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# Race and Prosecutorial Decision-Making: An Analysis of the Public Prosecution Service of Canada's British Columbia's Regional Office

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The project would not have been possible without their help.

## Introduction

### Background

In November 2021, the British Columbia Office of the Human Rights Commissioner published a report summarizing their investigation of racial disparities in policing. The report *Equity is safer: Human rights considerations for policing reform in British Columbia* described the commissioned findings of Dr. Scot Wortley.<sup>1</sup> Overall, Dr. Wortley's research found significant overrepresentation of Indigenous, Black, and people of colour (IBPOC)<sup>2</sup> in the arrest data of five British Columbia (BC) regions: Vancouver, Surrey, Prince George, Duncan/North Cowichan, and Nelson.<sup>3</sup> Most notably, in comparison to their representation in the general population, Indigenous, Arab/West Asian, Black, and Hispanic individuals were overrepresented in arrest data while, Asian and South Asian individuals were significantly underrepresented across the five sample jurisdictions.

In response to the findings published by the British Columbia Office of the Human Rights Commissioner, the Public Prosecution Service of Canada (PPSC) sought to evaluate the downstream effects of racial disparities in BC policing on the work of prosecutors. The British Columbia Regional Office undertook its own analysis and this report is the culmination of the research on the impact of racial and ethnic disparities in policing on PPSC BC's operations, decision-making, and the resulting impacts on the Criminal Justice System. In other words, the PPSC BC Regional Office sought to further Dr. Wortley's findings by investigating the role of PPSC Prosecutors in augmenting or reducing the racial disparities found in policing. In addition to investigating the downstream effects of racial disparities in policing, the project sought to address broader questions about the role that PPSC BC Regional Office plays in addressing the racial disparities present in BC's Criminal Justice System.<sup>4</sup> While the role of police agencies is often highlighted in the research on racial inequities in the Canadian Justice

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<sup>1</sup> Scot Wortley, *Racial disparities in British Columbia police statistics: A preliminary examination of a complex issue* (2021), online: British Columbia's Office of the Human Rights Commission Publications <[Racial disparities in British Columbia police statistics: A preliminary examination of a complex issue \(bchumanrights.ca\)](#)> [Wortley]

<sup>2</sup> An acronym standing for Indigenous, Black, and People of Colour.

<sup>3</sup> Wortley, *supra* note 1 at 7

<sup>4</sup> "BC Corrections and Indigenous justice" online <[BC Corrections and Indigenous justice - Province of British Columbia \(gov.bc.ca\)](#)>



System<sup>5</sup>, the role prosecutors play in the lifespan of a criminal file is not often studied. As such, this report serves to address the following questions:

1. To what extent are certain IBPOC groups over or underrepresented in the PPSC BCRO's files?
2. What is the role of the charge approval decision in increasing or decreasing the racial disparities present in BC arrest data?
3. Is there an association between the race or ethnicity of the accused and their file outcome?
4. To what extent does PPSC play a role in mitigating or amplifying racial disparities present in BC's Justice System?

It is important to note that the PPSC BCRO's investigation is preliminary, and this report is limited to the analysis of race or ethnicity and prosecutorial decision-making. While an intersectional analysis of prosecutorial decision-making might have been ideal, we were unable to conduct a project of that magnitude. The report's findings are significant for positive change within the PPSC, and we hope the results of this report will prompt further research and consultation.

## The role of a prosecutor

This report centers on key decisions points for BCRO's federal Crown counsel. Discretion is the centerpiece of the work of prosecutors.<sup>6</sup> Each prosecution, from beginning to its end, requires a prosecutor to make independent, policy-grounded decisions. In turn, these decisions direct the course of a proceeding. All possibilities within a criminal file begin with a prosecutor's decision. A prosecutor lays charges<sup>7</sup>, seeks certain bail conditions or detention, and/or submits sentencing positions. Other justice system participants are often reacting to decisions made in the prosecution. For example, it is unlikely that an offender will be incarcerated if the prosecutor does not seek their detention or ask for jail sentence. In this way,

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<sup>5</sup> See the [Report of the Standing Committee on Public Safety and National Security: Systemic Racism in Policing in Canada](#) (Ottawa: Standing Committee on Public Safety and National Security, 2021), Wortley, *supra* 1

<sup>6</sup> [PPSC Deskbook](#), Chapter 2.2 "Duties and Responsibilities of Crown Counsel"

<sup>7</sup> British Columbia is one of the jurisdictions where charges are laid by prosecutors and not by the police.

the prosecutor sets the course of the criminal proceeding. Therefore, it is important to critically examine the decision-making of prosecutors because their regular use of discretion will significantly influence the file's proceedings and seemingly, small decisions such as bail submissions can have long-term effects for the person charged.

By the time prosecutors receive a file for charge approval, the identity of the accused, circumstances of the incident, and the nature of police interaction are set. As a result, each prosecutor must work within the parameters of predetermined and potentially biased facts. The report illustrates that while a decision made at an individual level may be appropriate on those facts, when examined at the aggregate level these individualized decisions have led to an overrepresentation of Indigenous and Black Canadians, as well as Canadians from other racial minority groups in the Criminal Justice System. The report does not demonstrate "bad apples" within the organization or individuals who are incorrectly applying the charge approval standard. Instead, it highlights tangible areas for improvement in the current practices in the PPSC BCRO and offers opportunities for management to empower individual prosecutors to make decisions, which reduce the inequities present in the BC Justice System.

Throughout the writing of the report, we have seen that there is often a culture of colour blindness associated with prosecutorial decision-making. A colour blind approach refers to an individual ignoring race in order to maintain an egalitarian self-image. This decision-making pattern is reflective of the broader idea that prosecutors see all people "as equal under the law." As a result, this colour blindness may be the root of the negative aggregate results since colour blindness may be creating a false sense of equity in the work of prosecutors. As will be discussed later in the report, the concept of colour blindness can have unintended negative impacts on people from IBPOC groups.

Additionally, this report is limited to the analysis of race and ethnicity and prosecutorial decision-making. We recognize race or ethnic background is only one facet of an accused's identity. In the *Deskbook*, prosecutors are asked to consider various personal identity factors, such as indigenous or racial identity, as well as underlying issues facing each accused,

including such factors as: homelessness, substance use issues or mental disorders.<sup>8</sup> While an intersectional analysis of prosecutorial decision-making might have been ideal, we were unable to conduct a project of that magnitude in the time allotted. A more fulsome analysis into the intersecting identity factors, which inform criminality within the BC region, is possible and could yield additional areas for reducing inequities in the work of PPSC prosecutors.

## Report outline

The following report features three main sections. The first serves to review the project design and methodology used by the research team. The majority of the report outlines the project's findings, across five regions of PPSC practice: Prince George, Nelson, Duncan, Surrey, and Vancouver. Overall, the investigation finds overrepresentation of accused from various IBPOC groups across PPSC practices, and in certain regions, a potential bias towards the prosecution of IBPOC individuals. The report concludes with a list of recommendations for improvement across the PPSC BC office. While the recommendations are rooted in empirical data from both the project and broader research, they are preliminary.

## Research design

In order to address the research questions listed above, the BC research team took inspiration from the British Columbia Human Rights Commissioner's Report and, in particular, Dr. Scot Wortley's seminal work in creating that Report. Using many of Dr. Wortley's techniques, we created a research design that would be impactful, yet feasible, given the time constraints of the project.

For the project, the research team chose to evaluate all *Controlled Drugs and Substances Act* (CDSA) 4(1) and 5(2) charges<sup>9</sup> laid in 2017 across five BC areas. Through specific inclusion criteria, the project was able to create a detailed data set of 424 files.<sup>10</sup> Each file was reviewed from arrest to conclusion and coded. The offences of focus were chosen, since they were the

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<sup>8</sup> [PPSC Deskbook](#), Chapter 2.3 "Decision to Prosecute"

<sup>9</sup> Section 4(1) of the CDSA relates to the offence of possession of an illicit substance while section 5(2) relates to the offence of possession for the purpose of trafficking.

<sup>10</sup> Note: CDSA 4(1) and CDSA 5(2) charges were investigated together to ensure a sufficient sample size.

two most common charges laid in the BC Region in 2017.<sup>11</sup> Additionally, they present the highest opportunity for police bias. CDSA 4(1) and 5(2) charges often result from opportunistic policing such as random police checks<sup>12</sup>, traffic stops<sup>13</sup>, and street patrol.<sup>14</sup> The year 2017 was examined as it ensured that files had come to their conclusions and were not impacted by the pandemic period. Each of the opportunistic policing practices listed above has been found to be associated with greater racial profiling and bias.<sup>15</sup> As such, through our investigation of files featuring CDSA 4(1) and 5(2) charges, we hope to target files that have potentially already been subject to increased levels of racial profiling by police prior to the arrest. Moreover, CDSA 4(1) and lower level 5(2) charges are often lower complexity and as a result are primarily assigned to the newer prosecutors within the PPSC. As such, the investigation of these files for racial disparities allows the research team to evaluate the possible changes required to PPSC training materials and/or support. To focus the project, large portions of PPSC BC's operation were omitted from review. The majority of the personnel and resources within the Vancouver office are devoted to large-scale files, including, but not limited to, project files involving organized crime. While the research team recognizes the possibility for bias in PPSC's project file practices, this initial project sought to investigate the role of discretion in prosecutorial decision-making. In small files, the discretion of a prosecutor is high as both steps of the decision to prosecute test could fail to be met. A routine drug file could fail to have a reasonable prospect of conviction and/or fail to meet the public interest requirement. In large-scale project files, the public interest component of the test is usually met, and prosecutors tend to be consulted at an early stage on high-level investigative police practices resulting in better quality files. As such, any bias in prosecutorial decision-making may be more difficult to identify. Furthermore, in large-scale project files, arresting officers rarely work alone. The rigors

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<sup>11</sup> Data provided by Kendra Davidson, PPSC Senior Business Data Analyst from the PPSC's legal case management software "iCase".

<sup>12</sup> Ontario Human Rights Commission *Under suspicion: Concerns about racial profiling by police* (2017) online: [Under suspicion: Concerns about racial profiling by police | Ontario Human Rights Commission \(ohrc.on.ca\)](https://www.ohrc.on.ca/en/under-suspicion-concerns-about-racial-profiling-by-police) [Ontario Human Rights Commission]

<sup>13</sup> Lorne Foster & Les Jacobs for the Ottawa Police Service *Traffic Stoppe Race Data Collection Project II Progressing Towards Bias-Free Policing: Five Years of Race Data on Traffic Stops in Ottawa* (2019) online: [OPS-TSRDCP-II-REPORT-Nov2019.pdf \(ottawapolice.ca\)](https://www.ottawapolice.ca/en/ops-tsrdcp-ii-report-nov2019.pdf) [Foster]

<sup>14</sup> See *Supra* note 6 at 5(7)

<sup>15</sup> *Supra* note 11, 12, 13

required in complex investigation may reduce the likelihood of single officer bias or questionable practices.

In order to mirror and hopefully deepen the work undertaken by Dr. Wortley, the research team chose to examine the same regions and specifically: Prince George, Nelson, Duncan, Surrey, and Vancouver. In addition to their symmetry with Dr. Wortley's data, the five areas provided diversity to our research. Each region has their unique characteristics such as population demographics and police agencies. Furthermore, four of the five regions feature Agent Firms who undertake the majority of the prosecutions. As such, our data is reflective of an array of prosecutors and PPSC management structures.

Finally, the investigation was limited by timeframe: the project exclusively investigated charges laid in 2017.<sup>16</sup> This timeframe was selected for two main reasons; first, to allow sufficient time for the file to have reached a conclusion and second, to avoid files handled during the COVID-19 pandemic. The COVID-19 pandemic significantly altered many PPSC BC Regional practices<sup>17</sup> and the work accomplished during the initial lockdowns may not accurately reflect the region's tendencies. The research team acknowledges that there are negative aspects of investigating charges laid in 2017; specifically the file decisions and management may not be reflective of current practices. This is especially apparent in the current PPSC 4(1) directive published in 2020. Based on the new directive, CDSA 4(1) charges should only be applied in the "most serious manifestations of the offence."<sup>18</sup> Additionally, in recent years, there has been a renewed importance on learning and training on Equity, Diversity, Inclusion, and Accessibility (EDIA) principles.<sup>19</sup> As an example, PPSC is actively educating prosecutors on the incorporation of Gender-Based Analysis Plus (GBA Plus) analysis framework into their daily work. Despite the investigation of outdated files, the current study provides insight into

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<sup>16</sup> Note: A file was not excluded from the sample if a breach charge was laid outside of 2017

<sup>17</sup> George Dolhai & David Antonyshyn, "COVID-19: Bail and Resolution Principles" (2020), online: [PPSC - Memorandum - COVID 19: Bail and Resolution Principles \(ppsc-sppc.gc.ca\)](https://ppsc-sppc.gc.ca/memorandum-covid-19-bail-and-resolution-principles)

<sup>18</sup> [PPSC Deskbook](https://ppsc-sppc.gc.ca/ppsc-deskbook), Guideline 5.13 "Prosecution of Possession of Controlled Substances Contrary to s.4(1) of the *Controlled Drugs and Substances Act*"

<sup>19</sup> Kathleen Roussel, "2022-23 Departmental Plan" (2021), online: [PPSC - 2022-23 Departmental Plan \(ppsc-sppc.gc.ca\)](https://ppsc-sppc.gc.ca/2022-23-departmental-plan) [2022-23 Departmental Plan]

past decision-making as well as biased practices, which may still be reflected in current PPSC work.

In sum, the project as scoped allowed us to rely heavily on the work already done by Dr. Wortley and his team. Through our reliance on Dr. Wortley's project design, we were able to produce a high-quality report in a very short timeframe. Future investigations should create independent project designs to evaluate broader areas of PPSC practice.

## Terminology

In order to conduct research on race, racial and ethnic categories are inevitably required. In the report, like in the work of the Dr. Wortley, these categories listed in the census were combined to create symmetry with the categorization options listed on police databases.

Throughout this report, the terms racial minorities and IBPOC will be used to describe individuals who identify as Indigenous, Black, Asian, South Asian, Hispanic, and/or Middle Eastern/Arab. While the *Employment Equity Act* and Statistics Canada use the term "visible minority" to define "persons, other than Aboriginal peoples, who are non-White in race or non-white in colour," this term has received severe scrutiny from both the UN Independent Expert on Minority Issues<sup>20</sup> and the UN's Working Group of Experts on People of African Descent.<sup>21</sup> We are sensitive to the fact that the terms racial minority and IBPOC have also been questioned for their accuracy and inclusivity, however, we believe that in accordance with the current governmental practices, this is the appropriate terminology for this time period.<sup>22</sup>

## Creating the data set

Based on our search requirements, a list of all CDSA 4(1) and 5(2) charges laid in 2017 was acquired from Kendra Davidson, Senior Business Data Analyst who compiled the list using the

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<sup>20</sup> [Report of the independent expert on minority issues.](#)

<sup>21</sup> [Statement to the media by the United Nations' Working Group of Experts on People of African Descent, on the conclusion of its official visit to Canada, 17-21 October 2016 | OHCHR](#)

<sup>22</sup> See **Julia Nicol and Beverly Osazuwa**, "[Race and Ethnicity: Evolving Terminology](#)"- HillNotes, Library of Parliament.

PPSC data management software program, "iCase". The list of files provided summarized the available iCase Data for each file. This data did not provide enough information for the research team to run the required analysis. Most notably, the race of the accused is not included in the iCase data available.<sup>23</sup> In order to create an information rich data set, each physical file associated with the iCase data was retrieved from Iron Mountain Storage. Through the manual review of each physical file, the research team was able to extract information to create a data set featuring the following variables:

- Name of Accused
- Race of Accused
- Description of Police Stop
- Number of Prior Convictions (excluding Juvenile convictions)
- Charge Laid Date
- Charge
- Bail
- Bail Conditions
- Whether a Warrant was issued
- All Sentencing positions listed in the file
- Final Sentence
- Lead Prosecutor
- Agent Supervisory Unit Team Member
- Police Proposed Charges

After data was extracted from each individual physical file, the sample was reviewed for additional exclusion criteria. Through exclusion of additional files, the research team sought to focus in on lower level drug offences. Files were excluded from the data set if they featured: a CDSA 5(1) charge, an investigative practice by police, a juvenile offender, or the province took conduct of the file through the Major/Minor Agreement. The exclusion criteria were chosen to ensure that files featuring high-level drug operations were excluded. Typically, larger drug files involve police investigations (such as a multi-day surveillance operation, a buy/sell operation, or a dial-a-dope call made by police) and/or a CDSA 5(1) charge. In our project, we sought to

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<sup>23</sup> Additional issues related to the record keeping practices of the PPSC are discussed in recommendation 3

highlight incidents of opportunistic policing (such as street checks, patrol, and observation points). While there may be bias in whom the police choose to run an investigation on, the prolonged investigations required for the higher-level drug files reduces the likelihood of race as a determining factor in laying the charge. Additionally, as mentioned above, this initial investigation sought to utilize files with the highest degree of prosecutorial discretion. Large files, involving complex investigations would have reduced the research team's ability to isolate the effects of prosecutorial decision-making in relation to accused from various IBPOC groups. Files containing youth or in which the province took conduct through the Major/Minor agreement were omitted due to a differing application of the Charge Approval decision. For example, prosecutions involving files with Juvenile offenders must follow the specific guidelines outlined in the *PPSC Deskbook* for youthful offenders.<sup>24</sup>

### **Unavailable data**

While Information Management (IM) retrieved the large majority of files, a few files were unable to be located. These files have been excluded from the final data set due to their missing status within the PPSC.

Additionally, the BC Agent Supervisory Unit (ASU) was unable to provide complete records of their involvement on the files. As such, the research team was required to rely on the record keeping of Agent firms to review the oversight role of the ASU.

### **Data limitations**

When reviewing the sample size of the five regions sampled, three of the five regions had a sample size of fewer than 15 files. Due to the small number of files reviewed, there is a high chance of inflated statistics and error.<sup>25</sup> In order to avoid possible result over inflation, the research team calculated the total number of files across areas. In augmenting the sample size, there is a lower chance of inflated statistics.

## **Measuring racial disparity**

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<sup>24</sup> [PPSC Deskbook](#), Chapter 5.4 "Youth Criminal Justice"

<sup>25</sup> JP Verma & Priyam Verma, *Determining sample size and power in research studies: a manual for researchers* (Singapore: Springer, 2020).



While creating the data set, the research team paid special attention to the race characteristic of each accused. When writing the report to crown counsel (RTCC), police officers must input the race of the accused into PRIME<sup>26</sup>. The racial category associated with a forwarded file could represent the self-perception of the accused or it could incorrectly categorize the accused according to assumptions made by of the officer.<sup>27</sup> The RTCC is a limited resource for research, as it may present inaccurate information influenced by assumptions or biases of the arresting officer. In fact, in many files reviewed, the race noted on the RTCC did not match with the race of the accused noted later in the file. As such, the researchers used the race information noted on the RTCC as a basis, which could later be updated, by information provided by defence counsel or by Corrections Canada. The categories of races and ethnicities used in the project reflect those available through the drop-down menu on PRIME:

- Asian
- Black
- White/White
- Hispanic
- Indigenous
- Middle Eastern
- South Asian
- Other
- Unknown

In mirroring Dr. Wortley's design, race-based population estimates were calculated from the 2016 Canadian Census.<sup>28</sup> The 2016 Canadian census provided the most recent population estimate for the project timeline, allowing the research team to compare the population numbers between charges forwarded by the police and the greater population. Though it is important to note that as Dr. Wortley specified, "[the] census racial categories do not align perfectly with the racial categories used by the police in British Columbia."<sup>29</sup> As such,

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<sup>26</sup> Police Records Management Environment ("PRIME") is a records management system used by all police forces in British Columbia.

<sup>27</sup> This issue will be discussed in greater detail in Recommendation 2

<sup>28</sup> "Data products, 2016 Census", online: [2016 Census of Population – Data products \(statcan.gc.ca\)](https://www25.statcan.gc.ca/n1/pub/92-62-001/2016001-eng.htm) (last modified February 8, 2021) [Census]

<sup>29</sup> Wortley, *supra* note 1 at 11

categories of race and ethnicity listed in the census were combined to create symmetry with the race and ethnicity categorization options listed on PRIME. Population estimates of individuals with "Asian" background, includes individuals who self-reported as having East Asian, Chinese, Filipino, Japanese, and Korean backgrounds. Similarly, individuals categorized as having a Middle Eastern background include those who responded to the census as having a Middle Eastern, Arab, or West Asian background. Individuals of Hispanic decent include those who self-reported as either Hispanic or Latin American. Those categorized as Indigenous include people who are First Nation, Métis, and Indigenous.<sup>30</sup> Finally, using Dr. Wortley's approach to the estimation of each region's White population, the project calculated the White population of an area by taking the total population estimate and subtracting the total population of IBPOC groups.<sup>31</sup>

In creating a variable rich data set, the research team was able to evaluate the presence of racial disparity throughout the life span of the file. Racial disparity was measured using odds ratios. Odds ratios represent the relationship between the representation of Indigenous, Black, or other racial minorities in one population as compared to another. They are especially helpful in the investigation of racial disparity as one can calculate the estimated representation of one racial group, based on their population estimates, and compare that to the racial group's actual representation.

Throughout the project, odds ratios were calculated by dividing the percent of all occurrences involving one racial group by their percent representation in the general population. However, unlike Dr. Wortley's report, PPSC BC's project used two different guidelines for the general population.

When calculating the racial disparity of the charges forwarded by the police, the percent of all occurrences involving one racial group was divided by the census population estimates of the racial groups' representation in the general population. For example:

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<sup>30</sup> The following classification was taken from Dr. Wortley's analysis and as such does not include Inuk (Inuit) peoples. It is important to note that Inuk peoples comprise 4% of the total Indigenous population in Canada. Their representation in British Columbia is stated to be under 1% according to the [2011 Household Survey](#).

<sup>31</sup> Wortley, *supra* note 1

In Prince George, Indigenous individuals comprise 14.3% of the population<sup>32</sup> while files involving Indigenous individuals comprise 61.54% of the arrests in Prince George. In order to calculate the odds ratio for arrest data for Indigenous Individuals in Prince George, one would divide 61.54 by 14.3, which results in an odds ratio of 4.30.

However, when comparing the racial disparity present in the work of prosecutors, the odds ratio was calculated by dividing the racial group's representation in the prosecution files by their representation in arrest data. For example:

In Prince George, files involving Indigenous individuals comprised 61.54% of the arrests while files involving Indigenous individuals comprised 66.67% of the PPSC prosecution files. In order to calculate the odds ratios for charge approval data for Indigenous individuals in Prince George, one would divide 66.67 by 61.54, which results in an odds ratio of 1.08.

As prosecutors solely receive files from policing agencies, generally it would not be representative to compare their work to the population estimates. Instead, it is helpful to compare their work to the sample of arrests provided to them. In comparing the representation of IBPOC accused in PPSC files to their representation in police files forwarded to PPSC, it is possible to discuss the unique impact of prosecutorial decision-making on racial disparities.

In one exceptional circumstance, the representation of minority groups in PPSC's files will be divided by their representation in the general population. For example:

In Prince George, Indigenous individuals comprise 14.3% of the population while Indigenous individuals comprised 66.67% of the PPSC prosecution files. To calculate the odds ratio for the charge approval decision (which would capture both the representation of racial minorities in arrests and in PPSC files), one would divide 66.67 by 14.3, which results in an odds ratio of 4.66.

In order to compare the effect of PPSC's charge approval decision, the odds ratio for the PPSC files are compared to the odds ratios for arrests. To permit comparison, each odds ratio

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<sup>32</sup> Census, *supra* note 23; Wortley, *supra* note 1

must be compared to the same population – the census population. In comparing the two odds ratios, it is possible to determine the added or reduced representation present as a result of PPSC's charge approval decision.

An odds ratio approaching 1.00 indicates that the racial group is perfectly represented according to their population. For example, a group with an odds ratio of 2.00 is twice as prevalent in the sample of individuals detained as they are in the population of charges approved. However, if a group has an odds ratio of 0.50, they would be 50% less represented in the sample of individuals of individuals detained than they are in the population of charges approved. To continue from the Prince George example above:

When evaluating arrest data, Indigenous individuals have an odds ratio of 4.30. In arrest data, Indigenous individuals are grossly over-represented as compared to their representation of the population in Prince George. As such, Indigenous individuals are 330% more represented in arrest data than their representation in the Prince George population.

When evaluating the charge approval decision, Indigenous individuals have an odds ratio of 1.08 as compared to their representation in arrest data. As such, Indigenous individuals are equally represented in the arrest and charge approval populations. Prosecutorial decision-making mirrors the overrepresentation of Indigenous individuals present in the arrest data.

In the current research on racial disparities, there is a wide array of markers used to classify when a particular group of people is disproportionately represented in a sample. For example, Dr. Wortley uses an indicator of 50 percent<sup>33</sup> whereas others use an indicator of 20 percent.<sup>34</sup> For this project, the 20% rule was used to indicate a statistically significant over- or under-representation. A smaller percentage was used to indicate which disparity is noteworthy or not, in order to gain the greatest information possible. We believe that a higher standard for racial disparity will allow the most useful analysis of PPSC practices and result in a broader impact

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<sup>33</sup> Wortley, *supra* note 1 at 12

<sup>34</sup> Foster, *supra* note 12

for the results. Gross racial disparity was also analyzed. Gross racial disparity is present when a particular group is overrepresented by 200 percent or more (as indicated by an odds ratio of 3.00 or higher). In cases of gross racial disparity, a racial or ethnic group would be three times more prevalent in PPSC work than the sample population would predict.

### Qualitative examples:

In addition to the quantitative figures, qualitative examples are included in the analysis.<sup>35</sup> The qualitative examples, pulled directly from files reviewed, serve to provide greater insight into the difficulties in examining prosecutorial decision-making data at only one level – the individual or the aggregate. The examples provided within each section demonstrate the inequities in PPSC's everyday work that are missed in aggregate quantitative assessment. The research team recognizes that no two PPSC files are the same and that there are many contributing factors that can result in differences in decisions on similar files. Despite this recognition, we have pulled qualitative examples to highlight differential decision-making for Indigenous and Black accused as well as for accused from other racial minority groups. While it remains true that each file must be considered individually, the reality we have observed is that there is an aggregate impact of each of these individualized decisions resulting in negative impacts for individuals from various IBPOC groups.

## Introduction to Arrest Data

### Disproportionate representation of IBPOC accused in the files forwarded from police

The British Columbia Office of The Human Rights Commissioner report confirmed current police practices in BC result in racial inequities in arrests.<sup>36</sup> While the research that Dr. Wortley

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<sup>35</sup> Note all qualitative examples use the last name initial of accused used to protect anonymity

<sup>36</sup> Wortley, *supra* note 1

conducted demonstrated a clear pattern of overrepresentation of individuals from various IBPOC groups in arrest data, additional research indicates that these disparities may not be felt equally across all crimes. In fact, journalists in collaboration with scholars from the University of Toronto recently found that Black and Indigenous peoples are significantly overrepresented in Drug related arrests and police forwarded charges.<sup>37</sup> In order to understand the extent of overrepresentation of IBPOC accused in the files forwarded to the PPSC, we evaluated all CDSA 4(1) and 5(2) charges.

The below is a summary of all data collected. Full tables with all data and calculations on Arrest data can be found in Appendix 2.

## Total arrest data

In total, 424 files were analyzed. Based on population estimates, police disproportionately arrested and recommended charges for some groups. Specifically, Indigenous peoples were grossly overrepresented but White, Black, Hispanic and West Asian/Arab individuals were also overrepresented.

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<sup>37</sup> Dan Fumano, "Racial disparity in Vancouver drug charges revealed by new data" (August 7, 2020), online (newspaper): *The Vancouver Sun* [Racial disparity in Vancouver drug charges revealed by new data | Vancouver Sun](#); Rachel Browne "Exclusive Data Shows Canadian Cops Target More Black and Indigenous Folks for Drug Arrests" (April 19, 2022), online (newspaper): *Vice World News* [Exclusive Data Shows Canadian Cops Target More Black and Indigenous Folks for Drug Arrests \(vice.com\)](#)

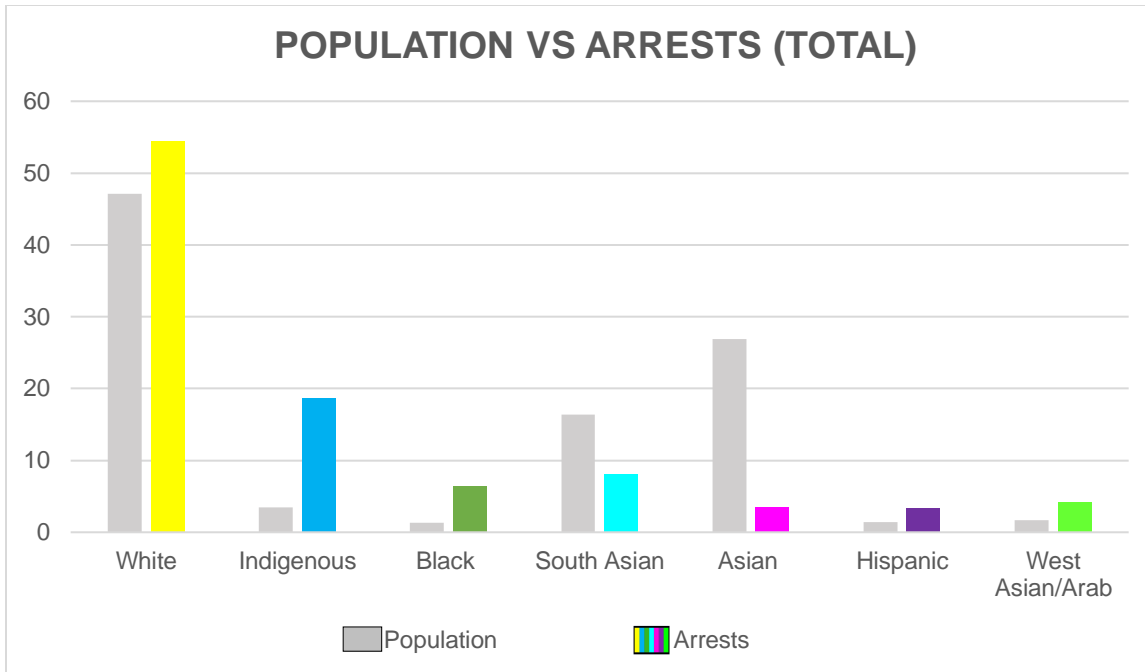


Figure 1.1: Total arrests compared to Census Population Data, divided by race

Figure 1.1 demonstrates that Indigenous individuals are grossly overrepresented in the total arrest data (odds ratio 5.38). Indigenous individuals are overrepresented by 438% as compared to their population. This is the greatest overrepresentation of any racial minority group. Black individuals are grossly overrepresented in arrests by 383% (odds ratio: 4.83). Hispanic individuals are overrepresented by 128% (odds ratio: 2.28) while West Asian/Arab individuals are overrepresented by 153% (odds ratio: 2.53).

## Arrest data (divided by region)

### Vancouver arrest data

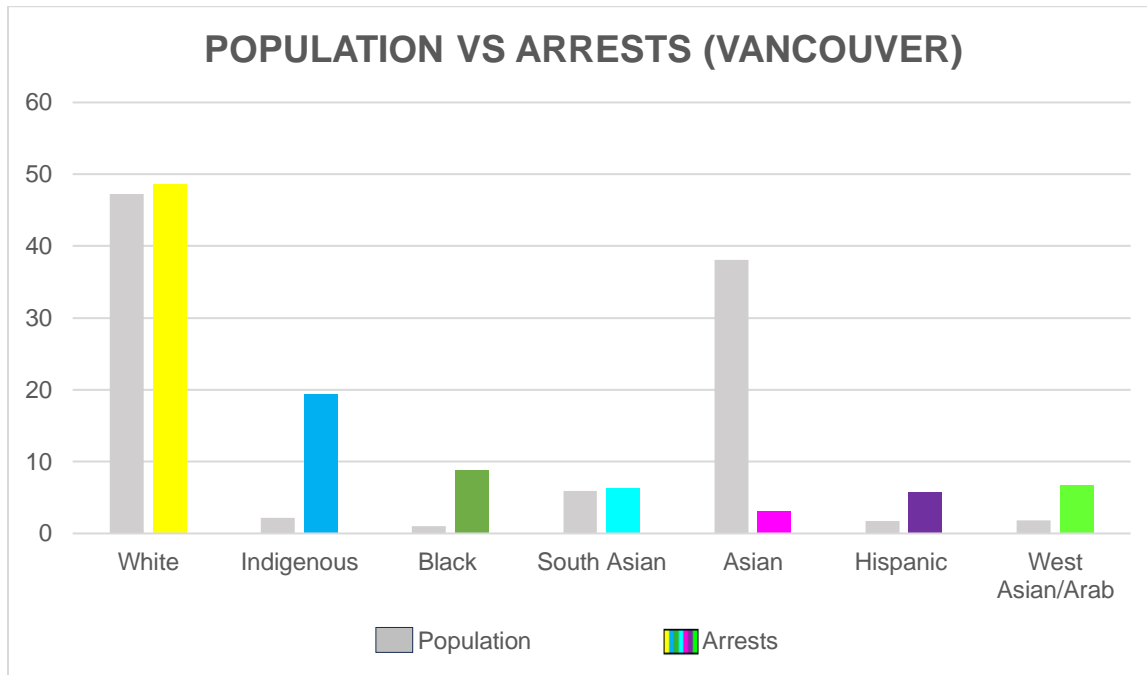


Figure 1.2: Vancouver arrests compared to Census Population Data, divided by race

Figure 1.2 depicts the arrest data in the files received from the Vancouver Police Department. In total, 191 arrest files were reviewed by the PPSC. In Vancouver, Indigenous, Black, Hispanic, and West Asian/Arab individuals are all grossly overrepresented in arrest data. Black individuals represent the highest overrepresentation. They are grossly overrepresented by 790% as compared to their population estimates (odds ratio: 8.90). Indigenous individuals are also grossly overrepresented in arrest data. They are overrepresented by 781% (odds ratio: 8.81). Hispanic individuals are grossly overrepresented by 239% (odds ratio: 3.39). West Asian/Arab individuals are the last racial minority population to be grossly overrepresented in Vancouver arrest data. West Asian/Arab individuals are overrepresented by 278% in arrests (odds ratio: 3.78).



### Nelson arrest data

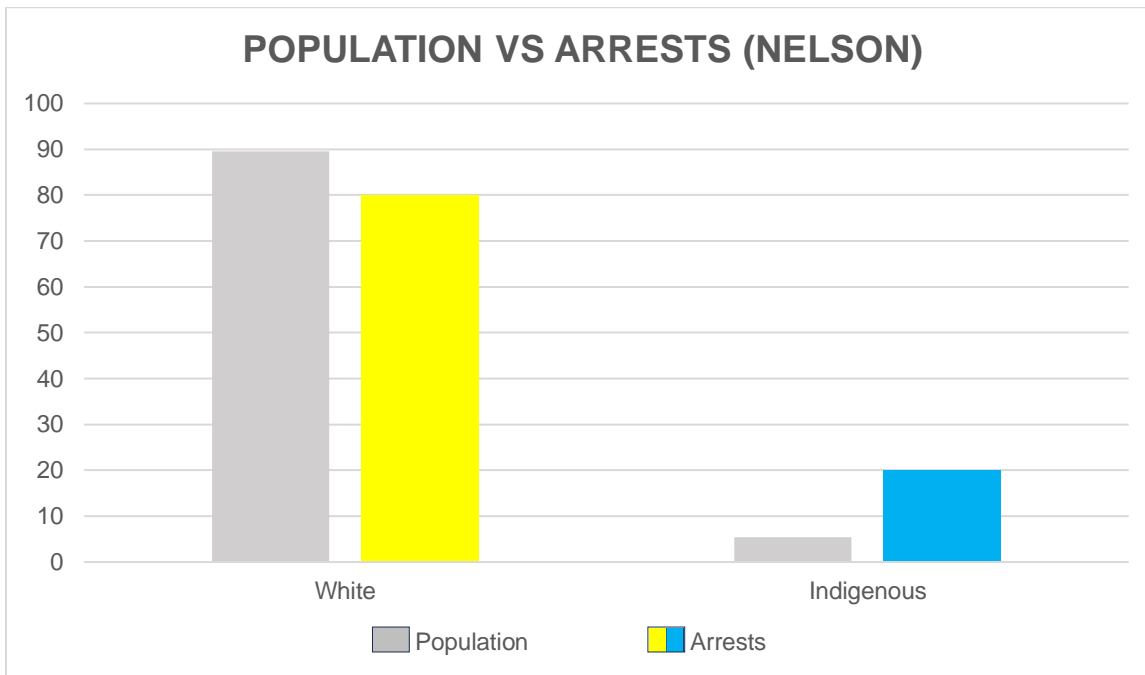


Figure 1.3: Nelson arrests compared to Census Population Data, divided by race

In Nelson, only White and Indigenous People were represented in the arrest data. Eleven files from the Nelson Police Department were reviewed (Figure 1.3).<sup>38</sup> In Nelson's arrest data, Indigenous individuals were grossly overrepresented by 270% (odds ratio: 3.70). White individuals were underrepresented however, not to a significant degree (odds ratio: 0.89)

The impact of disproportionate policing practices on the work of prosecutors in BC cannot be underestimated. Until there is a significant reduction in the racial inequities currently present in police practices, the overrepresentation of racial minorities in the BC Justice System will not change. However, despite prosecutors having no control over the files they receive, these racial disparities are fundamental to understanding the overrepresentation of IBPOC in the work of the PPSC. Furthermore, it is important to acknowledge the racial inequities present in arrest data as it provides a starting point of inequity for the work of prosecutors. As prosecutors disproportionately receive files involving IBPOC accused, it is likely that they will disproportionately prosecute these groups of people. While this baseline of inequity is

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<sup>38</sup> The research team recognizes the small number of arrests available for Nelson may affect the results. Please see appendix 1 for a discussion of the possible effects of this small sample size.

fundamental to understanding the current overrepresentation of IBPOC accused in PPSC's work, it does not absolve prosecutors from their responsibility in reducing the issue of overrepresentation of Indigenous, Black, as well as accused from other racial minority groups in the BC Justice System. Instead, it should empower prosecutors to acknowledge the inescapable overrepresentation of individuals belonging to IBPOC groups in arrest data and take an active role in reducing the inequities felt by marginalized communities.

The PPSC, and other governmental actors, have been called to action by the Truth and Reconciliation Commission as well as through the Calls for Justice of the National Inquiry into the Missing and Murdered Indigenous Women and Girls.<sup>39</sup> More specifically, the 30<sup>th</sup> call to action to “eliminate[e] the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so” is especially pertinent to the work of PPSC.<sup>40</sup> While it is important to recognize that the work of prosecutors is entrenched in the BC Justice System, an institution rooted in colonialism and racism<sup>41</sup>, it is impossible to ignore the power prosecutors hold within the judicial system. Prosecutors hold a quasi-judicial role, which requires that they “uphold public trust and contribute to the change necessary to support a criminal Justice System that is more equitable and fair to all Canadians.”<sup>42</sup> Given the 2022-2024 PPSC departmental priority of “tak[ing] action against systemic discrimination and racism in the criminal Justice System”<sup>43</sup>, now is an ideal time for the PPSC to empower prosecutors to utilize their discretion in order to reduce the biased system in which they work.

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<sup>39</sup> Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Ottawa: Truth and Reconciliation Commission of Canada, 2012) [Truth and Reconciliation Commission of Canada]; Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The final report of the national inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a* (Gatineau: National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019)

<sup>40</sup> This call to action will be discussed further in recommendation 4

<sup>41</sup> Charles Reasons et al. “Race and Criminal Justice in Canada” (2016) 11:2 *International Journal of Criminal Justice Sciences* 75-99; John A. Winterdyk, “Comparing Aboriginal and Post-colonial Restorative Justice: The Case of Canada” in: Theo Gavriessides, ed, *Comparing Restorative Justice* (Switzerland, Springer, 2021), Truth and Reconciliation Commission of Canada *supra* note 34

<sup>42</sup> Departmental Plans 2022-23 and 2023-24 *supra* note 18

<sup>43</sup> Departmental Plans 2022-23 and 2023-24 *supra* note 18

## Introduction to Charge Approval Data

### The importance of the decision to prosecute

As a charge approval jurisdiction, BC prosecutors have the authority to lay charges, which have been referred to them by investigative agencies. Unlike some Canadian jurisdictions, this affords BC prosecutors the discretion to decline to lay charges after a criminal investigation has occurred. When deciding whether to lay charges on behalf of the Federal Crown, prosecutors must consider two questions<sup>44</sup>:

1. Is there a reasonable prospect of conviction based on evidence that is likely to be available at trial? If yes,
2. Would a prosecution best serve the public interest?

The decision to prosecute does not end at the initial charge approval stage. Rather, prosecutors must constantly re-apply the two-step test throughout the life of the file to ensure that, at all times, the file meets the charge approval standard.

This is not a decision that should be treated lightly. In fact, the *PPSC Deskbook*, Chapter 2.3 specifies, “[t]he decision to prosecute is among the most important exercises of prosecutorial discretion undertaken by Crown counsel.” The Director of Public Prosecutions (DPP) is given authority under s 3(3) (a) of the *Director of Public Prosecutions Act* to initiate and conduct prosecutions on behalf of the Crown.<sup>45</sup> The DPP then delegates this power and function to federal prosecutors. Thus, Crown counsel have a “high ethical duty to act independently, fairly and objectively without either negative or positive animus towards the accused.” However, it can become routine for prosecutors to lay charges, and it may be easy to fail to appreciate the high ethical duty with which prosecutors are charged. In charging an individual, the full weight of the Criminal Justice System is brought upon them. Given the racial disparities in arrests<sup>46</sup>,

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<sup>44</sup> *PPSC Deskbook*, Chapter 2.3 “Decision to Prosecute”

<sup>45</sup> *Director of Public Prosecutions Act*, S.C. 2006, c 9, s 121

<sup>46</sup> Wortley, *supra* note 1

charges<sup>47</sup>, and incarceration<sup>48</sup> in Canada, the impact of a prosecutor's decision to prosecute is critical.

Some scholars have articulated that the decision to prosecute should serve a gatekeeping mechanism against the disproportionate arrests of individuals belonging to various IBPOC groups.<sup>49</sup> Prosecutors do not have control over the files they receive nor of the facts of any given case, but that lack of control may not equal an inability to guard against existing biases. Rather, declining to charge files demonstrating racially biased policing practices is one way that prosecutors can have a positive effect on the disproportionate representation of IBPOC Canadians in the BC Justice System.

This section serves to provide a targeted analysis to evaluate the role of charge approval decision-making for racialized accused people. As seen in the section above and Dr. Wortley's data, the files forwarded from police agencies to the PPSC feature an overrepresentation of individuals belonging to certain racial and ethnic groups. The question then becomes: in response to this disproportionate arrest data, what impact does the decision to prosecute have on the overrepresentation of different IBPOC groups?

The below is a summary of all data collected. Full tables with all data and calculations on Charge approval data can be found in Appendix 3.

## Total charge approval data

In total, 424 files were analyzed. Overall, Indigenous, Hispanic, and West Asian/Arab individuals are overrepresented in those charges. From the total number of files forwarded by the police, prosecutors charged 333 files (78.5% of the total). Despite the obvious racial

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<sup>47</sup> Ontario Human Rights Commission, *supra* note 11

<sup>48</sup> "BC Corrections and Indigenous justice", online: *Government of British Columbia* [BC Corrections and Indigenous justice - Province of British Columbia \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/justice/indigenous-justice); Adam Cotter "Perceptions of and experiences with police and the Justice System among Black and Indigenous populations in Canada" (16 February, 2022), online: *Statistics Canada* [Perceptions of and experiences with police and the Justice System among the Black and Indigenous populations in Canada \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/82-625-x/2022001/article/00001-eng.htm)

<sup>49</sup> Angela J. Davis, "In Search of Racial Justice: The role of the prosecutor" (2013) 16 NYUJ Legis & Public Pol'y at 821

disparities in the charges forwarded by police (discussed above), prosecutors charge approval decisions resulted in an increased overrepresentation for the three groups.

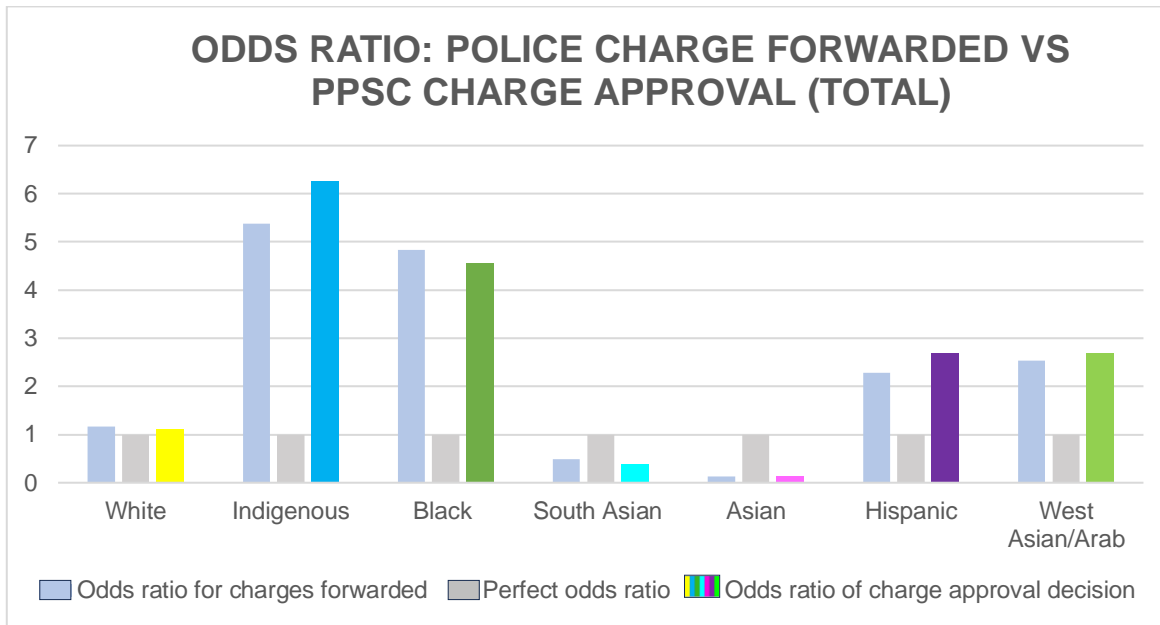


Figure 2.1: Total charges forwarded and charges approved compared to Census Population Data, divided by race

Figure 2.1 demonstrates that while Indigenous individuals are grossly overrepresented in the police files forwarded to the PPSC (odds ratio: 5.38; Indigenous overrepresentation by 438%), the PPSC charge approval decision results in greater gross racial disparity (odds ratio: 6.25; Indigenous overrepresentation by 525%). A similar pattern can be seen in files involving Hispanic individuals. Police forwarded files reflect an overrepresentation of Hispanic individuals by approximately 128% (odds ratio: 2.28) while the PPSC charge approval decision augments the overrepresentation to approximately 169% (odds ratio: 2.69). PPSC's charge approval decision also results in greater overrepresentation of West Asian/Arab individuals. More specifically, the PPSC charge approval decision increases the overrepresentation of West Asian/Arab individuals by 15% (Police data odds ratio: 2.53; West Asian/Arab overrepresentation by 153% as compared to PPSC data odds ratio: 2.68; West Asian/Arab overrepresentation by 168%). Put frankly, instead of reducing the ratio of some IBPOC groups in the criminal Justice System, the decision to prosecute has had a negative impact on them.

The results above also demonstrate that the decision to prosecute is not made equally across racial and ethnic groups. This becomes especially clear when evaluating the decision to

decline charges. As is a logical conclusion based on the results discussed above, the charge decline data indicates that Indigenous, Hispanic, and West Asian/Arab accused were disproportionately underrepresented in the decision not to prosecute. Yet, some racial and ethnic groups did benefit from the charge approval decision. In other words, for Black and South Asian accused, prosecutors may have acted as a gatekeeper thereby reducing their representation.

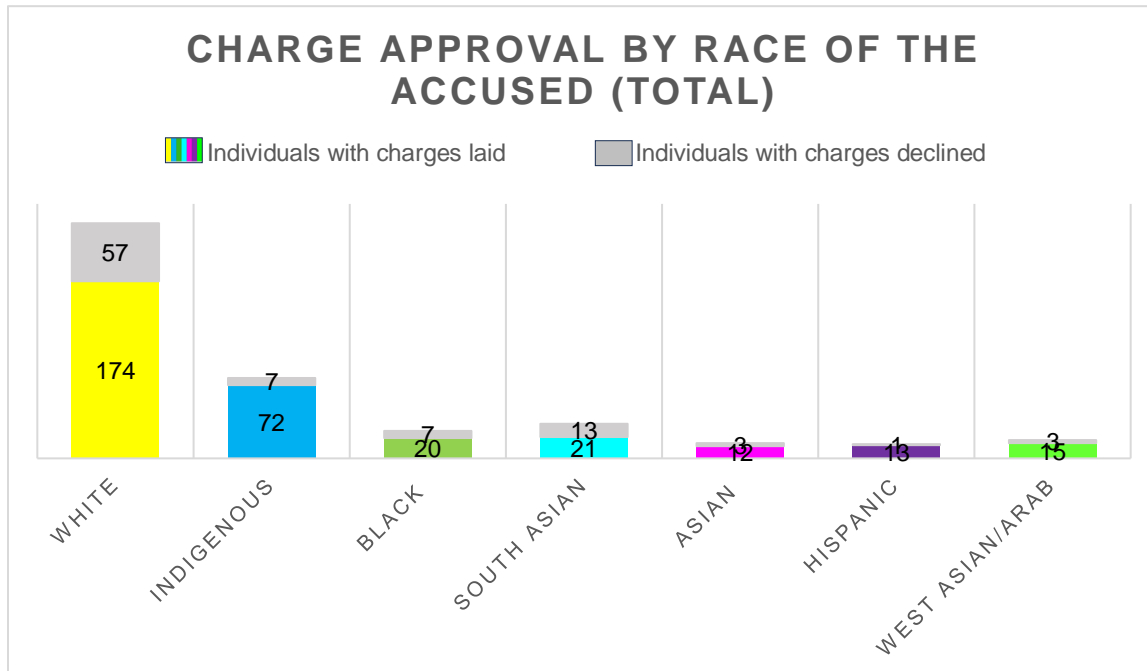


Figure 2.2: Individuals with charges approved, divided by race

Figure 2.2 depicts the significant overrepresentation of South Asian individuals with charges declined. PPSC declined to lay charges in 38% of files involving South Asian individuals, this resulted in South Asian individuals being disproportionate represented for having charges declined, an overrepresentation of 78% (odds ratio: 1.78). It should be noted that South Asian accused are already underrepresented in the police data (odds ratio of 0.49), and as such, the PPSC charge approval decision results in greater underrepresentation for South Asian individuals. Black individuals are also significantly overrepresented in the decision to decline charges (odds ratio: 1.21). While Black individuals are grossly overrepresented in both police and PPSC files (odds ratio: 4.83 and 4.55 respectively), their representation is decreased by 28% by the decision to prosecute. In spite of this reduction, Black individuals remain

overrepresented in PPSC files by 355% as compared to their representation in the general population.

### Charge approval data (divided by region)

The data was further divided by region and strong regional differences were found in the application of the Charge Approval Decision. Prosecutors in Vancouver, Nelson, and Duncan had no impact on the bias present in police arrest data. In Vancouver, charges were laid in 189 out of the 191 files forwarded (98.95% of files) while Duncan and Nelson each laid charges in 100% of the files forwarded. In all three regions, a strong bias to prosecute was present, meaning charges were nearly always approved.

Comparatively, Surrey and Prince George prosecutors are using their discretion to decline police forwarded charges. Surrey chose to decline charges in half of their files (50.28% of files) while Prince George declined charges for 7% of their files.

#### **Surrey charge approval data**

In Surrey, an agent jurisdiction, prosecutors laid only 50% of the charges they were forwarded. However, the frequent use of prosecutorial power to decline charges did not result in a reduction in racial disparities for all groups. While the charge approval decision resulted in a reduction in overrepresentation in White, Black, and West Asian/Arab individuals, greater racial and ethnic disparity can be found for Indigenous, Asian, and Hispanic individuals after the charge approval/decline decision was made.

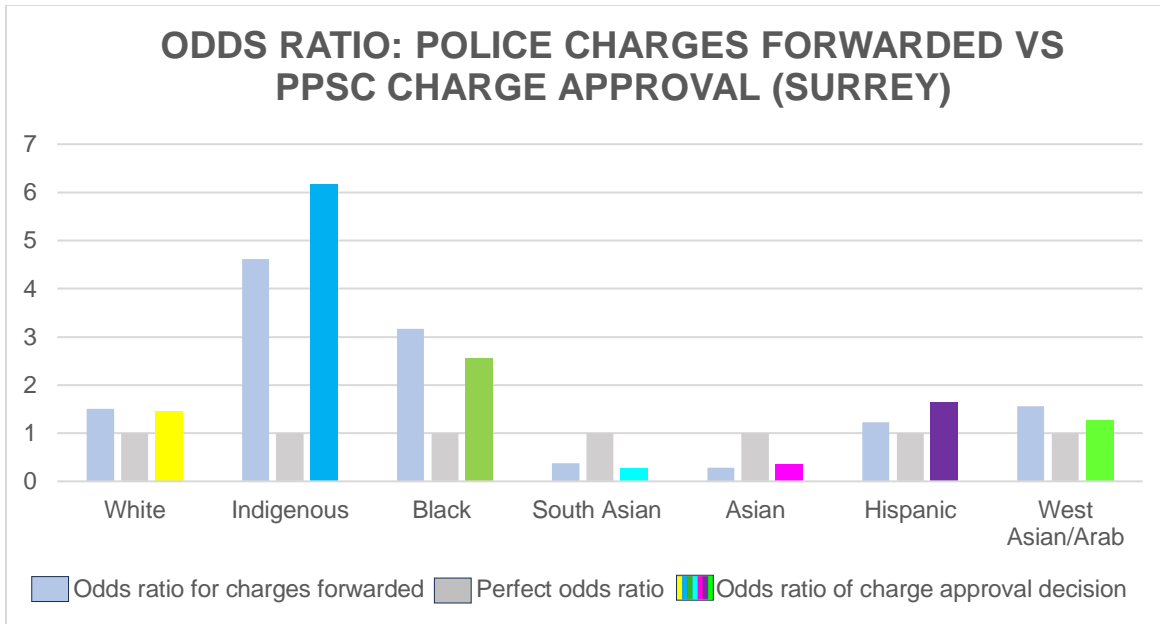


Figure 2.3: Surrey charges forwarded and charges approved compared to Census Population Data, divided by race

The increased racial and ethnic disparities as a result of the charge approval decision is especially poignant for Indigenous individuals. Indigenous individuals are grossly overrepresented in police files forwarded (odds ratio: 4.62) and they are further overrepresented by an additional 156% in PPSC data (odds ratio: 6.18). More details on Indigenous overrepresentation as a result of the decision to prosecute can be found in figure 2.4 (below). In addition to Indigenous accused, the charge approval process in Surrey resulted in increased representation of Asian and Hispanic individuals in PPSC files. As per figure 2.3, the charge approval process resulted in a 42% greater overrepresentation of Hispanic individuals in PPSC files (odds ratio: 1.64). The decision to lay charges also resulted in an increase of Asian individuals represented in files by 8% (odds ratio: 0.36).<sup>50</sup>

<sup>50</sup> Note: Despite the increase of representation for Asian individuals, they remain significantly underrepresented in both Police and PPSC files



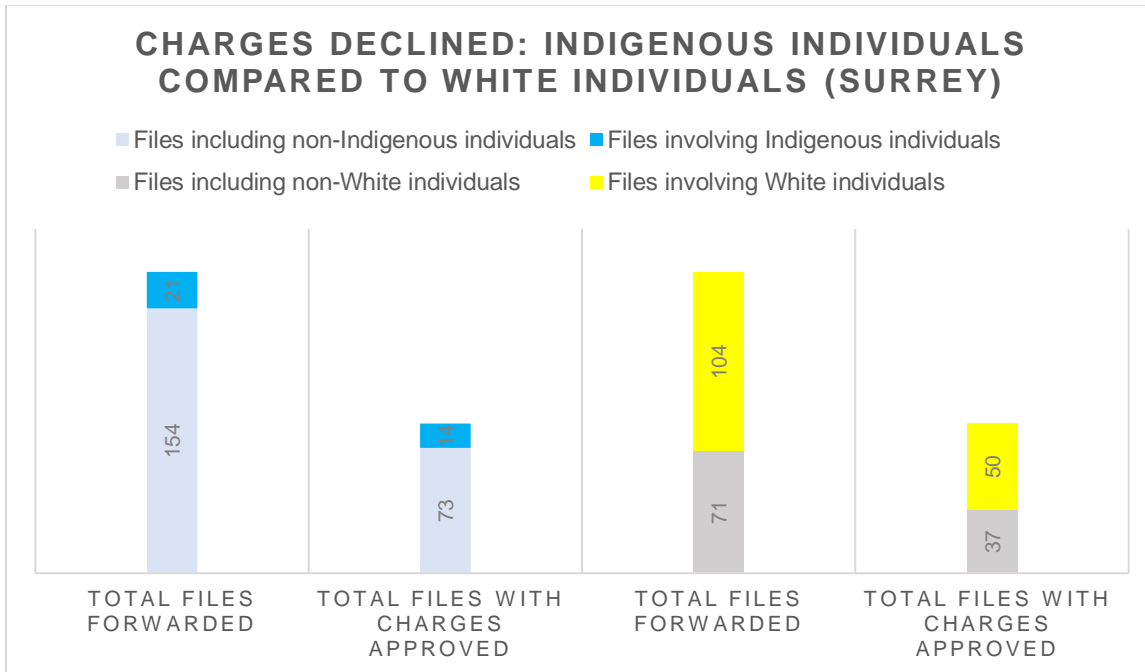


Figure 2.4: The proportion of Indigenous individuals compared to White individuals in charges forwarded and total files with charges approved in Surrey

Figure 2.4 depicts the significant effect the charge approval decision has on Indigenous individuals. In the two bars on the left, the blue portion of the graph depicts the percentage of Indigenous individuals in both the total files forwarded and the total files with charges approved. The two bars on the left can be compared to the bars on the right, which depict the percentage of White individuals in both the total files forwarded and the total files with charges approved in yellow. When the bars on the left are compared to the bars on the right, the blue portion remains constant across the total files forwarded and the total files with charges approved whereas the yellow portion is reduced. This signifies that while prosecutorial discretion has positive impacts for White accused, it may have a negative impact on Indigenous individuals.

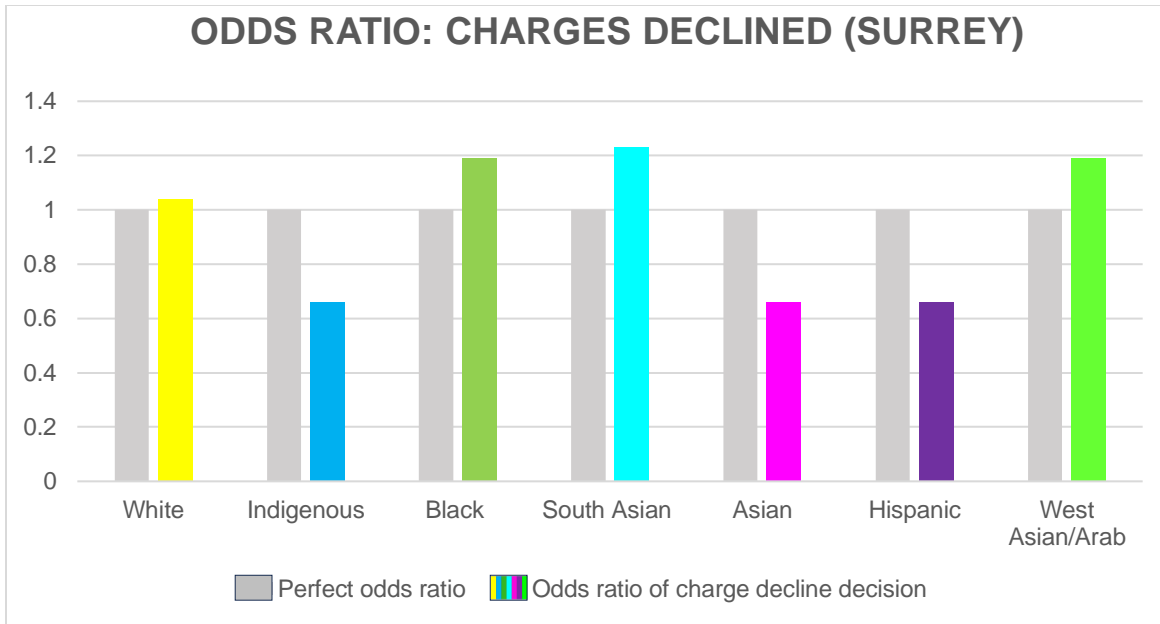


Figure 2.5: Surrey charges declined, divided by race

As expected, inequities in the decision to prosecute result from a disproportionate number of files' whose charges are declined by prosecutors. In Surrey, South Asian individuals are significantly overrepresented in the decision not to prosecute (odds ratio: 1.23). Further, Indigenous, Asian, and Hispanic individuals are significantly underrepresented in the decision not to prosecute (odds ratio: 0.66, 0.66, and 0.66 respectively). The result is that South Asian people are less likely to be charged while Indigenous, Asian and Hispanic people are more likely to be prosecuted.

In total, 26 files were reviewed for Prince George. As shown below (figure 2.6), the agent firm's charge approval process resulted in increased overrepresentation for Indigenous individuals. In police forwarded files, Indigenous individuals were grossly overrepresented (odds ratio: 4.3). This overrepresentation was then further increased by 36% as a result of the PPSC charge approval decision (odds ratio: 4.66). Comparatively, White individuals represent 77.9% of the population; they made up 38.46% of the arrest population. This underrepresentation was further exacerbated by the charge approval decision. While White people make up 38.46% of the arrest population in Prince George, they only make up 33.33% of those charged by the PPSC.

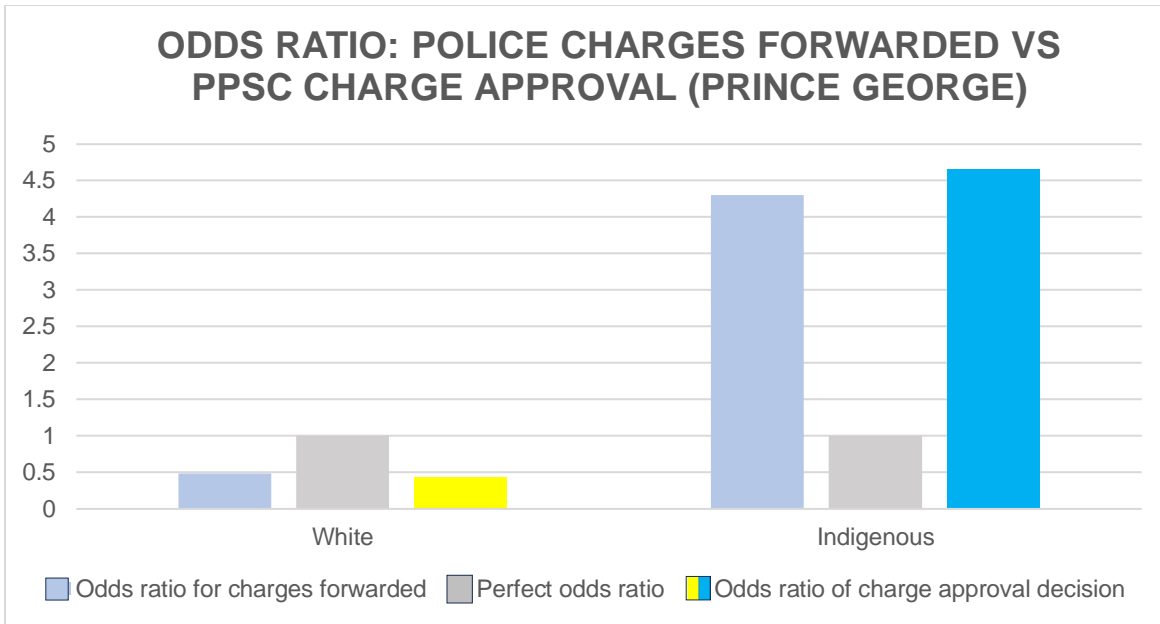


Figure 2.6: Prince George charges forwarded and charges approved compared to Census Population Data, divided by race

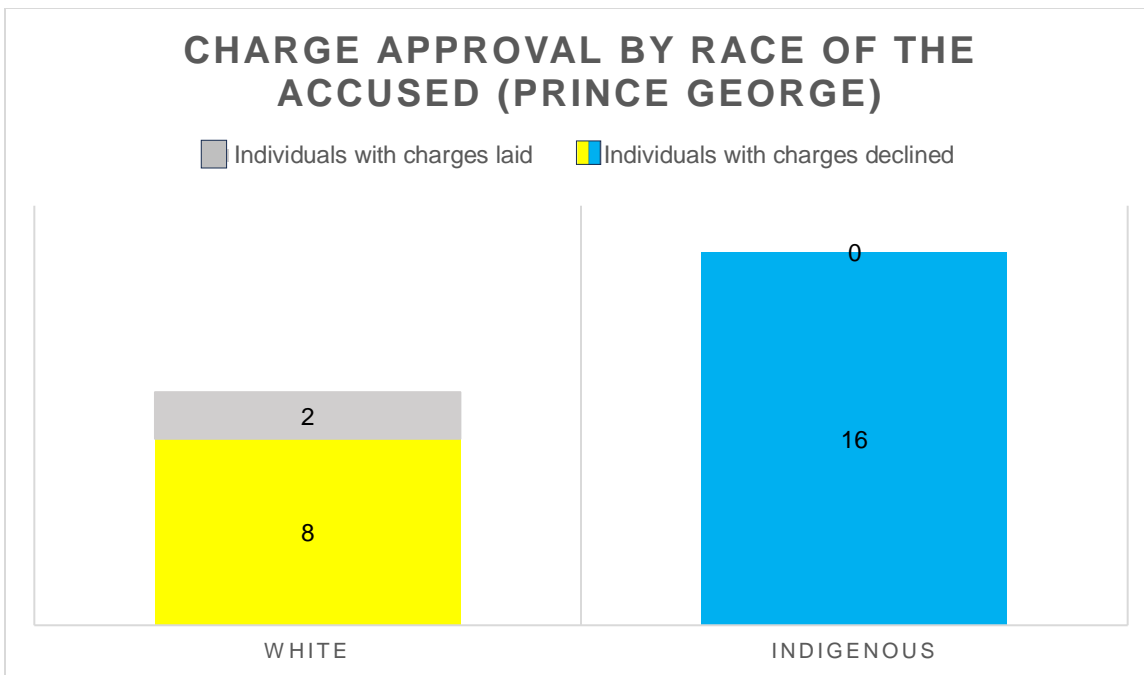


Figure 2.7: Prince George individuals with charges approved, divided by race

As per figure 2.7, the Prince George agent firm only declined to lay charges in files with White accused. As a result, the PPSC prosecuted 80% of files involving White accused while we proceeded with 100% of files involving Indigenous accused.

## Charge approval qualitative examples

Example 1: A comparison of charge approval decisions related to CDSA 5(2) charges in Surrey

### A (Black, First time offender, passenger)

- Circumstances of the incident: Officer ran the plate of a car in front of them while in fast food drive thru, noticed the car hadn't stopped for police in the last 24 hours (later discovered it was 48 hours). The officer then conducted a traffic stop and observed A (passenger) playing with their waistband and the officer noticed a black flip phone. A was arrested for CDSA 5(2).
- Charges forwarded: CDSA 5(2): Heroin containing Fentanyl (3.06g); CDSA 5(2): Methamphetamines (2.82g); CDSA 5(2): Cocaine (1.76g)

### G (White, First time offender, passenger)

- Circumstances of the incident: Officer observed a woman standing on the sidewalk, pacing. Officer pulled car over behind a parked car to observe. Observed a vehicle pull up and a hand-to-hand transaction occur between G (passenger) and woman standing on the sidewalk. The driver and passenger then noticed the marked police car and attempted to flee. The officer did a vehicle stop, approached, arrested both for 5(2) and requested the keys. Charges for the driver were also declined. The passenger kept their hands under their hoodie and was moving them around, passenger searched and drugs found.
- Charges forwarded: CDSA 5(2): Heroin containing Fentanyl (1.29g); CDSA 5(2): Methamphetamines (4.8g) ; CDSA 5(2): Cocaine (2.5g)

Both A and G were first time offenders who were caught with the same drugs in similar amounts. In both cases, there were section 8 and section 9 *Charter* breaches<sup>51</sup> identified during the charge approval assessment. When the *Charter* breaches were identified, the charges were declined for G. However, despite the *Charter* issues, A's case did not follow a simple path. First, the assigned prosecutor attempted to decline the charge because of the *Charter* breaches, but their supervising prosecutor encouraged them to approve charges and rely on a s. 24(2) justification because of the public interest in Fentanyl prosecutions. No such consideration was applied to G's case.

In A's case, the charges were approved, and the file progressed through the system for a year before a subsequent prosecutor reviewed the file and spoke with the arresting officer. After the conversation, the new prosecutor identified the same section 8 and 9 breaches as the first

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<sup>51</sup> Generally, breaches of section 8 of the *Charter* relate to unreasonable search and seizure while breaches section 9 relate to unlawful arrest or detention.

prosecutor. However, at this time, the same *Charter* breaches were found to negate the reasonable prospect of conviction. The charges were stayed.

While G benefitted from the original decision to decline charges, A was subjected to the weight of criminal prosecution for a year, which included abiding by bail conditions only to have their charges stayed.

Example 2: A comparison of charge approval decisions related to CDSA 4(1) charges in Vancouver and Surrey

B (Indigenous, 9 prior convictions)	R (Indigenous, 9 prior convictions)
<ul style="list-style-type: none"><li>• Circumstances of the event: patrol, officers eating dinner at a restaurant, observed B with a concealed canister of bear spray. Officers arrested B for possession of prohibited weapon, search incident to arrest shows drugs. Re-arrested for CDSA 4(1).</li><li>• Charges forwarded: CDSA 4(1): Fentanyl and Meth 0.47g</li></ul>	<ul style="list-style-type: none"><li>• Circumstances of the event: patrol, officers recognized R as holding outstanding warrant. Arrested and searched incident to arrest. Drugs found. Re-arrested for CDSA 4(1).</li><li>• Charges forwarded: CDSA 4(1): Heroin with Fentanyl 0.46g</li></ul>

Both B and R have similar records and were caught with almost identical amounts of drugs mixed with fentanyl. In both cases, prosecutors identified *Charter* breaches, in B's case there were both section 9 and 10 violations identified while in R's case, only the section 10 *Charter* breach<sup>52</sup> was identified.

The Surrey agent prosecutors declined R's charges because of the section 10 violation. In comparison, the PPSC Vancouver prosecutors pursued B's case, which included both section

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<sup>52</sup> Breaches of section 10 of the *Charter* relate to failures to properly administer a person's rights upon arrest or detention which include the right to counsel.

9 and 10 violations. Ultimately, the charge against B was stayed in order to facilitate a plea deal with their other active files. Despite greater *Charter* issues identified at the outset, the Vancouver prosecutors pursued a case which may have been declined in Surrey. It is possible that the charging decision influenced a plea deal for an Indigenous offender.

## Conclusion

The decision to approve or decline charges is the first and, arguably, the most important decision a prosecutor makes in the lifespan of a criminal file.<sup>53</sup> Despite the importance, only two of the five regions regularly utilized the prosecutorial power to decline charges. In Vancouver, Duncan, and Nelson, charges were declined in less than 1% of cases whereas in Surrey and Prince George, a significant percentage of charges forwarded were declined.<sup>54</sup> In Surrey and Prince George, the decision to decline charges was primarily based on the question of whether there was a reasonable prospect of conviction. Only 10% of the initial charges were declined for reasons of public interest.

As a whole PPSC, prosecutors' decisions are increasing or maintaining the level of overrepresentation of IBPOC accused in the BC Justice System. More specifically, the decision to decline charges in both Surrey and Prince George resulted in an increased representation of Indigenous individuals in PPSC files. Additionally, in Surrey, the decision to decline charges resulted in an increased representation for Hispanic, Asian, and West Asian/Arab individuals. While these two regions are utilizing the power afforded to them by the charge approval jurisdiction, it is not resulting in greater equity for already overrepresented groups.<sup>55</sup>

Even though there may be some positive aggregate impacts of the decision to decline charges, the file specific analysis demonstrates continued negative impacts. As demonstrated

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<sup>53</sup> [PPSC Deskbook](#), Chapter 2.2 "Duties and Responsibilities of Crown Counsel"

<sup>54</sup> It should be noted that Vancouver prosecutors were the most likely to enter a stay of proceedings for their case. In the "File Outcomes" section below, we will discuss the correlation between the lack of initial decision to decline charges and an increase in later stay of proceedings.

<sup>55</sup> The charge approval decision did result in a reduction of the representation of Black and White individuals. Notably, diminishing the overrepresentation of Black individuals present in police charges forwarded. More research is required to determine whether the positive effect of the charge approval decision-making process can be associated with quality of the police file related to Black accused.

in example 2 above, the power to decline charges resulted in differential, location-based, outcomes for two Indigenous offenders.

The decision to prosecute provides an avenue to promote equitable outcomes for overrepresented groups of people. Therefore, the decision to approve or decline charges must be made by actively considering guiding questions relating to the public interest and the intended focus on the reduction of marginalized individuals in the BC Justice System at the forefront.<sup>56</sup>

## Introduction to File Outcome Data

### The life span of a PPSC file

Once a charge has been laid, the prosecution of a routine drug file can last from a few days up to three years. In that time, a prosecutor must make significant decisions regarding an accused's current circumstances and future outcomes. In tracking the final outcome of an accused's experience in the BC Justice System, we are able to uncover significant differences in file outcome associated with the racial group of the accused. Overall, patterns emerge which signify that files involving accused individuals belonging to different racial groups correlate with different types of outcomes. These patterns provide insight into common experiences that racial minorities experience in the BC Justice System. Since Crown counsel serve as the director of criminal files, many of the repeat patterns may be associated with patterns in their work and approach to files.<sup>57</sup> Given the unique experience of Indigenous individuals in the Canadian Justice System, we have chosen to review data from files of Indigenous accused in a spotlighted section.

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<sup>56</sup> [PPSC Deskbook](#), Chapter 2.3 "Decision to Prosecute"

<sup>57</sup> While prosecutors hold immense power in the life course of a file, one must also recognize that prosecutor's work is embedded within a flawed, and historically colonial, Criminal Justice System. It is through the combined work of Justice System participants that these inequities result but also have the potential to change.

## Bail

After the decision to prosecute, a prosecutor must make a decision about the bail status of an accused. A prosecutor's bail position scopes the issues at play during the bail hearing. If a Crown counsel seeks detention, the Court will consider detention and may ultimately detain the accused. If a Crown counsel identifies the need for strict conditions, the breadth of applied conditions will be considered. In this way, the bail status decision made by the prosecutor is significant in determining the path forward for the individual accused.<sup>58</sup>

## Detention

Pursuant to section 515(10) of the *Criminal Code*, an accused may be detained for one or more of the following reasons:

- To protect the public;
- To ensure the arrestee's attendance in court or
- To maintain the public's confidence in the Justice system<sup>59</sup>

In 2017, the adult remand population in BC represented 67% of the total adult incarceration population.<sup>60</sup> This means that over half of those incarcerated had not been convicted and were still presumed innocent. Additionally, detention is not equal across IBPOC groups. Instead, Black, Indigenous, and Hispanic defendants are more likely to receive stricter bail decisions, as compared to White defendants due to racial stereotypes and bias.<sup>61</sup> Data from 2016 showcases that Indigenous defendants constituted 25% of all remand admissions and that Black individuals were remanded for periods twice as long as White individuals.<sup>62</sup>

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<sup>58</sup> Due to time constraints, the BC Research team was unable to conduct a fulsome analysis of Bail data. A greater sample size and project timeline would be required to achieve a more detailed investigation of the relationship between prosecutorial bail positions and race.

<sup>59</sup> *Criminal Code*, R.S.C 1985, C. C-46, s515 (10) [Criminal Code]; Note these grounds are referred to as primary, secondary, and tertiary grounds.

<sup>60</sup> Jamil Malakieh "Adult and Youth correctional statistics in Canada, 2018/2019" (21 December 2020), online: *Statistics Canada* [Adult and youth correctional statistics in Canada, 2018/2019 \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/25001x/2020001/article/00001-eng.htm) [Malakieh]

<sup>61</sup> Stephen Demuth & Darrell Steffensmeier, "The impact of gender and race-ethnicity in the pretrial release process" (2004) 51(2) *Social Problems* 222

<sup>62</sup> Anna Mehler Paperny "Exclusive: New data shows racial disparities in Canada's bail system", online: *Reuters* [Exclusive: New data shows race disparities in Canada's bail system | Reuters](https://www.reuters.com/article/healthcare-canada/exclusive-new-data-shows-racial-disparities-in-canada-s-bail-system-idUSKCN19001)



The overrepresentation of IBPOC individuals in remand custody is additionally problematic as it is common for those held in remand custody to ultimately be found innocent. For example, one study found that 40% of remand prisoners in Ontario were found to be innocent.<sup>63</sup> The cumulative result is that disproportionate amounts of innocent individuals, belonging to IBPOC groups are held in custody every year.

Prosecutors may seek initial detention if the accused has been held by police in custody after their arrest. Alternatively, prosecutors may seek detention throughout the file after a bench warrant has been issued or a new offence has taken place. In our analysis of detention, we have separated Crown detention submissions by time point in the file. Detention, which is sought at the beginning of the file, will be reviewed in the first two figures while detention sought after a bench warrant or re-offence will be reviewed in third figure. It is important to note that all detention statistics were calculated based on whether Crown *sought* detention. In most studies bail outcomes are considered, however the goal of this report is to seek to understand the impact of the decisions and actions of Crown counsel. As a result, we have chosen to focus on Crown counsel's bail position rather than whether the Court imposed detention.

There are many factors a prosecutor must take into consideration when deciding their bail position. Attention is paid to the type of offence, the criminal record of the accused, the circumstances of the offence and the impact of the accused's behavior on the community. In order to evaluate the potential racial disparities in prosecutorial bail submissions, the research team was able to control for the criminal record of the accused in certain graphs. Unfortunately, because of the small sample size in certain areas, the research team was unable to divide the regional bail data by offence type.<sup>64</sup>

It is also important to note that race represents one factor associated with marginalization. Bail decisions may be reflective of another indicator of marginalization, such as unstable housing, substance use disorder, and/or mental illness. While there are other indicators of marginalization, which could be confounding variables for the Crown's, decision to seek

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<sup>63</sup> "Criminal Court Statistics" (2015), online (pdf): *Ontario Court of Justice* [Criminal Court Statistics | Ontario Court of Justice \(ontariocourts.ca\)](https://www.ontariocourts.ca/criminal-court-statistics)

<sup>64</sup> A broader discussion of the limits of sample size can be found in Appendix 1

detention, this report will solely examine the correlation between race and Crown bail submissions.

The below is a summary of all data collected. Full tables with all data and calculations on detention data can be found in Appendix 4.

**Detention data (divided by region)**

For this section, the research team focused on Vancouver and Surrey. This is because the other three regions considered did not have a large enough sample size to investigate the association between race of the accused and prosecutorial bail positions. More specifically, in Prince George, only two individuals were detained; in Nelson, no individuals were detained and finally, while there were a significant number of detainees in Duncan (n=5), only White individuals were detained. As such, we were unable to conduct a meaningful racial comparison.

*Vancouver detention data*

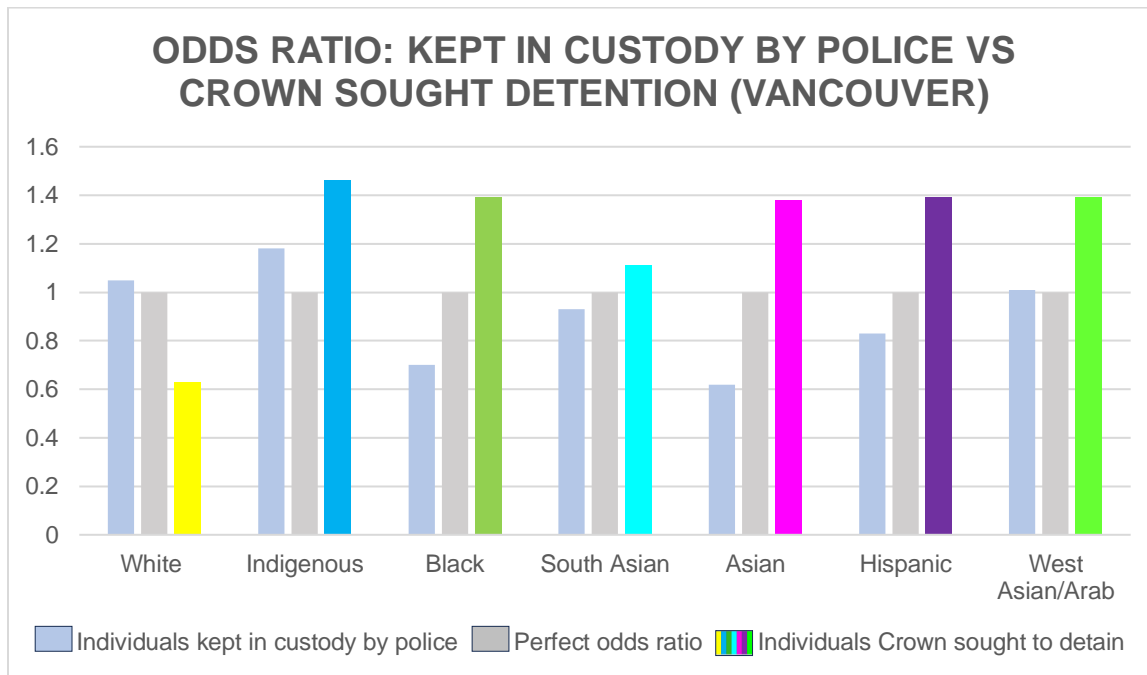


Figure 3.1: Vancouver comparison of odds ratio for individuals kept in custody by police vs individuals for whom Crown sought detention

As depicted in figure 3.1, Crown disproportionately sought detention for accused belonging to IBPOC groups. For every individual belonging to a IBPOC group, there was an increased

overrepresentation as a result of the Crown detention submission than by the police kept in custody data alone. For example, while Indigenous individuals were slightly overrepresented (non-statistically significant) in the population of individuals police kept in custody (as compared to arrest data) (odds ratio: 1.18), they were significantly overrepresented in the Crown bail positions (odds ratio: 1.46). This trend continues for all IBPOC groups, except for South Asian individuals, where the racial minority groups were not overrepresented in the population police kept in custody but were then overrepresented in the population for which Crown sought detention. In stark opposition, White individuals were proportionately represented in the population kept in custody (odds ratio: 1.05) but then significantly underrepresented in the population for which Crown sought detention (odds ratio: 0.63). The result is that Crown are seeking detention for IBPOC accused more often than for White accused.

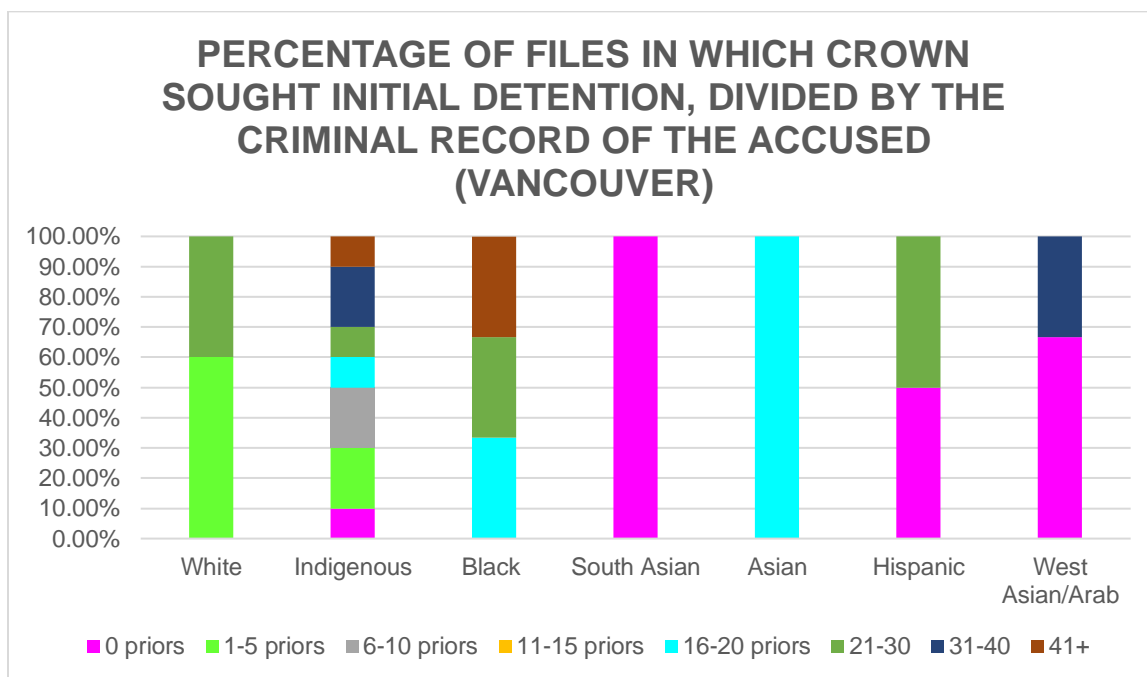


Figure 3.2: Vancouver files in which Crown sought detention divided by race and accused criminal record.

As demonstrated in Figure 3.2, the files in which Crown sought detention varied as a function of criminal history and race. In comparing files involving White and Indigenous accused, it is clear that the criminal history of an Indigenous accused plays a less important role when determining Crown detention position. Whereas Crown only sought detention for White

individuals who had 1-5 or 21-30 priors, Crown sought detention for Indigenous offenders at almost all number of priors. In opposition, for Black accused, prior criminal record may play a larger role as all Black individuals for which Crown sought detention had a criminal record of 16 priors or higher. Notably for Hispanic and West Asian/Arab individuals, Crown sought detention in files where individuals had either none or a very high number of criminal convictions.<sup>65</sup>

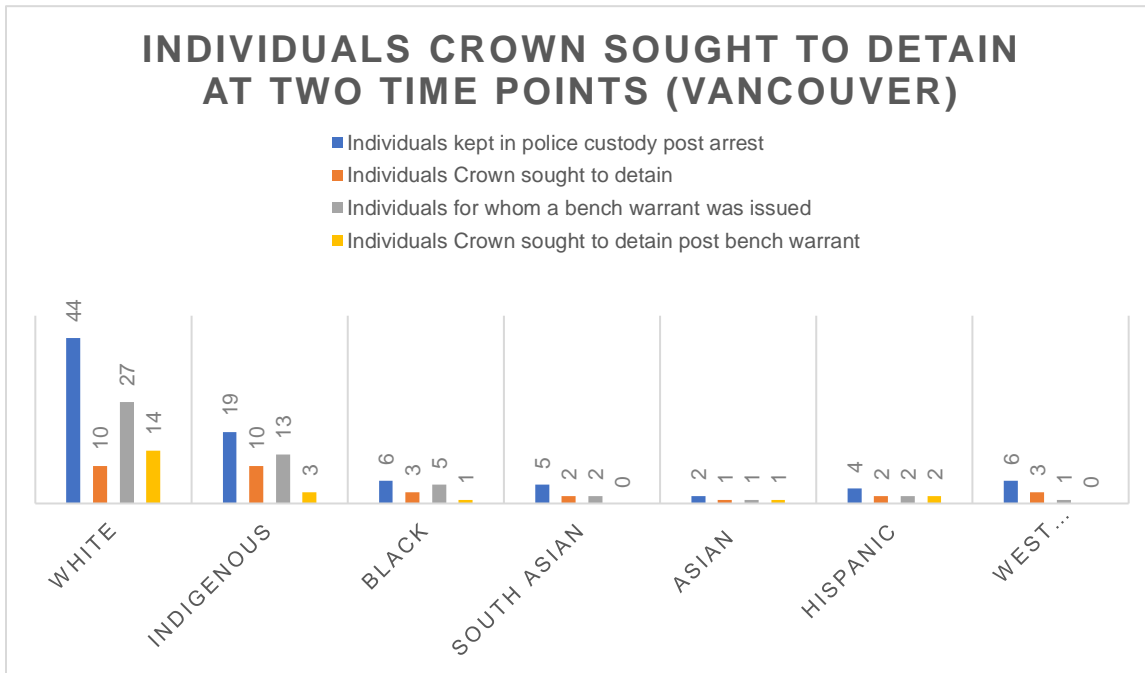


Figure 3.3: Vancouver number of individuals Crown sought to detain at two time points – initially and throughout the file

Figure 3.3 compares the number of individuals Crown sought to detain at the initial bail hearing as compared to after a bench warrant has been issued. Notably, for White individuals a pattern emerges where Crown are more likely to seek detention later within the file as compared to initially. In direct opposition, for Indigenous individuals, Crown are more likely to seek detention initially. In fact, the opposite patterns for Indigenous and White individuals correspond almost perfectly; 22.72% of cases involving White individuals kept in custody by police resulted in Crown seeking initial detention as compared to 52.63% of files involving Indigenous individuals. In comparison, post-warrant Crown sought detention in 51.85% of files involving

<sup>65</sup> Note: This may be a function of the gravity of the offence however; more research would be required to determine the association.

White individuals and 23% of files involving Indigenous individuals. This ratio is also true when comparing Black and White individuals. In non-numeric terms, this pattern demonstrates that White individuals are less likely to be initially detained than both Black and Indigenous individuals, respectively. Thus, at the second time point, White individuals become more likely to be detained as Black and Indigenous individuals (respectively) have likely already been detained. In fact, for all IBPOC groups, there is a well-established pattern of seeking higher rates of initial detention as compared to White individuals.

*Surrey detention data*

In Surrey, detention was initially sought in 58% of the files when police kept the accused in custody.

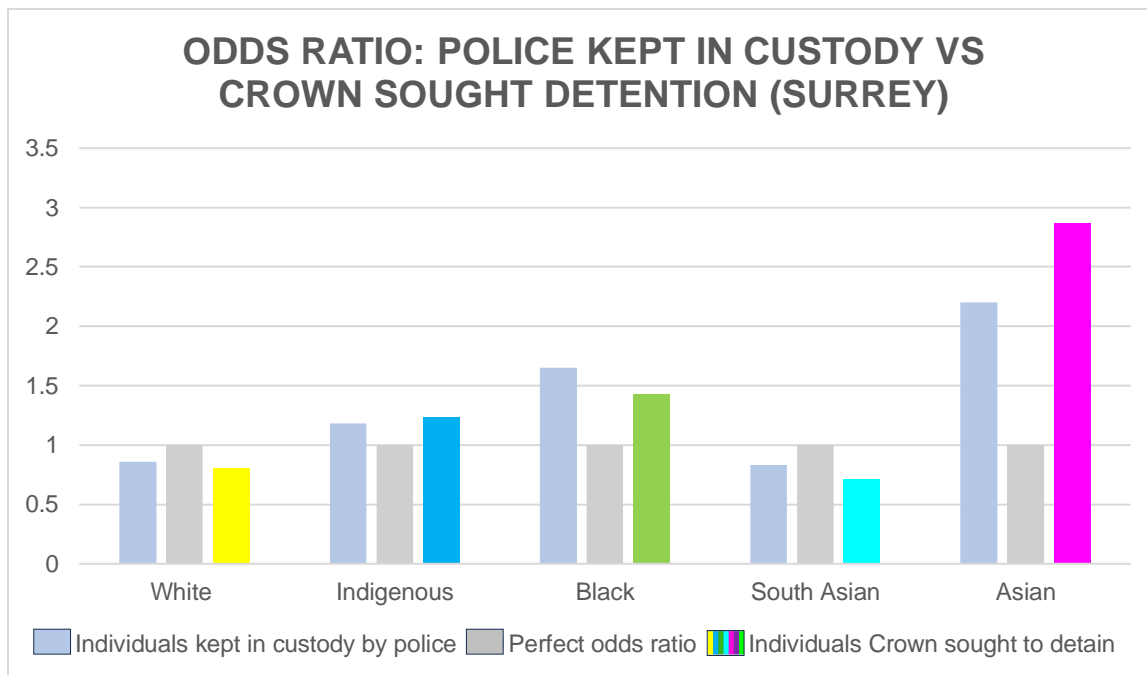


Figure 3.4: Surrey odds ratio comparison of Individuals kept in custody by police vs individuals for whom Crown sought detention

As seen in Figure 3.4, Indigenous, Black, and Asian accused were disproportionately represented in the population of accused kept in custody by police and also in the population for whom Crown counsel sought detention. More specifically, for Asian and Indigenous accused in Surrey, Crown counsel's request for detention created greater overrepresentation. Asian individuals were overrepresented in police custody post arrest by 120% (odds ratio: 2.20) while they were overrepresented in Crown submission for detention by 187% (odds ratio:

2.87). There was also an increase in overrepresentation in files involving Indigenous accused. Indigenous accused were not overrepresented in police custody post arrest (odds ratio: 1.18) however they were overrepresented in Crown submission for detention by 23% (odds ratio: 1.23). In comparison, for Black individuals, Crown submission for detention reduced their overrepresentation as compared to the police's decision-making. Black individuals were overrepresented in the population police kept in custody by 65% (odds ratio: 1.65) whereas they were overrepresented in Crown submission for detention by 43% (odds ratio: 1.43).

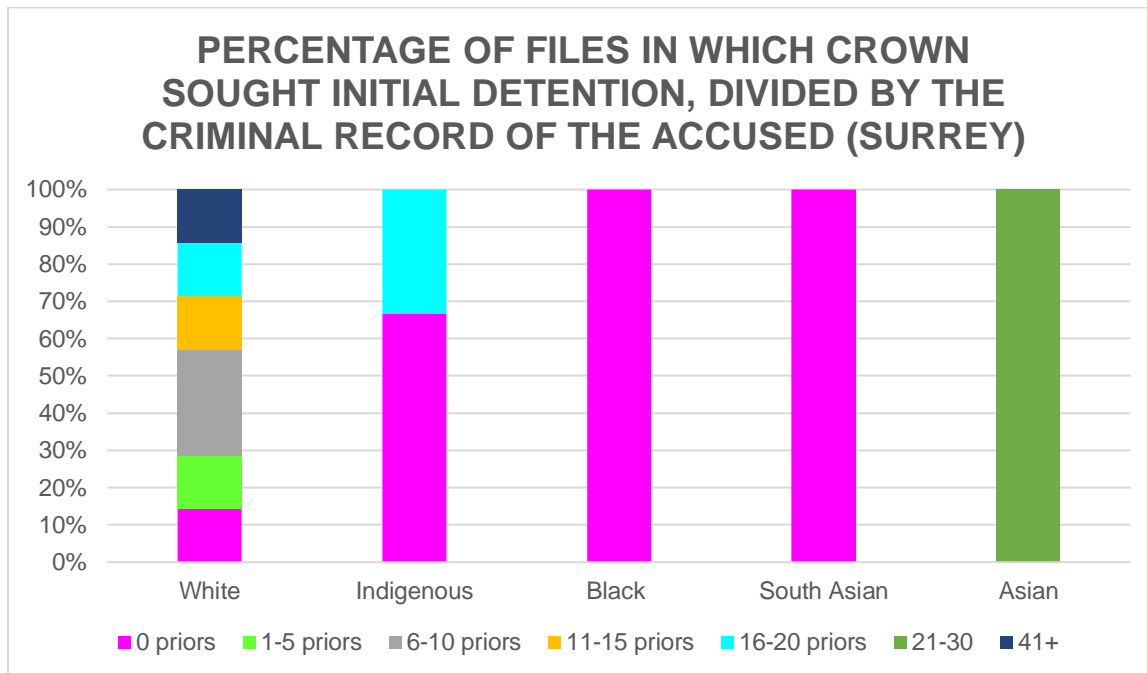


Figure 3.5: Surrey comparison of percentage of individuals belonging to different brackets of prior charges, divided by race

When dividing the data by offender's criminal record, a pattern emerges. Based on Figure 3.5, it is clear that individuals belonging to IBPOC groups are more likely to be detained with zero priors whereas White individuals are more likely to have a larger number of priors when detention is sought. By comparison, 14% of White individuals detained had zero priors while over 60% of Indigenous, Black, and South Asian individuals with zero priors were detained. The number of priors an accused had is a contributor to a prosecutor's decision to seek detention. It may serve as evidence of concerns regarding primary and tertiary grounds for

detention.<sup>66</sup> Because we know that a criminal record has tangible impact on bail positions is important to juxtapose this and note the racial disparities in Crown counsel’s submission for detention on files involving first time offenders.

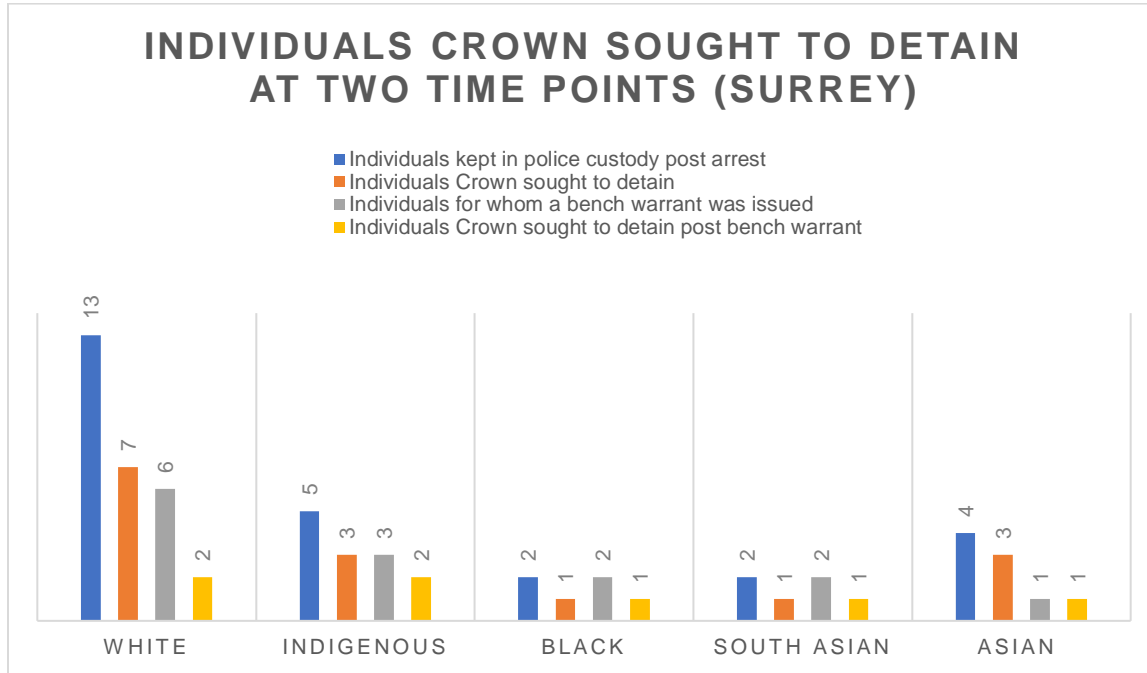


Figure 3.6: Surrey number of individuals Crown sought to detain at two time points – initially and throughout the file

The data in Figure 3.6, demonstrates that while Crown sought detention for 53.85% of White Individuals kept in custody by police, they sought detention for 60% of Indigenous individuals, and 75% of Asian individuals. This racial discrepancy in Crown sought detention continues after an accused is arrested on a warrant of first instance. More specifically, White individuals, as compared to all IBPOC groups, are the least likely to have Crown counsel seek their detention after an arrest warrant. Crown sought detention in only 33.33% of files involving White individuals while they sought detention in 50% or more of files involving non-White individuals (66.67% of files involving Indigenous individuals, 50% of files involving Black individuals and South Asian individuals, and 100% of files involving Asian individuals). Overall,

<sup>66</sup> The type of convictions entered may also influence the secondary grounds submissions of counsel. For example if an individual has history of failing to attend court that may imply a secondary ground concern.

at both time points, the Crown seeks detention more frequently for an IBPOC accused when compared to White accused.

### Detention qualitative examples

Example 1: A comparison of detention decisions related to CDSA 4(1) charges in Vancouver

M (White, 0 prior convictions)	P (Black, 0 prior convictions)
<ul style="list-style-type: none"><li>•Circumstances of the event: patrol, officer pulled in behind a car that was idling on the side of the road. Officer queried the vehicle and found the owner was wanted on an arrest warrant. Arrested M based off warrant. Observed that they had pre-packaged drugs in their car. Officer noticed a blackberry in the front passenger seat and answered the two incoming calls asking for drugs. Arrested for 5(2).</li><li>•Charged with CDSA 5(2) Cocaine</li><li>•Bail: kept in custody by police; Crown consent released</li></ul>	<ul style="list-style-type: none"><li>•Circumstances of the event: observation point, officers recognized P as they have observed them from previous observations and suspected trafficking. Officers observed three drug deals where P supplied the drugs. Arrested for 5(2).</li><li>•Charged with CDSA 5(2) Cocaine</li><li>•Bail: kept in custody by police; Crown sought detention</li></ul>

Both M and P were charged for possession of cocaine for the purposes of trafficking in the city of Vancouver. M was found with evidence linking them to a dial-a-dope operation. P could be designated as a street level dealer. However, despite differences in the gravity of the offence and similarities in criminal record, the Crown only sought detention for P, the Black individual.



Example 2: A comparison of detention decisions related to CDSA 4(1) charges in Surrey

D (White, 12 prior convictions)	Y (Indigenous, 3 prior convictions)
<ul style="list-style-type: none"><li>• Circumstances of the event: patrol, officers recognized D as breaching conditions. Officers stop D and notice that they had a bloody syringe in their hand.</li><li>• Charged with 4(1) Heroin (2.38g), Cocaine (8.66g), Meth (2.68g)</li><li>• Bail: kept in custody by police; Crown consent released</li></ul>	<ul style="list-style-type: none"><li>• Circumstances of the event: patrol, officer observed an individual, believed them to be Y who was known to have outstanding warrant, riding his bicycle without a helmet. Officer initiated stop. Y self identified and then was arrested. Officer then searched backpack and found drugs and a knife which broke their weapons PO condition.</li><li>• Charged with Meth 5 baggies</li><li>• Bail: kept in custody by police; Crown sought detention</li></ul>

The Surrey region presents another example of differing Crown bail submissions made for White and Indigenous accused. In the case of D and Y, both had CDSA 4(1) laid against them. While D was found in breach of their conditions, Y was arrested as a result of an active arrest warrant.

Crown submissions for bail differed with Crown seeking to detain Y while consenting to release D.

Despite D having a greater array of drugs and a greater number of priors, D was released on bail conditions while Y was detained.

Example 3: A detention decision related to CDSA 4(1) charges in Vancouver

### G (Indigenous, 17 prior convictions)

- Circumstances of the event: After responding to an unrelated call, officer noticed G sitting on the sidewalk with a can of bear spray poking out their pant pocket. Detained and handcuffed (detained with handcuff because of weapon), when handcuffing, officer observed a baggie. Arrested for possession.
- Charged with CDSA 4(1) Heroin with Fentanyl
- Bail History: kept in custody by police; Crown sought detention on secondary grounds
- Jail: 1 day (in court) + 30 days credit

The final example demonstrates a pattern throughout the data in which Indigenous individuals are detained as a result of their drug offence and then plead guilty. Once the Indigenous individual has pled guilty, they often receive a sentence of time served based on the number of days they were held in pre-trial detention.<sup>67</sup>

In the case of G, they were charged with both possession and weapons charges. During their bail hearing, Crown sought and was granted detention for G based on secondary grounds. There were concerns that G would struggle to attend court and as a result was held in a pre-trial detention facility. Ultimately, G pled guilty to possession and was sentenced to 31 days incarceration (all of which they served prior to their sentence).

### Conclusion

As demonstrated above, significant patterns emerge in the Crown detention positions according to the race or ethnicity of the accused. Most notably, in Vancouver, Crown counsel

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<sup>67</sup> Criminal Code, *supra* 52 at s.719 (3); Note: As per s.719(3) of the *Criminal Code*, the Court must take into account time spent in pre-trial custody.

disproportionately sought initial detention for accused belonging to IBPOC groups. While in Surrey, Crown counsel disproportionately sought detention for IBPOC accused post bench warrant.

These patterns are especially important when seen in relation to the association between detention and guilty pleas. Since individuals who are detained pre-trial are more likely than their counterparts to enter a guilty plea.<sup>68</sup> Detention has therefore been posited as a coercive mechanism of obtaining guilty pleas.<sup>69</sup> For an accused, pre-trial detention is often associated with “moral fatigue and uncertainty” as well as reduced access to legal aid provisions.<sup>70</sup> While it is unlikely that BC prosecutors utilize detention as a coercive tool, the downstream effects of an association between detention position and guilty pleas are concerning when a clear racial discrepancy in Crown detention positions can be shown. The overrepresentation of Indigenous and Black Canadians, as well as Canadians from other racial minority groups in Crown detention positions could be especially problematic in face of the PPSC's goal to assist in correcting the overrepresentation of Indigenous people in the Canada correctional system.<sup>71</sup>

## Introduction to Data on Guilty Pleas

In Canada, guilty pleas are the most common resolution for criminal cases.<sup>72</sup> Scholars have discussed the many positives associated with plea deals such as a reduction of matters heard in the overburdened court system, and the opportunity for bargaining with Crown counsel.<sup>73</sup> However, the positive outcomes may disproportionately apply to White offenders. The private nature of plea deals can result in differential treatment based on the race of the accused.<sup>74</sup> The

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<sup>68</sup> Gail Kellough & Scot Wortley, “Remand for plea. Bail decisions and plea bargaining as commensurate decisions” (2002) 42.1 *British Journal of Criminology* 186; Holly Pelvin, “Remand as a cross-institutional system: Examining the process of punishment before conviction” (2019) 61 *Canadian Journal of Criminology and Criminal Justice* 66

<sup>69</sup> Asra Areej, “The Consequences and Impacts of Pre-Trial Detention on Detainees and the Judicial System” (2022) 7 *The Society*; Elsa Euvrard & Chloe Leclerc, “Pre-Trial Detention and Guilty Pleas: Inducement or Coercion?” (2017) 19 *Punishment & Society* 525

<sup>70</sup> *Ibid*

<sup>71</sup> Kathleen Roussel, “2021-22 Departmental Plan” (2020), online: [PPSC - 2021-22 Departmental Plan \(ppsc-sppc.gc.ca\)](https://ppsc-sppc.gc.ca) [2021-22 Departmental Plan]

<sup>72</sup> Burke Scott & Zina Lu, “An Inconvenient Bargain: The Ethical Implications of Plea Bargaining in Canada” (2018) 81 *Sask. L. Rev.* 53 at 53 [Scott]

<sup>73</sup> *Ibid* at 75-76

<sup>74</sup> *Ibid* at 80

lack of transparency and potential for pressure to plead guilty can result in differing use of plea deals for IBPOC accused.<sup>75</sup> This issue is further complicated by the intersectional analysis of access to justice. IBPOC individuals are more likely to rely on legal aid counsel as opposed to private counsel.<sup>76</sup> As access to defence counsel is becoming more difficult, overrun legal aid counsel may encourage clients to plead guilty while private lawyers may feel more comfortable going to trial.<sup>77</sup>

In the plea agreement process, prosecutors are constrained in role they play in relation to an accused. In absence of a proactive and collaborative defence counsel, prosecutors are unable to understand the potential factors influencing a plea agreement. In recognition of the specific role prosecutors' play in a criminal file, an available avenue for increased equity in plea agreements lies in the first offer or a clear willingness to change the position based on new information. Prosecutors should feel empowered to seek out information about the accused and various factors contributing to their criminality (such as housing instability, substance use disorders, mental health disorders, and/or other indicators of marginalization) in order to craft a position that considers mitigating factors. Through active information gathering, prosecutors are able to create an equitable sentencing position. In recognition of the barriers to access to counsel and the potential lack of advocacy for marginalized communities, prosecutors should do their best to provide an equitable offer in plea agreements.

The below is a summary of all data collected. Full tables with all data and calculations on guilty plea data can be found in Appendix 5.

### **Total guilty plea data**

In total, 55.96% of files reviewed were concluded by guilty plea.<sup>78</sup> As compared to their representation in PPSC files, Black, South Asian and Asian individuals were significantly

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<sup>75</sup> Scott, *supra* at 80

<sup>76</sup> "Legal Aid Ontario: Race-based data for legal aid certificates 2019-20" (10 July 2020), online: [Legal Aid Ontario Legal Aid Ontario: Race-based data for legal aid certificates 2019-20 – Legal Aid Ontario](#) (last modified 3 September 2020); "Annual Service Plan Report" (August 2022), online: [Legal Aid BC Legal Aid BC 2021/22 Annual Service Plan Report](#)

<sup>77</sup> Suzanne Lamoureux, "The puzzle of Canadian legal aid" (2006) [unpublished doctoral dissertation, archived at Simon Fraser University Department of Economics]

<sup>78</sup> Note: throughout this section the calculation of guilty pleas include plea agreements to other or lesser offences

underrepresented in accepting plea deals (see figure 4.1). Most notably, South Asian individuals were 50% underrepresented in accepting plea deals (odds ratio: 0.43).

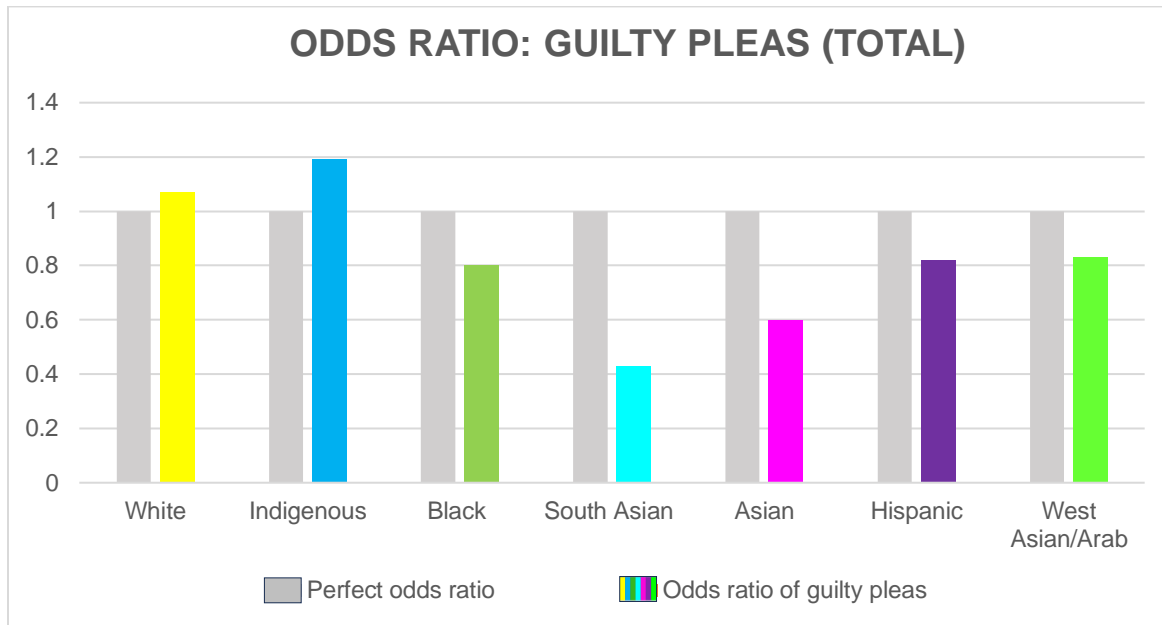


Figure 4.1: Total Guilty pleas, divided by race

### Guilty plea data (divided by region)

#### *Vancouver guilty plea data*

In this section, we have also chosen to highlight Vancouver, as it is the region with the highest number of guilty pleas.<sup>79</sup> In Vancouver, 51.87% of the files reviewed concluded with the accused pleading guilty. The results showed greater disparities for certain groups. South Asian and Asian individuals were significantly underrepresented in guilty pleas (odds ratio: 0.32). In comparison, Indigenous individuals were overrepresented by 25% in guilty pleas (odds ratio: 1.25).

<sup>79</sup> More specifically, in Vancouver 86 individuals pleaded guilty while in Surrey 44 individuals pled guilty. While rural areas had a higher rate of guilty pleas (i.e. 16 individuals in Prince George, 9 in Nelson, and 15 in Duncan)

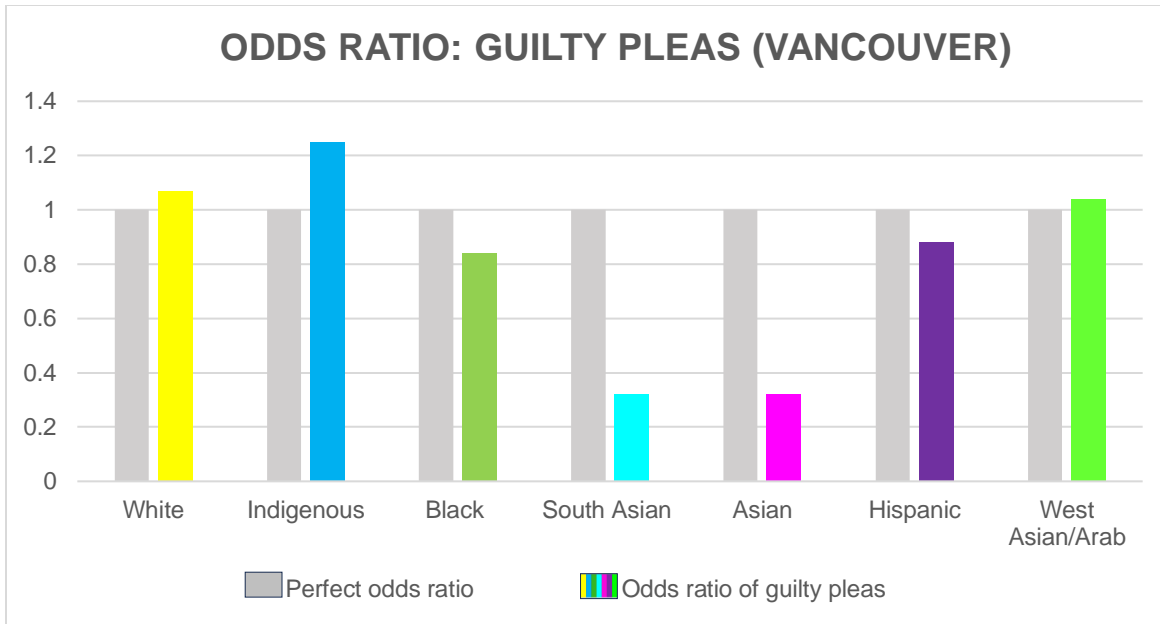


Figure 4.2: Vancouver Guilty pleas, divided by race

### Guilty Plea qualitative examples

In addition to the figures above, a qualitative comparison was included to demonstrate the variance between individuals who plead guilty.<sup>80</sup>

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<sup>80</sup> Vancouver had a larger number of files end in guilty pleas. Further research is encouraged to examine guilty pleas across the five regions.

Example 1: A comparison of guilty pleas related to CDSA 4(1) charges in Vancouver

K (Indigenous, 7 prior convictions)

- Circumstances of the arrest: patrol, officers observed an individual disobey a don't walk sign. The officers followed them to issue them a ticket. Upon stopping, K identified themselves and the officer found that they were breaching their probation conditions. K was arrested for breach, searched incident to arrest. Officers found a 1 inch knife and a small baggie of drugs. K was re-arrested for CDSA 4(1) for possession of 0.47g of MDMA.
- Pled guilty
- Sentenced to 21 days jail

D (White, 35 prior convictions)

- Circumstances of the arrest: patrol, officers observed an individual riding a bicycle without a helmet, on the sidewalk. Officers conduct a stop and query D's name. D is found in breach of their conditions to not touch any bicycle unless they are the owner. D is then arrested for breach, searched incident to arrest, and the officers find drugs. D is re-arrested for CDSA 4(1) for the possession of 0.46g of Meth.
- Pled guilty
- Sentenced to 1 day jail

In the case of K and D in Vancouver, both individuals were stopped for a minor infraction (disobeying a walk sign and riding a bicycle without a helmet) and then found to be in breach of their conditions. Once they were arrested for their breaches, drugs of a similar amount were found.

Each individual pled guilty however, they were sentenced differently. K was sentenced to 21 days in jail for the possession of MDMA. Despite having 5 times the number of priors as K, D was sentenced to only one day jail for the possession of methamphetamine.

Example 2: A comparison of guilty pleas related to CDSA 4(1) charges in Vancouver

P (Indigenous, 1 prior conviction)	W (White, 1 prior conviction)
<ul style="list-style-type: none"><li>• Circumstances of the event:patrol, officers observed P injecting themselves with a hypodermic needle</li><li>• Charged with CDSA 4(1) for possession of 0.2g Fentanyl with Meth</li><li>• Pled guilty pre-trial</li><li>• Crown sought 7 days jail sentence, eventually sentenced to 1 day jail</li></ul>	<ul style="list-style-type: none"><li>• Circumstances of the event: patrol, officers noticed a vehicle with its tail lights on, parked outside an abandoned lot. Police approached the driver and woke up the individual - when they asked the individual to step out of the vehicle, W had multiple baggies of drugs in their hands</li><li>• Charged with CDSA 4(1) for possession of 3.72g of Fentanyl with Cocaine</li><li>• Pled guilty pre-trial</li><li>• Crown sought a suspended sentence, eventually sentenced to a suspended sentence</li></ul>

In the second qualitative example, clear discrepancies between P and W's experience post guilty pleas are present. P and W were both found in possession of a Fentanyl mixed with another drug (Meth and Cocaine respectively). Both individuals pled guilty to their possession charges prior to trial.

Despite striking similarities in the circumstances of arrest, the number of priors, and the types of drugs, the Crown presented differing sentencing submissions. For W, Crown sought a suspended sentence while, for P, they sought jail. It should be noted that each individual had the same number of prior convictions, but that W was found with significantly more Fentanyl mix than P.

As a result, an Indigenous offender received a jail sentence while a White offender received a suspended sentence.

**Conclusion**

Based on our overview, there is a significant underrepresentation of South Asian and Asian individuals in guilty pleas. This could be the result of a myriad of factors such as the seriousness of the offence or access to legal counsel; however, more data and analysis would



be required to make any conclusions. Since plea agreements are the concluding mechanism for 50% (or more in rural regions) of PPSC BC files, it is important to further evaluate the role of Crown counsel in the bargaining of plea equitable agreements and whether these agreements are reflective of viable prosecutions.

## The decision to stay a proceeding

Throughout the prosecution of a file, the decision to prosecute test must continue to be met. The information surrounding the file may evolve or new information may emerge and so, the test should be considered often. If Crown determines that the charge approval standard is no longer met, they must enter a stay of proceedings.<sup>81</sup>

Generally, a stay of proceedings should result from additional information or a change in circumstance. However, our review has demonstrated that there are many instances in which a prosecutor may question the decision to prosecute at the outset as a result of particular issues (for example a *Charter* breach) but persist in the prosecution only to stay the proceedings at a later date citing that same issue. It seems that these instances call for a more rigorous application of the charge approval standard.

The below is a summary of all data collected. Full tables with all data and calculations on stay of proceedings data can be found in Appendix 5.

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<sup>81</sup> [PPSC Deskbook](#), Chapter 2.3 "Decision to Prosecute"

### Total stay of proceedings data

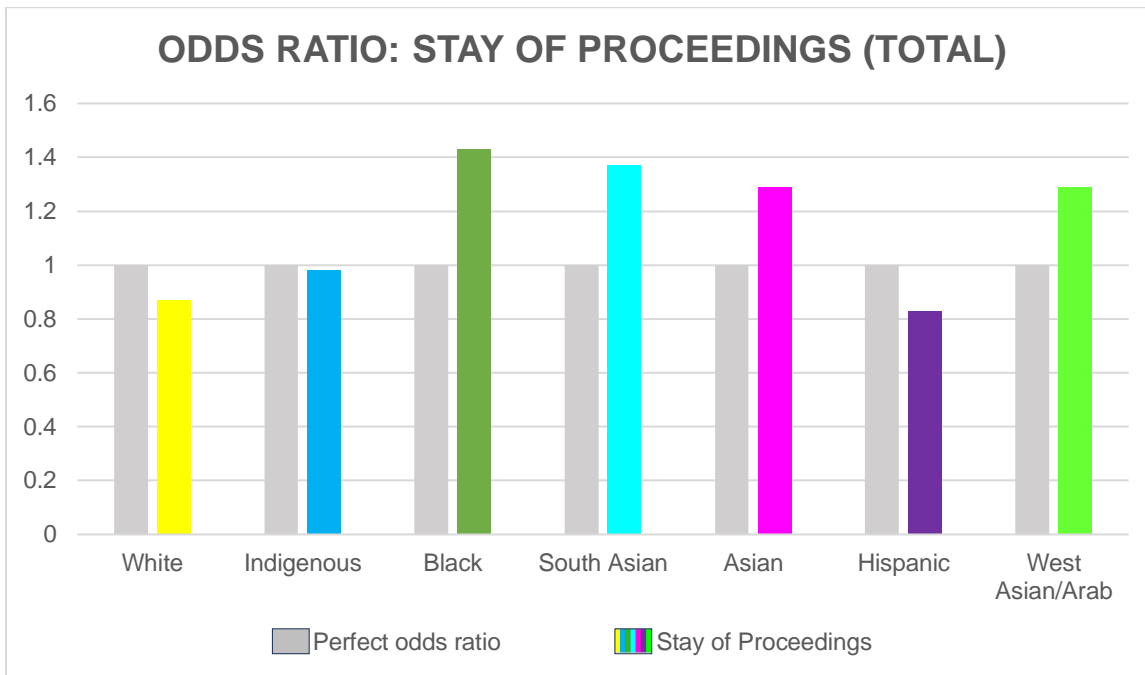


Figure 5.1: Total Stay of Proceedings divided by race

As demonstrated in Figure 5.1, files with Black, South Asian, Asian and West Asian/Arab accused disproportionately result in a stay of proceeding. As compared to their representation in arrest data, Black individuals are overrepresented by 43% in files, which result in a stay of proceedings (Odds ratio: 1.43). South Asian individuals are similarly overrepresented by 37% in files resulting in a stay of proceedings (odds ratio: 1.37). Both Asian and West Asian Arab individuals are overrepresented by 29% in stay of proceedings (odds ratio: 1.29).

The disproportionate representation of stay of proceedings experiences by Black, South Asian, Asian, and West Asian/Arab individuals can be compared to the number of charges, which were initially declined.

Based on Figure 5.2, we see patterns emerging based on the racial or ethnic group of the accused. Out of the three groups (Indigenous, Hispanic, and West Asian/Arab) who were overrepresented in file charge approval, only West Asian/Arab individuals are overrepresented in stay of proceedings. Thus, for West Asian/Arab individuals, their underrepresentation in the decision to decline charges may be corrected by an overrepresentation in the decision to enter

into a stay of proceedings. The same correction was not seen in the data for Indigenous and Hispanic people.

Additionally, South Asian individuals are overrepresented in both the decision to decline charges and to enter into a stay of proceedings (odds ratio 1.76 and 1.37 respectively). As such, South Asian individuals are disproportionately underrepresented in files which reach sentencing (odds ratio: 0.51).

For Black and Asian individuals, while their files are significantly overrepresented in stay of proceedings files, their files are not associated with an overrepresented in charges declined.

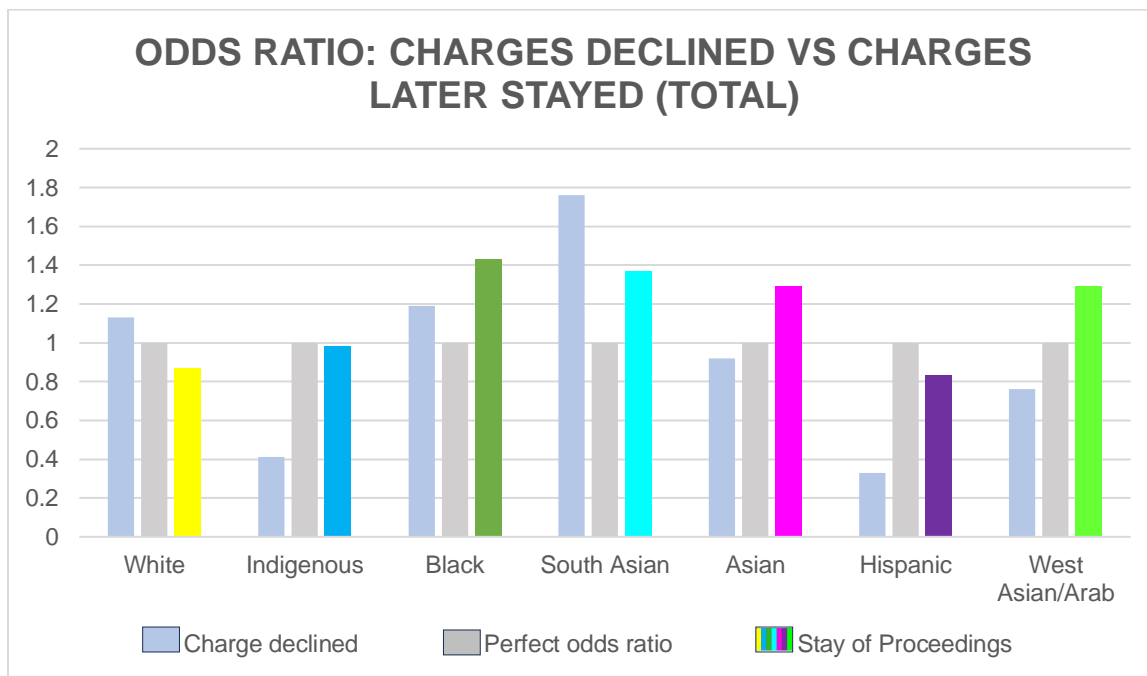


Figure 5.2: Total Stay of Proceedings compared to charge decline, divided by race

### Stay of proceedings data (divided by region)

#### *Vancouver stay of proceedings data*

As compared to the totals, the results differ when data is analyzed according to locations. In Vancouver, prosecutors laid 99% of the charges forwarded by police. As a possible downstream effect, Vancouver prosecutors stay over a quarter of their cases (49 of 187 files

were stayed).<sup>82</sup> Out of the five regions reviewed, Vancouver prosecutors stay the second highest proportion of files.<sup>83</sup> One might argue that the increased stay of proceedings is representative of a failure to decline charges initially as we see a strong correlation with high charge approval rates and high stay of proceedings.

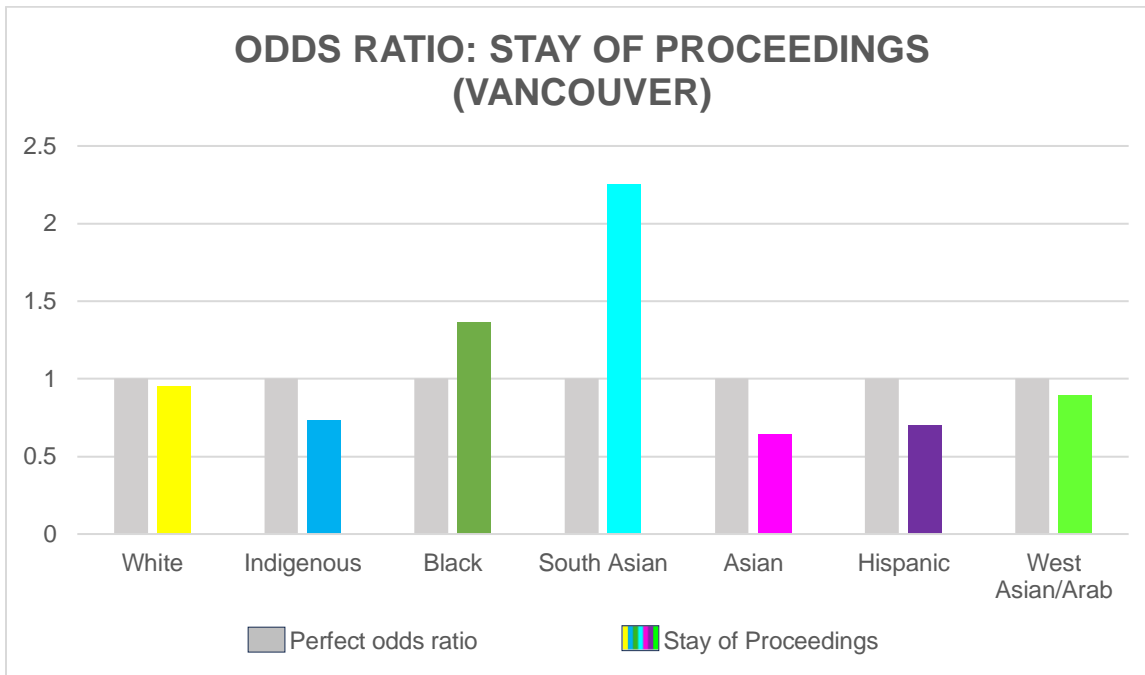


Figure 5.3: Vancouver Stay of Proceedings, divided by race

Figure 5.3 highlights the overrepresentation of Black and South Asian individuals whose files resulted in a stay of proceeding. Stayed files involving Black individuals are overrepresented by 36% when compared to their representation in total (odds ratio: 1.36). Files resulting in stay of proceedings involving South Asian individuals are overrepresented by 125% as compared to their representation in total (odds ratio: 2.25). Notably, Indigenous, Asian, and Hispanic individuals are significantly underrepresented in stay of proceedings (odds ratio: 0.73, 0.70, and 0.64 respectively).

<sup>82</sup> Note this number does not include stay of proceedings entered as a result of a plea deal.

<sup>83</sup> Note Surrey enters stay of proceedings at the highest rate

*Duncan stay of proceedings data*

Similar to Vancouver, prosecutors in Duncan rarely declined charges. In 2017, they laid 100% of the charges forwarded to their office. The high percentage in charges laid is also associated with a greater number of charges stayed. In Duncan, 22% of their cases result in a stay of proceeding. By comparison, in Prince George, a region who regularly declined charges, only 12.5% of files resulted in a stay of proceedings.

Figure 5.4 depicts the stay of proceedings entered by the Duncan office as separated by the race or ethnicity of the accused.<sup>84</sup> Indigenous individuals are overrepresented by 50% in files, which resulted in a stay of proceeding (odds ratio: 1.5). Whereas White individuals are almost perfectly represented when compared to their population in charge approval data (odds ratio: 0.96).

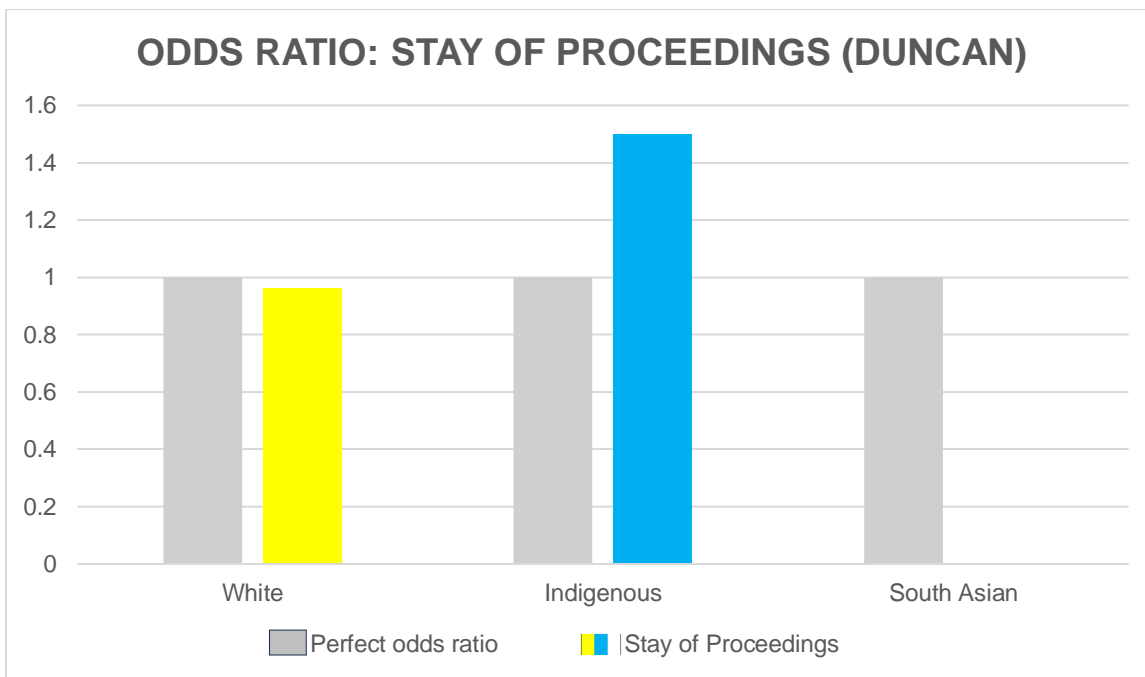


Figure 5.4: Duncan Stay of Proceedings compared to charge decline divided by race. It should be notes that these were the only three groups represented in the files reviewed for the Duncan Region.

<sup>84</sup> Note files involving South Asian individuals in Duncan did not result in a stay of proceedings, as such there is only one bar showing a perfect odds ratio for South Asian individuals in Figure 5.4.

*Surrey stay of proceedings data*

Surrey is an outlier in the decision to stay a proceeding. Despite Surrey region declining charges in a little over 50% of the initial files forwarded to them, they continue to direct stay of proceedings at high rates. In fact, Surrey stays 43% of their charge approval files. As a result, a comparatively small number of files reach the sentencing stage.

In Surrey, Indigenous, Asian, Hispanic, and West Asian/Arab individuals are overrepresented in stayed files. As per figure, 2.5 reviewed above, Indigenous, Asian, and Hispanic individuals are underrepresented in the decision to decline charges. As a result, the racially skewed overrepresentation in laying charges may be corrected by the overrepresentation of those same racial groups in the decision to stay a proceeding.

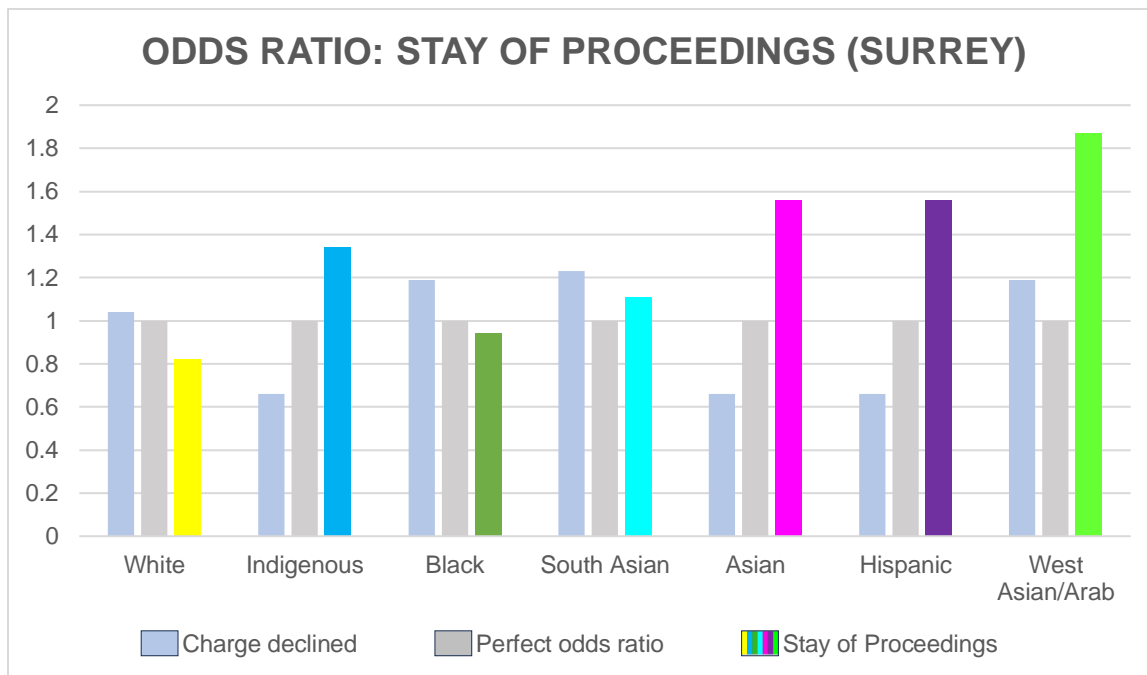


Figure 5.5: Surrey Stay of Proceedings compared to charge decline, divided by race

As figure 5.5 depicts, Indigenous, Asian, Hispanic and West Asian/Arab individuals are overrepresented in stayed files. Indigenous individuals are overrepresented by 34% in the total number of files that are stayed (odds ratio: 1.34). Both Asian and Hispanic individuals are overrepresented by 56% in the decision to enter a stay of proceedings (odds ratio: 1.56 respectively).

For Indigenous, Asian, and Hispanic individuals, their overrepresentation in stayed files corresponds to their underrepresentation in files where charges were declined. For example, Indigenous individuals are underrepresented by 44% in the decision to decline charges but are overrepresented by 34% in the decision to stay charges. There could be a relationship between the decision to charge and the decision to stay. For Indigenous, Asian, and Hispanic individuals, prosecutors may be hesitant to decline charges, only to later conclude that the file does not meet the charge approval standard. As a result, it seems that Indigenous, Asian, and Hispanic individuals do not benefit from the initial charge approval test when compared to other racial groups.

### **Stay of Proceedings qualitative examples**

An example of the problematic use of a stay of proceedings can be found in the qualitative example below.

Example 1: A stay of proceedings related to CDSA 5(2) charges in Surrey

#### **G (Indigenous, 0 prior convictions)**

- **Circumstances of the event:** Officers conduct a traffic stop for burnt out head light. G (passenger) runs from car when stopped, Officer catches them and arrests them for obstruction. Upon being caught G threw a box containing drugs off of their persons.
- **Charges laid:** CDSA 5(2) Cocaine 10.54 g Heroin with Fentanyl 1.81g
- **Stay of Proceedings:** Not in the public interest to proceed

In the case of G, the Agent firm and the Agent supervisory Unit (ASU)<sup>85</sup> had extensive email correspondence regarding the grounds for arrest. The Agent firm argued that G may have ran due to fear of police however, the ASU interpreted G's flight as grounds for the arrest. The charges were ultimately approved. Later, based on the pre-trial interview, the Agent entered a stay of proceedings because the officer lacked the grounds for arrest. Further, the expert opinion, which was not seen prior to making the charge approval assessment, did not support possession for the purpose of trafficking.

For months before G's charges were stayed, G was required to follow bail conditions such as a no-go requirement and a weekly reporting condition. In addition, a bench warrant was issued against G for failing to appear in court.

While they remain an individual with no criminal record, this Indigenous person was engaged in the Criminal Justice System for two years.

## **Conclusion**

A stay of proceedings is an essential tool for prosecutors. In the event that new information arises and the charge approval standard is no longer met, it is critical that prosecutors have a mechanism to end the proceedings. However, this tool should not be used as a replacement for the initial charge approval decision. The downstream effects of failing to decline charges, only to later enter a stay of proceedings based on the same information are significant. As such, it is not a decision that should be made based on uncertainty where information is readily attainable. It is hoped that a renewed focus on a rigorous application of the decision to prosecute will empower prosecutors to decline charges at the outset, rather than resort to staying a proceedings, based on the same facts, at a later date.

## **Spotlight on file outcomes for Indigenous accused**

Given the significant overrepresentation of Indigenous individuals in the BC Criminal Justice System<sup>86</sup> as well as the calls to action from the Truth and Reconciliation Commission, it is

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<sup>85</sup> In many regions of the province, the PPSC uses Crown agents who are private lawyers contracted as local prosecutors to conduct federal prosecutions.

<sup>86</sup> Truth and Reconciliation Commission of Canada *supra* note 34



important to specifically examine file outcomes as they relate to Indigenous people. For this analysis, we chose to focus on the two largest geographical areas – Vancouver and Surrey.<sup>87</sup>

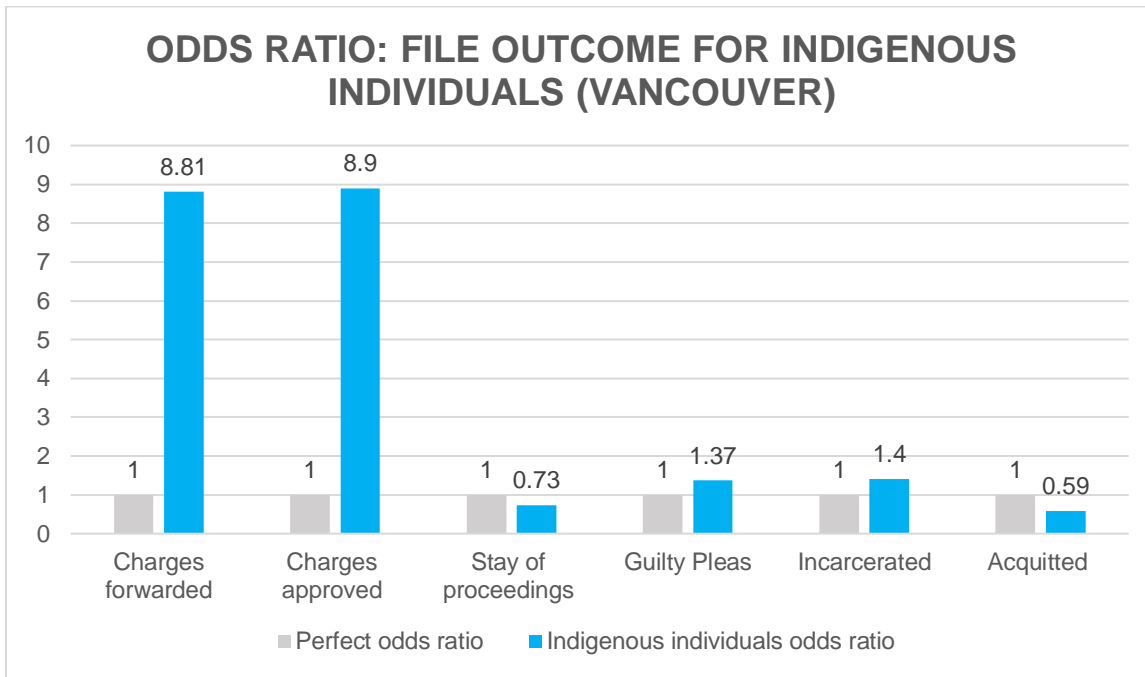


Figure 6.1: Vancouver File outcome for Indigenous individuals

In Vancouver, Indigenous individuals are grossly overrepresented in both arrests and charge approvals, as compared to their census population estimates (see figure 6.1). Throughout a prosecution, Indigenous individuals are significantly underrepresented in stay of proceedings and acquittals. However, they are overrepresented in guilty pleas and incarceration. In comparison, when examining White individuals' outcomes in Vancouver (figure 6.2); White individuals are nearly perfectly represented based on their population data. There is not one point in the file in which White individuals are disproportionately represented.

<sup>87</sup> This section is a summary of all data collected. Full tables with all data and calculations based on files with Indigenous accused can be found in Appendix 5.

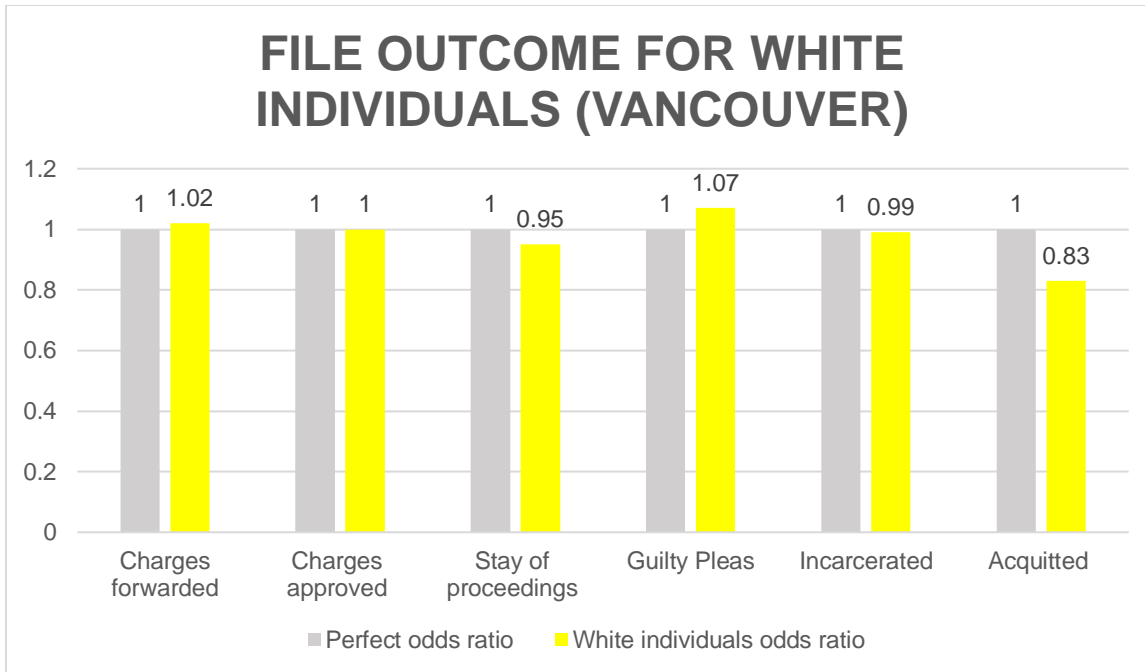


Figure 6.2: Vancouver File outcome for White individuals

Since we learned that it is common in the Vancouver region to charge files and then later stay them, it may be possible that Indigenous offenders are not equally benefitting from the decision to stay a file because they are pleading guilty at a disproportionate rate. It is possible that files with Indigenous offenders are simply better put together, involve better facts or contain fewer *Charter* Violations, although there is no evidence to support this. A greater analysis would be required to determine the true nature of the discrepancy, recognizing that intersectional factors may also play a role.

In Surrey, similar themes emerge (See figure 6.3). Indigenous individuals are grossly overrepresented in the charges forwarded to and approved by the PPSC. It is important to note, that unlike Vancouver, the Surrey agents often use their discretion not to approve charges. However, this use of discretion did not benefit Indigenous people, instead through the PPSC's charge approval process, Indigenous individuals' overrepresentation increases by 156% (odds ratio for arrests: 4.62; odds ratio for charges approved: 6.18). This may have an effect on Indigenous individuals' subsequent overrepresentation in stayed files. In Surrey, like Vancouver, Indigenous individuals are overrepresented in files ending through guilty pleas.

However, unlike Vancouver, in Surrey, Indigenous individuals are not disproportionately represented in experiences of incarceration.

When comparing Indigenous and White individuals (see figure 6.4) in Surrey, White Individuals are also overrepresented in arrest and charge approval samples, though to a much smaller degree (odds ratio for arrest: 1.50; odds ratio for charges approved: 1.45). White individuals are proportionately represented in files resulting in Stay of Proceedings, Guilty Pleas, and Incarceration. Lastly, White individuals are overrepresented in files ending in acquittals whereas there are no files in Surrey where an Indigenous individual is acquitted.

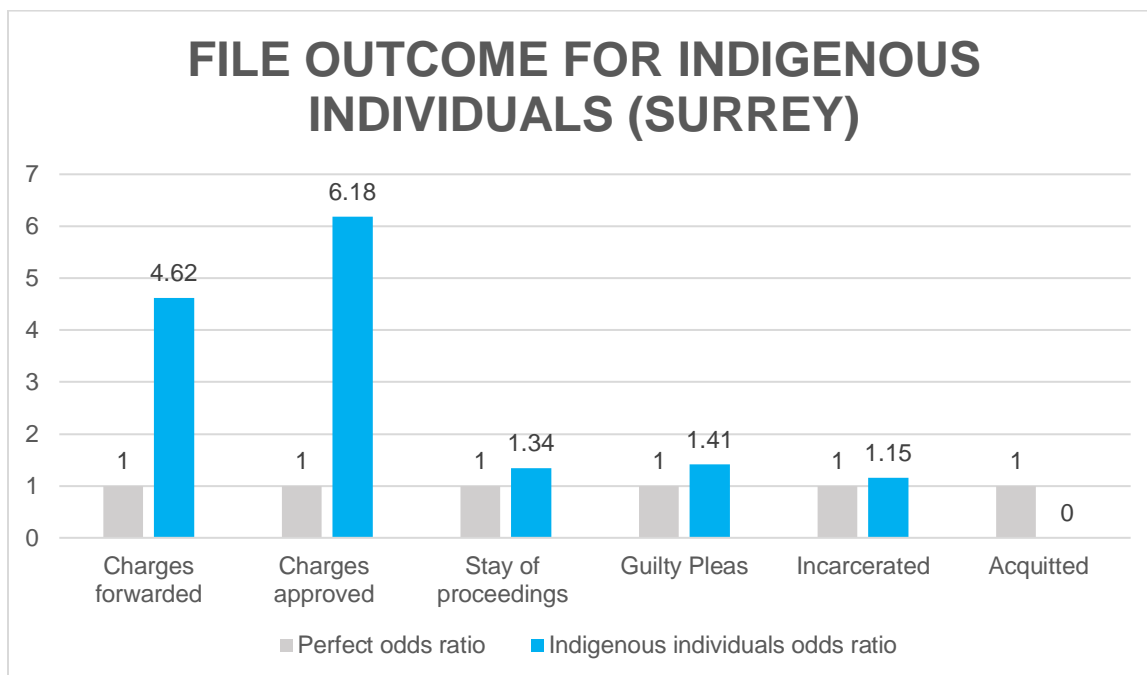


Figure 6.3: Surrey File outcome for Indigenous individuals

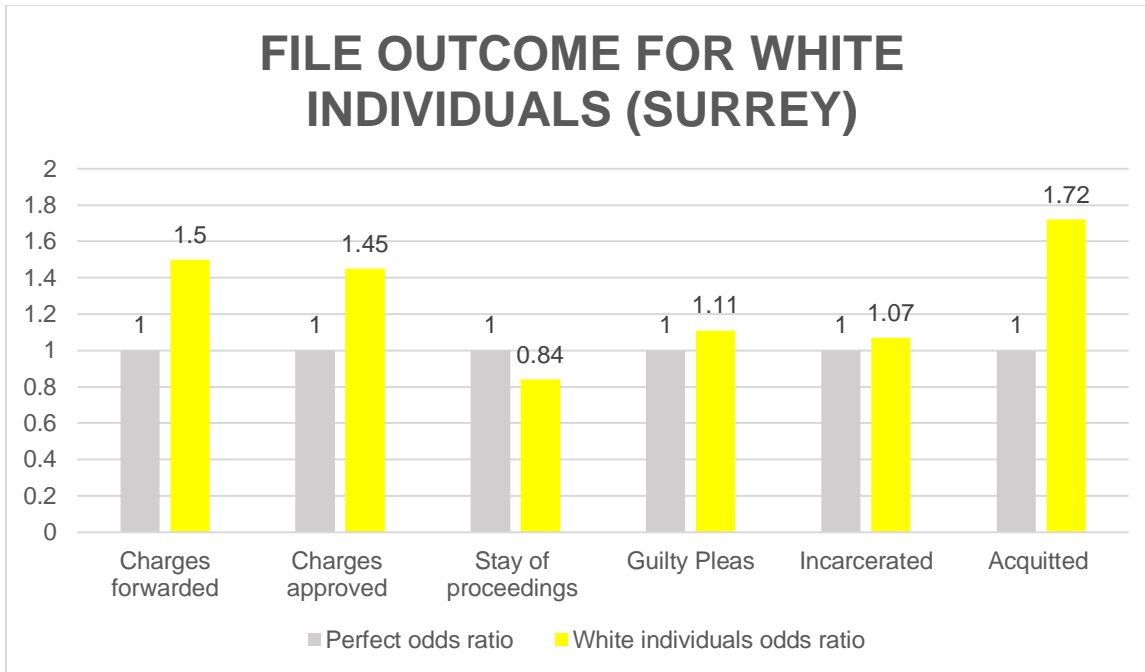


Figure 6.4: Surrey File outcome for White individuals

## Conclusion

In both Surrey and Vancouver, Indigenous individuals are overrepresented in arrests and charges approved when compared to White individuals. The racial and ethnic disparity continues in some cases, for the length of the file. The next section will review one of these areas of disparity.

## Acquittals

For an accused, a trial can result in either a conviction or an acquittal. Notably, acquittals for drug offences are quite rare. In 2016, only 74 of the total 1,680 drug prosecutions across BC resulted in an acquittal.<sup>88</sup>

Acquittals could represent the opportunity for courts to reduce the implicit racial bias in the cases before them.

<sup>88</sup> “Adult criminal courts, number of cases and charges by type of decision”, online: *Statistics Canada* [Adult criminal courts, number of cases and charges by type of decision \(statcan.gc.ca\)](http://statcan.gc.ca)

The below is a summary of all data collected. Full tables with all data and calculations on acquittal data can be found in Appendix 5.

### Total Acquittal data

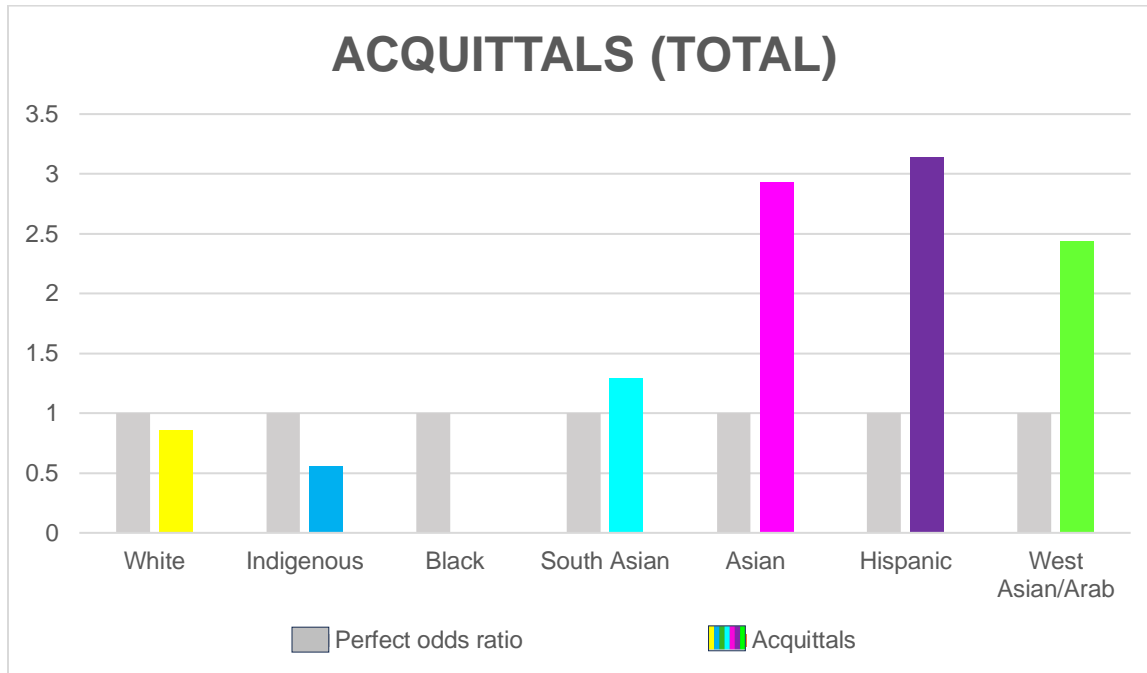


Figure 7.1: Total Acquittals divided by Race of the accused

In total, 19 individuals were acquitted and in those 19 acquittals disparities can be observed between the various racial and ethnic groups (see figure 7.1). Hispanic, Asian, and West Asian/Arab individuals were grossly overrepresented in files ending in acquittals (odds ratio 3.14, 2.93, and 2.44 respectively). South Asian individuals were also overrepresented in files ending in acquittals (odds ratio: 1.29). In acquittal files, White individuals were proportionate to their population estimates. Indigenous individuals were underrepresented in acquittals (odds ratio: 0.56). Because there were no Black individuals acquitted in the sample, we could not calculate an odd ratio demonstrating whether there are any inequities.

### Acquittals qualitative example

While some IBPOC groups were overrepresented in acquittals, the qualitative example below may demonstrate that certain groups experience inequities. As is discussed throughout this report, prosecutors are not the sole actor within the Justice System, rather, prosecutors direct proceedings by bringing prosecutions to the Court and setting the parameters of the

prosecution through submissions. The qualitative example below does not serve to show case racial bias in prosecutorial decision-making, nor does it serve to put onus on prosecutors for judicial decision-making. Rather, it serves to highlight discrepancies in outcomes for certain racial and ethnic groups of offenders within the Justice System. While both cases center on similar facts, one individual was acquitted while the other was sentenced to 9 months in jail.

Example 1: A comparison of acquittals related to CDSA 5(2) charges in Surrey

G (White, 0 prior convictions)	K (South Asian, 0 prior convictions)
<ul style="list-style-type: none"><li>•Circumstances of the event: Patrol, officer observed a car (driven by G) idling outside a school, ran the plates and saw the vehicle flagged as substance user. Officers followed the car, watched it stop next to another car and the driver of the new car gets in the backseat of G's vehicle. The officers did not see a drug transaction but believed to have reasonable ground to arrest G, the driver in the 'trafficking' car. Officers stopped the car, detained G and saw drugs in pocket of their pants. G was subsequently arrested for 5(2). A search of the car incident to arrest found more drugs.</li><li>•Charges laid: CDSA 5(2): 5.66g Carfentanil; 8.76g Heroin with Fentanyl and Carfentanil; 9.27g Cocaine; 4.78g Meth</li><li>•Acquitted</li></ul>	<ul style="list-style-type: none"><li>•Circumstances of the event: Police received a call about stolen vehicle from a complainant. Officers arrive near the scene and observe K in the driver seat of a parked vehicle. Officers stopped K believing them to be the suspect. While detained for stolen property, they saw drugs viewable from the car's front window. K was arrested for 5(2). K was in their own vehicle and not matching the description of the individual reported.</li><li>•Charges laid: CDSA 5(2): 0.86g Meth; 4.48g Heroin with Fentanyl</li><li>•Convicted and Sentenced to 9M in Jail</li></ul>

Both G and K are first time offenders who were caught with Fentanyl in their vehicles. The circumstances of the events are similar but do have noteworthy differences. In G's case, officers conducted surveillance on the vehicle and observed what they believed to be a drug deal. Upon D's detention, they found drugs on the accused's person and in their car. In K's case, the police detained K for an investigation of stolen property. K was sitting in their own car and did not match the description given by the complainant. During K's detention, drugs were viewable from the front window. Both cases, approval crown raised a section 8 *Charter* issue, in K's case there was an additional section 9 breach identified. Despite the potential breaches, both cases continued to trial.

At trial, G was acquitted, after a section 8 breach was found and the evidence was excluded, while K was convicted and sentenced to 9 months in prison. The file for G made note that G was a bright, young man whose family attended each day of the trial. G told the judge after the acquittal that they planned to speak to high schools about the dangers of gang membership. No similar notes were marked in K's file, despite this also being their first offence.<sup>89</sup> Further, it is noteworthy that G was found with 28.47 g of drugs, including Carfentanil, while K was found with a fifth of the amount of drugs and none of the more potent analog.

## Conclusion

A greater analysis could be conducted regarding acquittals but from the current data, we know that at an aggregate level, South Asian, Asian, Hispanic and West Asian/Arab individuals are overrepresented in acquittals. Additionally, the qualitative data showcases that an acquittal was not granted for a South Asian accused while a White accused was acquitted based on very similar facts.

Acquittals, much like the upcoming section Sentencing, are areas where only the prosecutorial decision-making can be evaluated. Once a prosecutor has presented their submissions to the Court, the Judge is responsible for correctly deciding the outcome. As a result, the Judge may impose something different than what is sought by the Crown. More research is needed to determine the extent of the Court's impact on the racial and ethnic disparities present in acquittals. As per their duty, Judges acquit individuals where the Crown fails to meet their evidentiary burden. Our data demonstrates that Crown are disproportionately failing to prove offences beyond a reasonable doubt in cases involving accused from IBPOC groups.<sup>90</sup>

## Introduction to Data on Sentencing

It is the task of the prosecutor to craft an appropriate sentencing position. The *Canadian Criminal Code* outlines that sentences must be "proportionate to the gravity of the offence and

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<sup>89</sup> Note: K was age 54 at the time of the offence as compared to G who was age 18.

<sup>90</sup> Note: This is a section that would benefit from a separate CDSA 5(2), CDSA 4(1) analysis, as there are many possible cofounders. For example, it is possible that those who are acquitted are those who are charged with more serious drug offences.

the degree of culpability of the offender.”<sup>91</sup> They must also take into account the aggravating and mitigating circumstances of the accused.

Prosecutors do not make sentencing decisions in isolation. Rather, prosecutors often work alongside defence counsel to assess the varying aggravating and mitigating circumstances of the offender. Ultimately, the sentence is decided by the judge after submissions from the parties. As a result, prosecutors are not solely responsible for the overrepresentation of individuals from certain racial and ethnic groups in sentencing outcomes. Despite this, prosecutors still have a critical voice in advocating for equitable sentencing outcomes for offenders. Further, in order to align with the 2021-2022 PPSC Departmental Plan, an increase in non-carceral sentencing may be required when working with an IBPOC offender.

Like other decisions made by prosecutors over the course of a file, individual sentencing positions may appear logical and appropriate. However, when examined at the aggregate level, there are significant differences in the representation of racial and ethnic groups in certain sentencing outcomes emerge.

### **The lasting impacts of Incarceration**

Despite the well-documented negative effects of incarceration, namely the increased levels of criminality, housing instability, unemployment, and mental health incidents,<sup>92</sup> it remains the most prevalent sentence in the Canadian Justice System.<sup>93</sup>

Public Safety Canada recently published the “Federal Framework to Reduce Recidivism”, in which they highlight the racial inequities present in the Canadian carceral system. The current institutions are deeply entrenched in systemic racism, fostering gross overrepresentation for Black and Indigenous individuals.<sup>94</sup> Despite the increased calls for action<sup>95</sup>, the number of Indigenous individuals incarcerated in Canada continues to grow. Between 2015 and 2020, the

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<sup>91</sup> Criminal Code, *supra* 52 at s.718.2

<sup>92</sup> The Honourable Marco Mendicino, “Federal Framework to Reduce Recidivism” (2021) online: *Public Safety Canada* [Federal Framework to Reduce Recidivism \(publicsafety.gc.ca\)](https://publicsafety.gc.ca) [Public Safety Canada]

<sup>93</sup> Malakieh, *supra* note 53

<sup>94</sup> Public Safety Canada, *supra* note 83

<sup>95</sup> Truth and Reconciliation Commission of Canada, *supra* note 34



proportion of Indigenous offenders within Canada's correctional services total inmate population grew by 15.3%.<sup>96</sup>

Both the Government of Canada and the Supreme Court of Canada recognize the need for a systemic change in the approach to the incarceration of Indigenous peoples.<sup>97</sup> However, the tangible steps to reducing overrepresentation in correctional facilities are difficult. One department alone cannot resolve the large-scale issue however, as prosecutors; the PPSC has significant power to invoke positive change. Prosecutors should feel empowered to diligently seek out information, which may influence sentencing such as race, ethnicity, personal circumstances, etc.<sup>98</sup> Equity-focused decision-making could lead to aggregate changes to reducing overrepresentation of Indigenous People and other overrepresented groups in the carceral system.

The below is a summary of all data collected. Full tables with all data and calculations on incarceration can be found in Appendix 5.

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<sup>96</sup> Public Safety Canada, *supra* note 83

<sup>97</sup> *R v Gladue*, [1999] 1 SCR 688 at para 47; Truth and Reconciliation Commission of Canada *supra* note 34

<sup>98</sup> See recommendation 2 for more concrete examples of positive sentencing practices

### Total incarceration data

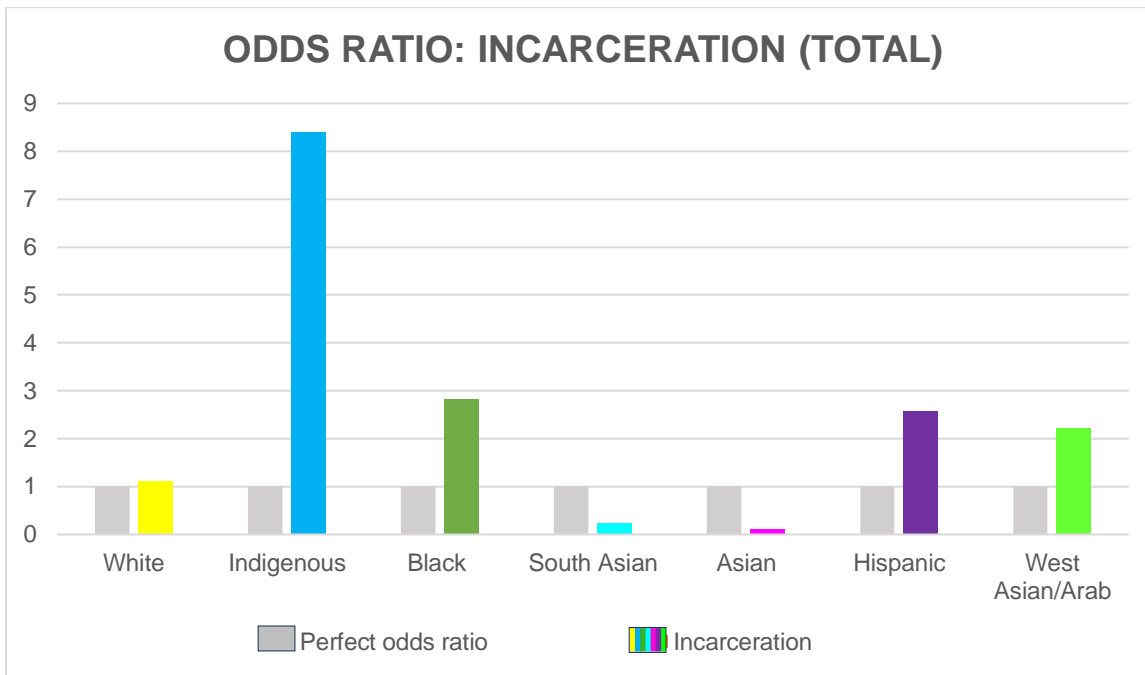
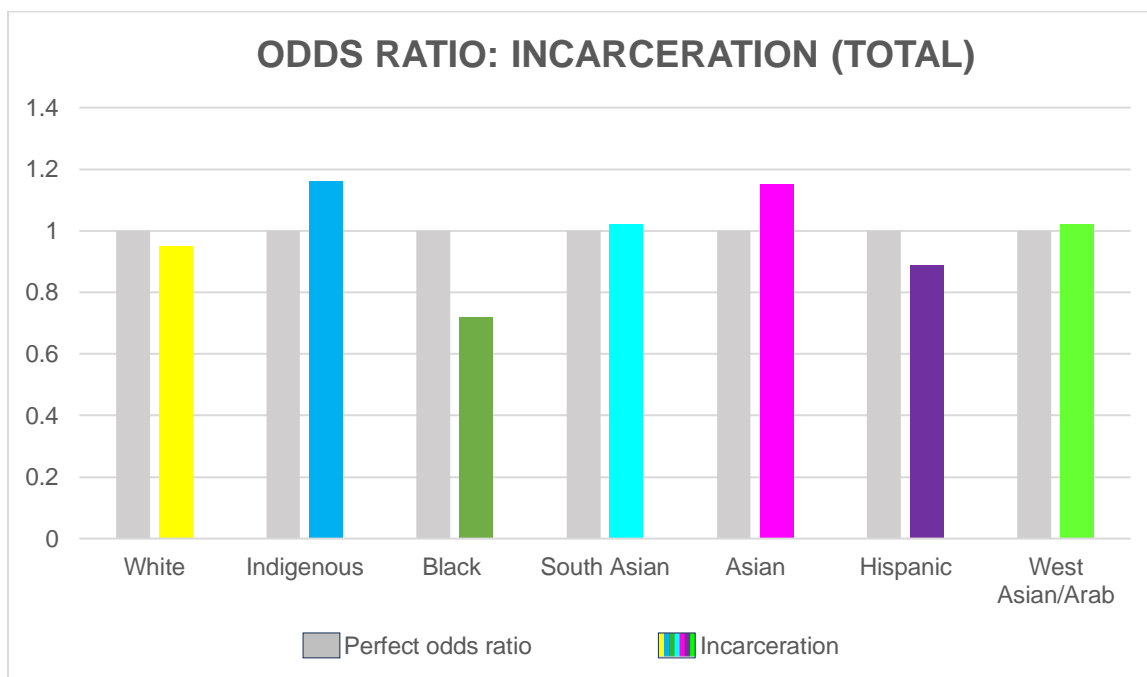


Figure 8.1: Total Incarceration divided by Race of the accused – Odds ratio calculated using census population data

Figure 8.1 demonstrates that the overrepresentation present in broader Canadian statistics is mirrored in our analysis. In the sum of five BC regions, Indigenous, Black, Hispanic and West Asian/Arab individuals are overrepresented in incarceration data as compared to their census data. The overrepresentation is especially striking for Indigenous individuals. While Indigenous people compose 3.46% of the population, they represent 29.10% of those sentenced to incarceration. As such, Indigenous individuals are grossly overrepresented in incarceration sentences (odds ratio: 8.41). The second most overrepresented group in incarceration statistics is Black individuals who are overrepresented by 183% as compared to their census data (odds ratio: 2.83). Hispanic and West Asian/Arab individuals are also overrepresented as compared to their census data (odds ratio: 2.57 and 2.22 respectively).

When compared to their representation in the general population, Indigenous, Black, Hispanic and West Asian/Arab individuals are overrepresented in carceral sentences. However, when we calculate odds ratios using the number of incarcerated individuals as compared to the number of individuals sentenced (per racial and ethnic group), no group was overrepresented (see figure 8.2). Instead, the only significant result is that Black individuals are

underrepresented in sentences to incarceration (odds ratio 0.72) as compared to their representation in sentences. In calculating the odds ratio using two different population metrics, it becomes clear that the significant overrepresentation of IBPOC individuals in prisons is associated with overrepresentation in arrest and charge data as compared to overrepresentation in sentencing data. In other words, while IBPOC groups are not overrepresented in incarceration as a result of the sentencing decision, they remain overrepresented when compared to their population estimates. It should be noted, that this lack of overrepresentation in incarceration rates does not directly represent the Crown counsel's sentencing position with respect to incarceration.<sup>99</sup> Since these figures do not take into account all instances where Crown sought incarceration, it is likely that the rates at which prosecutors *sought* incarceration would result in greater overrepresentation of certain racial and ethnic groups than the final judge imposed sentence of incarceration .<sup>100</sup>



<sup>99</sup> Crown submission data is a fascinating avenue for inquiry however given the lack of consistency across PPSC files; it would be difficult to align all files to review the initial sentencing position. Crown sentencing positions change rapidly and consistently throughout the file, and so it was not possible to match the time point of sentencing positions in order to compare them across files.

<sup>100</sup> As noted throughout this report, the PPSC is only one actor within a network of court actors. As the file lead, prosecutors direct the Court and required defence counsel to work in response to their submissions.

Figure 8.2: Total Incarceration divided by Race of the accused– Odds ratio calculated using sentencing population data

In evaluating the role of prosecutors in the overrepresentation of IBPOC individuals in correctional facilities, there is little data suggesting the sentencing decision is associated with overrepresentation at the aggregate level. It is positive that no aggregate association emerges between IBPOC individuals and overrepresentation in prison sentences. However, it does not indicate that there is not work to be done to encourage prosecutors to seek equitable sentences for offenders. As demonstrated by the two qualitative examples below, not only are White individuals less likely to be incarcerated but their jail sentences may be shorter. A fulsome analysis of the length of jail sentence as disaggregated by race could be performed but was not possible for this report.

### Incarceration qualitative examples

Example 1: A comparison of sentences related to CDSA 5(2) charges in Vancouver

R (Hispanic, 1 prior conviction)	S (White, 25 prior convictions)
<ul style="list-style-type: none"><li>• Circumstances of the event: patrol, officers saw two men arguing, police car stopped in front of them, officers try to engage in conversation, R ran and ripped off a fanny pack and throwing a black pouch on the ground. Officers caught R and arrested them for PPT.</li><li>• Convicted of CDSA 5(2) for Heroin mixed with Fentanyl 10.98g; Cocaine 4.33; Meth 3.23g</li><li>• Sentenced to Jail: 18M</li></ul>	<ul style="list-style-type: none"><li>• Circumstances of the event: officers attended hotel on an unrelated call, observed a male in the lobby near the ATM, they approached and saw that the individual (later identified as S) was weighing drugs on a scale. Arrested for PPT</li><li>• Convicted of CDSA 5(2) for Heroin mixed with fentanyl 7.37g; Meth 1.67</li><li>• Sentenced to Jail: 3 Months intermittent concurrent on all counts, PO 3years on all counts</li></ul>

R and S were both charged with CDSA 5(2) charges in Vancouver. S is a repeat offender with 25 priors while R only had one prior. The circumstances of the event were similar except that S was found committing an offence by weighing drugs on a scale in public, R was approached by police for arguing and then subsequently ran, throwing their bag containing drugs.

Both individuals had significant quantities of Heroin mixed with Fentanyl. For trafficking offences involving Fentanyl, the *Smith* Sentencing Range<sup>101</sup> indicates that offenders should receive a sentence of 18-36 months jail. While R received a sentence within the *Smith* range, S received an intermittent sentence of 90 days.

Despite having fewer priors, R was sentenced to a sentence 6 times greater than S.

Example 2: A comparison of sentences related to CDSA 4(1) charges in Vancouver

B (White, 2 prior convictions)	N (Middle Eastern, 3 prior convictions)
<ul style="list-style-type: none"><li>•Circumstances of the event: call from complainant reporting a disturbance in front of a hotel. B had been spray painting and then began to fight with another person. Officers arrived and observed a person matching the complainant's description. B refused to remove their hands from his hoodie pocket, officers forcefully removed them and cuffed them. Search of pockets showed drugs and weapon.</li><li>•Pled guilty to CDSA 4(1) 2.63g cocaine; 2.86g marijuana; 0.1g Heroin with Fentanyl</li><li>•Sentenced to Jail: 4 days (t/s) global sentence</li></ul>	<ul style="list-style-type: none"><li>•Circumstances of the event: patrol, officers recognized N and arrested them for breach of no-go zone. Search incident to arrest found drugs in their fanny pack.</li><li>•Pled guilty to CDSA 4(1) 4.6g cocaine</li><li>•Sentenced to Jail: 14 days (3 days t/s)</li></ul>

Another example from Vancouver is B and N. Both B and N pled guilty to possession charges.

Despite both parties pleading guilty, B was sentenced to 4 days jail (time served) and N was sentenced to 14 days jail (minus 3 days time served). As a result, B left their sentencing disposition having already served his sentence while N was incarcerated for another 11 days.

Surrey prosecutions also demonstrated some inequitable outcomes for at sentencing. For example, in the case of R and P, R received a jail sentence while P was required to pay a fine.

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<sup>101</sup> In *R. v. Smith*, 2017 BCCA 112, the British Columbia Court of Appeal set out a range of appropriate sentences for those who traffic in Fentanyl.

## Conclusion

As of 2021-2022, the PPSC has re-committed to working alongside other Justice System actors to reduce the overrepresentation of Indigenous and racialized Canadians in the criminal justice system.<sup>102</sup> This sentencing data should serve to encourage prosecutors to restructure their approach to sentencing.<sup>103</sup>

### Non-carceral sentences

A possible mechanism to correct the overrepresentation of Indigenous and Black Canadians, as well as Canadians from other racial minority groups in correctional facilities is through the use of non-carceral sentences. As per figure 22, non-carceral sentences such as Fines, Conditional Sentence Orders, Suspended Sentences, and Discharges (absolute and conditional) are disproportionately afforded to White offenders. These discrepancies in sentencing practices should be more broadly considered for all offenders in order to create more equitable outcomes for those belonging to an IBPOC group.

The below is a summary of all data collected. Full tables with all data and calculations on non-carceral sentences data can be found in Appendix 5.

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<sup>102</sup> 2021-22 Departmental Plan, *supra* note 64

<sup>103</sup> A greater discussion of possible re-structuring strategies can be found in Recommendation #3

### Total non-carceral sentences data

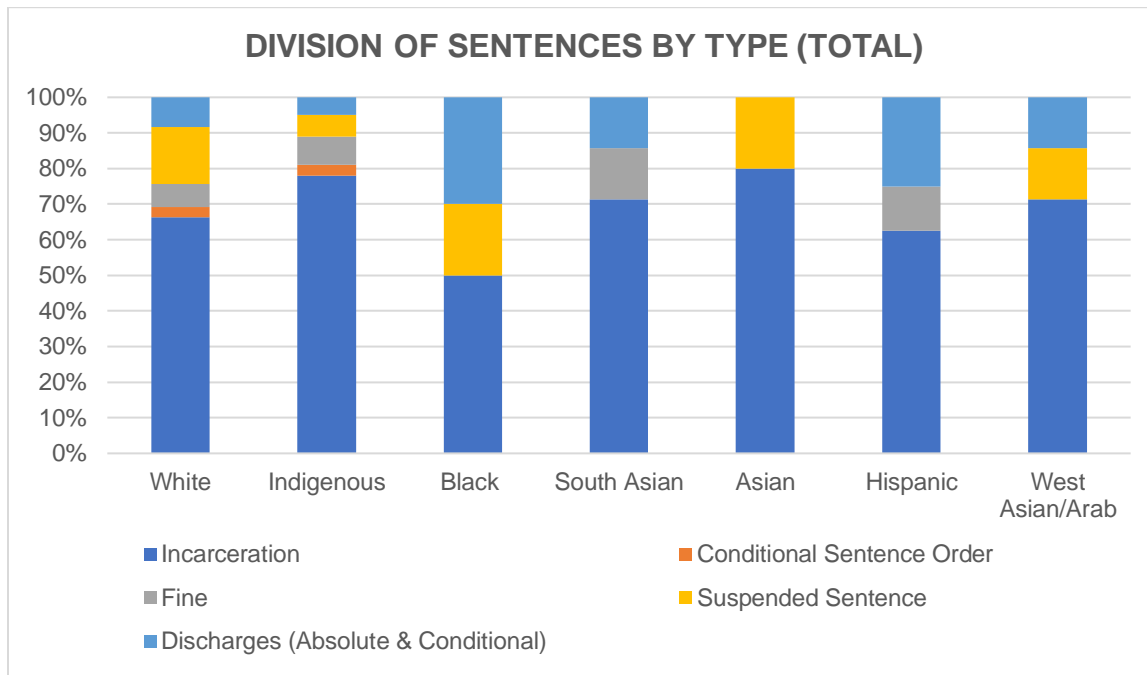


Figure 9.1: Total division of sentences by type

Figure 9.1 demonstrates the division of sentence types disaggregated by race and ethnicity. As evidenced by the disaggregation of data, it is clear that some groups are more likely to receive certain types of sentences. For example, out of all IBPOC groups, Indigenous offenders are most likely to receive carceral sentences, with 81.25% of files with Indigenous offenders resulting in jail sentences. Alternatively, when compared to all groups, White offenders are most likely to receive non-carceral sentences, with 33.64% of files with White offenders resulting in non-carceral sentences. The figure also highlights that Asian offenders received solely carceral or suspended sentences. This graph is not broken down by 4(1) or 5(2) offences or further by severity of offence within the 5(2) category, this type of further disaggregation is possible within the data but was not manageable for this report.

### Conclusion

Non-carceral sentences offer alternatives to help reduce the overrepresentation of certain IBPOC groups in correctional facilities. While non-carceral sentences can always be imposed by the sentencing judge, we encourage prosecutors to take proactive steps in considering non-

carceral sentences where appropriate. This may result in outcomes that are more equitable for IBPOC communities.

## **Introduction to first time offender data**

When evaluating the data collected, first time offenders were of particular interest. A person's first interaction with the Criminal Justice System has lasting effects on an individual's future outcomes and life experiences. For example, a 2009 study found that early life interaction with the Criminal Justice System was associated with later criminality and recidivism.<sup>104</sup> While additional research would be helpful to substantiate the importance of an offender's first prosecution, no such research is available at this time. Based on the previous research discussed on the subject of racial and ethnic inequities in policing, the impact of a criminal record, and the negative outcomes associated with the Criminal Justice System, it is possible to infer that similar results would be associated with an individual's first experience in the system. As we have noted throughout this report, prosecutors cannot determine which individuals the police bring into the Criminal Justice System. However, a prosecutor's role in dealing with a first time offender is critical to that individual's later life course.

Additionally, the characteristics of a first time offender are significant in the application of the two-step charge approval test. In the second step of the charge approval test, prosecutors are required to question whether a prosecution would best serve the public interest. In their application, prosecutors must consider the accused's degree of responsibility, background, and criminal record (among other factors). When evaluating a criminal record, a prosecutor must reflect on the underlying issues, which may have contributed to the offence such as "homelessness, mental illness, poverty or addiction." For first time offenders, the accused lack of criminal record and background should have an influence on the public interest requirement of the prosecution.

In order to provide a fulsome evaluation, the research team divided first time accused charged with CDSA 4(1) offences from those charged with CDSA 5(2) offences. In dividing CDSA 4(1)

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<sup>104</sup> Robert D. Crutchfield et al, "Racial disparities in early criminal justice involvement" (2009) 1 Race and social problems 218



and CDSA 5(2) offences, we are able to better reflect on the public interest test and the effects of prosecutorial decision-making for first time IBPOC offenders.

The research team is mindful that the new directive on the approach to CDSA 4(1) offences took place in 2020 and therefore was not referred to in the data reviewed. As a result, the PPSC's current practices with respect this offence may be significantly different.

The below is a summary of all data collected. Full tables with all data and calculations on first time accused can be found in Appendix 6.

### First Time Offenders Data: CDSA 4(1) Charges

As demonstrated in figure 10.1, the police disproportionately arrested Black and West Asian Arab individuals for the possession of drugs. Black individuals were overrepresented in arrest data by 542% while West Asian/Arab individuals were overrepresented by 304% as compared to their census population (odds ratios: 6.42 and 4.04 respectively). As a result of the PPSC's decision to prosecute, that overrepresentation was slightly reduced. Black individuals were overrepresented in files with charges approved by 483%, a reduction of 59% (odds ratio: 5.83). Similarly, West Asian/Arab individuals were overrepresented in files with charges approved by 205%, a reduction of 99% (odds ratio: 3.05). South Asian and Asian individual's representation was also decreased as a result of PPSC's charge approval decision-making (odds ratio: 0.78 and 0.09 respectively)

In comparison, the PPSC charge approval decision increased the representation of White and Indigenous individuals. While White individuals were not significantly overrepresented in arrest data (odds ratio: 1.15), they were overrepresented by 31% in the files with charges approved (odds ratio: 1.31). Indigenous individuals were significantly underrepresented in the arrest data (odds ratio: 0.49), however their representation was increased after the charge approval decision (odds ratio: 0.74).<sup>105</sup>

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<sup>105</sup> Note: Indigenous individuals remain underrepresented in CDSA 4(1) files with charges approved. Their representation is simply highlighted to demonstrate the effects of PPSC charge approval decision-making.

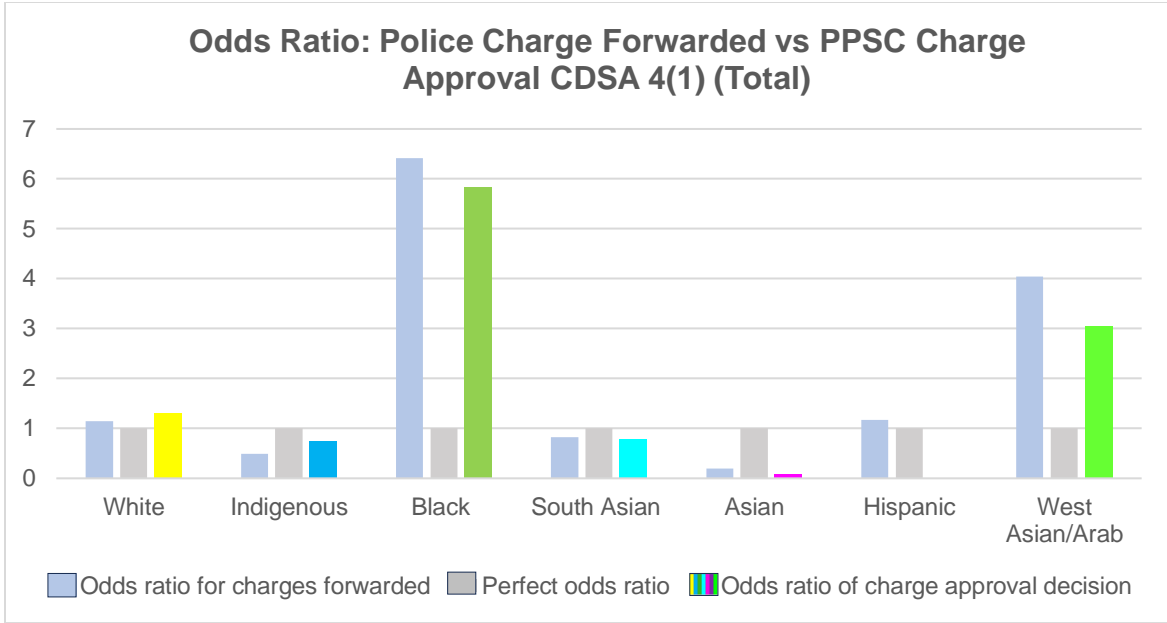


Figure 10.1: Total CDSA 4(1) charges forwarded and charges approved compared to Census Population Data

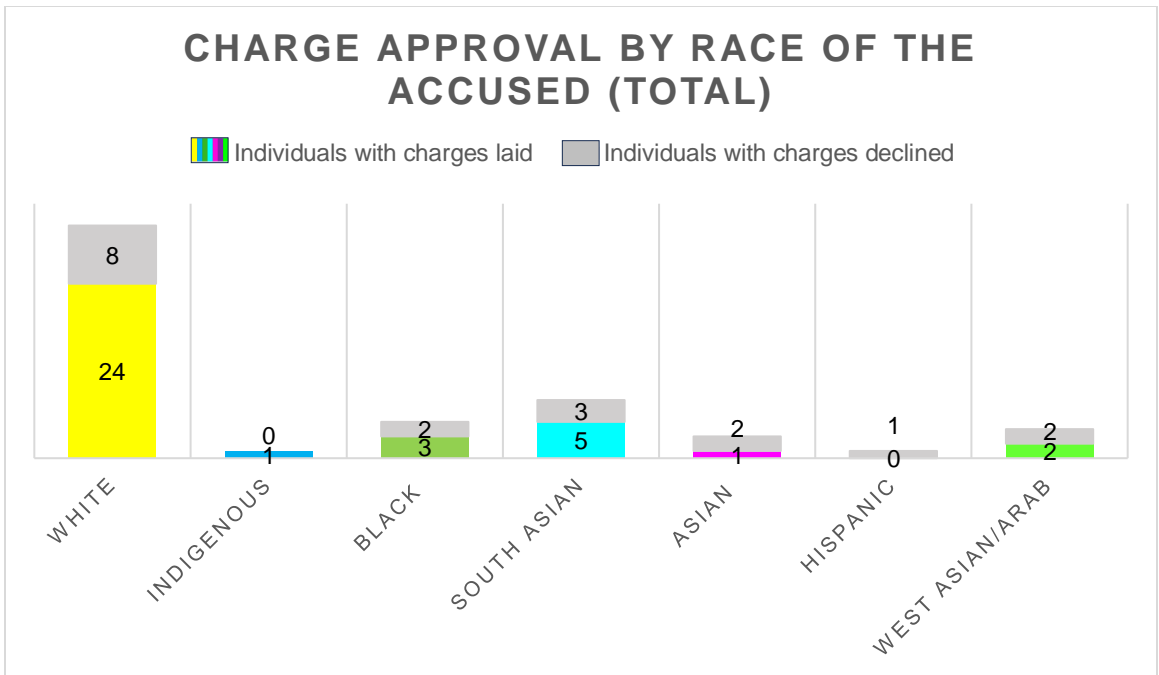


Figure 10.2: Total individuals charged with CDSA 4(1) offences, divided by those whose charges were approved vs declined

Figure 10.2 demonstrates the number of individuals for whom Crown declined to lay charges. For White, Indigenous, Black and South Asian individuals, Crown charged the majority of the files forwarded. For Asian and West Asian/Arab individuals, Crown declined over half the files forwarded. In the case of Hispanic individuals, Crown declined to charge the sole Hispanic

individual charged with a CDSA 4(1) offence. Due to the small sample size, it is difficult to extrapolate significant findings however, it can be noted that for Asian and Hispanic individuals, Crown was more likely to decline to lay charges.

The increased likelihood to decline to lay charges against Asian and Hispanic individuals can be seen in Figure 10.3 below. Both Hispanic and Asian individuals were significantly overrepresented in the files with charges declined (odds ratio: 2.96 and 1.97 respectively).

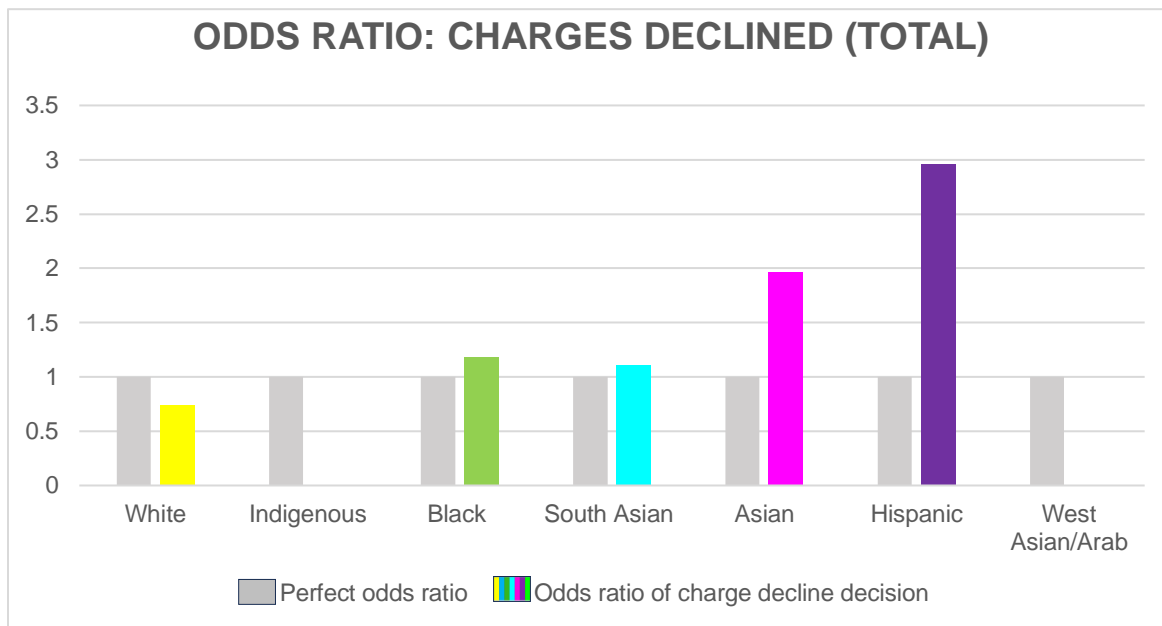


Figure 10.3: Total CDSA 4(1) charges declined

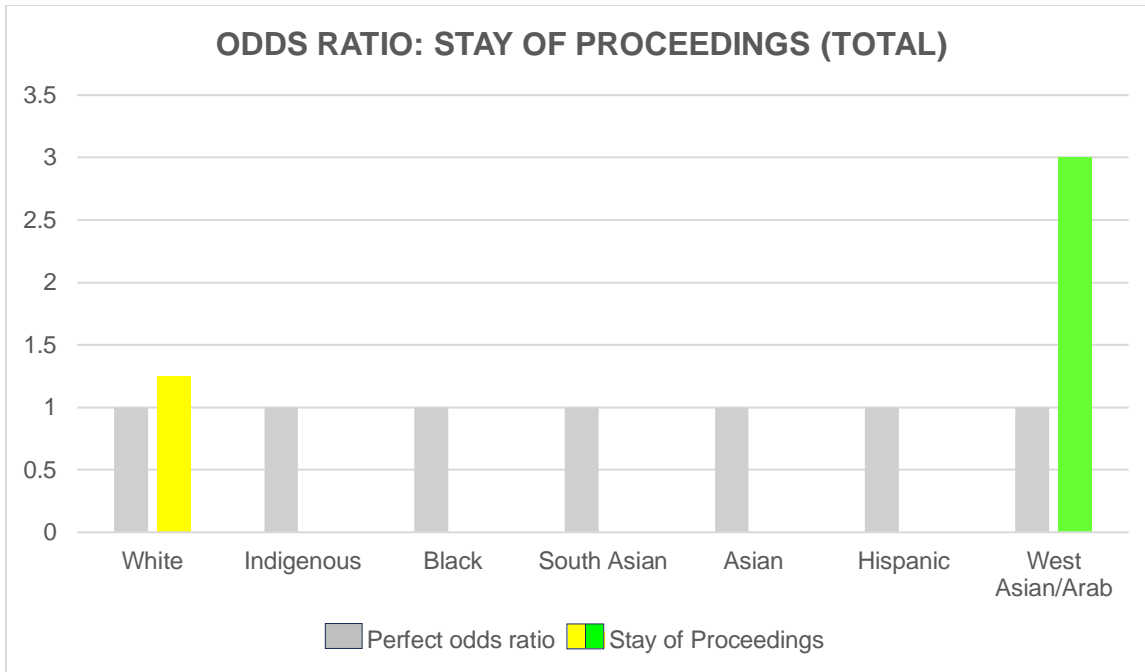


Figure 10.4: Total CDSA 4(1) files which ended in a stay of proceedings

Figure 10.4 illustrates the low rate of stay of proceedings for first time offenders charged with CDSA 4(1) offences. Only White and West Asian/Arab individuals had files, which resulted in a stay of proceedings. It is interesting to note that while West Asian/Arab individuals are overrepresented by 200% in files, which result in a stay of proceedings, they are not represented in any files with charges declined. This could further showcase a relationship between underrepresentation in files with charges declined and overrepresentation in files that conclude by stay of proceedings.

The sentences received by racial and ethnic group can be seen in Figure 10.5. Most notably, White, Black, and West Asian/Arab individuals were the most likely to receive alternative measures sentences (including Drug Treatment Court). South Asian individuals frequently received suspended sentences while White and Black individuals frequently received discharges (conditional and absolute). Indigenous offenders were most likely to receive a fine as their sentence. Finally, Asian offenders were the only racial group was overrepresented in carceral sentences.

Race and Prosecutorial Decision-Making: An Analysis of the Public Prosecution Service of Canada's British Columbia's Regional Office

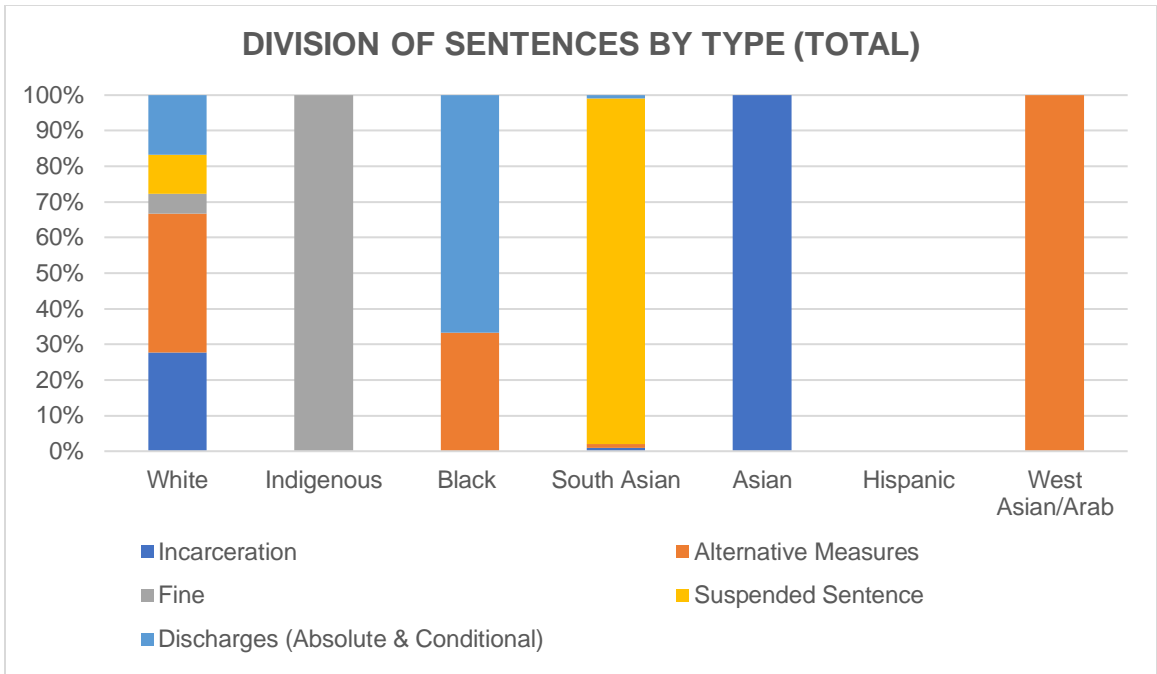


Figure 10.5: Total division of CDSA 4(1) sentences by type

### First time offenders Data: CDSA 5(2) Charges

In total, first time offenders were more likely to have CDSA 5(2) charges forwarded than CDSA 4(1) charges. As a result, the sample size for CDSA 5(2) charges is larger.

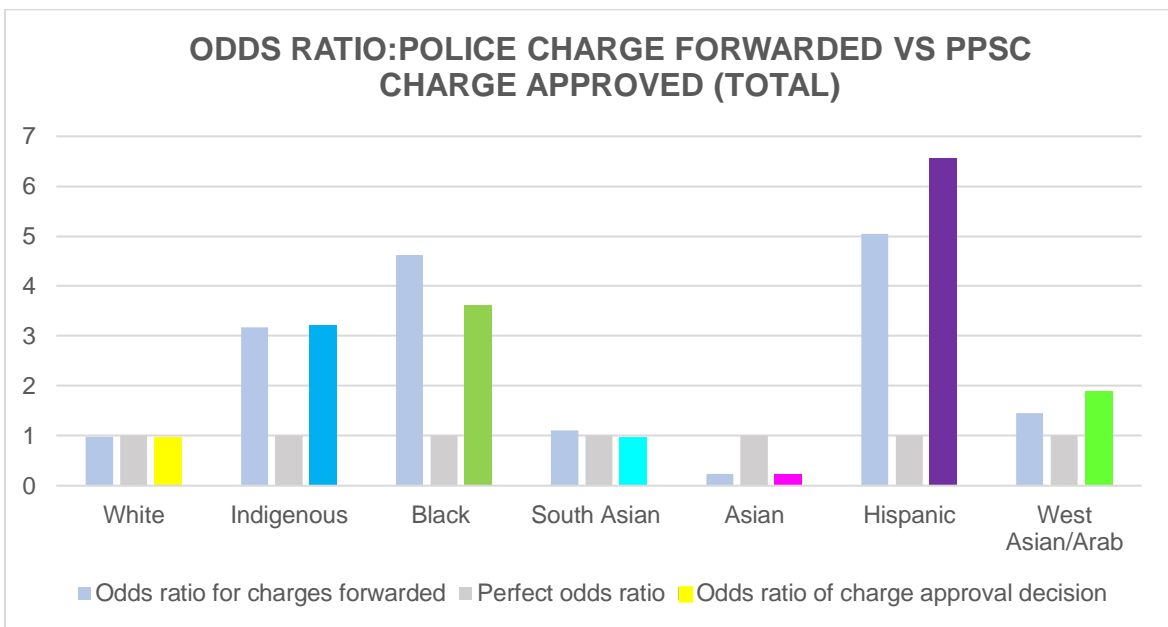


Figure 10.6: Total CDSA 5(2) charges forwarded and charges approved compared to Census Population Data

When evaluating first time accused who were charged with CDSA 5(2) offences, Indigenous, Black, and Hispanic individuals were overrepresented in both police forwarded charges and charges laid by the PPSC (Figure 10.6). In police charges forwarded, Black individuals were grossly overrepresented by 362% (odds ratio: 4.62), however, this declined to an overrepresentation of 261% as a result of prosecutors declining to lay charges for some files (odds ratio: 3.61). By contrast, for Indigenous and Hispanic groups, their gross overrepresentation grew because of the PPSC charge approval decision. Initially, Indigenous individuals were overrepresented by 217% in police files forwarded (odds ratio: 3.17), however Indigenous individual's overrepresentation grew to 221% as a result of the decision to lay charges (odds ratio: 3.21). Similarly, Hispanic individuals were overrepresented in police data by 405% (odds ratio: 5.05) whereas they were overrepresented in PPSC files by 557% (odds ratio: 6.57). The decision to prosecute also resulted in an increased overrepresentation of West Asian/Arab individuals in CDSA 5(2) files. While West Asian/Arab individuals were overrepresented by 45% in the police arrest data, they were overrepresented by an additional 44% as a result of the PPSC's decision to prosecute.

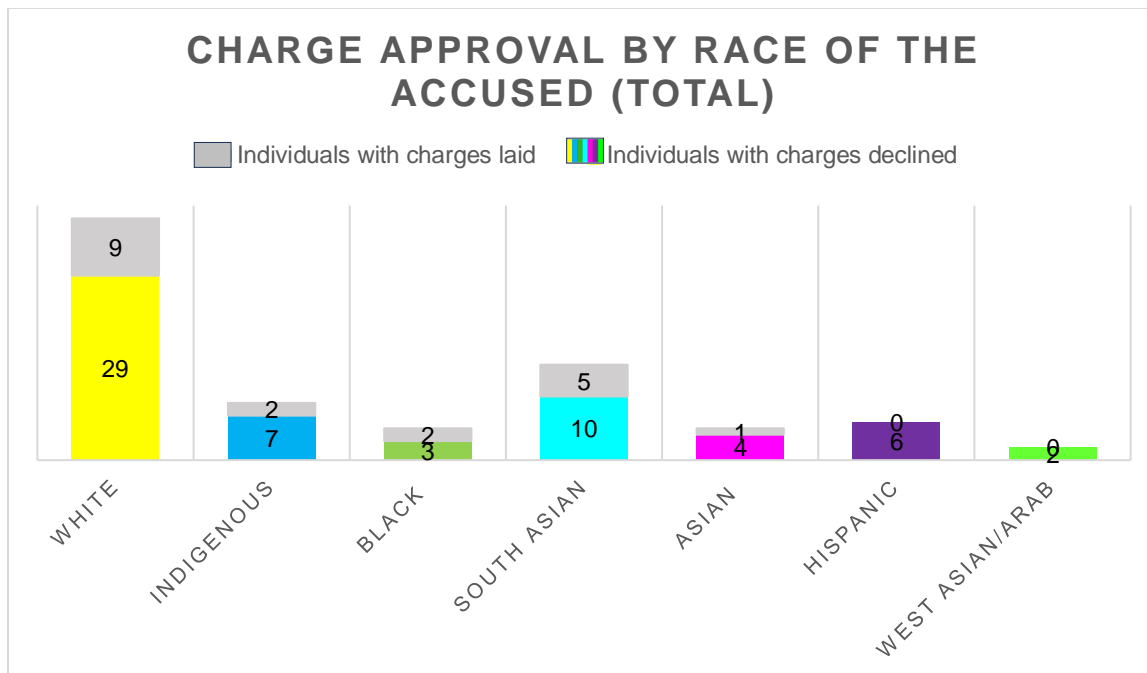


Figure 10.7: Total individuals charged with CDSA 5(2) offences, divided by those whose charges were approved vs declined

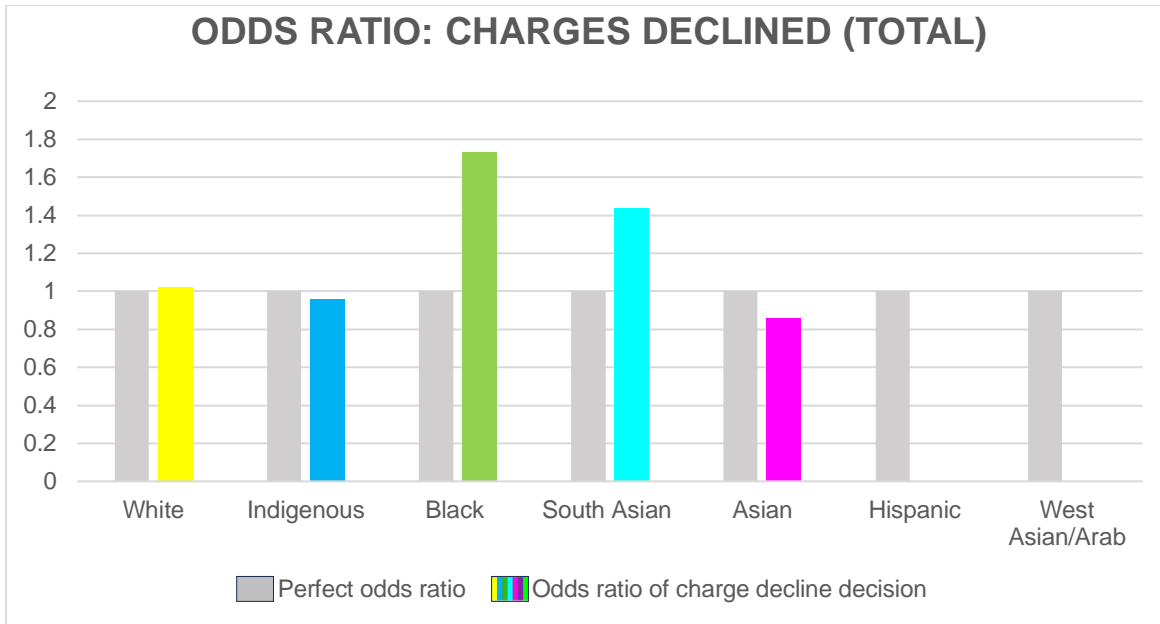


Figure 10.8: Total CDSA 5(2) charges declined, divided by race

As demonstrated in figure 10.7, 19 of the total 74 charges were declined. Most notably, no charges were declined for Hispanic and West Asian/Arab individuals. Comparatively, Black and South Asian individuals were significantly overrepresented in the files with charges declined (see figure 10.8). Black individuals were overrepresented by 73% while South Asian individuals were overrepresented by 44% (odds ratio: 1.73 and 1.44 respectively).

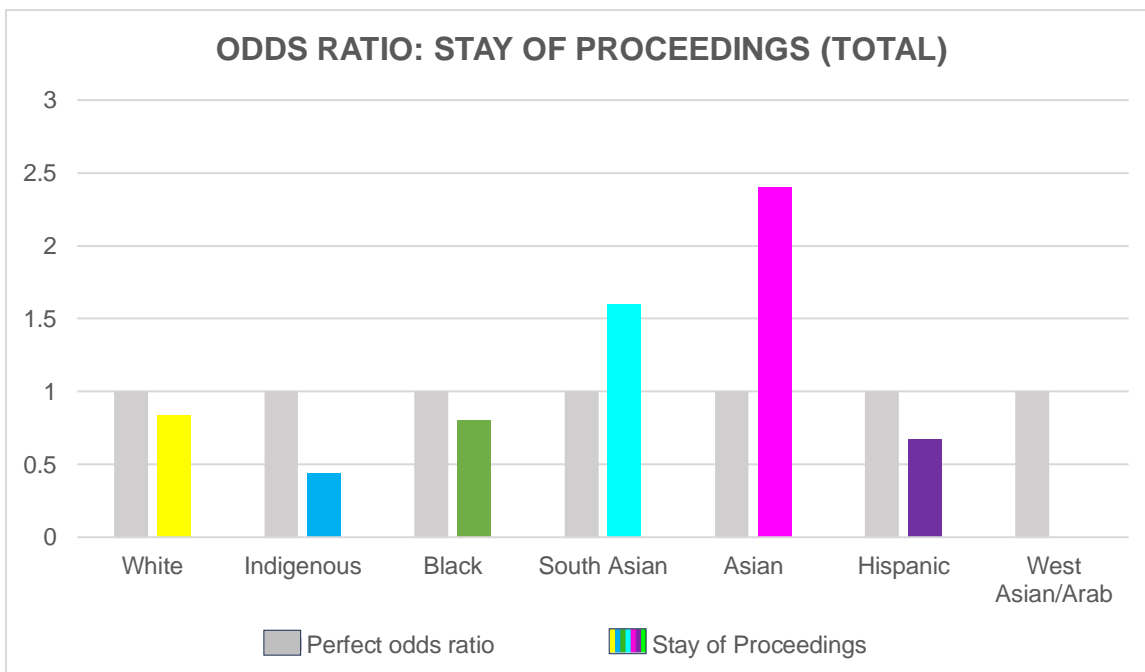


Figure 10.9: Total CDSA 5(2) charges which resulted in a stay of proceedings

Figure 10.9 demonstrates that first time Indigenous, Black, and Hispanic accused are underrepresented in files which resulted in a stay of proceedings. Notably, Indigenous accused are underrepresented by over 50% (odds ratio: 0.44). In comparison, Asian and South Asian accused were overrepresented in files which resulted in a stay in proceedings.

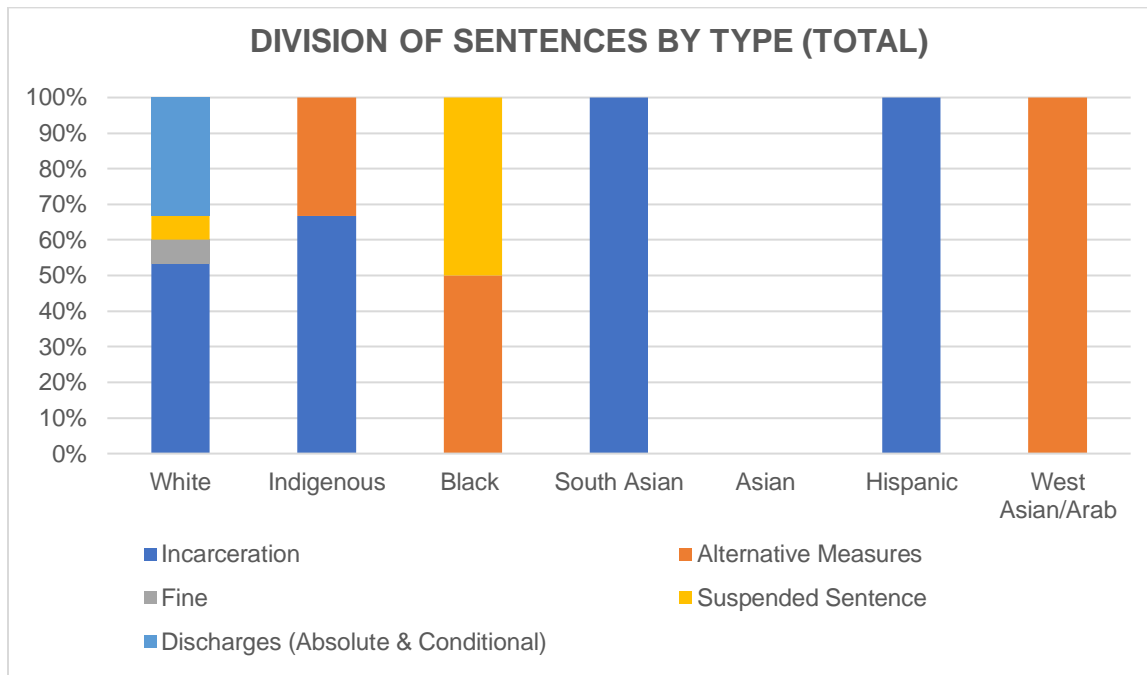


Figure 10.10: Total division of CDSA 5(2) sentences by type

The sentences received by racial and ethnic group can be seen in Figure 10.10. Most notably, White, Black, and West Asian/Arab individuals were the most likely to receive alternative measures sentences (including Drug Treatment Court). By contrast, Indigenous, South Asian and Hispanic individuals frequently received carceral sentences.

### First time offenders qualitative examples

Across regions, there are striking examples of prosecutorial decision-making in files with accused from IBPOC groups.



Example 1: An example of a CDSA 5(2) charge laid in Surrey

D (South Asian, 0 prior convictions)

- Circumstances of the event: motorcycle patrol, officer noticed a car stopped southbound in traffic, officer could see an "East Indian" individual with their right hand to their right ear with a cell phone to their ear. Officer stopped the car and noticed D dropped the cell phone and was not wearing a seatbelt. Officer asked for license, and the license was not given. Officer asked for the cellphone, D complied. While this happened, a strong odour of marijuana was smelled. Officer opened the driver side door and told D they were under arrest for possession of marijuana. Officer searched D found a small bundle of individually wrapped white rock substances in hoodie pocket. D was arrested for CDSA 5(2).
- Charged with CDSA 5(2) for possession of Cocaine 8.45g and Heroin 2.80g
- After the charge approval decision was made, a new agent prosecutor was assigned to the file. They identified *Charter* breaches and sought to stay the file. The Agent Supervisory Unit asked that they continue the proceedings and conduct pre-trial interviews as they were not convinced of the *Charter* breaches. After the pre-trial interviews, the charges were stayed.

As seen in the case of D from Surrey, there was a failure to identify *Charter* violations at the charge approval stage. It was only after a second prosecutor took ownership of the case that violations were identified. After the new prosecutor attempted to stay the proceedings, the Agent Supervisory Unit requested greater information and the proceeding continued until a pre-trial interview was conducted.

In this case, a first time offender whose *Charter* rights were violated was in the system for more than six months.

Example 2: An example related to CDSA 5(2) charges in Vancouver

GL (Hispanic, 0 prior convictions)

- Circumstances of the event: - patrol, officers observed GL with a joint in their hand. GL is subsequently detained for a drug investigation. After further investigation (officer smelling the joint and confirming it was marijuana), GL is arrested for CDSA 4(1). A search incident to arrest found more drugs on GL's body. They were then re-arrested for CDSA 5(2).
- Charged with CDSA 5(2) for possession of 7.12g Cocaine and 7.47g Heroin with Fentanyl
- While a s. 8 *Charter* breach was identified in the Charge Approval Memo, charges were approved. A subsequent prosecutor conducted pre-trial interviews with the arresting officers and remarked "approval crown should have met with officers before approving the charges". The charges did not meet the charge approval standard and therefore were stayed.

Similarly, in Vancouver, GL's case was stayed after the pre-trial interview with officers. Despite an identified s. 8 *Charter* breach and a potentially racially biased interaction by the police, prosecutors laid the charges against GL. Months later, a new prosecutor conducted pre-trial interviews and subsequently stayed the proceedings because it was clear that the charge did not meet the charge approval standard.

The new prosecutor remarked, "approval crown should have met with officers before approving the charges". In this case, the first-time Hispanic accused was before the Court for months.

### Example 3: An example related to CDSA 5(2) charges in Prince George

#### Z (Indigenous, 0 prior convictions)

- Circumstances of the event: officer observed Z riding bike without a helmet, performed a vehicle stop for failing to wear a helmet. Upon stopping them, officer observed a small ball with rope taped to it (categorized as a home made weapon). Z was arrested for possession of a weapon. Z resisted arrest by saying they were not under arrest and police tackled them, searched them, and found drugs
- Charges laid CDSA 5(2) for Heroin 0.6g, Cocaine 0.5g, Meth 0.6g
- Eventually pled guilty to CDSA 4(1) and sentenced to 4 months time served

Z<sup>106</sup> was a first time accused who was stopped by police for failing to wear a helmet while biking. As the interaction escalated, Z was ultimately tackled and hit by police. PPSC agents approved a 5(2) charge after the expert supported PPT. Z was subsequently detained and spent 4 months in pre-trial detention, for their first offence.

Ultimately, it was discovered that the arresting officer threw away crack pipe in Z's backpack and, as such, the expert agreed to PPT, as there was no evidence of personal consumption. Once this fact became apparent during trial, the expert changed their opinion to possession for personal use. Z was extended and accepted a plea agreement to CDSA 4(1) using their time served of over 4 months.

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<sup>106</sup> Z's charge approval memo included problematic language that demonstrated actual Crown bias. This language – used by an agent firm – was not corrected when the charge approval memo was reviewed and approved by the Agent Supervisory Unit.

## Conclusion

An individual's first experience within the Criminal Justice System represents a critical juncture in that individual's life. The prosecutorial decision-making in relation to the charge approval, bail, sentencing position etc. is especially pertinent in files involving first time offenders.

Despite the increased public interest considerations in these files, racial and ethnic disparities were found across all decisions. Notably, for Indigenous offenders sentenced for a CDSA 5(2) charge, this resulted in an overrepresentation in carceral sentencing.

## Recommendations

The analysis reveals Indigenous and Black Canadians, as well as Canadians from other racial minority groups are overrepresented throughout a prosecution. The analysis presents significant areas of improvement throughout the PPSC's operations. Through equity-driven action, the PPSC can take positive steps towards the improvement of the BC Justice System for IBPOC individuals. The six recommendations listed below serve to provide preliminary ideas for data-driven improvements to PPSC's operations. While each of the recommendations is informed by behavior reviewed throughout the sample files, it is critical to re-iterate that the purpose of this review is not to single out individual decisions since each is made within a larger context, but to encourage a change towards more equitable prosecutorial work on an aggregate level.

### 1. Accountability for Independent Decision-Making

Prosecutors have "substantial discretionary powers."<sup>107</sup> Specifically, in their quasi-judicial role, prosecutors determine the course of a prosecution. Despite the adversarial system present in Canadian Courts, a prosecutor's conduct must be characterized by "[f]airness, moderation, and dignity."<sup>108</sup>

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<sup>107</sup> [PPSC Deskbook](#), Chapter 2.2 "Duties and Responsibilities of Crown Counsel"

<sup>108</sup> [PPSC Deskbook](#), Chapter 2.2 "Duties and Responsibilities of Crown Counsel"

The work of this report has highlighted that though an individual decision may be justified, when considered on aggregate, problematic and inequitable patterns emerge. As we have demonstrated, the information presented to prosecutors does not always adequately capture the correct race or ethnicity of an individual accused. Further, anecdotally, it appears prosecutors are approaching race and ethnicity through a “justice is blind” or “colour blind” approach. This approach may be the root of the aggregate results, which show an overrepresentation of Indigenous and Black Canadians, as well as Canadians from other racial minority groups in the PPSC’s work. We hope to encourage equity-based decision-making and a more nuanced analysis in the work of prosecutors with the hope that it will help prosecutions to recognize, acknowledge, and counter both individual, organizational, and systemic biases they may encounter. By becoming more attuned with influence of these biases prosecutors can play their part in reducing overrepresentation of Indigenous, Black and other racially marginalized groups in the criminal justice system. Specifically, we hope to empower prosecutors to seek out additional information and develop a stricter application of the decision to prosecute test in order to ensure that all prosecutions serve the interest of the public.

**a) A more stringent application of the decision to prosecute test**

As discussed throughout this report, a key area for intervention is the decision to prosecute test. Our research demonstrated that various Indigenous and Black Canadians, as well as Canadians from other racial minority groups do not benefit from the charge approval analysis when compared to their White counterparts. More specifically, in certain regions, White individuals are more likely to have their charges declined when compared to IBPOC individuals. This discrepancy appeared as a result of the two prongs of the decision to prosecute test. As such, each prong offers an area for greater scrutiny during the file review process.

When evaluating a file, prosecutors must satisfy the following two questions:

1. Is there a reasonable prospect of conviction based on evidence that is likely to be available at trial? If yes,

2. Would a prosecution best serve the public interest?<sup>109</sup>

When evaluating the first question, prosecutors in some instances would lay charges only to later stay them apparently based solely on the same information provided in the RTCC. A more thorough consideration of the evidence and possible *Charter* breaches in files involving an IBPOC accused could reduce their overrepresentation in PPSC's files.

Additionally, when considering the public interest of a prosecution, the *PPSC Deskbook* calls upon prosecutors to consider the personal circumstances of the accused.<sup>110</sup> We believe this question offers an opportunity for equity driven prosecutorial decision-making. Through greater examination of the circumstances of the arresting event as well as a greater reflection on the systemic racism at play with respect to **IBPOC individuals** involvement in the Criminal Justice System, Crown prosecutors should feel empowered to reject charges that do not align with the PPSC Departmental Goals of promoting equity within the Criminal Justice System.

**b) Managerial support for equity driven prosecuting**

Prosecutors are independent decision-makers. While they are afforded independence in their decision-making, they remain accountable to their superiors (and ultimately the public) for the decisions they make. Thus, it is critical for managers to demonstrate and support equitable decision-making. Throughout the files reviewed, the BC research team discovered some instances in which managers or agent supervisors did not provide support for equity driven decision-making. Managers are best placed to provide examples of, and support for, equitable prosecutorial work. Through their leadership, positive cultural change in relation to minority groups can continue across the region.

**c) Zero tolerance policy for problematic language**

When reviewing the files, there were instances where the research team came across problematic language. In order to align with the PPSC's organizational priorities of "foster[ing] a culture of trust and engagement" as well as "advance[ing] equity, diversity, inclusion and

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<sup>109</sup> [PPSC Deskbook](#), Chapter 2.3 "Decision to Prosecute"

<sup>110</sup> [PPSC Deskbook](#), Chapter 2.3 "Decision to Prosecute"

accessibility in the workplace”, there should be zero tolerance for derogatory or inappropriate language in the prosecution files and action should be taken to correct any such instances.<sup>111</sup>

## 2. Requesting information about the accused in the Disclosure Letter

In current PPSC practice, the race or ethnicity of an accused is largely determined based on the categorization used by police when the incident report is uploaded to JUSTIN. Our findings, which are consistent with the findings in Dr. Wortley's report to the BC Human Rights Tribunal, show that the police racial categorization is often based on the arresting officer's perception or the information already in the police database. There are numerous issues associated with reliance on police perception of race, the most blatant of which being that the police are often wrong in their categorization. For example, a file reviewed featured S. S is an Indigenous person who was charged with and pleaded guilty to multiple CDSA 5(2) offences. It was not until the sentencing hearing when defence counsel requested a *Gladue* report that the agent prosecutors became aware of S's Indigenous identity. Prior to the *Gladue* report request, prosecutors relied on the police data which had mischaracterized S as White. S's case is important because the PPSC has committed to addressing the calls to action by the Truth and Reconciliation Commission as well as the calls the National Inquiry into the Missing and Murdered Indigenous Women and Girls.<sup>112</sup> However, it is exceedingly difficult to attempt to reduce the overrepresentation of Indigenous individuals in the BC Justice System without correct knowledge of an individual's Indigenous identity.

Furthermore, many PPSC prosecutors report not remarking upon the race or ethnic background of the accused until after the initial charge approval decision has been made. This is reflective of a “colour blind” approach, used in many professional settings. A colour blind approach refers to an individual ignoring race in order to maintain an egalitarian self-image. For prosecutors who are expected to be impartial agents of law<sup>113</sup>, a colour blind approach to files may be particularly appealing. The approach may also align with the ideology that all individuals are equal before the law. However, current literature related to reducing racial

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<sup>111</sup> 2022-23 and 2023-2024 Departmental Plans *supra* note 18

<sup>112</sup> 2021-22 Departmental Plan, *supra* note 64

<sup>113</sup> [PPSC Deskbook](#), Chapter 2.2 “Duties and Responsibilities of Crown Counsel”

biases demonstrates that colour blindness in professional settings results in a lack of awareness of racial inequities and an increase in non-verbal prejudicial behavior.<sup>114</sup> Additionally, colour blindness may create a false sense of equity in the work of prosecutors. This sense of equity is challenged throughout this report where we see many clear examples of unequal results for IBPOC people as a result of the work of PPSC prosecutors. Further, the PPSC has recently reaffirmed their commitment to reducing the overrepresentation of IBPOC individuals in the criminal Justice System. This commitment cannot be accomplished through colour blind policies and initiatives. Rather, we recommend that prosecutors actively seek out the self-identification of the accused. It is important to note that recent research on colour blindness has demonstrated that the use of colour blindness policies “remov[e] the plausibility of racism and, therefore, the opportunity of addressing it”.<sup>115</sup>

In correctly identifying racial or ethnic identity, prosecutors will be better equipped to make decisions that contribute to more equitable outcomes for accused persons and ultimately to reducing systemic discrimination and overrepresentation. As such, we recommend that prosecutors actively seek out the self-identification of the accused. The best mechanism to request self-identification of the accused is through their counsel. While some prosecutors do this work already through informal emails<sup>116</sup>, a formalized mechanism is required. We recommend adding the following request to the Disclosure Form sent to all defence counsel:

- Please identify any individual characteristics of the accused that may affect their file. This includes: self-identified race or Indigenous identity, current life circumstances, history of trauma and/or marginalization.

By requesting this information, prosecutors can fulfill their duties to seek more appropriate outcomes and sentences for Indigenous peoples and other racial and ethnic groups overrepresented in the criminal justice system.

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<sup>114</sup> Victoria Plaut et al, “Do color blindness and multiculturalism remedy or foster discrimination and racism” (2018) 27 *Current Directions in Psychological Science* 200 at 201

<sup>115</sup> *Ibid*

<sup>116</sup> In reviewing the files, on rare occasions prosecutors asked defence counsel over email to provide any information on the circumstances and race of their accused as a mechanism to alter the initial sentencing position



### 3. Improved PPSC record keeping

One of the greatest challenges when conducting this project was the lack of records available for the files evaluated. In addition to the lack of records, there were unclear procedures available for the information uploaded into iCase. As such, the records, which were received, required extensive cross-referencing with the physical file. In order to continue to review PPSC's practices in a data-conscious way, we recommend the following improvements to current record keeping procedures.

#### a) Clarify which charges are uploaded into iCase

It is currently unclear which charges are uploaded into iCase. It appears that it is left to the individual iCase data entry person to determine whether to upload charges recommended by police or charges laid by the prosecutor. The lack of standard practice prohibits an examination of the PPSC charge decision juxtaposed with police recommended charges. For example, it was impossible to say how many charges prosecutors approved of those recommended by police. This is problematic because it is established that despite the overrepresentation of various IBPOC groups in police data, police officers do not tend to actually overcharge **IBPOC individuals**.<sup>117</sup> Unfortunately, we are unable to say whether that is the case for prosecutors. Additionally, we are unable to determine when a prosecutor decided to lay different charges than those recommended by police. While our research has begun to investigate the impact of BC's charge approval discretion on the overrepresentation of racial and ethnic minorities in the Justice System, we were limited in our areas of research due to the lack of consistency in iCase usage.

#### b) Clarify language used by prosecutors

Another area lacking in standard practice is the verbiage used by prosecutors. Both inter- and intra- regional differences in descriptive language regarding the file outcome were present. For example: when inputting the final outcome of a case, which had been referred to an alternative measures program, prosecutors varied significantly in the way that they inputted the data. Some prosecutors uploaded that the case had been closed administratively, others indicated

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<sup>117</sup> Wortley, *supra* note 1 at 12

that charges had been withdrawn, or that a stay of proceedings had occurred. This lack of consistency negates any effort to review the rate in which alternative measures programs are being utilized. A similar error arrived when describing acquittals; some prosecutors entered an acquittal as a Crown invited a stay of proceedings. The lack of coherent verbiage results in confusion across files. Finally, the lack of consistent language across files prohibits large-scale review of file outcome. We recommend that new guidelines are created for file verbiage in order to allow for greater understanding between prosecutors as well as more fulsome research capabilities.

**c) Ensure certain documents be uploaded to iCase**

A concrete area for improvement when reviewing files is a lack of consistency on what documents are to be uploaded to iCase. When reviewing the electronic and physical file, there was a general lack of consistency, specifically on which documents were included in the file.<sup>118</sup> For example, some files were reviewed where the correspondence regarding the decision to enter a stay of proceedings was omitted from the file. As a result of the lacking information, an evaluation on the factors, which resulted in the decision to stay the prosecution, was unable to be conducted.

The research term recommends requiring the following documents be uploaded to iCase:

- Charge approval memo
- Summary of bail positions taken
- Summary of all sentencing positions provided
- Documentation for Stay of proceedings,
- Correspondence regarding special circumstances for the accused.

It should be noted that the policy would be especially pertinent for PPSC's own prosecutors. In reviewing the files, a discrepancy emerged when comparing in-house PPSC files to Agent firm files. PPSC files were sometimes disorganized, lacking in documentation, and failing to provide

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<sup>118</sup> Note: After the COVID-19 Pandemic, PPSC operations have shifted from paper files to primarily electronic files. While this project reviewed paper files from 2017-2020, recent electronic files would also benefit from the application of this recommendation. Based on preliminary examination, current iCase files continue to lack the systematic inclusion of documents to the detriment of the organization's record keeping.

the reasoning behind prosecutorial decision-making. Conversely, agent firms provided briefing notes for key events throughout the file. The agent firms' record keeping policies allowed for a greater understanding, and review, of the prosecutorial decision-making.

Not only would a requirement for more robust documentation provide clarity when files transfer to new prosecutors, but it would also facilitate better file review. In order for the PPSC to ensure equitable outcomes for accused, in particular IBPOC individuals, there must be mechanisms in place to review the conduct of prosecutors.

**d) Create mechanisms to ensure compliance with document upload policies**

In addition to the creation of new policy, compliance mechanisms must be put in place to ensure that all prosecutors take responsibility for the state of their files. Due to prosecutorial workload and court pressure, file management can be neglected. A collaborative approach to file management including legal assistants will be important in supporting prosecutors' efforts at proper file management. However, while legal assistants may assist in file management, the ultimate responsibility for file management lays with the prosecutors. It should be an office priority to ensure that records of decisions are written and uploaded into electronic files. This serves to create prosecutorial accountability, a key facet in the effort to reduce systemic inequalities.

#### 4. Increased training with greater mechanisms for evaluation

An increase in EDIA training and resources for PPSC staff is a current departmental priority.<sup>119</sup> Research has shown that increased training and awareness of implicit racial bias can reduce biased decision-making.<sup>120</sup> However, the training must be matched with evaluation. Certain evidence-based training programs have greater success than other programs. Further, in order for trainings to be successful, individual prosecutors should be supported by a clear shift in departmental culture. In order to ensure that PPSC plays an active role in reducing the racial

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<sup>119</sup> 2022-23 Departmental Plan *supra* note 18

<sup>120</sup> Francesca Gino & Katherine Coffman, "Unconscious Bias Training That Works" (October 2021), online: *Harvard Business Review* [Unconscious Bias Training That Works \(hbr.org\)](https://hbr.org)

disparities present in the Canadian Justice System, there must be mechanisms in place to determine whether the EDIA training provided is effective.

## 5. Increased support for alternative outcomes

There is a diverse array of alternative outcomes available in the BC region, such as First Nations Court, Drug Treatment Court, and Alternative Measures Programs. Each program offers offenders alternatives to the traditional Criminal Justice System. For offenders belonging to IBPOC groups, alternative systems can offer a targeted, treatment focused experience. Throughout our review, these services appeared to be underutilized by BC prosecutors. For example, out of the 89 first time offenders, only 14 were directed towards alternative systems.

Through an increased use of alternative outcomes, offenders of all races may benefit from the positive effects of these systems. In accepting and promoting the use of alternative court system, PPSC prosecutors can work to increase positive experiences of offenders within the BC Court system.

## 6. Surrey Pilot Project

In late 2022, the PPSC BCRO will be opening a new area office in Surrey. This office will ultimately replace the two agent firms currently conducting prosecutions in Surrey. As it covers the busiest courthouse in BC, the new office in Surrey will handle a large volume of cases.

The new office presents a unique opportunity for data collection. As the Surrey office offers a clean slate for data collection, it could be the site of a pilot project. In shaping the processes and standards of the new Surrey office through an equitable, race-focused lens, the PPSC could evaluate the efficacy of new processes for racial equity in prosecutorial work. The new processes could consist of the recommendations from this report or more expansive, countrywide recommendations.

In order for the pilot project to be effective, both new processes and data collection would need to be implemented from the opening of the new office. Through clear data collection, a fulsome empirical evaluation of the efficacy of equity-driven changes could be run at six months and a year. Through the empirical results, the PPSC could evaluate the impact of their changes for IBPOC accused.

In order for data-driven decision-making to take place in relation to the treatment of Indigenous and Black accused, as well as accused persons from other racial minority groups at PPSC, cultural changes must be implemented and evaluated for efficacy. The Surrey office offers an incredibly unique opportunity to conduct wholesome research, which could lead to increased equity in PPSC work across the nation.

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## Appendix 1

### A note on PPSC Data

It is important to highlight that the sample sized used throughout this report was small. In order to investigate the role of race in the work of PPSC BC's work, the creation of a new, information rich data set was required. Data set creation is time consuming as well as nuanced. In order to produce the report in the time frame provided, a small number of files were reviewed.

There are methodological problems associated with small sample sizes, most notably, that a small sample size may enlarge the resulting data. For example, if two Asian individuals were incarcerated while ten White individuals were incarcerated, one Asian individuals would comprise 50% as compared to five White individuals. The BC data team did work to reduce the likelihood of result enlargement for smaller sample sizes by calculating effects using odds ratios. However, there may be a greater number of statistically significant results due to the small sample size.



## Appendix 2

### Arrest Data

#### Total arrest data

Total Accused – arrested

	Population		Sample			Sample controlling for repeat accused		
White/European	598,828	47.15%	231	54.48%	1.16	218	55.33%	1.17
Indigenous	43,950	3.46%	79	18.63%	5.38	70	17.77%	5.14
Black	16,745	1.32%	27	6.37%	4.83	25	6.35%	4.81
South Asian	208,540	16.42%	34	8.02%	0.49	33	8.38%	0.51
Asian	341,070	26.86%	15	3.54%	0.13	13	3.30%	0.12
Hispanic	18,410	1.45%	14	3.30%	2.28	14	3.55%	2.45
West Asian/Arab	21,335	1.68%	18	4.25%	2.53	15	3.81%	2.27
Other	21,250	1.67%	0	0.00%		0	0.00%	
Unknown			6	1.42%		6	1.52%	
	1,269,928	100.0%	424	100.00%		394		

#### Vancouver arrest data

Vancouver – arrested

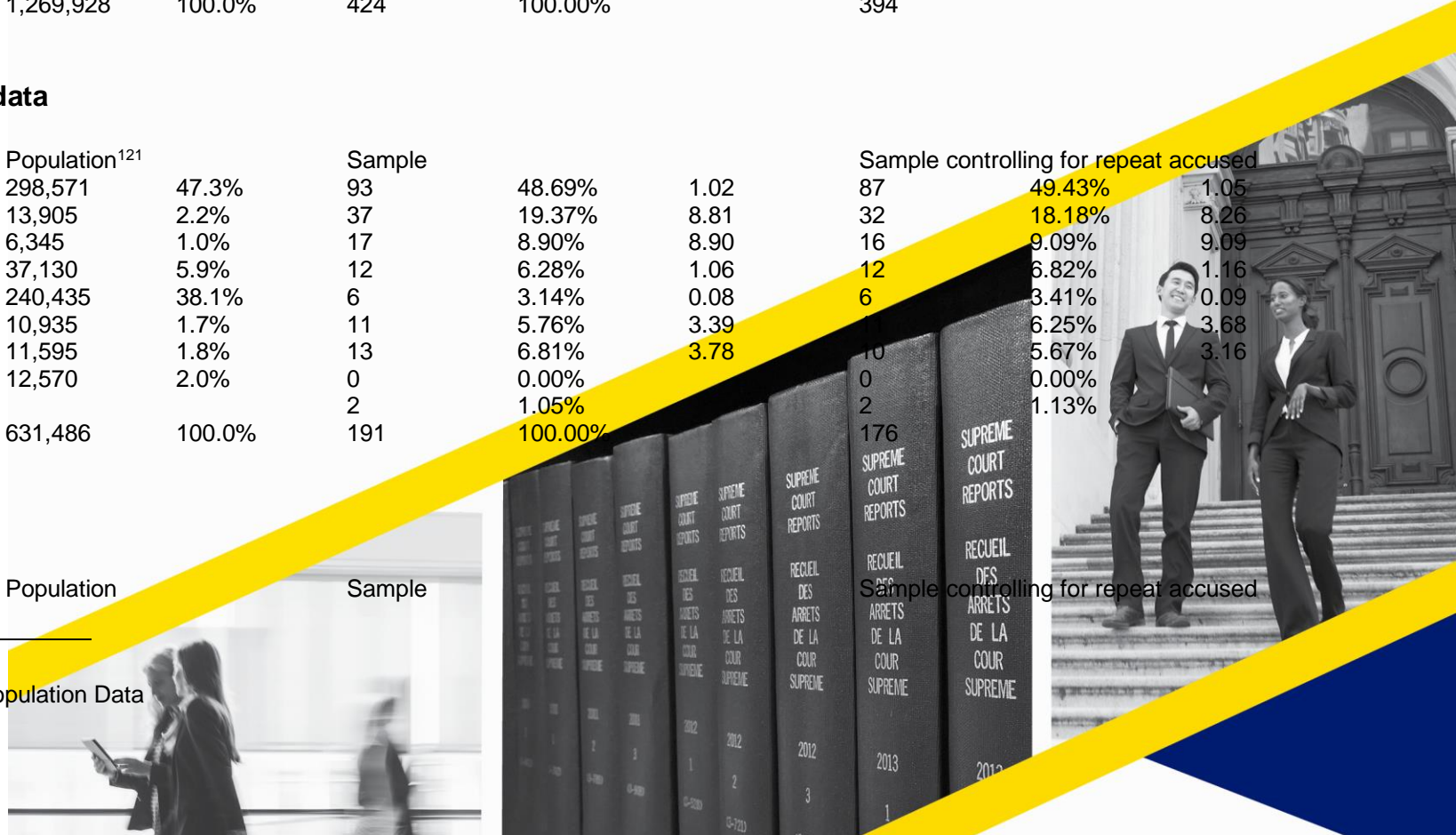
	Population <sup>121</sup>		Sample			Sample controlling for repeat accused		
White/European	298,571	47.3%	93	48.69%	1.02	87	49.43%	1.05
Indigenous	13,905	2.2%	37	19.37%	8.81	32	18.18%	8.26
Black	6,345	1.0%	17	8.90%	8.90	16	9.09%	9.09
South Asian	37,130	5.9%	12	6.28%	1.06	12	6.82%	1.16
Asian	240,435	38.1%	6	3.14%	0.08	6	3.41%	0.09
Hispanic	10,935	1.7%	11	5.76%	3.39	10	6.25%	3.68
West Asian/Arab	11,595	1.8%	13	6.81%	3.78	0	5.67%	3.16
Other	12,570	2.0%	0	0.00%		0	0.00%	
Unknown			2	1.05%		2	1.13%	
	631,486	100.0%	191	100.00%		176		

#### Surrey arrest data

Surrey – arrested

	Population	Sample

<sup>121</sup> City of Vancouver Population Data



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White/European	205,157	39.6%	104	59.43%	1.50	100	61.35%	1.55
Indigenous	13,460	2.6%	21	12.00%	4.62	17	10.43%	4.01
Black	9,455	1.8%	10	5.71%	3.17	9	5.52%	3.07
South Asian	168,040	32.4%	21	12.00%	0.37	20	12.27%	0.38
Asian	96,900	18.7%	9	5.14%	0.28	7	4.29%	0.23
Hispanic	7,065	1.4%	3	1.71%	1.22	3	1.84%	1.31
West Asian/Arab	9,485	1.8%	5	2.86%	1.59	5	3.07%	1.70
Other	8,315	1.6%	0	0.00%	0.00	0	0.00%	0.00
Unknown			2	1.14%	0.00	2	1.23%	0.00
	10,655	100.0%	175	100.00%		163		

**Prince George arrest data**

Prince George - arrested

	Population		Sample		
White/European	67,435	77.9%	10	38.46%	0.49
Indigenous	12,395	14.3%	16	61.54%	4.30
Black	745	0.9%	0	0.0%	0.00
South Asian	2,565	3.0%	0	0.0%	0.00
Asian	2,770	3.2%	0	0.0%	0.00
West Asian/Arab	270	0.3%	0	0.0%	0.00
Latin American	200	0.2%	0	0.0%	0.00
Other	240	0.3%	0	0.0%	0.00
Unknown			0	0.0%	0.00
	86,620	100.0	26	100.0	

**Nelson arrest data**

Nelson – arrested

	Population		Sample		
White/European	9,555	89.6%	8	72.73%	0.89
Indigenous	580	5.4%	2	18.18%	3.70
Black	70	0.7%	0	0.0%	0.00
South Asian	85	0.8%	0	0.0%	0.00
Asian	0	0.0%	0	0.0%	0.00
West Asian/Arab	0	0.0%	0	0.0%	0.00
Latin American	0	0.0%	0	0.0%	0.00
Other	0	0.0%	0	0.0%	0.00
Unknown			1	9.09%	0.00

	10,655	100.0	11	100.0	
<b>Duncan arrest data</b>					
Duncan – arrested					
	Population		Sample		
White/European	17,910	76.9%	16	76.19%	0.99
Indigenous	3,610	15.6%	3	14.29%	0.92
Black	130	0.6%	0	0.0%	0.00
South Asian	720	3.1%	1	4.76%	1.54
Asian	705	3.0%	0	0.0%	0.00
West Asian/Arab	80	0.3%	0	0.0%	0.00
Latin American	55	0.2%	0	0.0%	0.00
Other	70	0.3%	0	0.0%	0.00
Unknown	0	0.0%	1	4.76%	0.00
	10,655	100.0	21	100.0	

## Appendix 3

### Charge Approval Data

#### Total charge approval data

Total Accused – Charge(s) approved (substantive)

	Population		Accused with charges approved		
White/European	598,828	47.15%	174	52.25%	1.11
Indigenous	43,950	3.46%	72	21.62%	6.25
Black	16,745	1.32%	20	6.00%	4.55
South Asian	208,540	16.42%	21	6.31%	0.38
Asian	341,070	26.86%	12	3.60%	0.13
Hispanic	18,410	1.45%	13	3.90%	2.69
West Asian/Arab	21,335	1.68%	15	3.92%	2.68
Other	21,250	1.67%	0	0.00%	0.00
Unknown	0.00	0.00%	6	1.80%	0.00
	1,269,928	100.0%	333		

Total Accused – Charge(s) declined (substantive)

	Sample				
White/European	231	54.48%	57	62.64%	1.15
Indigenous	79	18.63%	7	7.69%	0.41
Black	27	6.37%	7	7.69%	1.21
South Asian	34	8.02%	13	14.29%	1.78

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Asian	15	3.54%	3	3.30%	0.93
Hispanic	14	3.30%	1	1.10%	0.33
West Asian/Arab	18	4.25%	3	3.30%	0.78
Other	0	0.00%	0	0.00%	0.00
Unknown	6	1.42%	0	0.00%	0.00
	424	100.00%	91		

**Vancouver charge approval data**

Vancouver – Charge(s) approved (substantive)

	Population <sup>122</sup>		Sample		
White/European	298,571	47.3%	92	48.69%	1.03
Indigenous	13,905	2.2%	37	19.58%	8.90
Black	6,345	1.0%	16	8.47%	8.47
South Asian	37,130	5.9%	12	6.35%	1.08
Asian	240,435	38.1%	6	3.17%	0.08
Hispanic	10,935	1.7%	11	5.82%	3.42
West Asian/Arab	11,595	1.8%	13	6.88%	3.82
Other	12,570	2.0%	0	0.00%	
Unknown			2	1.06%	
	631,486	100.0%	189	100.00%	

**Surrey charge approval data**

Surrey – charges approved (substantive)

	Population		Accused with charges approved		
White/European	205,157	39.6%	50	57.47%	1.45
Indigenous	13,460	2.6%	14	16.09%	6.18
Black	9,455	1.8%	4	4.60%	2.56
South Asian	168,040	32.4%	8	9.20%	0.28
Asian	96,900	18.7%	6	6.90%	0.36
Hispanic	7,065	1.4%	2	2.30%	1.64
West Asian/Arab	9,485	1.8%	2	2.30%	1.27
Other	8,315	1.6%	0	0.00%	0.00
Unknown	0.00	0.0%	1	1.14%	0.00
	10,655	100.0	87	100.0	

<sup>122</sup> City of Vancouver Population Data

**Prince George charge approval data**

Prince George – Charge(s) approved (substantive)

	Population		Sample		
White/European	67,435	77.9%	8	33.33%	0.86
Indigenous	12,395	14.3%	16	66.67%	1.08
Black	745	0.9%	0	0.0%	0.00
South Asian	2,565	3.0%	0	0.0%	0.00
Asian	2,770	3.2%	0	0.0%	0.00
West Asian/Arab	270	0.3%	0	0.0%	0.00
Latin American	200	0.2%	0	0.0%	0.00
Other	240	0.3%	0	0.0%	0.00
Unknown			0	0.0%	
	86,620	100.0	24	100.0	

**Nelson charge approval data**

Nelson – Charge(s) approved (substantive)

	Population		Sample		
White/European	9,555	89.6%	8	72.73%	0.89
Indigenous	580	5.4%	2	18.18%	3.70
Black	70	0.7%	0	0.0%	0.00
South Asian	85	0.8%	0	0.0%	0.00
Asian	0	0.0%	0	0.0%	0.00
West Asian/Arab	0	0.0%	0	0.0%	0.00
Latin American	0	0.0%	0	0.0%	0.00
Other	0	0.0%	0	0.0%	0.00
Unknown			1	9.09%	0.00
	10,655	100.0	11	100.0	

**Duncan charge approval data**

Duncan – Charge(s) approved (substantive)

	Population		Sample		
White/European	17,910	76.9%	16	76.19%	0.99
Indigenous	3,610	15.6%	3	14.29%	0.92
Black	130	0.6%	0	0.0%	0.00
South Asian	720	3.1%	1	4.76%	1.54
Asian	705	3.0%	0	0.0%	0.00
West Asian/Arab	80	0.3%	0	0.0%	0.00
Latin American	55	0.2%	0	0.0%	0.00

Other	70	0.3%	0	0.0%	0.00
Unknown	0	0.0%	1	4.76%	0.00
	10,655	100.0	21	100.0	

## Appendix 4

### Detention Data

#### Vancouver detention data

Vancouver – kept in custody initially

		White	Indigenous	Black	South Asian	Asian	Hispanic	West Asian/Arab							
Total	86	44	19	6	5	2	4	6							
Sought Detention	31	10	0.63	10	1.46	3	1.39	2	1.11	1	1.38	2	1.39	3	1.39
Detention	9	3 (1,2, 45)	1(7)	1	0	0	1(0)	1(36)							
CRIC	17	4(2,3, 56,29)	8(39,4,2,8,53, 31,24,0)2(18.26)	2(0)	1 (17)	1(0)	1(0)	1(0)							
Consent Release	58	37	10	3	3	1	2	4							

Vancouver – Bench Warrant Issued

		White	Indigenous	Black	South Asian	Asian	Hispanic	West Asian/Arab							
Total	160 <sup>123</sup>	78	30	16	10	6	9	11							
Bench warrant	51	27	1.09	13	1.36	5	0.98	2	0.63	1	0.52	2	0.70	1	0.28

Vancouver - Crown sought detention post Bench Warrant

		White	Indigenous	Black	South Asian	Asian	Hispanic	West Asian/Arab
Total	51	27	13	5	2	1	2	1

<sup>123</sup> Data not available for 27 accused

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Detention sought	21	14	1.26	3	0.56	1	0.49	0	1	2.51	2	2.43	0
Detention granted	8	6	42.86%	1	33.33%	1	100.00%	0	0	0.00%	0		0

**Surrey detention data**

Surrey – Police PTA vs Incarcerated

		White		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab
Total	86	50		14		4		8		6		2		2
Police PTA	60	37	1.06	9	0.92	2	0.72	6	1.08	2	0.48	2	1.43	2 1.43
Police Kept In Custody	26	13	0.86	5	1.18	2	1.65	2	0.83	4	2.20	0		0

Surrey – kept in custody initially

		White		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab
Total	15	7		3		1		1		3		0		0
Detention	10	4	0.86	2	1.00	1	1.50	0		3	1.5	0		0
CRIC	5	3	1.29	1	1.00	0		1	3.00	0		0		0

Surrey – Bench Warrant Issued

		White		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab
Total	86	50		14		4		8		6		2		2
Bench warrant	14	6	0.74	3	1.32	2	3.07	2	1.54	1	1.02	0		0

Surrey - Crown sought detention post Bench Warrant

		White		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab
Total	14	6		3		2		2		1		0		0
Detention sought	7	2	0.67	2	1.33	1	1.00	1	1.00	1	2.00	0		0
Detention granted	4	2	100.00%	1	50.00%	0	0.00%	0	0.00%	1	100.00%	0		0



**Prince George detention data**

Prince George – Police PTA vs Incarcerated

	Total White/European	Odds Ratio	Indigenous	Odds Ratio
Total	24 8		16	
Police Promise to Appear	22 8	1.09	14	0.95
Kept in Custody by Police	2 0		2	1.50

Prince George - Bail

	Total	White/European	Odds Ratio	Indigenous	Odds Ratio
Total	24	8		16	
Police Promise to Appear	21	8	1.14	14	1.00
Deposit Required	1	0		1	1.50
Kept I/C by Police	2	0		2	1.50
Detained	5	2	1.20	3	0.90
Consent remand in Custody <sup>1</sup>		0		1	1.50
I/C after Bench Warrant	8	3	1.13	5	0.94
Crown sought detention	2	1	1.50	1	0.75
Recognizance	6	2	1.00	4	1.00

**Nelson detention data**

Nelson – Police PTA vs Incarcerated

	Total	White/European	Odds Ratio	Indigenous	Odds Ratio
Total	9	8		1	

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Police Promise to Appear	9	8	1.00	1	1.00
Detained by Police	0	0.00		0.00	
Nelson - Bail					
	Total	White/European	Odds Ratio	Indigenous	Odds Ratio
Total	9 <sup>124</sup>	8		1	
Police Promise to Appear	9	8	1.00	1	1.00
Warrant Issued	1	0	0.00	100.00	9.00
Deposit Required	0	0	0.00	0	0.00
Detained by Police	0	0	0.00	0	0.00
Detained	0	0	0.00	0	0.00
Consent remand in Custody	0	0	0.00	0	0.00
Crown sought detention	0	0	0.00	0	0.00
Recognizance	1	100.00	1.13	0	0.00

**Duncan detention data**

Duncan – Police PTA vs Incarcerated

	Total	Caucasian/European	Odds Ratio	Indigenous	Odds Ratio
	11 <sup>125</sup>	11		0	
Police Promise to Appear	8	8	1.0	0	0.00

<sup>124</sup> Data unavailable for one accused

<sup>125</sup> Data unavailable for nine accused. Note the Duncan Agent firm's record keeping practices regarding Bail did not allow for a fulsome investigation of bail.

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Detained by Police	3	3	1.0	0	0.00
Duncan - Bail					
	Total	Caucasian/European	Odds Ratio	Indigenous	Odds Ratio
	11	11		0	
Police Promise to Appear	8	8	1.00	0	0.00
Warrant Issued	1	1	1.00	0	0.00
Deposit Required	0	0.00	0.00	0	0.00
Detained by Police	3	3	1.00	0	0.00
Detained	4	4	1.00	0	0.00
Consent remand in Custody	1	1	1.00	0	0.00
Crown sought detention	4	4	1.00	0	0.00
Recognizance	3	3	1.00	0	0.00

## Appendix 5

### File Outcome Data

#### Total File Outcome Data

##### Total – Total Individuals

	Total	Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	418	231		79		27		34		15		14		18	
Charge Declined	91	57	1.13	7	0.41	7	1.19	13	1.76	3	0.92	1	0.33	3	0.76
SoP	108	52	0.87	20	0.98	10	1.43	12	1.37	5	1.29	3	0.83	6	1.29
Acquitted	19	9	0.86	2	0.56	0	0.00	2	1.29	2	2.93	2	3.14	2	2.44
Guilty Plea	169	97	1.04	47	1.47	8	0.73	5	0.36	4	0.66	3	0.53	5	0.69
Conviction	9	3	0.60	0	0.00	1	1.72	2	2.73	1	3.10	2	6.63	0	0.00
GP to other/lesser	14	7	0.90	1	0.38	1	1.11	0	0.00	0	0.00	3	6.40	2	3.31
Closed Administratively	8	6	1.36	2	1.32	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

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### Total - Guilty pleas

		Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	327	174		72		20		21		12		13		15	
SoP	108	52	0.87	20	0.98	10	1.43	12	1.37	5	1.29	3	0.83	6	1.29
Acquitted	19	9	0.86	2	0.56	0	0.00	2	1.29	2	2.93	2	3.14	2	2.44
Guilty Plea	183	104	1.07	48	1.19	9	0.80	5	0.43	4	0.60	6	0.82	7	0.83
Conviction	9	3	0.60	0	0.00	1	1.72	2	2.73	1	3.10	2	6.63	0	0.00
Closed Administratively	8	6	1.36	2	1.32	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

### Total – Individual's outcome

		Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	327	174		72		20		21		12		13		15	
Incarcerated	134	71	1.00	39	1.32	5	0.61	5	0.58	4	0.81	5	0.94	5	0.81
Fine	13	7	1.01	4	1.40	0	0.00	1	1.20	0	0.00	1	1.93	0	0.00
CSO	4	3	1.41	1	1.14	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Acquitted	19	9	0.89	2	0.48	0	0.00	2	1.64	2	2.87	2	2.64	2	2.30
SoP	108	52	0.87	20	0.98	10	1.43	12	1.37	5	1.29	3	0.83	6	1.29
SS	25	17	1.28	3	0.54	3	1.96	0	0.00	1	1.09	0	0.00	1	0.87
CD	12	5	0.78	1	0.38	2	2.72	1	1.30	0	0.00	2	4.19	1	1.82
AD	4	4	1.88	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Closed administratively	8	6	1.41	2	1.14	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

### Total – Individual's sentence

		Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	192	107		48		10		7		5		8		7	
Incarcerated	134	71	0.95	39	1.16	5	0.72	5	1.02	4	1.15	5	0.89	5	1.02
Fine	13	7	0.97	4	1.23	0	0.00	1	2.11	0	0.00	1	1.84	0	0.00
CSO	4	3	1.35	1	1.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
SS	25	17	1.22	3	0.48	3	2.30	0	0.00	1	1.54	0	0.00	1	1.10
CD	12	5	0.75	1	0.33	2	3.20	1	2.28	0	0.00	2	4.00	1	2.28
AD	4	4	1.79	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

## Vancouver File Outcome Data

### Vancouver – Total Individuals

		Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	189	93		37		17		12		6		11		13	
Charge Declined	2	1	1.02	0	0.00	1	5.56	0	0.00	0	0.00	0	0.00	0	0.00
SoP	49	23	0.95	7	0.73	6	1.36	7	2.25	1	0.64	2	0.70	3	0.89
SoP (PA – Diff File)	12	5	0.85	3	1.28	2	1.85	0	0.00	1	2.63	0	0.00	1	1.21
Acquitted	17	7	0.84	2	0.60	0	0.00	2	1.85	2	3.71	2	2.02	2	1.71
Guilty Plea	86	46	1.07	23	1.37	6	0.78	2	0.37	1	0.37	3	0.60	5	0.85
Conviction	8	3	0.76	0	0.00	1	1.39	1	1.97	1	3.94	2	4.30	0	0.00
GP to other/lesser	11	5	0.92	1	0.46	1	1.01	0	0.00	0	0.00	2	3.12	2	2.64
Closed Administratively	4	3	1.52	1	1.28	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

### Vancouver – Guilty pleas

		Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	187	92		37		16		12		6		11		13	
SoP	49	23	0.95	7	0.73	6	1.36	7	2.25	1	0.64	2	0.70	3	0.89
SoP (PA – Diff File)	12	5	0.85	3	1.28	2	1.85	0	0.00	1	2.63	0	0.00	1	1.21
Acquitted	17	7	0.84	2	0.60	0	0.00	2	1.85	2	3.71	2	2.02	2	1.71

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Guilty Plea	97	51	1.07	24	1.25	7	0.84	2	0.32	1	0.32	5	0.88	7	1.04
Conviction	8	3	0.76	0	0.00	1	1.39	1	1.97	1	3.94	2	4.30	0	0.00
Closed Administratively	4	3	1.52	1	1.28	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

### Vancouver – Individual's outcome

		Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	187	92		37		16		12		6		11		13	
Incarcerated	76	37	0.99	21	1.40	5	0.77	2	0.41	1	0.41	5	1.12	5	0.95
Fine	2	1	1.02	0	0.00	0	0.00	0	0.00	0	0.00	1	8.50	0	0.00
CSO	4	3	1.52	1	1.26	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Acquitted	17	7	0.83	2	0.59	0	0.00	2	1.83	2	3.67	2	2.00	2	1.69
SOP	49	23	0.95	7	0.72	6	1.43	7	2.23	1	0.64	2	0.69	3	0.88
SoP (PA – Diff File)	12	5	0.85	3	1.26	2	1.95	0	0.00	1	2.60	0	0.00	1	1.20
SS	12	6	1.02	2	0.84	2	1.95	0	0.00	1	2.60	0	0.00	1	1.20
CD	8	4	1.02	0	0.00	1	1.46	1	1.95	0	0.00	1	2.13	1	1.80
AD	3	3	2.03	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Closed administratively	4	3	1.52	1	1.26	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

### Vancouver – Individual's sentence

		Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	105	54		24		8		3		2		7		7	
Incarcerated	76	37	0.95	21	0.92	5	0.86	2	0.92	1	0.69	5	0.99	5	0.99
Fine	2	1	0.97	0	0.00	0	0.00	0	0.00	0	0.00	1	7.50	0	0.00
CSO	4	3	1.46	1	1.09	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
SS	12	6	0.97	2	0.73	2	2.19	0	0.00	1	4.39	0	0.00	1	1.25
CD	8	4	0.97	0	0.00	1	1.64	1	4.37	0	0.00	1	1.87	1	1.87
AD	3	3	1.94	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

## Surrey File Outcome Data

### Surrey – Total Individuals

		Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	173	104		21		10		21		9		3		5	
Charge Declined	87	54	1.04	7	0.66	6	1.19	13	1.23	3	0.66	1	0.66	3	1.19
SoP	37	18	0.82	6	1.34	2	0.94	5	1.11	3	1.56	1	1.56	2	1.87
Acquitted	1	1	1.68	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Guilty Plea	41	27	1.11	7	1.41	2	0.84	2	0.40	3	1.41	0	0.00	0	0.00
Conviction	1	0	0.00	0	0.00	0	0.00	1	8.24	0	0.00	0	0.00	0	0.00
GP to other/lesser	3	2	1.12	0	0.00	0	0.00	0	0.00	0	0.00	1	19.27	0	0.00
Closed Administratively	3	2	1.12	1	2.75	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

### Surrey – Guilty pleas

		Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	86	50		14		4		8		6		2		2	
SoP	37	18	0.82	6	1.34	2	0.94	5	1.11	3	1.56	1	1.56	2	1.87
Acquitted	1	1	1.68	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Guilty Plea	44	29	1.13	7	0.98	2	0.98	2	0.49	3	0.73	1	0.98	0	0.00
Conviction	1	0	0.00	0	0.00	0	0.00	1	8.24	0	0.00	0	0.00	0	0.00
Closed Administratively	3	2	1.12	1	2.75	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

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### Surrey – Individual's outcome

		Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	86	50		14		4		8		6		2		2	
Incarcerated	32	20	1.07	6	1.15	0	0.00	3	1.01	3	1.34	0	0.00	0	0.00
Fine	3	3	1.72	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
CSO	0	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Acquitted	1	1	1.72	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
SOP (non plea)	37	18	0.84	6	0.99	2	1.16	5	1.45	3	1.61	1	1.16	2	2.32
SS	7	5	1.23	1	0.88	1	3.07	0	0.00	0	0.00	0	0.00	0	0.00
CD	2	0	0.00	0	0.00	1	10.75	0	0.00	0	0.00	1	21.46	0	0.00
AD	1	1	1.72	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Closed administratively 3	2	2	1.15	1	2.05	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

### Surrey – Individual's sentence

		Caucasian		Indigenous		Black		South Asian		Asian		Hispanic		West Asian/Arab	
Total	45	29		7		2		3		3		1		0	
Incarcerated	32	20	0.97	6	1.21	0		3	2.11	3	2.11	0	0.00	0	0.00
Fine	3	3	1.55	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
CSO	0	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
SS	7	5	1.11	1	0.92	1	3.22	0	0.00	0	0.00	0	0.00	0	0.00
CD	2	0	0.00	0	0.00	1	11.26	0	0.00	0	0.00	1	7.50	0	0.00
AD	1	1	1.55	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

## Prince George File Outcome Data

### Prince George – Total Individuals

	Total	White/European	Odds Ratio	Indigenous	Odds Ratio
Total Charges	26	10		16	
Charge Declined	2	2	2.60	0	0.00
Stay of Proceedings	3	0	0.00	3	1.62
Acquitted	1	1	2.60	0	0.00
Guilty Plea	15	3	0.52	12	1.30
Conviction	3	2	1.73	1	0.54
Other/Lesser	1	1	2.60	0	0.00
Closed Administratively	1	1	2.60	0	0.00

Prince George – Guilty Pleas

	Total	White/European	Odds Ratio	Indigenous	Odds Ratio
Total Individuals	24	8		16	
Stay of Proceedings	3	0	0.00	3	1.50
Acquitted	1	1	3.00	0	0.00
Guilty Plea	16	4	0.75	12	1.12
Conviction	3	2	2.00	1	0.50
Closed Administratively	1	1	3.00	0	0.00

Prince George – Individual's sentence

	Total	White	Odds Ratio	Indigenous	Odds Ratio
Total	24	8		16	
Incarcerated	14	4	0.86	10	1.07
Fine	4	2	1.50	2	0.75
Conditional Sentence Order	0	0	0.00	0	0.00
Acquitted	1	1	3.00	0	0.00
SoP (non-plea)	3	0	0.00	3	1.50
Suspended Sentence	2	2	3.00	0	0.00

**Nelson File Outcome Data**

Nelson – Total Individuals

	Total	White	Odds Ratio	Indigenous	Odds Ratio
Total Individuals	10	8		2	
Charge Declined	0	0	0.00	0	0.00
Stay of Proceedings	1	1	1.25	0	0.00
Acquitted	0	0	0.00	0	0.00
Guilty Plea	9	7	0.97	2	1.11
Conviction	0	0	0.00	0	0.00
Other/Lesser Included	0	0	0.00	0	0.00
Closed Administratively	0	0	0.00	0	0.00

Nelson – Individual's sentence

		Caucasian		Indigenous	
Total	10	8		2	
Incarcerated	3	2	0.83	1	1.67
Fine	1	1	1.25	0	0.00
Conditional Discharges	2	1	0.63	1	2.5
Acquitted	0	0	0.00	0	0.00
SoP (non-plea)	1	1	1.25	0	0.00
Suspended Sentence	3	3	1.25	0	0.00

**Duncan File Outcome Data**

Duncan – Total Individuals

	Total	White/European	Odds Ratio	Indigenous	Odds Ratio	South Asian	
Total Individuals	18	14		3		1	
Charge Declined	0	0	0.00	0	0.00	0	0.00
Stay of Proceedings	3	2	0.86	1	2.00	0	0.00
Acquitted	0	0	0.00	0	0.00	0	0.00
Guilty Plea	15	12	1.03	2	0.80	1	1.20
Conviction	0	0	0.00	0	0.00	0	0.00
Other/Lesser Included	0	0	0.00	0	0.00	0	0.00
Closed Administratively	0	0	0.00	0	0.00	0	0.00

Duncan – Individual's outcome

		Caucasian		Indigenous		South Asian	
Total	18	14		3		1	
Incarcerated	11	10	1.17	1	0.55	0	0.00
Fine	2	0	0.00	1	3.00	1	9.00
Acquitted	0	0	0.00	0	0.00	0	0.00
SoP (non-plea)	4	3	0.96	1	1.50	0	0.00
Suspended Sentence	1	1	1.29	0	0.00	0	0.00



Duncan – Individual's sentence

		Caucasian		Indigenous		South Asian	
Total	14	11		2		1	
Incarcerated	11	10	1.16	1	0.65	0	0.00
Fine	2	0	0.00	1	3.00	1	9.00
Suspended Sentence	1	1	1.29	0	0.00	0	0.00

## Appendix 6

### First Time Accused Data

#### CDSA 4(1) First Time Accused data

##### First Time Accused – 4(1) arrested

	Population		Accused arrested		
White/European	598,828	47.15%	32	54.24%	1.15
Indigenous	43,950	3.46%	1	1.69%	0.49
Black	16,745	1.32%	5	8.47%	6.42
South Asian	208,540	16.42%	8	13.56%	0.83
Asian	341,070	26.86%	3	5.08%	0.19
Hispanic	18,410	1.45%	1	1.69%	1.17
West Asian/Arab	21,335	1.68%	4	6.78%	4.04
Other	21,250	1.67%	0	0.00%	0.00
Unknown			5	8.47%	
	1,269,928	100.0%	59	100.00%	

##### First Time Accused – 4(1) Charge approved

	Population		Accused with charges approved		
White/European	598,828	47.15%	24	61.54%	1.31
Indigenous	43,950	3.46%	1	2.56%	0.74
Black	16,745	1.32%	3	7.69%	5.83
South Asian	208,540	16.42%	5	12.82%	0.78
Asian	341,070	26.86%	1	2.56%	0.09

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Hispanic	18,410	1.45%	0	0.00%	0.00
West Asian/Arab	21,335	1.68%	2	5.13%	3.05
Other	21,250	1.67%	0	0.00%	0.00
Unknown			3	7.69%	
	1,269,928	100.0%	39	100.00%	

First Time Accused – 4(1) Charge declined

	Accused arrested		Accused with charges declined		
White/European	32	54.24%	8	40.00%	0.74
Indigenous	1	1.69%	0	0.00%	
Black	5	8.47%	2	10.00%	1.18
South Asian	8	13.56%	3	15.00%	1.11
Asian	3	5.08%	2	10.00%	1.97
Hispanic	1	1.69%	1	5.00%	2.96
West Asian/Arab	4	6.78%	2	10.00%	1.47
Other	0	0.00%	0	0.00%	0.00
Unknown			2	10.00%	
	1,269,928	100.0%	20	100.00%	

First Time Accused – 4(1) Total Individuals

	Total	White	Indigenous	Black	South Asian	Asian	Hispanic	West Asian/Arab
Total	54	32	1	5	8	3	1	4
Charge Declined	18	8	0	2	3	2	1	2
SoP	15	10	0	1	1	1	0	2
Acquitted	2	1	0	0	1	0	0	0
Guilty Plea	15	11	1	2	1	0	0	0
Conviction	2	1	0	0	1	0	0	0
Closed Administratively	2	1	0	0	1	0	0	0

First time Accused – 4(1) Individual's outcome/sentence

	Total	White	Indigenous	Black	South Asian	Asian	Hispanic	West Asian/Arab
Total	36	24	1	3	5	1	0	2
Incarcerated	7	5	0	0	1	1	5.12	0
Fine	2	1	1	0	0	0	0.00	0
CSO	0	0	0	0	0	0	0.00	0
Acquitted	2	1	0	0	1	0	0.00	0
SoP non alt measure 6	5	5	0	0	0	0	0.00	1
SS	3	2	0	0	1	0	0.00	0
CD	4	1	0	2	1	0	0.00	0

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AD	2	2	1.50	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Alternative Measures 10	7	7	1.05	0	0.00	1	1.20	1	0.72	0	0.00	0	0.00	1	1.80
Closed Administratively <sup>126</sup>	0	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

First time Accused – 4(1) Individual's outcome/sentence

		White	Indigenous	Black	South Asian	Asian	Hispanic	West Asian/Arab
Total	28	18	1	3	4	1	0	1
Incarcerated	7	5	0	0	1	1	0	0
Fine	2	1	1	0	0	0	0	0
CSO	0	0	0	0	0	0	0	0
SS	3	2	0	0	1	0	0	0
CD	4	1	0	2	1	0	0	0
AD	2	2	0	0	0	0	0	0
Alternative Measures 10	7	7	0	1	1	0	0	1
Closed Administratively <sup>127</sup>	0	0	0	0	0	0	0	0

CDSA 5(2) First Time Accused data

First Time Accused – 5(2) arrested

	Population		Sample		
White/European	598,828	47.15%	38	46.34%	0.98
Indigenous	43,950	3.46%	9	10.98%	3.17
Black	16,745	1.32%	5	6.10%	4.62
South Asian	208,540	16.42%	15	18.29%	1.11
Asian	341,070	26.86%	5	6.10%	0.23
Hispanic	18,410	1.45%	6	7.32%	5.05
West Asian/Arab	21,335	1.68%	2	2.44%	1.45
Other	21,250	1.67%	0	0.00%	0.00
Unknown			2	2.44%	
	1,269,928	100.0%	82	100.00%	

First Time Accused – 5(2) charges approved

	Population		Accused with charges approved		
White/European	598,828	47.15%	29	46.03%	0.98

<sup>126</sup> Closed Administratively was due to completion of Alternative Measures

<sup>127</sup> Closed Administratively was due to completion of Alternative Measures

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Indigenous	43,950	3.46%	7	11.11%	3.21
Black	16,745	1.32%	3	4.76%	3.61
South Asian	208,540	16.42%	10	15.87%	0.97
Asian	341,070	26.86%	4	6.35%	0.24
Hispanic	18,410	1.45%	6	9.52%	6.57
West Asian/Arab	21,335	1.68%	2	3.17%	1.89
Other	21,250	1.67%	0	0.00%	0.00
Unknown			2	3.17%	
	1,269,928	100.0%	63	100.00%	

First Time Accused – 5(2) charges declined

	Arrests		Accused with charges declined		
White/European	38	46.34%	9	47.37%	1.02
Indigenous	9	10.98%	2	10.53%	0.96
Black	5	6.10%	2	10.53%	1.73
South Asian	15	18.29%	5	26.32%	1.44
Asian	5	6.10%	1	5.26%	0.86
Hispanic	6	7.32%	0	0.00%	0.00
West Asian/Arab	2	2.44%	0	0.00%	0.00
	1,269,928	100.0%	19		

First Time Accused – 5(2) Total Individuals

	Total	White	Indigenous	Black	South Asian	Asian	Hispanic	West Asian/Arab							
Total	80	38	9	5	15	5	6	2							
Charge Declined	19	9	2	1.00	2	1.68	5	1.40	1	0.84	0	0.00	0	0.00	
SoP	20	8	0.84	1	0.44	1	0.80	6	1.60	3	2.40	1	0.67	0	0.00
Acquitted	8	3	0.79	0	0.00	0	0.00	1	0.67	1	2.00	3	5.00	0	0.00
Guilty Plea	22	13	1.24	3	1.21	2	1.45	2	0.48	0	0.00	1	0.60	1	1.81
Conviction	1	0	0.00	0	0.00	0	0.00	1	5.33	0	0.00	0	0.00	0	0.00
Gp to other/lesser	5	3	1.26	2	3.56	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Closed Administratively	5	2	0.84	1	1.78	0	0.00	0	0.00	0	0.00	1	2.67	1	8.00

First time Accused – 5(2) Individual's outcome/sentence

	Total	White	Indigenous	Black	South Asian	Asian	Hispanic	West Asian/Arab							
Total	61	29	7	3	10	4	6	2							
Incarcerated	17	8	0.99	4	2.00	0	0.00	3	1.08	0	0.00	2	1.20	0	0.00
Fine	1	1	2.10	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

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CSO	1	1	2.10	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Acquitted	7	3	0.90	0	0.00	0	0.00	1	0.87	1	2.18	2	2.90	0	0.00
SoP non-alt measure 20	8	8	0.84	1	0.44	1	1.02	6	1.83	3	2.29	1	0.51	0	0.00
SS	2	1	1.05	0	0.00	1	10.16	0	0.00	0	0.00	0	0.00	0	0.00
CD	3	3	2.10	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
AD	2	2	2.10	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Alt Measures	1	0	0.00	1	8.71	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
DTCV	2	0	0.00	0	0.00	1	10.16	0	0.00	0	0.00	0	0.00	1	15.24
FN Restorative Justice	1	0	0.00	1	8.71	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
Closed Administratively	4	2	1.05	0	0.00	0	0.00	0	0.00	0	0.00	1	2.54	1	7.62