UnEqUaL JUSTICE

Experiences and outcomes of young people in Ontario's youth bail system

john howard society

Ontario

ABOUT US

For more than 90 years, the **John Howard Society of Ontario** has worked to keep the humanity in justice.

Today we continue to build a safer Ontario by supporting the people and communities affected by the criminal justice system. Our 19 local offices deliver more than 80 evidence-based programs and services focused on prevention, intervention and reintegration across the province. These range from helping youth develop the life skills that will let them achieve their full potential, to assisting families navigate issues of criminal justice, to providing job training for those leaving incarceration so they can contribute to their community in a meaningful way. We promote practical, humane policies while raising awareness of the root causes of crime and calling on Ontarians to share responsibility for addressing them. Within our criminal justice system, we work toward the fair treatment of all. As the system evolves to reflect our changing society, we ensure that no one is left behind.

We believe that policy should be grounded in the day-to-day reality of the people it impacts. That's why our **Centre of Research & Policy** specializes in bridging the gap between analysis and frontline service delivery. By collaborating closely with our local offices, the Centre's team of analysts and researchers develops policy positions that truly reflect the needs of each community, advances those positions to governments and other organizations, educates the public on the critical issues, and evaluates program efficacy to guide future work. Through it all, we're committed to ensuring that innovative ideas can translate into real action.

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INTRODUCTION

Thousands of youth aged 12-17 come into contact with the justice system every year. Their experiences in the justice system have a profound impact on their lives and the bail phase is a critical point in their journey through the criminal justice system. In the 2017/18 fiscal year, there were 275 youth in custody on any given day in Ontario, and more than two-thirds of them were held in pre-trial detention, meaning they were waiting for a decision on their bail or waiting for their trial to begin.[1] Youth held in pre-trial detention have not been found guilty of a crime and are presumed innocent.

The *Youth Criminal Justice Act* (YCJA) sets out a framework for youth bail in line with its guiding principles which include rehabilitation, reintegration and alternatives to custody. The research here supports the findings of earlier studies that have shown that the YCJA has been generally successful in reducing the overall number of young people in custody/detention facilities since its introduction.[2] This is good news. Despite this generally positive trend, this report finds that the impact is not consistent across the province and too many youth are still experiencing pre-trial incarceration after being charged with a crime. It is evident that race, gender, and regional location all play a role in young people's diverse experiences in the bail system across Ontario. In short, the success of the YCJA has not been equally shared across young populations.

The experiences and outcomes at the bail stage set the course for peoples' futures, both youth and adults. Yet, while research on the adult system is plentiful, much less is available on the youth bail system. That is why the John Howard Society of Ontario (JHSO) embarked on this unique research project to shed light on the issues that persist in the youth bail system in order to develop effective interventions and approaches at this key stage. In addition to an analysis of more than a decade's worth of data on court outcomes and admissions to detention, this research study also drew on the expertise of stakeholders across

[1] Statistics Canada. (2020) *Average counts of young persons in provincial and territorial correctional services.* Retrieved from: https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510000301&pickMembers%5B0%5D=1.6&cubeTimeFrame.startYear=2013+%2F+2014&cubeTimeFrame.endYear=2017+%2F+2018&referencePeriods=20130101%2C2017010 1

[2] Bala, N., Carrington, P. J.. & Roberts, J.V. (2009) Evaluating the Youth Criminal Justice Act after Five Years: A Qualified Success. *Canadian Journal of Criminology and Criminal Justice, 51*(2),131-167.

the province through an extensive consultation process. Young people with lived experience of the bail system were also given a voice and shared their experiences and ideas for reform, an opportunity they are rarely, if ever, afforded. While there are areas of concern in Ontario's youth bail system, this research demonstrates opportunities to strengthen the approach at this crucial stage in the justice system for young people and suggests further research opportunities to bolster the body of knowledge on this important topic.

The data for this study was drawn from three sources: The Ministry of the Attorney General's Integrated Case Outcome Network (ICON), the Ministry of Children, Community, and Social Services (formerly the Ministry of Children and Youth Services) and consultations with stakeholders and youth with lived experience of the bail system. The quantitative data has been broken down by region: Central; Eastern; Northern; Toronto; and Western Ontario.[3] Qualitative data from the consultations provided context to the data findings and formed the basis of the recommendations included in this report.

This report begins with an overview of the legal framework for youth bail in Ontario followed by a literature review on the youth bail system. The findings section outlines the results of the data analysis, and key trends identified in the data and through the consultations. The report concludes with a section focusing on solutions, complete with a set of recommendations.

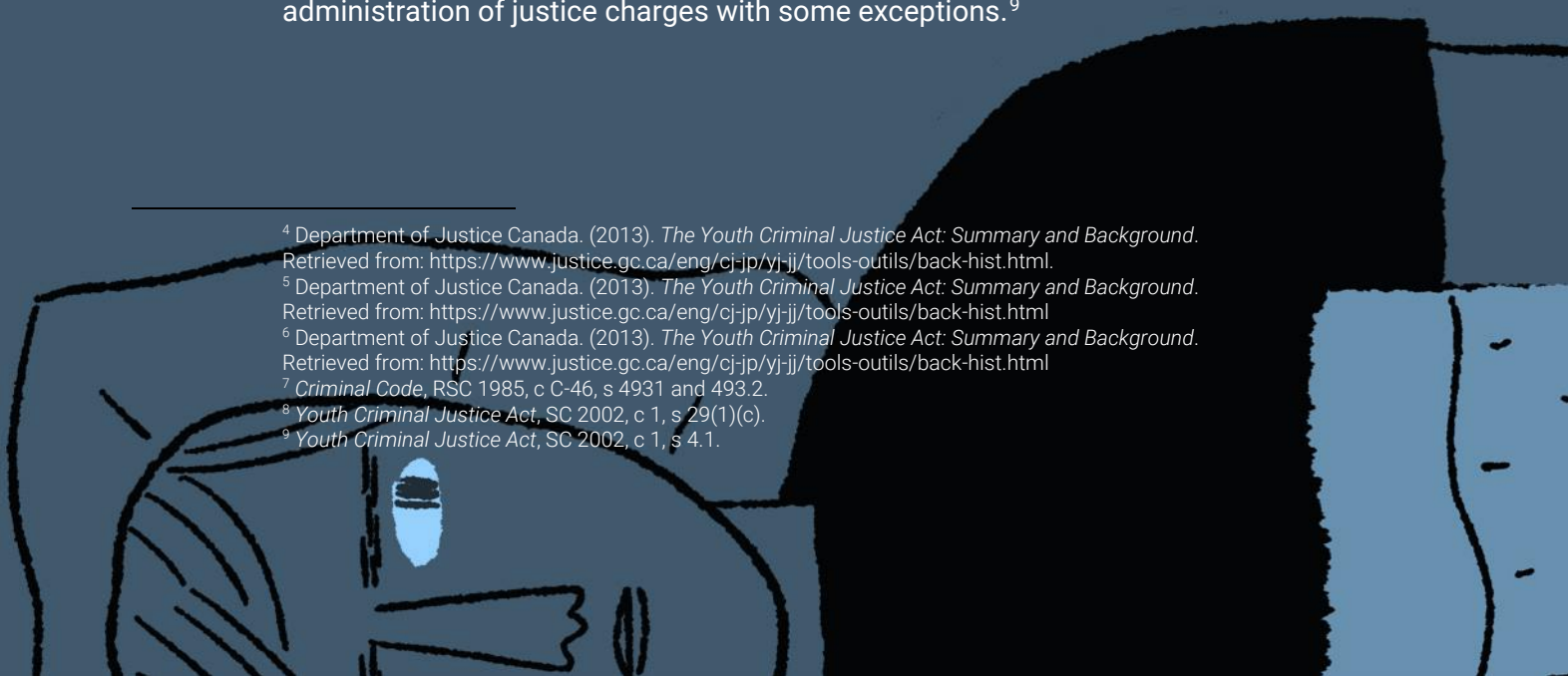
[3] These regional boundaries reflect MCCSC, formerly MCYS, 2014 regional realignment. For more information, see: Ministry of Children, Community and Social Services. (2016). *Offices*. Retrieved from http://www.children.gov.on.ca/htdocs/english/about/regionaloffices.aspx

History of the Youth Criminal Justice Act

The *Youth Criminal Justice Act (*YCJA*)* came into force in 2003, replacing the *Young Offenders Act*. Before the YCJA, Canada had one of the highest youth incarceration rates in the Western world.[4] The new legislation aimed to address concerns about an overreliance on the courts and incarceration by presenting alternatives that hold young people accountable without jail time. The YCJA stipulates that pre-trial detention is not to be used as a substitute for child protection, mental health or other social measures.

The YCJA section on pre-trial detention was amended in 2012.[5] The goals of the changes were to facilitate straightforward decision making at the bail stage, ensuring that youth were managed in the community or detained as appropriate. These amendments created a standalone test for pre-trial detention separate from the framework for adults in the *Criminal Code*.[6] This framework has been maintained in the current iteration of the YCJA in guiding court actors.

Recently, in 2019, a number of amendments were introduced to the YCJA and *Criminal Code*, some of which were applicable to the pre-trial detention stage. The courts confirmed the ladder principle, instructing justice system actors to release the accused at the earliest opportunity under the least restrictive conditions, and required decision makers to give special consideration to Indigenous accused, and vulnerable populations that are overrepresented in the criminal justice system.[7] Responding to concerns about the types of conditions imposed on young people and the prevalence of administration of justice charges, amendments were made that narrow the list of permissible conditions to those that are related to appearance at court or public safety, and are reasonable for the young person to comply with.[8] The amendments also clarified when extrajudicial measures are an appropriate response to hold young people accountable, deeming them adequate for most administration of justice charges with some exceptions.[9]



[4] Department of Justice Canada. (2013). *The Youth Criminal Justice Act: Summary and Background*. Retrieved from: https://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/back-hist.html.
[5] Department of Justice Canada. (2013). *The Youth Criminal Justice Act: Summary and Background*. Retrieved from: https://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/back-hist.html
[6] Department of Justice Canada. (2013). *The Youth Criminal Justice Act: Summary and Background*. Retrieved from: https://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/back-hist.html
[7] *Criminal Code*, RSC 1985, c C-46, s 4931 and 493.2.
[8] *Youth Criminal Justice Act*, SC 2002, c 1, s 29(1)(c).
[9] *Youth Criminal Justice Act*, SC 2002, c 1, s 4.1.

WHAT IS THE YOUTH BAIL SYSTEM?

Bail refers to the release of an individual who has been charged with a criminal offence(s) before their trial or resolution of their case. If someone is granted bail, they are able to remain in the community while their case is in the court system. The alternative is pre-trial detention where an individual must remain incarcerated until their case is resolved.

The right to reasonable bail in Canada is enshrined in the Canadian Constitution. Section 11 of the *Charter of Rights and Freedoms* (the Charter) states that any person in Canada charged with an offence has the right not to be denied reasonable bail without cause.[10]

In Canada, the legislation governing the youth justice system is the YCJA. It applies to young people between the ages of 12-17 who are alleged to have committed criminal acts. Canada has a separate justice system for youth based on the principle that young people are less morally blameworthy than adults.[11] The youth justice system is designed to hold young people accountable for their actions, promote rehabilitation and reintegration, and prevent crime while taking into account the lower level of maturity and the unique needs of young people.[12] The legislative framework for the youth bail system is found in the YCJA, although certain sections of the *Criminal Code* on bail also apply.

A young person's journey through the justice system begins with an incident that results in an interaction with a police officer. Police have discretionary powers to decide how to respond to an incident and can choose to proceed with an extrajudicial measure as an alternative to formally charging the young person. Extrajudicial measures are designed to hold a young person accountable without going through the formal court process. Extrajudicial measures are typically used for non-violent, first time offences. In addition to first time charges, extrajudicial measures are also presumed adequate to hold a young person accountable for breaches of conditions, failures to appear in court and for breaches of community-based youth sentences.[13] There are several

[10] *Canadian Charter of Rights and Freedoms*, s 11, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
[11] *Youth Criminal Justice Act*, SC 2002, c 1, s 3.
[12] *Youth Criminal Justice Act*, SC 2002, c 1, s 3.
[13] Department of Justice Canada. (2019). *Legislative Background: An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts,*

types of extrajudicial measures that are available to police as an alternative to laying a charge.

- a police officer can decide to take no further action in response to an incident
- an officer can issue a warning
- an officer can issue a caution. Cautions are considered more formal warnings and may involve a letter from the police or a meeting with the young person and their parents/guardians.
- an officer can provide a referral to a community program or agency designed to help youth avoid committing offences.[14]

If the officer determines that an extrajudicial measure is not sufficient in the circumstances, they may decide to formally lay charges against the young person. After being charged by a police officer, a young person may be let go with an order to appear at court. The police may also give a young person a police undertaking, which outlines instructions associated with their release and may have conditions they must follow. If the police officer has concerns about an individual coming to court or posing a safety risk, they will hold the individual for an appearance at a youth bail court.[15] If the young person is held for an appearance at a bail court, they will be taken to a police holding cell or transferred to a detention facility until their bail appearance.

There are also other types of extrajudicial measures, Crown cautions and extrajudicial sanctions, that take place after an officer has laid a charge. A Crown prosecutor may issue a caution after the case has been referred to them, rather than continue judicial proceedings. Extrajudicial sanctions are only meant to be used if the other forms of extrajudicial measures are not appropriate. Extrajudicial sanctions can include volunteer work, compensating the victim or attending a specialized program. These sanctions can be imposed either before or after the young person has been charged. The young person must take responsibility for their actions, consent to the use of the extrajudicial sanction, and the Crown must have sufficient evidence to proceed with a prosecution. If the young person fails to comply with the extrajudicial sanction, their case may proceed through the court process.[16]

The bail appearance includes: Crown counsel representing the interests of the state, duty counsel or private counsel advocating on behalf of the youth, and a justice of the peace or judge adjudicating the

as enacted (Bill C-75 in the 42nd Parliament). Retrieved from: https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p3.html

[14] Department of Justice Canada. (2015). *Extrajudicial Measures*. Retrieved from: https://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/sheets-feuillets/pdf/measu-mesur.pdf

[15] *Criminal Code*, RSC 1985, c C-46, s 499 - 503.

[16] Department of Justice Canada. (2015). *Extrajudicial Measures*. Retrieved from: https://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/sheets-feuillets/pdf/measu-mesur.pdf

appearance and deciding whether to adjourn the matter for another day, release the young person into the community, or detain the youth until their trial. Most often, bail appearances are adjudicated by justices of the peace, who preside over some criminal matters, including bail hearings and pre-trial appearances, and exercise jurisdiction over provincial offences.[17]

In many cases, a "consent release" will be proposed to the court instead of going through with a bail hearing. If the Crown thinks the young person can be released with or without conditions and the defence lawyer or duty counsel agree, they may propose a consent release to the court.[18] The judge or justice of the peace decides if the proposed consent release is acceptable.[19]

If there is no consent release, a bail hearing, or "show cause" hearing is conducted. It is referred to as a show cause hearing because the Crown must demonstrate why the individual should not be released from detention on the least restrictive type of release. In accordance with the Charter, there is a presumption of release at a bail appearance, meaning the default position should be to release the young person unless there is evidence to suggest detention is necessary. Under the YCJA, this position is strengthened as young people can only be detained prior to trial if specific criteria are met.[20] The young person must have been charged with a serious offence or have a history of outstanding charges or findings of guilt. In addition, the court must be satisfied, on a balance of probabilities, that detention is necessary to ensure attendance in court (primary grounds), for the protection of the public (secondary grounds), or in exceptional circumstances, to maintain public confidence in the justice system (tertiary grounds). The court must also be satisfied that no combination of conditions upon release would be sufficient to address concerns about attendance, public safety or public confidence in the justice system.[21] Last, if all those grounds are met, the court must consider section 31 of the YCJA that allows a young person to be released to the care of a responsible person before formally detaining a youth until their trial.[22] The YCJA also clearly states that a young person cannot be held in

[17] Ontario Court of Justice. (N.d) *What do Judges and Justices of the Peace do?* Retrieved from: https://www.ontariocourts.ca/ocj/general-public/what-do-judges-and-justices-of-the-peace-do/
[18] Steps to Justice. (2018) *How should I prepare for my bail hearing?* Retrieved from: https://stepstojustice.ca/steps/1-learn-about-consent-releases-and-contested-bail-hearings
[19] Steps to Justice. (2018) *How should I prepare for my bail hearing?* Retrieved from: https://stepstojustice.ca/steps/1-learn-about-consent-releases-and-contested-bail-hearings
[20] Department of Justice Canada. (2015). *Pre-trial Detention.* Retrieved from: https://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/sheets-feuillets/pdf/deten-deten.pdf
[21] *Youth Criminal Justice Act*, SC 2002, c 1, s 29(2).
[22] *Youth Criminal Justice Act,* SC 2002, c 1, s 31.

custody as a substitute for appropriate child protection, mental health or other social measures.[23]

If the court determines that the young person should be released, the "ladder principle" is used to determine the form of release that is appropriate in the circumstances. Each rung of the ladder represents a form of release and starting from the least restrictive release option, the Crown must consider and rule out each rung before progressing on to a more restrictive form of release.[24]

When a young person is released, they are often given conditions to follow. If the young person breaches any of these conditions, they can be arrested and charged with failure to comply, a type of administration of justice offence.[25] Other administration of justice offences include failing to appear for a court date or being at large without excuse, but they all stem from an original charge.[26]

Recent amendments to the YCJA added some considerations for the youth court judge or justice regarding bail conditions. A youth court justice or judge can impose any of the conditions set out in the *Criminal Code* only if they are satisfied that 1) they are necessary to ensure the young person attends court

The Ladder Principle: The least restrictive type of release is an undertaking without conditions, which represents a promise to appear for court dates when required. The young person can also be released on an undertaking with conditions, own recognizance, bail program recognizance, or surety recognizance. An individual released on their own recognizance agrees to follow certain conditions specified by the court and pledges an amount of money that they will pay to the court if they do not follow their bail conditions. In some jurisdictions, a young person might be released to a bail program, where a caseworker monitors compliance with the bail conditions. Surety recognizance involves a person promising the court that they will supervise the young person, and that supervising individual pledges an amount of money to the court that they will lose if the young person fails to follow their bail conditions and they do not report them. The young person may be ordered to reside with the surety.* The most restrictive form of release is house arrest, where the young person is not able to leave their residence, except in certain circumstances.

* Steps to Justice. (2018) *I'm being held for a bail hearing. How will the court decide if I can be released?* Retrieved from: https://stepstojustice.ca/steps/criminal-law/1-learn-about-types-releases

[23] *Youth Criminal Justice Act,* SC 2002, c 1, s 29(1).
[24] Ministry of the Attorney General, Criminal Law Division. (2017*). Crown Prosecution Manual*. Retrieved from: https://files.ontario.ca/books/crown_prosecution_manual_english_1.pdf
[25] *Criminal Code*, RSC 1985, c C-46, s 145.
[26] *Criminal Code*, RSC 1985, c C-46, s 145.

and for the protection and safety of the public including a witness or victim, 2) that they are reasonable for the young person to comply with, and 3) that they are reasonable given the offending behaviour.[27]

In Ontario, if a youth court determines that a young person should be detained, they can either be sent to an open detention facility or a secure detention facility. Open detention facilities are less restrictive and tend to be smaller residences in the community, likened to group homes. Secure facilities are separated from the community with fencing and have the security apparatus equivalent to correctional facilities and jails in the adult context.[28] There are approximately 41 open facilities and five secure facilities in the province. Many of the open facilities are operated through non-profit agencies and the secure facilities are mainly operated by the province. In recent years, some secure facilities have been closed down by the province due to declining custody and detention rates.

Under the *Child, Youth and Family Services Act* (2017), the default placement for a youth who is to be detained is an open detention facility.[29] The *Child, Youth and Family Services Act* stipulates that youth detained prior to being sentenced should be detained in an open detention facility unless a Provincial Director determines secure temporary detention is appropriate.[30]

The Provincial Director can determine that secure detention is appropriate if one of the following grounds are met: the youth must be charged with an offence for which an adult would be liable to imprisonment for five years or more; the young person would have to have left or attempted to leave a place of temporary detention without permission or was charged with escape, attempting to escape or unlawfully at large; or having regard to all the circumstances, it is necessary to detain the young person in secure temporary detention to ensure their attendance in court, for the protection and safety of the public or for the safety or security within a place of temporary detention.*

* *Child, Youth and Family Services Act,* 2017, S.O. 2017, c. 14, Sched. 1, s 148(2).

[27] *Youth Criminal Justice Act*, s 29(1).
[28] Ministry of Children, Community and Social Services. (n.d.) *Custody sentencing.* Retrieved from: http://www.children.gov.on.ca/htdocs/English/youthandthelaw/sentence/custody-sentence.aspx
[29] *Child, Youth and Family Services Act*, 2017, S.O. 2017, c. 14, Sched. 1, s 148.
[30] *Child, Youth and Family Services Act*, 2017, S.O. 2017, c. 14, Sched. 1, s 148.

Indigenous Youth

Special consideration is paid to Indigenous individuals at the bail stage. Both the *Criminal Code* and the YCJA have imposed special considerations for Indigenous Peoples, recognizing the systemic inequities experienced by Indigenous populations in the justice system and greater society.[31] For sentencing decisions, judges are directed to consider all available sanctions other than custody that would be reasonable in the circumstances, with particular attention to the circumstances of Indigenous youth.[32] The Indigenous sentencing principle for adults in the *Criminal Code* is almost identical in wording.[33]

In *R v Gladue*, the Supreme Court of Canada interpreted this legislative direction, recognizing the "tragic history of the treatment of Aboriginal peoples within the Canadian criminal justice system" and the overrepresentation of Indigenous Peoples in the justice system.[34] The court instructed sentencing judges to consider: "(a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection."[35] Since this case, the courts have clarified that these special considerations for Indigenous people, known as Gladue factors or principles, should also apply to "any situation where the liberty of an Aboriginal person is at stake, including a bail hearing".[36] However, there is a lack of direction from higher courts about how to apply the principles of *R v Gladue* to bail hearings. It has been argued that without adequate direction, when Gladue principles are considered in bail hearings, the courts are treating bail hearings like sentencing proceedings. This is a concern because handling a bail hearing like a sentencing hearing compromises the presumption of innocence of accused people.[37] Gladue factors at sentencing involve an inquiry into the circumstances that brought the individual to the court, i.e. the circumstances surrounding their criminal behavior. However, at the bail

[31] Note: When referring to court cases or sections of legislation, the term "Aboriginal" is used since that is the term used in the text of the court case or legislation. Other areas of the report use the term "Indigenous". The authors acknowledge that in some instances Aboriginal is the preferred collective noun, and that for some Indigenous Peoples, traditional names from original languages such as Nuu-chah-nulth, Anishinaabe, Nehiyahaw, Inuit, or Abenaki are preferred terms. In the interest of inclusion, brevity, and acknowledging the shift by Ontario and federal governments, this report uses the term Indigenous Peoples, unless directly citing a court case or legislative provision.
[32] *Youth Criminal Justice Act*, SC 2002, c 1, s 38(2)(d).
[33] *Criminal Code*, RSC 1985, c C-46, s 718.2(e).
[34] *R v Gladue*, 1999 CanLII 679 (SCC) at para 34 and para 64.
[35] *R v Gladue*, 1999 CanLII 679 (SCC) at para 66.
[36] *R v Brant*, [2008] O.J. No. 5375 at para 14.
[37] Rogin, J. A. (2014) *The Application of Gladue to Bail: Problems, Challenges, and Potential*. (LLM Thesis). Retrieved from http://digitalcommons.osgoode.yorku.ca/llm/14.

stage, the individual has not yet been found guilty of a crime and so it is inappropriate to consider the causes of criminal activity at this stage.

Recent amendments to the *Criminal Code* have instructed officers, justices of the peace and judges to consider the particular circumstances of Indigenous Peoples accused at the bail stage.[38] These amendments enshrined instructions from the courts into the legislation, further emphasizing the importance of considering Indigeneity at early stages of the criminal justice system journey. In addition to considerations about Indigenous accused, the amended sections also instruct justice system actors to consider other vulnerable populations that are overrepresented in the justice system.[39]

Direction from the Courts

The courts have clarified that the right to reasonable bail extends to the form and terms of release. The Supreme Court of Canada provided clarification on the appropriate decision-making process related to the form of release in *R v Antic*.[40] The ladder principle, as described above, requires the court to consider and rule out each form of release before moving on to a more restrictive release option. There must be reasons provided about why alternative forms of release are not sufficient before moving on to a more restrictive form of release like a surety.[41] The court also clarified that the terms of release, also known as the conditions of release, must be related to the criteria for detention and should not be about changing an individual's behavior or punishing them.[42] Although *R v Antic* is an adult bail case, the principles apply to youth bail as well.

Recent changes to the *Criminal Code* have enshrined the principles articulated in *R v Antic*. In 2019, the *Criminal Code* was amended to include a provision directing a police officer, justice of the peace or judge to give primary consideration to the release of the accused at the earliest reasonable opportunity and on the least onerous conditions.[43]

Ontario's Court of Appeal examined the procedure for Crown onus bail hearings and the use of sureties in another case, *R v Tunney*. In Crown onus bail hearings, the Crown bears the burden of demonstrating why the accused should not be released on the least restrictive form of release. Conversely, in reverse onus bail hearings it is up to the accused to demonstrate why they should not be detained. The court commented that Ontario has a culture of risk aversion resulting in an over-reliance on

[38] *Criminal Code*, RSC 1985, c C-46, s 493.2(a).
[39] *Criminal Code*, RSC 1985, c C-46, s 493.2(b).
[40] *R v Antic*, 2017 SCC 27.
[41] *R v Antic*, 2017 SCC 27; *R v Tunney*, 2018 ONSC 961.
[42] *R v Antic*, 2017 SCC 27 at para 67.
[43] *Criminal Code*, RSC 1985, c C-46, s 493.1.

sureties.[44] The overuse of sureties has been criticized for contributing to delays in the bail system, undermining the presumption of innocence and the accused's right to reasonable bail.[45] The court referred to a report by Judge Raymond Wyant, which noted the over-use of sureties as part of a practical reverse onus being imposed in cases where the onus should be on the Crown. This means that in practice, because of a reliance on sureties, even in cases where it is up to the Crown to establish why the accused should not be released on lesser restrictive options, there is pressure on the accused to present an appropriate release plan with a surety that is likely to be approved by the court. This is particularly relevant for youth cases because all cases are Crown onus, meaning it is always up to the Crown to show cause why the least restrictive form of release is not appropriate.

The decision in *Tunney* found that it is inappropriate for the court to consider a surety release to be appropriate from the outset without properly considering and rejecting all other forms of release. In addition, it is acceptable practice to bifurcate a bail hearing whereby the court first considers what the appropriate form of release would be. If the court decides that a surety release is appropriate, the court would then hear evidence about proposed sureties.[46] The intention being that bifurcating would result in shorter bail hearings and keep the determination of the form of release distinct from the approval of the surety. In this way, a bifurcated process would prevent the hearing from mirroring a reverse onus situation or a trial of the proposed surety.

[44] *R v Tunney,* 2018 ONSC 961 at para 30.
[45] *R v Tunney,* 2018 ONSC 961 at para 32.
[46] *R v Tunney,* 2018 ONSC 961 at para 53.

EXISTING LITERATURE ON YOUTH BAIL

Canada's bail system has been described as "broken" by a leading bail scholar.[47] Literature consistently raises the following concerns: that more cases are starting their life in bail courts than ever before; courts are taking a longer time to determine bail; there is an overreliance on the use of sureties in granting bail; and court actors are continuously requesting and acceding to requests for adjournments in bail cases. The *Canadian Charter of Rights and Freedoms* (the Charter) states that all Canadians have the right to reasonable bail, and the *Youth Criminal Justice Act* (YCJA) is aimed primarily at keeping youth out of detention.[48] Yet from the available research, it appears that the same bail issues that persist in the adult system may be present in the youth system as well.

Statistics Canada recently examined data from 2007-2016, and found that the number of youth in pre-trial detention continues to overtake the number of youth sentenced to custody in Canada.[49] Nearly half (46%) of all Canadian youth released from pre-trial detention in the 2013-2014 reporting year spent more than one week in custody before they were released.[50] Variations in bail practices, such as adjournments and number of appearances required before bail is granted, may underlie increasing rates of pre-trial detention.

Adjournments, Delays and Time in Court

Research on adult bail shows that a "culture of adjournment" exists in Canadian courts, suggesting that the courts emphasize getting through the docket as quickly as possible over meting out justice.[51] This results in delays and adjournments that extend the time spent waiting for a decision on bail or resolution of a case. Since the 1970s, there has been a dramatic increase in the use of adjournments. A comparison of daily

[47] Webster, C.M. (2015) Broken Bail and How we Might Go About Fixing It. Unpublished.
[48] *Canadian Charter of Rights and Freedoms*, s 11, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
[49] Correctional Services Program. (2016) *Youth correctional statistics in Canada, 2014/2015*. Statistics Canada. Retrieved from http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14317-eng.htm.
[50] Statistics Canada. (2015) *Youth correctional statistics in Canada, 2013/2014*. Retrieved from http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14164-eng.htm.
[51] Myers, N. M. (2015) Who Said Anything About Justice? Bail Court and the Culture of Adjournment. *Canadian Journal of Law and Society / La Revue Canadienne Droit et Société, 30*(1), 127– 146. https://doi:10.1017/cls.2014.28

outcomes in a Toronto Bail Court showed that in 1974, only 3% of cases were adjourned while in 2006, over 30% of cases were adjourned, largely by defence counsel.[52] A study of eight courts across Ontario between 2006 and 2008 showed that on an average day, between 57% and 81% of cases were adjourned.[53] A more recent study of five different jurisdictions saw similar results, where on average, 54% of cases were adjourned to another day.[54]

It appears that the actual bail process itself is taking longer than it did in the past, requiring a greater number of court appearances for a decision on bail/release to be reached.[55] In 2001, the average case took just over four days to reach a decision on bail. In 2007, cases took an average of six days to complete the bail process.[56]

Not only are the courts taking longer to reach a decision on bail but it is also taking longer to reach a final disposition on the charges. A study of 225 youth at a large Toronto court found that on average, youth appeared before the court nine times before their charges were resolved, which translated to an average of 219 days.[57] A more recent study of 358 youth court cases in Ontario found an average of 12 appearances, with 63% of youth requiring ten or more appearances. One youth appeared in court an astounding 65 times before their case was resolved.[58] This study suggests that adjournments are commonplace in youth courts as well as the adult system.

Risk Aversion

A cultural shift toward risk aversion has also contributed to the growing remand problem in Canada.[59] Risk aversion at the point of bail often manifests itself as unnecessary detention for a bail hearing and multiple, onerous bail conditions that are often unconnected to the initial offence.

Those charged by the police are increasingly being held in custody until a bail hearing has been set, meaning that police officers are using their

[52] Webster, C. M., Doob, A. N., & Myers, N. M. (2009). The parable of Ms. Baker: Understanding pre-trial detention in Canada. *Current Issues in Criminal Justice*, *21*(1), 79-102.
[53] Myers, N. M. (2009). Shifting risk: Bail and the use of sureties. *Current Issues in Criminal Justice*, *21*(1), 127-147.
[54] Beattie, K., Solecki, A. & Morton-Bourgon, K. E. (2013). Police and Judicial Detention and Release Characteristics: Data from the Justice Effectiveness Study. Department of Justice Canada.
[55] Webster, C. M., Doob, A. N., & Myers, N. M. (2009). The parable of Ms. Baker: Understanding pre-trial detention in Canada. *Current Issues in Criminal Justice*, *21*(1), 79-102.
[56] Webster, C. M., Doob, A. N., & Myers, N. M. (2009). The parable of Ms. Baker: Understanding pre-trial detention in Canada. *Current Issues in Criminal Justice*, *21*(1), 79-102.
[57] Sprott, J. B., & Myers, N. M. (2011). Set up to fail: The unintended consequences of multiple bail conditions. *Canadian Journal of Criminology and Criminal Justice*, *53*(4), 404-423.
[58] Sprott, J. B., & Sutherland, J. (2015). Unintended consequences of multiple bail conditions for youth. *Canadian Journal of Criminology and Criminal Justice*, *57*(1), 59-82.
[59] Webster, C. M., Doob, A. N., & Myers, N. M. (2009). The parable of Ms Baker: Understanding pre-trial detention in Canada. *Current Issues in Criminal Justice*, *21*(1), 79-102.

discretionary powers less often to release people on a promise to appear or summons.[60] Recent data from the Ontario Court of Justice showed that the proportion of cases starting in bail court has increased since 2011.[61]

Not only do police officers have discretion regarding detaining an individual for a bail hearing, the YCJA also provides alternatives to charges to divert young people out of the courts. A study that surveyed police officers in Canada found that knowledge of the YCJA's principles and objectives is not reflected in the actions of officers in exercising their discretion to use alternatives to formal charges.[62] In other words, although officers may be aware of the alternatives to formal charging set out in the YCJA, like diversion programs and other extrajudicial measures, they are not using these alternatives. In some cases, this may be due to lack of resources. Extrajudicial measures, especially diversion programs, rely on the existence and knowledge of community-based organizations delivering programs and this may be lacking in many communities.[63]

A culture of risk aversion also manifests in the imposition of restrictive conditions. Recent research on youth bail shows that youth are subjected to numerous bail conditions, many of which are not supported by the legislative framework of bail.[64] The imposition of multiple bail conditions may unintentionally set up youth to accumulate further criminal charges through failing to comply with a court order. The evidence indicates that for individuals who are subject to numerous conditions, if their case is not dealt with quickly, they are at a high risk of returning to court for charges associated with failure to comply with release conditions.[65]

A study of 225 youth bail cases in Toronto found that on average, six bail conditions were imposed. A quarter of youth in the sample were subjected to six or more bail conditions for nine months or longer. Half of those with six or more conditions, perhaps unsurprisingly, were charged with a failure to comply. Interestingly, in the end 40% of these

[60] Department of Justice. (2006). *The Final Report on Early Case Consideration of The Steering Committee on Justice Efficiencies and Access To The Justice System.* Retrieved from http://www.justice.gc.ca/eng/rp-pr/csj-sjc/esc-cde/pdf/ecc-epd.pdf
[61] Ontario Court of Justice. (2018). *Criminal Bail Statistics by Region 2011 to 2017*. Retrieved from http://www.ontariocourts.ca/ocj/files/stats/bail/2017/2017-Bail-Region.pdf
[62] Ricciardelli, R., Crichton, H., Swiss, L., Spencer, D. C. & Adorjan, M. (2017). From knowledge to action? The Youth Criminal Justice Act and use of extrajudicial measures in youth policing. *Police Practice and Research, 18*(6), 599-611. DOI: 10.1080/15614263.2017.1363971
[63] Ricciardelli, R., Crichton, H., Swiss, L., Spencer, D. C. & Adorjan, M. (2017). From knowledge to action? The Youth Criminal Justice Act and use of extrajudicial measures in youth policing. *Police Practice and Research, 18*(6), 599-611. DOI: 10.1080/15614263.2017.1363971
[64] Yule, C., & Schumann, R. (2019). Negotiating Release? Analysing Decision Making in Bail Court. *Canadian Journal of Criminology and Criminal Justice*, (aop), 1-22.
[65] Sprott, J. B., & Myers, N. M. (2011) Set up to fail: The unintended consequences of multiple bail conditions. *Canadian Journal of Criminology and Criminal Justice*, *53*(4), 404-423.

youth were not convicted of any charges that initially triggered the bail hearing, however, many had to deal with new charges accumulated through breaching conditions.[66] Other more recent studies have found an even higher number of average conditions. In one study, 199 youth bail cases across Toronto found that youth received an average of 9.4 conditions, ranging from zero to 23 conditions.[67]

The legislated purpose of bail conditions is to ensure court attendance and to reduce the likelihood of reoffending. However, recent research has found that the imposition of numerous bail conditions is not associated with an increased likelihood of court attendance, or a decreased likelihood of recidivism, nor do they have a connection to the offence. In a study observing almost 200 youth cases, researchers found that 40.7% of the conditions imposed on youth had no apparent connection to the initial offence.[68]

Many conditions seem to be imposed in order to give the sureties or caregivers more power over the youth or for behavioural/lifestyle reasons. For example, non-association orders or curfews are often not related to the offence and intended to keep the youth away from "bad influences".[69] In addition, conditions that do not allow the youth to associate with anyone with a criminal record, can be nearly impossible for the young person to comply with. Applying bail conditions that are not connected to the offence may inadvertently create opportunities for a new criminal offence.[70] Not only do they often lead to further entrenchment in the justice system, but research also states that there is no evidence to suggest that restrictive bail conditions reduce re-offending.[71]

[66] Sprott, J. B., & Myers, N. M. (2011). Set up to fail: The unintended consequences of multiple bail conditions. *Canadian Journal of Criminology and Criminal Justice*, *53*(4), 404-423.
[67] Myers, N. M., & Dhillon, S. (2013). The criminal offence of entering any shoppers drug mart in Ontario: Criminalizing ordinary behaviour with youth bail conditions. *Canadian Journal of Criminology and Criminal Justice*, *55*(2), 187-214.
[68] Sprott, J. (2015). How Court Officials "Create" Youth Crime: The Use and Consequences of Bail Conditions. *Canadian Criminal Law Review*, *19*(1), 27-39.
[69] Sprott, J. (2015). How Court Officials "Create" Youth Crime: The Use and Consequences of Bail Conditions. *Canadian Criminal Law Review*, *19*(1), 27-39.
[70] Myers, N. M., & Dhillon, S. (2013). The criminal offence of entering any shoppers drug mart in Ontario: Criminalizing ordinary behaviour with youth bail conditions. *Canadian Journal of Criminology and Criminal Justice*, *55*(2), 187-214.
[71] Wong, K., Bailey, B., & Kenny, D. (2010). *Bail me out: NSW young people and bail*. Youth Justice Coalition. Retrieved from http://apo.org.au/node/18998; Sprott, J. B., & Sutherland, J. (2015). Unintended consequences of multiple bail conditions for youth. *Canadian Journal of Criminology and Criminal Justice*, *57*(1), 59-82.

Discriminate Effects: Gender and Race

Black and Indigenous Peoples are overrepresented at nearly every stage of the Canadian criminal justice system,[72] though little research has explored racialized youth at the bail stage. The barriers these racialized groups face in Ontario are complex and interlaced with systemic historical inequalities.

Between 2014 and 2015, Indigenous youth made up more than a third of youth admissions to pre-trial detention in Canada, which is five times their representation in the general population.[73] Indigenous male youth (aged 12-17) make up nearly 15% of all admissions to Ontario's youth facilities, yet they only constitute 2.9% of Ontario's young male population.[74] Similarly, the same data analysis found that there were four times more Black youth in Ontario's youth facilities than the general youth male population. There is also some experimental research originating from the United States that suggests bail judges are racially biased against Black defendants, resulting in bail being denied more often for Black defendants because of stereotypes that exaggerate the danger of releasing them.[75]

The disproportionate experience of custody is not exclusive to young racialized males. Research has found that the proportion of Indigenous female youth was ten times higher in Ontario jails than in the general female youth population.[76] These disparities are in large part a reflection of the remand population, as more youth are held in remand than are sentenced to custody in Ontario.

The impact of bail issues is particularly pronounced for Indigenous Peoples, who face numerous intersecting problems such as intergenerational trauma. A recent study conducted by Justice Canada suggested that bail-related issues may lead Indigenous Peoples to plead guilty.[77] Furthermore, although courts have acknowledged that the Gladue principles are applicable to bail, there is a lack of guidance from

[72] Owusu-Bempah, A, and Wortley, S. (2014). Race, crime, and criminal justice in Canada. In S. Bucerius and M. Tonry (eds.), *The Oxford Handbook of Ethnicity, Crime and Immigration*: 281-320.
[73] Correctional Services Program. (2017). *Trends in the use of remand in Canada, 2004/2005 to 2014/2015*. Retrieved from: https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14691-eng.htm
[74] Rankin, J., Winsa, P, and Ng, H. (2013, March). Unequal justice: Aboriginal and black inmates disproportionately fill Ontario jails. *The Toronto Star*. Retrieved from: http://www.thestar.com/news/insight/2013/03/01/unequal_justice_aboriginal_and_black_inmates_disproportionately_fill_ontario_jails.html.
[75] Arnold, D., Dobbie, W., & Yang, C. S. (2018). Racial bias in bail decisions. *The Quarterly Journal of Economics*, *133*(4), 1885-1932.
[76] Rankin, J., Winsa, P, and Ng, H. (2013, March). Unequal justice: Aboriginal and black inmates disproportionately fill Ontario jails. *The Toronto Star*. Retrieved from: http://www.thestar.com/news/insight/2013/03/01/unequal_justice_aboriginal_and_black_inmates_disproportionately_fill_ontario_jails.html.
[77] Bressan, A., & Coady, K. (2017). *Guilty pleas among Indigenous people in Canada*. Department of Justice Canada/ Ministère de la justice Canada.

higher courts on how to apply the principles. Bail courts have fallen into the trap of treating Indigenous bail hearings as sentencing proceedings. When this is done without any modifications in consideration of the differing legal contexts, it violates the individual's presumption of innocence that all accused people are entitled to at the bail phase.[78]

In addition to race-based disparities, there are gender-based differences in bail outcomes as well. Research has found that female youth were more likely than their male counterparts to receive a treatment condition.[79] This has been thought to be a result of justices of the peace having more paternalistic, rehabilitative concerns when dealing with female youth compared to their male counterparts.[80]

Impact

The decisions reached at bail hearings can have a profound impact on the outcomes of cases and the accused who must abide by them. Incarceration is detrimental to everyone, but it is particularly damaging for young people. Pre-trial detention causes fear, stress and insecurity in young people, removes them from their communities, exposes them to violence inside the institutions, and has negative consequences on their well-being.[81] In addition, research has shown that accused persons who are unable to access bail are more likely to plead guilty, whether or not they believe they are guilty, than those who are released on bail.[82]

A large portion of incarcerated young people experience depression, suicidal attempts and ideation, and drug and alcohol use. Experiences of incarceration exacerbate these issues and are often not addressed while youth are detained.[83] The effects of incarceration can be long lasting and continue to affect individuals into adulthood. One study found that people who had experienced childhood incarceration had worse general health, mobility limitations, depressive symptoms and suicidal

[78] Rogin, J. (2017). Gladue and Bail: The Pre-Trial Sentencing of Aboriginal People in Canada. *Canadian Bar Review, 95*, 325.
[79] Sprott, J. B., & Doob, A. N. (2010). Gendered treatment: Girls and treatment orders in bail court. *Canadian Journal of Criminology and Criminal Justice*, *52*(4), 427-441; Sprott, J. B., & Manson, A. (2017). YCJA Bail Conditions:" Treating" Girls and Boys Differently. *Canadian Criminal Law Review*, *22*(1), 77
[80] Sprott, J. & Manson, A. (2011). YCJA Bail Conditions: "Treating" Girls and Boys Differently. *Canadian Criminal Law Review*, *22*(1), 77.
[81] Van den Brink, Y.N. & Lubow, B. (2019). Reforming pre-trial detention of children: Strategies and challenges in the Netherlands and the United States. In O'Brien W and Foussard C (Eds.) *Violence against Children in the Criminal Justice System*. London: Routledge, 181–197.
[82] Kellough, G., & Wortley, S. (2002). Remand for plea. Bail decisions and plea bargaining as commensurate decisions. *British Journal of Criminology*, *42*(1) 186-210.
[83] Lambie, I., & Randell, I. (2013). The impact of incarceration on juvenile offenders. *Clinic Psychology Review, 33*, 448-459.

tendencies compared to individuals who first experienced incarceration later in life or not at all.[84]

The incarceration of youth is extremely disruptive and can have a significant impact on education and job opportunities. For example, youth who have been incarcerated are more likely to drop out of school.[85] In one study, juvenile incarceration was found to reduce the likelihood of high school completion, as well as increase the probability of incarceration later in life.[86] There is evidence that suggests adverse labour market outcomes even begin at the pre-trial detention stage, prior to any conviction.[87] One study using an American sample found that those who are released pre-trial fare better than those who are detained across several outcomes. Pre-trial release was associated with an increase in formal sector employment as well as the receipt of tax and employment related benefits.[88]

Experiences of incarceration pre-trial can be particularly stressful, especially for young people, because of the uncertainty involved. In addition to the uncertainty and fear of the unknown, a distrust of an authoritarian environment, lack of control and isolation from family and important social connections can have a significant impact on the young person's ability to cope with the experience of incarceration.[89] The ability to cope determines how much the young person can minimize the psychological effects of incarceration. Remand is a harsh experience for young people because of the frequent use of restraints and segregation, lack of sensitivity to the needs of individual youth and lack of educational resources.[90] Young people detained waiting for their bail hearing experience the same uncertainty and negative impacts as youth that are formally held in pre-trial detention.

Falsely entered guilty pleas and subsequent wrongful convictions are another less considered, but serious consequence of being held on bail. Individuals held in pre-trial detention are more likely to enter a guilty

[84] Barnert, E. S., Abrams, L. S., Dudovitz, R., Coker, T. R., Bath, E., Tesema, L., ... & Chung, P. J. (2019). What Is the Relationship Between Incarceration of Children and Adult Health Outcomes?. *Academic pediatrics*, *19*(3), 342-350.
[85] De Li, S. (1999). Social control, delinquency, and youth status achievement: A developmental approach. *Sociological Perspectives*, *42*(2), 305-324.; Tanner, J, Davies, S and O'Grady, B. (1999). Whatever Happened to Yesterday's Rebels? Longitudinal Effects of Youth Delinquency on Education and Employment. *Social Problems, 46*, 250-274.; Sweeten, G. (2006). Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement. *Justice Quarterly, 23*, 462-480.
[86] Aizer, A., & Doyle Jr, J. J. (2015). Juvenile incarceration, human capital, and future crime: Evidence from randomly assigned judges. *The Quarterly Journal of Economics*, *130*(2), 759-803.
[87] Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, *108*(2), 201-40.
[88] Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, *108*(2), 201-40.
[89] Cesaroni, C., & Peterson-Badali, M. (2016). The role of fairness in the adjustment of adolescent boys to pre-trial detention. *The Prison Journal, 96* (4): 1–20.
[90] Cesaroni, C., & Peterson-Badali, M. (2016). The role of fairness in the adjustment of adolescent boys to pre-trial detention. *The Prison Journal, 96* (4): 1–20.

plea. One study found that the odds of pleading guilty are 2.5 times greater for those who are detained than those who are released.[91] Wrongful convictions happen too often in court when vulnerable people plead guilty to crimes they did not commit because they are denied bail. Pleading guilty may be an attractive option to a young defendant with little resources, who is otherwise facing a lengthy trial and an extended stay in remand. Programming and other supports are available to young people who are sentenced to custody but not remanded youth, which also makes pleading guilty seem like a better option. Research has shown that youth, particularly, are susceptible to wrongful convictions because of the cognitive, social and emotional traits associated with their development.[92]

Not only is incarceration damaging, but it is also ineffective at rehabilitation and reducing recidivism for young people. In fact, studies suggest that incarceration may increase engagement in criminal activity.[93] Community-based supervision and treatment have been found to be the most effective approach to reduce recidivism and produce desirable outcomes for the young person and the community.[94] Effective interventions responding to criminal activity should be rehabilitative, multi-systemic and take into account the developmental and criminogenic needs of the individual young person.[95]

The present report expands on this foundation of knowledge about the youth bail system exploring 11 fiscal years of youth bail court data from the Ministry of the Attorney General, and ten fiscal years of admissions data from the Ministry of Children, Community and Social Services. Through the data analysis, this report analyzes trends from the 2006-2007 reporting year onward to identify key issues that persist in the youth bail system in order to unpack the variations in bail experiences of youth across the province based on geographic and demographic factors. This one-of-a-kind data analysis is bolstered by consultations with stakeholders from a variety of roles in the youth bail system as well as youth with lived experience of the bail system across Ontario, providing insights that contextualize the data findings and inform the recommendations.

[91] Kellough, G., & Wortley, S. (2002). Remand for plea. Bail decisions and plea bargaining as commensurate decisions. *British Journal of Criminology*, *42*(1), 186-210.
[92] Tepfer, J. A., Nirider, L. H., & Tricarico, L. M. (2009). Arresting development: Convictions of innocent youth. *Rutgers L. Rev.*, *62*, 887.
[93] Lambie, I., & Randell, I. (2013). The impact of incarceration on juvenile offenders. *Clinic Psychology Review, 33*, 448-459.
[94] Lambie, I., & Randell, I. (2013). The impact of incarceration on juvenile offenders. *Clinic Psychology Review, 33*, 448-459.
[95] Lambie, I., & Randell, I. (2013). The impact of incarceration on juvenile offenders. *Clinic Psychology Review, 33*, 448-459.

MAKING SENSE OF THE NUMBERS

This research project used an explanatory design[96] with a mixed-methods approach. The objectives were to further understand the gaps and barriers in accessing reasonable and timely bail for youth throughout Ontario, as well as recommend solutions to these issues. The research questions focused on time spent waiting for a bail decision and for a resolution of their case. A particular emphasis was placed on the potential variation of how such waiting is experienced across the province. Examining the variables of age, geography, bail outcome, and seriousness of offence was critical to highlight underlying issues leading to longer time spent waiting pre-trial and the number of appearances required to reach a final bail decision. Further, the research questions gave attention to the proportional representation of Black and Indigenous youth relative to their population in the community, and the prevalence of non-reporting in race-based data collection.

Throughout the project, data was collected and analyzed from three sources: (1) the Ministry of the Attorney General's Integrated Case Outcome Network (ICON); (2) the Ministry of Children, Community, and Social Services (MCCSS); and (3) a robust consultation process with both stakeholders and youth with lived experience in the bail system since 2012.[97]

The ICON data provided all cases of youth charged with a crime by police and brought to bail court between the 2006 and 2017 fiscal years.[98] The ICON data provided was organized by disposition date, so only cases that reached a final disposition (resolution of the case) were included in the analysis. The ICON data was analyzed by fiscal year in order to examine key trends between the two datasets.[99] This data included demographic information such as gender and age, and court case information such as recorded charges, bail-related outcomes, and case outcomes. Please refer to Appendix A for a full summary of sample, methods, and data utilized for the study.

[96] An explanatory research design focuses on conducting research for a problem that has not yet been well researched and helps with understanding the problem in a more detailed manner.
[97] Consultations with youth with lived experience focused on those who experienced the bail system since 2012 as this was the year that major amendments were made to the youth bail framework set out in the YCJA.
[98] Each entry in the data is a case organized by information number, not necessarily a unique individual. Individuals may be represented more than once in the data set if they had more than one case before the courts.
[99] Fiscal years begin April 1 of each year, and end March 31 of the following year.

For the purposes of the research, data was broken down based on the regional boundaries outlined by the MCCSS, and include: Central; Toronto; Eastern; Western; and Northern.[100]

Central Region ---

Toronto Region ---

Eastern Region ---

Western Region ---

Northern Region ---

Data from the MCCSS *Freedom of Information Act* request provided information on all youth admissions to open and secure detention, broken down by race/ethnicity and gender, between the 2006 and 2015 fiscal years. The data provided showed the total number of admissions, not the number of individual youth admitted.[101] The dataset indicated that race-based data for youth was provided on a voluntary, self-reported basis. The collection of race-based data is challenging and complex as youth may not fit into distinct categories, are not always aware of their ethnic backgrounds, and/or may not wish to specify their ethnicity. As data is based on self-identification, actual figures may be higher than highlighted in the current report. This data was compared to the census data from Statistics Canada to show the proportional representation of race-based admissions to detention.

The consultation process included surveys, interviews, and an event with stakeholders, as well as focus groups and interviews with youth. Through purposive sampling, a list of stakeholders encompassing a

[100] Ministry of Children, Community and Social Services. (2016) *Offices*. Retrieved from http://www.children.gov.on.ca/htdocs/english/about/regionaloffices.aspx

[101] Total admissions represent each time a youth is physically admitted to a detention facility with the exception of a transfer from the same status facility (i.e. secure to secure or open to open). Detention data is based on the number of orders associated with each youth entering a facility. If a youth has multiple orders, each order is included in the detention count. If a youth incurs additional orders while in a facility, this is included in the detention count.

variety of different roles in the youth bail system in Ontario was compiled.

Youth with lived experience were also consulted for this project.[102] Researchers held a number of focus groups and one-to-one interviews in Toronto, Ottawa, Thunder Bay, and St. Catharines. Participants were recruited through community service organizations that were involved with the stakeholder consultations, including the John Howard Society local offices. Youth were asked open-ended questions about their experiences in the bail system, what impact this experience had on their life, the forms of support they encountered, and their own recommendations on how issues in the bail system could be addressed.

Perspectives and insights from both stakeholders and youth with lived experience informed the themes and recommendations included in the following sections of the report.

The section that follows delves into the key findings that emerged from the data. In addition to providing an overview of general trends that were identified, the section also showcases variations and disparities that exist for youth based on region, gender, and race.

Overview of Sample

159,301 youth bail **cases** from **ICON**.

64,111 **admissions** to open and secure **detention** from MCCSS examined.

45 **stakeholders** responded to an online **survey** providing perspectives and feedback.

49 **stakeholders** attended a **Think Tank Day** sharing their expertise.

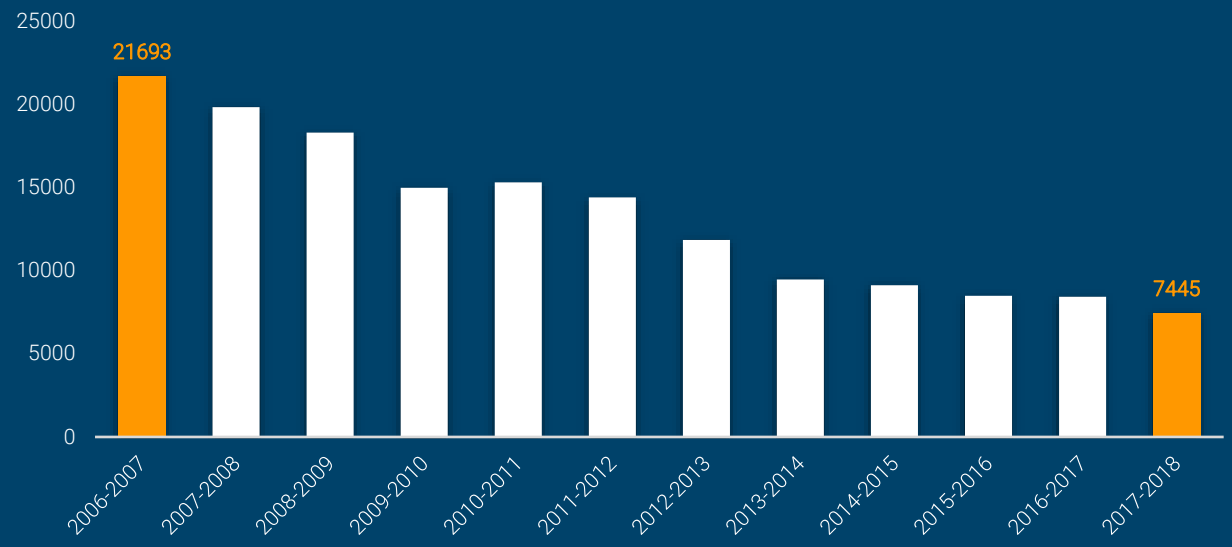
15 **youth** with lived experience were **interviewed** and formed a representative sample of the different geographical regions.

[102] The information youth shared was aggregated to form personas illustrating the experiences of young people in the bail system. Four personas are included throughout the report as well as quotes highlighting sentiments and thoughts related to experiences of the bail system.

Overview of Findings

Since the 2006-2007 reporting year, the number of youth bail cases in Ontario has been declining. Less cases are ending up in court and less youth are being detained pending their trial, suggesting that the YCJA has been successful in keeping more young people out of jail. However, despite the declining cases, youth are being detained longer while they wait for a decision on their bail and spending longer waiting for a resolution of their case. Bail is granted often, also signifying positive impacts from the YCJA, but, even amongst those youth, many of them experience significant periods of incarceration until they are eventually released.

Figure 1: Number of Ontario Youth Bail Cases 2006-2017 (n=159,301)



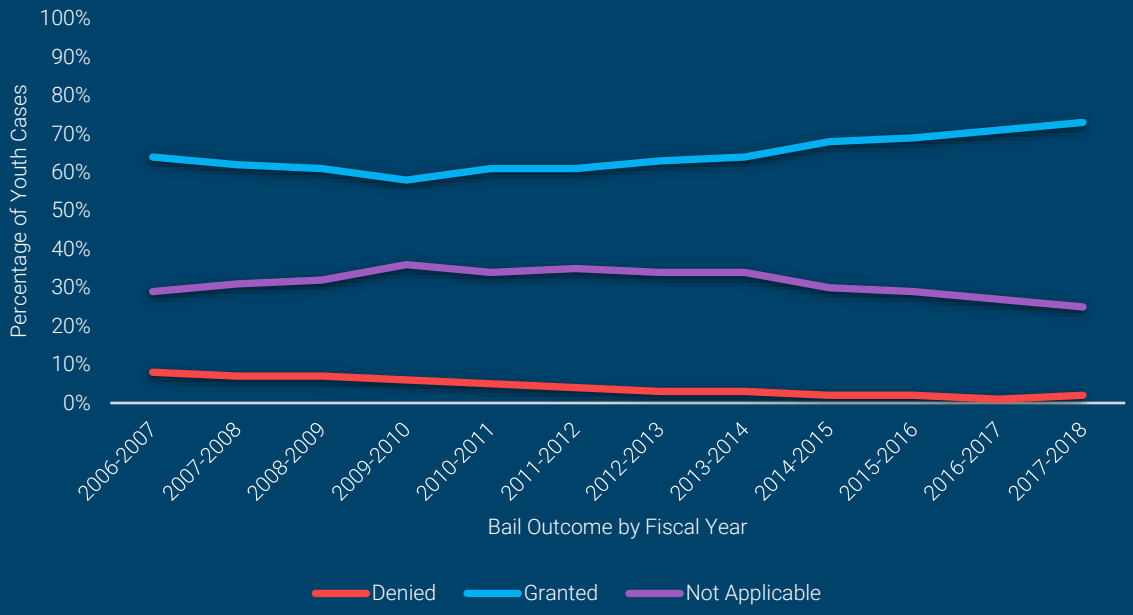
At their final bail appearance, youth receive one of the following bail decisions: bail granted, bail denied, or an outcome categorized as "not applicable" (N/A). Between the 2006-2017 reporting years, bail granted was the most common bail decision followed by N/A.

This N/A bail outcome is likely due to guilty pleas or other case resolutions that occur before a bail decision has been reached. Cases with N/A bail outcomes were more likely to involve guilty dispositions than the provincial average. In 2006-07, 74% of N/A bail cases involved a guilty disposition. This decreased to 63% in 2016-17 and again to 57% in 2017-18.

Overall, the number of cases resulting in bail being granted has increased while the number of cases involving bail being denied has decreased. In the 2006-2007 reporting year, bail was granted in 64% of youth cases. From 2007 to 2009, bail-granted cases steadily declined, however, cases have been increasing steadily since the 2010-2011 reporting year. By the 2017-2018 reporting year, 73% of youth court cases ended up with the youth being granted bail, meaning youth are being granted bail more often than before.

N/A bail decisions represented about 30% of youth cases in the 2006-2007 reporting year. By the 2017-2018 reporting year, 25% of youth court cases reached a N/A bail decision. Youth court cases reaching a decision of bail denied occurred less frequently over the 2006-2017 time frame. In the 2006-2007 reporting year, 8% of youth cases were denied bail, and this number has declined steadily since that year. By 2017-2018, only 2% of cases reached a decision of bail denied, indicating that the vast majority of young people are not being denied bail and more youth are being released into the community over the years. However, it is taking longer to reach those decisions, leaving youth in jail while they wait.

Figure 2: Bail Outcomes in Ontario Youth Criminal Cases Over Time (2006-2017)



The number of bail appearances and time spent waiting for a bail decision has increased since the 2006-2007 reporting year, even though most youth end up being granted bail. In addition to longer periods

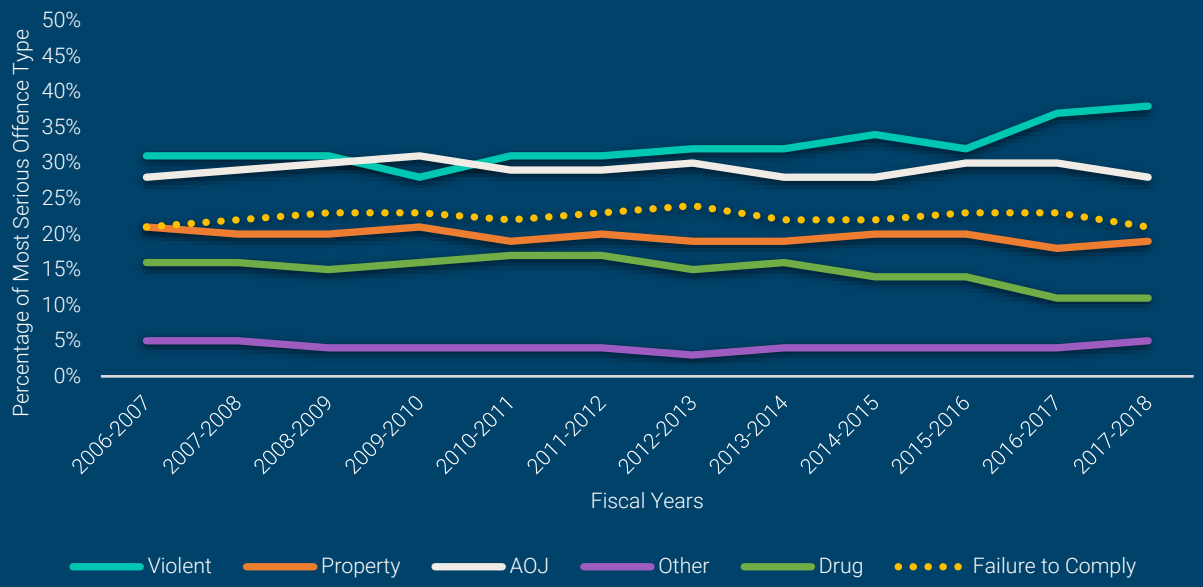
awaiting a bail decision, cases are taking longer to reach a final disposition, or resolution of their case. This means that even for those granted bail, they are made to remain in the community with onerous and restrictive conditions for longer periods of time, increasing the risk of breaches that further entrench them in the system. On the whole, the data suggests that youth that are granted bail spend longer waiting for their case to reach a final disposition than those denied bail and detained in pre-trial detention.

When it comes to the types of offences that youth are bringing into the court, the ICON data provided information on the most serious charge received on the youth case. When a case includes more than one charge, the most serious charge is recorded. For the purposes of this report, the most serious charge is referred to as the most serious offence (MSO), and each MSO has been categorized into five offence categories as defined by the Canadian Centre for Justice Statistics: violent, property, administration of justice, other, and drug.[103] In the data, the most common MSOs over the 2006 - 2017 time frame were violent (32%) and administration of justice (29%).

Administration of justice offences (AOJs) are particularly noteworthy. These charges stem from an original charge(s) and include offences related to a failure to appear in court, failure to comply with release conditions and breaches of probation. 29% of MSOs in the dataset were AOJ offences, the majority of which were failure to comply with order (77%). The failure to comply offences represent breaches of conditions that were imposed as part of a young person's release. Failure to comply charges alone represented a larger proportion of MSOs than entire offence categories, as shown in the figure below. Failure to comply charges have remained relatively constant throughout the years and represented between 21 – 24% of MSOs, making them a significant portion of MSOs in the province. In addition, over 40% of cases between 2006 and 2017 involved at least one AOJ charge indicating that AOJ charges as a whole are common across the province.[104]

[103] Ontario Court of Justice. (2019). *Offence Based Statistics, Youth Criminal Cases*. Ontario Court of Justice: Provincial Overview.
[104] AOJ offences in Figure 3 include failure to comply offences. The failure to comply data line here provides a comparison of the proportion of failure to comply offences to entire offence categories.

Figure 3: Most Serious Offences Types in Ontario Youth Bail Cases 2006-2017



There are several outcomes for a youth case including acquitted, dismissed, guilty, stayed, and withdrawn. This report is focused on the youth bail system and therefore does not go into detail on case outcomes and sentencing. However, there is some analysis on withdrawn cases as these charges could indicate cases in which a Crown has directed a youth to post-charge diversion, which is explored in this study. In the 2006-2007 reporting year, 32% of youth cases were withdrawn. This remained constant until the 2009-2010 reporting year with a slight decline to 31%. By the 2010-2011 reporting year, withdrawn cases increased to 34% and continued to increase up to the 2017-2018 reporting year where 50% of youth cases were withdrawn.

There are also regional variations in the dataset, suggesting that depending on where a youth lives, they may have a different experience at bail than youth in another region. For example, some regions had significantly longer wait times or a higher number of bail appearances on average, and this also changed over time. As well, some regions had youth waiting for a final disposition longer than others, and this is found most often for youth who are granted bail, have their cases withdrawn, or have a violent MSO. AOJ charges are also different depending on which region a youth lives in and can have significant impacts on youth

and how likely they are to get lost in the system. A breakdown of this analysis is provided in the next section below.

Open and secure detention admissions have decreased significantly over the 2006 to 2015 reporting years, especially in secure detention. Despite this, Black and Indigenous youth are disproportionately represented, particularly in secure detention. This too, is experienced differently across the province, and in some regions, has been increasing over the years. Of significance, as well, the data shows that race-based data in terms of admissions to detention is largely unreported, and this is especially true for female youth. Race-based data was only available for admissions to detention and not ICON data, so race-based analyses are not possible for court information like case outcomes, time spent detained, and charges.

A Closer look at the Data Findings

The YCJA was a direct response to concerns around high incarceration rates of youth. Since the YCJA, the detention of young people has decreased significantly. However, incarceration is still experienced by a significant number of young people, whether or not they are denied bail. Young people being held for a bail hearing also experience incarceration, either in a police holding cell, or a correctional facility.

There are two different phases youth experience in the bail system which are outlined below.

Phase 1: Time Spent Detained

For the purposes of this research, time spent detained is defined as the time spent waiting for a decision on bail starting from the first bail appearance date to the final appearance date. This period represents the time a young person is detained in an institutional setting while they wait for a decision about whether they are granted bail and released into the community or detained pre-trial. For this period of time, the liberty of the young person is restricted as they wait in jail for a decision.

Phase 2: Time to Disposition

This phase is defined as the period that youth are waiting for a final disposition on their case. This period begins at the first bail appearance date and ends at the final disposition date, which could be a conviction, charges withdrawn or other resolution. During this period, the young person may be on bail in the community or held in pre-trial detention. This period is a measure of how long it takes for a case to be completed and represents the time a youth must spend in a period of uncertainty. Even if they were granted bail and released into the community for this time, they often must contend with restrictive release plans and onerous conditions.

Phase 1: Time Spent Detained

Police discretion is important to consider at this stage because an officer determines whether a young person will be held for a bail hearing or if they will be released on a promise to appear with or without conditions. The *Criminal Code* states that when a police officer arrests an individual, they should be brought before a justice of the peace within 24 hours of the arrest or if a justice of the peace is not available in that time, then as soon as possible.[105] Sometimes it takes more than one appearance for a justice of the peace to reach a decision on bail. However, the intention is that a decision is made promptly to avoid prolonged incarceration prior to a bail decision.

One of the key findings that emerged from the data was that many youth cases take multiple appearances, spanning over days, weeks or months to reach a decision on bail. Overall, the data suggests that just over 50% of cases in 2006-2017 were resolved in one appearance. In the 2006-2007 reporting year, 51% of cases were resolved in one appearance as shown in Figure 4. The proportion of bail decisions reached in one appearance increased steadily throughout 2008 to 2012, and by the 2012-2013 reporting year, 57% of cases were resolved in one appearance. The proportion of cases resolved in one appearance remained between 55-56%, and by the 2017-2018 reporting year, this increased to about 59%. This is a positive finding that demonstrates that for many youth, a decision on their bail is made swiftly. However, the other half of youth are experiencing a considerable amount of time incarcerated waiting for a bail decision.

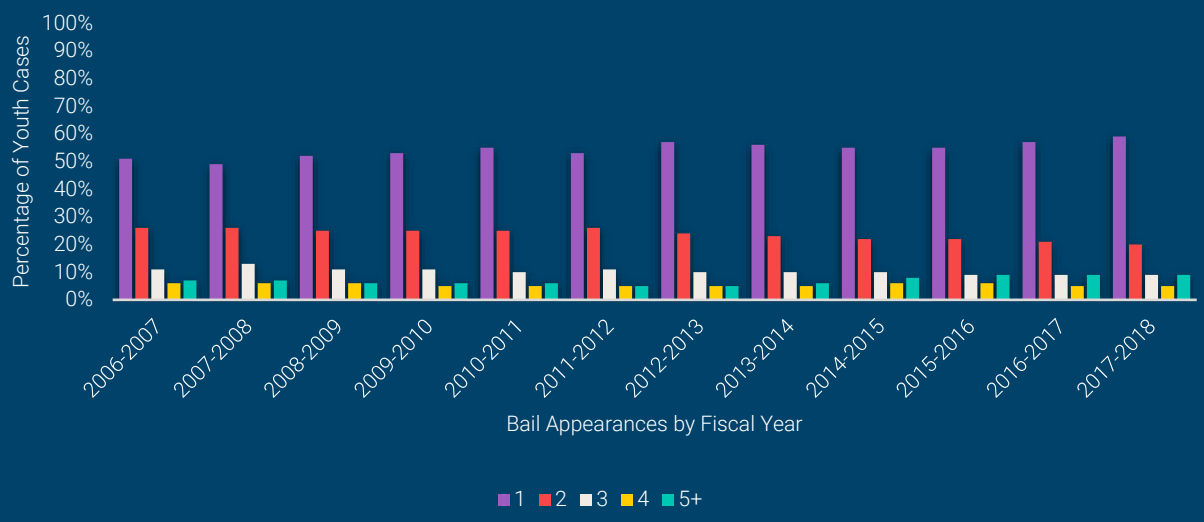
Trends in two, three, and four bail appearances show the proportion of cases slightly declining over time, as seen in Figure 4 below. In the 2006-2007 reporting year, two appearances represented about 26% of cases, three appearances just over 10%, and four appearances represented 6%. The proportion of cases requiring 2 bail appearances declined to 24% in the 2012-2013 reporting year, and continued to steadily decline each year to 20% in the 2017-2018 reporting year. Those cases requiring three appearances to reach a bail decision represented 10-11% of cases through the 2006 to 2014 reporting years. By 2015-2016, and through to the 2017-2018 reporting year, 9% of cases required three appearances to reach a decision on bail. Conversely, cases requiring five or more appearances to reach a decision on bail slightly increased over time. Between 2006 to 2008, 7% of cases required five or more appearances to reach a bail decision. Through 2009 to 2013, this number declined to about 5%, but increased to 8% in the 2014-2015 reporting year. By the 2015-2016 reporting year, 9% of cases required five or more

[105] *Criminal Code*, RSC 1985, c C-46, s 503.

appearances to reach a decision, and this remained constant through the remaining years.

A significant number of bail cases are being resolved quickly and efficiently in one appearance. However, on the other end of the spectrum, more cases are taking five or more appearances to reach a bail resolution. The intention of the *Criminal Code* is that a bail hearing should take place as soon as possible after a charge has been laid, and a decision made swiftly in accordance with the individuals' constitutional rights. This is not the case for a growing number of young people.

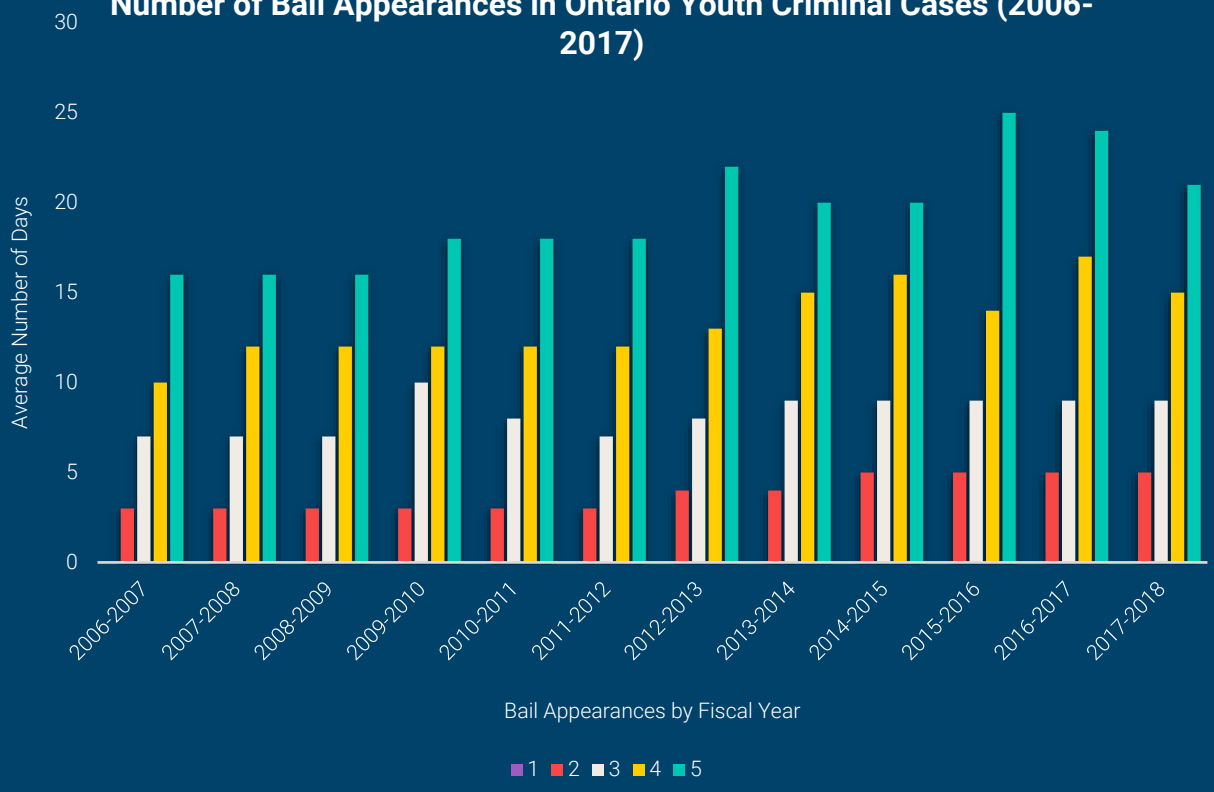
Figure 4: Number of Bail Appearances to Reach a Bail Decision in Ontario Youth Criminal Cases (2006-2017)



Multiple appearances could take days or weeks with each additional appearance significantly increasing the amount of time spent waiting for a bail decision. The overall number of days it takes to reach a bail decision for cases that were not resolved in one bail appearance is growing and the number of youth spending more than a week detained has also increased. For example, in the 2006-2007 reporting year, the average number of days to reach a bail decision in two appearances was three days, but increased to an average of five days between 2014 to 2017(see Figure 5). Three appearances, in comparison, took one week on average in the 2006-2007 reporting year, and increased to an average of nine days through 2013 to 2017, nearly double the average number of days required for two appearances. Similar trends can be found in cases involving four and five appearances whereby an additional appearance

increases the average number of days to weeks. For example, cases involving five appearances waited an average of two and a half weeks to reach a bail decision in 2006-2007. By 2017-2018, five appearances took an average of about three weeks to reach a decision on bail. This indicates that youth with multiple appearances are increasingly spending more time waiting prior to any finding of guilt. In fact, on the extreme end of the spectrum, the data found that the maximum number of bail appearances was 42 appearances which translated to months spent awaiting a decision.

Figure 5: Average Number of Days to Reach a Bail Decision by Number of Bail Appearances in Ontario Youth Criminal Cases (2006-2017)

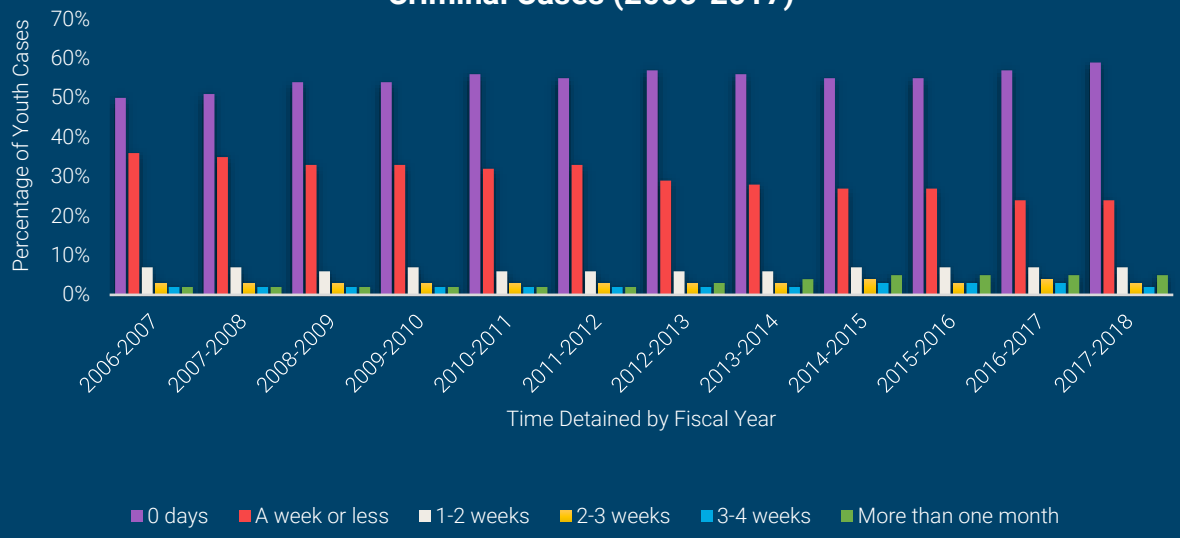


In some areas of the province, youth court sits infrequently, which could account for the jumps in time based on additional appearances. For example, if youth court only sits once a week and a case is adjourned, that means the next appearance will not take place for another week, leaving that youth in detention for the waiting period.

Many youth are spending days, sometimes weeks, detained only to be later granted bail. In the 2006-2007 reporting year, 50% of youth spent some time detained waiting for a decision on bail, as shown in Figure 6.

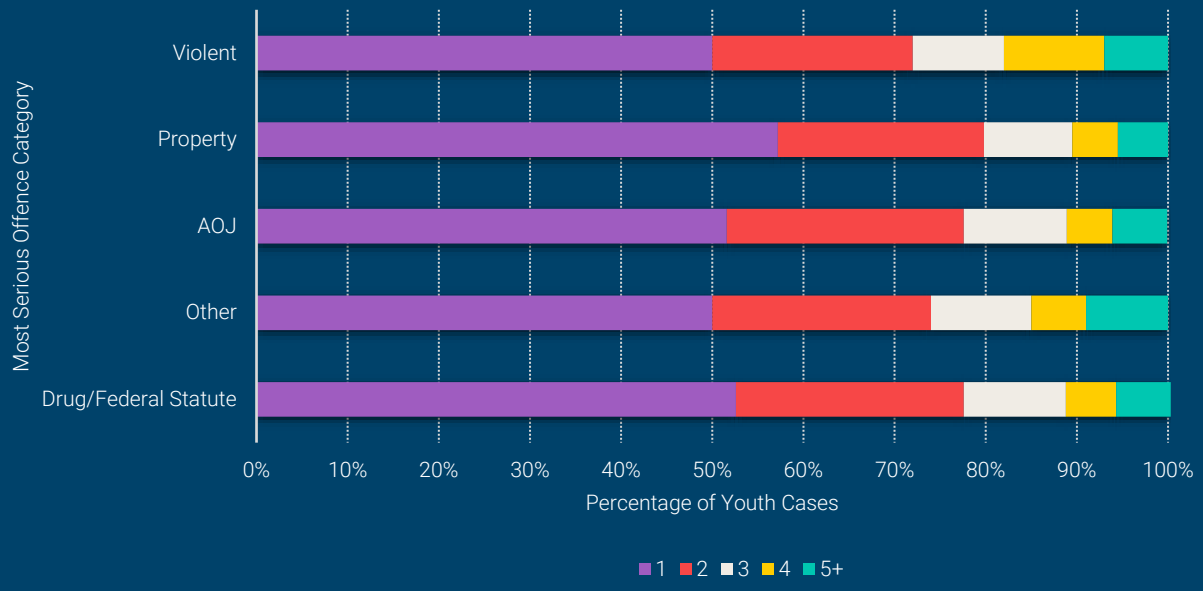
Of this, 36% spent up to a week detained, 7% spent up to two weeks, 3% up to three weeks, 2% spent up to four weeks detained, and 2% spent more than a month. The proportion of cases of youth spending up to one week detained awaiting a decision on bail steadily declined throughout the 2007 to 2016 reporting years. In both the 2016 and 2017 reporting years, 24% of youth cases required up to one week of waiting while detained. While the number of youth waiting up to one week has declined, the number of youth waiting up to two, three, and four weeks has remained the same. However, the number of youth cases requiring more than one month of waiting has been increasing. Up to the 2011-2012 reporting year, 2% of cases spent more than a month waiting, but this began to increase through the 2012 to 2017 reporting years. In the 2014-2015 reporting year, 5% of youth cases spent more than a month waiting, and this has remained constant through to the 2017-2018 reporting year.

Figure 6: Time Spent Awaiting a Decision on Bail in Ontario Youth Criminal Cases (2006-2017)



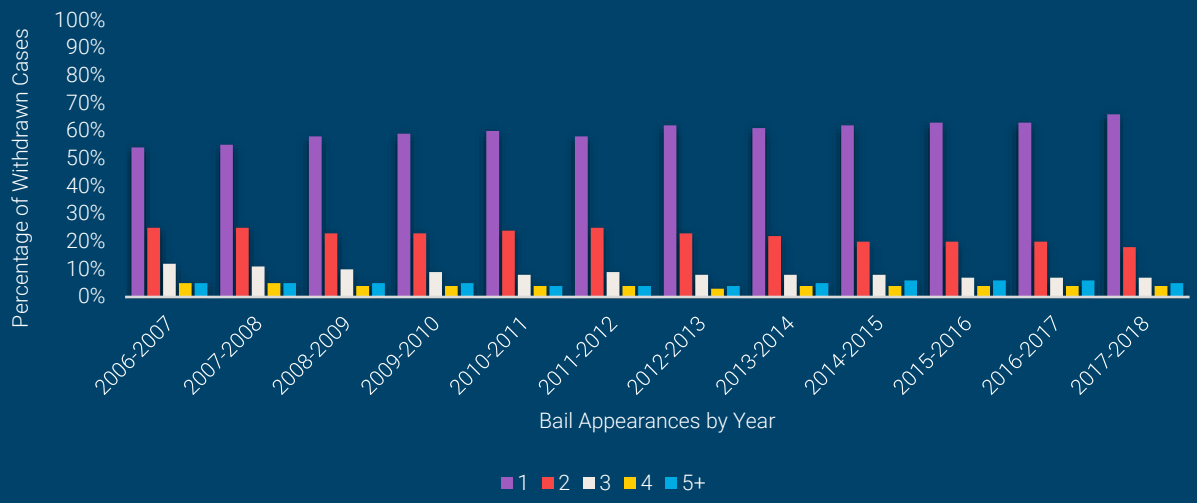
Aside from property offences, there was no strong indication that the differences in number of bail appearances were due to the type of most serious offence (MSO) involved. Property offences were most often resolved in one appearance compared to the other offence categories, and least likely to take four or more appearances to resolve, as shown in Figure 7. However, administration of justice (AOJ) offences, violent offences and the “other” category had no significant differences. There is a large variation in the severity of offences within these categories suggesting that offence type may not explain the variation in number of bail appearances.

Figure 7: Number of Bail Appearances in Ontario Youth Criminal Cases by Most Serious Offence (2006-2017)



Cases where charges were eventually withdrawn still took a considerable amount of time to reach a bail decision, as can be seen in Figure 8. More than 58,000 cases were withdrawn over the 2006-2017 time period in Ontario. From those cases, 54% reached a decision on bail in the first appearance in the 2006-2007 reporting year, while 22% took three or more appearances. The proportion of withdrawn cases that reached a decision on bail in the first appearance increased steadily over the years to about 60% between the 2009 to 2013 reporting years. This continued to increase, and by the 2017-2018 reporting year, 66% of withdrawn cases reached a decision on bail in one appearance. Withdrawn cases are increasingly reaching a bail decision in fewer appearances. In fact, by the 2015 to 2017 reporting years, about 16% of cases took three or more appearances.

Figure 8: Withdrawn Case Outcomes by Bail Appearances in Ontario Youth Criminal Cases (2006-2017)



For cases that were eventually withdrawn, 17% waited five or more days, and 3% waited more than a month for a decision on their bail. This is significant because withdrawn cases mean that either the Crown found there was not sufficient evidence to proceed with the trial or the youth may have completed a diversion program as part of an extrajudicial sanction and had their charges withdrawn upon completion. In either case, the charges are not serious or substantiated enough to result in sentenced custody, yet in many cases, these youth still experienced a significant amount of time in detention.

Overall, the data suggests that the number of youth in detention is declining in Ontario, yet a large number of youth entering the justice system spend significant time incarcerated due to delays in reaching a bail decision. These youth have not been found guilty of a crime and the courts have not yet determined that they are unsuitable for release on bail, yet they experience prolonged detention waiting for that decision. Many of these young people are later granted bail and/or have their charges withdrawn, begging the question as to why they were detained in the first place. Indeed, the data demonstrates only 5% of cases in the province involved a denial of bail.

These trends are concerning for two reasons. The first is the constitutional right not to be denied reasonable bail without just cause and the presumption of innocence. Expediency at the bail stage preserves these constitutional rights. Pre-trial detention is designed to

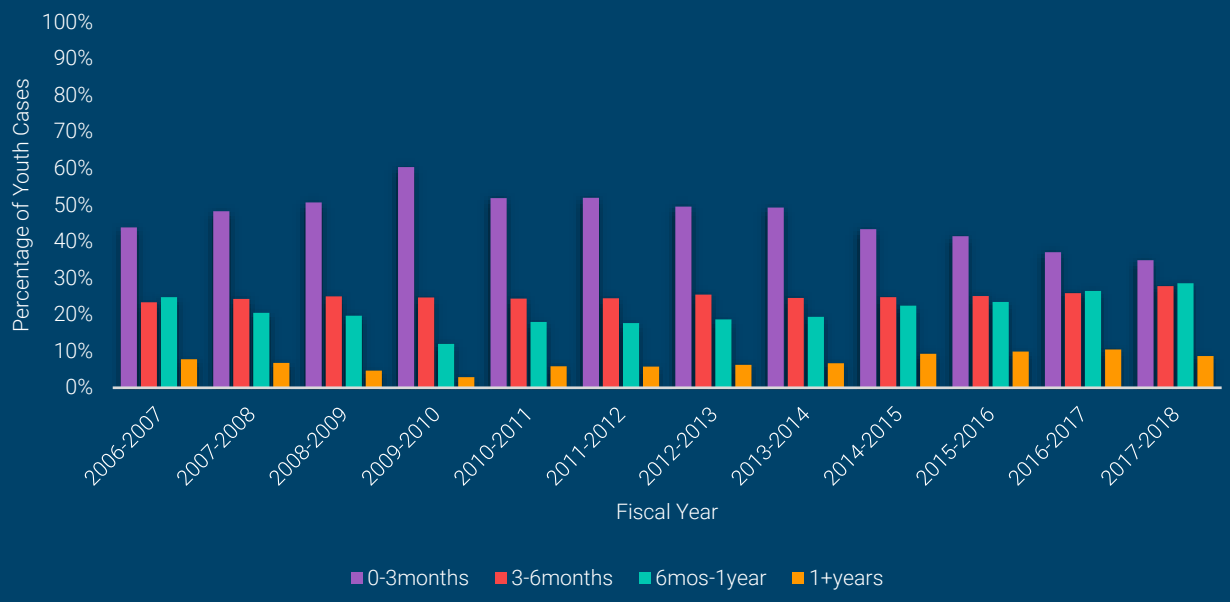
be a measure of last resort only used in cases where the court finds that the grounds for detention laid out in the statutory framework for bail are met. In all other cases, detaining an individual before trial is unconstitutional. Therefore, young people spending days or weeks in a form of detention before they have their bail hearing and a final determination is made as to whether pre-trial detention is warranted, is contrary to the constitutional rights of the accused young person.

The second reason is the impact of incarceration on youth and the aims of the YCJA. Any experience of incarceration has a negative impact on young people. Studies have highlighted a number of negative impacts that incarceration can have on young people, included above in the section outlining existing literature. Any time spent in detention, meaning prior to a finding of guilt, can be particularly stressful, especially for young people, because of the uncertainty involved. Young people detained waiting for a bail decision experience the same uncertainty and impacts as youth that are formally held in pre-trial detention. Therefore, experiences of incarceration while awaiting a bail hearing have significant negative impacts on young people, making these findings part of a troubling trend in the youth justice system.

Phase 2: Time to Disposition

The data also suggests young people spend a significant time waiting for a final disposition on their case, and that cases are taking longer to reach a disposition over the years. In the 2006-2007 reporting year, for example, 44% of cases reached a final disposition date in three months or less, however, this decreased to 35% by the 2017-2018 reporting year (see Figure 9 below). This means that by 2017-2018, 65% of youth cases spent more than three months waiting for a disposition, 9% of which took over a year. This analysis indicates that, overall, the time spent waiting for a disposition has been increasing throughout the years, meaning that the time spent in a period of uncertainty has gotten longer. For many youth this means they are spending more time contending with restrictive release plans and onerous conditions, increasing their chances of breaching and accumulating additional charges.

Figure 9: Time Spent Awaiting a Final Disposition Date on Ontario Youth Bail Cases (2006-2017)



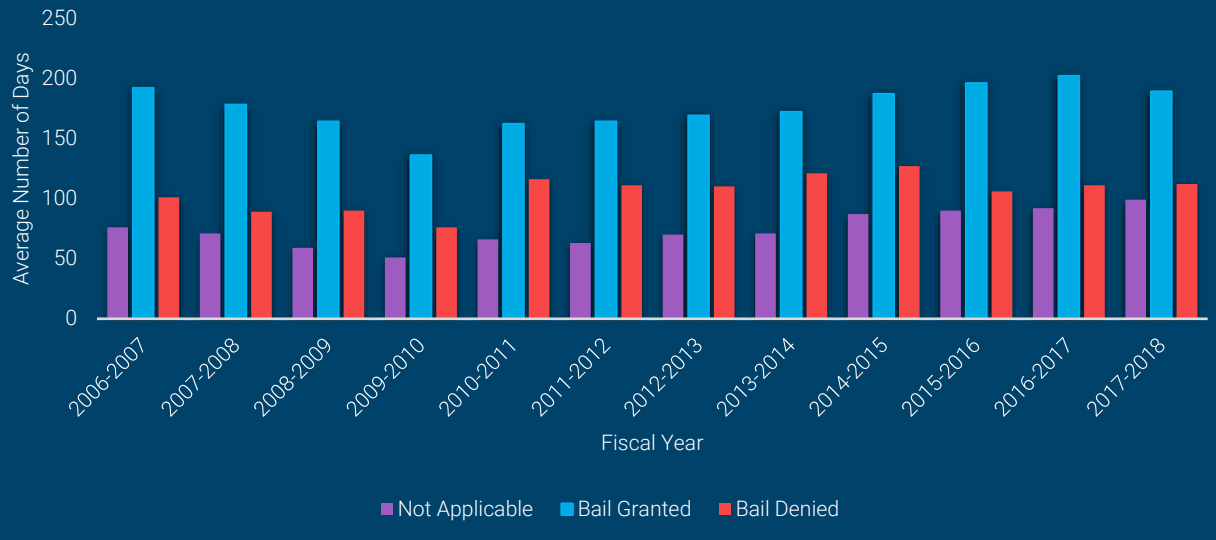
Youth who were granted bail spent the most time waiting for a case disposition compared to those denied bail or those receiving an N/A bail outcome. For those granted bail, 67% spent more than three months waiting for a case disposition compared to 24-34% for other bail outcomes. As outlined in the table below, the average number of days spent waiting for a case disposition throughout the 2006-2017 time period is highest for those granted bail, followed by those denied bail.

Those granted bail, on average, spent between five to seven months waiting for a case disposition compared to those denied bail spending an average of two to four months awaiting a case disposition. Those who received a N/A bail outcome spent the least amount of average days waiting for a case disposition, spanning between about one to three months.

Table 1: Average Days to Reach a Final Disposition in Ontario Youth Criminal Cases 2006-2017

	Not Applicable	Bail Granted	Bail Denied
2006-2007	76	192	101
2007-2008	71	178	89
2008-2009	59	164	90
2009-2010	51	136	76
2010-2011	66	162	116
2011-2012	63	164	111
2012-2013	70	169	110
2013-2014	71	172	121
2014-2015	87	187	127
2015-2016	90	196	106
2016-2017	92	202	111
2017-2018	99	189	112

Figure 10: Average Number of Days to Reach a Final Disposition in Ontario by Bail Outcome (2006-2017)



Youth charged with a violent offence spent the most time waiting for a case disposition. 12% of youth with a violent MSO spent more than a year waiting for a case disposition compared to 4% for other offence categories (except the category of "other offences" which is 8%). For withdrawn cases, 61% spent between three months and up to two years waiting for a case disposition. Overall, cases where the charges were eventually withdrawn spent longer waiting for a case disposition than those with a guilty case outcome. This could be related to the time spent completing a diversion program since cases where charges are withdrawn could be cases where an extrajudicial sanction was imposed.

For youth that are denied bail, this phase is spent in detention either at an open or secure facility. According to the *Child Youth and Family Services Act,* the default placement for detention is an open facility unless the Provincial Director determines a secure facility is appropriate, yet placements in secure detention seem to be very common. Open facilities are a very different experience to secure facilities. While secure facilities operate much like adult correctional institutions, open custody/detention facilities incorporate more programs and services and operate much like a group home as opposed to a traditional jail.

The data suggests that in general, rates of detention, in both open and secure facilities, are declining. Overall, in Ontario, admissions to open detention declined by the 2015-2016 reporting year to about one-third of what they were in the 2006-2007 reporting year. Open detention admissions peaked in the 2009-2010 reporting year and steadily declined since. Admissions to secure detention saw significantly higher numbers in the 2006-2007 reporting year, but these admissions declined by about two-thirds of that by the 2015-2016 reporting year, reflecting similar admissions numbers to open detention.

While the experience of incarceration makes it easy to understand the impact that waiting for a case disposition has on those denied bail, this period of time is also significant for youth that are granted bail and released into the community. More often than not, youth are released with restrictive release plans and a number of onerous conditions. Existing research has highlighted concerns around the bail conditions imposed on young people finding that conditions are overly restrictive and often unrelated to the legislated purposes. Young people are often given conditions such as: abide by the rules of the household, attend school, do not communicate with certain individuals which may include family or friends. If an officer is called in response to a breach of conditions, the young person may end up back before a court with failure to comply charges, a type of AOJ offence.

AOJ charges are one of the most common MSO types (29%), and 40% of youth cases in the dataset involved at least one AOJ charge. The

research suggests that within AOJ offences, failure to comply with order offences are the most common, meaning young people are coming back to court solely because of a breached bail condition. Failure to comply with order offences are the most serious offence listed in 22% of all cases in the database, representing 77% of all cases involving AOJ as the MSO. This means that failure to comply with order offences account for more cases than most offence categories including property (20%), drug (15%) and other offences (4%). This contributes to a cycle whereby one initial charge quickly results in more charges and the youth becomes deeply entrenched in the system. In addition, with more charges, young people are more likely to be detained pre-trial or experience even more restrictive release plans when they return to court, further perpetuating the cycle.

Overall, the data suggests that most youth are granted bail, but that time to disposition, either spent in the community or in pre-trial detention is getting longer. This is impactful both for the young people detained pre-trial and for those released into the community on onerous conditions and restrictive release plans. Many young people are becoming entrenched in the justice system as they rack up additional charges for failing to comply with their release order.

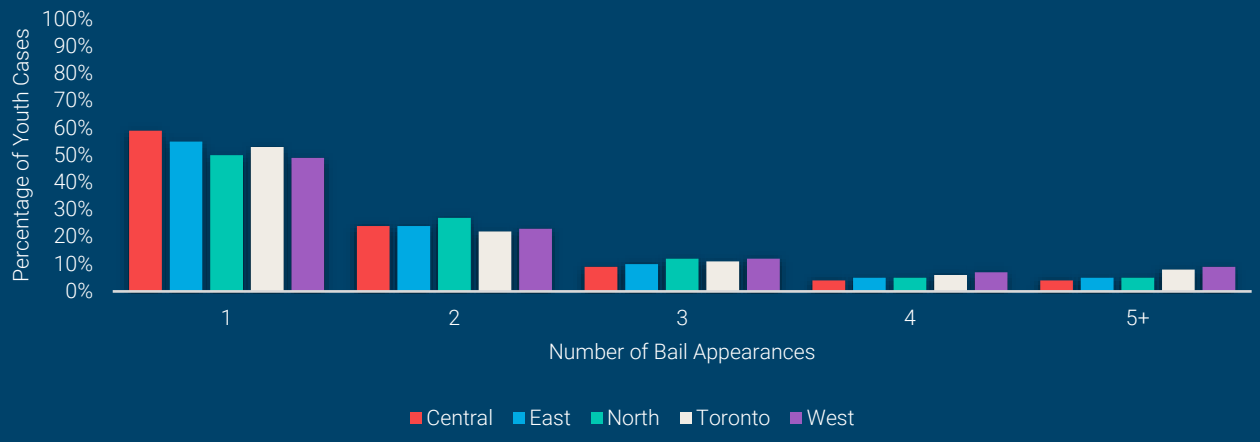
In addition to findings about time spent detained before a bail hearing and time awaiting a disposition for youth across the province, the data also suggests that there are differences in variables based on regional and demographic factors.

Regional Variation: Time Spent Detained

An analysis of the data by region in the province found that there were some significant differences in the time spent detained awaiting a bail decision. When it comes to the number of bail appearances, the Western region had the highest proportion of cases that required five or more appearances to reach a decision on bail. In the 2006-2007 reporting year, 44% of youth cases in the West reached a bail decision in one appearance compared to 52-53% in other regions, with the exception of Toronto (47%) (see Appendix B). Not only were fewer cases resolved quickly in one appearance, but the proportion of cases requiring five or more bail appearances to reach a decision in the Western region in the 2006-2007 reporting year was 10% compared to about 4% in other regions, again, with the exception of the Toronto region (7%). This means more cases took five or more appearances to reach a bail decision than other regions in the province.

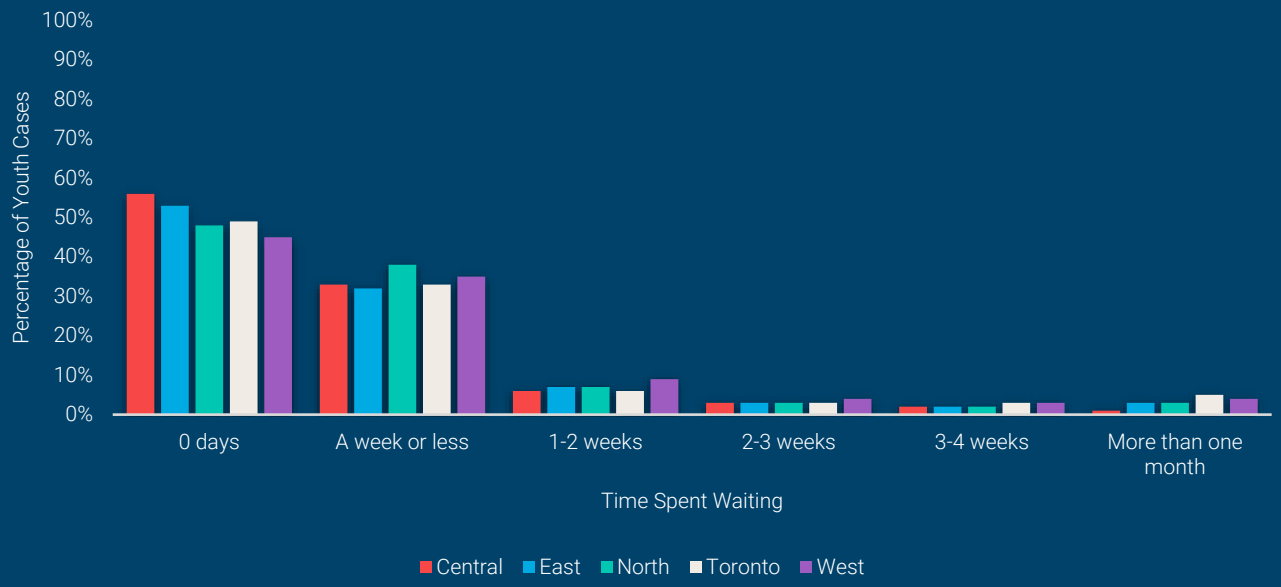
The proportion of cases requiring one appearance in the Western region increased over the 2007 to 2012 reporting years up to 53%, however, this declined through the 2013 to 2015 reporting years. By the 2017-2018 reporting year, 53% of cases in the Western region required one appearance, but this proportion is the lowest compared to other regions. The proportion of cases requiring five or more bail appearances in the Western region fluctuated over the years between 8-11%, and reached a high of 14% in the 2015-2016 reporting year. By the 2017-2018 reporting year, 13% of cases in the Western region took five or more appearances to reach a bail decision, representing the highest proportion of cases compared to other regions.

Figure 11: Number of Bail Appearances to Reach a Bail Decision in Ontario Youth Criminal Cases by Region (2006-2017)



In line with the provincial data, the more bail appearances required to reach a bail decision, the more time is spent detained waiting. Compared to other regions, the Western region consistently took longer to reach a decision on bail (see Figure 12 below). With the exception of Toronto, overall, the Western region almost always had youth in detention waiting for a decision on bail longer than any other region.

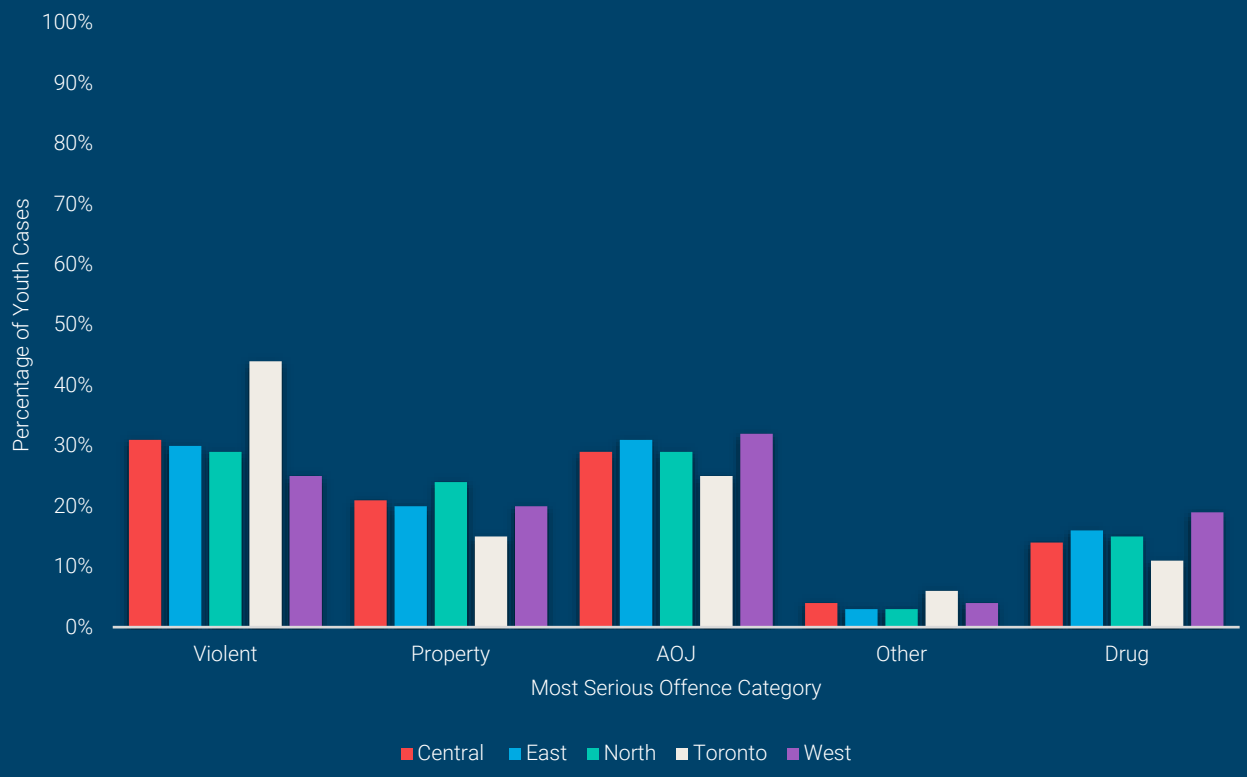
Figure 12: Time Spent Detained before a Decision on Bail is Reached in Ontario Youth Criminal Cases by Region (2006-2017)



In order to explore these discrepancies, bail outcomes were examined to see if these variables explained the variation. The Western region had the lowest rate of cases where bail was denied. Followed closely by the Central region (4%), only 3% of cases in the Western region resulted in bail being denied. Though the Western region had the lowest rate of bail denied, it took more appearances to reach that decision. For those who were denied bail, 33% of cases took four or more appearances, while 28% of cases with a N/A bail outcome involved four or more appearances. The Western region also has one of the lowest rates of withdrawn charges in Ontario. Second to the Northern region (25%), 26% of cases were withdrawn in the Western region and 70% of cases resulted in a guilty outcome. The Northern region also had more guilty cases overall than other regions, however, cases in the Northern region involved less bail appearances than in the Western region. Therefore, it seems that the Western region's trend towards more bail appearances may not be due to more youth being denied bail or more charges being withdrawn.

It appears that the discrepancies cannot be explained by MSOs either. Though violent and "other" offences seem to result in more bail appearances in the province overall, the Western region did not have a high rate of these MSOs to explain the higher numbers of bail appearances. In fact, instead, the Western region had the highest rate of AOJ and drug offences and the lowest rate of violent offences (25%) compared to other regions, as shown in Figure 13. Across all MSO categories in the Western region, there were more appearances required to reach a bail decision compared to all other regions. For example, for cases involving "other" MSO charges, 13% required five or more appearances to reach a decision compared to about 5% in the Central and Northern regions.

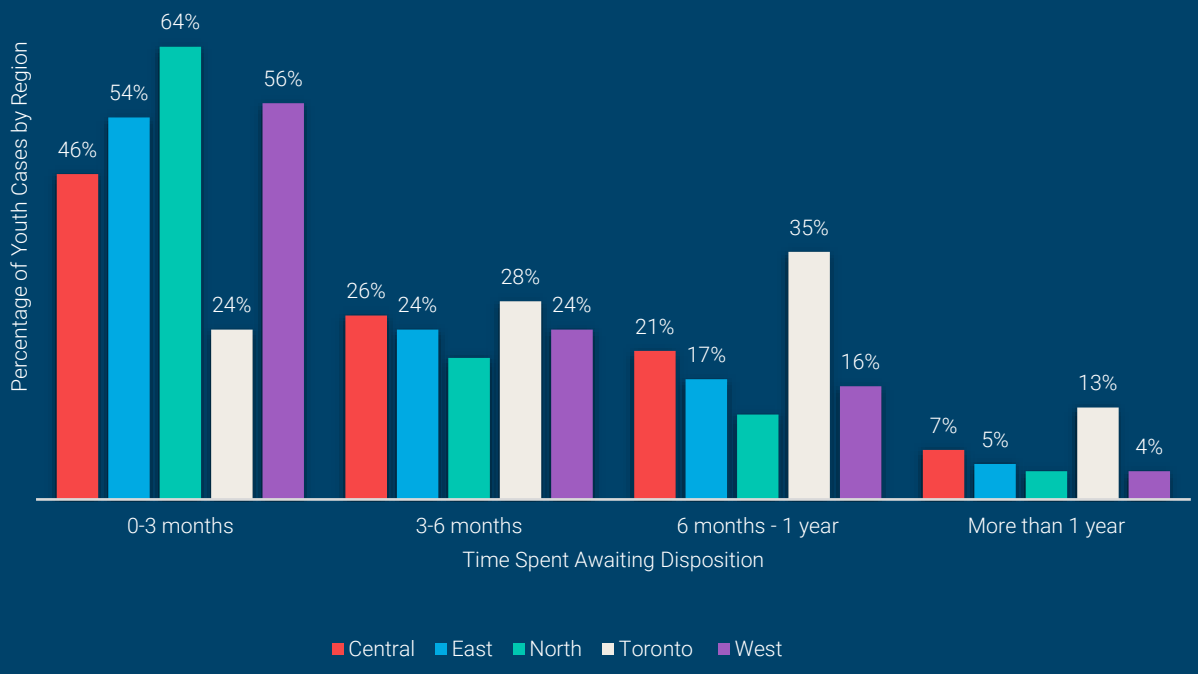
Figure 13: Most Serious Offence Category by Region in Ontario Youth Bail Cases (2006-2017)



Regional Variation: Time to Disposition

In terms of time to disposition (i.e., the time from first bail appearance date to a final disposition on the case), Toronto consistently stood out. Youth in the Toronto region spent the most amount of time waiting for a disposition with almost half the cases taking six months or longer to be resolved. On average, youth in Toronto spent 205 days waiting for a disposition. The Northern region is quite the opposite. 80% of cases in the Northern region were resolved in 6 months or less. While 13% of cases took more than a year awaiting a disposition in Toronto, only 4% of cases in the Northern region reached a year or more waiting for a disposition (see Figure 14). In addition, the average number of days waiting for a disposition was 99 days in the Northern region, the lowest of all the regions.

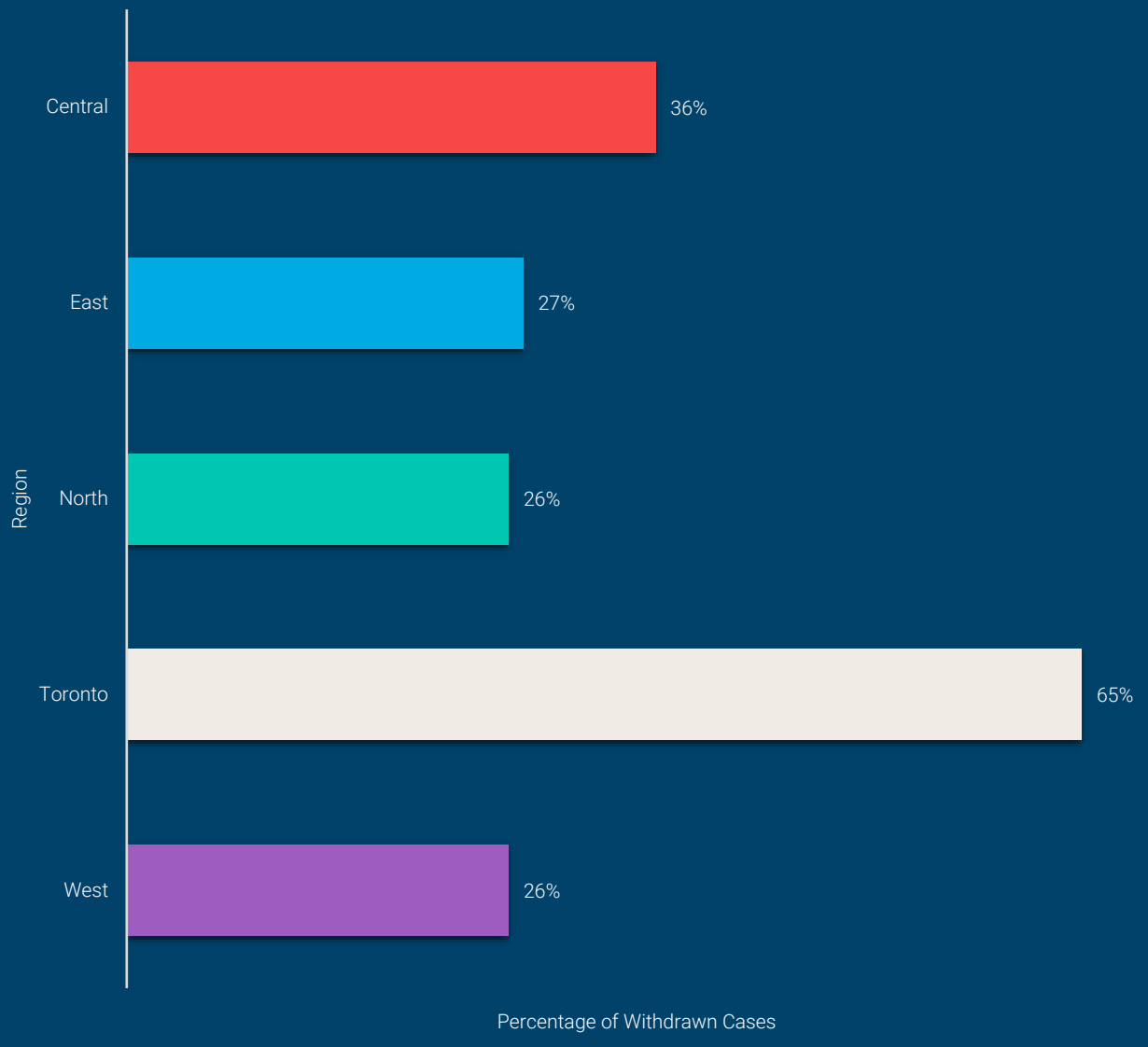
Figure 14: Time Spent Awaiting a Disposition Date by Region in Ontario Youth Bail Cases (2006-2017)



Toronto had the largest percentage of withdrawn cases as shown in Figure 15 below. Withdrawn charges could mean that the Crown decided not to proceed with the charges or that the Crown elected for an

extrajudicial sanction and the young person completed a diversion program. It is likely that Toronto sees more withdrawn charges than other regions because it has more community service organizations providing diversion programs than in other areas of the province. The data cannot confirm this, but the information gathered from the consultations supports this hypothesis.

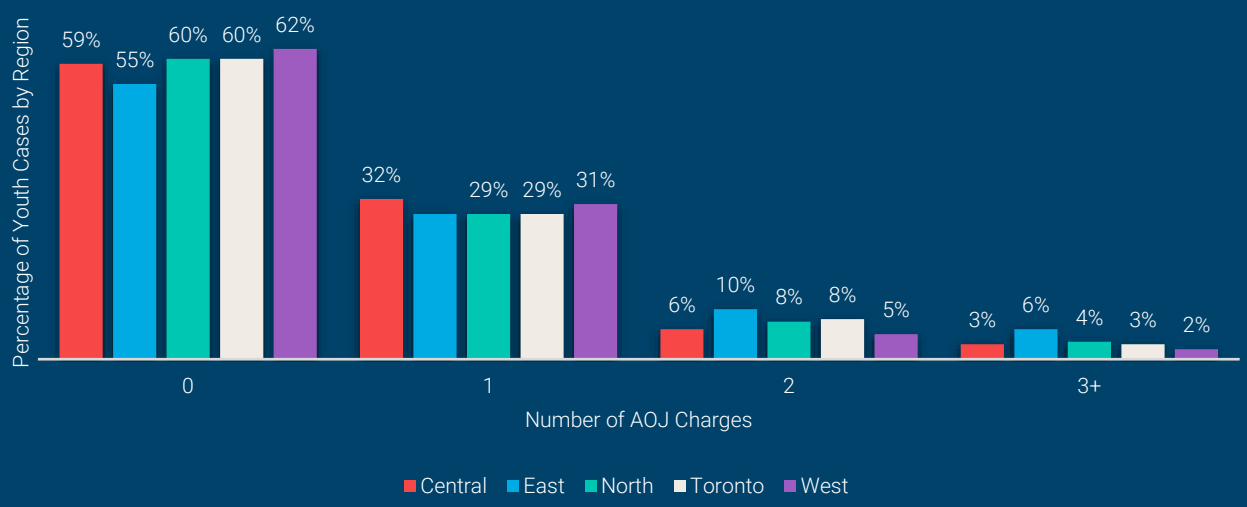
Figure 15: Withdrawn Case Outcomes by Region in Ontario Youth Bail Cases (2006-2017)



Regional Variation: Administration of Justice Charges

AOJ offences are common in Ontario overall, but there are variations across the regions. Youth in the Eastern region were more likely to have at least one AOJ charge and more likely than any other region to have three or more AOJ charges. Furthermore, the Eastern region had the largest total number of AOJ charges between 2006-2017.

Figure 16: Administration of Justice Charges by Region in Ontario Youth Bail Cases (2006-2017)



AOJ charges were the most prevalent in the Eastern region. About 7% of youth in the Eastern region had three or more AOJ charges on their case compared to only 3% in other regions (see Figure 16). About 20% of cases had two or more AOJ charges, and 47% had at least one AOJ charge compared to the provincial average (40%). The number of AOJ charges in the East remained relatively constant over the years, though the number of those with no AOJ charges increased then decreased.

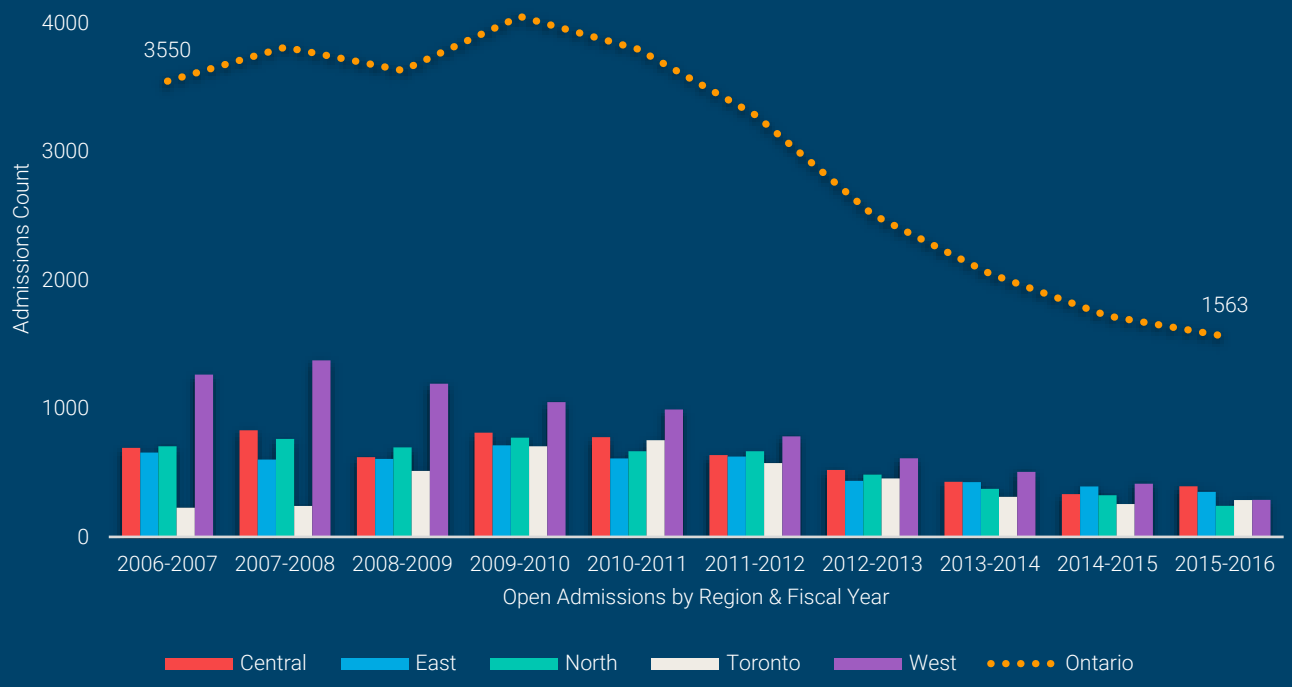
AOJ charges were commonly the MSO across the different regions, particularly failure to comply charges. In Toronto, AOJ was slightly less common as the MSO than other regions and in turn, failure to comply was also slightly less common as an MSO than the other areas in the province. However, when looking at a breakdown of the AOJ offence category, failure to comply made up a similar proportion of cases in Toronto as it does in the other regions. While Toronto reported a lower percentage of cases where AOJ was the MSO, there were a higher percentage of cases where violent charges were the MSO than other regions in the province.

Table 2: Percentage of Failure to Comply and Administration of Justice Offences in Overall MSOs and Failure to Comply as a Category of AOJ MSO by Region (2006-2017)			
	% of Failure to Comply (Overall MSO)	% of AOJ as an MSO	% of AOJs made up of Failure to Comply
Central	21.6	29.1	74.3
East	24.3	31.2	77.9
North	23.7	29.3	80.9
Toronto	19.1	24.6	77.6
West	23.9	31.4	75.9

Admissions to Open and Secure Detention

Open detention admissions declined by about one-third from the 2006-2007 reporting year, as shown by the overall Ontario admissions (see graph below). Cases seemed to increasingly decline following the 2010-2011 and 2011-2012 reporting years. Looking at regional variation, the Western region accounted for a large number of admissions to open detention in the 2006 to 2009 reporting years. However, admissions declined in the Western region over time, and by the 2015-2016 reporting year, most admissions to open detention were found in the Central and Eastern regions.

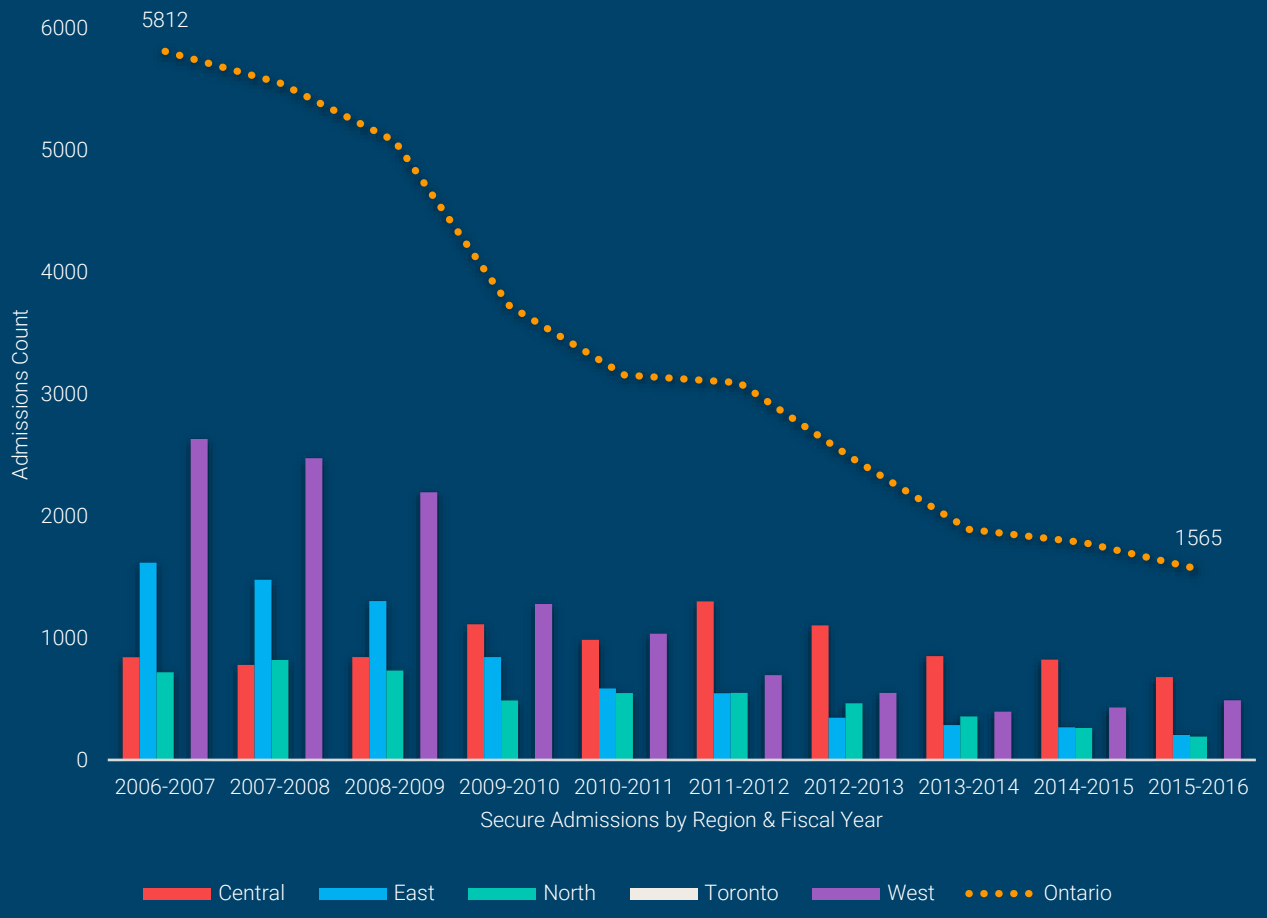
Figure 17: Open Detention Admissions 2006-2015 (n=29,991)



Admissions to secure detention were significantly higher than admissions to open detention in the 2006-2007 reporting year, however, admissions to both forms of detention were relatively the same by the 2015-2016 reporting year. This shows a similar, yet more significant, decline in admissions as that in open detention. The Western region accounted for most admissions to secure detention in the 2006 to 2009 reporting years. By the 2011-2012 reporting year, the Central region accounted for the most admissions to secure detention and this

continued through to the 2015-2016 reporting year. Toronto is not represented in secure detention as there are no secure detention facilities in the Toronto area. This is important to note as youth in Toronto are often sent to other locations for secure detention, such as the Western or Central regions, and could explain why numbers may be higher in other regions.

Figure 18: Secure Detention Admissions 2006-2015 (n=34,120)



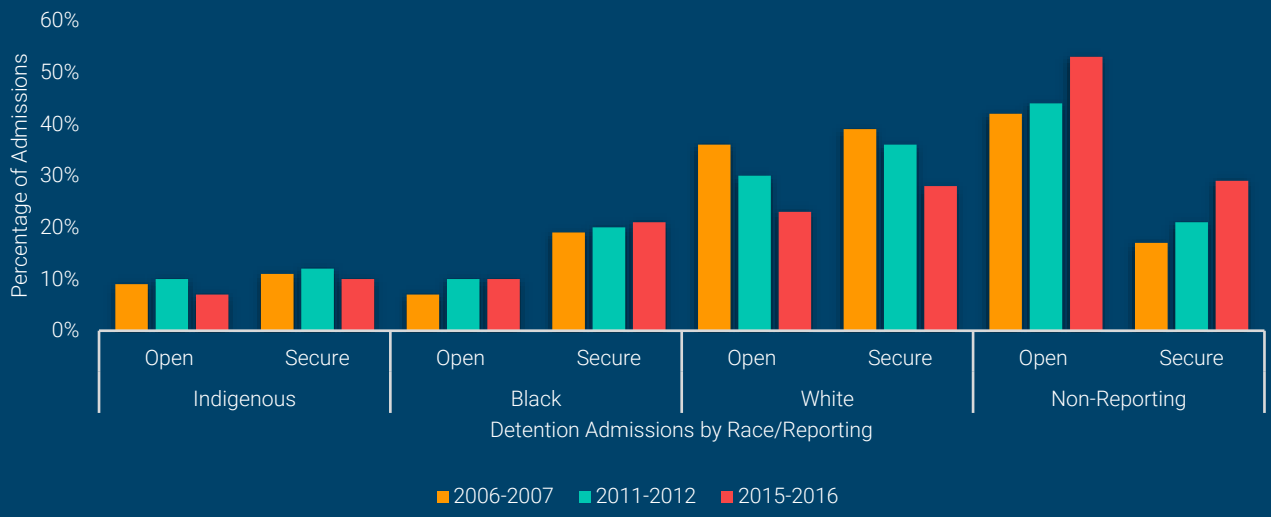
The variations observed based on regions are concerning because this suggests that youth are experiencing the bail system differently based on where they live in the province. This is contrary to the framework laid out in the YCJA and *Criminal Code* that enshrines consistency of experiences and sentences for similar crimes no matter where the accused is located.

Race-Based Data in Admissions to Detention

To examine race-based data in admissions to detention, census data from Statistics Canada was used to show the proportional representations of youth in the general population and compare those values to the representation in detention admissions from the dataset. For this reason, the dataset is compared across three census years to analyze the representation of Black and Indigenous youth populations relative to their representation in detention admissions.

The data demonstrates that while there have been overall decreases in the numbers of youth being detained, the same cannot be said for Black and Indigenous youth who continue to be overrepresented in admissions to detention. As indicated down below, Black and Indigenous youth were also especially overrepresented in admissions to secure detention suggesting that they are disproportionately receiving the more restrictive form of detention.[106]

Figure 19: Representation of Open & Secure Detention Admissions 2006-2015



In the 2006 census year, Indigenous youth (aged 12-17) represented 2.8% of the general population but made up 10.3% of the overall admissions to detention, 73% of which were Indigenous male youth. Black youth (aged 12-17) represented 5.3% of the general population but made up 14.1% of the admissions to detention, 94% of which were Black male youth.

[106] Non-reported data was included in the analysis for race-based data collection meaning actual figures may be higher than highlighted in the current report.

Almost identical numbers were found in the 2011 census year, though the proportional representation of both Indigenous and Black youth in the general population increased. Indigenous youth (aged 12-17) represented 3.3% of the general population, but Indigenous youth made up 10.2% of the admissions to detention, 70% of which were Indigenous male youth. Black youth (aged 12-17) represented 6.1% of the general population but made up 14.4% of the admissions to detention, 92% of which were Black male youth.

In the 2016 census year, while the representation of Indigenous youth in overall detention admissions slightly declined from the previous years, the representation of Black youth showed an increase. Indigenous youth (aged 12-17) represented 4% of the general population, but made up 8.7% of the admissions to detention, 75% of which were Indigenous male youth. Black youth (aged 12-17) made up 7.1% of the general population, but represented 15.3% of the admissions to detention, 96% of which were Black male youth.

Table 3: Ontario census population totals (2006-2011-2016)

	Population Total	Indigenous People	Indigenous Youth (12-17)	Black People	Black Youth (12-17)
2006	11,981,235	2.0%	2.8%	3.9%	5.3%
2011	12,651,795	2.3%	3.3%	4.3%	6.1%
2016	13,242,160	2.8%	4.0%	4.7%	7.1%

Table 4: Ontario Admissions to detention 2006-2016

ONTARIO	Total	Indigenous Youth (12-17)	Black Youth (12-17)
2006-07	9,362	10.3%	14.1%
Open Detention	3,550	9.4%	6.9%
Secure Detention	5,812	10.9%	18.6%
2011-12	6,958	10.2%	14.4%
Open Detention	3,801	8.7%	10.2%
Secure Detention	3,157	12.1%	19.4%
2015-16	3,128	8.7%	15.3%
Open Detention	1,563	7.4%	10.0%
Secure Detention	1,565	10.0%	20.6%

Secure detention represents the more restrictive form of detention. Black and Indigenous youth were overrepresented in admissions to secure detention. In fact, the representation of Black youth in secure detention admissions was consistently more than three times their proportional representation in the community. As well, the representation of Indigenous youth in secure detention admissions was anywhere between two to four times their proportional representation in the community.

In the 2006-2007 reporting year, Black youth represented 18.6% of the admissions to secure detention, 96% of which were male. Indigenous youth made up 10.9% of admissions to secure detention, 73% of which were male. In the 2011-2012 reporting year, Black youth represented 19.4% of the admissions to secure detention, 94% of which were male. Indigenous youth made up 12.1% of admissions to secure detention, 74% of which were male. By the 2016-2017 reporting year, Black youth made up 20.6% of admissions to secure detention, 96% of which were male. Indigenous youth made up 10% of admissions to secure detention, 76% of which were male.

These disproportionalities are even more stark for certain regions in the province. In the 2006 census year, Black youth in the Eastern part of Ontario represented 4.6% of the population in the region, but made up 16.7% of admissions to secure detention, all of which were males. Black youth in the Central region represented 5% of the population, but Black youth made up 21.7% of admissions to secure detention, 79% of which were male. In the Western region, Black youth represented 23.6% of the population, almost all of which were male.

The Toronto region is the only region that has no secure detention facilities, and so, the representation analyzed for this region is based only on open detention admissions. Still, there are stark disproportionalities found for Black youth in this region. Toronto has a higher population of Black youth than other regions in the province, yet the rates of admission to open detention are almost triple the proportion of the youth in the community in the 2006 census year.

The Northern region of Ontario has the highest percentage of Indigenous youth (16.9%), but in the 2006-2007 reporting year, Indigenous youth in secure detention were three times the proportion of Indigenous youth in the community. In fact, 50.8% of overall secure detention admissions were Indigenous youth, 66% of which were male and 34% of which were female. In the Western region, Indigenous youth made up 2.5% of the general population but Indigenous males represented almost 3 times that amount in secure detention.

Table 5: Region census population totals 2006

REGION 2006	Total	Indigenous People	Indigenous Youth (12-17)	Black People	Black Youth (12-17)
Central	3,609,500	0.9%	1.1%	3.9%	5.0%
East	2,424,695	1.9%	2.7%	3.2%	4.6%
North	829,900	11.8%	16.9%	0.4%	0.6%
Toronto	2,467,160	0.5%	0.7%	8.4%	12.5%
West	2,649,975	1.8%	2.5%	1.6%	2.3%

Table 6: Regional Admissions to detention 2006-2007

REGION	Total	Indigenous Youth (12-17)	Black Youth (12-17)
Central	1,536	2.3%	18.1%
Open Detention	694	2.2%	13.7%
Secure Detention	842	2.5%	21.7%
East	2,276	3.3%	12.9%
Open Detention	658	2.4%	3.6%
Secure Detention	1,618	3.6%	16.7%
North	1,425	40.1%	0.8%
Open Detention	706	29.3%	0.8%
Secure Detention	719	50.8%	0.7%
Toronto	227	2.2%	34.4%
Open Detention	227	2.2%	34.4%
Secure Detention	0	0.0%	0.0%
West	3,898	7.1%	17.0%
Open Detention	1,265	7.0%	3.2%
Secure Detention	2,633	7.1%	23.6%

In the 2011 census year, Black youth in the Central region made up 5.9% of the population but made up 33.2% of admissions to secure detention, 91% of which were male. In the Eastern region, Black youth made up 5.9% of this region but made up 22.8% of admissions to secure detention, 96% of which were male. In the Western region, Black youth made up 3.1% of the population, but represented 14.1% of admissions to secure detention, 96% of which were male. In Toronto, Black youth made up 12.6% of the general population in this region, but represented 27.1% of open detention admissions, all of which were male.

For Indigenous youth in the 2011 census year, 19.3% of the population in the Northern region were Indigenous youth, but Indigenous youth made up 40% of secure detention admissions, 78% of which were male. In the

Western region, Indigenous youth made up 3.5% of the general population in this region, but made up 11.5% of secure detention admissions, 74% of which were male.

Table 7: Region census population totals 2011

REGION 2011	Total	Indigenous People	Indigenous Youth (12-17)	Black People	Black Youth (12-17)
Central	4,008,545	1.1%	1.4%	4.3%	5.9%
East	2,563,410	2.6%	3.6%	3.8%	5.9%
North	814,720	12.2%	19.3%	0.4%	0.8%
Toronto	2,576,025	0.7%	0.9%	8.5%	12.6%
West	2,689,085	2.5%	3.5%	1.8%	3.1%

Table 8: Regional Admissions to detention 2011-2012

REGION	Total	Indigenous Youth (12-17)	Black Youth (12-17)
Central	1,763	3.1%	24.9%
Open Detention	777	2.7%	14.4%
Secure Detention	986	3.3%	33.2%
East	1,198	1.4%	13.2%
Open Detention	611	1.3%	3.9%
Secure Detention	587	1.5%	22.8%
North	1,216	36.9%	0.8%
Open Detention	667	34.3%	0.7%
Secure Detention	549	40.0%	0.9%
Toronto	753	1.5%	27.1%
Open Detention	753	1.5%	27.1%
Secure Detention	0	0.0%	0.0%
West	2,028	8.9%	9.3%
Open Detention	993	6.2%	4.3%
Secure Detention	1,035	11.5%	14.1%

In the 2016 census year in the Central region, 6.6% Black youth were in the general population, but made up 37.5% in secure detention admissions, 97% of which were male. In both the Eastern and Western region, the overall proportional representation in the population for Black youth increased, but the numbers in secure detention admissions decreased significantly. In Toronto, Black youth made up 13.9% of the population, however, 28.9% made up the open detention admissions, all of which were male.

In the Northern region in the 2016 census year, Indigenous youth made up 24.6% of the general population, but yet, Indigenous youth represented 45.8% of secure detention admissions, 73% of which were male. In the Western region, Indigenous youth represented 4.1% of the general population, but made up 10.2% in secure detention admissions, 90% of which were male.

Table 9: Region census population totals 2016

REGION 2016	Total	Indigenous People	Indigenous Youth (12-17)	Black People	Black Youth (12-17)
Central	4,293,295	1.3%	1.7%	4.7%	6.6%
East	2,675,000	3.2%	4.3%	4.5%	7.6%
North	824,145	15.7%	24.6%	0.5%	0.9%
Toronto	2,691,665	0.8%	1.0%	8.9%	13.9%
West	2,758,055	2.8%	4.1%	2.3%	3.9%

Table 10: Regional Admissions to detention 2015-2016

REGION	Total	Indigenous Youth (12-17)	Black Youth (12-17)
Central	1,074	2.4%	28.5%
Open Detention	394	3.0%	12.9%
Secure Detention	680	2.1%	37.5%
East	555	1.8%	2.9%
Open Detention	351	1.4%	1.4%
Secure Detention	204	2.5%	5.4%
North	435	23.9%	1.1%
Open Detention	243	6.6%	0.0%
Secure Detention	192	45.8%	2.6%
Toronto	287	1.7%	28.9%
Open Detention	287	1.7%	28.9%
Secure Detention	0	0.0%	0.0%
West	777	9.1%	8.9%
Open Detention	288	7.3%	5.9%
Secure Detention	489	10.2%	6.7%

These findings highlight the disproportionate representation of Black and Indigenous youth in the bail system in Ontario. They also dispel any musings that higher rates of Black and Indigenous youth in detention are proportional to their populations in particular areas of the province. However, this data does not provide the full picture of this issue. The data obtained about the race of youth admitted to detention was based

on self-reports. As indicated in the following section, the rate of non-reporting was quite high indicating that these disparities could be even more defined. In addition, there is no standardized raced based data collection for ICON data so a race analysis of court-based information like charges, bail and case outcomes is not possible.

Non-Reporting in Admissions to Detention

Race-based data was collected on a self-reported basis, and many young people in the dataset did not report their race. As data is based on self-identification, actual figures may be higher than highlighted in the current report. In the dataset, 36% of youth were represented as non-reported when it came to race, with significantly more female youth not reporting their race than male youth. For females admitted to detention in the 2006-2015 reporting years, 56% were not reported in the race-based data. This was found overwhelmingly in the Central and Western regions in the 2006 to 2009 reporting years and continued in the Central region by the 2015-2016 reporting year.

There could be various reasons behind the non-reporting numbers. When asked to specify, young people may not have known which race category they would qualify as, or they could have been reluctant to provide that information. In addition, as indicated in the next section, stakeholders suggested that in practice the data is sometimes collected based on assumptions of staff rather than self-reports of youth. Either way, for a significant number of youths, race was not recorded. This means that the disproportionalities identified in terms of Black and Indigenous male youth could be even more pronounced than what has been recorded in this report.

There is a trend of non-reporting going up while admission rates are going down. The number of female youth that did not report race in the 2006-2007 reporting year is 52% and increased to 62% in the 2015-2016 reporting year. For male youth, in the 2006-2007 reporting year, 21% did not report race and by 2015-2016, this increased to 38%. This indicates that race is increasingly not being reported, making it difficult to accurately assess the scope of racial disparities.

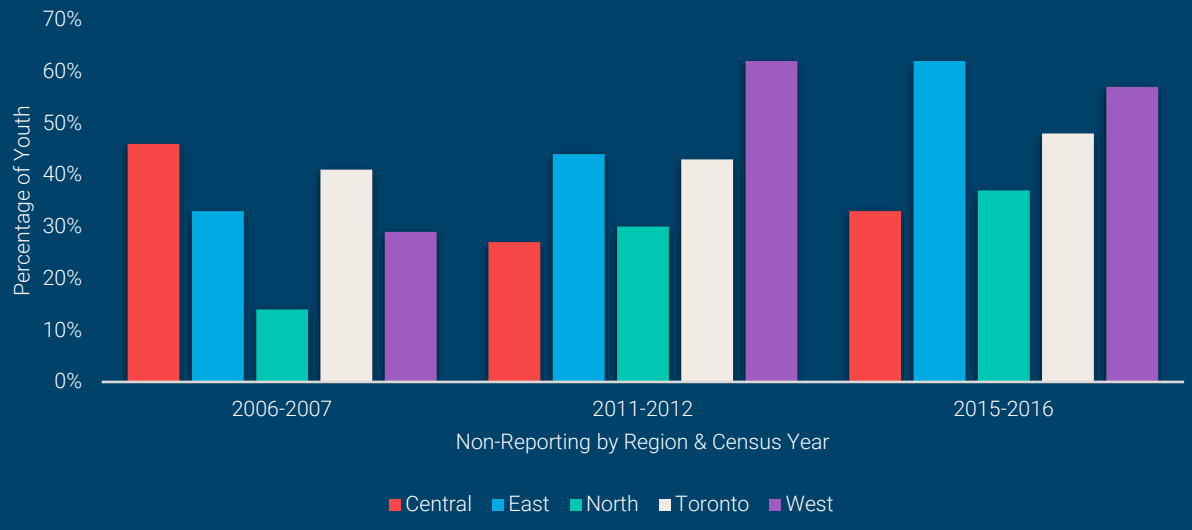
Figure 20: Non-Reporting in Overall Detention Admissions by Gender (2006-2015)

Regional variation could be seen in the Central and Toronto regions at first, but throughout the years, this declined and non-reporting was most prevalent in the Eastern and Western regions.

In the 2006-2007 reporting year, non-reporting was found to be most prevalent in the Central (46%) and Toronto (41%) regions, and lowest in the Northern region (11%). Non-reporting in the Central region increased to 51% in the 2007-2008 reporting year, however, this number steadily declined throughout the 2008 to 2012 reporting years to 23%. Between the 2012 to 2015 reporting years, the proportion of non-reporting in the Central region increased again to 33% in 2015-2016. Toronto, on the other hand, remained relatively consistent with non-reporting through the 2008 to 2015 reporting years, with 48% of non-reporting by the 2015-2016 reporting year. The non-reporting rate in the Northern region more than doubled through the years, increasing to 46% in the 2014-2015 reporting year, and declining to 37% in the 2015-2016 reporting year. The Eastern and Western regions reported relatively lower rates compared to the Central and Toronto regions in the 2006-2007 reporting year, however, both regions accounted for the highest rates by the 2015-2016 reporting year. In the Eastern region, 33% of youth did not report their race, and this increased each year, almost doubling by the 2015-2016 reporting year to 62% of youth not reporting their race. In the Western region, 29% of youth did not report their race. This increased over the years hitting up to more than 60% in the 2011-2012 and 2012-2013 reporting years, and up to 80% in the 2013-2014 reporting year. This declined to 71% in 2014-2015, and then 57% in 2015-2016. Overall non-

reporting is on the incline, which is concerning. Race-based data is crucial to identify disparities and inequities in the justice system in order to build appropriate policy responses.

Figure 21: Non-Reporting to Detention Admissions by Region & Census Year (2006-2015)



The quantitative data revealed several noteworthy findings and trends as outlined in this section. The findings were shared with stakeholders and youth with lived experience of the bail system to gather their perspectives and provide context to the findings based on their own knowledge and understanding. Consultation participants also shared concerns beyond the data findings and recommendations to strengthen the youth bail system in Ontario.

CONSULTATIONS FINDINGS

"The way in which bail works is an access to justice issue for marginalized young people." - **Stakeholder**

Stakeholders and young people with lived experience were consulted as part of this project. The following section outlines some key findings from the consultations organized into the following themes: experiences of arrest and incarceration; alternatives to the formal court process; release plans; bail conditions; regional and demographic variations; and cross-system involvement. Many youth shared experiences of feeling lost in the system, especially for vulnerable youth that lacked the family and community-based supports they needed to successfully navigate the justice system.

Experiences of arrest and incarceration

The arrest and period of incarceration while the young person waits for a bail hearing can be distressing. Stakeholders acknowledged the traumatizing effect of the arrest itself and the experience of jail, including things such as strip searches and cavity searches.

"Going to jail was like going on a field trip. It was in and out. I felt alone. Even when people are there, I felt alone." **– Youth**

Young people involved in the research indicated that experiences of incarceration caused and exacerbated mental health issues and deeply affected their well-being. Youth reported struggling with PTSD while in detention and sleeping with their eyes open. Others reported losing their appetites and sleeping for hours on end, no longer feeling like themselves. Young people divulged being traumatized by strip searches and interactions with officers that inflamed histories of trauma and abuse. These experiences were shared by youth that were formally detained pre-trial and those incarcerated while they waited for a decision

on their bail. Frequent adjournments and multiple appearances at court result in more frequent experiences of strip searches and handcuffs.

> *"People go into jail and come out worse. You gain mental health challenges because of jail. And solitary confinement? You see the walls moving because you've been there so long."* - **Youth**

Feelings of being lonely and trapped were also shared by many of the youth interviewed. They often spoke of losing hope. These experiences were particular to secure detention facilities that are similar to adult correctional institutions with fences and restrictions on movement.

Detaining young people also has a significant impact on their education. Stakeholders indicated that, often, there are no plans put in place to address the disruption in the youth's education or supports provided to catch them up. For a young person, especially those that may be struggling in school, spending weeks away could be catastrophic, and depending on the format of their school, could lead to the loss of the semester.

Alternatives to the formal court process

Stakeholders suggested that pre-charge diversion or restorative justice practices should be used more often. Pre-charge diversion is one option under the umbrella of extrajudicial measures available to police officers as alternatives for charging a youth. Stakeholders also stressed the utility of restorative justice practices suggesting that if restorative justice circles are conducted in a timely manner, they are more likely to produce an understanding of the harm caused and to address that damage than the formal court process. Restorative justice practices also provide access to supports for both the perpetrator and the victim. It was also noted that restorative justice practices can provide a fairer approach in cases where there is a fine line between the "perpetrator" and the "victim". Restorative justice options are also highly cost-effective and efficient options, freeing up court time for other matters and diverting youth out of legal proceedings.

The consultations also suggested that there are examples of police divisions that are connected to community service providers in order to facilitate referrals and pre-charge diversion. While this demonstrates what is possible, it is not standardized across the province. Stakeholders indicated that many communities lack productive relationships between

police services and service providers. Often, the use of discretion and extrajudicial measures depends on the particular officer, with huge variation between individuals.

Stakeholders suggested that there are inequities in the use of alternatives to the formal court process for overrepresented populations, including Black and Indigenous youth. Stakeholders across the province indicated that extrajudicial measures were rare in many communities and that many referrals to community service providers and diversion programs happen post-charge by Crowns rather than by officers at the pre-charge phase.

Stakeholders indicated that a trauma-informed approach should be applied in order to understand the underlying issues that can often be effectively addressed through appropriate connections and services. Pre-charge diversion or restorative justice circles are an effective tool to make those connections.

"Its not like I was committing these serious crimes – it was stupid [stuff]. But they weren't looking into why I was doing these crimes. Just, 'here's the punishment' instead of 'hey, maybe this kid's not doing okay'" - **Youth**

Release plans

It was revealed in the consultations that many youth and some stakeholders believed surety releases to be the default for youth bail cases. This points to how widespread the use of surety releases are and the lack of clarity around the ladder principle and its application in youth bail courts. Many youth said they spent longer in detention prior to their show cause hearing in order to prepare a release plan that would be amenable to the courts, often scrambling to find someone who was willing to pledge a considerable amount of money to the courts to secure their release.

For surety releases, the courts look to parents to fill that role and place youth in a challenging position if they are involved with child welfare or do not have parents able and willing to come forward. Internal policies prevent Children's Aid Societies (CAS) and group care home operators from stepping forward to pledge as sureties to the court.[107]

In other cases, since the courts default to parents when considering proposed surety releases, some youth are forced back into

[107] Finlay, J., Scully, B., Eaton-Kent, M., Farrell, T-R., Dicks, P., & Salerno, J. (2019). Cross-Over Youth Project: Navigating Quicksand. Toronto, ON: Cross-Over Youth Project.

environments where they experience abuse and conflict. Stakeholders and youth with lived experience spoke at length about the need for courts to apply a more flexible approach when considering whether an individual is an appropriate surety. Participants in the research shared experiences of having an individual willing to step up as a responsible person or for a surety release, but having that proposal dismissed because they were not a parent.

> *"I was homeless, too, and I already had custody issues with my father. It was more on his end… he wasn't allowed to parent. They thought it was cool to throw me in with my dad, so they had to figure out custody issues first. I had nowhere to go, so that was my last resort."* **-Youth**

Youth experience their release very differently based on who takes on the role of supervising them in the community. Some youth discussed having parents that were very hesitant to report their children for breaches, while others, especially youth living in group homes, often got reported for the most minor transgressions.

Bail supervision programs are also often out of reach for young people across the province. Supervision programs are only available for youth 16 or older, and stakeholders reported that many programs prohibit participation if the young person has previous failure to comply charges which, as the research has indicated, is common. In addition, stakeholders indicated that when they do exist, judges, Crowns, and lawyers are often unaware of bail programs in the community, thereby failing to make referrals to these programs.

A lack of options in the community may be resulting in detention for young people. Stakeholders indicated that when there is not a residence/suitable living arrangement for the young person to refer to, pre-trial detention results. This is usually the case when the young person does not have family support to act as a residential surety or if they come from group homes where they are not welcomed back. Therefore, it seems that the most vulnerable young people, who lack supports, are the ones who end up experiencing detention. Advocates and representatives for young people confirmed that most youth they work with experience issues like homelessness, substance abuse, and mental health concerns and largely lack support from family members. The YCJA clearly states that detention should not be used for welfare reasons, yet in many cases, it is clear to stakeholders that this is happening regardless.

It was repeated more than once in the consultations that court actors do not seem to realize that homelessness is not a crime. Many stakeholders and youth with lived experience lamented that there were limited options in the community for youth who lack fixed housing. Many youths spoke about not being able to return home and being forced to grow up very quickly and adjust to independence. There are very few options for 16 or 17 year-olds trying to find a place to live, and without supports, young people are forced into dangerous or harmful housing options out of desperation.[108] Stakeholders indicated that this would be addressed by implementing bail bed programs across the province and other supportive housing options for youth involved with the justice system.

Stakeholders also wondered why bail supervision programs are only available to youth 16 years of age and over, and recommended expanding eligibility to younger youth.

Bail conditions

Stakeholders and youth with lived experience were nearly unanimous in their view that bail conditions imposed on youth are overly restrictive and often unrelated to the legislated purposes. The long list of onerous conditions many young people must contend with disproportionately affect vulnerable youth populations including those with mental health issues, child welfare involvement, and Indigenous and racialized youth. These, ultimately, set young people up to fail.

> *"They gave me so many conditions that even breathing felt like breaching. They were very hard to follow in the way that I had so many. I couldn't go to many places; I was confined to one area – and that's what they wanted. At the time, I thought that they wanted this and wanted to send me back."*
> **– Youth**

There are a number of commonly issued conditions that are particularly problematic for many young people as they criminalize otherwise non-criminal behaviour leading to further charges. Many stakeholders and youth brought up the condition "abide by the rules of the household." This condition is not connected to the legislative basis for conditions (i.e., to promote attendance at court and address public safety

[108] According to Ontario law, youth 16 and over can withdraw from parental control and live independently. Under 16, young people must be in the care of a parent, guardian or Children's Aid Society.

concerns). For young people living in group homes, this condition has led to police being called and even AOJ charges laid for behaviours such as:

- Failing to do the dishes when asked;
- Not cleaning one's room;
- Returning home a few minutes late.

Contact restrictions are another condition that can be extremely difficult for young people to follow, especially when the individuals they are prohibited from contacting include parents, siblings or other close connections. Young people are left without a support system and their most trusted social connections, while also struggling to follow other conditions of release and navigate their criminal justice process. Indigenous youth expressed that contact bans and location bans disconnected them, not only from their parents, but also their communities and cultural traditions.

"If you want us to get back into the environment, why not let us go do things to get back in it? Otherwise, I might as well go back to jail. How are we supposed to be better without being able to see anyone?" - **Youth**

Several young people and stakeholders discussed curfews. While some understand their utility, the youth and stakeholders in the consultations pointed out the barriers to employment, programming, and attending school that can result from early curfews. A curfew of 7:00p.m. to 7:00a.m. may prevent a youth from working and earning an income to pay for essential expenses and prevent them from catching the school bus in the morning. Part-time jobs for many of these youth are not for pocket money, but rather to support themselves and pay for essential needs such as housing and food. In a more extreme case, a young person shared that their 2:00p.m. curfew prevented them from attending school, programs and services, and made it extremely difficult to schedule medical appointments. Even for young people who did not have such extreme curfew conditions, the restriction caused stress and anxiety.

"I had a 9pm curfew at one point. It was hard to follow, and I always had anxiety if it came close. For example, times when the bus was late and I would get anxiety because it wasn't my fault, but if I was stopped by a police officer, it would be my fault." – **Youth**

It was shared more than once in the consultations that youth felt a 3-strike protocol would be helpful for responding to breaches of conditions. They envisioned a protocol where officers would allow for warnings after the first couple breaches before any official charges would be laid, allowing more room for error and leniency for mistakes with hard to follow conditions.

Stakeholders also raised concerns about how young people with mental health issues fare with restrictive conditions. It was suggested that mental health issues might make it even more difficult to follow bail conditions and the restrictive nature of the conditions can also exacerbate or create mental health issues.

Regional and demographic based variations

The analyses above of the ICON and admissions data suggest there are regional differences in the experience of the bail system. This rang true for stakeholders and young people who have experienced the bail system as well.

Stakeholders shared that in many areas outside Toronto, there seems to be less of an understanding of the *Youth Criminal Justice Act*, particularly the alternatives for formal court proceedings, and that this varies from place to place. In addition, they suggested there is a lack of programs and services across the province to support diversion, restorative justice and alternatives to detention. It was suggested that some regions may take longer to reach a decision on bail because of a lack of services and programming in the community to support a release plan or resolve the charges outside the formal court process. This suggests that even where there is an understanding of the principles of the YCJA, if there are no available community alternatives, youth may be detained in pre-trial detention or held longer to come up with a release plan because of lack of options.

In some cases, this may even result in more instances of detention where community alternatives would otherwise be appropriate. In Northern Ontario, where many young people were removed from their families and communities for their court proceedings, they often have no one able to step forward for a surety release or to act as a responsible person. Stakeholders and youth with lived experience spoke about difficulties in formulating a release plan and experiencing detention as a result or pleading guilty because they did not want to go to pre-trial detention and felt they had no chance at making bail. Stakeholders

mentioned that there once was a youth hostel in Thunder Bay that provided young people with justice involvement a place to go if they had no other alternatives for residence, but it lost funding and closed. According to stakeholders, the hostel provided a place to stay, mental health and substance use supports, life skills services and separation from gang involvement, making its closure a significant loss to the community. Without options like the youth hostel, young people rely on emergency shelters for adults which presents safety concerns.

The data presented above found that withdrawn charges are most common in Toronto. According to stakeholders, this is likely due to the wide use of extrajudicial sanctions, resulting in a withdrawal of charges once a diversion program is completed. Less availability of such programs could lead to a smaller proportion of withdrawn charges in other areas of Ontario. Stakeholders pointed out that areas like Toronto have a larger population and more youth involved with the justice system than smaller rural cities, creating a critical mass for programming. However, it was also noted that youth across the province should have the same right to consistent application of the YCJA. Since alternatives to detention is a foundational principle of the YCJA, the community-based programs necessary to achieve that aim must exist for youth regardless of where they are located in Ontario.

Indigenous youth are overrepresented in the bail system. Stakeholders suggested that, despite judicial direction to apply Gladue principles for Indigenous individuals at bail, this is not the case in practice. It was raised that part of the issue is a lack of Gladue court workers in the Northern area supporting youth, often due to a lack of funding for community service organizations. Stakeholders and youth, particularly in the Northern region, talked about racism toward Indigenous people from officers and other court actors. Youth recounted experiences of being called derogatory names by police and being singled out based on their identity and assumed to have committed illegal acts. Many stakeholders spoke about the lack of culturally specific, Indigenous-led community services and programs available for Indigenous youth and the strong need for such programming. In addition, stakeholders indicated there is a need for cultural sensitivity training to improve relationships and interactions with Indigenous youth.

"I remember one time I was gonna go to McDonald's at 6am. This lady I didn't know here… well, apparently there was a scuffle with another group of natives. I went to get my coffee and she stopped me. And every chance that I tried to talk to her, she's like, 'no, nobody wants you in there, it's not for you'. I went in anyways and came out. She was OPP and in uniform" - ***Youth***

Black youth are also disproportionately represented in the bail system. According to the stakeholders and youth with lived experience, this is particularly stark in Toronto. Similar to Indigenous youth, stakeholders and young people reported experiences of racism and a lack of culturally relevant programs and services for Black youth. For many Black youth, issues related to mental health and isolation might also be compounded by experiences of anti-black racism, making it difficult to cope and causing feelings of hopelessness.

Stakeholders suggested that in some cases Black youth are not aware of culturally specific programs and services available to them, especially if they are not referred by justice system actors. This makes it very important that officers, lawyers, justices of the peace and judges are aware of these community-based resources.

Cross-system involvement

For youth dually involved with the welfare and justice systems, community service providers fill many gaps that result from a lack of stable housing and familial support systems to assist with basic needs. In addition to housing needs, many youth who are dually involved also have histories and experiences with mental health issues, substance abuse or addictions, trauma and abuse. Programs and services must be responsive to the needs and challenges and deliver these programs in a trauma-informed manner recognizing the lack of trust that many dually-involved youth have with others as a result of their experiences. In addition to the circumstances and experiences of dually-involved youth, programs and services should also be responsive to cultural and gender differences.

[In relation to groups homes] *"[it's] like going from one system to the next, they're just setting [us] up for failure"* - **Youth**

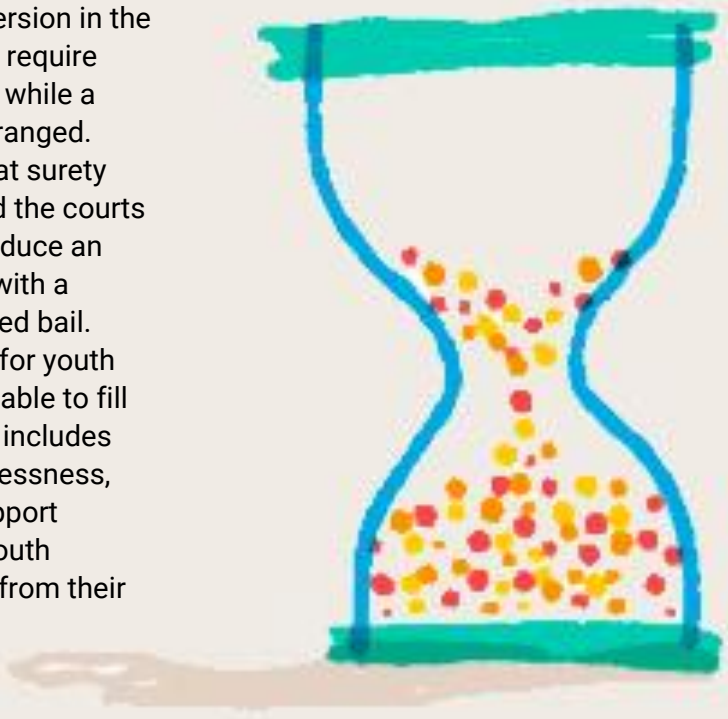
Mental health issues are also intertwined with criminal justice involvement. A need for mental health supports was mentioned by stakeholders and youth. The young people who participated in the research all articulated experiences of anxiety, depression and PTSD, but few had received mental health supports. When asked what services or supports they wish they had received, a number of young people mentioned psychologists or mental health workers, suggesting an awareness and recognition of their mental health issues, but a lack of services to meet their needs.

*"Unless you have **real** mental health, they don't care. Depression? They don't know about that; they don't care about that"* – **Youth**

SUMMARY OF FINDINGS

Findings from the consultations confirmed the interpretations of the quantitative data findings and provided necessary context. One of the key findings from the data was that many young people are starting their journey through the criminal justice system in detention awaiting a decision on their bail. A large portion of these youth spend a significant amount of time waiting for a bail decision exposing them to the harmful and disruptive experience of incarceration. Stakeholders suggested that police officers are not using extrajudicial measures and restorative justice practices enough to divert young people out of the formal process. It was indicated that in some cases there is a lack of community-based programs delivering pre-charge diversion, impacting the options available to police officers to divert young people out of the formal court process.

The time spent detained waiting for a decision on bail is also connected to adjournments and risk aversion in the court system. A case may require multiple bail appearances while a suitable release plan is arranged. Stakeholders indicated that surety releases are common, and the courts expect the accused to produce an appropriate release plan, with a surety in order to be granted bail. This is especially difficult for youth that lack family members able to fill the role of a surety, which includes youth experiencing homelessness, youth without a family support system, and Indigenous youth arrested and detained far from their home communities.



Young people recounted their experiences of incarceration and the effect it had on their health and well-being. All youth in the dataset experienced incarceration of some kind since they were held for a bail hearing and many spent days, weeks, or months in detention even if they were later granted bail. Especially for those that were later granted bail, this time spent incarcerated represents wasted time, money and resources. Studies have documented the harms associated with incarceration and proven that community-based alternatives upstream through diversion and social supports, and downstream through reasonable releases are much more effective. “Dead time” waiting for a bail hearing negatively impacts youth and their communities.

Another key finding was that overall, young people are spending longer than previous years in the bail phase. For most youth, this time is spent in the community, not detained, however being released on bail is still fraught with challenges because of the restrictive release plans commonly imposed. Young people are often released with several onerous conditions that are unrelated to the legislative framework for bail, setting them up for breaches and further entrenching them in the criminal justice system.

Consistent with the findings, stakeholders reported variations in the application of the YCJA in regions across the province and systemic racism that contributes to the overrepresentation of Black and Indigenous youth. Stakeholders reported a lack of programs and services across the province for youth in the bail stage and a particular lack of culturally specific programming for Black and Indigenous youth. It is possible that the lack of programs and services across the province is contributing to the differences in time spent detained before a decision on bail and time spent in the bail phase. Indeed, without community-based alternatives, youth cannot successfully be diverted out of the courts. The variation in bail outcomes across the province may also be due to differences in understanding of the YCJA and variances in court culture from place to place.

Whether it is due to differences in court culture or a lack of programs and services, variations in experience of the youth bail system is a significant concern. The framework for bail set out in the legislation should be consistently applied no matter where a young person finds themselves in conflict with the law. If a young person is detained because of a lack of community-based programs and not because the legislative framework finds them inappropriate for release, that is a failure to uphold that young person’s constitutional right to reasonable bail. The YCJA has implemented alternatives to incarceration and opportunities to steer youth towards community-based alternatives focused on rehabilitation. The services and supports necessary for

implementation of those measures must be available for all youth across the province.

The data also confirmed that Black and Indigenous youth are overrepresented in admissions to detention overall and admissions to secure detention in particular. Without access to race-based data from the courts, it is not possible to carry out a race-based analysis of court outcomes leaving a lot of questions about the depth of these disparities identified in admissions data.

Overall, the findings suggest that although the YCJA has created opportunities for diversion and alternatives to incarceration, the implementation of these principles is not consistent across the province and many youth continue to experience incarceration. Consultations support the literature that suggest incarceration is not an effective tool and that early diversion is more successful than the formal court process in reducing recidivism and addressing the motivating issues behind youth crime. The following recommendations are based on the goal of keeping young people out of incarceration and addressing the underlying issues of young people's involvement with the justice system.

RECOMMENDATIONS

Incarceration is a harmful and largely ineffective tool in reducing youth crime and should be avoided wherever possible. To achieve this, young people must be diverted out of the courts and out of jail as much as possible and at the earliest possible point. The YCJA provides the legislative means to achieve this; however, the foundation of community-based programming must be strong and various legal actors must use their discretion in line with YCJA principles. The recommendations below are intended to provide some pathways to further realizing the objectives of the YCJA and to ensure that young people are supported in the community as much as possible. The youth bail system is a key juncture in an individual's future– one that could mean the difference between a lifetime of justice involvement or not.

Programs and Services

The YCJA provides opportunities to divert young people out of the formal court process. Extrajudicial measures and sanctions are available to police and Crowns, directing young people to community-based organizations and away from the courts and jails. However, the use of these alternatives depends on the availability of programming. Consultations revealed that in urban areas, like Toronto, there are many diversion programs available to young people, but this is not the case in smaller cities and rural communities. Therefore, investing in diversion programs, both pre- and post-charge, is key in order to put the objectives of the YCJA into practice and keep young people out of jail.

A youth's experience with the criminal justice system is directly impacted by the community services and programs available to them. It is crucial for communities to have culturally relevant, holistic programs and services including restorative justice and diversion programs, mental health and addictions services, skills development, mentorship, navigational services and housing supports. These programs and supports play a crucial role in minimizing interactions with the justice system by addressing the underlying causes of crime and meeting the needs of young people. At the outset of the criminal justice journey, the availability of community programs can play a role in the use of police and Crown discretion. Programs must be sensitive to their target population in terms of content and implementation. This means that

programs should be culturally specific and consider developmental maturity and local contexts. Effective programs are also holistic, in that the program covers court requirements while also delivering wrap-around services to reduce recidivism and address the youth's needs.

An example of an effective program is the **RISE** program in Toronto run by **For Youth Initiative**. RISE is a post-charge diversion program that also provides culturally and local specific wraparound services for young people. This program helps young people fulfil their court obligations in addition to providing support in four key areas: economic opportunities, educational attainment, family well-being, and social engagement. The program employs an anti-racist, anti-oppressive approach, understands the importance of families, and recognizes the social issues and stigma experienced by youth in their community. The RISE program has built a strong reputation with the courts, providing an option for bail supervision and post-charge diversion, promoting the release of young people wherever possible.

The RISE program is just one example of effective models in the province – but more are needed. In order to effectively implement the YCJA, there must be programs like this, specific to local communities and context across the province. Therefore, a key recommendation is to invest in diversion programming across the province and in regions with overrepresented populations of Black and Indigenous youth.

The fate of young people released into the community, pre- or post-charge, lies in their access to appropriate services and supports. Without availability of or access to culturally relevant, needs based, wrap-around services and supports, youth are revolving through the justice system and falling through the cracks of society. A lack of programs and services in the community also prevents the consistent application of the YCJA. The legislation provides a number of provisions aimed at reducing a reliance on detention yet without the community-based programs and services, youth across Ontario are not receiving the same opportunities promised to them in the legislation. In order to truly see progress in the youth bail system, not only must there be an emphasis on reductions to detention and custody but also the off-ramps available for youth in the form of diversion programs and services able to address underlying issues related to youth crime.

RECOMMENDATION 1:

Increase funding for programming directed at youth and families across the province, prioritizing communities that lack existing programming with a focus on pre-charge and post-charge diversion programs and restorative justice programs that divert young people out of the courts and incarceration. Programming should be culturally relevant and responsive to local needs and realities.

Addressing Racial Disparities

This research confirmed significant disparities among Black and Indigenous youth. However, this analysis only looked at admissions to detention and did not provide the full picture due to nonreporting. The ICON data received from the Ministry of Attorney General provided data on age and gender but not race.

The *Anti-Racism Act, 2017* outlined a plan for the roll out of race-based data collection as part of Ontario's Anti-Racism Strategy.[109] The regulations for the *Anti-Racism Act, 2017* set out the dates that public sector organizations are either authorized or required to collect information, including Indigenous identity, race, religion and ethnic origin. According to regulations, as of July 2020, the Ministry of Attorney General is authorized and the Ministry of Children, Community and Social Services is required to collect information about a person's Indigenous identity, race, religion and ethnic origin.[110] Collecting and publishing race-based data is important in order to understand where racial disparities exist and inform policies to promote equity. Anti-racism work in the criminal justice system is not possible without comprehensive race-based statistics.

Despite the limited data, the research is clear that there is an overrepresentation of Black and Indigenous young people being held in pre-trial incarceration. Focused strategies are necessary to address and correct this. At a provincial level, the government has laid out plans to address racial disparities in the justice system with the Anti-Black Racism Strategy and the Indigenous-focused Anti-Racism strategy. The action plans and initiatives associated with these strategies are important steps in addressing the race-based disparities in the justice system. However, as the research indicates, there are regional differences and local contexts that must be considered in the development of strategies to address the overincarceration of Black and Indigenous youth.

The development of regional strategies to address racial disparities would allow for the incorporation of local contexts and challenges and specific action items for communities across the province. The regional-based strategies could also inform provincial strategies around program development and funding allocation to ensure that communities are receiving the support they need to address racial inequities in the justice system.

[109] *Anti-Racism Act*, *2017*, S.O. 2017, c. 15.
[110] *Anti-Racism Act*, O. Reg. 267/18, s 2.

Black and Indigenous young people need community-based supports and services that are culturally safe and responsive to their needs. At a provincial level, there must be a commitment of funding and a prioritization of addressing this issue to create meaningful change in Ontario. There must also be effective data collection tools used to collect and report race-based information at multiple stages of the justice system to identify disparities and drive change.

RECOMMENDATION 2:

Currently, the criminal justice system does not publish statistics on the race of young people that are processed through the system. The data that is available points to significant racial disparities and there have been additional data collection standards introduced since the data for this report was obtained. Publishing race-based data is a necessary step to understand the extent of the race-based disparities in the youth justice system and to be able to address them through appropriate policy and program development.

RECOMMENDATION 3:

The courts in each region in Ontario should be required to create a focused strategy to address the overrepresentation of Black and Indigenous youth in admissions to pre-trial detention in consultation and collaboration with local communities. These local strategies should inform provincial strategies and funding decisions.

Police Discretion and Charging Practices

Police officers are the first point of contact for young people involved with the justice system. The YCJA provides officers discretion about whether to lay a formal charge or use extrajudicial measures. The first decision to charge the young person or employ alternative measures is a crucial juncture in determining the trajectory for that young person's life. Youth can start off getting charged for a minor crime but become deeply entrenched in the justice system through subsequent administration of justice charges or resulting conflicts and cycle through the justice system for the remainder of their adolescence.

Officers are able to do nothing, issue a warning or issue a caution in response to an incident. Wherever possible, officers should be utilizing these options. Especially for first time offences, a warning or caution should be considered a sufficient response. Another form of extrajudicial measures, pre-charge diversion, depends on the existence of such programming and the officer having knowledge about available organizations to refer the young person to. This is also true for the use of Crown discretion post-charge.

Officers must be provided with the local context-specific knowledge and tools to implement the directives of the YCJA. Research suggests that police knowledge of the YCJA alone is a poor predictor of the officer's likelihood of using extrajudicial measures, without the tools to put the YCJA principles and objectives into practice. According to officers, part of the problem is that they are "stretched too thin" and in some cases not able to build the relationships with community organizations that is needed for effective use of diversion programs.[111] The consultations indicated that many communities lack productive relationships between police services and service providers. Often, the use of pre-charge diversion and discretion depends on the particular officer with huge variation between individuals. It was indicated that police culture in some communities does not emphasize or encourage the use of extrajudicial measures, despite being a mandatory consideration as set out in the YCJA. In other cases, there is a lack of services and programs available for police to divert youth to. Culturally specific options like Indigenous-led diversion programs and programs for Black youth must be in the arsenal of knowledge for police officers and called on as much as possible. Maintaining regularly updated lists of diversion programs and direct contact with staff from community organizations would

[111] Ricciardelli, R., Crichton, H., Swiss, L., Spencer, D.C., & Adorjan, M. (2017). From knowledge to action? The Youth Criminal Justice Act and use of extrajudicial measures in youth policing, *Police Practice and Research, 18*(6), 1-13. DOI: 10.1080/15614263.2017.1363971

formalize and facilitate the implementation of extrajudicial measures by police officers.

One way to spread awareness about diversion programs is to include community organizations in the annual training sessions for police detachments across Ontario. John Howard Society of Hamilton, Burlington & Area presented to police officers at their annual training and within a few months, noticed a significant increase in referrals to their extrajudicial measures program. This should be scaled up and provided as part of police trainings across the province to increase awareness of diversion programs.

Restorative justice models can also be effective in diverting young people out of the justice system, saving costs and harms to the young person. They involve the person who caused the harm, the victim(s) and community members in a collaborative approach to repair harms and regain harmony. Restorative justice options are highly cost-effective and efficient options, freeing up court time for other matters and diverting youth out of legal proceedings.

The consultations and data revealed that youth are often laid with multiple charges. The research showed that many charges get withdrawn. These charges could be withdrawn because the young person completed a diversion program or because the Crown found that there was insufficient evidence to proceed with prosecution. Withdrawn charges still have significant impacts on a young person and costs to both the individual and the system.

In Ontario, charges are laid at the discretion of police officers. Once charges are laid, the Crown prosecutor must determine whether to proceed with the charges considering whether there is a reasonable prospect of conviction and if the charges are in the public interest. In other jurisdictions, including British Columbia, Quebec and New Brunswick, officers submit evidence to Crown counsel, who makes the final determination on what charges would be appropriate to be laid in the circumstances.

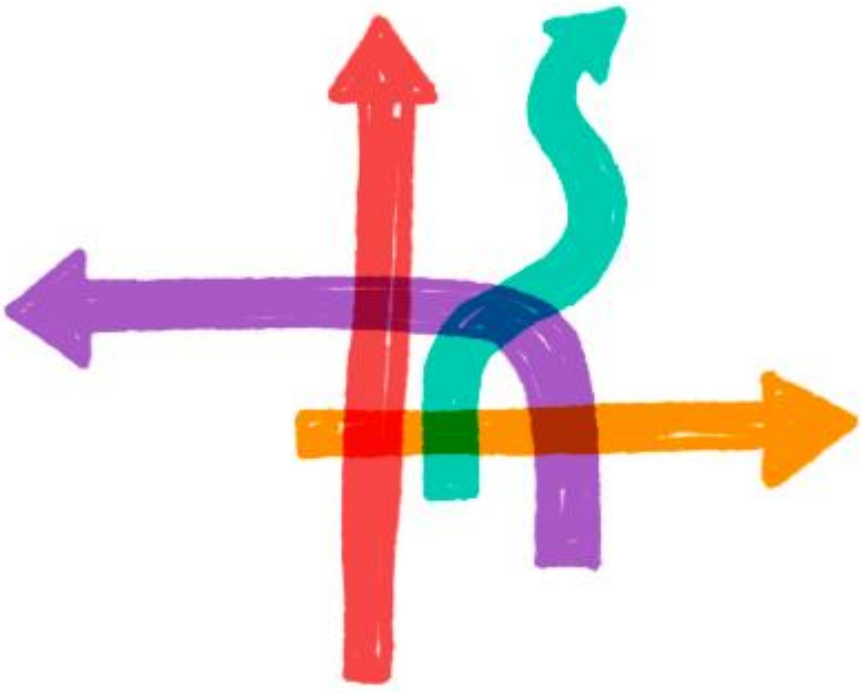
Pre-charge screening promotes efficiencies and eases burdens on the court system. It can also prevent inappropriate charges and negative impacts on the young accused. Ontario should consider implementing a pre-charge screening approach where Crown counsel reviews all potential charges and relevant evidence before any charges are laid. The province could test out this approach by piloting a pre-charge screening process in several mid-size jurisdictions and evaluate the impact on youth court volumes, case outcomes and admissions to pre-trial detention, including feedback from key justice system actors.

RECOMMENDATION 4:

Police detachments should maintain regularly updated lists of programs available to divert young people out of the court system through community service providers. Police services should also build formal relationships between police and community service organizations to facilitate the implementation of pre-charge diversion protocols and the use of restorative justice practices. One way to increase awareness of community service providers is to invite the community organizations to present at the annual police trainings for detachments across the province. Annual training should also emphasize the use of other extrajudicial measures, including taking no action and issuing a warning, as appropriate responses in certain cases.

RECOMMENDATION 5:

Ontario should explore the adoption of a "charge approval model": where police make a recommendation to charge, but Crown prosecutor approval is needed before a charge can be laid. Therefore, only charges with sufficient evidence for conviction and that are in line with public interest and the legislative framework proceed.



Bail Conditions

This research is consistent with existing literature in finding that bail conditions imposed on young people are often outside the legislative framework and unrelated to the offence, setting them up for breaches and further charges. The YCJA refers to the *Criminal Code* in identifying what types of conditions can be imposed but provides an additional requirement that conditions must be necessary to ensure the young person's attendance in court or for the protection or safety of the public; that the condition is reasonable in the circumstances of the offending behaviour; and that the young person will reasonably be able to comply with the condition. This requirement comes from recent amendments to the YCJA in 2019.

Many conditions that courts regularly impose as part of release plans would not fit under this framework. Overly restrictive, onerous conditions that end up trapping young people in the system have become the norm. Conditions like "obey the rules of the household" and curfews have often been added to release plans, criminalizing otherwise non-criminal behaviour. Conditions must also be reasonable for the specific young person, considering cultural specificity and circumstances of the accused. Education and training of court actors is essential to interrupt this prevalent practice and realize the intent of the recent YCJA amendments.

Stakeholders suggested that many conditions that are outside the legislative framework are included as part of a set of boilerplate terms of release. In order to disrupt this culture, it was suggested that conditions should be challenged by the defence to ensure they are all appropriate. In line with this suggestion, in a submission on Bill C-75 from the Canadian Civil Liberties Association and a number of legal experts and professionals, it was suggested that justices of the peace or judges should cite on record the reasons for imposing forms of release and conditions above the default release without conditions. This recommendation is supported by the current research in order to ensure court actors are remaining vigilant in ensuring that release plans and conditions remain in line with legislative guidelines.

RECOMMENDATION 6:

In order to ensure conditions are in line with the legislative framework set out by the YCJA and the *Criminal Code* and to have a record of such considerations, justices of the peace or judges should be required to state, on the record, the grounds for imposing any conditions included as part of a bail release plan.

Amend ss 515(2.04) of the *Criminal Code*: "Upon making an order containing the conditions referred to in one of the paragraphs (2)(b) to (e) or under 515(4), the justice shall state, on the record, the grounds for imposing the conditions." Adding in a clause requiring the justice to state reasons for the conditions imposed would help to ensure each condition is in accordance with the clearly set out legislative framework.

Intensive Case Management

This research revealed that many young people continue to experience pre-trial detention while they wait for a bail decision. Even young people who are later released on bail or have their charges withdrawn spend days, weeks or even months in jail waiting for a bail decision. The experience of incarceration for any period of time is disruptive and harmful to young people and should be avoided wherever possible.

The consultations revealed that young people without a support system or a stable place to go may have a harder time forming a release plan and securing bail. These cases represent vulnerable young people in need of additional support. Providing additional case management for any young person experiencing multiple bail appearances would ensure these vulnerable youth are connected to programs and services to support their release and prevent prolonged unnecessary incarceration.

RECOMMENDATION 7:

After a second bail appearance, if a decision has not been reached on their release, Crown counsel in cooperation with court actors, should employ intensive case management to ensure a bail decision is reached as soon as possible in line with the legislative framework and to prevent prolonged incarceration. At this stage, a young person should also be connected to relevant supports and services to assess the young person's needs and support the development of a release plan. Courts should report on and account for cases that require more than two appearances to reach a decision on bail.

Report on Regional Variation

The data analysis and findings from the consultations indicated that bail is experienced differently across the province based on geographic and demographic factors. One of the reasons for this might be the inconsistent application of the YCJA. Stakeholders indicated that courthouse culture and practices of individual justice system actors vary, which may be producing different outcomes.

Youth should be experiencing the youth bail system consistently no matter where they find themselves in the province. Discrepancies in bail and case outcomes should be identified and accounted for in order to bring the province as a whole in line with the legislative framework for youth bail.

Currently, the Ontario Court of Justice reports bail statistics but does not separate out youth cases. Youth cases are separated out for criminal court statistics allowing for analysis of youth cases. Youth bail cases should be reported on yearly, broken down by regions. Regular reporting on youth bail and case outcomes would identify trends and regional variations allowing for targeted policy responses to ensure the YCJA, and its alternatives to incarceration are applied consistently around the province.

RECOMMENDATION 8:

The courts should be required to report on bail and case outcomes broken down by regions and account for any data trends that deviate from provincial averages or show changes over time that indicate youth are spending more time in jail.

Alternatives to Detention

If a young person has been formally charged and detained for a bail hearing, the court should explore all possible options to release the young person instead of detaining them pre-trial. In accordance with the YCJA, the *Criminal Code* and the Charter, young people should be released on the least restrictive release plans that are appropriate in the circumstances. This means releasing on their own recognizance where possible and not automatically requiring sureties.

For some youth, additional supervision is required and options like residential sureties may not be available. Youth experiencing homelessness or youth that are arrested and charged in communities far from their families may not have individuals who are able to take an active role in their release plan. Young people and stakeholders from the North indicated the latter to be true for young people from rural or Indigenous communities far from the cities where they must remain before their trial. However, despite these challenges, the YCJA asserts that detention must not be used for welfare purposes, making community alternatives to detention essential. Bail supervision programs – both residential and non-residential – provide such alternatives.

Bail beds have been recommended in the adult context, particularly for individuals facing homelessness. Accused individuals who lack a fixed address or have a no contact order often experience prolonged detention and delays. Residential bail programs provide an alternative to detention for individuals who may require additional supervision and supports. Research has suggested bail beds can increase the likelihood of an accused successfully completing bail, can have some positive effects on reducing recidivism and are much more cost-effective than incarceration.[112]

These residential supervision programs should be limited to young people as many jurisdictions have raised concerns about mixing adults and youth in residential program and shelters. Residential programs are also a great opportunity to connect young people with services and supports to help them successfully complete their bail and address other issues that may impact their justice involvement, like mental health supports, employment and life skills training. Stakeholders have expressed concerns about including a condition on a release plan requiring a youth to reside at a certain residence. Without mandating

[112] Johns, R. (2002). *Bail law and practice: Recent developments*. (NSW Parliamentary Library Research Service, Briefing Paper no. 15/02). Sydney: NSW Parliament.

that a youth lives at the residence, these facilities would provide needed housing and supports to youth on bail.

The Ministry of Attorney General has implemented supervised housing for adults on bail in five jurisdictions across the Province. The John Howard Societies of Ottawa and Thunder Bay operate bail bed programs, which are almost always full and have demonstrated their value with residents who would otherwise have cost the province significant amounts in long remand stays. Not only have these programs saved money, they have also demonstrated success by connecting clients with programming and mental health supports to support successful bail and reduce recidivism. This program should be expanded for youth with the caution of not using these programs for youth who should otherwise be released on less restrictive conditions.

Windrose Supportive Housing Program serves as a good example of a residential program for young people, whether or not they are involved with the justice system. Run by **John Howard Society of Ottawa**, this residence is for young people aged between 16 and 21 at the time of application and provides apartment style housing but with a 24-hour staff person and connections to community services and supports. Some, but not all, young people are involved with the justice system and may be on bail or probation. The program is suggested to the courts for youth in the bail system who may not have other options for housing. Residences like Windrose can provide housing options for vulnerable young people at the bail stage and connect them with the appropriate programs and services to support successful bail and address underlying issues.

For young people who do not require residential services, bail supervision programs provide another option encouraging pre-trial release. Bail supervision programs do not have a residential component, but they supervise young people, 16 and older, that lack the social ties or other resources to meet bail conditions and ensure attendance at court. Like residential programs, supervision programs are also able to connect individuals to programs and services to support their bail and in some cases an assessment is conducted to identify areas of concern that may have contributed to the alleged offence and may be causing difficulty in a person's life.[113]

Consultations with stakeholders and young people who have experienced the system revealed that bail supervision programs are a positive alternative to detention but pointed to the age restriction as an issue. Supervision programs in the province only admit individuals 16

[113] John Howard Society of Ontario. (2010). *Bail verification and supervision program*. Ontario, Canada: John Howard Society. https://johnhoward.on.ca/sault-ste-marie/services/bail-verification-supervision-program/

and older, barring younger youth from this alternative to detention. Expanding the age eligibility would allow more youth that lack resources and family supports to be released in a timely manner.

Bail supervision programs provide a cost-effective alternative to incarceration and connect individuals to crucial community supports and services.

RECOMMENDATION 9:

The Ministry of the Attorney General and Ministry of Children, Community and Social Services (MCCSS) should jointly invest in bail beds for young people aged 16-21, recognizing their maturity, level of development, and needs. The availability of bail beds for youth would provide a safer, community-based option for young people who cannot be released on their own recognizance. There should be caution about net-widening and ensure that individuals released to residential bail programs are not individuals who could otherwise be released on their own recognizance.

A bail bed program for youth 16-21 should be piloted in the Northern region based on high levels of detention, lack of existing supports and services and reports from stakeholders about more serious youth charges. This pilot should be evaluated and scaled up if the program can demonstrate positive outcomes. Success should not only be evaluated in terms of number of youth admitted to pre-trial detention but also in outcomes and time spent in the bail phase because of lack of adequate release options.

RECOMMENDATION 10:

The Ministry of the Attorney General and MCCSS should conduct a study to explore the feasibility of expanding bail supervision programs for youth aged 12-16. Currently, many programs only accept youth aged 16 or older.

Discharge Planning

Discharge planning, or release planning, refers to the process of preparing individuals for their release from prison and reintegration into the community.[114] Ideally, this planning involves an assessment of their needs and a plan that connects individuals to programs in the community to help with health, housing, mental health treatment and other areas.

Young people require supports when transitioning out of custody or detention. The YCJA provides reintegration supports for youth that are sentenced to custody. The Act stipulates that when custody is ordered, a youth worker must be designated to help create and implement a reintegration plan setting out programs and services for the young person's transition into the community after their custodial sentence.[115] However, this is for sentenced youth. Consistent with the adult system, legislation does not require discharge planning for individuals on remand (i.e., in pre-trial detention).

Discharge planning at the remand stage appears inconsistent if it happens at all. In the consultations, young people recounted experiences of being released with no housing, no plan and no transportation following their bail hearing. Young people are particularly vulnerable, and many require support in figuring out where to go when they are released, how to access required programs and where to get help with healthcare, housing or employment needs.

Discharge planning should begin at the point of admission to detention for all incarcerated young people regardless of the time they spend in jail. Discharge planning is essential for young people on remand and young people who have been detained while they wait for their bail hearing. As the research shows, a significant number of young people spent days or weeks waiting for a decision on their bail. Especially for young people who did not have stable housing and family supports prior to their arrests, the appropriate connections and planning for their release is very important. Discharge planning is also consistent with the YCJA's principle that recognizes youths' still-emerging maturity and dependence on adults.

[114] John Howard Society of Ontario. (2014). *Reintegration in Ontario*. Ontario, Canada. Retrieved from: https://johnhoward.on.ca/wp-content/uploads/2016/11/Reintegration-in-Ontario-Final.pdf
[115] *Youth Criminal Justice Act*, SC 2002, c 1, s 90(1).

RECOMMENDATION 11:

Establish discharge planning, starting at the first point of detention for all young people who are detained for any amount of time. Discharge planning should be culturally competent and connect young people to appropriate programs and services in the community especially for Indigenous, Black youth, and other vulnerable youth that have mental health concerns, housing insecurity or other issues.

Future Research on the Youth Bail System

This report contributes to a limited but growing body of knowledge on the youth bail system and related practices. We commit to continuing efforts to strengthen the youth justice system through research and working with communities and service providers across the province to develop meaningful policy and program development recommendations. A particular focus will be on solutions to address the overrepresentation of Black and Indigenous youth and address the needs of other vulnerable populations that are overrepresented in the justice system.

CONCLUSION

The right to reasonable and timely bail is a fundamental right under the Charter, and for youth, this principle becomes even more important. The research is clear that any time spent in detention negatively impacts young people and the effects can be long-lasting. Issues with the youth bail system relate not only to time spent in detention but also challenges and harms resulting from the manner in which youth are released into the community. While the *Youth Criminal Justice Act* has been successful in reducing the number of youth held in custody/detention facilities, that is not the end of the story.

Many youth continue to experience incarceration either while they wait to see if they will be granted bail or once they have been detained pre-trial. Although more youth are being released on bail than in previous years, many continue to spend time incarcerated waiting for a bail decision, an experience that is not only damaging for the young person but also an inefficient use of resources since youth are often eventually released. Youth also find themselves lost in the system and falling through the cracks in society as they struggle to navigate challenging circumstances and access crucial programs and services. As indicated in this research, experiences of the bail system also differ greatly across the province and for racialized and Indigenous youth, young people involved in child welfare and those with mental health challenges.

Early interventions are essential in order to disrupt the cycle of criminal justice involvement that can last throughout adolescence and into adulthood. The research, coordination, and education efforts required to improve the youth bail system are far worth the investments, as strategic actions at this early stage of the criminal justice system can completely change the trajectory for many young people, leading to reduced rates of justice involvement for adults and more thriving communities.

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APPENDIX

Appendix A: Summary of Sample, Methods, & Data Utilized for Study			
Sample	Method	Description of Method	Responses
Data Analysis	Ministry of the Attorney General's Integrated Case Outcome Network (ICON)	Bail and case outcome data were provided by the ICON data. Data on all youth charged with a crime by police between 2006 and 2017 were provided. This data included courthouse, region, gender, age, most serious offence (MSO), presence of an administration of justice (AOJ) charge, bail-related outcomes (bail granted or denied, days since first appearance, number of appearances), case outcome (guilty, acquitted, withdrawn, dismissed, stayed, other), most serious sentence, and types of conviction (AOJ vs. non-AOJ)	There were 159,301 valid cases that were used for the analysis.
	Ministry of Children, Community, and Social Services (formerly Ministry of Children and Youth Services)	Race and gender analyses of admissions to custody and detention are based on the data released from the Ministry through a *Freedom of Information Act* request. The Ministry provided data on all youth admitted to custody and detention, broken down by self-reported race/ethnicity and gender between 2006 and 2016. This data was then compared to the population statistics of Ontario that describe the race/ethnicity breakdown of all residents (adults and youth) of Ontario.	There were 64,111 admissions to detention that were used for the analysis.
Stakeholders	Stakeholder Online Survey	Stakeholders across the province were provided with the interim report and executive summary from our research. Online survey questions asked for demographics such as role in the youth bail system, and area of work; beliefs on the most pressing issues, experiences with the system, and recommendations for improvement.	45 individuals/organizations completed the online survey.
	Think Tank Day Consultations	The Think Tank Day gathered key stakeholders to engage in discussions on the issues in the youth bail system. The first half of the day divided stakeholders by key issue area and allowed each table to work together to produce recommendations. The second half of the day was divided by region and	There were 49 stakeholders, 9 John Howard Society of Ontario staff members, and 1 facilitator in attendance for a total of 59 people overall.

		stakeholders were invited to choose which table discussion they wanted to take part in and there was an open discussion on the disparities experienced depending on where youth are located. The remainder of the day brought the entire group together and began an open discussion.	
	One-to-one Consultations	These consultations took place sporadically over the last year with various stakeholders. Consultations were conducted over the phone or in person, and researchers collected notes for analysis. Stakeholders were asked similar questions that were asked in the online survey with some variation depending on their expertise.	
Youth Experts with Lived Experience	Focus Groups	Each youth had an opportunity to participate in a focus group with other youth with lived experience to discuss their experience(s) in the bail system and provide their thoughts and recommendations on how to address issues.	13 youth participated in various focus groups held in different regions including: Toronto, Ottawa, Thunder Bay and St. Catharines.
	One-to-one Interviews	Each youth had an opportunity for a one-to-one interview instead of a focus group to discuss their experience(s) in the bail system and provide their thoughts and recommendations on how to address issues.	2 youth participated in one-to-one interviews. These interviews were conducted in person or over the phone.

Appendix B: Bail Appearances by Fiscal Year & Region													
		2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
CENTRAL	1	53%	52%	58%	61%	62%	59%	63%	60%	63%	61%	65%	65%
	2	26%	26%	26%	24%	23%	24%	23%	24%	22%	23%	22%	21%
	3	12%	12%	9%	9%	8%	9%	9%	9%	8%	8%	6%	7%
	4	5%	5%	4%	3%	3%	4%	3%	4%	3%	4%	3%	3%
	5+	4%	5%	3%	3%	4%	4%	2%	3%	4%	4%	4%	4%
	TOTAL	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
EAST	1	53%	54%	59%	58%	52%	55%	64%	59%	52%	50%	51%	55%
	2	24%	24%	22%	23%	28%	28%	22%	25%	23%	26%	24%	23%
	3	12%	11%	10%	10%	11%	10%	9%	8%	9%	10%	10%	8%
	4	5%	5%	4%	4%	5%	4%	3%	4%	6%	6%	6%	5%
	5+	6%	6%	5%	5%	4%	3%	2%	4%	10%	8%	9%	9%
	TOTAL	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
NORTH	1	52%	47%	49%	49%	53%	49%	51%	50%	46%	51%	47%	58%
	2	28%	30%	28%	29%	30%	28%	27%	25%	23%	22%	21%	20%
	3	12%	13%	11%	13%	10%	13%	9%	11%	14%	12%	11%	9%
	4	5%	6%	6%	4%	4%	5%	6%	7%	8%	7%	7%	5%
	5+	3%	4%	6%	5%	3%	5%	7%	7%	9%	8%	14%	8%
	TOTAL	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
TORONTO	1	47%	51%	49%	50%	56%	53%	53%	57%	57%	60%	58%	61%
	2	25%	24%	24%	24%	21%	25%	24%	21%	21%	19%	18%	17%
	3	14%	12%	12%	12%	10%	11%	10%	9%	9%	7%	9%	9%
	4	7%	6%	7%	6%	5%	5%	5%	5%	5%	5%	4%	5%
	5+	7%	7%	8%	8%	8%	6%	8%	8%	8%	9%	11%	8%
	TOTAL	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
WEST	1	44%	44%	46%	46%	49%	50%	53%	52%	51%	50%	57%	53%
	2	26%	26%	26%	25%	25%	24%	22%	22%	22%	21%	19%	19%
	3	13%	13%	13%	13%	11%	12%	10%	12%	11%	9%	10%	10%
	4	7%	7%	7%	6%	6%	6%	6%	6%	6%	6%	5%	6%
	5+	10%	10%	8%	10%	9%	8%	9%	8%	10%	14%	9%	12%
	TOTAL	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

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