack of timely disclosure of evidence by the police, or attributed to Crown attorneys, such as witnesses not showing up to testify or delays in setting trial dates; and
- 21 were experiencing institutional delays that included problems such as unavailability of courtrooms or of judges who were ill or had a scheduling conflict.

The accused in 12 of these cases were being detained in remand, while the other 15 were out on bail while the case was proceeding in court.

One of the cases we reviewed included nearly all of the reasons for delay we noted. This case related to a major assault and was pending disposition for 28 months, with the accused out on bail. Most of the delay was due to a conflict of interest relating to one judge, another judge's unavailability as a result of illness, difficulty in obtaining court dates, and timely disclosure of evidence from police. The defence counsel was responsible for the balance of the delay, approximately three months. (**Appendix 8** summarizes other cases in this sample.)

The remaining three case files were not usable for our purposes. One case should have been recorded as closed but was erroneously still listed as pending disposition. Two cases were transferred to the Public Prosecution Service of Canada and were no longer being prosecuted by the provincial Crown attorneys.

4.1.2 Cases Are Taking Longer to Resolve—191 Provincially Prosecuted Cases Were Stayed Due to Excessive Delay between July 2016 and August 2019

Contributing to the backlog in cases awaiting disposition is the increasing length of time needed to resolve criminal cases in Ontario. Between 2014/15 and 2018/19, the average number of days needed to resolve a criminal case increased by 9% (from 133 to 145 days), and average appearances in court increased by 17% (from 6.5 to 7.6 appearances).

Figure 7 shows the number of cases stayed by Ontario courts resulting from the July 2016 Jordan decision. The downward trend in the numbers appears to show a slight improvement by Crown attorneys in identifying cases in danger of being stayed. Since the decision, according to information provided by the Division, 191 provincially prosecuted cases have been stayed at the request of the defence by judges who ruled that the prosecution, police and/or court system had been responsible for unreasonable delay. In these cases, justice was denied for the victims.

As of August 2019, 28 applications made by defence counsel to stay cases were pending judicial decision.

The Division does not analyze such cases by court location, by region or province-wide for the types of offence and reasons for delay. We selected a sample of 35 cases (between July 2016 and June 2019) from the 191 stayed cases involving charges to understand why they were stayed and to review the reasons for the prosecution's delay. For 19 of the 35 cases, instead of giving us full access to the files, the Crown attorneys reviewed their case notes and summarized the reasons for delay (on the understanding that a case can have more than one reason for delay):

- eight cases (42%)—court scheduling;
- seven cases (37%)—disclosure of evidence; and
- four cases (21%)—delays attributed to Crown attorneys, such as witnesses not showing up to testify or delays in setting trial dates.

Figure 7: Number of Cases Stayed Due to the Jordan Decision, July 2016–August 2019

Source of data: Ministry of the Attorney General

Time Period	# of Cases
July 2016–December 2016	39
January 2017–June 2017	45
July 2017–December 2017	39
January 2018–June 2018	30
July 2018–December 2018	27
January 2019–June 2019	17
July 2019–August 2019*	6
Total Cases Stayed (A)	**203**
Total Cases Overturned on Appeal (B)	**12**
Net Stayed Cases (A – B)	**191**

Note: In July 2016, the Supreme Court of Canada ruled in *R. v. Jordan* that the pretrial delay caused by the prosecution or the court system breached the Charter "right to trial within a reasonable time." The Court set timelines for disposing criminal cases from the date of charge by the police: 18 months for provincial court, and 30 months for superior court or after a preliminary inquiry for a case that began in provincial court. When a case exceeds these timelines, the defence may request a judge to have the charges stayed. (See **Section 2.3.4**.)

* Data compiled as of August 2019, at which time 28 applications made by the defence counsel to stay cases were pending either argument or judicial decision.

Among the 19 stayed cases where Crown attorneys gave us summaries of their case notes, in one case relating to a $13 million fraud, the judge ruled that delays of approximately four years were primarily due to two sudden medical leaves that left the case with no judge available to hear it. In another case of crime against persons, the judge ruled that the entire delay of 19.5 months was due to lack of appropriate police preparation of a witness and police disclosure issues. An impaired driving case was stayed as a result of not co-ordinating trial dates with a key witness's schedule, adding to the 21-month delay attributed to the Crown attorney.

We did not further analyze the summaries of their case notes for the remaining 16 cases of the 35 we sampled that fell into various categories. In 13 of them, the Crown attorneys could not identify the reason for delays before the end of our audit. In two of the 16 cases, the Division noted that the cases were determined to have been stayed for reasons other than the Jordan decision; we later discovered

from our own independent review that the two cases had actually been stayed under the Jordan decision. One stayed case of the 16 was being appealed by the prosecution at the time of our review.

To confirm the reasons for delays as summarized by the Division and noted above, we selected all 56 judicial decisions that were publicly reported or that the Division provided to us as of August 2019 (excluding judicial stays that were subsequently overturned on appeal), and did our own review of the types of offences charged and the reasons for delay. We noted that 26 were impaired driving cases. Of the remaining 30, one case related to attempted murder; six were sexual assault–related cases; seven were for assault, including assault with a weapon; seven were offences against children; three were firearm-related offences; and the other six cases were for various other Criminal Code offences, including fraud and public mischief.

Among the delays cited, the top reasons given for staying these 56 cases were (on the understanding that a case can have more than one reason for delay):

- 18 cases (32%)—institutional delays owing to courtroom scheduling, lack of judicial resources, difficulty obtaining court interpreters and/or administrative errors;
- 22 cases (39%)—delays in gathering and disclosure of evidence by police and/or Crown attorneys; and
- 16 cases (29%)—delays attributed to Crown attorneys, such as witnesses not showing up to testify or not scheduling court dates in a timely manner.

As with the pending cases we examined that are still moving slowly through the justice system, a case that was stayed by the court may also have experienced a range of delays. For example, we noted that a case originating in 2017 in which the accused faced 14 firearm-related charges was stayed. The delay was just over 20 months, and issues with timely disclosure were a concern throughout the case. In addition, the Crown attorney on this case underestimated the required trial time, and as a result seven of the 20 months of delay were attributed to Crown attorneys' unavailability and other issues relating to their assignment. The judge ruled that if the appropriate amount of time had been scheduled for the trial, what had been accomplished in seven months would have taken much less time. (**Appendix 8** summarizes other cases in this sample.)

In August 2016 the Division began to track cases pending disposition for more than 18 months. The large number of impaired driving cases in our sample of stayed cases suggests that, when cases are approaching the Jordan timeline, Crown attorney offices with limited resources were prioritizing other types of serious criminal cases or, for instance, cases with accused persons having prior criminal records for prosecution so that these cases are not stayed. We asked the Ministry to provide 10-year case histories (January 2009 to July 2019) for a sample of 50 accused whose cases had been stayed. Our objective was to determine if any accused persons whose cases were stayed already had a record of older criminal charges, or if any were charged with new offences they committed after their cases were stayed.

In 11 of the 50 sample cases, the accused either already had a record of older criminal charges before their case was stayed, or went on to be charged with a new offence after their case was stayed.

In another 23 sample cases, we noted that the accused had no charges from before or after their cases were stayed. In the remaining 16 cases, the Ministry had no records relating to case histories—although it informed us that it does not have a unique identifier for accused persons, and some case histories may not be located if, for example, a name has been recorded incorrectly.

4.1.3 Reasons for Aging Cases Require Formal and Regular Analysis Done Centrally

As shown in **Figure 6**, the number of cases pending disposition up to eight months increased by more

than 30%, from 59,000 as of March 2015 to 77,000 as of March 2019. However, we found that the Division has not done formal and regular analysis of aging cases at an aggregate level, that is, at the level of court location, region or province, such as the following:

- categorizing the reasons why cases are pending disposition;
- categorizing the reasons why cases are stayed; or
- distinguishing whether delays were caused by the defence or by the prosecution or were "institutional," for example, related to court scheduling.

These higher-level analyses can be used to generate regular reports for senior management to highlight areas of concern that have a systemic impact on the criminal court system. As well, such analysis can help to inform the Division so that Crown resources can potentially be allocated and reallocated proactively.

Instead of conducting formal and regular analysis on an aggregate level or centrally across the province, the Division relies on assistant Crown attorneys at individual court locations to manage their own cases and inform their Crown attorneys if a case is at risk of being stayed or if they need more help to resolve it.

For their part, Crown attorneys track their cases individually in their case notes. In 2013, the Criminal Law Division developed SCOPE (Scheduling Crown Operations Prepared Electronically), a case management system designed to assist Crown attorneys in electronic scheduling, resource management, case management and disclosure tracking. SCOPE allows Crown attorneys to view and run reports on pending cases by their age and track applications filed by the defence to stay cases due to unreasonable delay under the Jordan decision. In addition, SCOPE extracts are used to provide a dashboard to help managers identify and triage cases nearing the Jordan timelines.

However, the Division can do more in identifying systemic reasons for delays so that the information can help ensure that criminal cases are managed and disposed in a timely manner. The eight-month mark could be a key time for Crown attorneys to start monitoring these cases more closely and to inform the Division through formal data analysis and reporting.

RECOMMENDATION 1

To proactively manage the progress of criminal cases through the court system and resolve them in a timely manner, we recommend that the Ministry of the Attorney General (Criminal Law Division):

- monitor all criminal cases that have been pending disposition for more than eight months by court location and region and analyze the reasons for the delays;
- capture all reasons for cases being stayed by judges;
- distinguish the reasons under the control of the Division (such as availability of Crown attorneys and disclosure of evidence) and the courts (such as scheduling of courtrooms and judges) from those caused by the defence; and
- take timely action, including allocating resources as needed and working with the judiciary to improve the court scheduling process.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Division is dedicated to resolving criminal cases as efficiently and effectively as possible, while simultaneously striving to provide the highest quality and standard of prosecution service. For those cases where stays were issued, the Division conducts reviews to take corrective action where required.

The effectiveness of these practices is demonstrated in the decreasing number of stays for delay year over year since the Jordan decision. In the three years since Jordan, July 2016 to

August 2019, the total number of cases disposed was 633,788. Of those cases, only 191, or 0.03%, were stayed for delay.

The Division will actively analyze the data gathered by Crown offices to ensure cases are dealt with as expeditiously and effectively as possible with the appropriate oversight. As well, the Division will continue to have collaborative discussions with the judiciary and the Ministry's Court Services Division on how to maximize courtroom use in a way that provides timely access to justice while respecting the Court's judicial independence.

4.2 Criminal Law Division Efforts Have Had Little Effect on Delays in Disposing Criminal Cases

4.2.1 Number of Cases Disposed Has Remained Nearly Constant Although the Number of Crown Attorneys Has Increased over the Last Five Years

While the number of full-time-equivalent Crown attorneys increased by 8% between 2014/15 and 2018/19, total cases disposed in both the Ontario Court and Superior Court increased by only 2%. The addition of new Crown attorneys did not result in a proportional increase in the total number of cases disposed.

4.2.2 Lack of Benchmarks Has Led to Inefficient Allocation of Crown Attorneys and Vastly Unequal Numbers of Cases Disposed across the Province

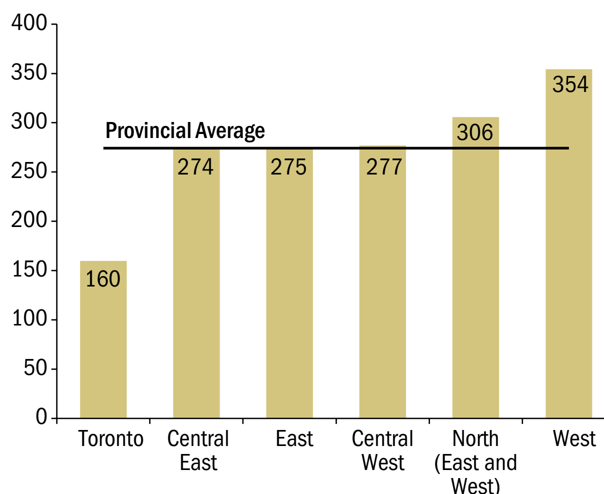
We noted that, overall, the average number of criminal cases disposed per Crown attorney increased by 2.5% over the five-year period ending March 31, 2019; but we also found significant variations in the number of cases disposed (using a five-year average) per Crown attorney across the province, from a low of 160 cases in Toronto region to a high of 354 cases in the West region, compared to a provincial average of 274 cases (see **Figure 8**). We also noted variations in the number of cases disposed per Crown attorney in offices within the Toronto region, from a low of 128 cases in one office to a high of 198 cases in another office.

The Division continues to face challenges in obtaining reliable data and key performance indicators on workloads. This includes determining what is a reasonable workload and the average time Crown attorneys take to resolve cases, especially at the local and regional level. Lack of relevant data and analysis impedes decision-making in assigning Crown attorneys to court locations based on need, balancing workloads so that they are equitably distributed across the province, and allocating Crown attorneys among offices as needed. We note in **Section 4.1**, from the notes that the Division summarized for us when we were not given full access to the case files, that unavailability of a Crown attorney was indicated as one of the top three reasons for delays in resolving cases and, in some circumstances, for cases being stayed.

Inequitable and increasing workloads noted by the Division have caused significant concerns among Crown attorney offices. In a business case submitted in May 2017 by a Crown attorney office for additional Crown attorney resources, the office making the submission noted that:

Figure 8: Five-Year Average Number of Cases Disposed per Crown Attorney Across Six Regions in Ontario, 2014/15–2018/19

Source of data: Ministry of the Attorney General



- it received about 29% more cases in 2017 versus 2016 and expected the increasing trend to continue; and
- it had about two Crown attorneys, versus four to five Crown attorneys in offices having similar numbers of disposed cases.

The office requested an additional permanent Crown attorney and a temporary Crown attorney; the Division accepted this request and provided additional resources.

In February 2019, another Crown office submitted a business case for additional Crown attorney resources to senior management of the Division. The business case used the Division's caseload statistics to identify eight Crown offices located in urban areas with significant differences in resources. The Crown office making the submission:

- received the highest volume of criminal cases in the province, with 189.6 active cases per Crown attorney, versus 86.9 in another office; and
- disposed 76.6 cases per Crown attorney, versus 36 cases in another office.

The business case reported the impact that the workload was having on the Crown attorneys in this office, resulting in a 36% increase in sick days taken by staff over the preceding 13 months. As of August 2019, this business case was still being considered by senior management of the Division.

We identified similar issues in managing Crown attorney workloads in our 2012 audit of Criminal Prosecutions. Since then, the Division has taken some steps to further understand its workload issues. Among the new tools that the Division has created and implemented since 2012 are:

- WRIT, a workforce resourcing tool that lets managers track metrics such as case volume by individual court location and region, the proportion of offence types handled, staffing allocations by position type and related expenses;
- PROStats, which generates customized reports for senior management to monitor the trend in criminal case statistics by court location;
- SCOPE, a scheduling, case management, file management and disclosure tracking tool that can help with case management by, for example, categorizing active cases by age; and
- HUD (Heads-Up Display through SCOPE), which produces real-time dashboards of active cases and case volumes.

Also after our audit in 2012, the Division identified the additional need for a system to define the complexity of different criminal cases and assign caseloads to its prosecutors accordingly. However, after seven years, as of August 2019, the development of this Crown Information Management Model system was in data analysis stage, with an expected completion date by the end of June 2020.

Despite its adoption of new tools, the Division does not have a data-driven and systematic approach to assigning Crown attorney resources consistently across the province that could help decision-makers reduce the backlog of cases. To explain the difficulty it faces in assigning caseloads to its Crown attorneys according to the complexity of cases, the Division listed some of the many factors that drive complexity in criminal prosecutions: type of jurisdiction (urban or rural); size of the Crown office and case volume; experience level of Crown attorneys; type of offence and evidence required to prosecute; number of police services that Crown attorneys have to co-ordinate with in different regions; number of available courtrooms; changes in criminal legislation that are under federal control; increased sophistication of crimes; and increase in the volume of digital disclosure due to advances in digital technology (such as body-worn cameras and videos) and the use of social media.

From February to June 2019, the Division conducted a survey of Crown attorneys in order to quantify and assess the effects of caseload variability and increasing case complexity, but the results were not yet available at the time we completed our audit.

RECOMMENDATION 2

To allocate, assign and reassign Crown attorneys efficiently and appropriately based on case complexity and the need to achieve a reasonable balance in their workloads across the province, we recommend that the Ministry of the Attorney General (Criminal Law Division):

- set a targeted timeline to complete the implementation of the Crown Information Management System;
- allocate Crown resources to cases as needed by criteria including age, complexity and type of case; and
- continuously reassess case status to be able to reallocate cases where needed.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The Division recognizes the importance of gathering and utilizing data to support the optimal use of existing resources while taking into consideration the resource demands of cases and reasonable expectations for prosecutors. The Division is structured to provide support to local offices on specific types of prosecutions.

To better understand the resource requirements of various types of cases and their complexity, the Division initiated the Crown Information Management System project to support informed decision-making in the utilization of limited Divisional resources. The Division anticipates that the project analysis will be completed by the end of June 2020.

While the information gathered through this project may inform resource-allocation considerations, the Division does not have the flexibility to freely move resources in the manner suggested by the Auditor as a result of Ontario Public Service policies and obligations under various collective agreements. The Division will, however, continue to work with its bargaining-agent partners.

4.2.3 Ministry Data Not Sufficient to Fully Analyze the Reasons Why Crown Attorneys Took Months to Withdraw Charges That Did Not in the End Go to Trial

A Crown attorney may withdraw the charges against an accused person before trial (1) when it becomes clear that there is no reasonable prospect of conviction; (2) as part of the resolution, such as plea bargaining; (3) when it is not in the public interest to prosecute; or (4) for other reasons not categorized by the Division.

We found that the Court Services Division's Integrated Court Offences Network (ICON) system does not capture the withdrawn charges by the four major reasons mentioned above. Although the Crown attorney's case management system (SCOPE) has the capability to capture these reasons, the system has not yet been able to fully cover all locations because, as of August 2019, SCOPE was rolled out across approximately 90% of the province. As a result, the Division was unable to fully analyze the growing trend we saw in the number of cases where charges were withdrawn by Crown attorney before trial, the number of days it took to withdraw and the number of appearances an accused had to make in court before charges were withdrawn. This information can be used to assist the Division to distinguish which areas were within or outside of the control of Crown attorneys, and to help them make timely decisions to withdraw charges when there appears to be no reasonable prospect of convicting the accused, or if it is not in the public interest to prosecute or for other uncategorized reasons.

We noted that, according to ICON, the charges withdrawn by the Province's Crown attorneys ranged from 34% to 40% (71,373 to 84,820) of all cases disposed before trial between 2014/15 and 2018/19 (see **Figure 9**). We noted as well that, in 2018/19, these charges were taking longer to withdraw and the accused required more appearances in court before they were withdrawn:

Figure 9: Criminal Cases Withdrawn by Crown Attorneys before Trial* in Ontario Court of Justice, 2014/15–2018/19

Source of data: Ministry of the Attorney General

	2014/15	2015/16	2016/17	2017/18	2018/19	% Change
# of cases withdrawn	71,373	71,410	76,954	81,026	84,820	19
Average # of days to withdraw	110	117	127	128	126	14
Average # of appearances by accused before case was withdrawn	5.3	5.6	6.0	6.2	6.3	19

* These cases were withdrawn by Crown attorneys for any of the following reasons: (1) because there was no reasonable prospect of conviction; (2) as part of their resolution, by, for example, plea bargaining; (3) because it was not in the public interest to prosecute; or (4) for other reasons. The Integrated Court Offences Network (ICON) does not capture these cases by their reasons. It includes stayed cases but excludes federal offences and bench warrants.

- In 2018/19, Crown attorneys took an average of 126 days to withdraw charges for all reasons before a trial, compared to 110 days in 2014/15, an increase of 14%.
- Similarly, accused persons appeared in court an average of 6.3 times in 2018/19 before withdrawal, compared to 5.3 times in 2014/15, a 19% increase.

Based on the best data available from the Division for 85% of provincial cases received in 2018/19, we noted that of all charges withdrawn before trial by Crown attorneys, 14% were withdrawn because there was no reasonable prospect of conviction; 48% were withdrawn as part of resolution, such as plea bargaining; 12% were not in the public interest to prosecute; and 26% were withdrawn for other reasons that were not categorized by the Division. Again, using the best data available to us, we estimated that in 2018/19, the cost incurred by the prosecution on cases where charges were eventually withdrawn due to reasons other than as part of resolution was roughly $38 million (total 84,820 cases withdrawn X $859 average cost per case incurred by Crown attorney X 52% withdrawn due to reasons other than as part of resolution, such as plea bargaining).

We further reviewed notes summarized for us by Crown attorneys on 50 selected case files that we were refused full access to, and noted 30 cases where there was no reasonable prospect of conviction. These include cases with insufficient evidence to prosecute for reasons such as problems with disclosure (discussed in **Section 4.2.4**). The remaining 20 cases were withdrawn due to other reasons such as plea bargaining or because Crown attorneys decided that it was not in the public interest to prosecute.

We compiled examples of charges withdrawn with no reasonable prospect of conviction. These include the following:

- In an arson and break-and-enter case involving organized crime, the available evidence was limited to a description of a car that would match thousands of vehicles in the city and a fingerprint on a garbage bag in a quasi-public location. The Crown attorney had a considerable amount of potential evidence to review and withdrew the case approximately 14 months after the date of arrest.
- In a domestic-violence case, the complainant was no longer willing to participate in the court process and did not want it to proceed, which removed any reasonable prospect of conviction. This case was withdrawn after eight months.

According to Crown attorneys, there are many reasons that account for the time it takes from the laying of a charge to the case being withdrawn. For instance, disclosure is not always provided by the police at the start of the case but instead throughout the proceedings, and witnesses may not be able to be located or may no longer wish to provide evidence. A Crown attorney must review all

the evidence and may ask for further investigation by the police.

The Ministry's Crown Prosecution Manual notes how difficult it may be for a Crown attorney to finally decide to withdraw charges when there appears to be no reasonable prospect of convicting the accused. We are aware that the withdrawal of charges puts an end to a case, and that before a Crown attorney determines there is no reasonable prospect of conviction, they must exercise due diligence and ensure they have reviewed all the available evidence collected and investigative steps taken.

We have also noted the monetary and personal costs of prolonging a case that ultimately cannot be prosecuted. These include time spent by Crown attorneys, judges, court support staff and others; costs incurred in having the accused make repeated appearances before a court; and the long wait that victims face before cases are disposed. Repeated pretrial court appearances in these cases tie up courtrooms that may be better used to hear pending cases where the prospect of conviction does exist.

RECOMMENDATION 3

To help reduce the costs that result from delaying the withdrawal of charges when there is no reasonable prospect of conviction, and to promote timely disposition of criminal cases, we recommend that the Ministry of the Attorney General (Criminal Law Division) collect complete data that includes the breakdown of all reasons for withdrawal before trial, the average number of days from charge to withdrawal for each reason, and the average number of appearances required by the accused in court for each reason, covering all court locations.

MINISTRY RESPONSE

The Ministry agrees and recognizes the importance of timely and informed decision-making pertaining to the withdrawal of charges. In accordance with their obligations, prosecutors ensure on a consistent and regular basis that they have reviewed all the available evidence collected, and the investigative steps taken, before deciding to withdraw charges.

The Division also gathers data on withdrawals, including capturing the reason for the withdrawal of a case. To address this recommendation, the Division will support comprehensive data collection through its existing case management system and identify best practices.

The decision to continue or terminate a prosecution is one of many instances of the exercise of Crown discretion done in accordance with the Crown Prosecution Manual and in a professional and responsible manner. Due to the dynamic nature of criminal cases, prosecutors have an ongoing obligation to assess the charge screening standard, which is a reasonable prospect of conviction and public interest.

4.2.4 Criminal Law Division and Police Services Lack Formally Agreed-Upon Roles and Responsibilities for Disclosure of Evidence

In our review of notes summarized by Crown attorneys on the case files we selected, we noted problems in obtaining timely and sufficient disclosure of evidence from police. In one case involving possession of property obtained by crime, the police services took approximately six months from the date of arrest to inform the Crown attorney that there was inadequate evidence to prosecute the case. The Crown attorney withdrew the charges four months later. As we noted in **Section 4.1.2**, disclosure was the main factor in delaying 39% of the 56 cases that we reviewed that were stayed under the Jordan decision.

The Division has long been aware of the difficulties in obtaining timely and sufficient evidence for disclosure purposes; however, the delays in delivering timely disclosure continue to contribute significantly to case backlogs.

In 1999, the Criminal Justice Review Committee (Committee) issued its report. The Committee, led by senior members of the judiciary and the Ministry, looked at ways to improve the speed and efficiency of criminal proceedings, while respecting the rights of the accused, the expectations of victims and the needs of society. It recommended, among others things, establishing a provincial co-ordinating committee to develop a directive that sets out the full disclosure responsibilities of the police and prosecutors, and to address disclosure issues on an ongoing basis. At the time of our audit, neither a provincial co-ordinating committee nor a formal policy had been established to clearly define the agreed-on roles and responsibilities of the Division and police services.

The Committee also recommended negotiating a memorandum of understanding between police representatives and the Ministry of the Attorney General. In November 2016, the Division began to engage in a framework memorandum of understanding (MOU) with the Ontario Association of Chiefs of Police to standardize the disclosure process. However, we found that not all of the police services signed the MOU with the Division:

- The first MOU was signed in June 2017 with the Ontario Association of Chiefs of Police, representing the interests of its membership, including the Ontario Provincial Police and chiefs of municipal police services.
- As of March 2019, only 27 out of 47 municipal police services had signed. The Ontario Provincial Police also signed, bringing the total to 28 signatories. None of Ontario's First Nations police services had signed.

The Division was unable to substantiate that signing the MOU has shown significant improvement among the police services that signed the MOU. At our request, the Division gathered the results of the number of disclosure requests made by the Crown attorneys to three police services for our analysis. We reasoned that if disclosure received from the police services to the Crown attorney were organized and complete, it should lead to fewer follow-up requests by Crown attorneys. Our review of the data noted that the results were mixed:

- The Ottawa Police Service has improved in responding to disclosure requests: before signing the MOU it had been receiving requests for between 544 and 1,237 items of disclosure per month, and post-MOU it was receiving between 255 and 976.
- The Toronto Police Service, which had been receiving requests for between 10,032 and 15,371 items of disclosure per month before signing the MOU, was now receiving between 12,164 and 18,592.
- For the Hamilton Police Service, monthly requests for items of disclosure remained relatively stable since signing the MOU, ranging from 1,088 to 1,757, with one month standing out with 896 requests.

The MOU specifies various timelines to be met in the police delivery of disclosure to the Crown attorney. For example, initial disclosure for cases not classified as "major" is expected between 14 and 21 days from the date of arrest. However, the Division does not have a process, including regular reporting, in place to measure if the police services that have signed the MOU are meeting these agreed-upon timelines.

In June 2019, the Division revised the MOU and signed it with the Ontario Association of Chiefs of Police. The revised MOU encourages police and Crown attorneys to prepare checklists and to standardize them where possible, to bring consistency to the process. It also distinguishes between evidentiary documents that need to be transcribed, translated or redacted by police and those to be done by Crown attorneys. The revised MOU also includes an enforcement clause noting that "Police are responsible for monitoring compliance and ensuring implementation of the provisions under this MOU."

As of August 2019, only three municipal police services had signed the revised MOU. All other 59 police services had yet to sign. We followed up

with two of the municipal police services that had not yet signed the MOU. Both of them expressed concerns about lack of adequate resources within police services to meet the MOU's specified timelines and its increased requirements for transcription and redaction of evidence. All three police services agreed that a clear statement of their own and Crown attorneys' roles and responsibilities is essential for both parties to better allocate their limited resources and provide timely disclosure of evidence.

RECOMMENDATION 4

To improve the timeliness and sufficiency of disclosure of evidence to assist Crown attorneys in making their assessment whether to proceed with the prosecution of their cases, we recommend that the Ministry of the Attorney General (Criminal Law Division):

- work with the Ministry of the Solicitor General to clearly define the respective roles and responsibilities of police services and Crown attorneys with regard to disclosure of evidence;
- revise the memorandum of understanding (MOU) between the Ministry of the Attorney General and police services to incorporate their agreed-upon roles and responsibilities and address any concerns that are preventing the remaining police services from signing the MOU; and
- put in place an effective process to regularly monitor and determine if the agreed-upon disclosure timelines have been met by both parties.

MINISTRY RESPONSE

The Ministry agrees with the recommendation and acknowledges that timely disclosure of evidence is a priority for the Division, as it is a shared obligation inherent in delivering effective prosecutions.

To further this objective, the Division will take the necessary steps to work collaboratively with the Ministry of the Solicitor General and police services with respect to disclosure, and clarify the roles and responsibilities of prosecutors and police services to facilitate the finalization of outstanding issues. One recent example is the Criminal Justice Digital Design Initiative where justice system stakeholders, including police services, will have one electronic system for disclosure and data-sharing.

4.3 Twenty-Seven Courthouses Where We Noted Above-Average Delays in Disposing Criminal Cases Also Operated Less than the Ministry's Optimal Average of 4.5 Hours

As of March 2019, Ontario had 673 courtrooms in 74 courthouses (permanent court locations that provide for court appearances with document filing and administrative functions) spread across the province's seven administrative regions, of which 68 Ontario Court of Justice courthouses hear criminal cases. In 2018/19, criminal cases used 67% of total Ontario Court and Superior Court courtroom operating hours; these courtrooms are used for all practice areas, including family, civil and small claims.

We were able to use the case statistics available to us to identify 32 of the 68 Ontario Court of Justice courthouses with reported delays in resolving criminal cases. These 32 courthouses reported above-average delays in disposing criminal cases on at least one of the following indicators in 2018/19 (see **Figure 10**):

- average time needed to dispose a criminal case (provincial average 145 days); and/or
- total number of criminal cases pending disposition at the end of the fiscal year 2018/19 as a percentage of total pending cases at the beginning of the year plus the number of

Figure 10: List of Courthouses with Reported Above-Average Delays in Disposing Criminal Cases, Ontario Court of Justice, 2018/19

Source of data: Ministry of the Attorney General

Region	Location	# of Courthouses	Average # of Days to Dispose of a Criminal Case (Days)	# of Cases Pending Disposition at Beginning of the Year + # of Cases Received, 2018/19 (A)	# of Cases Pending Disposition, End of 2018/19 (B)	% of Cases Pending Disposition, End of 2018/19 (B)÷(A)	Average Daily Operating Hours Used per Courtroom[1]
North West	Fort Frances	1	177	1,646	601	37	1.3
West	St. Thomas	1	140	2,350	813	35	1.6
North East	Gore Bay	1	170	864	263	30	2.0
West	Chatham	1	145	4,015	1,504	37	2.2
North West	Thunder Bay	1	165	6,622	2,680	40	2.2
Central West	Welland	1	170	1,093	537	49	2.3
Central West	Hamilton	2	147	14,010	4,907	35	2.4
Central East	Lindsay	1	152	2,449	849	35	2.4
Toronto	311 Jarvis	1	161	1,705	604	35	2.5
North West	Kenora	1	141	4,383	1,568	36	2.7
East	Brockville	1	146	3,147	904	29	2.7
Central West	St. Catharines	1	162	8,934	3,390	38	2.8
East	L’Orignal	2	166	2,021	625	31	2.8
East	Cornwall	1	163	4,553	1,379	30	2.9
North East	Sudbury	2	152	6,337	2,253	36	3.0
Central West	Brantford	2	153	6,167	2,370	38	3.2
West	Goderich	1	129	1,557	588	38	3.5
North East	Cochrane	1	157	2,091	768	37	3.6
Toronto	1911 Eglinton	1	172	12,226	4,441	36	3.6
Toronto	2201 Finch Avenue West	1	169	9,239	3,520	38	4.0
Toronto	Old City Hall	1	163	18,261	6,359	35	4.2
Central West	Brampton[2]	2	175	28,211	11,249	40	4.2
Subtotal		**27**					
Toronto	1000 Finch Avenue West	1	151	9,744	3,397	35	4.6
East	Ottawa	1	150	17,610	5,260	30	4.7
Central West	Milton	1	146	7,582	2,675	35	5.0
Toronto	College Park	1	124	9,722	3,403	35	5.0
Central East	Newmarket	1	157	17,544	6,043	34	5.0
Subtotal		**5**					

1. Courtroom operating hours reflect hours during which courtrooms are in use; they do not measure working hours for judicial officials or court staff. Activity outside of the courtroom is not captured. Calculation is based on the total number of operating hours reported in ISCUS (ICON Scheduling Courtroom Utilization Screen) divided by the number of courtrooms in individual base courthouses, by 249 business days in a year.
2. Brampton courtroom operating hours do not reflect Brampton proceedings moved to other court locations due to a shortage of hearing rooms. Brampton proceedings are regularly moved to Kitchener, Guelph, Orangeville, Milton and Toronto for hearings.

cases received during the same year (provincial average 34%).

We then compared the average daily court operating hours for each of the 32 courthouses with the optimal average of 4.5 hours expected by the Ministry and found the following:

- five courthouses reported averages at or above 4.5 hours; and
- the other 27 reported averages below 4.5 hours.

Of the 27 courthouses that operate less than 4.5 hours daily, we noted that 15 reported a relatively high rate of cases that collapsed on the first day of trial or during the trial, either through withdrawal of charges or a guilty plea: between 69% and 88%. The provincial average was 66%. This helps to partially explain the low utilization rates of their courtrooms: trials that end suddenly with a collapse may leave the rooms sitting empty until they can be rescheduled. Cases that unexpectedly collapse do not appear to be a key factor in the low utilization rates of the other 12 courthouses.

Courtroom operating hours are those hours during which the rooms themselves are in use. They do not measure the working hours of judicial officials, Crown attorneys or court staff. However, the difficulties in obtaining court dates have contributed to the systemic delays we found in disposing criminal cases in Ontario. In the sample case files we discuss in **Sections 4.1.1** and **4.1.2**, this is a key reason provided to explain why cases were pending disposition for more than 18 months and why cases were stayed for unreasonable delay following a Jordan application.

For our audit of the courthouses that appeared to be underutilized, we attempted to examine the courts' scheduling (scheduled days for hearing cases versus days the cases were proceeded with) to follow up on why the courtrooms were not being used at their optimal level. However, the Offices of the Chief Justices of the Ontario Court and the Superior Court refused our request for access to court schedules or other detailed records of court activities that were often maintained by trial coordinators who work under the direction of the judiciary. This refusal represents a limitation on the scope of our audit (see **Section 3.0**).

We discuss courtroom utilization in greater detail in Court Operations (**Chapter 2** of this volume in this Annual Report), and make a recommendation on it there.

4.4 Approximately 70% of Inmates in Detention Are in Remand and Have Not Yet Been Convicted on Their Current Charges

An accused in remand (pretrial detention) has not been convicted on their current charges and under section 11(d) of the Charter is presumed innocent until proven guilty. If an accused person is denied (or does not seek) bail, they will remain in detention. **Chapter 1** of this volume in this Annual Report, **Adult Correctional Institutions**, found that the remand population in adult correctional institutions in Ontario amounted to 71% of all inmates in 2018/19 (based on average daily count), up from 60% in 2004/05. Ontario's remand population first overtook its sentenced population as the majority of inmates in its correctional institutions on an average day in 2000/01. The proportion of remand to sentenced population peaked in 2008/09 and has since remained fairly stable. As of 2018/19, the average daily count of remand inmates in provincial adult correctional institutions exceeded 5,000 (see **Figure 11**).

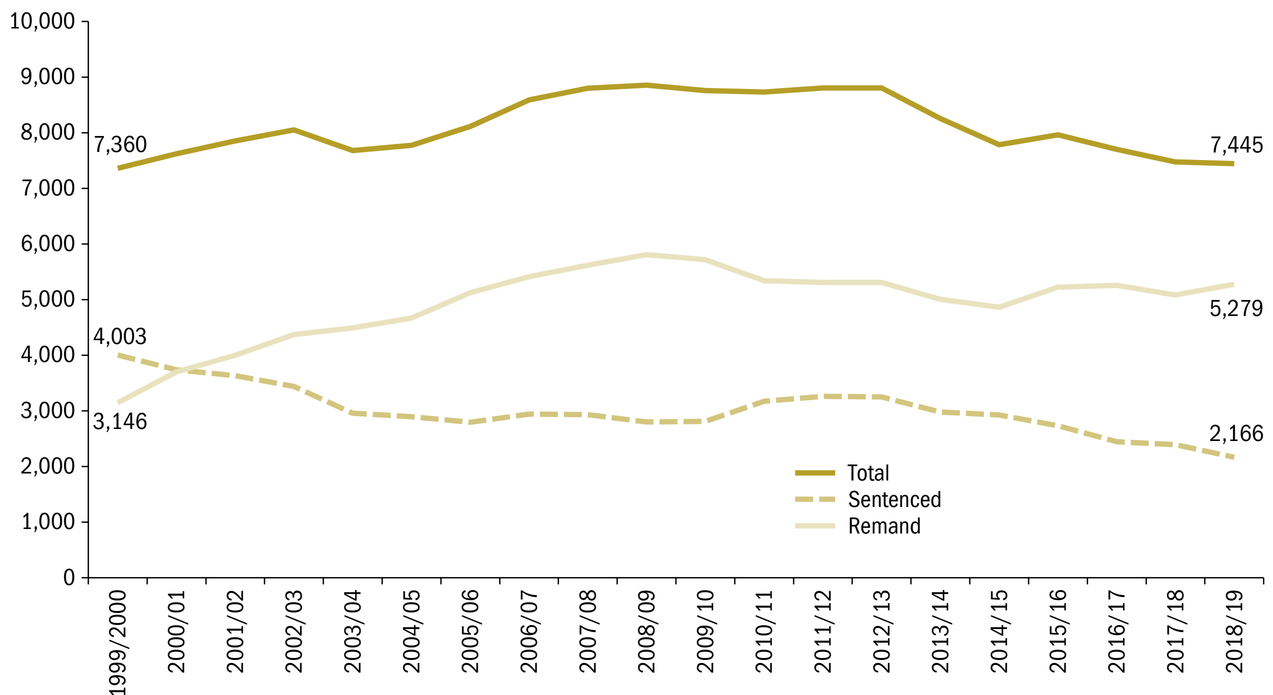
Two factors contribute to the size of the remand population: the length of time accused persons are spending in remand custody and the number of accused entering remand custody.

4.4.1 85% of Bed Days Are Used by Inmates Who Are in Remand for Longer than One Month

The length of stay of remand inmates in Ontario varies widely; it ranges from a low of one day to well over a year. In order to analyze the reasons for this wide range, we divided remand inmates

Figure 11: Average Daily Remand and Sentenced Population in Adult Correctional Institutions, Ontario, 1999/01–2018/19

Source of data: Ministry of the Solicitor General



Note: In 2001/01, the remand population overtook the sentenced population to become the majority of inmates on an average day in Ontario's adult correctional institutions.

into short-stay (detained between one day and one month), medium-stay (detained between one and six months) and long-stay inmates (detained for more than six months). The impact on correctional institutions of these inmates (in terms of the cost to the correctional institutions to maintain and house them) is measured in "bed days," meaning the number of days each inmate occupies a bed. See **Figure 12** for the percentage of bed days used by each of these groups of accused while in remand.

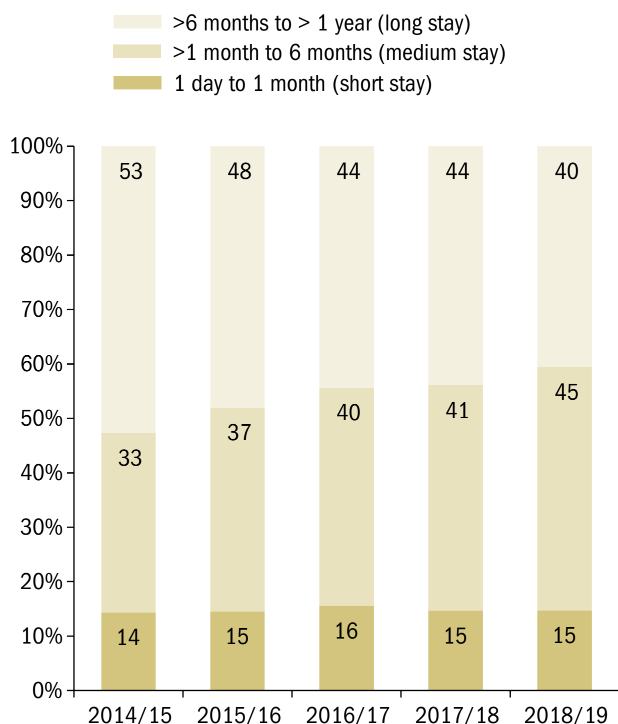
We noted that, over the last five years, short-stay inmates' use of remand bed days stayed steady at 14%–15% of the total. The vast majority of remand bed days, however, are used by medium- and long-stay inmates—84%–86% of the total over the last five years. Yet the balance between these two groups has shifted: the percentage of medium-stay inmates increased from 33% in 2014/15 to 45% in 2018/19, while the percentage of long-stay inmates fell from 53% to 41%.

The Ministry has not regularly analyzed the reasons behind these numbers. So, to understand why accused persons remain in remand, we selected and interviewed a sample of 24 remand inmates at one correctional institution who have not requested bail from the court. We chose five short-stay, 14 medium-stay and five long-stay inmates. We also selected 30 cases from a list of accused who were in remand for up to six months in the same correctional institution in 2018/19, and reviewed notes summarized by Crown attorneys on their case files. Based on our interviews and review of Crown attorneys' notes for all 54 inmates, we identified the top reasons among the multiple reasons each of these inmates gave for remaining in remand:

- 31 inmates were dealing with other charges;
- 22 inmates chose not to seek bail because they had been advised by defence counsel not to apply for bail, they wanted to earn enhanced credit for pretrial custody (maximum 1.5 days credit toward the sentence for

Figure 12: Percentage of Bed Days in Adult Correctional Institutions Used by Short-, Medium- and Long-Stay Inmates in Remand, 2014/15–2018/19

Source of data: Ministry of the Solicitor General



Note: Bed days are the number of days each inmate occupies a bed.

each day spent in remand), or they needed time to prepare a plan to present to the court; or they had health issues that resulted in delay in seeking or obtaining bail;

- 19 inmates were having ongoing plea discussions with the prosecution;
- nine inmates had difficulty producing a surety (a person who promises to supervise the inmate while out on bail, often a family member or friend); and
- eight inmates were awaiting disclosure before requesting bail.

In **Appendix 8**, we provide examples of cases that illustrate the reasons cited above.

The Division has implemented an Embedded Crown initiative that gives Crown attorneys the opportunity to advise the police on bail-related matters, such as whether to release accused persons who promise to appear in court instead of detaining them for a bail hearing. The Crown attorneys work full-time ("embedded") inside the police station. This initiative aims to reduce the proportion of cases starting in bail court. In November 2018, the Division conducted a preliminary assessment of the pilot which found a 2%–10% drop in the percentage of cases where the accused was detained by the police and sent for a bail hearing. The Division plans to decide on the next steps for this pilot once it completes its final evaluation by the end of 2019.

We note in **Section 4.1.1** how the large inmate population in remand can be partly explained by increasing delays in resolving criminal cases.

RECOMMENDATION 5

To help reduce the number of accused persons in detention waiting for their cases to be disposed, and shorten the time inmates on remand must spend in detention, we recommend that the Ministry of the Attorney General (Criminal Law Division):

- complete the evaluation of its Embedded Crown initiative, specifically its potential for reducing the number of accused being remanded in custody; and
- if the initiative is found to be successful, create an execution plan to expedite its implementation across the province.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and has prioritized a number of initiatives, such as the Bail Vettor and Embedded Crown initiatives, aimed at expediting the bail process and taking early bail positions. However, the decision to seek bail rests with the accused, and the decision to release or detain is solely the function of the judiciary.

The issues highlighted regarding bail and the remand population in Ontario have been at the forefront of priority initiatives the Division has undertaken recently. The Division anticipates that it will complete the evaluation

of the Embedded Crown initiative by the end of 2019. This initiative has demonstrated positive outcomes to date, and the final evaluation will ultimately inform the Division's decision whether to expand the program. If a decision is made to expand the program, the Division will develop an implementation plan, including the required investment of resources, to support the expansion.

4.5 Time Needed for Bail Decision Has Increased over the Past Five Years

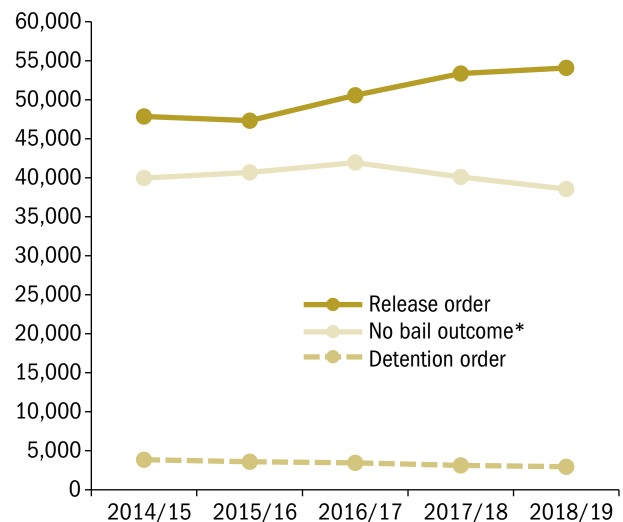
Cases where people charged with crimes went through bail courts in Ontario increased by 4% between 2014/15 and 2018/19, from 91,691 to 95,574. **Figure 13** shows the three types of outcomes at bail hearings—release order, detention order or no outcome—and their five-year trend. Over this period, release orders have seen a small increase, and detention orders and cases with no bail outcome have decreased slightly. As a result, in 2018/19, 54,072 (57%) of those appearing for a bail hearing were released, 2,960 (3%) were detained and 38,542 (40%) had no bail outcome. When no bail outcome is recorded, the accused did not seek bail.

We noted that the average number of days needed to reach a bail resolution increased for two types of inmates from 2014/15 to 2018/19, as follows:

- Where the accused persons were released after a bail hearing, the decision took on average 3.5 days in 2018/19 before the release order was made, compared to 3.1 days in 2014/15. We estimated that this increase is equivalent to more than 9,400 bed days per year.
- Where the accused persons were ordered to be detained after a bail hearing, the decision took on average 14.1 days in 2018/19 before the detention order was made, compared to 11 days in 2014/15—an increase equivalent to nearly 4,000 bed days per year, based on our estimate.

Figure 13: Number of Criminal Cases Resolved in Bail Courts with Decisions, Ontario Court of Justice, 2014/15–2018/19

Source of data: Ministry of the Attorney General



* "No bail outcome" means the accused did not seek bail.

On our visits to the seven courthouses, we observed that the dockets for bail courts were usually long, for example, there were 84 cases scheduled in one bail courtroom in a single day. In Ontario, bail hearings are scheduled from 9:00 a.m. to 5:00 p.m., Monday to Friday, with limited use of teleconferences and videoconferences. Ten weekend and statutory holiday (WASH) courts are available for bail hearings for the seven regions. Records kept by Crown attorneys in one region showed that the WASH court is often closed by noon. In contrast, British Columbia and Alberta have set up a centralized location where a justice of the peace is available for bail hearings by teleconference and videoconference, with extended hours seven days a week from 8:00 a.m. to 11:00 p.m. or midnight. The extended hours allow accused who were arrested later in the day to still receive a bail hearing and possibly be released the same day.

The Ministry has implemented a number of initiatives to reduce bail court delays. However, these were limited to certain locations, and despite

their success they were unable to reverse the province-wide increase in the number of days needed to reach a bail disposition.

- Ontario Court of Justice bail pilot project—In late 2016, courthouses in two locations started using judges to sit in bail courts instead of justices of the peace, who are not required to be trained in the law. The pilot project ended in August 2019; starting in September 2019, justices of the peace resumed sitting in the bail courts. The Ontario Court's evaluation of the pilot's effectiveness to identify options for judicial case management of matters beginning in bail court is scheduled to be completed by February 2020.
- Bail vettors—Between September 2015 and early 2017, Crown attorneys began to be assigned to 10 high-volume courthouses as bail vettors to review bail files, prepare the prosecution's position on the bail decision and meet with defence counsel and support workers before the bail hearing, to determine if there is an appropriate plan of release. Bail vettors also interview proposed sureties to reduce the number that have to testify in court. This initiative was evaluated in 2018 with mostly positive results: more bail outcomes, and decisions taken with fewer bail court appearances by the accused.
- Bail Verification and Supervision Program—The Ministry has implemented this program at all but six courthouses. Accused persons seeking bail who cannot provide a surety may be released and supervised in the community or given mental health supports through certain community organizations. In 2018/19, the program supervised about 12,010 people on bail, above the targeted goal of 8,500 set by the Ministry.

RECOMMENDATION 6

To help reduce the average number of days needed in arriving at a bail outcome, we recommend that the Ministry of the Attorney General (Court Services Division and Criminal Law Division) work with the judiciary to:

- discuss the possibility of expanding court operating hours for bail hearings;
- expand the use of teleconferencing and videoconferencing for bail hearings with extended hours seven days a week from morning to late evening, similar to the best practices in place in British Columbia and Alberta; and
- complete the evaluation of initiatives aiming to increase speed and certainty in the bail process, such as the Ontario Court of Justice bail pilot project, bail vettors and the Bail Verification and Supervision Program, and expand them if they are shown to have positive outcomes.

MINISTRY RESPONSE

The Ministry's Criminal Law Division agrees to closely track and monitor the effectiveness and results of its existing initiatives to improve and create efficiencies in the bail process. The Division anticipates a final evaluation of these programs to be completed by the end of 2020. If the outcomes of these programs are determined to be positive and effective in reducing the time it takes to reach a bail decision, the Division will consider their further implementation.

Any expansion of bail court (days/hours) will represent a significant increase in costs, such as staffing numbers and/or excessive overtime costs for all justice stakeholders.

The scheduling of courts in Ontario is the exclusive responsibility of the judiciary. The Division agrees to engage the judiciary and the Ministry's Court Services Division to explore opportunities and the feasibility of implementing proven best practices in other jurisdictions to facilitate timely bail hearings.

4.6 Administration of Justice Cases Increasingly Consume Criminal Justice System Resources

Administration of justice offences include Criminal Code violations such as failure to comply with bail conditions, failure to appear in court and breach of probation. These offences are sometimes seen as the "revolving door" of the justice system, as most are committed when a person disobeys a pretrial condition or order imposed by a judge relating to a previous offence.

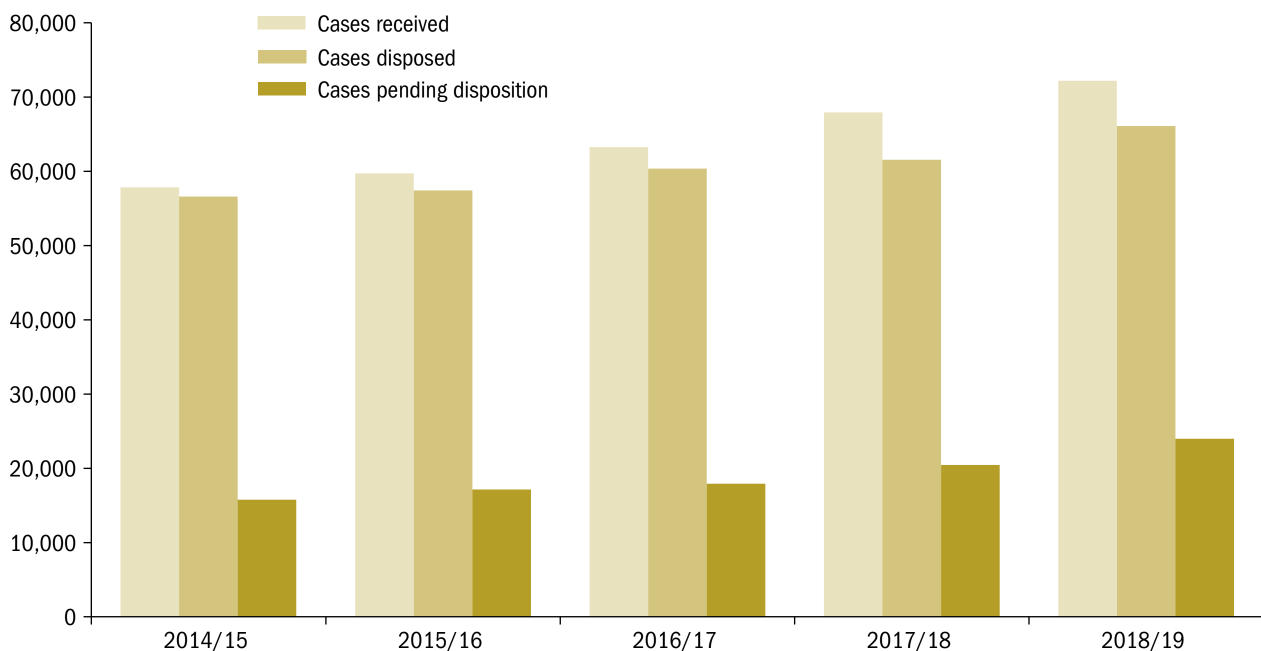
As noted in **Section 2.2**, 31% of the criminal caseload in Ontario consists of administration of justice offences, which have increased by 25% (57,834 versus 72,176) over the last five years (**Figure 14**). Of those, cases pending disposition have increased by 52% (15,772 versus 23,953), as the number of these cases disposed has not kept up with the increase in cases received. (We discuss delays and backlogs for all criminal cases in **Section 4.1**). At the same time, of all the cases withdrawn by Crown attorneys, the percentage of administration of justice cases increased from 24% in 2014/15 to 30% in 2018/19—representing the largest proportion of criminal cases withdrawn of all types of criminal cases in 2018/19. It took an average of 90 days for the Crown attorney to withdraw one of these cases, with the accused appearing in court an average of 6.1 times.

As a result, in recent years, attention has been focused on these offences, as many of them are relatively minor and are non-complex from the prosecutor's point of view, but they take up significant criminal justice system resources.

Failure to comply with a court order is a prosecutable offence under the Criminal Code of Canada, and therefore would require federal law amendments if they were to be dealt with outside the courts and instead in an expedited tribunal setting. As a result, the Division has explored ways to limit the number of these charges that are laid. In August 2017, it began a pilot project in the London court location in co-ordination with the local municipal police service. The pilot addresses three specific offences that are considered minor offences: "failure to appear in court," "failure to comply with a bail order" and "failure to appear for fingerprints." Key to the pilot is that:

Figure 14: Administration of Justice Cases Received, Disposed and Pending Disposition, Ontario Court of Justice, 2014/15–2018/19

Source of data: Ministry of the Attorney General



- both the police and the prosecution agree to make efforts to limit the conditions of release imposed at bail hearings; and
- the police agree to use greater discretion when laying these two charges, and will only lay charges when releasing the accused person would pose an unreasonable level of risk to the community or when there are reasonable grounds to believe that an accused's failure to attend court is an attempt to escape or frustrate justice.

The London pilot has significantly reduced the number of charges local police lay for these two minor offences. Relying on data gathered from the Crown attorney case management system (SCOPE), we found that 784 fewer charges for these offences were laid in the first six months of the initiative than in the previous six months—a 37.5% reduction.

With this success and the pressures arising from the Jordan decision, the Division and the local police services agreed to expand the pilot project to six additional Crown attorney offices (Brantford, Peterborough, Kitchener, Ottawa, Brockville and Sudbury) and police services between spring 2018 and summer 2019. Sites chosen were those that had the largest number of these offences and a pressing need to create court capacity. The Division indicated that it may seek to expand this initiative across the province if it is proven that it could free up some court resources.

RECOMMENDATION 7

To help make better use of Crown attorney resources to prosecute more serious criminal cases, we recommend that the Ministry of the Attorney General (Criminal Law Division) set a targeted timeline to expand the Administration of Justice initiative across the province, if this initiative is shown to be successful after evaluation.

MINISTRY RESPONSE

The Ministry agrees with this recommendation. The implementation of the Division's Administration of Justice offences initiative has demonstrated favourable results, and its outcomes are closely monitored. As noted in the report, the Division has recently expanded the initiative to an additional six sites.

The Division will actively monitor the outcomes of the initiative at these additional sites to inform a future decision on working with the police to expand the initiative.

4.7 Lack of Specific Mandate, Standard Procedures and Goals Limit Potential Benefits of Mental Health Courts

We note in our audit of Adult Correctional Institutions (**Chapter 1** of this volume in this Annual Report) that, in 2018/19, 33% of about 51,000 inmates admitted to provincial adult correctional institutions had a mental health alert on their file indicating possible mental health concerns, compared to 7% of inmates admitted in 1998/99. Although these mental health alerts are not always tied to or dependent on a formal diagnosis, the upward trend of alerts is significant.

Our audit found that the benefits of mental health courts are unknown. Procedures are not clearly outlined, there is lack of proper data on their operations, and definitions of mental health courts' objectives and intended outcomes are imprecise.

4.7.1 Mandate and Objectives of Mental Health Courts Lack Specifics

We found that the mandate and objectives set for mental health courts are broad and general. Without specific measurable outcomes set, neither the Ministry nor the Ontario Court is able to measure the courts' success in achieving the mandate and objectives.

The Ontario Court of Justice Specialized Criminal Court Scheduling Guidelines, effective January 2017, state the following mandate and objectives for specialized courts, including mental health courts: "[to] respond to locally identified populations overrepresented in the criminal justice system with co-ordinated justice, health and social services aimed at the fair and just application of criminal law, including the rehabilitation of offenders and protection of the public."

In the context of mental health, according to the Office of the Chief Justice of the Ontario Court of Justice, this means:

1. *ensuring that the criminal justice process is cognizant of, and takes into account, vulnerabilities that may result from an accused person's mental health issues; and*
2. *ensuring that accused persons with mental health issues are put in touch with the appropriate mental health treatment providers, and that their mental health issues are properly addressed by those with the requisite experience and expertise in mental health treatment.*

Our review of numerous research papers suggests that diverting accused with mental illness away from correctional institutions and/or reducing their repeated contact with the criminal justice system are appropriate goals for mental health courts. To measure success in achieving these goals, some possible outcomes could be:

- to reduce the rate of re-offence or re-arrest;
- to reduce number and/or length of incarceration(s);
- to increase the rate of success in completing community treatment programs; and
- to improve health outcomes of accused persons with mental illness.

We noted that one community agency that provides services in mental health diversion and court support started in 2018 to track the outcomes of its programs and services. It measures, for example, number of individuals successfully diverted compared to all clients served, and percentage of clients released from custody as a result of release plans completed. Another community agency has also started to track outcomes such as whether the accused person achieved bail, was diverted successfully, or received a non-custodial sentence. A third community agency tracks the number of treatment orders issued as well as the number of persons they assist in admitting to a forensic hospital after they are determined to be not criminally responsible and unfit for trial. It also tracks the number of psychiatric assessments performed.

Nova Scotia reported publicly on the operations of its mental health court five years after it was created in 2009. Key statistics reported included the number of individuals referred to the court, and the number and percentage of people who were deemed eligible to participate in the program and of those who successfully completed the program. The court partnered with a university to conduct an independent evaluation, including an assessment of this key objective: the court's success in reducing recidivism relative to the regular criminal justice system. The report also recommended ways to improve the court's effectiveness.

The Ontario Court of Justice Specialized Criminal Court Scheduling Guidelines state that a "Regional Senior Judge and Local Administrative Judge should, in consultation with the court committee, review the scheduling and operation of the court after the first year and at least every two years." As we note in **Section 3.0**, when we inquired whether such reviews have been done, the representative of the Office of the Chief Justice of the Ontario Court responded that these matters relate to judicial independence and fall outside the scope of the audit. As a result, we cannot confirm to the Legislature that such reviews have been conducted. Ontario has not published any such evaluations of the court.

The representative of the Office of the Chief Justice of the Ontario Court has indicated that metrics for the desired outcomes of mental health courts are difficult to identify because of the complexity of individual mental health and mental health treatment, as well as other variables.

4.7.2 Key Data Not Available to Track the Users of Mental Health Courts and Their Case Outcomes

The Ministry's ICON and SCOPE systems do not distinguish between accused persons who go through a mental health court and those who go through a regular court. As a result, neither the Ministry nor the Ontario Court is able to identify and quantify the number of individuals and cases received in mental health courts and their case dispositions, including the number of cases pending disposition, time taken to resolve cases and details of case disposition. This key data is critical to help measure the effectiveness of mental health courts in achieving their intended objectives.

Further, in order to select 30 sample cases where accused persons had gone through a mental health court between 2015 and 2018, we had to locate them manually among numerous public court dockets generated from a selected set of designated mental health courts. We were refused full access to the files. Only after the Division had written case summaries for us could it identify that four cases had not been heard in mental health courts. We then reviewed 26 cases. If the Division flagged or tracked data related to mental health cases separately in its information systems, it would be able to identify these cases quickly and accurately.

RECOMMENDATION 8

To assess whether the mandates and objectives of mental health courts are being met, we recommend that the Ministry of the Attorney General (Criminal Law Division) work with the Ontario Court of Justice to:

- establish specific and measurable goals and outcomes for mental health courts; and
- collect relevant data on the courts' success in achieving these goals and outcomes, (for example the number of people who have gone through the mental health court process, the number of these cases disposed and pending, time taken to resolve cases, and details of case disposition and relevant outcomes).

MINISTRY RESPONSE

The Ministry acknowledges the importance of establishing measurable objectives and gathering data to support the evaluation of mental health courts. To this end, the Division agrees to work in close collaboration with the Ontario Court of Justice to support steps to ensure mental health courts have clear objectives and appropriate data-gathering mechanisms in place to demonstrate the benefits of these courts.

4.7.3 Criminal Law Division Has Not Developed Best Practice Guidance for Mental Health Courts

While the Division's Crown Prosecution Manual contains three separate directives about cases involving mentally ill accused, there are no specific and consistent policies and procedures regarding the operations of mental health courts, such as clarifying who should be accepted into a mental health court and in what circumstances; in what circumstance a psychiatric assessment is required; or when a formal community-based program or other plan is needed.

Our review of the sample summarized notes of 26 case files we selected highlighted inconsistencies in the treatment of accused persons who had gone through a mental health court. In these cases we found inconsistencies in the operation of the mental health courts and lack of uniform access to the services they provide. With no standard for a formal diagnosis of the accused person's mental health by a qualified professional, a miscarriage of justice may result. Lack of formal treatment plans may mean that accused persons' mental health issues are not addressed, potentially leading to repeated contact with the criminal justice system.

According to the summaries provided by the Division on files we were refused full access to:

- In eight cases where the accused pleaded guilty, four accused had both a psychiatric assessment and a formal plan for the courts to consider in sentencing. In the other four cases, either a psychiatric assessment or a formal plan was completed, or neither was. In two of these cases, it was noted that the accused appeared to have a history in that mental health court. The Division's summaries do not always explain why a psychiatric assessment and/or a formal plan was not needed.
- Nine of the 14 cases where the accused were diverted and had their charges withdrawn had a formal plan in place. In two of the five remaining cases, there were no formal plans because the accused refused to comply or participate with the mental health workers and the cases were disposed in other ways. The Division's summaries do not make clear whether a formal plan was in place for the other three cases.
- The remaining four cases either had fitness hearings to ensure the accused was fit to stand trial or the case was still ongoing at the time of our review.

We noted that other provinces, such as Alberta and Nova Scotia, have published key information, such as criteria for admission to mental health court. In addition, the Courts of Nova Scotia publish a best-practice framework for the operation of mental health courts. These include:

- eligibility criteria to determine who should be accepted to appear in a mental health court;
- an eligibility screen to be conducted by a mental health and addictions clinician for establishing a connection between the accused person's mental health disorder(s) and the offence;
- requirements for accused who agree to appear before a mental health court, and are willing to engage in an individualized support plan; and
- a requirement for the accused person to attend court on a regular basis, allowing the specialized mental health court program team to review the accused person's progress frequently as it relates to their support plan, determine incentives/sanctions, and discuss successful completion of the plan.

4.7.4 Many Accused Persons Who Have Appeared in Mental Health Courts Continue to Have Repeated Contact with the Justice System

We are concerned that the objectives and rate of success of the mental health courts and associated programs remain unclear. In **Section 4.7.1** we noted that our review of numerous research papers suggests that diverting accused with mental illness away from correctional institutions and/or reducing their repeated contact with the criminal justice system are appropriate goals for mental health courts. We also noted that to measure success in achieving these goals, some possible outcomes could include reducing the rate of re-offence or re-arrest.

At our request, the Ministry generated for our review a charging history for each of the sampled accused persons whose cases had been heard in a mental health court. We found that of 11 accused who had completed their treatment plan, eight had between two and 38 other charges dating from before and/or after their case was disposed in a mental health court.

In one case, an accused person was charged five times in two years (late 2017–mid-2019), and had been in and out of a mental health court. The charges laid were for low-level criminal offences, including assault, possession of a stolen item under $5,000, and mischief to a window, and they led to approximately 43 appearances in court. The notes in the case files indicated that the accused has made significant improvements but still has an impulse

control issue, has low insight into their outbursts, and has not addressed their substance use. This person was enrolled in a volunteer program and was connected to a doctor on-site. The last charge was still ongoing as of August 2019.

We have discussed our observations with mental health support workers from community agencies, who generally agreed that treatment of mental illness can be a long process. The risk of criminal behaviour can be mitigated with appropriate interventions and continued support, even after the accused person's case is disposed in a mental health court, to minimize recidivism. The success rate of these efforts will vary based on individual and clinical situations, complexity and access to the required support. More information regarding outcomes from the Division and service providers is needed to fully understand the impact of these efforts.

RECOMMENDATION 9

To help guide the operations of the province's mental health courts, we recommend that the Ministry of the Attorney General (Criminal Law Division) work with the Ontario Court of Justice to:

- review best practices from other jurisdictions (such as Nova Scotia);
- assess their applicability to Ontario; and
- put in place best-practice guidance for Ontario.

MINISTRY RESPONSE

The Ministry will work with the Ontario Court of Justice on these recommendations. The Ministry agrees with the recommendation and the decision to undertake a comprehensive jurisdictional scan and review of proven practices and existing research in relation to the operation of mental health courts in other provinces. The jurisdictional review will include an assessment of each demonstrated practice to ensure that implementation would be feasible and beneficial to Ontario.

The Division will also engage other key stakeholders and partners to identify and develop best practices for the operations of mental health courts.

4.7.5 Public Information about Mental Health Courts Is Limited

We noted that the Ministry's and Ontario Court's public websites provide general information on specialized criminal courts, but some basic information specific to mental health courts was difficult to locate. Information on these courts could increase public awareness and understanding of these courts, their uses and their procedures. For example, currently the following information is not normally publicly available:

- the number of mental health courts, their locations and available sitting time;
- description of mental health courts, including their purpose, how they attempt to accomplish it and the typical processes they follow; and
- what an accused person or their family members need to know if they are considering applying to have a criminal case heard in a mental health court.

In contrast, the mental health court in Nova Scotia provides a wide range of information to promote public awareness.

RECOMMENDATION 10

To help increase public awareness and provide better information about the operations and purpose of mental health courts, we recommend that the Ministry of the Attorney General work with the Ontario Court of Justice to make relevant information, such as the number of mental health courts, their locations and available sitting time, and detailed description of the courts and their procedures, widely available to Ontarians.

MINISTRY RESPONSE

The Ministry agrees with this recommendation and understands the importance of providing Ontarians with information pertaining to the operations of mental health courts. The Ministry will engage with the Ontario Court of Justice and explore steps to ensure that all pertinent information is easily accessible and available through appropriate channels. Together with the Ontario Court of Justice, the Ministry will identify where and how public information will be shared.

Appendix 1: Key Participants and Their Roles in the Criminal Justice System

Prepared by the Office of the Auditor General of Ontario

Participants	Roles
Crown attorneys (or prosecutors)	Part of the Criminal Law Division of the Ministry of the Attorney General (Ministry). Crown attorneys are appointed to act as “agents” for the Attorney General and are responsible for the administration of justice, including the prosecution of individuals charged with criminal and quasi-criminal offences.
Court support staff	Part of the Court Services Division of the Ministry. Court support staff provide administrative and courtroom support in all levels of courts; e.g., they schedule court cases at the direction of the judiciary, provide clerical support to the judiciary in the courtroom, maintain court records and files, perform data entry into the Integrated Court Offences Network system, collect fines and fees, and provide information to the public.
Defence counsel	Lawyers hired by a person charged with a criminal offence to represent that person in the court process. Their role is to protect their client’s right to a fair trial and to ensure that any reasonable doubts concerning the Crown attorney’s case are presented to the court.
Duty counsel (Legal Aid Ontario)	Lawyers employed or retained by Legal Aid Ontario (a provincial agency reporting to the Ministry) to help an accused person who qualifies financially and legally for legal aid services. The legal services they provide include plea-bargaining with the Crown, conducting bail hearings, and assisting with guilty pleas and sentencing.
Judiciary	The collective name used in this report for judges and justices of the peace. Ontario Court of Justice criminal judges case manage proceedings in the court and preside over criminal trials for cases that are not resolved through diversion, withdrawal, guilty pleas or stays. Justices of the peace conduct all intake proceedings in the province, including issuance of process such as Informations and warrants, and preside over the majority of bail hearings.
Provincial and municipal police	Police services that have responsibility and discretion over the investigation of criminal offences and the laying of criminal charges for an offence under the Criminal Code, except where the law requires consent of the Attorney General, and/or the laying of charges under federal laws and provincial statutes. Police personnel also provide physical security within a court location and during transportation for court hearings of accused persons who are remanded in correctional institutions.
Corrections officers	Under the Ministry of the Solicitor General, they oversee accused persons who are in custody. Corrections officers also prepare accused persons for their court appearances and manage the admission and discharge process every time they enter and leave the institution where they are being held.
Community support workers	Trained employees of community agencies funded by the Ministry of Health. They support accused persons appearing in specialized courts, such as mental health courts, by establishing treatment plans and connecting them to appropriate community programs that suit their needs.

Appendix 2: Glossary of Terms

Prepared by the Office of the Auditor General

Bail: A judicial order from the court granting a person charged with a criminal offence a release from custody while waiting for a resolution of their case; generally accompanied by conditions imposed by the court, such as a curfew or a ban on contacting certain persons.

Bed days: The number of days each inmate occupies a bed in a correctional institution.

Case: All charges that are included on the "Information," or the formal accusation, for each single accused. A case may proceed to trial through the regular court or be moved to a specialized court. The case may be disposed when the Crown attorney withdraws the charges; the accused pleads guilty; through a judicial stay of proceedings; or through a verdict of guilty followed by sentencing, or a verdict of not guilty.

Caseload: Cases received (for a court) or prosecuted (for a Crown attorney) and not yet disposed.

Case collapsed: A case that is disposed during the trial stage before the trial is completed, usually due to a guilty plea by the accused or a withdrawal by the Crown attorney.

Case disposed: A case is recorded in the Ministry's records as "disposed" when a case is completed and there are no future court dates. Cases can be considered completed when:

- an accused is found guilty before or during a trial and sentenced;
- the case is diverted (e.g., through community-based sanction in the mental health court) from the regular court process by a Crown attorney;
- charges are withdrawn by a Crown attorney who believes there is no reasonable prospect of conviction or it is not in the public interest to proceed; or as part of an agreement between the prosecution and the defence;
- a judge issues a verdict of either guilty or not guilty after a trial and sentences the accused person; or
- a judge stays (discontinues) the proceedings and releases the accused—e.g., if the judge finds that there is an "unreasonable" delay or there are other violations of the rights of the accused.

Case pending: Active case that has a future court date.

Case received: A case filed against an accused person in a particular court location or jurisdiction.

Case stayed or withdrawn by a Crown attorney: A case is stayed or withdrawn when:

- a Crown Attorney withdraws the charges when there is no reasonable prospect of conviction or it is not in the public interest to proceed; or as part of a resolution agreement between the prosecution and the defence; or
- a Crown Attorney stays the proceedings; they may be recommenced within one year if there is new evidence.

Charge: A formal accusation laid by police against an accused, involving an offence under the Criminal Code or other federal and/or provincial statutes. Charges may be withdrawn by the Crown attorney prosecuting a case.

Court appearance(s): Accused persons who were released from the police station with a promise to appear and accused persons who were released following a bail court appearance must attend court in person for subsequent court appearance(s). Accused who are being held in a correctional institution must be transported from the facility to the court and back for their appearances in court, although in some cases these hearings may be done through video link.

An appearance in court may be followed by further appearances to discuss next steps, including determining if the accused has engaged legal counsel for their defence, determining if all evidence has been disclosed, discussing the prosecution and defence positions on the case, and if prosecution and defence are ready for trial.

Custodial and non-custodial sentences: Custodial sentence: a sentence to spend time in custody in a correctional or federal institution.

Non-custodial sentence: a fine or probation.

Detention or release: The accused may be detained while awaiting their bail appearance, typically at the police station or correctional institution, or they may be released on a promise to appear before the court.

Disclosure: The requirement to provide to the accused and/or defence the evidence collected by the Crown (prosecution) and the police before trial; also, a copy of this evidence. Initial disclosure is usually provided at the accused's first court appearance. The disclosure package usually contains an overview of the case, copies of police officers' notes, witness statements, photographs and other relevant documents.

Diversion: Community justice programs that provide an alternative to a formal prosecution. These programs hold a person accountable through community-based programs. This can be done in any court. There are specialized mental health courts that address community-based sanctions for mentally ill accused. These courts can be used if mental health issues are identified by the defence counsel, the family of the accused or the Crown attorney. In such cases, the accused is referred for treatment and counselling to a community organization. Upon the successful completion of a treatment plan, the Crown attorney may withdraw the criminal charges.

Information: A formal document prepared by the police that names the accused and states the offences that the person is charged with.

Jordan decision: July 2016 decision by the Supreme Court of Canada in *R. v. Jordan* that the pretrial delay caused by the prosecution or the court system breached the "right to trial within a reasonable time" as guaranteed by the Charter of Rights and Freedoms. The Court set out a "presumptive ceiling" at 18 months for cases going to trial in the Ontario Court of Justice, and at 30 months for cases going to trial in the Superior Court of Justice (or cases going to trial in the Ontario Court after a preliminary inquiry).

Judicial stay: A judge stays the proceedings and releases the accused—e.g., if the judge finds "unreasonable" delay or other violations of the rights of the accused.

Mental health court: A specialized court in the Ontario Court of Justice where the case of an accused person who has mental health issues can be diverted for treatment or counselling. In this court, the accused may be certified as either fit or not fit to understand court proceedings in relation to the charge, or may make a plea to the charge. An accused who pleads guilty may request the judge to consider the mental health issue when imposing a sentence.

Preliminary inquiry: On indictable matters with an eligible sentence of 14 years or more, the accused may elect to have a preliminary inquiry. If there is some evidence of each of the elements of the offences, sufficient that a jury could return a verdict of guilty, the accused will be ordered to stand trial. If not, the accused will be discharged and their case completed.

Public interest (to prosecute a case): In making a determination whether to prosecute the case or not, the Crown attorney must also consider whether it is in the public interest to continue the prosecution. The public interest factors must only be considered after it is determined that there is a reasonable prospect of conviction. A number of factors are considered in making this determination, including:

- the gravity or relative seriousness of the incident;
- circumstances and views of the victim, including any safety concerns;
- the age, physical health, mental health or special vulnerability of an accused, victim or witness;
- the prevalence of the type of offence and the actual or potential impact of the offence on the community and/or victim;
- the criminal history of the accused;
- whether the consequences of any resulting conviction would be unduly harsh or oppressive to the accused;
- whether the accused is willing to co-operate or has already co-operated in the investigation or prosecution of others;
- the length and expense of a trial when considered in relation to the seriousness of the offence; and
- the availability of any alternatives to prosecution such as diversion and civil remedies.

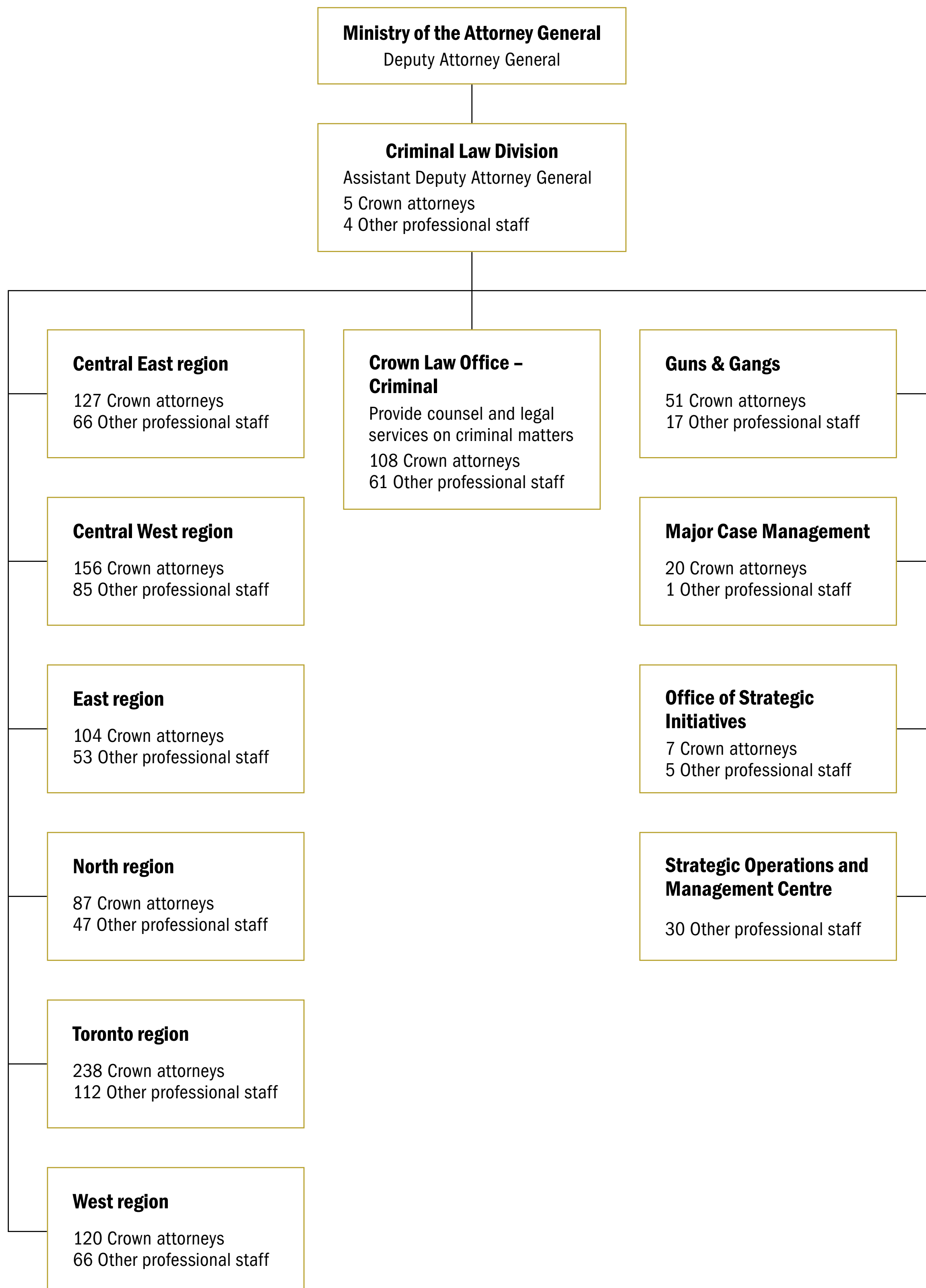
Reasonable prospect of conviction: Crown attorneys must proceed with a charge only where there is a reasonable prospect of conviction and if prosecution is in the public interest. Reasonable prospect of conviction requires more than evidence in a case appearing to be true when first considered; however, it does not require a conclusion that conviction of the accused is more likely than not. The term "reasonable prospect of conviction" indicates a middle ground between these two standards, to be determined by a Crown attorney.

Remand: Temporary detention of accused persons in custody while awaiting the resolution of their case. Accused persons remain in remand if they are awaiting a bail hearing, waive their rights to a bail hearing, or have been ordered to be detained by a judge after a bail hearing.

Withdrawal of charges: The Crown attorney decides not to continue with prosecution of the accused person on the charge(s) laid. The case is then closed and recorded as disposed.

Appendix 3: Criminal Law Division—Organization Chart

Source of data: Ministry of the Attorney General



Appendix 4: List of Criminal Courts That Hear Cases for Accused Persons with a Mental Health Condition, Ontario Court of Justice, as of October 2018

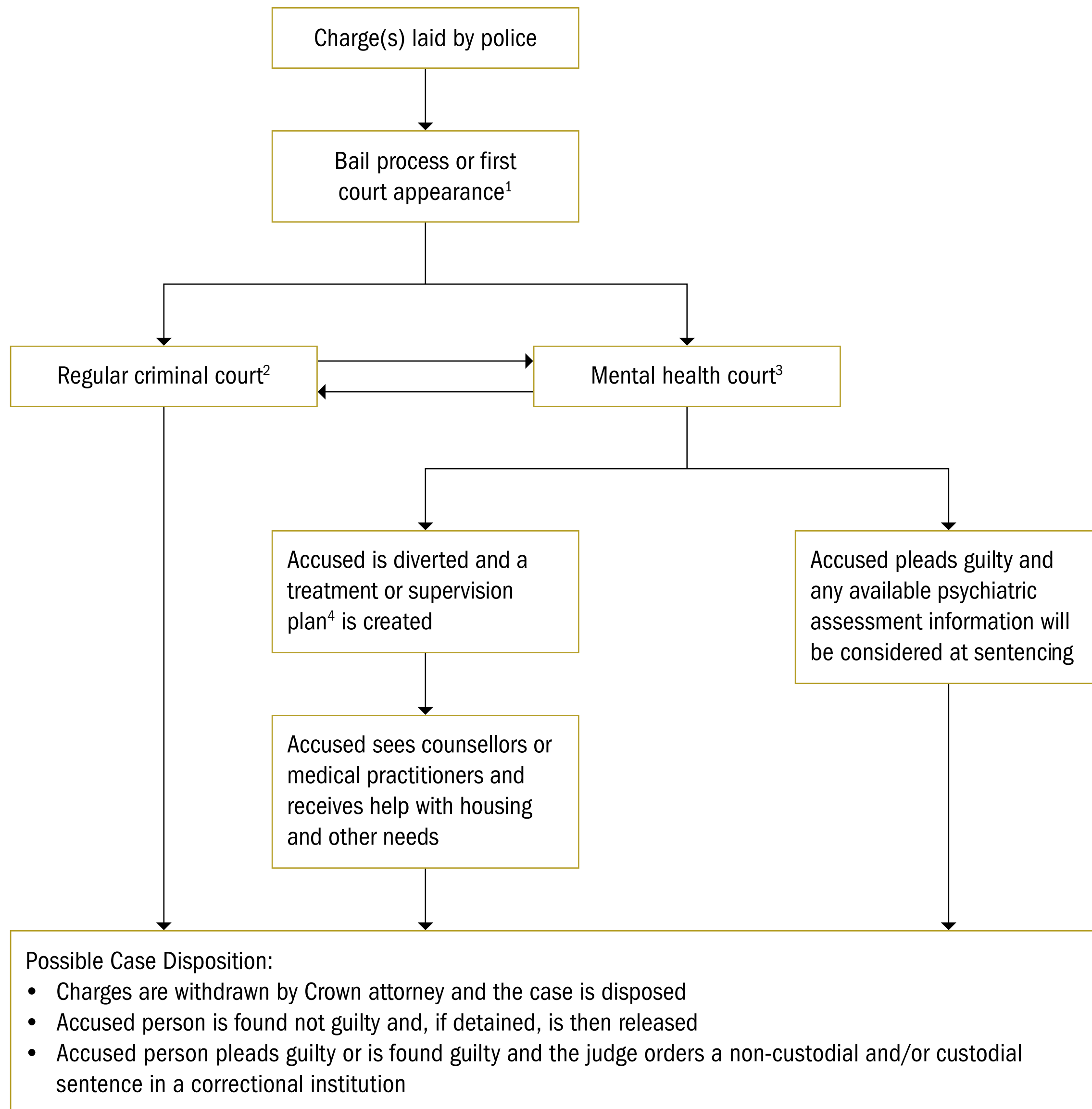
Source of data: Ministry of the Attorney General and Ontario Court of Justice

Base Court Location	Region	Year Established	Court Hours[1]
Dedicated Mental Health Court[2]			
1. Kenora	North West	2010	Twice per month
2. Sault St. Marie	North East	2010	Two days per month
3. Sudbury	North East	2014	Two days per month
4. Brockville[3]	East	2018	Twice per month
5. Ottawa	East	2005	Three times per week
6. Barrie/Orillia[4]	Central East	Not available	Once per month
7. 1000 Finch Ave. W[5]	Toronto	Not available	One day per week
8. Toronto–Old City Hall	Toronto	1998	Five days a week
9. Peel (Brampton)	Central West	1999	Two days per week
10. London	West	1997	One day per week
11. Owen Sound[4]	West	2004	Half day per week
12. Walkerton	West	2011	Twice per month
13. Kitchener	West	Not available	Once per week
14. Waterloo	West	2005	One day per week
15. Windsor	West	2006	Twice per month
Community Treatment Court, Drug Treatment Court or Community Therapeutic Court[2]			
16. Belleville[6]	East	2007	Once per month
17. Newmarket	Central East	May-04	Half day per week
18. Cobourg	Central East	Not available	No set dates
19. Haliburton County (Kawartha Lakes)	Central East	Not available	No set dates
20. Lindsay (Kawartha Lakes)	Central East	Not available	Twice per month
21. Oshawa (Durham)	Central East	2006	Half day per week
22. Peterborough	Central East	2012	Twice per month
23. Burlington	Central West	2013	Twice per month
24. St. Catherines	Central West	Not available	Twice per month
25. Sarnia	West	Not available	Half day per week
26. Stratford	West	Not available	Once per week
27. Oxford	West	2014	Once per month
28. Elgin (St.Thomas)	West	2016	Half day per month
29. Woodstock	West	Not available	Once per month

1. Daily court scheduling pressures may result in cases being heard in another courtroom instead of the designated courtroom.
2. A dedicated mental health court is a specialized court geared to resolving cases solely for accused persons with mental health conditions. Drug treatment, community treatment and community therapeutic courts are specialized courts that resolve cases involving drug and/or alcohol addiction, and may also deal with mental health or other conditions.
3. Mental health matters in Perth can be referred to Brockville mental health court.
4. In addition to a dedicated mental health court, these locations also have a community treatment court, community therapeutic court or drug treatment court that services clients with mental health issues.
5. Not a dedicated mental health court; however, a doctor is present for fitness hearings and approved mental health diversions.
6. Mental health matters in Picton can be referred to Belleville community treatment court.

Appendix 5: The Mental Health Court Process in Ontario

Prepared by the Office of the Auditor General of Ontario



1. At any time after charges have been laid, Crown attorneys have the option to divert the case, referring the accused to mental health treatment and support instead. If the accused person is eligible for diversion, a mental health court support worker will work with the person to develop a program that may include community support, supervision and/or treatment. Any criminal court participants, such as the Crown attorney, defence counsel, police, judiciary, family members of the accused or the accused can apply to refer the case to a mental health court.
2. A regular criminal court hears all criminal cases for accused persons who have been charged by police.
3. A mental health court, where available, hears/resolves criminal cases for accused persons with mental health conditions, aimed at both the rehabilitation of the person and protection of the public. As well, at any time in the court process, either side can raise the issue of "fitness to stand trial." A person is unfit to stand trial if they have a mental illness that prevents them from understanding the nature or object of what happens in court, understanding the possible consequences of what happens in court, or communicating with and instructing their lawyer. If the person is found unfit, the judge may order them to receive treatment in order to return them to a "fit" state. If the person is fit after treatment, they are returned to regular criminal court or mental health court. If the person is found unfit to stand trial and remains unfit even after treatment, the case is transferred to the Ontario Review Board.
4. If the accused person is eligible for diversion, a mental health court support worker will work with the person to develop a treatment plan or program that may include community support, supervision and/or treatment.

Appendix 6: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1.	Effective court services and Crown processes, such as monitoring the number of cases received, cases withdrawn before or at trial and days needed to resolve a case, are in place to support the resolution of criminal cases on a timely basis and in accordance with applicable legislation and best practices.
2.	Criminal court services and specialized programs are delivered consistently and equitably across all regions in accordance with applicable legislation and in line with best practices.
3.	Technology in the criminal court system is used to its full advantage to reduce costs and to improve efficiency, while at the same time still protecting the fair trial rights of accused individuals.
4.	Appropriate financial, operational and case file management data are collected to provide accurate, reliable, complete and timely information to help guide decision-making and assist with performance management and public reporting in the delivery of court services. In addition, reasonable targets are established to allow evaluation of performance and periodic public reporting. Corrective actions are taken on a timely basis when issues are identified.

Appendix 7: Summary of Publicly Available Information, Information Our Office Obtained During the Audit and Information Where Our Access Was Denied

Prepared by the Office of the Auditor General of Ontario

Criminal Court System	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access on Completion of Audit
		We Got Access	We Were Denied Access		
Ontario Court of Justice (Ontario Court)					
Scheduling of criminal cases and key statistics	• Daily court dockets (listing of court appearances scheduled for the next day, by type of appearance, case number, courthouse and courtroom) • Court proceedings are open to the public except for publication bans or other reasons at the discretion of the judiciary • # of criminal cases received, disposed and pending disposition, reported by courthouses, regions and at the provincial level • # of court appearances heard by courthouses and regions, and at the provincial level • # of criminal cases withdrawn, days to withdraw and appearances in court.	An overview of the scheduling process with trial co-ordinators, regional senior judges and/or local administrative judges.	Court scheduling information, such as court dates historically scheduled and upcoming court dates that were scheduled and maintained by trial co-ordinators, who work under the direction of the judicial officials.	To determine if courtrooms were scheduled efficiently and effectively for criminal law matters, and to examine the possible reasons that contributed to the lower-than-optimal utilization of courtrooms. **Section 4.3** discusses this further.	Unable to determine if public resources, such as courtrooms, were scheduled and used optimally to help reduce backlogs in disposition of criminal cases.

Criminal Court System	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access on Completion of Audit
		We Got Access	We Were Denied Access		
The Ministry of the Attorney General's Criminal Law Division (Division)					
Criminal case files maintained by Crown attorneys	• The Crown Prosecution Manual contains information on the criminal process and the role of prosecutors in the criminal justice system. It is used by the Attorney General to provide direction to prosecutors.	We asked to review a sample of case files maintained by Crown attorneys in the following areas: • 30 samples of cases pending over 18 months; • 35 samples of cases that were stayed due to the *R. v. Jordan* decision; • 50 samples of cases withdrawn by a Crown attorney; and • 30 samples of cases relating to remand inmates. The Division provided us with summaries of notes made by Crown attorneys in its case management system (SCOPE).	We were not given full access to the case files selected (a total of 145 cases) by the Division, which cited various privileges such as confidential informer privilege and litigation privilege.	To determine the reasons for delays and review other case details in the following areas: • cases pending over 18 months (**Section 4.1.1**); • cases that were stayed due to the *R. v. Jordan* decision (**Section 4.1.2**); • cases where charges were withdrawn by the Crown attorney (**Section 4.2.3**); and • cases where the accused were in remand (**Section 4.4.1**).	Unable to conduct an independent review and assessment of the delays in disposing criminal cases.
Ontario Court of Justice (Ontario Court)					
Mental health court scheduling and operations	• A general overview of specialized criminal courts that have been developed in the Ontario Court of Justice offering a range of programs and supports to address specific needs, including those of persons with mental health or addiction issues. • Court dockets generated from designated mental health courts.	A copy of the Ontario Court of Justice Specialized Criminal Court Scheduling Guidelines, effective January 2017, including the mandate and objectives for specialized courts.	Any reviews of the scheduling and operations of mental health courts, if done in the past.	To determine if any review has been done in the past as specified in the Ontario Court of Justice Criminal Court Scheduling Guidelines. **Section 4.7.1** discusses this further.	Unable to confirm whether such a review had been done in the past or to determine if the mental health courts were being operated as intended.

Criminal Court System	Information That Is Publicly Available	Information That Is Not Publicly Available		Why We Need Access to the Information	Impact of Not Getting Access on Completion of Audit
		We Got Access	**We Were Denied Access**		
The Ministry of the Attorney General 's Criminal Law Division (Division)					
Mental health court scheduling and operations	• The Crown Prosecution Manual, including the prosecution directives for mentally ill accused.	• List of criminal courts that hear cases for accused persons with a mental health condition. • We requested to review 30 mental health–related case files maintained by Crown attorneys. The Division provided us with summaries of notes made by Crown attorneys from its case management system (SCOPE).	We were not given full access to all 30 case files selected.	To review and assess the efficiency and effectiveness of the criminal court process in place for accused persons with mental health issues. **Section 4.7.2** and **Section 4.7.3** discuss this further.	Unable to conduct an independent review and assessment of the criminal court processes in place for accused persons with mental health issues.

Appendix 8: Examples of Cases Reviewed During Our Audit

Prepared by the Office of the Auditor General of Ontario

Other Cases Pending for More than 18 Months (Section 4.1.1)

Other cases taken from the sample of 30 criminal case files where, on our request, the Criminal Law Division (Division) summarized the reasons for delays in cases pending for more than 18 months:

- A case relating to a major assault was pending for 37 months where the accused was in remand. Defence delay of 11 months was due to change of defence counsel. Delay of 16 months was caused when the court-ordered psychiatric assessment did not address criminal responsibility of the accused person. The Division did not note the explanation for the balance of the delay, which was 10 months.
- A case relating to weapons possession was pending for 24 months where the accused was out on bail. Twelve months of the delay was attributed to delays in receiving disclosure from police due to the complexity of reviewing hundreds of pages of evidence. The remaining 12 months of delay was attributed to unavailability of defence counsel.
- A case relating to a major assault was pending for 25 months where the accused was out on bail. A delay of 13.5 months was attributed to factors including lack of disclosure, adjournment of the case because the victim did not appear to testify and unavailability of the Crown attorney. The remaining delay of 11.5 months was attributed to unavailability of court dates. The matter was sent to Superior Court, but the delays already amounted to 25 months as of July 2019 and the case risked being dropped (according to the Jordan decision, Superior Court cases with delays in excess of 30 months may be dropped if the judge rules that the delay is unreasonable and not caused by the defence).
- A case relating to homicide was pending for 23 months where the accused was in remand. Nine months of the delay was spent awaiting disclosure from police. The remaining 14 months of delays were due to unavailability of witnesses, unavailability of court dates and the judge's illness.

Other Cases Stayed Due to Exceeding the Jordan Timelines (Section 4.1.2)

Other cases taken from the sample of 50 criminal cases stayed by the judge for remaining pending beyond the Jordan timelines:

- Delay in one case of sexual assault was 30 months and 13 days after charge was laid in October 2013. The judge ruled that 15 months of delay was "institutional" (i.e., due to lack of available court dates and to time needed to transfer the case between two locations); 9.3 months of delay was attributed to outstanding disclosure (requested repeatedly by Crown attorney but not provided by the municipal police services); 5.3 months was attributed to "neutral delays," or delays inherent in the court process such as laying the charge and applying for legal aid. Ninety days of delays attributed to the defence was deducted from the total.
- In a case where the accused was charged with making child pornography available, possessing child pornography and accessing child pornography, the total delay was just over 39 months. About eight months of the delay were attributed to court scheduling issues, and about 25 months were attributed to the Crown attorney's delay, which included not providing timely disclosure (the Crown attorney further attributed the delay to receiving an expert's report only 10 day before the start of trial). About six months were deducted from the total delay as attributable to the defence.
- In another case where the accused was charged with fraud, using forged documents and falsifying employment records, the total delay was 46 months. Eight months of the delay were attributed to the defence for delays in retaining counsel. In the remaining 38 months, there were a total of 21 court appearances at the Provincial Court level and five appearances at the Superior Court level. Part of the delay was also attributed to issues with obtaining a French/English interpreter.

Cases Taken from the Sample of 11 Cases (Section 4.1.2)

Cases taken from the sample of 11 cases where the accused had a record of other criminal charges before or after their case was stayed:

- In one case, we noted that the accused had been previously charged with a major assault in 2009 and had pleaded guilty. Between July 2014 and July 2015, other charges of disturbing the peace and sexual assault were laid and subsequently stayed, as the judge ruled that "the Crown lost control of the process of obtaining necessary expert evidence."
- In another case, the accused had been previously convicted for uttering threats in August 2014, and breached her probation in June 2015. Subsequently, in July 2016, this person was charged with child abandonment but the case was stayed, as the judge ruled that the "Crown was not alerted that a trial date was set for 14 months later."

Cases Taken from Our Interviews with 24 Remand Inmates and Review of 30 Crown Attorneys' Notes (Section 4.4.1)
The following cases illustrate the reasons cited: • A medium-stay inmate in remand for 38 days and charged with break and enter wanted to earn enough enhanced credit in pretrial custody to negotiate with the Crown attorney for a sentence that would be fulfilled by the time already served in remand. • A long-stay inmate in remand for 208 days had multiple charges of fraud in front of three different courts that they wanted to deal with before applying for bail, to increase the chance of the bail being granted. At the time of the most recent arrest, the accused was already out on bail, but the surety withdrew and the accused also breached bail conditions. • An inmate accused of a nonviolent sexual offence wanted to plead guilty; however, due to mental health and addiction issues, an assessment was required. The accused was disruptive in court, which led to a delay in resolving the case and extended the stay in remand to 147 days.