



FIRST NATIONS OF QUEBEC
AND LABRADOR HEALTH
AND SOCIAL SERVICES
COMMISSION

PORTRAIT
of the
CRIMINALIZATION
of the
FIRST NATIONS
in **QUEBEC**
PROVIDING
IMPETUS FOR
CHANGE



**REPORT SUBMITTED TO
FIRST NATIONS OF QUEBEC AND LABRADOR HEALTH AND SOCIAL SERVICES
COMMISSION (FNQLHSSC)**

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FOREWORD

This report, entitled *Portrait of the Judicialization of the First Nations in Quebec: Providing Impetus for Change*, was prepared to document and provide reliable data on the judicialization of First Nations in Quebec. This report is the first of its kind. No other study of this scope, specific to First Nations, has been produced until now. Furthermore, through its analysis of 2016 data from the Ministère de la Justice du Québec, this report sheds light on the different aspects of the process leading to judicialization in First Nations communities in Quebec.

Despite the media coverage of First Nations overjudicialization, not much is known about this phenomenon as it is poorly documented. This study seeks to fill that void by measuring the extent of the judicialization of First Nations in the Quebec justice system and identifying the different contributing factors to this problem.

The First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC) plans to leverage this report to mobilize all the major stakeholders, including from public safety, social services and the justice and legislative systems, to provide assistance to First Nations as they work to develop and execute actions that are adapted to their own approaches and methods of intervention. This approach is instrumental to reducing the overjudicialization of First Nations in Quebec.

The ongoing collaboration of the multiple stakeholders is essential in order to effect real change with respect to this problem. Similarly, the role of First Nations governance and self-determination is critical for the implementation of restorative justice initiatives that are specific to First Nations, including justice committees and community mediation circles.

The FNQLHSSC would like to acknowledge the contribution of the Ministère de la Justice du Québec, which provided financial assistance for this study as well as access to its data. The FNQLHSSC is particularly grateful to researchers Marie-Ève Sylvestre (University of Ottawa), Céline Bellot (Université de Montréal) and Élane Lesage-Mann (Institut national de recherche scientifique) for their excellent work and outstanding collaboration with the FNQLHSSC.

The recommendations made in this report are meant to be complementary to the Calls to Action (25 to 42) issued by the Truth and Reconciliation Commission of Canada. Advanced by the political leadership of First Nations, these recommendations will serve to raise awareness among the federal and provincial governments regarding the current situation, with a view to fostering greater collaboration to implement concrete actions that respect the needs and cultural diversity of First Nations.



HIGHLIGHTS

Extent of criminalization

1. A significant number of counts documented in the court records that were opened and closed in 2016 are associated with addresses located in First Nations communities¹ provided by the individuals concerned. The total is 9,809 counts, with 4,510 in the open records, and 5,299 in the closed records.²
2. A comparison of the rates of criminalization of First Nations with those in Quebec³ reveals that First Nations populations were decidedly more criminalized. In Quebec, the rate of criminalization was 3% in the open records and 3.4% in the closed records. For persons domiciled in First Nations communities, the rate was 15% in the open records and 17.6% in closed records – in other words, 5 or 6 times higher.
3. The Innu, Algonquin, Atikamekw and Mohawk communities accumulated the highest number of open and closed records in 2016. However, the highest rate of criminalization per 100 inhabitants was in the Naskapi, Algonquin, Atikamekw and Innu communities.
4. Young persons under age 30 were the most affected by criminalization, particularly young Innu and Algonquin individuals (over 50% of the cases involved young persons).
5. Men were overwhelmingly more affected by criminalization than women. Men from the Abenaki nation appear to have been proportionately less criminalized than men from the other nations.

1 In accordance with our mandate from the FNQLHSSC, this report analyzes court records in which a person has provided a civic address in a First Nations community. The term "First Nations" is used here to refer to a group of 8 nations and 29 communities. The Cree Nation, signatory to the James Bay Agreement, is not included in this group. The Maliseet Nation is also not included since it is not constituted by inhabited communities and there is therefore no data in connection with that nation.

2 In this report, the term "count" is used to designate a charge against a person for a specific offence, it being understood that a person may be charged with several counts in connection with the same incident. Our analysis was not performed per person, but rather per count recorded in two databanks from the Ministère de la Justice du Québec – specifically, records that were opened in 2016 ("open records") and records that were closed in 2016 ("closed records") – for which a person provided an address in a First Nations community.

3 The rate of criminalization corresponds to the percentage of records (open or closed) per person. The population used is the population over age 18, as enumerated in the 2016 Canadian census.

Nature of offences

6. Persons with a civic address in a First Nations community were criminalized primarily for offences against the administration of justice (OAJ). These types of offences represented 44.2% of those alleged in the open records (1,915 offences) and 40.5% in the closed records (2,015 offences), far outnumbering offences against the person (26.5% and 25.1% in the open and closed records, respectively).
7. In both the open and the closed records, the five most frequently criminalized offences were, in descending order: failure to comply with an order, breach of probation, simple assault, impaired driving, and other offences against the person.
8. OAJ primarily involved young persons under age 25.
9. Over one third (36%) of offences against the person were allegedly committed in a situation of conjugal violence.



Guilty pleas

10. Criminalized persons with a civic address in a First Nations community pleaded guilty to nearly half of the alleged offences (49.8%). If the large amount of missing data had been removed, guilty pleas would have been entered in two thirds of the cases.
11. A higher rate of guilty pleas was observed for the following offences: drug possession (81.2%); theft under \$5,000 (72.9%); other driving offences (67.2%); other OAJ (64.2%); assaulting a peace officer (59.8%); breach of probation (59.4%); failure to comply with an order (54.9%); failure to appear (52.4%); theft over \$5,000 (50%); offensive weapons offences (49.6%); and drug trafficking (48.9%).
12. The highest rate of guilty pleas was found in the Abenaki (73.1%), Huron-Wendat (68.9%), Algonquin (63.1%) and Atikamekw (56%) communities.

Sentences imposed

13. Probation alone or combined was the sentence most frequently imposed on criminalized persons with a civic address in a First Nations community (46.6% of all sentences), closely followed by imprisonment (36%), either alone or combined. Fines were imposed for only 15.6% of offences.
14. Incarceration – i.e., sentences served in a detention facility – was ordered in 92% of cases, while conditional sentences were ordered in 8.2% of cases. Of the sentences of incarceration, 9.3% were served intermittently.
15. Communities with the highest rates of sentences of incarceration were, in descending order: Mohawk (99%), Innu (94.5%), Atikamekw (91.1%) and Algonquin (90.4%). Sentences served intermittently were most frequent in the Mohawk (34.5%) and Huron-Wendat (16.7%) communities, while conditional sentences were most common in Abenaki (66.7%) and Mi'gmaq (21.1%) communities.
16. Of all the sentences, 42.5% were imposed for OAJ. Moreover, sentences of incarceration were ordered in cases of OAJ more than for any other type of offence. Specifically, 54.7% of sentences of incarceration were in connection with OAJ, and 21% were in connection with crimes against the person.

- 
17. The terms of incarceration for persons with a civic address in a First Nations community were generally short. Terms of 30 days or less accounted for 52.7% of prison sentences, and nearly 15% of those were for a single day. Moreover, 58.3% of all sentences of incarceration of 30 days or less were related to an OAJ (377 sentences).
 18. Sentences of incarceration of a single day were particularly frequent in the Naskapi community (31.8% of the sentences of incarceration imposed), Innu communities (22.8%), Algonquin communities (20.4%), and Mi'gmaq communities (12.9%).
 19. Nearly half of the probationary sentences in the closed records databank were for 12 months or less (48.2%), while 42.9% of the probationary sentences were for 13 to 24 months and 8.9% were for 25 to 36 months.
 20. Of the probationary sentences, 59.1% were “unsupervised” and 32.6% of them required the person to report to a probation officer. In addition, 8.0% of probationary sentences included a condition to perform community work.
 21. Nearly one third of the fines imposed were for \$100 or less (31.4%), and 47% of the fines were for an amount between \$100 and \$1,000. Fines for \$1,001 or more accounted for 21.4% of those imposed, and 99.1% of fines of \$1,001 or more were in connection with impaired driving offences.







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1. INTRODUCTION

This report presents a first portrait of the criminalization of the First Nations in Quebec. Based on data from the Ministère de la Justice du Québec (MJQ), it focuses on the year 2016.

As explained in greater detail below, this report is not a portrait of criminal behaviour in the First Nations in 2016, but rather of the criminalization of First Nations people or, in other words, the subjection to the criminal justice system of certain behaviours associated with persons who provided an address in a First Nations community. Generally speaking, an analysis of crime should be understood as an analysis of problematic situations that have been brought before the courts by way of the criminal justice system. Consequently, crime is better described as matters that police and judicial organizations have chosen to examine and subject to their control.

All of the studies from recent decades have observed an overrepresentation of the First Nations in the Canadian court system, at every stage of the criminal process. Two explanations are generally proposed, sometimes alone and sometimes in combination. First, Canadian colonization and the imposition of various colonial policies, including the residential schools, have given rise to significant social and economic problems in First Nations communities and have disrupted traditional mechanisms for dealing with such problems. As a result, First Nations people are more likely to

find themselves in problematic situations that are defined as crimes and subjected to the court system. Second, unfavourable bias, racism and systemic discrimination against the First Nations is common amongst police officers and in the court system. As a result, First Nations are more closely supervised and more frequently stopped and taken into custody than other groups in the Canadian population (Bellot & Sylvestre, 2016). These two hypotheses are the most commonly advanced to explain the issues involved in the criminalization of the First Nations. From that perspective, the absence or shortage of social responses to the social problems experienced by the First Nations communities is understood as the underlying reason for the reliance on the police and the court system. With this background in mind, this report offers an analysis of the problematic situations experienced by First Nations people in Quebec who are criminalized.

Because ethnocultural backgrounds are not identified in the MJQ databanks, only records for persons with a civic address in a First Nations community could be considered. Accordingly, these analyses concern the court records, not the individuals themselves.





2. BACKGROUND TO THE CRIMINALIZATION OF THE FIRST NATIONS IN QUEBEC

Learning about the background to the criminalization of the First Nations in Quebec means understanding how and why police organizations and judicial bodies subject problematic situations experienced by the First Nations in Quebec to their control. While studies specifically on Quebec are rare, studies dealing more globally with the Canadian situation are even fewer in number.

Generally speaking, police are expected to be responsible for maintaining order and safety. It is nonetheless clear that this responsibility is expressed very differently depending on the social context in which it is exercised. The role of police work is to exert social control; it is therefore an aspect of maintaining security in a territory and supervision and control over suspect populations (Brodeur, 1983). This traditional perspective on police action depends on the accepted exercise of institutional social control over communities and populations (Marenin, 1982).

The public order and public security issues in First Nations communities that help us understand the role, meaning and effect of police practices should also be viewed in light of the social, economic and cultural tensions related to the colonial context and systemic discrimination (Kiedrowski et al., 2017; Jones et al., 2016; Lithopoulos and Ruddell, 2011).

Indeed, from an overall perspective, colonial policies and systemic racism have contributed to placing First Nations populations in situations of major social, economic, and cultural disenfranchisement, both historically and currently. Acute social problems have resulted, and they are expressed in poverty, unemployment, undereducation, inadequate housing, drug and alcohol abuse, violence suffered and committed, suicide, and mental health issues (Kiedrowski et al., 2017; Comack, 2012; Fontaine, 2006; Lithopoulos and Ruddell, 2011).

The data is abundant, and as it accrues, the material and educational deprivation of the great majority of First Nations communities and individuals becomes increasingly clear. According to the 2015 First Nations Regional Health Survey, just under half of adults live in a household with income below the low-income cut-off, and adults living with children were more likely to be living below the

low-income cut-off than adults not living with children (FNQLHSSC, 2018). In terms of employment, the most recent data on the working population in Canada shows that the rate of unemployment in 2017 was 13.5% in First Nations populations, compared with only 6.2% in non-Aboriginal populations (Statistics Canada, 2018). In addition, the report on the well-being of First Nations communities produced by Aboriginal Affairs Canada shows how much lower the well-being of First Nations communities is, based on all the indicators, when compared with that in non-Aboriginal communities (AANDC, 2015). Some authors refer to the notion of crisis, arguing that police officers are more active in Aboriginal communities in crisis, and particularly with families and individuals who themselves are in crisis situations (Jones et al., 2016; Ruddell et al., 2014).

In Quebec, the FNQLHSSC (2018) published the results of the First Nations Regional Health Survey that provides an overview of the deprivation experienced by the communities. The survey sampled 3,261 individuals, including 825 children, 769 adolescents and 1,667 adults. Each individual filled out a questionnaire about various individual and community aspects. The data gathering and analysis also took into account the geographic distribution of the communities, defined in the study as follows:

- ◆ Zone 1 (urban): The community is within 50 km of the nearest service centre with year-round road access.
- ◆ Zone 2 (rural): The community is between 50 km and 350 km from the nearest service centre with year-round road access.
- ◆ Zone 3 (isolated): The community is more than 350 km from the nearest service centre with year-round road access.
- ◆ Zone 4 (difficult to access): The community has no year-round road access to a service centre.

More than two thirds of the First Nations population reside in communities in Zone 1.

In terms of education, more than one third of adults have not completed secondary school, and this proportion rises to 60% in individuals ages 18-24, according to the data in the Quebec First Nations Regional Health Survey (FNQLHSSC, 2018). One third of adolescents say that they have had learning difficulties. The proportion of adults who completed their secondary education decreases with geographic remoteness, from 70% in zone 1 (urban) to only 41% in zone 3 (isolated).





In terms of housing, over 25% of adults affirm that their home needs major repairs. One in four children lives in an overcrowded household, and that proportion rises to nearly 50% in zone 3 (isolated). A study by the FNQLHSSC (2015) on homelessness among the First Nations in Quebec also shows that housing difficulties (inappropriate housing, overcrowding, violence, etc.) in the communities affect mobility and residential stability, greatly contributing to eventual homelessness.

In terms of socioeconomic conditions, half of the adults (adult population over age 18, including retired persons, disabled persons, etc.) report having a remunerated activity. Overall, more than four in ten live in a household with income below the low-income cut-off. They generally have a more negative perception of their mental health. Moreover, over 20% of adults live with food insecurity.

In terms of lifestyles, more than half of adolescents and elderly persons do not drink alcohol. However, half of the young adults (ages 18-34) drink excessive amounts of alcohol at least once a month. Most drug users consume only cannabis, with the exception of young adults (ages 18-24). In that group, one out of five uses stimulants.

It is important to remember that nearly two in ten adults age 40 and older attended residential school, and nearly two thirds of them report that this experience had a negative effect on their lives. Moreover, nearly 20% of the total First Nations populations residing in communities have lived in foster families, half of them outside the communities.

Unsurprisingly, alcohol and drug abuse, unemployment, violence, and housing are the elements most often listed as problems in the communities. It should also be noted that only 23% of persons over age 15 in zones 2, 3 and 4, view community policing as a strength in the community, compared with nearly half (48%) of respondents over age 15 in zone 1⁴ (FNQLHSSC, 2018).

Studies show that the social situations dealt with by police officers are perceived relatively similarly by the police officers and police organizations on the one hand, and by the First Nations communities on the other. For example, the study conducted by Kiedrowski et al., which was based on questionnaires given to police officers in the First Nations Policing Program, found that these officers believed that the three most important problems in First Nations communities in Canada were abuse of psychoactive substances, family violence, and the well-being of children (Kiedrowski et al., 2017).

⁴ It should be noted that this result was obtained through a question asking respondents to rank the strengths in their community, from among about fifteen proposed choices.

While the past and current colonial context contributes to poverty, social exclusion, violence and substance abuse in the communities, sustained interventions represent an assertion of judicial control over these social problems (Comack et al., 2013). Thus, in many studies, the disorganization and ill-being of persons and communities explain the violence committed and suffered. The high prevalence of criminal behaviour and victimization also reveals the situations in which the police intervene in Canada in general. These results feed into issues of insecurity and ill-being within the First Nations communities overall.

Nevertheless, according to the First Nations Regional Health Survey (FNQLHSSC, 2018), nearly 9 in 10 persons age 12 and older feel safe in their communities. In this respect, it is important to qualify or at least be vigilant when it comes to Canadian data describing higher proportions of crime and victimization in First Nations communities. Comparing the crime rates in 50 communities served by a First Nations police force with the crime rates in 980 communities served by non-Aboriginal police in 2012, Lithopoulos (2013) found that there were 3.7 times more criminal incidents in First Nations communities than in non-Aboriginal communities, that violent crimes were 6.7 times more frequent, and that homicides were 5.9 times more common. This study did not include Quebec, however, and its findings are in line with those of the study by Brzozowski et al. (2006), which reported three times more crime in First Nations communities than in the rest of Canada.

The overrepresentation of First Nations and Inuit among victims of violent crime is also notable in Canada (Miladinovic and Mulligan, 2015). According to the study of victimization by Statistics Canada (2014), 28% of First Nations and Inuit persons had been victims of a crime within the preceding 12 months, compared with 18% of non-Aboriginal persons. Moreover, in 2014, the overall rate of victimization of violence experienced by First Nations and Inuit persons was twice as high as it was for non-Aboriginal persons (163 incidents per 1,000 persons, compared with 74 incidents per 1,000 persons). Nonetheless, Aboriginal identity contributes less to a higher overall risk of victimization than do the other risk factors, which are childhood abuse, perception of social disorder in the neighbourhood, prior homelessness, drug use or mental health issues. Similarly, the factors associated with crime and violence presented by Brzozowski et al. (2006) are youth, low levels of education, unemployment, low income and living in crowded conditions. It is difficult to understand what the situation is in Quebec, however. Brassard and Spielvogel (2018) have shown that in both Quebec and Canada, conjugal and family violence in First Nations communities and Inuit villages are a major social problem. Few studies look in any detail at the First Nations and their experience of conjugal violence, however, and even fewer seek to understand the reality of male victims.





Perreault and Brennan (2012) demonstrate the link between these crime rates and victimization rates by noting that most of the victims of these crimes are First Nations and Inuit persons in Canada. Brennan (2011) also reports that women are the most frequent victims, with her study concluding that First Nations and Inuit women are three times more likely to be victims of violence than non-Aboriginal women, and twice as likely to be victims than First Nations and Inuit men. The 2014 victimization survey revealed that First Nations and Inuit women were three times more likely to claim that they have been victims of conjugal violence than non-Aboriginal women. Despite the higher victimization rates, however, First Nations and Inuit persons are less likely to report these situations to the police, due, among other things, to the wariness that has taken hold, but also due to the risk that the reports will not remain confidential in the communities. Moreover, as noted by Brassard et al. (2017), the decision to call the police testifies more to the lack of other types of social intervention than to any real interest on the part of the victims in having their situations criminalized.

In more structural and global terms, in a study of the involvement of First Nations, Inuit and Métis youth in street gangs, Comack et al. (2013) described how the effects of colonialism are not merely explanations for the criminality and victimization of

First Nations, Inuit and Métis persons, but actually constitutive elements of the process of resistance. In an ethnographic study, the researchers sketched a portrait of the involvement and experience of First Nations, Inuit or Métis youth in street gangs in Winnipeg, showing how youths became involved in Winnipeg gangs not just to seek respect and dignity but also to rebel against the oppression, exclusion and repression they suffer. Thus, the repression experienced by the gangs is itself part of the colonial process continuum, representing another assertion of control over youths seeking a place and a future. Fontaine (2006: 116) states that “Aboriginal gangs are the product of our colonized and oppressed space within Canada – a space fraught with inequity, racism, dislocation, marginalization, and cultural and spiritual alienation.” These authors, like Bourgois in his studies of East Harlem, New York City (1996), show how a discriminatory and oppressive structure places young people in situations that increase the repression they experience and push them further away from society. The authors also show how this repression is expressed in a neoliberal context that favours individual and family responsibility over a more structural interpretation of the effects of colonialism. Nonetheless, the dire and vicious circle in which these young people find themselves is recreated by the effects of colonialism, closing off the avenues towards change in both individuals and communities.

Beyond the social and cultural context that require police departments to manage social problems and the crime experienced in the communities and by their populations, it is also important to understand the relational context in which these forces act. This approach has given rise to studies demonstrating that police and judicial actions take place in a relational context marked by racism and discrimination.

The monopoly over maintaining order and public safety is grounded in a relationship of trust between the citizens and their police (Goyette et al., 2014). In a First Nations, Inuit or Métis context, the maintenance of social order has historically been an aspect of the colonial project and in this way is marked by racism and systemic discrimination (Comack et al., 2013).

An analysis of the various social, economic and cultural facets of the victimization experienced and the crimes committed shows how this data is a record of the constant impact of colonialism as a producer of major social disorganization in First Nations communities and the lives of the individuals themselves. It is therefore important to understand the degree to which these situations are interrelated and symptomatic of the

oppression suffered. Relationships between the First Peoples and non-Aboriginal peoples in Canada are expressed through the exercise of a still-greater power by non-Aboriginal peoples, who have taken control of Aboriginal territory, wiped out their culture, and profoundly destabilized individuals, communities and nations (Truth and Reconciliation Commission, 2015). Day after day, poverty and the processes of marginalization and assimilation reinforce this oppression, hindering the respect and reconciliation that could challenge systemic discrimination.

The dominant majority's institutions of authority play an essential role in these relationships of domination and discrimination that characterize oppression. Far from trusting, the relationship between First Nations communities and populations on the one hand and police officers and police organizations on the other has crystallized into one of suspicion and hostility on both sides. Reciprocal distrust is rooted in relationships of power and abuse that are part and parcel of the colonialist policies and practices of assimilation that led the police to play a key role in the history of residential schools, in the history of the control of alcohol consumption, and in the authoritarian creation of public order without regard to the customary laws or practices of the First Nations communities



(Jones et al., 2016). Thus, police practices are also at the source of the overrepresentation of First Nations, Inuit and Métis persons in the court and prison systems, generating situations of disorder and disorganization in the communities and in families (Jones et al., 2016; Kiedrowki et al., 2017). The study led by Jones et al. (2016) with the First Nations is particularly eloquent as it reveals the vicious circle in which the communities and individuals find themselves. Victims of the effects of colonialism that placed them in difficult living conditions defined by poverty, low education, and violence suffered leading in turn to personal problems such as substance abuse, violence inflicted, and mental and physical problems, these persons are subjected to penal management that most often results in criminal charges and incarceration, experiences that render the possibility of better living conditions, wellness and integration increasingly inaccessible to them.

The weight of systemic racism is also frequently visible in analyses of the overrepresentation of First Nations populations in the court and prison systems (Comack et al., 2013). In a study of the criminalization of homelessness in First Nations in Val-d'Or, Bellot and Sylvestre (2016) showed the degree to which these populations are targeted by the town's police forces. This criminalization reveals social and racial profiling practices that lead police officers to stop First Nations people more often, fine them more frequently, and ultimately ensure that the court system incarcerates them for failing to pay their fines.

Because the studies shedding light on the issues of the criminalization of the First Nations are too often Canadian, this report seeks to address more specifically the issue of the criminalization of people who have a civic address in a First Nations community in Quebec.







3. OUTLINE OF THE STAGES OF THE LEGAL PROCESS

The “dark figure” of crime and the criminal justice funnel

As we have shown, it is impossible to obtain a precise or complete picture of crime. There is a vast array of problematic situations and conflicts on which it would be theoretically possible to affix the “crime” label. However, many problems and conflicts are managed privately among the individuals or groups involved, are not reported to the police or authorities, or are taken in hand by systems other than the criminal justice system (e.g., civil or administrative justice, mediation, arbitration, the informal conflict settlement in families or groups, social or community intervention). Thus, resorting to the criminal justice system is a *de facto* sign that other types of intervention were unused or unsuccessful or that the criminal justice system is given more authority than the other systems (for example, where state law prevails over traditional First Nations conflict resolution systems).

The criminal justice system can be represented as a funnel (Robert, 1977) consisting in successive levels involving the police, the prosecutor (the representative of the Director of Criminal and Penal

Prosecutions [DCPP]), the trial and the sentences. As a funnel, the system does not retain all the primary material and instead sorts and selects elements at each stage. Thus, at every level, one or more actors make a series of decisions that have the effect of selecting, directing, keeping or letting go of problematic situations, allowing them to progress to the next level of the funnel or eliminating them altogether. Consequently, only a certain number of situations and individuals actually move through the funnel to the next stages.

The police play a key role at the first stage of the funnel by selecting certain types of problematic behaviour or situations. The decision to put a certain type of behaviour in the criminal justice funnel depends on a very large number of factors, including the filing of a complaint (which excludes all unreported offences), the characteristics of the complainant and the victim (e.g., research reveals prejudice on the part of police when certain situations are reported by certain types of complainants, in particular marginalized First Nations women), the visibility of the offence (an offence committed in the street versus in a private residence), institutional priorities and police force guidelines (e.g.,

emphasis placed during different periods on incivility, street gangs or conjugal violence), prejudices or profiling (e.g., the fact that the police are more likely to intervene with First Nations and Inuit persons or visible minorities), etc.

Once a problematic situation is brought to their attention, police officers enjoy broad discretion, regardless of the nature or seriousness of the conduct in question (*R. v. Beaudry*, [2007] 1 S.C.R. 190). Subject to the ability to objectively and subjectively justify exercising that discretion – that is, by not displaying favouritism or discrimination – a police officer is never required to proceed with an arrest or file an information. Although the police must apply the law, they are professionals trained to exercise their judgment and are therefore not obliged to report every problematic situation. When they are called to intervene, officers have a certain number of means at their disposal, including simply stopping a person, encouraging prevention by providing information about the law, issuing a warning, ordering a person to cease their activity, issuing a statement of offence, or arresting the person and filing a criminal information. This report concerns only problematic situations that became the subject of police intervention resulting in the assertion of police authority, that were then funneled into the justice system by way of an information, and that led to the opening of a record.

Jurisdiction of the Quebec courts

In terms of procedure, there are three categories of offence: *indictable offences*, which are prosecuted by way of indictment, *summary offences*, which are prosecuted by summary conviction, and *hybrid* or *mixed offences*, which may be prosecuted by either procedural method. The procedural vehicle is usually specified in the statutory provision creating the offence. Prosecuting counsel or the DCCP representative chooses the method of prosecution for mixed offences, based on the guidelines applicable in his or her prosecution department. The mode of prosecution has an effect on determining the procedure applicable, the sentence imposed, and the court hearing the proceeding.

In summary prosecutions, the competent court is the summary conviction court, which is the Court of Quebec and, in the cities of Montréal, Laval and Québec, the Municipal Court.

In prosecutions by way of indictment, the competent court is the Court of Quebec, except for a minority of offences that are heard exclusively by the Superior Court (e.g., murder) or when the accused chooses a trial by jury.





With respect to appeals, the Superior Court has jurisdiction over appeals in summary offence cases, whereas the Court of Appeal of Quebec has jurisdiction when the offence is indictable.

Process

A. First stage: Filing an information

A criminal record is “opened” when a justice of the peace receives an information. Anyone may present a justice of the peace with an information, but in practice, it is done by a police officer or a representative of the DCPD of Quebec. The justice of the peace then issues a summons or an arrest warrant or, as appropriate, confirms the citation, the promise to appear or the recognizance submitted by a police officer (where the person was arrested during the commission of an offence) (s. 504 of the *Criminal Code*, hereinafter “Cr. C.”).

Following the arrest of the accused (in French, the term “*prévenu*” is used for the person before charges are formally laid), the peace officer may release him or her with a citation to appear (this document contains only a date of appearance before the judge), a promise to appear (this document contains a date of appearance and imposes specific conditions effective until the date of the appearance), a recognizance (this document contains a date of appearance and requires a deposit of money, but includes

no conditions), or a summons (this document is rarely used because it must be issued by a judge; when it is issued, it imposes conditions). The police officer may also decide to detain the person to establish his or her identity, prevent the commission of an offence, ensure the safety of victims or witnesses, or ensure that the person will attend when it comes time to appear before a judge (ss. 497 et seq. Cr. C.)

The databank analyzed includes the date the record was opened with file numbers identifying the judicial district and the court registry.

B. Appearance

The next stage in the judicial process is the appearance of the accused before a judge. In most cases, the accused is at large when he or she appears for the first time before the court. If the accused is detained, the appearance must take place as soon as possible; in most cases, it happens within 24 hours of the arrest. During the appearance, counsel for the DCPD recites the “counts” (corresponding to the number of offences alleged) laid against him. The accused may then enter a plea of guilty or not guilty on each count or reserve the plea for a later date, e.g., after consulting with an attorney. It should be noted that, in Canadian criminal law, the accused is always presumed innocent until proven otherwise.

The databank analyzed includes the number of counts, the statutory provisions corresponding to the alleged offences, the plea entered by the accused and the date on which the plea was entered.

C. Interim release

During the appearance, counsel for the DCP and the accused (or counsel for the accused) may agree on conditions of interim release, i.e., conditions of release pending trial. Failing agreement, an interim release hearing (sometimes called a “bail hearing”) is held, usually in the days following the detainee’s appearance. The release of an accused pending trial is the rule, not the exception, as the right of any person charged with an offence “not to be denied reasonable bail without just cause” is enshrined in s. 11(e) of the *Canadian Charter of Rights and Freedoms*. Generally, then, an accused must be released without conditions, unless the prosecution is able to show cause why detention or conditions are justified. Detention of the accused is justified only if it is necessary to ensure that he or she attend court, to ensure the safety and security of the public, or to maintain public confidence in the administration of justice (s. 515 Cr. C.).

In practice, however, several recent studies have shown that these principles are not respected. Recourse to detention is excessive. In 2015-2016, 60% of detained adults in Canada were held in interim detention (Reitano, 2017). In Quebec, the

percentage of detained adults in interim detention was 45%. Although lower than the Canadian average, this rate is nonetheless very high.

According to the preliminary data for a study by the Department of Justice Canada (DOJ) drafted by Beattie et al., in four Canadian provinces, more than four in ten accused were detained by the police (41.1%) and 58.9% of them were released (Beattie et al., 2013). Among accused who appeared while in detention, approximately two thirds were subsequently released by the court at their appearance or further to an interim release hearing, whereas 34.1% remained in detention (Beattie et al., 2013 at 17). According to that study, First Nations, Inuit and Métis individuals were more likely to be detained than non-Aboriginal persons.

Ordering conditions is a generalized practice. Once again according to the DOJ study, at least 44.3% of individuals apprehended by the police were released with conditions (Beattie et al., 2013 at 15). It also appears that none of the individuals released by a judge following an interim release hearing were released without conditions. According to recent data from the Municipal Court of Montreal obtained by Sylvestre et al. (2018), 95% of the individuals released by the Court between 2002 and 2014 were released with conditions.





The databank does not contain any information on release or conditions, but the data on offences against the administration of justice presented below make it possible to estimate their frequency.

D. Preliminary inquiry (indictable offences only)

A preliminary inquiry takes place only in the case of certain offences prosecuted by way of indictment. It is held at the request of the accused.

The databank does not contain information about preliminary inquiries.

E. Trial and decisions made by prosecution and court

The trial begins with the presentation of the DCP's evidence. Once the prosecution declares its case closed, the defence has the choice of whether or not to present a defence. The trial concludes with the oral arguments of the parties.

Throughout proceedings, counsel for the DCP can make decisions that affect how the trial unfolds. For example, counsel might decide to "withdraw" a charge or ask for a "stay of proceedings" if he or she feels there is no evidence to bring or that it is not appropriate to continue. Charges may also be withdrawn or amended after negotiations with the defence regarding a guilty plea.

At the end of the trial, the judge renders the verdict from the bench – that is, as soon as the trial ends – or takes the case under advisement. The judge may "convict" (find guilty) or "acquit" (find not guilty) the accused. The judge may also render a verdict of "not responsible on account of mental disorder" if the appropriate evidence has been adduced before the court.

Other decisions can be made at different times: for example, the judge may "strike" a case from the roll when it is transferred to another jurisdiction. The judge may also "reject" a count or "release" an accused in the absence of evidence or for any other reason.

The databank contains information on the eight different types of decisions (1-convicted; 2-withdrawn; 3-released; 4-dismissed; 5-acquitted; 6-other; 7-struck given transfer; and 8-stay).

F. Sentencing

The judge imposes a sentence or a combination of sentences on the accused after a guilty plea is entered or after a conviction is rendered. The *Criminal Code* indicates the range of sentences.

The databank contains information about the types of sentences imposed and the dates of sentencing.

1. Discharge

First, the judge can choose whether to convict or discharge an offender. A “discharge” can be either “conditional” or “absolute”. Strictly speaking, an absolute discharge is not a sentence and does not result in a criminal record for the accused. A conditional discharge is a discharge with a probation order (s. 730 Cr. C.).

The databank indicates whether the discharge is 1-conditional or 2-absolute.

2. Probation

The judge can also choose to order probation. Probation is the most frequently imposed sentence in criminal cases in Canada (ordered in 43% of cases). Probation involves a person’s written undertaking to comply with the law and any conditions set out in the order. While probation usually requires supervision in the community, its purpose is traditionally seen to be social reinsertion. There are three types of probationary sentences. First, the judge can suspend sentencing and order conditions (suspended sentence). Second, the judge can order probation following a prison sentence or in addition to a fine. Finally, probation can be ordered with a discharge (s. 731 Cr. C.). The maximum term of probation is three years.

It includes compulsory conditions (four) and may also include optional conditions. Failure to comply with a condition of a probation order is a criminal offence, known as breach of probation (ss. 731 et seq. Cr. C.).

The databank contains information about the term (days, months, years) and certain conditions of probation, indicating whether the offender is ordered to 1-report to a probation officer; 2- report to a police officer; 3- remain unsupervised; or 4-perform community work. However, the databank does not contain any other information about the nature of the conditions imposed.

3. Fine and victim surcharge

A fine is a pecuniary sentence, or an amount of money imposed by the court. It is the most frequent sentence in penal matters but is ordered in only 31% of criminal cases. Some offences have fines as a minimum sentence (s. 734 Cr. C.).

The victim surcharge is mandatory and is paid in addition to any sentence ordered. It corresponds to 30% of the amount of the fine where a fine is imposed, or \$100 or \$200 per count resulting in a conviction. For example,





a person convicted on three summary counts must pay a surcharge of $3 \times \$100 = \$300$ in addition to any sentence imposed (s. 737 Cr. C.).

The databank contains the amount of the fine imposed and a note regarding the surcharge (1/0).

4. Imprisonment

Although imprisonment is the paradigmatic criminal sentence, it is not the most frequent, representing the outcome in 37% of cases. Some offences require a minimum sentence of imprisonment (s. 743 et seq. Cr. C.). Imprisonment may be in the form of incarceration (served in a detention facility) or “conditional” (served in the community). A conditional sentence of imprisonment is ordered with numerous conditions, usually including a residency requirement and a curfew. The term of imprisonment can be fixed or indeterminate (e.g., “life”). Where the court orders a sentence of incarceration of 90 days or less, it can be served “intermittently” along with certain conditions: this is sometimes known as a “weekend sentence.” Finally, a sentence of incarceration can be served concurrently to (at the same time as) another prison sentence or consecutively to (after) another prison sentence.

The databank contains information about the term of imprisonment (days, months, years) and the type of imprisonment imposed (incarceration, conditional, life).

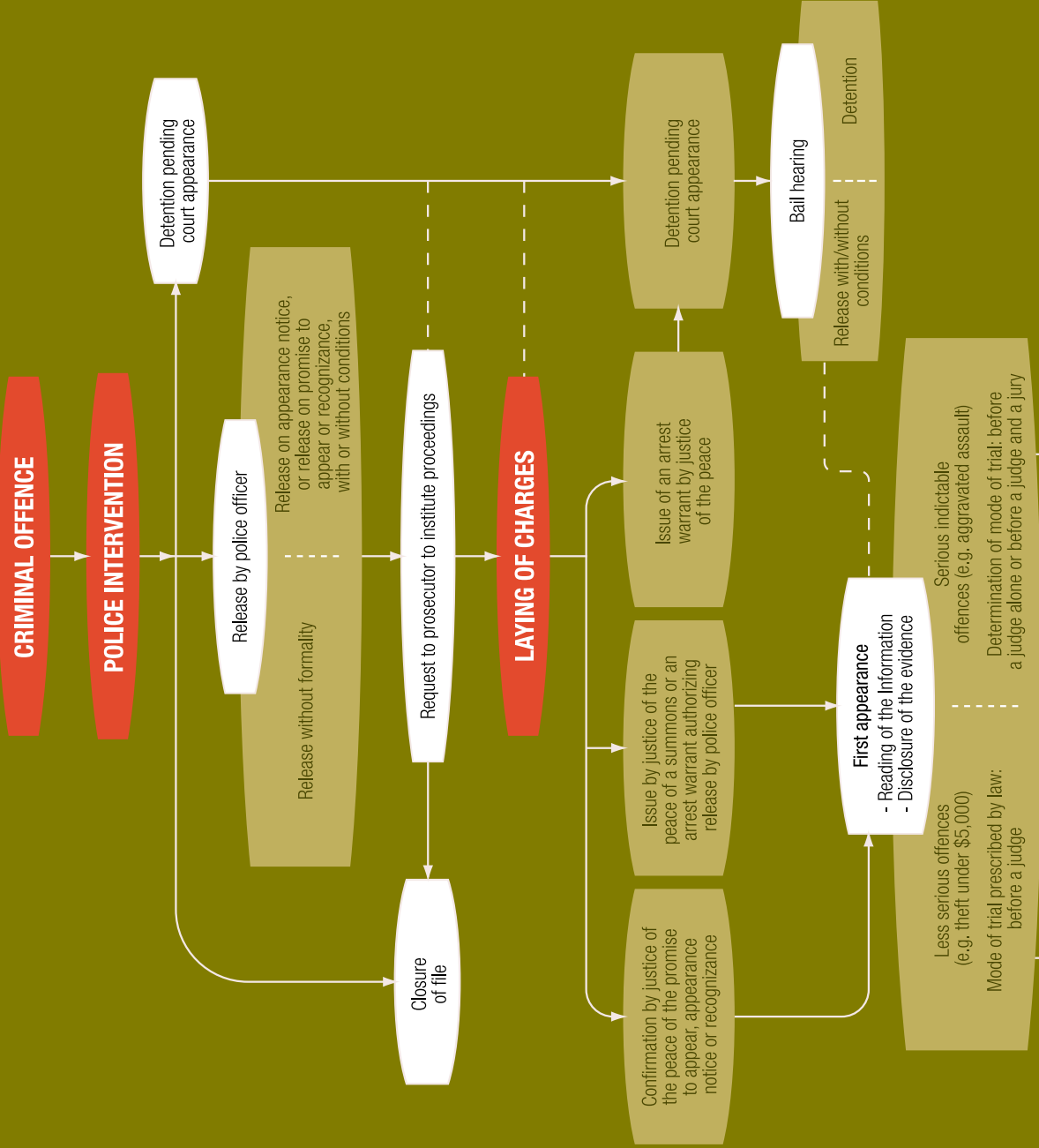
G. Other statistics

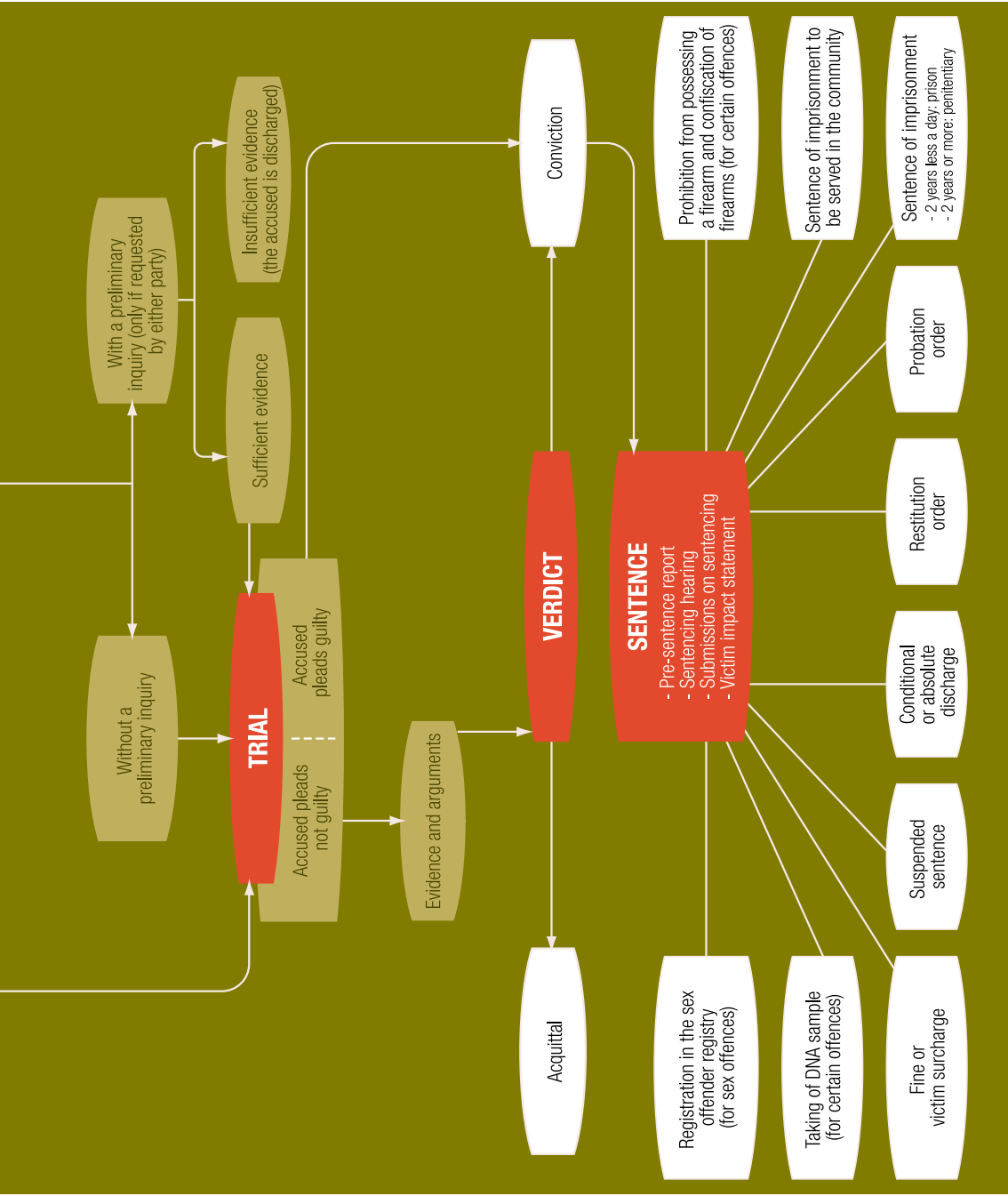
The databank contains specific codes for offences committed in four specific contexts: 1-conjugal violence, 2-sexual abuse of children, 3-physical abuse of children, and 4-violence against the elderly.

The following diagram provides a summary of the typical stages of the legal process. It does not, however, illustrate the decisions that counsel for the prosecution might make at various stages of the proceeding or any special verdicts (see section E, above).



Adult Criminal Justice Process









4. METHODOLOGY

This report relies on two databanks provided by the MJQ to the FNQLHSSC that contain all of the counts in criminal records opened and closed in Quebec court registries in 2016. “Open” records include counts filed in 2016 but not settled that year. “Closed” records include counts filed in 2016 or earlier and settled in 2016.

The number of counts in the closed records is 246,028, while the number in the open records is 211,579. All of the counts concern the entire population residing in Quebec (including First Nations and Inuit).

To perform the analyses concerning the First Nations in Quebec, we needed to identify which counts involved individuals with an address in a First Nations community.⁵ Because the databanks did not indicate an accused’s ethnocultural background, we decided to identify the First Nations individuals geographically. We therefore analyzed all of the postal codes for the domicile addresses provided by all the accused, and only counts in the open or closed records that contained postal codes corresponding to domiciles in First Nations communities were retained for analysis for this report.⁶ These counts and records involved 29 communities and 8 First Nations in Quebec.⁷ The following map presents the geographic distribution of these communities in Quebec.

Consequently, the results obtained for this report do not represent a comprehensive picture of the criminalization of the First Nations in Quebec, since the data could not be used to identify criminalized First Nations individuals who provided a civic address outside a First Nations community.

Table 1 presents the total number of counts in closed and open records in all of Quebec for the year 2016 and the counts associated with an address in one of the 29 First Nations communities.⁸

⁵ Namely, communities from one of the following eight nations: Abenaki, Algonquin, Atikamekw, Huron-Wendat, Innu, Mi’gmaq, Mohawk, Naskapi.

⁶ The recoding and characterization of records as “records involving First Nations individuals” required first that we standardize the names of the towns and communities. After that, we worked with the postal code registry. Finally, when the postal code was the same for a First Nations community and a non-Aboriginal community, we checked the exact address on Google Maps to identify the precise location of the address associated with the record to determine whether it was a civic address in a First Nations community.

⁷ The 29 communities are the following: Akwesasne, Ekuanitshit-Mingan, Essipit, Gesgapegiag, Kahnawake, Kanesatake, Kawawachikamach, Kebaowek, Kitcisakik, Kitigan Zibi, La Romaine-Unamen Shipu, Lac-Rapide, Lac-Simon, Listuguj, Manawan, Mashteuiatsh, Matimekush-Lac-John, Nutashkuan, Odanak, Opitciwan, Pakua Shipu, Pessamit, Pikogan, Timiskaming-Notre-Dame-du-Nord, Uashat Mak Mani-Utenam, Wemotaci, Wendake, Winneway and Wôlinak.

⁸ See note 7.

THE NATIONS



LEGEND

- ABENAKIS
- ALGONQUINS
- ATIKAMEKW
- CREE
- HURONS-WENDAT
- INNUS
- INUIT
- MALISEET
- MI'GMAQ
- MOHAWKS
- NASKAPIS



FIRST NATIONS OF QUEBEC
AND LABRADOR HEALTH
AND SOCIAL SERVICES
COMMISSION



Table 1: Number of counts in open and closed records, by civic address

	Open records	Closed records
Address in FN community*	4 510	5 299
Address in Quebec outside FN community	207 069	240 279
Total	211 579	246 028

*This data covers 29 communities in 8 First Nations.

Our analyses are based on **4,510 counts in records opened** in 2016 and **5,299 counts in records closed** in 2016.⁹

It should also be emphasized that the analyses concern the counts in the records, not the criminalized individuals. Accordingly, the total number of counts in the records does not represent the total number of criminalized individuals. The number of counts is probably higher than the number of criminalized individuals, since, for example, one person may be charged with several counts in the same record.

The databanks contain numerous variables. They also contain sociodemographic data about the person charged (age, sex), the nature of the offences alleged, and the different stages of the court system described above.¹⁰ We coded each offence according to the Uniform Crime Reporting Manual (2016) from the Canadian Centre for Justice Statistics (Statistics Canada - UCR Manual 2016) and then compiled the data into six broad categories of offence: offences against the person, offences against property, drug offences, offences against the administration of justice, youth offences, and other offences. Since there was data missing, only 4,333 offences (out of 4,510) in the open records and 4,974 offences (out of 5,299) in the closed records could be retained for our analyses of the offences.

The descriptive, comparative and bivariate analyses performed using the different variables in the databanks allowed us to sketch this portrait of the criminalization of the First Nations in Quebec, with a particular focus on the nature and scope of the criminalization.

⁹ These counts, associated with eight nations, represent, in relation to all of the First Nations (including the Cree Nation) and the Inuit, 32.9% of the counts in the open records and 35.9% of the counts in the closed records.

¹⁰ It should also be noted that the variables set out in the dictionary of codes provided by the MJQ were not all found in the databank. Moreover, the quality of the variables is not constant, because a great deal of data was missing in some cases, as noted in the report.



5. PRESENTATION OF RESULTS

The data is presented along four axes. First, we document the extent of the criminalization of individuals with civic addresses in a First Nations community in Quebec by looking at the number of counts brought against them in 2016. We then move on to present the nature of the offences for which they were criminalized. In the last two subsections, we present the stages of their legal process and, in particular, the rate of guilty pleas and an analysis of the sentences imposed.

5.1 Extent of criminalization of First Nations in Quebec

Examining the scope of criminalization means also understanding the volume of charges processed in the year 2016 against First Nations persons. Thus, the analyses describe the total number of counts processed, as well as their distribution by nation, age and gender of the persons affected. The criminalization of the First Nations is compared proportionally with that of the population of Quebec using a rate per person. Accordingly, the rate of criminalization is defined by the number of counts in open or closed records in 2016 per 100 inhabitants over age 18.

First, we analyzed and compared the rates of criminalization in 2016 in the open records. This task involved considering the counts filed in 2016 that did not reach a conclusion before the court. We then performed the same analysis for records that were closed in 2016. The comparison between the open and closed records in terms of the charges brought and the nations and persons concerned must be considered with caution, however, because the reasons for these variations are difficult to identify. They may be random, or they may arise from different circumstances in the communities and nations or in the police organizations and the courts.

Table 2: Number of counts and rate of criminalization per 100 inhabitants age 18 and over

	Open records		Closed records		Population age 18 and +
	N	Offences / 100 inhab.	N	Offences / 100 inhab.	
Counts with civic address in Quebec	211 579	3.1	246 028	3.4	6 892 251
Counts with civic address in FN community	4 510	15.0	5 299	17.6	30 077

Source: Statistics Canada, 2016 enumeration

Source: INAC 2016: Total of persons registered in the band registry and living in their own community

Table 2 shows that the rate of criminalization for persons domiciled in Quebec was **3%**, whereas it was **15%** for persons domiciled in First Nations communities, representing a rate **five times higher in the open records**. In the closed records, the disparity was a little higher, with a rate of 3.4% for persons domiciled in Quebec and 17.6% for persons domiciled in First Nations communities.

Thus, these first tables establish at the outset that there was a higher rate of criminalization for records with a civic address in a First Nations community in Quebec, in both the open records and the closed records.

The following analysis provides a breakdown of the distribution of criminalization by age group.

Table 3 shows that, generally speaking, the highest rate of criminalization was found in individuals under age 35, regardless of where the accused was domiciled. However, proportionally speaking, the rate was even higher for individuals under age 35 who were domiciled in First Nations communities.



Table 3: Distribution of counts in open records, by age and address

		18-24	25-29	30-34	35-59	60+	NA	TOTAL
Counts with civic address in Quebec (outside FN community)	N	49 347	33 735	28 267	78 832	8 606	12 792	211 579
	%	23.3	15.9	13.4	37.3	4.1	6.0	100
Counts with civic address in FN community	N	1 208	998	673	1 511	82	28	4 510
		26.8	22.1	14.9	33.2	1.8	0.6	100

With regard to counts in closed records, Table 4 shows that, once again, the age groups with the highest rates of criminalization were under age 35 and that the rate of criminalization of young people was higher in the First Nations.

Table 4: Distribution of counts in closed records, by age and address

		18-24	25-29	30-34	35-59	60+	NA	TOTAL
Counts with civic address in Quebec (outside FN community)	N	59 281	36 731	32 418	91 447	8 860	17 291	246 028
	%	24.1	14.9	13.2	37.1	3.6	7.0	100
Counts with civic address in FN community	N	1 445	1 127	802	1 780	95	50	5 299
		27.3	21.3	15.1	33.5	1.7	0.9	100

Figures 1 and 2, following, illustrate the distribution of criminalization by age group (in open records and closed records) first for persons domiciled in Quebec and outside FN communities, and then for persons domiciled within a First Nations community.

Figure 1: Distribution of counts in records with addresses in Quebec (outside FN communities), by age

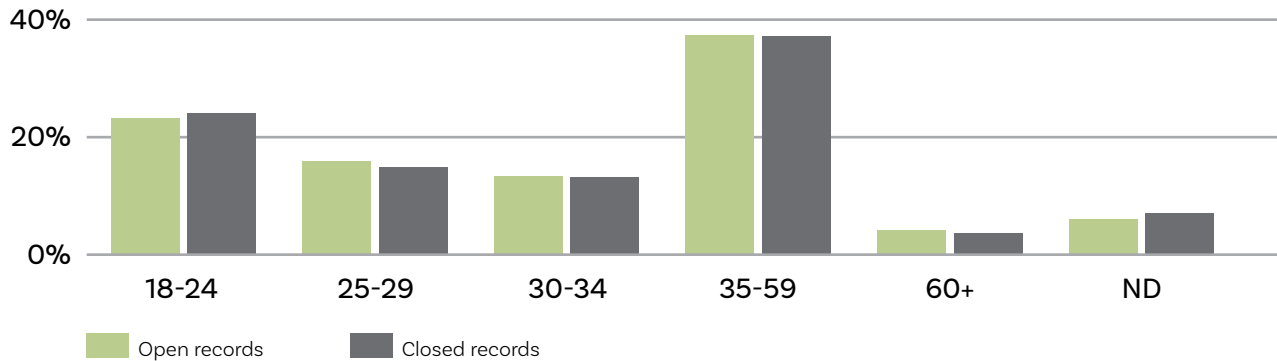
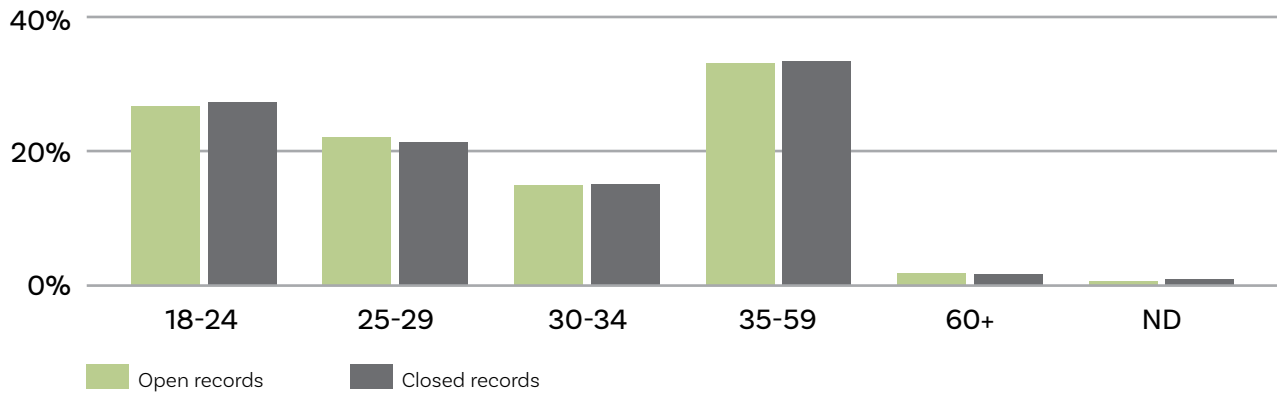


Figure 2: Distribution of counts in records with addresses in FN communities, by age





By cross-referencing the data on the domiciles and on the judicial districts (court registries) that processed the records, the address of a person in a First Nation community could be geographically located within the judicial district that processed the record.

Accordingly, Table 5 shows that for individuals with civic addresses in First Nations communities in 2016, counts were filed primarily in the following judicial districts, in descending order: Mingan, Roberval, Abitibi. Significantly fewer charges were filed in the other judicial districts.

Table 5: Distribution of counts in open records, by judicial district

Judicial district	N
Abitibi	554
Arthabaska	1
Baie-Comeau	223
Beauharnois	157
Bedford	3
Bonaventure	305
Drummond	2
Frontenac	4
Gatineau	19
Joliette	149
Labelle	152
Laval	1
Longueuil	257
Mingan	1 220
Montréal	157
Pontiac	2
Québec	90
Richelieu	14
Roberval	633
Rouyn-Noranda	2
Saguenay (Chicoutimi)	13
Saint-François	4
Saint-Maurice	145
Témiscamingue	114
Terrebonne	81
Trois-Rivières	19
NA	189

Table 6 combines the data on the judicial districts and that on the communities where the criminalized persons were domiciled. It shows that, in the vast majority of cases, the individual's community of domicile was in the judicial district where the criminalization took place. Consequently, it can be affirmed that the vast majority of cases of criminalization concerned offences committed locally, that is, on the territory of the judicial district where the person was domiciled.

Table 6: Distribution of counts in open records, by judicial district and community of domicile

Community	Judicial district	N Counts	N Domiciled	% Counts/dom.
Akwasasne	Beauharnois	66	68	97.1
	Montreal	2	0	0
Ekuanitshit – Mingan	Mingan	51	51	100
Essipit	Baie-Comeau	8	8	100
Gesgapegiag	Bonaventure	87	87	100
Kahnawake	Beauharnois	89	0	0
	Bedford	3	0	0
	Joliette	2	0	0
	Longueuil	254	499	50.9
	Montreal	146	0	0
	Terrebonne	5	0	0
Kanesatake	Beauharnois	2	0	0
	Laval	1	0	0
	Terrebonne	72	75	96
Kawawachikamach	Bonaventure	1	0	0
	Mingan	136	146	93.1
	Montreal	2	0	0
	Saguenay (Chicoutimi)	3	0	0
	Saint-François	4	0	0
	Témiscamingue	42	42	100





Community	Judicial district	N Counts	N Domiciled	% Counts/dom.
Kitcisakik	Abitibi	59	62	95.1
	Saint-Maurice	1	0	0
	Terrebonne	2	0	0
Kitigan Zibi	Abitibi	2	0	0
	Gatineau	15	0	0
	Labelle	65	85	76.4
	Montreal	1	0	0
	Pontiac	2	0	0
La Romaine – Unamen Shipu	Mingan	168	168	100
Lac-Rapide	Abitibi	5	0	0
	Gatineau	4	0	0
	Labelle	81	90	90
Lac-Simon	Abitibi	351	359	97
	Arthabaska	1	0	0
	Labelle	4	0	0
	Roberval	2	0	0
	Rouyn-Noranda	1	0	0
Listuguj	Bonaventure	217	224	96.8
	Joliette	2	0	0
	Montreal	5	0	0
Manawan	Abitibi	1	0	0
	Baie-Comeau	2	0	0
	Joliette	139	153	90.8
	Trois-Rivières	11	0	0



Community	Judicial district	N Counts	N Domiciled	% Counts/dom.
Mashteuiatsh	Joliette	6	0	0
	Mingan	1	0	0
	Roberval	195	211	92.4
	Saguenay (Chicoutimi)	4	0	0
	Saint-Maurice	3	0	0
	Terrebonne	2	0	0
Matimekush-Lac-John	Mingan	117	118	99.1
	Quebec	1	0	0.0
Nutashkuan	Mingan	86	91	94.5
	Quebec	5	0	0
Odanak	Drummond	2	0	0
	Longueuil	3	0	0
	Richelieu	14	19	73.6
Opitciwan	Mingan	9	0	0
	Abitibi (Saint-Maurice et Roberval)	454	467	97.2
	Saguenay (Chicoutimi)	4	0	0
Pakua Shipu	Mingan	38	38	100
Pessamit	Baie-Comeau	202	217	93.0
	Mingan	15	0	0
Pikogan	Abitibi	106	107	99.0
	Rouyn-Noranda	1	0	0
Timiskaming - Notre-Dame-du-Nord	Abitibi	1	0	0
	Témiscamingue	41	42	97.6



Community	Judicial district	N Counts	N Domiciled	% Counts/dom.
Uashat Mak Mani-Utenam	Baie-Comeau	11	0	0
	Mingan	593	624	95.0
	Quebec	18	0	0
	Saguenay (Chicoutimi)	2	0	0
Wemotaci	Joliette	1	0	0
	Roberval	1	0	0
	Saint-Maurice	125	127	98.4
Wendake	Frontenac	4	0	0
	Joliette	1	0	0
	Mingan	6	0	0
	Montreal	1	0	0
	Quebec	64	77	83.1
	Trois-Rivières	1	0	0
Winneway	Abitibi	24	0	0
	Labelle	2	0	0
	Témiscamingue	31	57	54.3
Wôlinak	Quebec	2	0	0
	Trois-Rivières	7	9	77.7
NA		189		

Table 7: Distribution of counts in closed records, by judicial district

Judicial district	N
Abitibi	798
Arthabaska	1
Baie-Comeau	227
Beauce	1
Beauharnois	340
Bedford	3
Bonaventure	333
Drummond	3
Gaspé	2
Gatineau	21
Iberville	2
Joliette	131
Labelle	219
Longueuil	282
Mingan	1 236
Montréal	143
Québec	122
Richelieu	11
Roberval	684
Rouyn-Noranda	1
Saguenay (Chicoutimi)	14
Saint-François	7
Saint-Maurice	176
Témiscamingue	124
Terrebonne	75
Trois-Rivières	18
NA	325

Table 7 presents the distribution by judicial district of counts in records closed in 2016 for persons domiciled in a First Nations community.





Table 7 shows that the three most active judicial districts in the closed records were the same as in open records, i.e., Mingan, Roberval and Abitibi.

Table 8 combines the data on judicial districts and the data on the communities where the criminalized persons were domiciled, in the closed records.

Table 8: Distribution of counts in closed records, by judicial district and community of domicile

Community	Judicial District	N Counts	N Domiciled	% Rec./dom.
Akwasasne	Beauharnois	148	153	96.7
	Longueuil	2	0	0
	Montréal	2	0	0
	Saint-François	1	0	0
Ekuanitshit - Mingan	Mingan	66	68	97.0
	Québec	2	0	0
Essipit	Baie-Comeau	3	3	100
Gesgapegiag	Bonaventure	86	88	97.7
	Saint-François	2	0	0
Kahnawake	Beauharnois	123	0	0
	Bedford	3	0	0
	Iberville	2	0	0
	Joliette	9	0	0
	Longueuil	280	548	51.0
	Montréal	127	0	0
	Richelieu	1	0	0
	Terrebonne	3	0	0
Kanesatake	Beauharnois	69	0	0
	Montréal	4	0	0
	Terrebonne	72	145	49.6



Community	Judicial District	N Counts	N Domiciled	% Rec./dom.
Kawawachikamach	Baie-Comeau	3	0	0
	Mingan	183	196	93.3
	Montréal	2	0	0
	Québec	1	0	0
	Saguenay (Chicoutimi)	3	0	0
	Saint-François	4	0	0
Kebaowek	Témiscamingue	20	20	100
Kitcisakik	Abitibi	61	61	100
Kitigan Zibi	Abitibi	2	0	0
	Gatineau	16	0	0
	Labelle	120	138	86.9
La Romaine – Unamen Shipu	Baie-Comeau	1	0	0
	Mingan	122	123	99.1
Lac-Rapide	Abitibi	5	0	0
	Gatineau	3	0	0
	Labelle	95	103	92.2
Lac-Simon	Abitibi	595	601	99.0
	Arthabaska	1	0	0
	Gatineau	2	0	0
	Labelle	1	0	0
	Québec	1	0	0
	Rouyn-Noranda	1	0	0
Listuguj	Bonaventure	247	257	96.1
	Gaspé	2	0	0
	Joliette	2	0	0
	Montréal	6	0	0
Manawan	Abitibi	1	0	0
	Saint-Maurice (Joliette)	114	118	96.6
	Trois-Rivières	3	0	0



Community	Judicial District	N Counts	N Domiciled	% Rec./dom.
Mashteuiatsh	Abitibi	2	0	0
	Drummond	1	0	0
	Québec	2	0	0
	Roberval	230	235	97.8
Matimekush-Lac-John	Mingan	113	113	100
Nutashkuan	Mingan	74	88	84.0
	Québec	9	0	0
	Saguenay (Chicoutimi)	5	0	0
Odanak	Drummond	2	0	0
	Richelieu	10	13	76.9
	Trois-Rivières	1	0	0
Opitciwan	Joliette	5	0	0
	Mingan	20	0	0
	Abitibi (Saint-Maurice et Roberval)	477	502	95
Pakua Shipu	Mingan	37	37	100
Pessamit	Baie-Comeau	197	212	92.9
	Mingan	4	0	0
	Québec	11	0	0
Pikogan	Abitibi	104	104	100
Timiskaming – Notre-Dame-du-Nord	Québec	1	0	0
	Témiscamingue	83	84	98.8

Community	Judicial District	N Counts	N Domiciled	% Rec./dom.
Uashat Mak Mani-Utenam	Baie-Comeau	14	0	0
	Joliette	2	0	0
	Mingan	616	656	93.9
	Montréal	1	0	0
	Québec	21	0	0
	Saguenay (Chicoutimi)	2	0	0
Wemotaci	Roberval	3	0	0
	Saint-Maurice	150	153	98.0
Wendake	Baie-Comeau	9	0	0
	Beauce	1	0	0
	Joliette	2	0	0
	Mingan	1	0	0
	Montréal	1	0	0
	Québec	74	90	82.2
	Roberval	1	0	0
	Trois-Rivières	1	0	0
Winneway	Abitibi	28	0	0
	Labelle	3	0	0
	Témiscamingue	21	52	40.3
Wôlinak	Trois-Rivières	13	13	100
NA		325		

Table 8 shows that, once again, in the vast majority of cases, the individual's community of domicile was located in the judicial district where the criminalization took place. Consequently, it can be affirmed that the vast majority of cases of criminalization concerned offences committed locally, that is, on the territory of the judicial district in which the person was domiciled.

The following tables present analyses of the criminalized population domiciled in a First Nations community.





Tables 9 and 10 present data on the distribution of counts filed in the open records and then of those filed in the closed records, by nation.

As Table 9 shows, in open records, the nations that accumulated the highest number of counts were, in descending order: the Innu nation with 1,593 counts filed (35.3%), the Algonquin nation with 890 counts (19.7%), the Atikamekw nation with 775 counts (17.2%) and finally the Mohawk nation with 660 counts (14.6%). However, as the rate of criminalization per 100 inhabitants (age 18 and older) shows, rates were proportionally higher for the Naskapi nation (32.4 per 100 inhabitants) and much lower for the Huron-Wendat, Mohawk and Abenaki nations. The records that contain a civic address in the Algonquin, Atikamekw, Innu, and Mi'gmaq nations have comparable rates (around 20 per 100 inhabitants).¹¹

Table 9: Distribution of counts in open records and rate of criminalization, by nation of accused

	Counts		Total population*	Rate per 100 inhabitants
Nation	N	%	N	
Abenaki	28	0.6	305	9.2
Algonquin	890	19.7	4 182	21.3
Atikamekw	775	17.2	3 848	20.1
Huron-Wendat	78	1.7	1 168	6.7
Innu	1 593	35.3	8 620	18.5
Mi'gmaq	331	7.3	2 020	16.4
Mohawk	660	14.6	9 456	7.0
Naskapi	155	3.4	478	32.4
Total	4 510	100	30 077	15.0

* Source: INAC 2016: Total of persons 18 and older registered in the band registry and living in their own community

¹¹ It should also be noted that one individual can accumulate several counts; indeed, a single person can be charged with several different counts in several different records.

Table 10 repeats the analysis by nation for closed records. The nations with the highest number of counts in the closed records were, in descending order, the Innu nation with 1,640 counts processed (30.9%), the Algonquin nation with 1,272 counts processed (24%), the Mohawk nation with 871 counts processed (16.4%) and, finally, the Atikamekw nation with 818 counts processed (15.4%). As the rate of criminalization per 100 inhabitants (age 18 and older) shows, the nations with the highest rates were the Naskapi and Algonquin nations (44.8 and 30.4 per 100 inhabitants, respectively), followed by the Atikamekw, Innu, and Mi'gmaq nations (at 21.3, 19.0 and 17.9, respectively).

Table 10: Distribution of counts in closed records and rate of criminalization, by nation of accused

	Counts		Total population*	Rate per 100 inhabitants
Nation	N	%	N	
Abenaki	28	0.5	305	9.2
Algonquin	1 272	24.0	4 182	30.4
Atikamekw	818	15.4	3 848	21.3
Huron-Wendat	95	1.8	1 168	8.1
Innu	1 640	30.9	8 620	19.0
Mi'gmaq	361	6.8	2 020	17.9
Mohawk	871	16.4	9 456	9.2
Naskapi	214	4.0	478	44.8
Total	5 299	100	30 077	17.6

* Source: INAC 2016: Total of persons 18 and older registered in the band registry and living in their own community

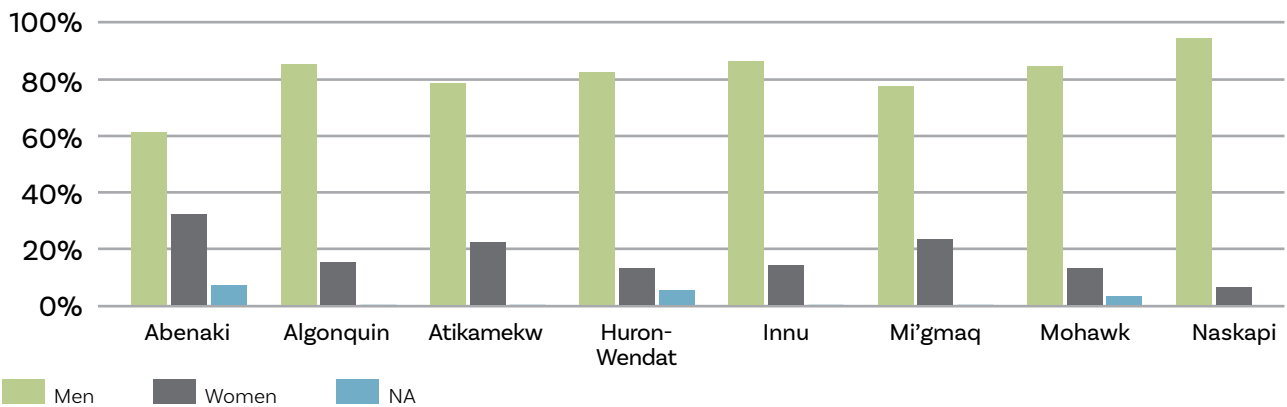




The very large majority of the open and closed records involved men (83% of open records and 84% of closed records).

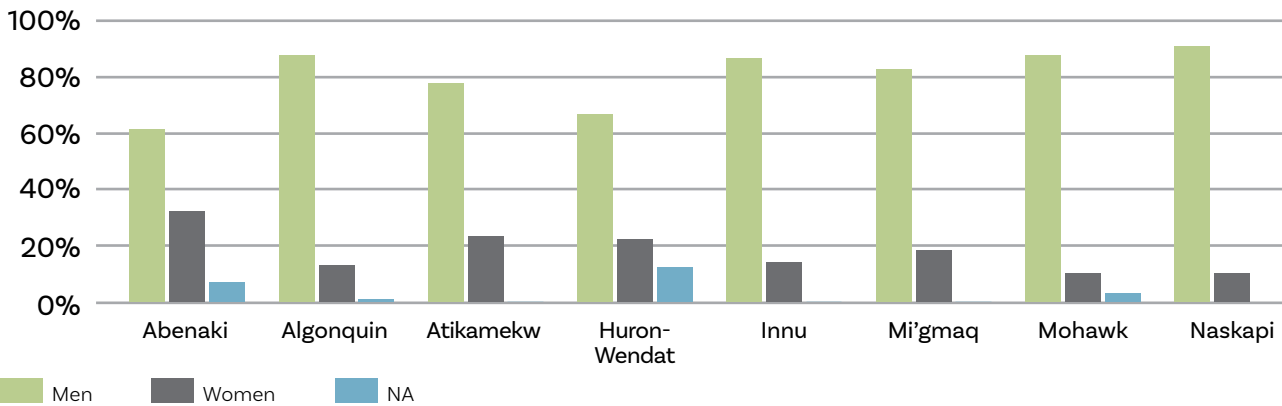
Figure 3 presents the distribution of counts in open records by sex for each nation. It shows that, proportionally speaking, in the Abenaki nation, there were significantly fewer open records involving men (61%) than there were in other nations.

Figure 3: Distribution of counts in open records, by sex and by nation



As Figure 4 shows for the closed records, Abenaki and Huron-Wendat men appeared to be proportionally less criminalized than men from other nations (61% and 66% of records, respectively).

Figure 4: Distribution of counts in closed records, by sex and by nation



The following tables present the same type of analysis in the open and closed records, by nation and age group of the persons concerned in the records analyzed.





The results in Table 11 show that the accused in the records analyzed were most frequently under age 30. More than 50% of the counts in the open records involve young people under age 30 from the Innu and Algonquin nations.

Table 11: Distribution of counts in open records, by age group and nation of accused

Nation		18-24	25-29	30-34	35-59	60+	NA	TOTAL
Abenaki	N	2	4	11	11	0	0	28
	%	7.1	14.3	39.3	39.2	0	0	100
Algonquin	N	244	231	116	285	14	0	890
	%	27.4	26.0	13.0	32.1	1.6	0	100
Atikamekw	N	191	165	175	225	19	0	775
	%	24.6	21.3	22.6	29.1	2.4	0	100
Huron-Wendat	N	29	9	14	26	0	0	78
	%	37.2	11.5	17.9	33.4	0	0	100
Innu	N	505	348	176	541	20	3	1593
	%	31.7	21.8	11.0	33.9	1.2	0.2	100
Mi'gmaq	N	70	83	79	86	13	0	331
	%	21.1	25.1	23.9	26.0	3.9	0	100
Mohawk	N	133	122	100	290	15	0	660
	%	20.2	18.5	15.2	43.9	2.3	0	100
Naskapi	N	39	37	21	57	1	0	155
		25.2	23.9	13.5	36.7	0.6	0	100
Total		1 213	999	692	1 521	82	3	4 510

Table 12 concerns closed records. The results show that, in the Innu and Algonquin nations, more than 50% of the counts in the closed records involved young people under age 30.

Table 12: Distribution of counts in closed records, by age group and nation of accused

Nation		18-24	25-29	30-34	35-59	60+	NA	TOTAL
Abenaki	N	3	4	16	5	0	0	28
	%	10.7	14.3	57.1	17.9	0.0	0	100
Algonquin	N	374	282	189	400	24	3	1 272
	%	29.4	22.2	14.9	31.5	1.9	0.2	100
Atikamekw	N	197	198	180	221	22	0	818
	%	24.1	24.2	22.0	27	2.7	0	100
Huron-Wendat	N	21	24	20	28	2	0	95
	%	22.1	25.3	21.1	29.5	2.1	0	100
Innu	N	548	363	235	482	12	0	1 640
	%	33.4	22.1	14.3	29.4	0.7	0	100
Mi'gmaq	N	94	58	68	63	14	0	361
	%	26.0	16.1	18.8	48.9	3.9	0	100
Mohawk	N	172	169	89	487	15	0	871
	%	19.7	19.4	10.2	48.9	1.7	0	100
Naskapi	N	62	32	21	93	6	0	214
		29.0	15.0	9.8	43.4	2.8	0	100
Total		1 471	1 130	818	1 782	95	3	5 299

Tables 13 ad 14 repeat the different analyses of the average age and the median age for each of the nations in the open records and the closed records. In the open records, the average age for most of the nations (except the Abenaki) was around 32-33 years old, whereas in the closed records, the average age range was bigger, spanning from 31 to 34.





Table 13: Average age and median age in open records, by nation

Nation	N	Average	Median
Abenaki	28	37.0	32.4
Algonquin	890	32.3	29.5
Atikamekw	775	32.8	30.9
Huron-Wendat	78	32.5	30.7
Innu	1 593	32.7	28.9
Mi'gmaq	331	33.1	30.4
Mohawk	660	34.9	32.9
Naskapi	155	32.7	30.2
Total	4 510	33.5	30.7

Table 14: Average age and median age in closed records, by nation

Nation	N	Average	Median
Abenaki	28	33.5	32.1
Algonquin	1 272	32.2	29.7
Atikamekw	818	32.2	30.6
Huron-Wendat	95	32.9	30.3
Innu	1 640	31.4	28.4
Mi'gmaq	361	34	32.1
Mohawk	871	35.7	35.2
Naskapi	214	35.2	31.3
Total	5 299	33.4	31.2



5.2 Nature of offences charged

The following tables present the types of offences charged by category of offence and by nation. First we present the open records, followed by the closed records. Note that we have generally preserved the categories and subcategories of offence used by Statistics Canada in its Uniform Crime Reporting Manual – UCR Manual 2016, with only two exceptions. First, we decided to isolate OAJ from the category of “other offences” because they constitute the major part of that category. In so doing, we applied the definition accepted by Statistics Canada in its study of criminal court activities in Canada. Thus, the category of OAJ include the following: “the *Criminal Code* violations of failure to comply with conditions, escape or help escape from custody, prisoner unlawfully at large, failure to appear, breach of probation, and other offences against the administration of justice (for example, impersonating a peace officer)” (Burczycka and Munch, 2015, p. 4).

The second exception concerns drug offences. Statistic Canada’s UCR Manual 2016 classifies drug offences according to the type of conduct (possession, trafficking and importing) but also according to the prohibited substance (e.g., possession of cannabis, possession of cocaine). Given that the databank provided by the MJQ did not distinguish by prohibited substance, we created new codes that reflect only the prohibited conduct, i.e., possession, trafficking, production and importing, without regard to substance.





A. Open records

Figure 5 provides a portrait of the most frequently criminalized offences in the records opened in 2016. OAJ were far and away the most frequent of all the categories combined (1,915 offences or nearly 45%), followed by offences against the person (1,150 offences or 26.5%) and other offences (703 offences, or 16.2%). Drug offences represent 294 offences or 6.1%, and offences against property represent 264 offences or 6.8%.

Figure 5: Nature of offences charged in open records

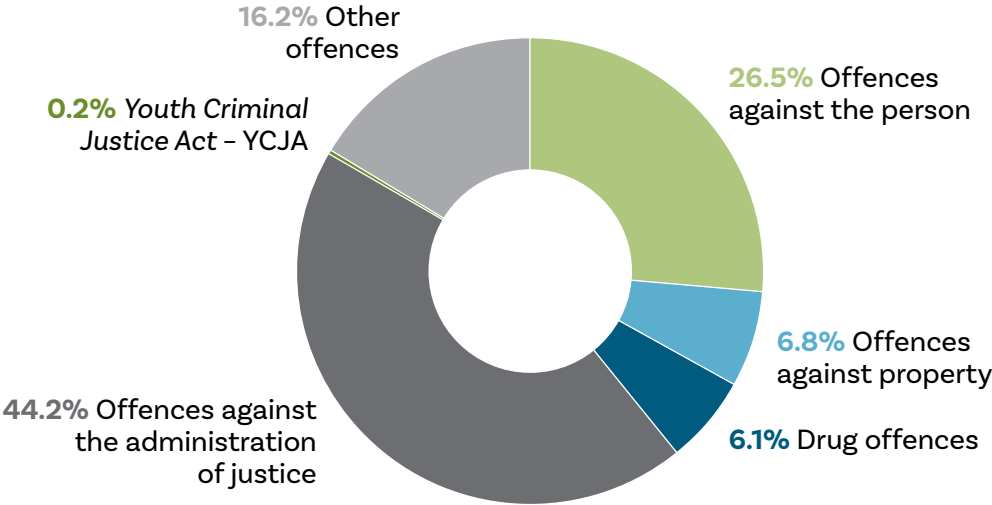


Table 15 shows that, all categories combined, the most frequent offences were the following: failure to comply with an order (842), breach of probation (688), simple assault (443), impaired driving (393), other offences against the person (302), aggravated assault (250), escape from lawful custody (190) and drug possession (181).

Table 15: Nature of offences charged in open records

Category of offence	Offence	N	%
Offences against the person (1,150; 26.5%)	Sexual assault	38	3.3
	Aggravated sexual assault	3	0.3
	Sexual assault of a child	22	1.9
	Offences and attempted offences causing death	3	0.3
	Assault against a police officer	82	7.1
	Aggravated assault	250	21.7
	Simple assault	443	38.5
	Other offences against the person	302	26.3
	Other assault	7	0.6
Offences against property (294; 6.8%)	Arson	4	1.3
	Fraud	20	6.8
	Breaking and entering	85	28.9
	Possession or trafficking of stolen goods	38	12.9
	Theft of a motor vehicle or in a motor vehicle	14	4.8
	Theft under \$5,000	127	43.2
	Theft over \$5,000	6	2.0
Drug offences (264; 6.1%)	Drug importation or production	5	1.9
	Drug possession	181	68.6
	Drug trafficking	78	29.4
Offences against the administration of justice (1,915; 44.2%)	Escape from lawful custody	190	9.9
	Other offences against the administration of justice	131	6.8
	Breach of probation	688	35.9
	Failure to appear	64	3.3
	Failure to comply with an order	842	44.0





Category of offence	Offence	N	%
Youth Criminal Justice Act – YCJA (7; 0.2%)	Youth Criminal Justice Act – YCJA	7	100
Other offences (703; 16.2%)	Offensive weapons	101	14.4
	Impaired driving	393	55.9
	Reckless driving	50	7.1
	Disturbing the peace	1	0.1
	Other driving offences	45	6.4
	Other offences	113	16.1
Total		4 333	100

Table 16 presents the analysis of the categories of offence, by nation and by sex.

The disparity between the sexes narrowed for certain offences in certain nations. For example, among persons with a civic address in the Algonquin and the Atikamekw nations, there were practically as many records involving women charged with drug offences as there were involving men charged with the same type of offence (31 and 24 men; 27 and 20 women).

Table 16: Nature of offences charged in open records, by sex and by nation*

		Sex			
Nation	Category of offence	M	W	NA	TOTAL
Abenaki	Offences against the person	-	-	-	6
	Offences against property	-	-	-	2
	Drug offences	8	4	0	12
	Offences against the administration of justice	-	-	-	3
	Other offences	-	-	-	5
	Subtotal	17	9	2	28



		Sex			
Nation	Category of offence	M	W	NA	TOTAL
Algonquin	Offences against the person	194	32	0	226
	Offences against property	47	6	0	53
	Drug offences	31	27	0	58
	Offences against the administration of justice	322	44	0	366
	Youth Criminal Justice Act – YCJA	-	-	-	5
	Other offences	113	23	0	136
	Subtotal	712	132	0	844
Atikamekw	Offences against the person	178	34	0	212
	Offences against property	33	7	0	40
	Drug offences	24	20	0	44
	Offences against the administration of justice	230	56	1	287
	Other offences	117	47	0	164
	Subtotal	746	164	1	911
Huron-Wendat	Offences against the person	-	-	-	9
	Offences against property	-	-	-	5
	Drug offences	-	-	-	8
	Offences against the administration of justice	27	3	2	32
	Other offences	18	5	0	23
	Subtotal	64	9	4	75
Innu	Offences against the person	386	61	0	447
	Offences against property	91	19	0	110
	Drug offences	69	16	0	85
	Offences against the administration of justice	617	77	0	694
	Other offences	151	39	0	190
	Subtotal	1 314	212	0	1 526



		Sex			
Nation	Category of offence	M	W	NA	TOTAL
Mi'gmaq	Offences against the person	48	25	0	73
	Offences against property	26	4	0	30
	Drug offences	14	2	0	16
	Offences against the administration of justice	107	37	0	144
	Youth Criminal Justice Act – YCJA	-	-	-	1
	Other offences	39	8	0	47
	Subtotal	235	76	0	311
Mohawk	Offences against the person	97	25	0	122
	Offences against property	40	6	0	46
	Drug offences	30	7	0	37
	Offences against the administration of justice	103	20	3	126
	Other offences	269	27	15	311
	Subtotal	539	85	18	642
Naskapi	Offences against the person	47	3	0	50
	Offences against property	-	-	-	7
	Drug offences	-	-	-	3
	Offences against the administration of justice	67	6	0	73
	Youth Criminal Justice Act – YCJA	-	-	-	1
	Other offences	12	0	0	12
	Subtotal	137	9	0	146
Total		3 600	696	25	4 321

*For confidentiality reasons, the sex in the record is not indicated where there were less than ten records.

Table 17 shows that, in all nations, young people under age 35 were the most criminalized, being targeted by 64% of the counts overall. This rate rises to 78.4% and 79% in the Atikamekw and Mohawk nations. This overrepresentation exists in all categories of offence, except in the Abenaki nation, whose data was removed to preserve the confidentiality of the individuals.

Table 17: Nature of offences charged in open records, by age group and nation*

Nation	Category of offence	18- 34	35-59	+60	NA	TOTAL
Abenaki	Offences against the person	-	-	-	-	6
	Offences against property	-	-	-	-	2
	Drug offences	4	8	0	0	12
	Offences against the administration of justice	-	-	-	-	3
	Other offences	-	-	-	-	5
	Percentage (%)	-	-	-	-	100
Algonquin	Offences against the person	186	36	4	0	226
	Offences against property	40	13	0	0	53
	Drug offences	43	15	0	0	58
	Offences against the administration of justice	296	74	1	0	370
	Youth Criminal Justice Act – YCJA	-	-	-	-	5
	Other offences	89	36	7	0	132
	Percentage (%)	77.5	20.6	1.4	0	100
Atikamekw	Offences against the person	174	32	6	0	212
	Offences against property	30	9	1	0	40
	Drug offences	37	7	0	0	44
	Offences against the administration of justice	251	44	5	0	300
	Other offences	94	50	7	0	151
	Percentage (%)	78.4	19.0	2.5	0	100
Huron-Wendat	Offences against the person	-	-	-	-	9
	Offences against property	-	-	-	-	5
	Drug offences	-	-	-	-	8
	Offences against the administration of justice	35	6	0	0	41
	Other offences	8	6	0	0	14
	Percentage (%)	78.2	21.8	0	0	100





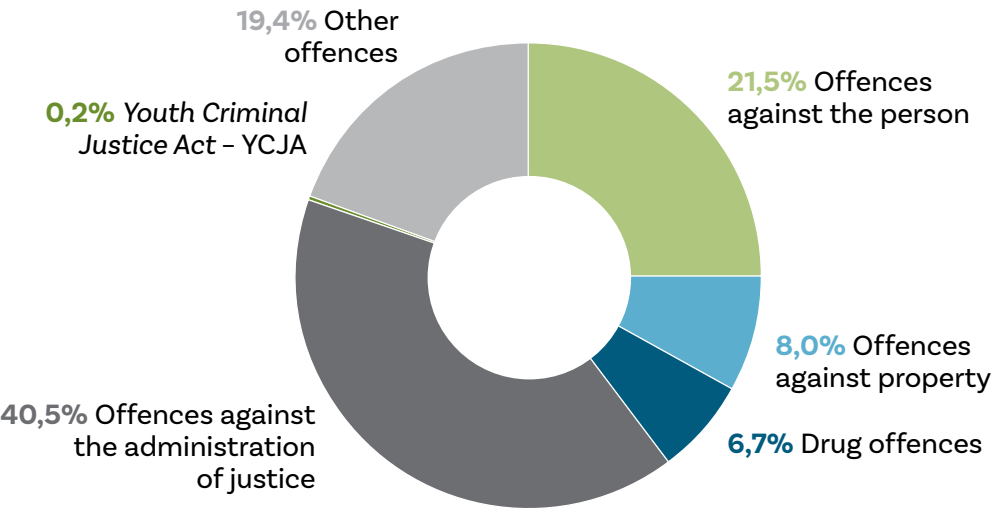
Nation	Category of offence	18- 34	35-59	+60	NA	TOTAL
Innu	Offences against the person	344	100	2	1	447
	Offences against property	75	30	5	0	110
	Drug offences	49	30	5	1	85
	Offences against the administration of justice	573	143	3	1	720
	Other offences	110	49	5	0	164
	Percentage (%)	75.4	23.1	1.3	0.2	100
Mi'gmaq	Offences against the person	57	11	5	0	73
	Offences against property	26	4	0	0	30
	Drug offences	15	1	0	0	16
	Offences against the administration of justice	114	24	8	0	146
	Youth Criminal Justice Act – YCJA	-	-	-	-	1
	Other offences	34	11	0	0	45
	Percentage (%)	79.1	16.4	4.2	0	100
Mohawk	Offences against the person	83	35	4	0	122
	Offences against property	33	13	0	0	46
	Drug offences	30	5	2	0	37
	Offences against the administration of justice	175	82	3	0	260
	Other offences	103	68	6	0	177
	Percentage (%)	66.0	31.6	2.3	0	100
Naskapi	Offences against the person	39	11	0	0	50
	Offences against property	-	-	-	-	7
	Drug offences	-	-	-	-	3
	Offences against the administration of justice	56	18	1	0	75
	Youth Criminal Justice Act – YCJA	-	-	-	-	1
	Other offences	6	4	0	0	10
	Percentage (%)	69.2	22.6	0.7	0	100
Total (N)		2 767	1 471	80	3	4 321
Total (%)		64.0	34.0	1.9	0.1	100

*For confidentiality reasons, the age in the record is not indicated where there were less than ten records.

B. Closed records

The analysis of the closed records repeats the same approach. Figure 6 and Table 18 show that the main offences were OAJ (2,015), offences against the person (1,249), and other offences (966).

Figure 6: Nature of offences charged in closed records



The most common specific offences against the administration of justice were failure to comply with an order (811) and breach of probation (789), as Table 18 shows.



Table 18: Nature of offences charged in closed records

Category of offence	Offence	N
Offences against the person (1 249; 25.1%)	Sexual assault	23
	Aggravated sexual assault	2
	Sexual assault of a child	27
	Offences and attempted offences causing death	4
	Assault against a police officer	92
	Aggravated assault	248
	Simple assault	508
	Other offences against the person	334
	Other assault	11
Offences against property (399; 8%)	Arson	1
	Fraud	82
	Breaking and entering	101
	Possession or trafficking of stolen goods	53
	Theft of a motor vehicle or in a motor vehicle	25
	Theft under \$5,000	129
	Theft over \$5,000	8
Drug offences (333; 6.7%)	Drug importation or production	13
	Possession of drugs	207
	Drug trafficking	113
Offences against the administration of justice (2 015; 40.5%)	Escape from lawful custody	158
	Offences against the administration of justice	173
	Breach of probation	789
	Failure to appear	84
	Failure to comply with an order	811
Youth Criminal Justice Act – YCJA (12; 0.2%)	Youth Criminal Justice Act – YCJA	12

Category of offence	Offence	N
Other offences (966; 19.4%)	Offensive weapons	111
	Impaired driving	494
	Reckless driving	57
	Other driving offences	58
	Other offences	246
Total		4 974

Table 19 presents the distribution of the nature of offences according to the six broad categories of offence, by nation and by sex, in the closed records. It shows that records for offences against the administration of justice involved an equal number of men and women. Moreover, records of this type of offence were the most common in all the First Nations, except for the Abenaki.

Table 19: Nature of offences in closed records, by sex and nation*

		Sex			
Nation	Category of offence	H	F	NA	TOTAL
Abenaki	Offences against the person	-	-	-	4
	Offences against property	-	-	-	4
	Drug offences	-	-	-	7
	Offences against the administration of justice	-	-	-	3
	Other offences	-	-	-	8
	Subtotal	-	-	-	26
Algonquin	Offences against the person	280	26	1	307
	Offences against property	80	19	0	99
	Drug offences	60	10	1	71
	Offences against the administration of justice	410	61	4	475
	Youth Criminal Justice Act – YCJA	-	-	-	8
	Other offences	170	31	2	203
	Subtotal	-	-	-	1 163





		Sex			
Nation	Category of offence	H	F	NA	TOTAL
Atikamekw	Offences against the person	184	35	0	219
	Offences against property	35	4	0	39
	Drug offences	24	16	0	40
	Offences against the administration of justice	227	65	1	293
	Other offences	124	58	0	182
	Subtotal	594	178	1	773
Huron-Wendat	Offences against the person	9	3	6	18
	Offences against property	-	-	-	4
	Drug offences	12	0	0	12
	Offences against the administration of justice	27	6	0	33
	Other offences	11	8	4	23
	Subtotal	-	-	-	90
Innu	Offences against the person	353	62	0	415
	Offences against property	96	23	0	119
	Drug offences	68	21	0	89
	Offences against the administration of justice	646	82	2	730
	Other offences	152	30	0	182
	Subtotal	1 315	218	2	1 535
Mi'gmaq	Offences against the person	91	20	0	111
	Offences against property	22	3	0	25
	Drug offences	7	5	0	12
	Offences against the administration of justice	110	26	0	136
	Youth Criminal Justice Act – YCJA	-	-	-	4
	Other offences	47	10	0	57
	Subtotal	-	-	-	345

		Sex			
Nation	Category of offence	H	F	NA	TOTAL
Mohawk	Offences against the person	110	16	0	126
	Offences against property	85	11	0	96
	Drug offences	79	11	0	90
	Offences against the administration of justice	205	12	20	237
	Other offences	260	34	3	297
	Subtotal	739	84	23	846
Naskapi	Offences against the person	39	10	0	49
	Offences against property	12	1	0	13
	Drug offences	12	0	0	12
	Offences against the administration of justice	101	7	0	108
	Other offences	13	1	0	14
	Subtotal	177	19	0	196
Total		4 191	736	47	4 974

*For confidentiality reasons, the sex entered in the record is not indicated when there were less than ten records.

Finally, Table 20 shows the distribution of the nature of the offences, by age group, in the closed records. Here again, the most common records involved individuals under age 35, representing 64.2% of accused, and the most frequent counts in these cases were for offences against the administration of justice.





Table 20: Nature of offences charged in closed records, by age group and nation*

Nation	Category of offence	18-34	35-59	+60	NA	TOTAL
Abenaki	Offences against the person	-	-	-	-	4
	Offences against property	-	-	-	-	4
	Drug offences	-	-	-	-	7
	Offences against the administration of justice	-	-	-	-	3
	Other offences	-	-	-	-	8
	Percentage (%)	-	-	-	-	100
Algonquin	Offences against the person	206	97	4	0	307
	Offences against property	64	35	0	0	99
	Drug offences	55	15	1	0	71
	Offences against the administration of justice	331	139	2	3	475
	Youth Criminal Justice Act - YCJA	8	0	0	0	8
	Other offences	104	83	16	0	203
	Percentage (%)	66.0	31.7	2.0	0.3	100
Atikamekw	Offences against the person	165	48	6	0	212
	Offences against property	29	9	1	0	39
	Drug offences	38	2	0	0	40
	Offences against the administration of justice	209	88	6	0	293
	Other offences	104	70	8	0	182
	Percentage (%)	71.1	28.3	2.7	0	100
Huron-Wendat	Offences against the person	12	6	0	0	18
	Offences against property	-	-	-	-	4
	Drug offences	10	2	0	0	12
	Offences against the administration of justice	24	9	0	0	33
	Other offences	14	7	2	0	23
	Percentage (%)	-	-	-	-	100



Nation	Category of offence	18-34	35-59	+60	NA	TOTAL
Innu	Offences against the person	275	136	4	0	415
	Offences against property	74	44	1	0	119
	Drug offences	58	31	0	0	89
	Offences against the administration of justice	539	190	1	0	730
	Other offences	115	71	6	0	182
	Percentage (%)	69.1	30.7	0.8	0	100
Mi'gmaq	Offences against the person	60	42	9	0	111
	Offences against property	18	7	0	0	25
	Drug offences	5	7	0	0	12
	Offences against the administration of justice	74	50	2	0	136
	Youth Criminal Justice Act - YCJA	-	-	-	-	4
	Other offences	37	17	3	0	57
	Percentage (%)	-	-	-	-	100
Mohawk	Offences against the person	55	70	1	0	126
	Offences against property	39	51	6	0	96
	Drug offences	54	35	1	0	90
	Offences against the administration of justice	122	115	0	0	237
	Other offences	151	140	6	0	297
	Percentage (%)	49.8	48.6	1.7	0	100
Naskapi	Offences against the person	29	19	1	0	49
	Offences against property	10	22	1	0	13
	Drug offences	8	4	0	0	12
	Offences against the administration of justice	53	51	4	0	108
	Other offences	9	5	0	0	14
	Percentage (%)	55.6	51.5	3.1	0	100
Total (N)		3 195	1 684	92	3	4 974
Total (%)		64.2	33.9	1.9	0.1	100

*For confidentiality reasons, the age in the record was not indicated when there were less than ten records.



Offences committed in specific circumstances

The databank contained information about the circumstances surrounding some of the offences. In particular, it specified when an offence was committed in a situation of conjugal violence or violence against the elderly, or when it involved the sexual or physical abuse of a child. For the purposes of this analysis, it is assumed that most if not all of these offences fall within in the category of offences against the person.

As stated above, there are 1,249 charges in the category of offences against the person in the 2016 closed cases, representing 25.1%. Of these, 36.0% were committed in a situation of conjugal violence, 3.8% concerned the sexual abuse of children, 3.3% the physical abuse of children, and 0.2% violence against the elderly.

Table 21: Offences against the person committed in a situation of violence in closed cases

Offences against the person	N	%
Type of violence		
Conjugal violence	450	36.0
Sexual abuse of children	47	3.8
Physical abuse of children	42	3.4
Violence against the elderly	3	0.2
Other	157	12.6
Subtotal (offences committed in a situation of violence)	699	56.0
Other types of offences against the person	550	44.0
Total (all offences against the person)	1 249	100

It is worth noting the high number of offences committed in a situation of conjugal violence. In Quebec, these offences are targeted by a so-called zero-tolerance policy resulting in automatic criminalization,¹² which was met with resistance in some First Nations communities. In 2015, in response to pressure applied by First Nations representatives, the Quebec government agreed to review its Alternative Measures Program for adults in Aboriginal communities, first adopted in 2001, to include some offences committed in a situation of conjugal violence (excluding those causing serious bodily harm and sexual assault) (Ministère de la Justice du Québec, 2015).

To conclude this section, we feel it is necessary to consider offences against the administration of justice (OAJ) more specifically.

First, the frequency of OAJ was extremely high in records in which the person provided a civic address in a First Nations community. Not only did they represent 44.2% of all the offences in the open records and 40.5% of those in the closed records, but the two most frequent offences were OAJ, far outstripping offences against the person and the offence of impaired driving.

To compare, OAJ represented 23% of all cases involving adults that were settled before the courts in 2014-2015. And a third of the cases settled in Quebec in 2013-2014 contained at least one offence of this type (20,195 out of 62,844) (Burczycka and Munch, 2015).

OAJ are different from other offences because they arise directly from judicial activity itself. In other words, they are the result of the (over)representation of the First Nations. The two most common offences were related to conditions imposed during the pre-trial release of criminalized persons (failure to comply with an order) and as part of a probation order (breach of probation). The conditions might prohibit a series of behaviours, from disturbances of the peace, to alcohol consumption, to being in a specific location or in contact with specific persons named in an order. Thus, the conduct charged against the accused was often not a criminal offence in itself (it is not illegal to be in a park or to drink alcohol), but it becomes so, solely because it is included in a judicial order.

¹² Quebec, Comité interministériel de coordination en matière de violence conjugale et familiale, *Politique d'intervention en matière de violence conjugale: prévenir, dépister, contre la violence conjugale*, Québec, Government of Quebec, 1995. See also *Directive du Directeur des poursuites criminelles et pénales : Violence conjugale - Intervention du procureur (VIO-1)*, p. 1.



In this respect, it is worth noting that the high number of offences in connection with the administration of justice tends to shine a different light on writings in Canada on the issue of violent crime perpetrated by First Nations. Nevertheless, in this category of offence, more than one third were committed in a situation of conjugal violence, a fact that should give rise to some reflection on best practices when dealing with these specific issues (Brassard and Spielvogel, 2018).

5.3 Legal process: Stage of entering plea of guilty or not guilty

Following our analysis of the nature of the alleged acts, it is now relevant to consider the stages of the legal processes in the records. Sections 5.3 and 5.4 deal with the pleas and the court decisions, as well as the sentences imposed when the outcome

was a guilty verdict. Since these constitute the advanced stages of criminal procedure, we set aside the records that were open (and therefore still in progress), out of a concern for presenting the most reliable picture possible. Accordingly, this section presents an analysis only of records that were closed in 2016. In other words, the analysis was performed on cases once the entire legal process was complete.

As the tables below reveal, a large amount of information about the history of the criminalized individuals was missing from the MJQ databank. The portrait provided is therefore limited.

Table 22 presents the frequency of the type of plea (guilty, not guilty) entered in the records, by category of offence, in all records closed in 2016.



Table 22: Frequency of guilty pleas, by category of offence, in closed records

		Frequency					
		Guilty		Not guilty		Not avail.	
Category of offence	Offence	N	%	N	%	N	%
Offences against the person	Sexual assault	7	30.4	8	34.8	8	34.8
	Aggravated sexual assault	0	0	0	0	2	100
	Sexual assault of child	8	29.6	7	25.9	12	44.4
	Offences and attempted offences causing death	2	50.0	2	50.0	0	0
	Assault against a peace officer	55	59.8	20	21.7	17	18.5
	Aggravated assault	81	32.7	79	31.9	88	35.5
	Simple assault	235	46.3	180	35.4	93	18.3
	Other assault	3	27.3	1	9.1	7	63.6
	Other offences against the person	117	35.0	114	34.1	103	30.8
	Subtotal	508	40.7	411	32.9	330	26.4
Property offences	Arson	1	100	0	0	0	0
	Fraud	30	36.6	4	4.9	48	58.5
	Breaking and entering	47	46.5	22	21.8	32	31.7
	Possession or trafficking of stolen property	24	45.3	13	24.5	16	30.2
	Theft of or in a motor vehicle	11	44.0	9	36.0	5	20.0
	Theft under \$5,000	94	72.9	24	18.6	11	8.5
	Theft under \$5,000	4	50.0	1	12.5	3	37.5
	Subtotal	211	52.9	73	18.3	115	28.8
Drug offences	Drug importation or production	2	15.4	0	0	11	84.6
	Drug possession	168	81.2	28	13.5	11	5.3
	Drug trafficking	55	48.7	14	12.4	44	38.9
	Subtotal	225	67.6	42	12.6	66	19.8





		Frequency					
		Guilty		Not guilty		Not avail.	
Category of offence	Offence	N	%	N	%	N	%
Offences against the administration of justice	Escape from lawful custody	49	31.0	14	8.9	95	60.1
	Offences against the administration of justice	111	64.2	38	22.0	24	13.9
	Breach of probation	469	59.4	223	28.3	97	12.3
	Failure to appear	44	52.4	24	28.6	16	19.0
	Failure to comply with an order	445	54.9	151	18.6	215	26.5
	Subtotal	1 118	55.5	450	22.3	447	22.2
Youth Criminal Justice Act – YCJA	Youth Criminal Justice Act – YCJA	9	75.0	1	8.3	2	16.7
Other offences	Offensive weapons	55	49.5	23	20.7	33	29.7
	Impaired driving	231	46.8	200	40.5	63	12.8
	Dangerous driving	14	24.6	27	47.4	16	28.1
	Disturbing the peace	1	100	0	0	0	0
	Other driving offences	39	67.2	10	17.2	9	15.5
	Other offences	65	26.5	53	21.6	127	51.8
	Subtotal	405	41.9	313	32.4	248	25.7
Total		2 476	49.8	1 290	25.9	1 208	24.3

In total, criminalized individuals with a civic address in a First Nations community pleaded guilty in nearly half of the cases (49.8%; 2,476 records) and not guilty in 25.9% of the cases (1,290 records). Data for 24.3% of the cases (1,208 records) is not available, however. Moreover, with regard to eight offences, the rate of missing data is higher than the rate of pleas entered (sexual assault, aggravated sexual assault, sexual assault of a child, aggravated assault, other assault, drug importation or production, and escape from lawful custody).

In terms of categories of offence, the rate of guilty pleas was highest for offences alleged under the Youth Criminal Justice Act – YCJA (75%), followed by drug offences (67.6%) and offences against the administration of justice (55.5%). In contrast, the categories of offence with the highest rate of not guilty pleas were offences against the person (32.9%) and other offences (29.1%). That being said, it is difficult to draw a definitive conclusion, since the rate of missing data is significantly higher (by at least 10%) for offences against the person, property offences, and other offences.

While it is difficult to reach a conclusion on the nature of the offences, it is still worth noting that guilty pleas were entered in nearly half of the records. If we removed the missing data from our analysis, nearly 66% of the records about which we have the information would contain a guilty plea.

Table 23 presents the percentage frequency of the type of plea entered in the accused’s record (guilty, not guilty, or data not available), by nation, in all the records closed in 2016.

Table 23: Frequency of guilty pleas, by nation, in closed records

Nation	Frequency					
	Guilty		Not guilty		NA	
	N	%	N	%	N	%
Abenaki	19	73.1	6	23.1	1	3.9
Algonquin	734	63.1	202	17.4	227	19.5
Atikamekw	433	56.0	248	32.1	92	11.9
Huron-Wendat	62	68.9	15	16.7	13	14.4
Innu	778	50.7	390	25.4	367	23.9
Mi'gmaq	183	53.0	122	35.4	40	11.6
Mohawk	194	22.9	245	29.0	407	48.1
Naskapi	73	37.2	62	31.6	61	31.1
Total	2 476	49.8	1 290	25.9	1 208	24.3





Among the records of individuals with a civic address in a First Nations community, the nations with the highest rates of guilty pleas were the Abenaki (73.1%), Huron-Wendat (68.9%), Algonquin (63.1%) and Atikamekw (56%) nations. The highest rates of not guilty pleas were among the Mi'gmaq (35.4%), Atikamekw (32.1%) and Naskapi (31.6%). However, the highest rate of missing data was from the Mohawk (48.1%) nation, followed by the Naskapi (31.1%) and the Innu (23.9%). The data about the Abenaki, Mi'gmaq and Atikamekw was the most reliable.

Other data on court decisions

We also analyzed data on the distribution of court decisions (guilty verdict, acquittal, stay of proceedings, count rejected, withdrawn or struck due to transfer, and others). A large amount of data was missing from the databank in this category, however. For example, 73.1% of the data is missing for records with a civic address in an Abenaki community, 63.3% for those with an address in the Huron-Wendat nation and 55% for those with an address in the Algonquin nation. Given the significant amount of missing data and a real doubt as to the reliability of the data entered, we decided not to present an analysis of the different types of court decisions. Consequently, the following analysis of the sentences is based on convictions in closed records without regard to the manner in which the individual's guilt was established, be it by guilty plea or guilty verdict.

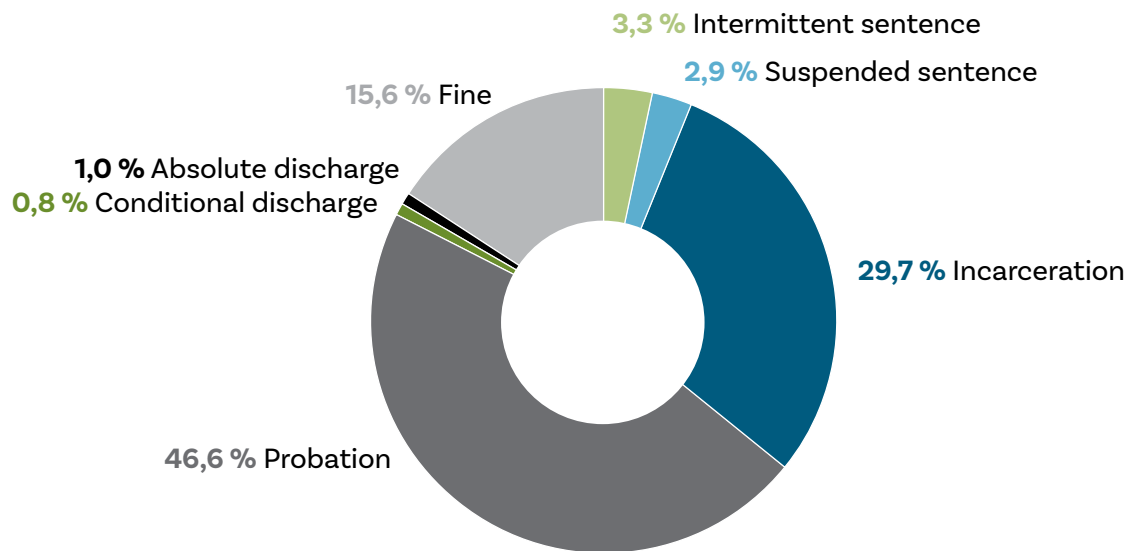
5.4 Sentences

In this subsection, we consider the type of sentences imposed on criminalized individuals in the closed records studied. The sample analyzed is reduced. First, as in the preceding section, we focus only on records closed in 2016. Second, sentences were not imposed for all of the alleged offences included in the databank, but only when the individual was found guilty (after pleading guilty or receiving a guilty verdict). No sentence was imposed when a stay of proceedings was ordered, when a count was rejected or withdrawn, or when the accused was acquitted.

To analyze the data on sentences of imprisonment, we had to make a few decisions. The total number of sentences of imprisonment imposed was obtained by counting the number of cases where the length of the prison term was specified in the databank. Then, we assumed that imprisonment was a sentence of incarceration when the databank indicated a prison term but no mention was made of the imprisonment being "intermittent" or "suspended". It is possible that, in doing so, we overestimated the number of sentences of incarceration. In some cases, the sentence imposed might have been suspended or intermittent but that information was not recorded in the databank. We note, however, that intermittent imprisonment is a form of incarceration, since it is served in a detention facility, albeit intermittently (typically, on weekends).

Figure 7 shows that the most frequently imposed sentences were probation (1,589), sentences of incarceration (1,013) and fines (532).

Figure 7: Distribution of types of sentences in closed records



Overall, there were 2,575 counts with convictions in the closed records. The number of sentencing elements ordered in connection with those counts was 3,409, due to the existence of convictions with multiple sentences. To make this determination, we followed the methodology used by Statistics Canada in its Integrated Criminal Court Survey (Maxwell, 2017; Table 5). Our aim was to get a clear picture of all the sentences ordered and the weight of each type of sentence in the context of all the sentences taken together.

Table 24 shows that most criminalized persons with a civic address in a First Nations community received a probationary sentence, either on its own or combined (1,589 or 46.6% of the total number of sentences imposed), followed closely by imprisonment (1,227 or 36%) alone or combined, while fines were ordered





in only 532 cases of offences with convictions (15.6%). Finally, discharges were rarely used, representing only 61 cases in all. When a discharge was granted, however, it was absolute in the majority of cases (in 35 cases or 57.4% of discharges). It should be recalled that a conditional discharge is a discharge combined with probation. A probationary sentence followed a prison sentence in 717 cases, while the combination of probation and a fine was ordered in only 6 cases.

Table 24: Number of convictions with at least one sentencing element, by type, in closed records

Category of sentence	Sentence	N	%
Imprisonment	Total	1 227	36.0
	Intermittent	114	3.3
	Suspended	100	2.9
	Incarceration	1 013	29.7
Probation	Total	1 589	46.6
Discharge	Total	61	1.8
	Conditional	26	0.8
	Absolute	35	1.0
Fine	Total	532	15.6
Imprisonment and probation	Total	717	
Imprisonment and fine	Total	6	
Total		3 409	100

In comparison, probation was the most frequently imposed sentence in 2014-2015, when 43% of cases settled in adult court in Canada resulted in probation, whereas imprisonment was ordered in 36.8% of cases and a fine in 31.3% (Maxwell, 2017). Thus, the data basically follows the same trends as in the rest of Canada, except with respect to fines.

Table 24 and Figure 7 also show that incarceration was clearly favoured (in 1,013 cases or 82.6%) over suspended sentences (8.2%) or intermittent sentences (9.3%). It should also be recalled that intermittent imprisonment is a sentence of incarceration and that, therefore, incarceration was favoured in 92% of cases.

According to a recent study of the Ministère de la Sécurité publique du Québec, in 2012-2013, only 1% of inmates ordered to serve intermittent sentences claimed to be of Inuit origin or from a First Nation (2016). Our results also tend to show that intermittent sentences were rarely used.

Table 25, which analyzes the type of sentences ordered (single or multiple) per nation, shows that probation was the sentence most frequently imposed on persons with a civic address in all the First Nations communities studied (again, there were more sentences that included probation than sentences that included prison terms). Nonetheless, prison sentences were imposed in 41.8% (425 cases) of the records when the person convicted was Algonquin. That number was 35% (361 cases) where the accused was Innu; 33% (119 cases) when the person was Mohawk; and 29.2% (168 cases) when the accused was from the Atikamekw nation.

Table 25: Type of sentences imposed in closed cases, by nation

Nation	Type of imprisonment	N	%
Abenaki	Prison	6	25.0
	Probation	8	33.3
	Discharge	2	8.3
	Fine	8	33.3
	Subtotal	24	100
Algonquin	Prison	425	41.9
	Probation	439	43.3
	Discharge	19	1.9
	Fine	132	13.0
	Subtotal	1 015	100
Atikamekw	Prison	168	29.2
	Probation	304	52.9
	Discharge	3	0.5
	Fine	100	17.4
	Subtotal	575	100





Nation	Type of imprisonment	N	%
Huron-Wendat	Prison	36	37.9
	Probation	52	54.7
	Discharge	2	2.1
	Fine	5	5.3
	Subtotal	95	100
Innu	Prison	361	35.2
	Probation	484	47.2
	Discharge	18	1.8
	Fine	163	15.9
	Subtotal	1 026	100
Mi'gmaq	Prison	90	38.5
	Probation	115	49.1
	Discharge	2	0.9
	Fine	27	11.5
	Subtotal	234	100
Mohawk	Prison	119	33.4
	Probation	136	38.2
	Discharge	12	3.4
	Fine	89	25.0
	Subtotal	356	100
Naskapi	Prison	22	26.2
	Probation	51	60.7
	Discharge	3	3.5
	Fine	8	9.5
	Subtotal	84	100
Total		3 409	

In Table 26, the results show the specific type of sentence imposed, by nation. Our analysis of imprisonment reveals that most prison sentences were sentences of incarceration. The highest percentage of sentences of incarceration were found in the following nations, in descending order: Naskapi (100%; 22/22 sentences), Algonquin (86.6%; 368/425 sentences), Innu (85%; 307/361 sentences) and Atikamekw (81.5%; 137/165 sentences).

Table 26: Type of sentences imposed and nature of sentences, by nation, in closed records

Nation	Imprisonment				Probation	Discharge			Fine	TOTAL
	Total	Interm.	Susp.	Incarc.		Total	Cond.	Abs.		
Abenaki	6	0	4	2	8	2	0	2	8	24
Algonquin	425	16	41	368	439	19	7	12	132	1 015
Atikamekw	168	16	15	137	304	3	2	1	100	575
Huron-Wendat	36	6	0	30	52	2	0	2	5	95
Innu	361	34	20	307	484	18	7	11	163	1 026
Mi'gmaq	90	1	19	70	115	2	2	0	27	234
Mohawk	119	41	1	77	136	12	8	4	89	356
Naskapi	22	0	0	22	51	3	0	3	8	84
Total	1 227	114	100	1 013	1 589	61	26	35	532	3 409

Table 27 analyzes which type of sentence (single or multiple) was ordered for which category of offence. For OAJ, prison sentences were ordered in 622 cases, representing 51.5% of prison sentences, and probation was ordered in 692 cases, representing 43.5% of probationary sentences. Offences against the person were punished by prison sentences in 262 cases, representing 21.3% of prison sentences, and by probation in 465 cases, representing 29.2% of prison sentences.

In terms of the type of sentence imposed, imprisonment was less frequent in cases of offences against the person (33% or 262/774 sentences) than in cases of OAJ (42.5% or 632/1,485 sentences). According to Burczycka and Munch (2015), being charged with and eventually convicted of an OAJ considerably increases the probability of receiving a prison sentence: in 2013-2014, the rate of incarceration was 53% in OAJ cases, compared with 22% in non-OAJ cases.





Table 27: Types of sentences imposed in closed records, by category of offence

Category of offence	Imprisonment				Probation	Discharge			Fine	TOTAL
	Total	Interm.	Susp.	Incarc.		Total	Cond.	Abs.		
Offences against the person	262	19	30	213	465	22	16	6	25	774
Offences against property	104	11	18	75	164	9	4	5	26	303
Drug offences	83	16	10	57	122	16	2	14	88	309
Offences against the administration of justice	632	42	36	554	692	12	2	10	149	1 485
Youth Criminal Justice Act – YCJA	6	0	0	6	5	0	0	0	0	11
Other offences	140	26	6	108	141	2	2	0	244	527
Total	1 227	114	100	1 013	1 589	61	26	35	532	3 409

In the following tables, the analysis focuses more closely on specific sentences and their characteristics (term, amount, as appropriate). We will begin with imprisonment.

Sentences of imprisonment

In Tables 28 to 30, we analyze the length of prison terms according to type of imprisonment in the closed records, first as a whole, then by nation, and finally by category of offence.

Figure 8 shows that persons with a civic address in a First Nations community were generally incarcerated for short periods.

Figure 8: Term of sentences of incarceration in closed records

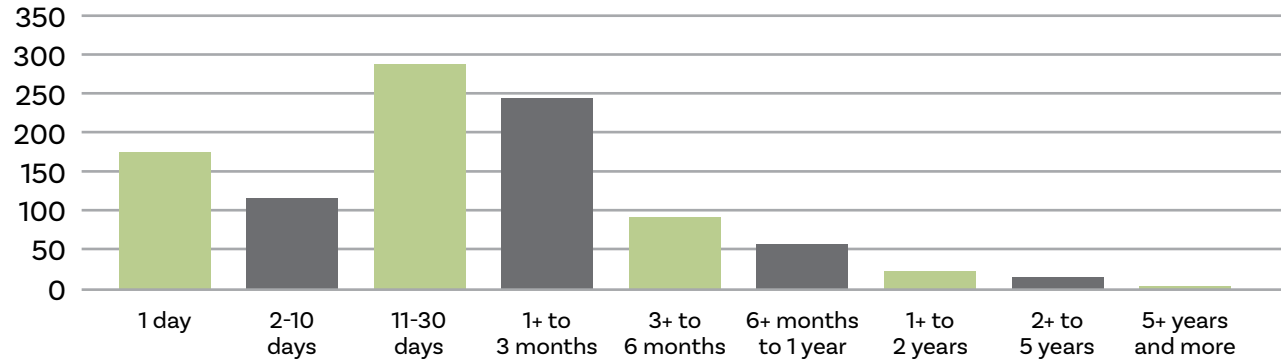


Table 28 shows that the majority of prison sentences (647 or 52.7%) were for 30 days or less, and that nearly 15% of them were for 1 day only. In comparison, in 2014-2015, 57.5% of the prison sentences imposed in Canada were for 30 days or less, and 21.9% were for more than 1 month and less than 3 months (Maxwell, 2017; Chart 5). While the length of prison terms for criminalized First Nations persons appears to follow the Canadian trend, the most recent statistics available in Quebec tend to show a disparity between the First Nations and the overall inmate population. According to the Direction de la recherche des Services correctionnels du Québec, in 2007-2008, 35.6% of people incarcerated in Quebec were serving sentences of 30 days, and 10.6% were serving sentences of 1 day (Giroux, 2011, Table 11).

Intermittent prison sentences (total = 114, see Table 24) were all under 3 months. Indeed, under the *Criminal Code*, a judge can order that a prison sentence be served intermittently when the sentence imposed is 90 days or less (s. 732 Cr. C.). Most intermittent sentences were for 1 to 3 months (65 sentences; 57%), while 28% (32 sentences) had terms of 11 to 30 days, and 14.9% (17 sentences) were for 10 days or less.





Suspended sentences (total = 100, see Table 24) may not be longer than 2 years (s. 742.1 Cr. C.). Overall, 92% of suspended sentences were under 1 year, while only 8% were for 1 year or more. In addition, 48% of these sentences were for 1 to 6 months, and 25% were for 6 months to 1 year.

Finally, regarding sentences of incarceration, not including intermittent sentences (total = 1,013, see Table 34), 57% of the sentences imposed were for 30 days or less, and 28.7% of those were for 10 days or less. Moreover, 17.3% were for 1 day only.

Table 28: Term of imprisonment in closed records, by type of imprisonment

Type of imprisonment	Term of imprisonment								
	1 day	2 to 10 days	11 to 30 days	1+ to 3 months	3+ to 6 months	6+ months to 1 year	1+ to 2 years	2+ to 5 years	5+ years
Intermittent	5	12	32	65	0	0	0	0	0
Suspended	1	5	13	21	27	25	8	0	0
Incarceration	175	116	288	244	92	57	23	15	3
Total = 1 227	181	133	333	330	119	82	31	15	3

Table 29 shows that sentences of incarceration with a term of 1 day only were particularly frequent for persons with a civic address in a Naskapi community (31.8% of sentences of incarceration imposed on Naskapi persons; 7 sentences), an Innu community (22.8%; 70 sentences), an Algonquin community (20.4%; 75 sentences) and a Mi'gmaq community (12.9%; 9 sentences), yet were relatively infrequent in other nations (rates from 0% in records connected with the Huron-Wendat and Abenaki communities to 6.5% in records involving Mohawk individuals, and 6.6% in those concerning Atikamekw persons). People with civic addresses in Algonquin and Innu communities combined received 80.1% of all sentences of incarceration of 1 day (whereas overall, they received 64% of all prison sentences). Moreover, the percentages of sentences of incarceration of 30 days or less in Table 30 indicates that they were most frequent for individuals with a civic address in a Naskapi community (77.3%), Algonquin community (68.2%), Innu community (56.4%) and Mohawk community (50.6%). Finally, although sentences of incarceration with terms longer than 2 years were not common in the First Nations overall, they were most frequent for persons with civic addresses in an Atikamekw community (5.8%; 8 sentences).

Table 29: Term of imprisonment according to type of imprisonment, by nation, in closed records

Nation	Type of imprison.	Term of imprisonment									Total
		1 day	2 to 10 days	11 to 30 days	1+ to 3 months	3 to 6 months	6+ months- 1 year	1+ to 2 years	2+ to 5 years	5+ years	
Abenaki (6)	Intermittent	0	0	0	0	0	0	0	0	0	0
	Suspended	0	0	0	1	2	1	0	0	0	4
	Incarceration	0	0	1	0	0	1	0	0	0	2
Algonquin (425)	Intermittent	0	4	5	7	0	0	0	0	0	16
	Suspended	1	5	5	16	3	10	1	0	0	41
	Incarceration	75	46	130	82	12	17	1	5	0	368
Atikamekw (168)	Intermittent	2	2	7	5	0	0	0	0	0	16
	Suspended	0	0	0	0	11	3	1	0	0	15
	Incarceration	9	19	35	37	17	7	5	5	3	137
Huron-Wendat (36)	Intermittent	0	0	1	5	0	0	0	0	0	6
	Suspended	0	0	0	0	0	0	0	0	0	0
	Incarceration	0	7	3	9	3	5	3	0	0	30
Innu (361)	Intermittent	3	0	11	20	0	0	0	0	0	34
	Suspended	0	0	0	1	4	9	6	0	0	20
	Incarceration	70	31	72	80	40	10	3	1	0	307
Mi'gmaq (90)	Intermittent	0	0	1	0	0	0	0	0	0	1
	Suspended	0	0	8	3	7	1	0	0	0	19
	Incarceration	9	0	16	21	8	7	8	1	0	70
Mohawk (119)	Intermittent	0	6	7	28	0	0	0	0	0	41
	Suspended	0	0	0	0	0	1	0	0	0	1
	Incarceration	5	9	25	11	12	9	3	3	0	77
Naskapi (22)	Intermittent	0	0	0	0	0	0	0	0	0	0
	Suspended	0	0	0	0	0	0	0	0	0	0
	Incarceration	7	4	6	4	0	1	0	0	0	22
Total		181	133	333	330	119	82	31	15	3	1227



Table 30 presents the lengths of prison sentences, by category of offence. It shows that sentences of incarceration were ordered for OAJ more than for other type of offence. Specifically, 54.7% of sentences of incarceration were related to OAJ, while 21% were related to crimes against the person, 10.7% to other offences, 7.5% to property offences, and 5.6% to drug offences. This could be explained in part by the fact that the *Criminal Code* creates a presumption in favour of detention when a person appears when charged with committing an offence involving failure to comply with an order (s. 515(6)(c) Cr. C.) and that, as a result, a large number of people are sentenced to “time served” (i.e., a sentence of imprisonment equal to the number of days already served in detention following arrest).

The analysis of the length of the sentences by category of offence confirms the hypothesis that short sentences are more common for OAJ (Ministère de la Sécurité publique, 2013). Thus, 63% of sentences of incarceration of 1 day were imposed when

the count involved an OAJ (while OAJ were overall responsible for 51.5% of the prison sentences imposed). Moreover, 68.1% of sentences of incarceration in cases of OAJ were for 30 days or less. Finally, 58.3% of all sentences of incarceration of 30 days or less were related to OAJ (377 out of 647 sentences). This does not take into account prison sentences served intermittently, which are also sentences of incarceration.

The opposite trend is apparent in cases of offences against the person, where 62% of sentences of incarceration were for 1 month or less. Moreover, 55.6% of sentences of incarceration of more than 2 years were imposed in cases of offences against the person (10 out of 18 sentences).

Table 30: Term of imprisonment in closed records, by type of imprisonment and category of offence

Category of offence	Type of imprison.	Term of imprisonment								
		1 day	2-10 days	11-30 days	1+ to 3 months	3+ to 6 months	6+ months -1 year	1+ to 2 years	2+ to 5 years	5+ years
Offences against the person	Intermittent	0	0	3	16	0	0	0	0	0
	Suspended	0	0	2	9	11	6	2	0	0
	Incarceration	27	9	45	67	25	24	6	8	2
Offences against property	Intermittent	0	1	0	10	0	0	0	0	0
	Suspended	0	1	2	3	1	5	6	0	0
	Incarceration	8	5	19	23	11	4	4	1	0
Drug offences	Intermittent	2	0	3	11	0	0	0	0	0
	Suspended	1	1	0	0	1	7	0	0	0
	Incarceration	9	11	9	7	7	8	5	1	0
Offences against the administration of justice	Intermittent	3	10	12	17	0	0	0	0	0
	Suspended	0	3	7	8	13	5	0	0	0
	Incarceration	114	85	178	125	36	7	5	3	1
Youth Criminal Justice Act – YCJA	Intermittent	0	0	0	0	0	0	0	0	0
	Suspended	0	0	0	0	0	0	0	0	0
	Incarceration	3	1	2	0	0	0	0	0	0
Other offences	Intermittent	0	1	14	11	0	0	0	0	0
	Suspended	0	0	2	1	1	2	0	0	0
	Incarceration	14	5	35	22	13	14	3	2	0
Total		181	133	333	330	119	82	31	15	3

Sentences of imprisonment of 1 day and other short prison sentences are special sentences. What is more, the people who serve short sentences are apparently also different from other detainees. According to a study by the Ministère de la Sécurité publique du Québec (2013), these sentences seem to be used particularly in cases involving marginalized individuals with drug and alcohol problems, who are convicted for offences of failing to comply with conditions and find themselves trapped in the revolving door of criminalization.



Our most recent work on the criminalization of marginalized persons in Montreal and Vancouver also demonstrated that short sentences (one day or a few days) were often imposed on persons who appeared while being held in custody, pleaded guilty at the first occasion, and received a prison sentence of “time served” after their arrest (Sylvestre et al., 2017b). Thus, these sentences are directly related to the police officer’s decision to detain the person following the arrest and the application of the presumption of detention in s. 515(6)(c) Cr. C. It should also be noted that, according to a study by the Department of Justice Canada (Beattie et al., 2013), being accused of an offence against the administration of justice considerably increases the chance of detention following arrest: people accused of committing the offence of failing to comply with an interim release order were detained in 56.7% of cases, and those who failed to comply with a condition of probation were detained in 55.4% of cases. These detention rates are nearly as high as the rates for persons accused of a sexual offence, which is 57.4%.

Probation

In Tables 31 to 33, we move on to our analysis of probationary sentences imposed in the closed records. We note that, under the *Criminal Code*, probationary sentences have a maximum term of 3 years (s. 732.2(2)(b) Cr. C.). In the databanks, we found only 1 probationary sentence out of the total of

1,584 that was longer than 3 years, which we assumed was an error and therefore decreased it to 3 years for the purpose of our analysis. Nearly half of the probationary sentences in the closed records databank were for 12 months or less (48.2%, 763 sentences), while 42.9% of probationary sentences were for 13 to 24 months (680 sentences) and 8.9% were for 25 to 36 months (141 sentences).

Under the *Criminal Code*, probation orders include four compulsory conditions and may also include a series of optional conditions. The databank does not permit a complete analysis of the *conditions* imposed. It does, however, distinguish between different probationary sentences according to the following characteristics: (1) appearance before a probation officer; (2) appearance before a police officer; (3) unsupervised; or (4) community work.

Thus, 59.1% or 936 probationary sentences were “unsupervised,” while 32.6% or 516 probationary sentences required the person to report to a probation officer. Moreover, 8.0% or 126 probationary sentences included a condition to perform community work, and 0.4% or 6 probationary sentences required the person to report to a police officer.

Figure 9: Type of probation

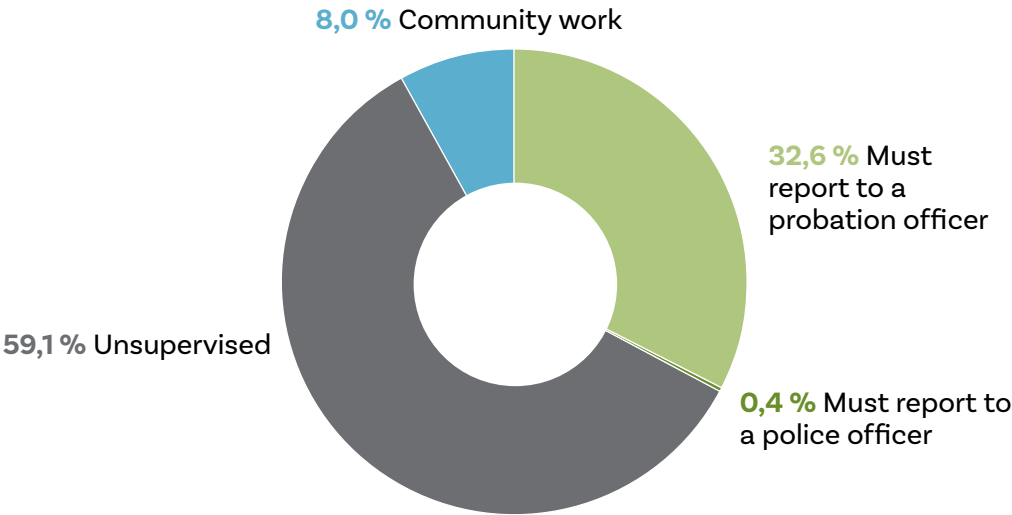


Table 31 also allows for an analysis of the type of probation according to its length. More than half of the probationary sentences that required the person to report to a probation officer were for longer than 18 months (56.5%). All of the probationary sentences with a condition to perform community work were for 2 years or less. Of unsupervised probation orders, 60.8% were for 1 year or less, and 95% were for 2 years or less. We note that the majority of unsupervised probationary sentences had terms of 1 year or less (60.8%, or 569/936), while nearly three quarters of probationary sentences that required the person to report to a probation officer were for 13 months or more (73%, or 376/516), and nearly 20% (94/516) of them were for more than 2 years.



Table 31: Term of probation in closed records, by type of probation

Type of probation (N%)		Total	1 to 30 days	1+ to 3 months	4 to 6 months	7 to 12 months	13 to 18 months	19 to 24 months	25 to 30 months	31 to 36 months	3 + years
Must report to a probation officer (N/%)	N	516	0	0	6	134	83	199	1	92	1
	%	100	0	0	1.2	26	16.1	38.6	0.2	17.8	0.2
Must report to a police officer (N/%)	N	6	0	0	0	1	0	5	0	0	0
	%	100	0	0	0	16.7	0	83.3	0	0	0
Unsupervised (N/%)	N	936	4	9	72	484	86	234	0	47	0
	%	100	0.4	1	7.7	51.7	9.2	25	0	5.0	0
Community work (N/%)	N	126	0	0	1	52	21	52	0	0	0
		100	0	0	0.8	41.3	16.7	41.3	0	0	0
Total	N	1584	4	9	79	671	190	490	1	139	1
	%	100	0.3	0.6	5	42.4	12	30.9	0.1	8.8	0.1

This same analysis by nation reveals similar trends.



Table 32: Term of probation in closed records according to type, by nation

Nation	Type of probation	1 to 30 days	1+ to 3 months	4 to 6 months	7 to 12 months	13 to 18 months	19 to 24 months	25 to 30 months	31 to 36 months
Abenaki	Must report to a probation officer (N%)	0	0	0	0	0	2	0	0
	Must report to a police officer	0	0	0	0	0	0	0	0
	Unsupervised	0	1	0	0	2	0	0	1
	Community work	0	0	0	0	0	2	0	0
Algonquin	Must report to a probation officer	0	0	5	83	33	36	0	0
	Must report to a police officer	0	0	0	0	0	0	0	0
	Unsupervised	3	3	43	154	35	23	0	11
	Community work	0	0	0	3	1	3	0	0
Atikamekw	Must report to a probation officer	0	0	0	22	18	59	0	10
	Must report to a police officer	0	0	0	0	0	0	0	0
	Unsupervised	1	1	9	137	8	12	0	5
	Community work	0	0	0	12	2	6	0	0
Huron-Wendat	Must report to a probation officer	0	0	0	1	0	16	0	15
	Must report to a police officer	0	0	0	0	0	0	0	0
	Unsupervised	0	0	1	6	0	11	0	1
	Community work	0	0	0	1	0	0	0	0





Nation	Type of probation	1 to 30 days	1+ to 3 months	4 to 6 months	7 to 12 months	13 to 18 months	19 to 24 months	25 to 30 months	31 to 36 months
Innu	Must report to a probation officer	0	0	0	15	23	36	1	55
	Must report to a police officer	0	0	0	1	0	5	0	0
	Unsupervised	0	2	12	125	26	123	0	21
	Community work	0	0	1	21	8	8	0	0
Mi'gmaq	Must report to a probation officer	0	0	1	13	5	30	0	12
	Must report to a police officer	0	0	0	0	0	0	0	0
	Unsupervised	0	1	4	16	13	20	0	0
	Community work	0	0	0	0	0	0	0	0
Mohawk	Must report to a probation officer	0	0	0	0	2	18	0	0
	Must report to a police officer	0	0	0	0	0	0	0	0
	Unsupervised	0	1	2	36	2	38	0	8
	Community work	0	0	0	9	4	16	0	0
Naskapi	Must report to a probation officer	0	0	0	0	2	2	0	0
	Must report to a police officer	0	0	0	0	0	0	0	0
	Unsupervised	0	0	1	10	0	7	0	0
	Community work	0	0	0	6	6	17	0	0
Total		4	9	79	671	190	490	1	139

An analysis of the categories of offence (Table 33) reveals that unsupervised probation was most frequent in cases of OAJ. Specifically, 43.5% of unsupervised probationary sentences were related to OAJ, while 29% were related to offences against the person, followed by property offences (11.4%) and other offences (9.5%). In addition, unsupervised probation constituted 82.4% of all probationary sentences imposed for “other offences.” In the case of OAJ and offences against the person, 58.8% and 58.3% of the probationary sentences ordered were unsupervised.

Table 33: Term of probation in closed records, by type of probation and category of offence

Category of offence	Type of probation	Term of probation								
		1 to 30 days	1+ to 3 months	4 to 6 months	7 to 12 months	13 to 18 months	19 to 24 months	25 to 30 months	31 to 36 months	Over 3 years
Offences against the person	Must report to a probation officer	0	0	1	34	25	50	1	27	1
	Must report to a police officer	0	0	0	0	0	0	0	0	0
	Unsupervised	0	0	8	150	25	65	0	23	0
	Community work	0	0	0	23	7	23	0	0	0
Offences against property	Must report to a probation officer	0	0	2	18	3	27	0	2	0
	Must report to a police officer	0	0	0	0	0	0	0	0	0
	Unsupervised	0	0	12	52	8	29	0	6	0
	Community work	0	0	0	1	1	3	0	0	0



Category of offence	Type of probation	Term of probation								
		1 to 30 days	1+ to 3 months	4 to 6 months	7 to 12 months	13 to 18 months	19 to 24 months	25 to 30 months	31 to 36 months	Over 3 years
Drug offences	Must report to a probation officer	0	0	1	12	10	18	0	9	0
	Must report to a police officer	0	0	0	1	0	0	0	0	0
	Unsupervised	0	1	1	34	0	21	0	3	0
	Community work	0	0	1	3	1	6	0	0	0
Offences against the administration of justice	Must report to a probation officer	0	0	1	55	39	82	0	49	0
	Must report to a police officer	0	0	0	0	0	5	0	0	0
	Unsupervised	3	4	43	203	48	98	0	8	0
	Community work	0	0	0	23	11	18	0	0	0
Youth Criminal Justice Act – YCJA	Must report to a probation officer	0	0	1	0	2	0	0	0	0
	Must report to a police officer	0	0	0	0	0	0	0	0	0
	Unsupervised	0	0	1	1	0	0	0	0	0
	Community work	0	0	0	0	0	0	0	0	0
Other offences	Must report to a probation officer	0	0	0	15	4	22	0	5	0
	Must report to a police officer	0	0	0	0	0	0	0	0	0
	Unsupervised	1	4	7	44	5	21	0	7	0
	Community work	0	0	0	2	1	2	0	0	0
Total		4	9	79	671	190	490	1	139	1

Fines

The fine amount is first specified in the provision creating the offence. Some offences establish minimum fines, as in the case of impaired driving, for example. In most cases, the statute also sets out a maximum fine. When the provision creating the offence does not specify a minimum or maximum fine, the general provisions of the *Criminal Code* apply. In the case of summary offences, the maximum fine is \$5,000 (s. 787(1) *Cr. C.*). There is no maximum fine for indictable offences. Moreover, except where a minimum fine is required, the judge may impose a fine only if he or she is satisfied that the person is able to pay (s. 734(2) *Cr. C.*).

Table 34 shows that nearly one third of the fines imposed were for \$100 or less (31.4% or 167 fines), and that 47% of the fines (251) were for an amount between \$100 and \$1,000. Finally, 21.4% of the fines imposed were for \$1,001 or more (114 fines). We also note that 17 fines were for \$25 or less, and that 5 of those were between \$0 and \$5. The amount of the average fine was \$681.99.

The minimum sentence for a first offence of impaired driving is \$1,000 (s. 255(1)(a)(i) *Cr. C.*).

Table 34: Fines imposed in closed cases

Fine (\$)	N	%
From 0 to 5	5	0,9
From 6 to 25	12	2,3
From 26 to 50	33	6,2
From 51 to 100	117	22,0
From 101 to 500	135	25,4
From 501 to 1,000	116	21,8
From 1,001 to 2,000	106	19,9
From 2,001 to 3,000	8	1,5
Total	532	100

The analysis by nation (Table 35) reveals the same trends.





Table 35: Fines imposed, by nation, in closed cases

Nation	Amount of fines (\$)							
	0-5	6-25	26-50	51-100	101-500	501-1,000	1,001-2,000	2,001-3,000
Abenaki	0	0	0	0	5	1	2	0
Algonquin	5	0	12	31	40	26	18	0
Atikamekw	0	5	11	9	12	39	24	0
Huron-Wendat	0	0	1	0	0	2	2	0
Innu	0	1	5	56	53	31	15	2
Mi'gmaq	0	6	4	3	3	4	7	0
Mohawk	0	0	0	14	20	13	36	6
Naskapi	0	0	0	4	2	0	2	0
Total	5	12	33	117	135	116	106	8

The analysis of the amounts of the fines by offence in Table 36 highlights the impact of the offence of impaired driving. Of these fines, 45.9% of them were imposed for “other offences,” which includes driving offences such as impaired driving, followed by 28% for cases of OAJ. Of the fines for \$1,001 or more, 99.1% were for “other offences” (113 fines out of 114; one of them was related to offences against the administration of justice). Other interesting facts: all of the fines imposed in property offence cases were of \$500 or less, and nearly all of the fines imposed for drug offences were also of \$500 or less (94.3%). Finally, there were no fines imposed for any offences under the YCJA.



Table 36: Fines imposed, by category of offence, in closed cases

Category of offence	Amount of fines (\$)							
	0-5	6-25	26-50	51-100	101-500	501-1,000	1,001-2,000	2,001-3,000
Offences against the person	1	1	0	6	16	1	0	0
Offences against property	1	0	3	8	14	0	0	0
Drug offences	0	1	10	32	40	5	0	0
Offences against the administration of justice	3	10	13	64	53	5	1	0
Youth Criminal Justice Act – YCJA	0	0	0	0	0	0	0	0
Other offences	0	0	7	7	12	105	105	8
Total	5	12	33	117	135	116	106	8

Victim surcharge

Finally, the victim surcharge, which is compulsory, is ordered on top of the other sentences, in accordance with the *Criminal Code*. The amount of the surcharge is statutorily determined and corresponds to 30% of the fine where a fine is imposed, or \$100 per offence prosecuted by summary conviction and \$200 per offence prosecuted by way of indictment (s. 737(2) Cr. C.). Table 37 shows that the surcharge was imposed for 97.1% of the counts in the databank.

Table 37: Victim surcharge in closed cases

Victim surcharge	N	%
Yes	2 432	97.1
No	72	2.9
Total	2 504	100







6. CONCLUSION

This report presents the first portrait of the criminalization of the First Nations in Quebec. Because of the methodological limits of the databank (e.g., classification by postal code and not by self-identified ethnocultural background), it represents merely the tip of the iceberg. In addition, given that court records were used as the unit of analysis, we emphasize that the data was sourced solely from those records for which a person provided a civic address in a First Nations community and therefore does not include First Nations people living in urban environments. In this respect, we can only deplore the lack of ethnocultural data in the MJQ databanks provided. They did not allow us to directly associate an accused with an ethnocultural background of any kind and required us to proceed indirectly by assigning ethnocultural origin by logical deduction.

Nonetheless, the data show that, in 2016, 9,809 counts in open and closed records concerned persons domiciled in a First Nations community. The rate of criminalization per First Nations persons was 15.0% in the open records and 17.6% in the closed records. Young First Nations individuals under age 35 appeared proportionally more affected by criminalization than other young Quebecers, and this phenomenon seemed all the more significant in the Innu and Algonquin nation communities.

Criminalization took place primarily for OAJ, which represent nearly 45% of all the offences filed in the open records, far outstripping offences against the person (26.5%). OAJ involved primarily the failure to comply with conditions imposed by court orders for release and probation orders (more than 1,500 offences). Thus, the mere fact of being subjected to the criminal justice system was at the origin of half the offences. Moreover, OAJ resulted in a high rate of guilty pleas (around 60%) and led to imprisonment more often than any other category of offence. Specifically, 54.7% of sentences of incarceration were ordered for an OAJ, and 58.3% of all sentences of incarceration of 30 days or less were connected with an OAJ (377 sentences). The research shows that people convicted for OAJ and those who were given short prison sentences were generally trapped in a vicious circle and were experiencing numerous social problems (poverty, homelessness, mental illness, drug and alcohol use) (Sylvestre et al., 2017; Sylvestre et al., 2018; Ministère de la Sécurité publique, 2013). To further the aim of reducing criminalization, particular attention should be paid to these offences, which are directly related to the court system itself. Moreover, it is worth noting that the high number of OAJ was identified as one of the main causes of court delays in criminal cases in the 2016-2017 action plan developed by the Table Justice-Québec partners, who have committed to the task of keeping track of these offences (Table Justice Québec, 2016).

As for offences against the person, more than one in three offences were related to conjugal violence. This figure might be underestimated because of the limitations of the databank. The third category of offence in order of frequency includes impaired driving and drug possession. These two types of offences (offences against the person, impaired driving and drugs) call to mind certain social issues that exist in the communities that arise directly from the current and past imposition of colonial policies. In this respect, the 2015 amendments to the Alternative Measures Program for Adults in Aboriginal Communities that include offences related to conjugal violence with the consent of the victim should be highlighted. There is certainly room to expand the program to deal with other types of issues as well.

The findings of this report also seem to indicate that it was generally rare for most criminalized persons to avail themselves of their right to a trial. In nearly half of the cases, they pleaded guilty to the offences alleged. Given the high amount of missing data in this category, it is difficult to precisely evaluate the scope of this phenomenon. For some offences, the rate of guilty pleas appears to be even higher; the rate in cases of drug possession, for example,

was 81.2%. The rate of guilty pleas was particularly high for counts involving persons from the Abenaki (73.1%), Huron-Wendat (68.9%), Algonquin (63.1%) and Atikamekw (56%) communities

Finally, the analysis of the sentences imposed indicates that imprisonment was frequently ordered. Although probation, either on its own or combined, was the sentence most frequently imposed on criminalized First Nations persons (1,589 or 46.6% of the sentences imposed), it was followed closely by imprisonment (1,227 or 35%), either alone or combined. In addition, sentences of incarceration served in a detention facility were ordered in 92% of cases of imprisonment. Only 9% of prison sentences were served intermittently, while 8% were suspended. However, the length of this type of imprisonment was relatively short: nearly 15% were sentences of 1 day only. Finally, probation orders were also generally short: 48.2% of these sentences had a term of 12 months or less, and more than half of those were “unsupervised”. Fines were less frequent in the cases of criminalized First Nations persons (532 sentences, 15.6%). Moreover, 99% of the fines over \$1,000 were related to impaired driving offences (for which a fine of \$1,000 is the minimum). Finally, we noted a low rate of discharge.



It should be noted that, in Canadian criminal law, imprisonment is the sentence of last resort. Courts have a duty to weigh the possibility of less restrictive sentences before considering the deprivation of liberty (s. 718.2(d) Cr. C.). When it comes to the First Nations, this obligation is even more strict: judges must consider all available sanctions other than imprisonment, and they must consider the systemic or background factors that may have

led the person to commit an offence, as well as the types of sentencing procedures and sanctions appropriate to the cultural heritage of the First Nations, Inuit and Métis (s. 718.2(e) Cr. C.; *R. v. Gladue*, [1999] 1 S.C.R. 688; *R. v. Ipeelee*, [2012] 1 S.C.R. 433). This obligation to consider the First Nations background may soon be extended to the release stage and the imposition of conditions if federal Bill C-75 is enacted.





7. RECOMMENDATIONS

In light of the findings presented in this report, we make the following recommendations:

- ◆ **That the Ministère de la Justice (MJQ) implement the Truth and Reconciliation Commission's call to actions, the National Inquiry into Missing and Murdered Indigenous Women and Girls' Calls for Justice, as well as the Calls to Action of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listing, reconciliation and progress, to implement a justice system that reflects their values and legal traditions.**

It is clear from this report that the First Nations are criminalized primarily as a result of their contact with the justice system in Quebec. Moreover, the nature of the offences charged and the revolving doors that appear to trap criminalized individuals demonstrate that their criminalization is related to the many social problems within the communities. To address the situation, the place of the Quebec justice system and the role it plays must be reconsidered, and the First Nations' right to implement a conflict resolution system aligned with their values and legal traditions must be recognized.

- ◆ **That the Ministère de la Justice (MJQ) implement the Truth and Reconciliation Commission's call to actions, the National Inquiry into Missing and Murdered Indigenous Women and Girls' Calls for Justice, as well as the Calls to Action of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listing, reconciliation and progress, to promote and implement social and preventive solutions to problematic situations that have been subjected to the justice systems.**

The Truth and Reconciliation Commission has formulated the following Call to Action asking the “federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.” (Call to Action 31)

Measures to decriminalize and resolve social problems must be promoted and applied. The First Nations must play a prominent role in implementing social and preventive measures that seek to address the underlying causes of the alleged criminal behaviour in the communities and in urban settings. These measures must also be properly supported and funded.

- ◆ **That the Ministère de la Justice amend the Alternative Measures Program (AMP) for adults in Aboriginal communities to include offences against the administration of justice and impaired driving offences.**

The MJQ should amend its AMP for adults in Aboriginal communities to reflect the nature of the most common offences charged against First Nations persons. In particular, offences against the administration of justice and impaired driving should be included, even though the latter offence carries a minimum sentence. Although the AMP is not a panacea or even a true measure of criminalization (indeed, the program does not intervene before an offence is committed, remains under court supervision, and does not allow convictions to be suspended in favour of alternative measures), it is a first step towards allowing communities to take social problems in hand, and it should be encouraged, supported and adequately funded.

- ◆ **That police departments and the DCCP establish annual targets to reduce the use of incarceration and the number of charges for offences against the administration of justice (OAJ).**

It is essential for police officers and DCCP prosecutors to exercise their discretion to limit arrests, detention and charges for failing to comply with conditions, especially when this type of breach does not endanger the safety of a victim or a witness. Bill C-75, if enacted, will set out a new procedure for processing certain breaches that could help reduce the number of charges for OAJ. As we have shown, OAJ very frequently lead to convictions and imprisonment (often corresponding to the duration of the initial detention following arrest) and should be strictly limited. Police departments and the DCCP could adopt specific guidelines in this respect. The new guidelines adopted by the DCCP on November 15, 2018, contain no provisions on this precise issue.

It is also worth noting that the Truth and Reconciliation Commission's Calls to Action 30 and 38 ask the provincial governments to commit to reducing the overrepresentation of Aboriginal people in detention and to publish yearly reports of their progress in this respect. This recommendation is made in this same spirit.



- ◆ **That the police departments, the DCCP and the Conseil de la magistrature provide adequate and appropriate training to police officers and actors in the court system who intervene with the First Nations.**

As recommended in the Truth and Reconciliation Commission's Call to Action 27, police departments, the DCCP and the Conseil de la magistrature du Québec should ensure that police officers, prosecutors and provincial court judges receive appropriate training on history, colonial policies, the legacy of the residential schools, and Aboriginal rights, as well as on intercultural skills, dispute settlement, human rights and the fight against racism. As stated in the literature overview, research has shown that the overrepresentation of the First Nations in the justice system is directly related to the systemic discrimination these populations experience at the hands of police officers and legal actors, at every stage of the criminal process.

- ◆ **That police departments and the DCCP establish indicators to ensure that police officers and prosecutors consider the specific situation of the First Nations when making decisions about release and sentencing recommendations. Specifically, the indicators should be used to gauge the number of conditions of interim release to be suggested, the connection between the conditions and the offences alleged, and the verifications made about the reasonable possibility of compliance with these conditions. These indicators should be made public.**

As we noted in our conclusion, when sentencing First Nations individuals, judges are required to consider all available sanctions other than imprisonment and to consider the systemic or background factors that might have contributed to the commission of an offence, as well as the types of sentencing procedures and sanctions that may be appropriate in the circumstances because of the cultural heritage of the First Nations, Inuit and Métis (s. 718.2(e) *Cr. C.*; *R. v. Gladue*, [1999] 1 S.C.R. 688; *R. v. Ipeelee*, [2012] 1 S.C.R. 433). The obligation to consider the situation of the First Nations may soon be extended to the interim release stage and the ordering of conditions if the federal government enacts Bill C-75.

These obligations do not necessarily extend to prosecutors (*R. v. Anderson*, 2014 SCC 41) or to the police. However, the Supreme Court of Canada recently clarified the state of the applicable law at the interim release stage (*R. v. Antic*, 2017 SCC 27). Absolute discharge should therefore remain the norm, any conditions suggested or imposed upon release must be justified, and in no case should the purposes of those conditions be rehabilitation or punishment. In particular, and subject to the presumptions of detention under s. 515(6) *Cr. C.*, Crown counsel must justify the decision to seek conditions.

On November 15, 2018, the DCPD adopted new guidelines, including ACC-3 to guide prosecutors in their decisions to bring or continue a prosecution. Section 28 of the guideline now provides that prosecutors must show restraint by favouring release and the least restrictive conditions possible, while also ensuring a logical relationship between the conditions and the alleged offence and the possibility that the conditions imposed will reasonably be respected. In addition, the impositions of realistic and reasonable conditions that are likely to be respected is a constitutional obligation under s. 11(e) of the *Canadian Charter* (and confirmed in *R. v. Antic*, 2017 SCC 27).

Section 29 of guideline ACC-3 also provides that, at the interim release stage, prosecutors must consider the specific situation of Aboriginal offenders, including [translation] “the role and involvement of the offender in the community, the consequences that interim detention would have on the offender, traditional practices of the area’s inhabitants, the realities of the geographic location, and the social issues in the community.”

To favour the effective implementation of these guidelines and to ensure that they have a real impact on decisions made at the time of release (in particular, that they limit the use of detention and the number of conditions imposed), we recommend that the DCPD and police departments define indicators they can use to gauge the number of conditions of release to be suggested, to ensure a connection between these conditions and the alleged offences, and to verify that these conditions will reasonably be respected, and that they make these indicators public (e.g., it might be necessary to obtain information about an offender’s material situation or degree of dependence on alcohol or drugs).

Finally, police departments and the DCPD could adopt specific directives regarding the choice of the conditions to be suggested to the court, including requirements to abstain or to appear at locations, which result in a significant number of breaches.



- ◆ **That the Ministère de la Justice gather data on decisions made at the interim release stage and on the number and type of interim release conditions imposed, if any, as well as data on the number and type of conditions of probation and the nature of any failure to comply with these conditions.**

The MJQ's databank contains no information about decisions made at the interim release stage (detention, unconditional release, conditional release on recognizance or promise, with deposit or security, etc.). The decision made at that stage determines the outcome of proceedings (directly influencing the offender's decision to plead guilty and the ability to mount a defence) and the sentence to be imposed (in particular because of the possibility of ordering imprisonment for time served in detention following arrest). Complete data on these issues is essential.

Moreover, considering the high number of offences against the administration of justice by First Nations and the connection between such offences and incarceration, it is also essential that we know the nature and number of release or probation conditions, as well as the rates of breach of each. It is worth noting that Alberta and British Columbia have been compiling data on the number and nature of conditions of release since 2016-2017 and it is reported by Statistics Canada (Malakieh, 2018).

Research has shown that the number of conditions imposed and their term of application are the best indicators of future breach (Sylvestre et al., 2018). To reduce the rate of OAJ, we must also understand which conditions are breached most frequently. In light of the case law and preliminary research, we submit the hypothesis that conditions to abstain (i.e., prohibitions against using alcohol or drugs), prohibitions against being in specific locations, and conditions to not disturb the peace, which are frequently imposed in Quebec as they are elsewhere in Canada, are particularly subject to breach. Complete court data on this subject would provide a clearer picture.





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VISION

First Nations individuals, families and communities are healthy, have equitable access to quality care and services, and are self-determining and culturally empowered.

MISSION

To accompany Quebec First Nations in achieving their health, wellness, culture and self-determination goals.



FIRST NATIONS OF QUEBEC
AND LABRADOR HEALTH
AND SOCIAL SERVICES
COMMISSION