



Police and Judicial Detention and Release Characteristics: Data from the Justice Effectiveness Study

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2013

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Executive Summary

The purpose of this research is to provide information regarding the detention and release practices of police and of the court, while also providing data on the characteristics of accused subject to these decisions. This report provides information on the decision to release and detain following arrest and by the court as a result of Judicial Interim Release (JIR), socio-demographic characteristics of the accused, reasons for police detention and remand by the court, characteristics of bail/JIR decisions, as well as the types and conditions of police and JIR release.

Data used in this research report are part of a larger database from the Justice Effectiveness Study at the Research and Statistics Division, Justice Canada. This database includes a vast amount of information to examine case length and case processing, including appearances, bail hearings, preliminary hearings and trial, and sentencing. This multi-site court study aims to map the progress of cases at the appearance level through the criminal justice process from the opening of the court file to disposition. The research project is the first of its kind undertaken in Canada and represents an important body of Canadian knowledge, providing useful evidence to improve the understanding of the patterns and outcomes of appearances and elapsed time to disposition.

Data in this report illustrate that more than half of all adults accused of a crime are released by police following arrest (58.9%). A slightly higher (65.9%) proportion of accused who were detained by police were subsequently released by the court as a result of Judicial Interim Release (JIR).

Factors which contributed to the likelihood that an accused was detained by police and the court included being male, single, Aboriginal, unemployed, or if diagnosed or suspected of having a mental illness. The likelihood of detention by police and the court was also influenced by the most serious offence in the case with those accused of robbery, administration of justice offences and break and enter offences having the highest rates of detention. The types of release used by police and courts varied significantly among the four sites in the study. Roughly one-quarter of accused were identified as violating or breaching their order of release by police (25.2%) while a smaller proportion of accused violated their JIR order (17.5%).



Highlights

- Roughly four-in-ten (41.1%) accused were detained by police following arrest by police.
- Factors which contributed to the likelihood that an accused was detained by police and the court included being male, single, Aboriginal, unemployed, or if diagnosed or suspected of having a mental illness.
- The likelihood of detention by police following arrest was influenced by the most serious offence in the case with those accused of robbery, administration of justice offences and break and enter offences having the highest rates of detention.
- An Undertaking to appear in court was the most serious type of police release (36.1%) followed by an Appearance Notice (28.3%) and Promise to Appear (27.4%). Significant differences in the types of releases used by police were found across the sites where data were available.
- The most common condition of police release was to abstain from communication with an individual or group of individuals (67.1%) followed by report as required to police or other authority (55.0%).
- Both the police and the court were more likely to detain or remand an accused with a known prior criminal history compared to an accused with no known prior criminal history.
- Among all accused who were initially detained by police, two-thirds were subsequently released at the first Judicial Interim Release (JIR) hearing in court (65.9%) while the remaining one-third (34.1%) were remanded to custody.
- Remand by the court was a more likely outcome for cases where the most serious offence was fraud (55.6%), break and enter (53.3%) or robbery (41.4%).
- Among all releases at the first JIR in these jurisdictions, the most common release type was an Undertaking with conditions (54.7% of all releases). While the most common types of JIR conditions given by the court were similar among each of the sites, there were some notable differences.
- Approximately one-quarter (25.2%) of accused were identified as violating or breaching their order of release by police while a smaller proportion of accused violated their JIR order (17.5%).



1.0 Introduction

Data from the Canadian Centre for Justice Statistics (CCJS) show that the use of remand in Canada is increasing. Specifically, admissions to remand increased 30% over a ten-year period between 1999/2000 and 2008/2009. Additionally, the length of time spent on remand is continuing to grow (Porter and Calverley 2011).

Webster, Doob and Myers (2009) suggest that one of many explanations for the growing remand population in Canada is the changing culture of the police and courts in their response to the large number of accused. Specifically, they propose that the criminal justice system has become more risk averse and is detaining a larger number of accused following arrest, and in court, than may be deemed to be 'reasonable.' Myers (2009) noted similar findings and suggests that the shift towards "managing risks posed to the criminal justice system and the over-cautiousness of criminal justice professionals has significantly impacted the efficient and proper functioning of the bail court." In contrast however, Kellough and Wortley, (2002) found that rather than 'managing risk,' "the detention of accused persons is a rather important resource that the prosecution uses to encourage (or coerce) guilty pleas from accused persons. Those accused who are not held in pre-trial custody, by contrast, are much more likely to have all of their charges withdrawn by the prosecution."

Further, McLellan (2010) details the shift in guiding principles of bail in Canada over the past twenty years, noting the increased use of reverse onus offences and its impact on the bail decision-making process and the overall presumption of innocence in the bail process. Additional research has also explored the outcomes of bail and release orders for youth (Sprott and Myers 2011), the length of the bail process (Webster et. al. 2009; Webster 2009); and, the perceptions of police investigators regarding their decision to detain or release an offender accused of domestic violence (Gauthier 2009). More recently, an internal Justice Canada report highlighted a number of predictors of police and JIR detention for offences involving firearms, violence and drugs (Morton Bourgon et. al. 2011). This research found that for these types of offences, accused were more likely to have been detained than released by both the police and court and that the likelihood of release varied by court location.¹ Further, factors associated with detention included: being charged with an offence where there was a victim, the number of prior bail violations and the number of current charges.

While there are limited data on the use of pre-trial detention and the characteristics of accused who are admitted to remand, little is known about the characteristics of the release or detention decision itself or about the factors in the decision to detain or release an accused at a broader level across Canada. Moreover, research that examines the characteristics of persons criminally charged in Canada and the release or detention decisions regarding these accused, by both the police and the courts, is limited.

¹ The overall rates of release by police and the court were significantly lower in the Morton Bourgon study than those found in the current study. It is important to note however that the court locations were different between the two studies, as were the types of offences included in the samples. Further, for a summary of the importance of court culture and how varying court practitioners, informal practices, and norms can influence the outcome of bail or the court process, see Grech 2011.



The purpose of this research is to provide information regarding the detention and release practices of police and of the court, while also providing data on the characteristics of accused subject to these decisions. Specifically, this report will provide information on the following: the decision to release and detain following arrest and by the court as a result of Judicial Interim Release (JIR); accused characteristics; reasons for police detention and remand by the court; characteristics of bail/JIR decisions²; and, the types and conditions of police and JIR release.

Data used in this research report are part of a larger database from the Justice Effectiveness Study at the Research and Statistics Division, Justice Canada. This database includes a vast amount of information to examine case length and case processing, including appearances, bail hearings, preliminary hearings and trial, and sentencing. This multi-site court study aims to map the progress of cases at the appearance level through the criminal justice process from the opening of the court file to disposition. The research project is the first of its kind undertaken in Canada and represents an important body of Canadian knowledge, providing useful evidence to improve the understanding of the patterns and outcomes of appearances and elapsed time to disposition.

Data for the Justice Effectiveness Study were collected from both court and Crown files in 5 court locations in 4 provinces across Canada. Each site was requested to provide a random sample of 400 non-trial and 200 trial cases that were closed in 2008. This sample list was used to pull the appropriate files and code the information contained therein. In some locations there was a need to pull files from other years (11%) to increase the sample size. Each Crown and court file was used to complete an extensive coding form that was designed to collect information about the case and its process through the criminal justice system.

In order to protect the anonymity of each province, the location of each of these Sites is not disclosed. Whenever possible, comparisons across the four sites are conducted but made with caution. At present, there are 3,093 unique criminal court cases in the database across all four sites. The distribution of all cases across each Site is as follows: Site 1 (2 court locations) = 1,286 (41.6% of all cases); Site 2 = 637 (20.6%); Site 3 = 794 (25.7%); Site 4 = 376 (12.2%).

Research in other areas using the data from the Justice Effectiveness study is ongoing. It is anticipated that future analysis of the data will be able to present findings concerning: the type of offences committed, case processing length, disposition and sentencing of cases, the demographics of accused, information concerning victims of crime, and legal representation of accused at various stages of the process.

² The terms 'Judicial Interim Release (JIR)' and 'bail' are synonymous and will be used interchangeably throughout the report.



2.1 Findings

Table 1 presents select socio-demographic characteristics of the accused in each of the four sites, where information was available in the Court or Crown files. Overall, most accused were male (82.1%), and single (65.8%). Nearly one-quarter were identified as being Aboriginal (22.0%). The median age was 32 years. Half (50.2%) of all accused were employed at the time of arrest while 40.5% were unemployed. An accused was recorded as having a ‘known’ or ‘suspected’ mental illness if any information was evident in the file. If no information was available to accurately identify this occurrence, the accused was deemed to have no known or suspected concern. Note however that the identification of a ‘known or suspected’ mental illness may reflect the amount and detail of information found in the file and not necessarily the accurate identification of accused with a mental health concern. According to data in the files, 3.4% were identified with a known or suspected mental illness.

TABLE 1: SOCIO-DEMOGRAPHIC CHARACTERISTICS BY SITE

Accused Characteristics	Site 1	Site 2	Site 3	Site 4	Total
Median Age (n=3,015)*	33 years	29 years	32 years	32 years	32 years
Sex (n=3,053)					
Male	82.8%	83.9%	79.3%	82.7%	82.1%
Female	17.2%	16.1%	20.7%	17.3%	17.9%
Aboriginal Identity (n=1,850)*					
Non-Aboriginal	84.1%	46.9%	97.7%	..	78.0%
Aboriginal	15.9%	53.1%	2.3%	..	22.0%
Marital Status (n=1,108)*					
Single	77.7%	62.9%	66.1%	35.3%	65.8%
Married	15.2%	25.8%	21.8%	52.9%	23.3%
Divorced/separated/widowed	7.1%	11.3%	12.0%	11.8%	10.9%
Employment (n=1,059)*					
Unemployed	42.7%	31.8%	49.7%	47.6%	40.5%
Employed	53.1%	56.1%	39.7%	52.4%	50.2%
Student	1.5%	11.0%	9.7%	0.0%	7.8%
Other	2.7%	1.1%	0.9%	0.0%	1.4%
Mental Illness (n=3,093)*					
None identified or unknown	98.8%	97.3%	93.5%	94.4%	96.6%
Known or suspected	1.2%	2.7%	6.5%	5.6%	3.4%

Note: The total population for each site may vary by characteristic as table excludes accused where socio-demographic characteristic was not known.

* denotes significant differences at the .000 level.

.. Excluded due to missing data



Noteworthy differences were found in the socio-demographic characteristics among the four sites.³ The median age for Site 2 was slightly younger at 29 years old than the overall average of 32 years. Aboriginal accused also represented a larger proportion of all accused in Site 2 compared to the overall average (53.1% versus 22.0%) while a slightly greater proportion of accused in Site 3 was female compared to the other Sites. Site 1 reported having the highest proportion of single accused among all four sites (77.7%) while most accused in Site 4 were married (52.9%). In addition, a larger proportion of accused in Site 3 was identified as having a known or suspected mental health concern compared to the other sites.

2.2 Characteristics of police detention and release

Following an arrest, an accused may be released or detained by police. A number of options are available to police should they choose to release an accused, including: an Appearance Notice that directs the accused to attend court or an Undertaking that identifies conditions for the accused to follow while released. On the other hand, the police may also detain the accused until the accused has the opportunity to go before a justice for a bail hearing. Detention of an accused by a police officer is authorized if the police officer believes, on reasonable grounds, that it is necessary in the public interest that the person be detained in custody to:

- establish the identity of the person,
- secure or preserve evidence of or relating to the offence,
- prevent the continuation or repetition of the offence or the commission of another offence,
- ensure the safety and security of any victim of, or witness to, the offence, or
- compel attendance at court.⁴

Data on the police decision to release or detain the accused were available for 1,729 accused following arrest, in all sites except for Site 1 where data were unavailable.⁵ Among these accused, roughly four in ten, or 711 accused, was detained by police following arrest (41.1%). The remaining 58.9% or 1,018 accused was released by police. Overall, the likelihood of release by police following arrest was similar in most of the three sites. However, among all accused, Site 4 (66.6%) was more likely to release accused compared with the overall rate of release for the 3 sites.⁶ See Table 2.

³ Chi-square tests were performed for each characteristic. Differences were statistically significant for all characteristics except the sex of the accused.

⁴ see *Criminal Code*, R.S.C., 1985, c. C-46, s. 497(1.1)

⁵ In some cases, for Sites 2 and 3, data provided on the decision to detain or release an accused were amended to reflect procedural outcomes found in the criminal file and subsequent database. For example, if there was an indication of a police release but the presence of a Judicial Interim Release (JIR) was also found in the data, it was assumed that police failed to release the accused. In these cases, a release by police was changed to detention. This assumption is based on the criminal procedure model, wherein an accused can have a JIR only if they have been held in custody by law enforcement agencies following their arrest.

⁶ Differences were statistically significant, $X^2(3, N=1,729) = 15.412, p=.000$.



TABLE 2: POLICE DETENTION AND RELEASE BY SITE⁷

Police decision	Site 2	Site 3	Site 4	Total
Detained	286 (46.3%)	309 (40.4%)	116 (33.4%)	711 (41.1%)
Released	332 (53.7%)	455 (59.6%)	231 (66.6%)	1,018 (58.9%)
Total	618	764	347	1,729

Table 3 presents select demographic characteristics of accused that were released and detained by police following arrest for all Sites. Overall, among the three sites where data were available, male accused were more likely to be detained by police than female accused (43.8% versus 31.1%, respectively). In addition, more than half of all single accused were detained by police (53.7%), a significantly larger proportion compared to married (45.6%) or divorced/separated/widowed accused (43.4%). Further, having employment strongly influenced the likelihood of release as 61.1% of employed accused were released by police following arrest compared to 43.6% of those who were unemployed. In addition, the presence of a known or suspected mental illness also influenced the likelihood of release: 59.5% of those without any known illness were released compared to 47.7% of those with a known or suspected mental health concern. Further, Aboriginal accused (56.1%) were more likely to be detained by police compared to non-Aboriginal accused (40.4%). No significant differences were found for the median age of accused who were detained (30 years) versus released (32 years).

TABLE 3: POLICE DETENTION AND RELEASE ACCUSED CHARACTERISTICS

Accused Characteristics	Detained	Release
Median Age (n=1,671)	30 years	32 years
Sex (n =1,697)*		
Male	43.8%	56.2%
Female	31.1%	68.9%
Aboriginal Identity (n=1,128) *		
Non-Aboriginal	40.4%	59.6%
Aboriginal	56.1%	43.9%
Marital Status (n=904)*		
Single	53.7%	46.3%
Married	45.6%	54.4%
Divorced/separated/widowed	43.4%	56.6%
Employment (n=782)*		
Unemployed	56.4%	43.6%
Employed	38.9%	61.1%
Student	43.4%	56.6%

⁷ Site 1 is excluded due to missing data.



Other	12.5%	87.5%
Mental Illness (n=1,729)*		
None	40.5%	59.5%
Known or suspected	52.3%	47.7%

* denotes significant differences at the 0.05 level or better.

Approximately two-thirds of all accused had a known criminal history prior to their first appearance in the case (65.5%). A similar pattern in the likelihood of a criminal history was found for Sites 1, 2 and 3 where anywhere between 61.7% and 72.4% of accused had a known prior criminal conviction. In contrast, Site 4 reported a lower level of prior criminal convictions among its accused, according to information in the court and/or Crown files (46.3%).⁸

Having a prior criminal conviction increased the likelihood of detention by police. Roughly three-quarters (76.9%) of those detained by police following arrest had a known prior criminal record compared to 53.3% of those who were released.⁹ For the majority of accused detained by police, a pattern of repetitive criminal behaviour was evident when prior criminal history was known. Figure 1 illustrates that among all those who were detained by police, approximately four-in-ten had more than 20 convictions at arrest (39.6%) while a smaller proportion of released offenders had a comparable number of prior convictions (23.2%). On the other hand, four-in-ten accused who were released by police following arrest had one to four known prior criminal convictions (40.7%), twice as high as the proportion among those who were detained by police (21.8%). Overall, among all accused with a prior criminal history, the median number of prior convictions was approximately 14 for those that were detained, twice the number of prior convictions among those that were released by police (7 prior convictions). In general, as the number of criminal convictions prior to the index offence increased, so too did the likelihood of detention by police.¹⁰ See Figure 1.

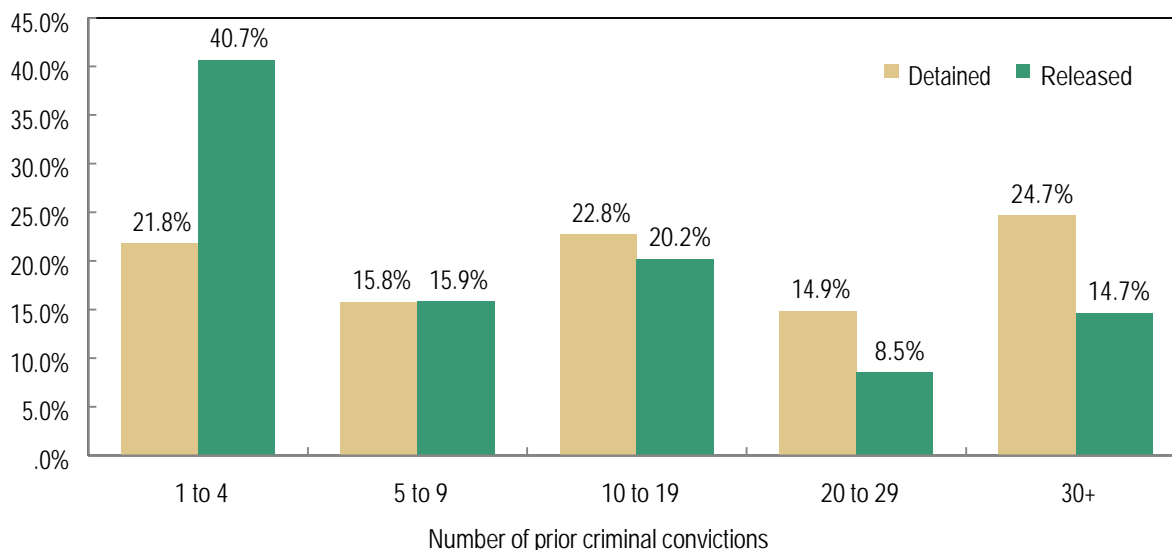
⁸ Criminal history for this analysis was identified if evidence was found in the court or Crown file to indicate a prior criminal conviction. It is not known how many, if any, prior criminal convictions were present but not identified in the files. Differences were statistically significant, $X^2((3, N=3,093) = 92.128, p=.000)$.

⁹ As the extent to which prior criminal history was known to police is unknown in this study, the relationship between this study's criminal history and police decision making regarding detention should be made with caution. Differences were statistically significant, $X^2((1, N=1,729) = 100.020, p=.000)$. Excludes data from Site 1 due to missing data.

¹⁰ Differences were statistically significant, $X^2((4, N=1,022) = 51.692, p=.000)$.



FIGURE 1: TOTAL NUMBER OF PRIOR CRIMINAL CONVICTIONS FOR THOSE WITH A CRIMINAL HISTORY BY POLICE DETENTION/RELEASE STATUS¹¹



As Table 4 illustrates, having a prior criminal conviction for an administration of justice offence influenced the likelihood that an accused would be detained. Accused with known prior sexual offences had the highest rates of detention (57.4%), followed by those with a prior history of s.145 offences, such as failing to attend court or failing to comply with a court order (56.7%). Similarly, a prior conviction for a breach of probation (55.4%) or violent offence (55.8%) also resulted in a higher likelihood of detention by police. On the other hand, a prior conviction for an impaired driving offence resulted in the lowest detention rates among all offence groups (44.3%).

TABLE 4: KNOWN PRIOR CRIMINAL HISTORY BY POLICE RELEASE DECISION¹²

Prior criminal history type	Detained	Released
Violent*	55.8%	44.2%
Sexual*	57.4%	42.6%
Impaired Driving	44.3%	55.7%
Theft*	54.5%	45.5%
Common Assault*	51.7%	48.3%
Fail to Appear/Comply (s.145) *	56.7%	43.3%
Breach of Probation*	55.4%	44.6%
Other AOJO Offences*	53.6%	46.4%

Note: * denotes significant differences <.05 level.

In addition to prior offence history, the index offence profile for all cases in the sampled dataset was also collected. Figure 2 displays the most serious offence among all index offences in the case. Assault offences (all levels) were the most serious index offences for one-fifth of all cases (22.1%) while an additional one-fifth (20.1%) of all accused were in court for a property offence, such as a theft, as their most serious offence. The most serious offence in the case for 16.4% of all cases was

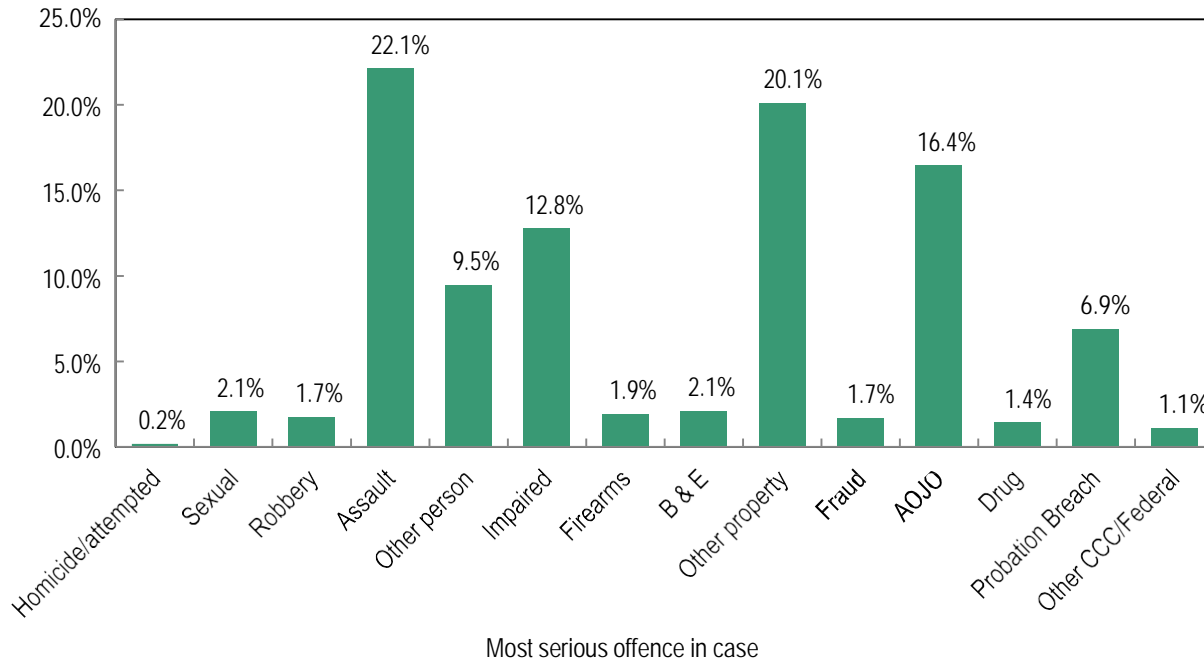
¹¹ Site 1 is excluded due to missing data.

¹² Site 1 is excluded due to missing data.



an administration of justice offence, such as a fail to comply with an order or fail to appear in court. An additional 12.8% of all cases involved impaired driving offences.

FIGURE 2: MOST SERIOUS OFFENCE IN CASE, ALL SITES



The most serious offence (MSO) in the case differed slightly by jurisdiction.¹³ For example, assault offences were the most serious in roughly one-third of all cases in Site 2 (34.2%) while a smaller proportion of cases involved an assault as the MSO in Site 1 (16.6%), Site 3 (22.9%) and Site 4 (19.1%). Furthermore, impaired driving offences were more commonly the MSO in the case in Site 4 (17.3%) compared to the other 3 Sites (ranging from 8.6% to 13.5%). In contrast, Site 4 reported fewer offences against the administration of justice as the MSO in the case (8.8%) compared to all other sites where these types of offences accounted for 13.5% to 18.9% of the MSOs in the case. Although accounting for a small number of the offences overall (n=44), drug offences accounted for a significantly larger proportion of offences in Site 3 (5%) compared the overall average for all four sites (1.4%).

As Table 5 illustrates, the likelihood of detention by police following arrest varied by the MSO in the case.¹⁴ More than four-fifths of all individuals accused of robbery as their MSO in the case were detained by police (85.0%), the highest detention rate among all offence types. Large proportions of cases with break and enter offences (65.7%) and AOJO offences (66.1%) were also detained by police in the three sites where data were available. Further, a smaller proportion of those accused of assault as the MSO in the case were detained by police (44.7%).¹⁵ In contrast, a significantly fewer

¹³ Differences were statistically significant, $X^2((39, N=3,093) = 318.711, p=.000)$.

¹⁴ Differences were statistically significant, $X^2((13, N=1,729) = 239.721, p=.000)$.

¹⁵ The relatively lower likelihood of detention when assault was the most serious offence in the case is largely the result of the high proportion of Level 1 or simple assault offences among all assaults (60.1%). Release by police occurred in



accused were detained by police following arrest when their MSO was an impaired driving offence (7.5%) or fraud (9.1%).

TABLE 5: MOST SERIOUS OFFENCE IN CASE BY POLICE DECISION¹⁶

Most serious offence in case	Detained	Released
Homicide/attempted (n=3)
Sexual (n=45)	51.1%	48.9%
Robbery (n=40)	85.0%	15.0%
Assault (n=461)	44.7%	55.3%
Other violent (n=184)	36.4%	63.6%
Impaired (n=213)	7.5%	92.5%
Firearms (n=33)	42.4%	57.6%
B & E (n=35)	65.7%	34.3%
Other property (n=311)	33.4%	66.6%
Fraud (n=22)	9.1%	90.9%
AOJO (n=248)	66.1%	33.9%
Drug (n=33)	21.2%	78.8%
Breach of Probation (n=79)	50.6%	49.4%
Other CCC / Federal (n=22)	36.4%	63.6%
Total - All offences (n=1,729)	41.1%	58.9%

.. Indicates that numbers are too small to show results

2.1.1 Reasons for police detention

In some cases, police identified one or more reasons for why the accused was detained following arrest. Excluding those cases where data were not available and excluding all data in Site 1 due to missing data, the most common reason cited for police detention was to ensure attendance at court (23.3%, n =166). Further, 4.9% (n=35) of detentions were to ensure the safety and security of a victim or witness to the offence while 3.8% (n=27) of accused were detained in order to prevent recidivism.

2.1.2 Type of police release

Overall, among the three Sites where data were available, there were 1, 018 accused released by police following their arrest. The types of release available to police include the following: Appearance Notice, Promise to Appear, Recognizance with/without deposit, and Undertaking with/without conditions. In instances where more than one type of release was identified for an accused, the most serious type of release was noted.¹⁷ These data were available for three of the four Sites and are presented in Table 6.

fewer than half (41.7%) of all cases where aggravated assault was the MSO while 59.9% of accused whose MSO was assault causing bodily harm or with a weapon were released. More than half (54.8%) of accused who assaulted a peace officer were released while three-quarters (73.1%) of those simple assault (Level 1) were released by police.

¹⁶ Site 1 is excluded due to missing data. Assault includes all levels of assault.

¹⁷ The most serious ranking for release type, from the least serious to the most serious, is as follows: Appearance Notice, Promise to Appear, Recognizance with/without deposit and Undertaking.

TABLE 6: MOST SERIOUS RELEASE TYPE BY SITE¹⁸

Police release type	Site 2	Site 3	Site 4	Total
Appearance Notice	57 (19.3%)	162 (37.7%)	51 (22.5%)	270 (28.3%)
Promise to Appear	13 (5.0%)	96 (22.3%)	152 (67.0%)	261 (27.4%)
Recognizance with/without deposit	60 (20.3%)	18 (4.2%)	0 (0.0%)	78 (8.2%)
Undertaking	166 (56.1%)	154 (35.8%)	24 (10.6%)	344 (36.1%)
Total	296 (100.0%)	430 (100.0%)	227 (100.0%)	953 (100.0%)

As Table 6 illustrates, an Undertaking was the most serious type of release used in the majority of cases (36.1%) which resulted in a release by police. An Appearance Notice was used in 28.3% of all police releases followed closely by a Promise to Appear (27.4%). Recognizances with or without a deposit were generally used infrequently (8.2%) among the three sites except for Site 2 where 20.3% of all releases were Recognizances. Significant differences were found for the most serious type of release used among each of the three sites. In Site 4, Promise to Appear notices were most common release type (67.0%) while these types of release were rarely used in Site 2 (5.0%). In contrast, Undertakings were commonly-used in Site 2 (56.1%) and Site 3 (35.8%) while only 10.6% of all releases in Site 4 were Undertakings.

2.1.3 Conditions of police release

Neither an Appearance Notice nor a Promise to Appear provides police the discretion to subject an accused to any conditions while released in the community. For these types of release, an accused is simply directed to attend court and/or a police station for the purpose of fingerprinting. The use of conditions as part of release by police is possible however with an Undertaking or Recognizance. Among the 422 offenders with an Undertaking or Recognizance with conditions, the most common conditions of police release are presented in Figure 3.¹⁹

The most common condition of police release was to abstain from communication with an individual or group of individuals. Two-thirds of all accused were given this condition (67.1%) of release by police. Moreover, more than half of all conditions were to report as required to police or other authority (55.0%). Conditions to attend court were also common (26.5%) while nearly one-quarter of accused were given a condition to abstain from the consumption of drugs and/or alcohol (22.7%) and 11.8% were ordered to keep the peace and be of good behaviour (KPBGB).²⁰

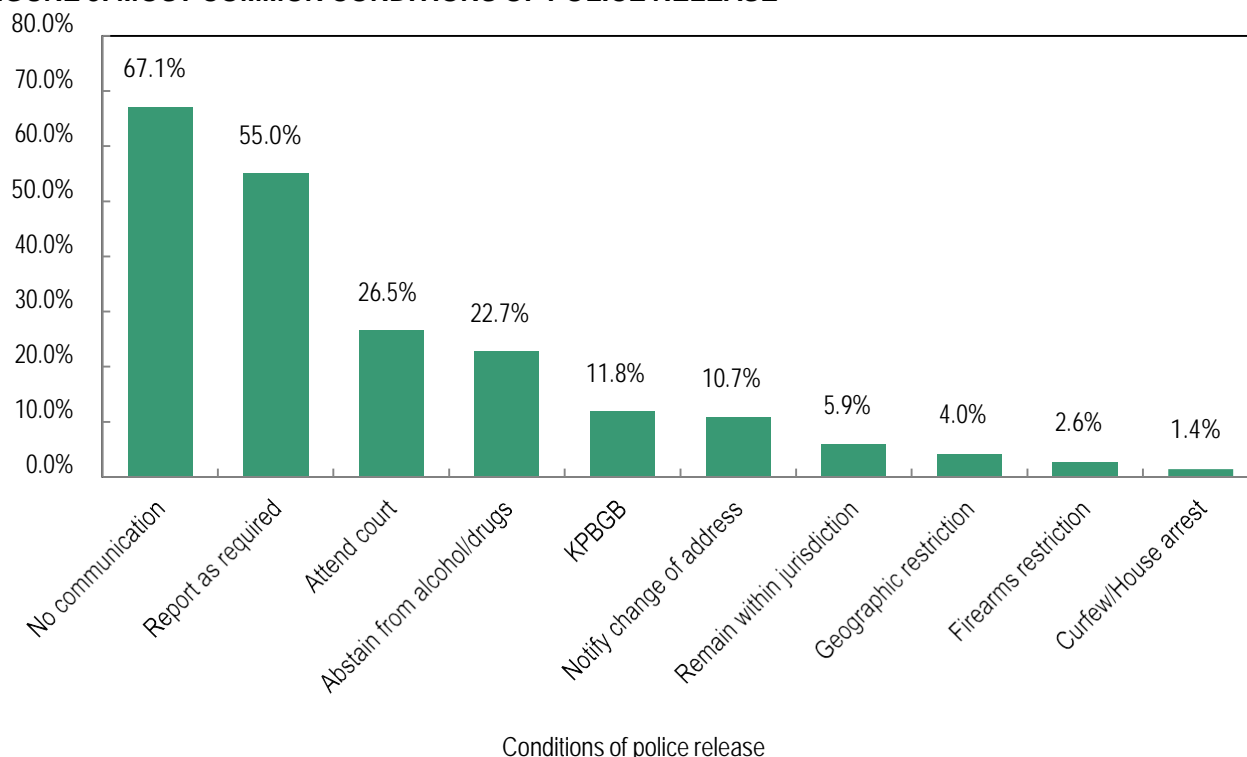
¹⁸ Differences were statistically significant, $X^2(6, N=953) = 420.271, p=.000$.

¹⁹ Data from Site 1 are excluded due to missing data.

²⁰ Note that a Recognizance under s.493 automatically includes the requirement to attend court and as such, may not be included here as a condition for some accused.



FIGURE 3: MOST COMMON CONDITIONS OF POLICE RELEASE



Note: KPBGB refers to the mandatory condition to ‘Keep the Peace and Be of Good Behaviour’

The types of conditions used by police for release on an Undertaking or Recognizance differed by Site.²¹ For example, while nearly one-in-five release orders in Sites 3 (21.5%) and 4 (20.8%) included a condition to notify change of address or employment, this condition was uncommon in Site 2 (1.3%). Further, large proportion of release orders in Sites 3 and 4 included a condition to abstain from communication (78.5% and 70.8%, respectively). This condition was less common among all these releases in Site 2 (58.0%). Moreover, a vast majority of release conditions in Site 2 were to report to police or other person designated (79.6 %) while 30.2% of the releases in Site 3 and none of the releases in Site 4 gave this condition of release. Finally, while 31.4% of all conditions of release were to abstain from drugs and/or alcohol in Site 2, 13.4% of those in Site 3 and 8.3% of those in Site 4 included this condition.

2.2 Characteristics of Judicial Interim Release (JIR)

If an accused is not released by the police, they must be brought before a justice without unreasonable delay following the arrest. A hearing that addresses bail, also known as a ‘show cause’ or judicial interim release hearing, usually occurs within 24 hours following arrest, or as soon as possible, and will determine if the accused will be detained while awaiting trial or sentencing. Subsection 515(10) of the *Criminal Code* sets out specific grounds to justify the pre-trial detention of an accused. The grounds for detaining an accused prior to sentence are as follows:

- **Primary grounds:** refer to whether detention is necessary to ensure attendance in court.

²¹ Includes conditions for 422 accused, excluding data in Site 1, where data were available.



- **Secondary grounds:** refer to whether detention is necessary for the protection or safety of the public.
- **Tertiary grounds:** refer to whether detention is necessary to maintain confidence in the administration of justice.

The justice ultimately decides whether to release the accused or hold the accused in pre-trial custody. When an offender is released, this is referred to as Judicial Interim Release (JIR), or simply 'bail.' Similar to the release options by police, an accused may be released using a number of options, such as an Undertaking or Recognizance, with or without conditions or a surety. Alternatively, an accused may be remanded to custody to await trial or sentencing. The decision to detain/remand an accused is the responsibility of each province and territory and accused are typically detained in facilities in the jurisdiction in which the offence is alleged to have been committed so that attendance in court is feasible.

As noted previously, one-third (31.2%) of all accused had been detained by police following arrest. Among all accused who were initially detained by police, two-thirds were subsequently released at the JIR hearing in court (65.9%) while 34.1% were remanded by court, continuing the detention status set by police following arrest.²² There were no significant differences in the outcome at JIR for any of the sites. See Table 7.

TABLE 7: JUDICIAL INTERIM RELEASE (JIR) OUTCOME BY SITE

JIR release type	Site 1	Site 2	Site 3	Total
Remand	160 (34.8%)	73 (30.3%)	73 (37.2%)	306 (34.1%)
Release	300 (65.2%)	168 (69.7%)	123 (62.8%)	591 (65.9%)
Total	460	241	196	897 (100.0%)

Table 8 presents select demographic characteristics of accused that were released or remanded by the court following their first JIR hearing in the case. Overall, there were few significant differences in the likelihood of remand or release by the selected socio-demographic characteristics. There were no significant differences found for the median age, gender, Aboriginal identity, marital status or mental illness history of the accused who were detained versus released at JIR. However, accused who were not employed were more likely to be remanded following their JIR as 58.9% of those who were unemployed were remanded. Alternatively, roughly one-third (33.7%) of all employed accused and 18.2% of students were released at JIR.

²² In order to identify the initial decision of the court, all JIR outcomes subsequent to the initial JIR outcome in the case (e.g., bail condition review hearings) are excluded from the analysis. Analysis in this section is restricted to the decision of the court on the initial JIR hearing, for accused who were initially detained by police only (N=897 accused). Site 4 is excluded due to missing data.



TABLE 8: JUDICIAL INTERIM RELEASE AND REMAND ACCUSED CHARACTERISTICS²³

Accused Characteristics	Remand	Release
Median Age (n=501)	32 years	29 years
Sex (n=506)		
Male	51.2%	48.8%
Female	40.0%	60.0%
Aboriginal Identity (n=382)		
Non-Aboriginal	48.9%	51.1%
Aboriginal	51.0%	49.0%
Marital Status (n=253)		
Single	43.4%	56.6%
Married	42.9%	57.1%
Divorced/separated/widowed	45.5%	54.5%
Employment (n=206)*		
Unemployed	58.9%	41.1%
Employed	33.7%	66.3%
Student	18.2%	81.8%
Other
Mental Illness (n=507)		
None	50.5%	49.5%
Known or suspected	30.0%	70.0%

* denotes significant differences, p<0.05 level.

.. Indicates that numbers are too small to show results

The court was more likely to remand an accused following their JIR hearing when an accused had a known prior criminal history.²⁴ Of those who had a known prior criminal history, 38.8% were remanded at JIR compared to 14.0% of those who did not have a known prior criminal history. The court's decision to remand or release an accused varied somewhat by the nature of the prior criminal history. Overall, having prior criminal convictions for failure to appear/comply under s.145 of the CCC increased the likelihood of remand by the court as 43.9% of those with known prior criminal convictions for s.145 offences were remanded by the court. In contrast, as Table 9 illustrates, remand was less common for those with a prior violent (39.9%) or prior sexual criminal history (39.5%).

²³ Site 4 is excluded due to missing data.

²⁴ Includes all accused except for those from Site 4 due to missing data (n=897). Criminal history for this analysis was identified if evidence was found in the court or Crown file to indicate a prior criminal conviction. The absence of a prior criminal history does not always indicate that no prior criminal history was present, rather, it may also mean that criminal history was not known or not available in the court file. Differences were statistically significant, $\chi^2(13, N=897) = 37.896, p=.000$.



TABLE 9: KNOWN PRIOR CRIMINAL HISTORY BY INITIAL JIR OUTCOME²⁵

Prior criminal history type*	Remand	Release
Violent* (n=551)	39.9%	60.1%
Sexual (n=43)	39.5%	60.5%
Impaired Driving* (n=377)	45.6%	54.4%
Theft* (n=453)	40.6%	59.4%
Common Assault* (n=396)	40.4%	59.6%
Fail to Appear/Comply (s.145)* (n=501)	43.9%	56.1%
Breach of Probation* (n=560)	41.3%	58.8%
Other AOJO Offences* (n=452)	39.4%	60.6%

* denotes significant differences, p<0.05 level.

The court's decision to remand or release was also influenced by the most serious offence (MSO) in the case (Table 10). As was the case for the decisions to detain or release by police following arrest, increased offence seriousness did not always result in an increased likelihood an individual would be remanded by the court at JIR. For example, although representing only a small number of accused, those accused of fraud were the most likely to have been remanded at JIR (55.6%). Break and enter offences also resulted in a higher likelihood of remand (53.3%) in contrast with the overall average, as did cases with a most serious offence of robbery (41.4%). On the other hand, cases involving other CCC or federal offences, sexual assault and impaired driving offences were less likely to have resulted in remand (28.6%, 27.8% and 9.5% respectively).²⁶

TABLE 10: MOST SERIOUS OFFENCE IN CASE BY JIR OUTCOME²⁷

Most serious offence in case	Remand	Release
Homicide/attempted (n = 3)
Sexual assault (n = 18)	27.8%	72.2%
Robbery (n = 29)	41.4%	58.6%
Assault (n = 233)	32.2%	67.8%
Other violent (n = 91)	29.7%	70.3%
Impaired driving (n = 21)	9.5%	90.5%
Firearms (n = 16)	37.5%	62.5%
B & E (n = 30)	53.3%	46.7%
Other property (n = 150)	34.0%	66.0%
Fraud (n = 9)	55.6%	44.4%
AOJO (n = 206)	38.8%	61.2%
Drug (n = 5)
Breach of probation (n = 79)	30.4%	69.6%
Other CCC / Federal (n = 7)	28.6%	71.4%
Total - All offences (n = 897)	34.1%	65.9%

.. Indicates that numbers are too small to show results

²⁵Site 4 is excluded due to missing data.

²⁶ Caution should be made when JIR outcomes due to small numbers for some offence groups.

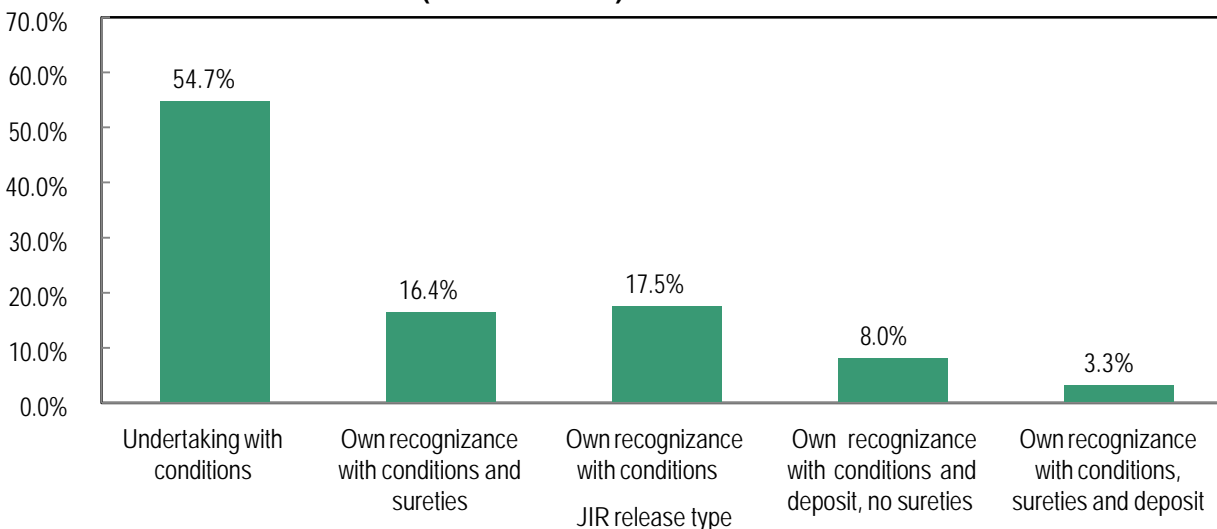
²⁷Site 4 is excluded due to missing data. Assault includes all levels of assault.



2.2.1 Types of Judicial Interim Release (JIR)

Data on the type of release by the court were available in Sites 2 and 3 only.²⁸ Among all releases at the first JIR in these jurisdictions, the most common release type was an Undertaking with conditions. More than half (54.7%) of all accused were released at JIR on this type of release. As Figure 4 illustrates, various types of Recognizances were also used. Nearly one-sixth (16.4%) of releases were by Recognizance with conditions and a surety and an additional 17.5% of accused were released on a Recognizance with conditions only. A small proportion of accused were released on a Recognizance with conditions, sureties and a deposit (3.3%).

FIGURE 4: TYPES OF JIR RELEASE (SITES 2 AND 3)



Among all releases in Sites 2 and 3 where data were available, notable differences in the types of JIR were found.²⁹ For example, most releases in Site 2 were by an Undertaking with conditions (77.8%) while less than one-quarter (23.3%) of those in Site 3 were released that way. Site 3 commonly used a Recognizance to release an accused as a result of a bail hearing in court, the most common of which were a Recognizance with conditions (39.7%) followed by a Recognizance with conditions and sureties (35.3%). Table 11 highlights the different types of release for these 2 Sites.

TABLE 11: TYPES OF JIR RELEASE (SITES 2 AND 3)

	Undertaking with conditions	Own Recognizance with conditions and sureties	Own Recognizance with conditions	Own Recognizance with conditions and deposit, no sureties	Own Recognizance with conditions, sureties and deposit
Site 2	123 (77.8%)	4 (2.5%)	2(1.3%)	21 (13.3%)	8 (5.1%)
Site 3	27 (23.3%)	41 (35.3%)	46 (39.7%)	1 (0.9%)	1 (0.9%)
Total	150 (54.7%)	45 (16.4%)	48 (17.5%)	22 (8.0%)	9 (3.3%)

²⁸ Among all 279 releases, the type of release was available for 274 accused.

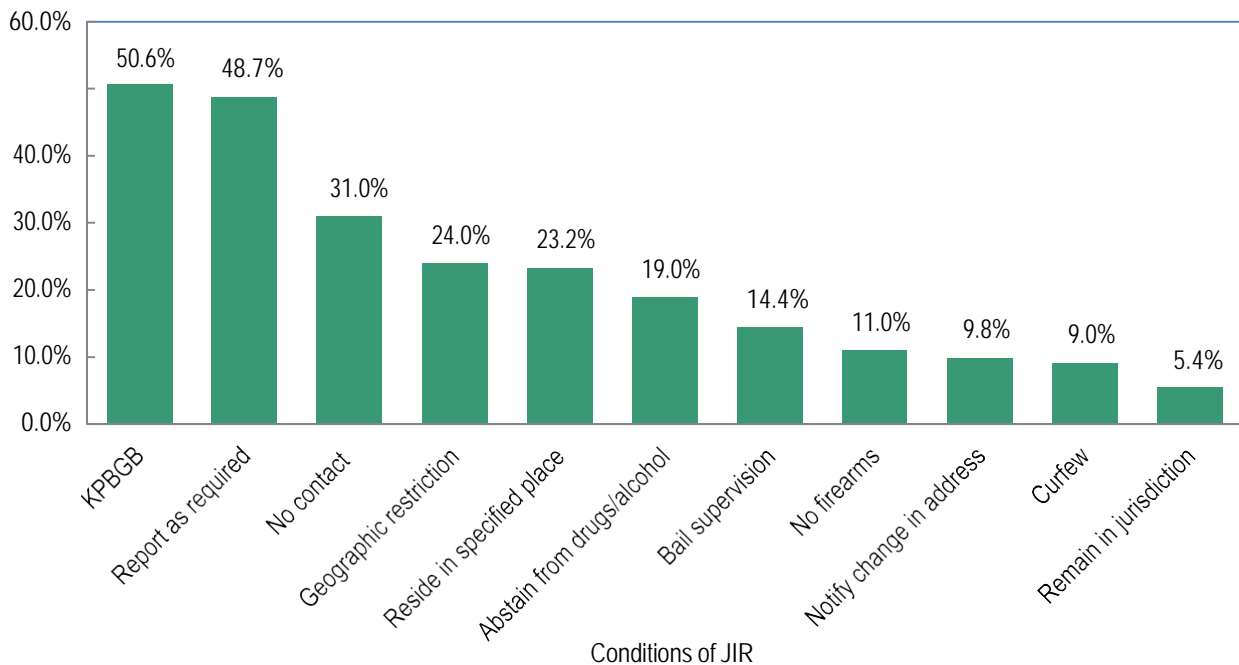
²⁹ Differences were statistically significant, $X^2((4, N=274) = 152.978, p=.000)$.



2.2.2 Conditions of Judicial Interim Release (JIR)³⁰

Figure 5 illustrates the most common conditions given by the court as a result of a JIR, excluding data in Site 4, where data were available. Overall, the most common condition was to keep the peace and be of good behaviour (KPBGB) as half (50.6%) of all accused were given this condition of release. Nearly half (48.7%) of all accused were ordered to report as required and directed to a peace officer or other designated authority while 31.0% were prohibited from contacting an individual such as a victim or witness. In addition, one-quarter of all accused were prohibited from certain geographic locations or places (24.0%) and an additional one-quarter (23.2%) were ordered to reside in a specific jurisdiction. Nearly one-in-five accused was directed to abstain from the consumption of drugs or alcohol (19.0%).

FIGURE 5: MOST COMMON CONDITIONS OF JUDICIAL INTERIM RELEASE³¹



Note: KPBGB refers to the mandatory condition to ‘Keep the Peace and Be of Good Behaviour’

Overall for all sites, a median number of 1.8 conditions were given to each accused subject to a JIR order. However, the extent to which conditions of JIR orders were used to ensure compliance by an accused varied by each site.³² Specifically, Site 1 used fewer conditions on average (median = 1.1 conditions) while Sites 2 and 3 used a larger number of conditions, on average, as part of the JIR orders (median=3.8 and 3.8, respectively). Although a larger proportion of JIR orders included multiple conditions in Sites 2 and 3, none of the sites gave more than 9 or 10 conditions per JIR order.

³⁰ Includes conditions for 591 accused, excluding data in Site 4, where data were available.

³¹ Includes conditions for 591 accused, excluding data in Site 4, where data were available.

³² Differences were statistically significant, $F(2,580) = 173.464$, $p = .000$.



While the most common types of JIR conditions given by the court were similar among each of the sites, there were some notable differences.³³ As Table 12 below illustrates, Site 1 was significantly more likely to give a condition to keep the peace and be of good behaviour (KPBGB) compared to Sites 2 and 3. In contrast, while nearly all accused released on JIR in Site 2 (92.9%) were ordered to report as directed to a peace officer or other designated authority, this was less common in Site 3 (53.7%) and Site 1 (22.0%). Site 1 used geographic restriction conditions or conditions to reside in a specified place very infrequently compared to the other 2 sites. Further, while conditions to abstain from drugs and/or alcohol and to abstain from contact with an individual were common in Sites 2 and 3, virtually none of the releases in Site 1 included these conditions. Moreover, while firearm restrictions were common in Site 3 (45.5%), only small percentages of JIR orders included this condition in the other sites. Finally, a condition to attend a bail supervision program was fairly common in Site 1 (21.0%) while this was not the case in any of the other sites, likely the result of differences in the availability of the bail supervision programs in each of the jurisdictions.

TABLE 12: COMMON CONDITIONS OF JUDICIAL INTERIM RELEASE BY SITE

Type of JIR condition	Site 1 (n=300)	Site 2 (n=168)	Site 3 (n=123)	Total Sites (n=591)
KPBGB	69.3%	28.0%	35.8%	50.6%
Report as required	22.0%	92.9%	53.7%	48.7%
No contact	3.0%	66.7%	50.4%	31.0%
Geographic restriction	1.0%	53.0%	40.7%	24.0%
Reside in specified place	1.0%	48.8%	42.3%	23.2%
Abstain from drugs/alcohol	0.7%	40.5%	34.1%	19.0%
Bail supervision	21.0%	11.9%	1.6%	14.4%
No firearms	0.3%	4.8%	45.5%	11.0%
Notify change in address	0.0%	13.7%	28.5%	9.8%
Curfew	0.0%	18.5%	17.9%	9.0%
Remain in jurisdiction	0.0%	9.5%	13.0%	5.4%
Attend assessment/counselling	0.3%	15.5%	1.6%	4.9%

Note: KPBGB refers to the mandatory condition to ‘Keep the Peace and Be of Good Behaviour’

2.2.3 Case Processing and JIR hearing characteristics

The vast majority of all initial JIR hearings were dealt with in one appearance (93.4%).³⁴ As Table 13 illustrates, the length of time it took to complete a JIR was one appearance for all accused in Sites 1 and nearly all accused in Site 4 (98.4%). A smaller proportion of JIR hearings were completed in only one hearing in Site 2 (91.7%) while 84.7% of JIR hearings in Site 3 were completed in one appearance.³⁵

³³ Includes conditions for 591 accused, excluding data in Site 4, where data were available.

³⁴ Analysis is based on the first initial JIR in the case only (n=596), excluding all subsequent review hearings and hearings for amendment of a condition, for example, if applicable.

³⁵ Differences were statistically significant, $X^2((3, N=595) = 42.074, p=.000)$. One possible explanation for why fewer JIR hearings in Site 3 were completed in one appearance is the increased use of a Recognizance with conditions and



Approximately 81.4% of all accused had legal representation in court during their initial bail hearing to determine bail or remand (See Table 13). There was significant variation among the four sites regarding legal representation. For example, while nearly all accused in Site 3 were represented at JIR (91.2%), smaller proportions of accused were represented in all other Sites. Almost three-quarters of all accused had counsel at their JIR in Site 1 (71.2%) while 84.8% of those in Site 2 and 83.3% of those in Site 4 were represented.³⁶

TABLE 13: COMMON CASE PROCESSING AND JIR HEARING CHARACTERISTICS

Case Processing and Characteristics	Site 1	Site 2	Site 3	Site 4	Total
One JIR hearing (%)	100.0%	91.7%	84.7%	98.4%	93.4%
Legal representation at JIR (%)	71.2%	84.8%	91.2%	83.3%	81.4%

Slightly more than half of all accused (52.9%) with legal representation at the initial JIR hearing were released.³⁷ In contrast, one-third (34.4%) of accused who were not represented were released. The likelihood of release for those with legal representation varied significantly by site. Among those represented at their initial JIR, nearly two-thirds of accused in Sites 2 (64.5%) and 3 (62.1%) were released compared to only one-third (37.9%) of those in Site 1.³⁸ Interestingly, a greater proportion of accused were released when not legally represented in Sites 2 (76.5%) and 3 (64.3%) compared to those who were represented. In Site 1, where remand is more likely for all accused, regardless of representation, the reverse was found. Unrepresented accused were less likely to have been released than those with legal representation (16.9% versus 37.9%).

Among all accused who were remanded as a result of their initial JIR, slightly more than half consented to detention (55.0%).³⁹ Accused in Site 3 were more likely to consent to remand at JIR (67.6%) compared to those in Site 1 (49.4%).⁴⁰

2.3 Breach of release

Information regarding a violation or breach of a police release order or JIR was available for Sites 2 and 3 only. The following illustrates the rate of breach among those who were released by police or JIR, separately.

sureties compared to the other sites. The identification of a surety may take time, thereby influencing the length of the JIR process and increasing the number of hearings to identify an outcome at JIR.

³⁶ Differences were statistically significant, $X^2((3, N=544) = 29.275, p=.000.)$.

³⁷ Differences were statistically significant, $X^2((2, N=495) = 10.604, p=.001.)$. Excludes Site 4 due to missing data.

³⁸ Differences were statistically significant, for those who were represented at their initial JIR: $X^2((2, N=399) = 24.490, p=.000.)$ and for those unrepresented, $X^2((2, N=96) = 27.682, p=.000.)$. Excludes Site 4 due to missing data.

³⁹ Excludes Sites 2 and 4 due to missing data. There are many reasons why an accused may consent to remand, including: to bring an end to the bail process to encourage a more speedy resolution to the case; if the accused is facing additional criminal charges or cases; or, to secure an appropriate surety.

⁴⁰ Differences were statistically significant, $X^2((1, N=213) = 7.434, p=.005.)$.



Of the 787 accused who were released by police following arrest from these two Sites, one-quarter (25.2%) of accused were identified as violating or breaching their order of release by police.

Three-quarters of all accused who breached their police release did so once (76.1%), while 15.4% breached twice and 8.5% violated the terms of their release order three or more times. More than six-in-ten (61.7%) of the 201 accused who violated the terms of their police release were formally charged as a result of the breach. Approximately 2.5% of accused were remanded following their allegation of a breach. Most violations and breaches involved violating a condition of police release rather than committing a new substantive offence. Approximately 14.9% of breaches involved a new substantive offence.

Almost one-quarter of all accused who breached their order of release by police did so because they failed to attend court (22.4%). When an accused violated one or more conditions of police release, the most common condition breached was for failing to report to a police officer or other person designated (64.7%). An additional 9.5% breached their condition to keep the peace and be of good behaviour, while 4.0% violated their no contact condition and 4.0% failed to abstain from drugs or alcohol.

A smaller proportion of accused released by the court violated or breached their JIR as compared to those released by police. All accused who were released by the court were included in the analysis, irrespective of what point in the case they were released, either at their initial JIR or a subsequent hearing.⁴¹ Of the 291 released on JIR in Sites 2 and 3, 51 accused, or 17.5% of all accused, violated their terms of release by the court.

Half of all accused who breached their JIR did so once (54.9%) while an additional one-quarter (25.5%) violated their JIR twice and 19.7% breached three times or more. Almost half who violated the terms of their JIR were formally charged as a result of the breach (47.1%). One-third of accused were remanded following their allegation of a breach (35.3%).

Nearly all violations of JIR were breaches of release conditions or a failure to attend court (98.0%) as only 2.0% of accused committed a new substantive offence while on judicial interim release. Among those who violated the JIR order, half of all accused failed to attend court (49.0%). The remaining half of accused violated their JIR by breaching one or more conditions of release. All violations were attributed to a failure to report to a police officer or other designated person (100.0%). Additionally, a further 2.0% of accused were also identified as failing to keep the peace and be of good behaviour (KPBGB).

⁴¹ Excludes Sites 1 and 4 due to missing data.

3.0 Conclusion

This report provided information on the detention and release practices of police and of the court and the characteristics of accused subject to these decisions, using data from the Justice Effectiveness Study from the Research and Statistics Division, Justice Canada. The data in this report were collected from both court and Crown files in five court locations in four provinces across Canada.

Data collected on the decisions of police to release or detain an accused show that roughly two-thirds of accused were released by police following arrest. The likelihood that an accused was detained by police was higher for male accused, Aboriginal accused, single accused, and those with a prior criminal history. Police detention was also more common when the most serious offence committed by accused was robbery, break and enter or an administration of justice offence, such as a failure to attend court. Overall, the most common police release type was an Undertaking, although significant differences in the types of release were found among the four sites. The types of conditions used by police for orders of release (e.g., Undertaking or Recognizance) also differed by site but overall, the most common conditions were to abstain from communication with an individual followed by a condition to report to police as required.

When an accused was detained by police, roughly two-thirds were later released by the court as a result of their initial Judicial Interim Release (JIR) hearing in court. Again, the decision of the court to release an accused differed by Site. Notable differences were also found in the type of JIR. Overall, nearly half of all accused released at JIR were released on an Undertaking with conditions. The most common condition of a JIR was the requirement to keep the peace and be of good behaviour, followed by the condition to report to police or other designate. Substantial differences in the types of JIR conditions were found among Sites, where data were available.

Most accused who were released by police and by JIR were successful in their release requirements and did not breach or violate the terms of their release. Accused were more likely to breach their police release than their JIR. Where a breach of release did occur, most violations involved a breach of a condition of release and not a new substantive offence. Typical violations were for failing to attend court or failing to report to a police officer or other designated person.

Overall, this report found that while most accused persons are not detained while awaiting trial or sentencing, remand is still an important option that is used by the court and by police. The findings in this report illustrate that the decision to release or detain an accused is often complex. The likelihood of detention or release by police and court varies according to a number of factors, including the location of the court, the offence profile of the case, the criminal history of an accused as well as socio-demographic characteristics of the accused. While the data in this study do not identify if the use of detention has increased, nor do they identify all reasons why an accused would be denied release in the community, they do provide some information about the nature of the decision-making process by police and in the criminal court and the characteristics of the individuals subjected to these decisions.



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