

RESTORATIVE JUSTICE AS A PARADIGM TO THINK ABOUT ALTERNATIVES

- “Restorative justice is an approach to justice that focuses on addressing the harm caused by crime while holding the offender responsible for their actions, by providing an opportunity for the parties directly affected by the crime – victims, offenders and communities – to identify and address their needs in the aftermath of a crime”
(Justice Canada, 2017)

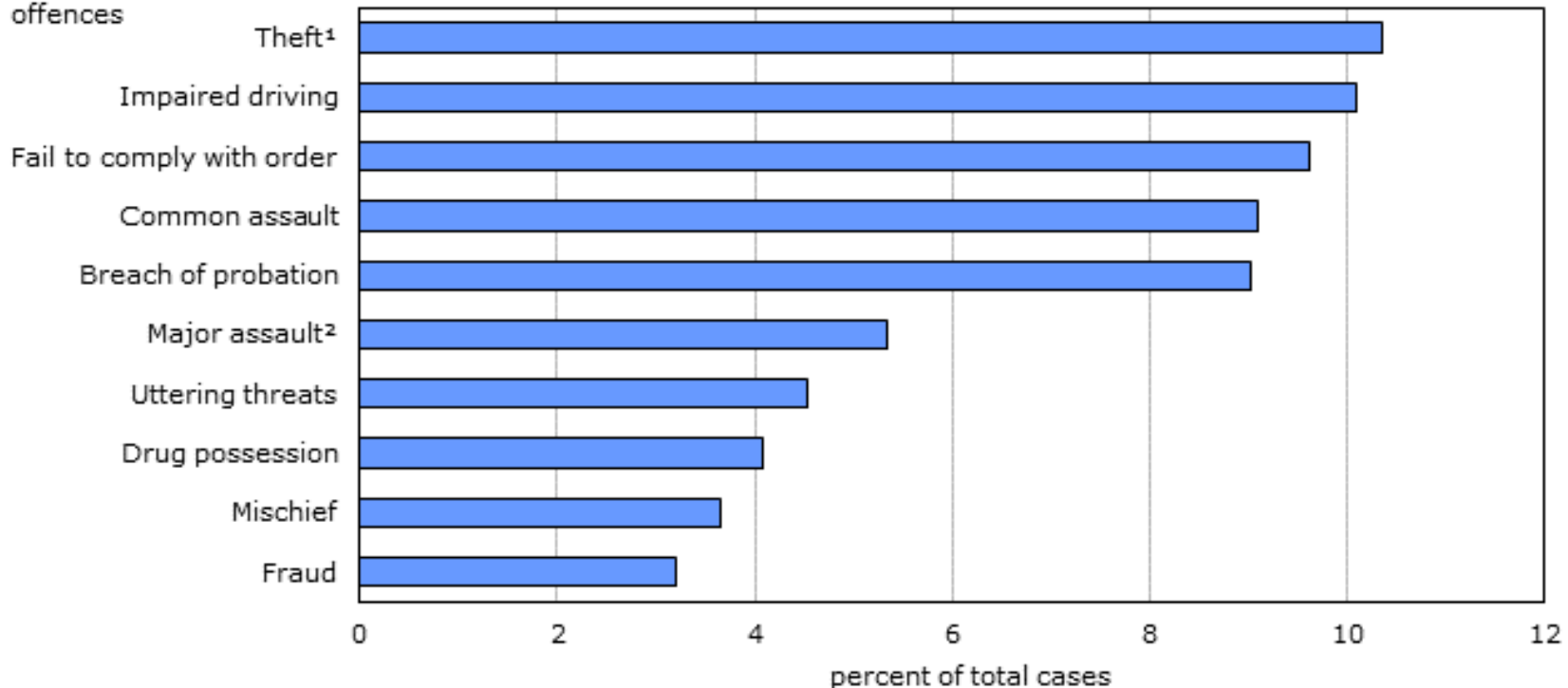
	Restorative justice	Retributive justice
Orientation	Conflict-resolution	Conflict-management
Objectives	Reparation, rehabilitation, healing, addressing the needs	Retribution, deterrence, denunciation, infliction of pain
Parties involved	All relevant parties directly concerned in the conflict/problem (identifying needs)	State vs. accused (protection of rights)

PATTERNS OF CRIMINALIZATION IN CANADA

Chart 2

Ten most common offences for cases completed in adult criminal court, Canada, 2014/2015

Ten most common offences



1. Includes, for example, theft over \$5,000, theft \$5,000 or under, as well as motor vehicle theft.

2. Includes, for example, assault with a weapon (level 2) and aggravated assault (level 3).

Note: A case is one or more charges against an accused person or company that were processed by the courts at the same time and received a final decision. Cases that involve more than one charge are represented by the most serious offence. Data exclude information from superior courts in Prince Edward Island, Ontario, Manitoba and Saskatchewan as well as municipal courts in Quebec due to the unavailability of data.

Source: Statistics Canada, Canadian Centre for Justice Statistics, Integrated Criminal Court Survey.

PATTERNS OF INCARCERATION: REMAND vs. SENTENCED CUSTODY

Chart 1
Average daily rate of adults in provincial/territorial custody, 2013/2014 to 2017/2018
rate per 100,000 adult population

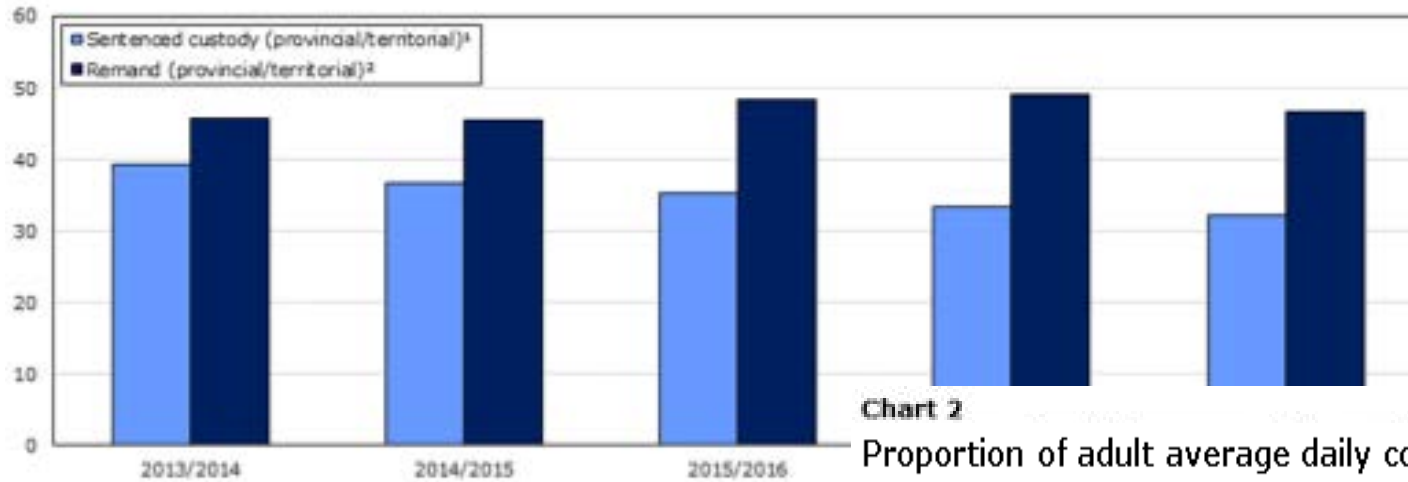
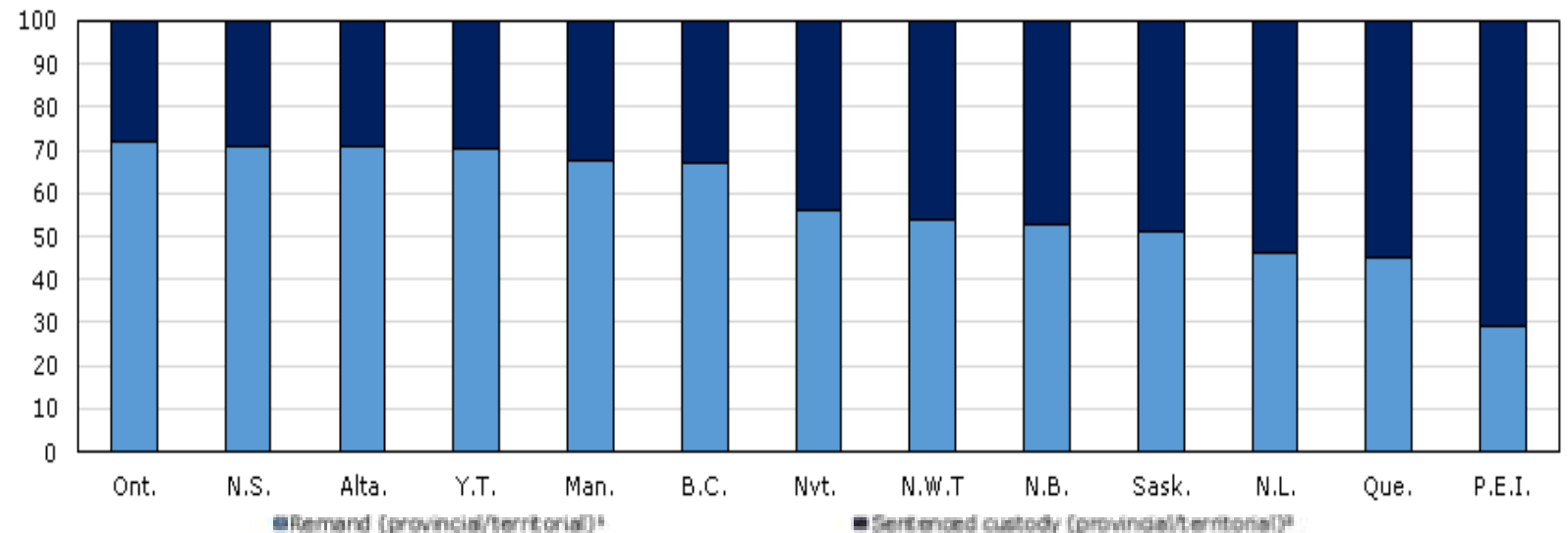


Chart 2
Proportion of adult average daily counts to remand and sentenced custody, 2018/2019

Percent of average daily counts

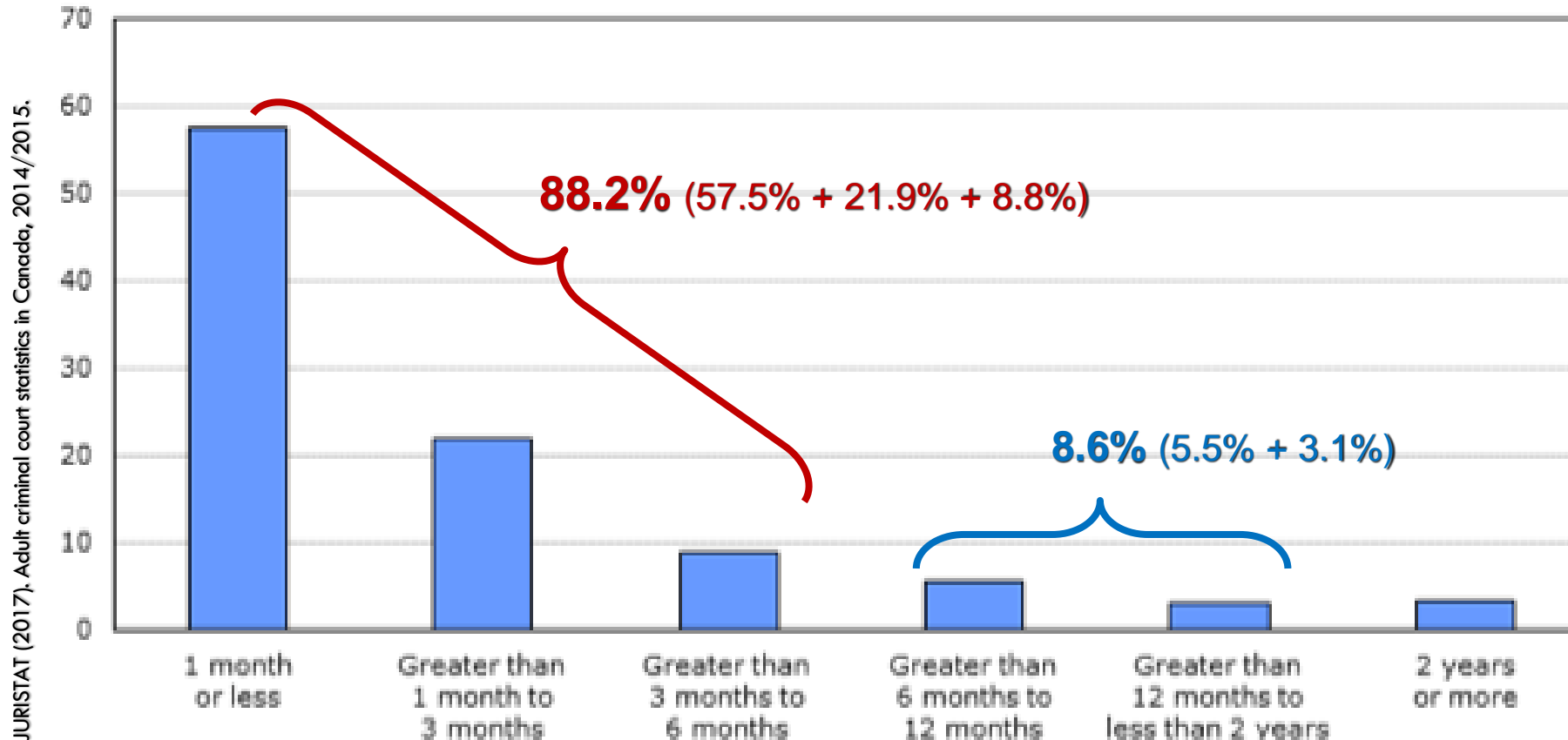


PATTERNS OF INCARCERATION: Length of Sentences

In 2014/2015, 88.2% of individuals sentenced to custody received a sentence of 6 months or less; 8.6% of between 6 months and 2y; and 3.2% of 2y or more.

Guilty cases in adult criminal court, by length of custody sentence, Canada, 2014/2015

percent of cases sentenced to custody



PROCESSING TIME

Juristat Article—Adult criminal court processing times, Canada, 2015/2016

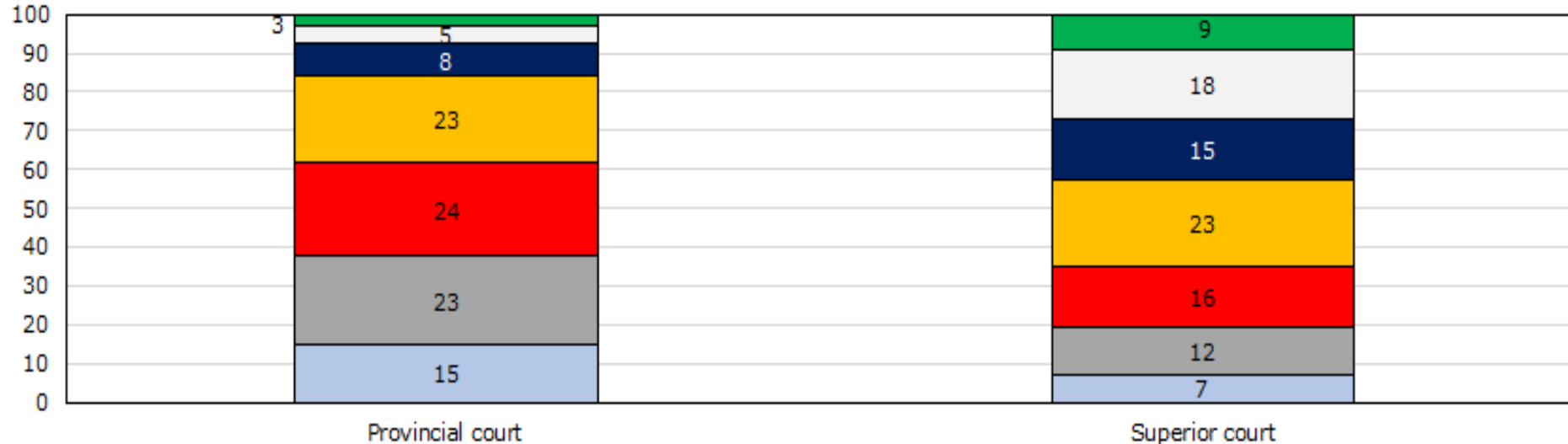
Chart 3

Charges remaining to be completed in adult criminal provincial court, by month, Canada, 2015/2016

Chart 5

Age of open cases, by court level, select provinces and territories, 2017/2018

percentage



1 month or less

Greater than 6 months to 12 months

Over 30 months

Greater than 1 month to 3 months

Greater than 12 months to 18 months

Greater than 3 months to 6 months

Greater than 18 months to 30 months

TYPICAL REVOLVING DOOR CASES – WHO DOES THIS AFFECT?

- Paul, possession and trafficking opioids in Vancouver DTES (grew up in Nova Scotia, a history of abuse, a heroin addiction, HIV positive), released on bail with conditions, multiple breaches, remanded and released on stricter conditions 3 times, pled guilty to 8 counts, sentenced to 10 months ('multi-recidivist').
- Sarah, Indigenous woman, experiencing homelessness in Gatineau, caught stealing a bottle of spaghetti sauce and cheese worth \$15 from a IGA, resisted her arrest, remanded over the week-end, pled guilty, sentenced to 3 days of incarceration already served...
- Martine, homeless, sex worker, HIV positive, charged with communication for purposes of prostitution, released on bail with red zone, breached multiple times, charged 11 counts in total (including two substantive offences only)

OUR 'ALTERNATIVES' NEVER LEFT THE SHADOW OF INCARCERATION : SLOWING DOWN THE REVOLVING DOOR

- Be careful of 'alternatives' to custody that become supplements or are working in the shadow of incarceration
- Need oversight on policing patterns and decisions to remand
- Prosecutorial guidelines for minor offences, where punishment (and incarceration) are disproportionated
- *R. v. Zora* (2020): stricter control on bail conditions (and probation) – everybody's responsibility, but ultimately lies with the judicial official
- Necessary legislative changes: MMS; conditional sentences

ALTERNATIVE MEASURES PROGRAMS FOR ADULTS (S. 717 C.C.)

- Pre-charge (diversion) or Post-charge (suspended), but not a penalty
- Provincial variations
- Unrestricted schedule of offences and alleged offenders in the Code
- Unrestricted list of measures: may include restitution, writing a letter, community service and programming, mediation sessions, therapy
- Limitations de facto: restricted to minor offences; inadmissibility of multirecidivists or those with pending charges

ALTERNATIVE MEASURES PROGRAMS – INDIGENOUS CONTEXT

- An answer to mass incarceration and systemic discrimination of Indigenous populations
- Linked to reconciliation and revival of Indigenous legal orders
- Healing circles and Community-based programs
- Limitations: state supervision; restricted list of offences; funding and resources; access to Indigenous law

SPECIALIZED TRIBUNALS

- Social problems: mental health, drugs, domestic violence, homelessness
- Based on the assumption that the person could and should have access to health and social services
- Multidisciplinary (justice, health, social services)
- Post-charge (suspended, sometimes, ultimately withdrawn); sentencing
- Based on a court order, or on a more flexible approach that allows relapses and setbacks
- Critiques: increased supervision over time; net widening; program invasiveness

- Based on research, community mobilization and judicial leadership and innovation
- Starts with social intervention, then the defendant goes to court with a social worker to settle their situation (open and closed cases) (reward-based)
- Leads to withdrawal of charges for by-law violations & provincial offences and suspended sentence for summary conviction offences

**PAJIC – A
COMMUNITY-
BASED
PROGRAM FOR
THE HOMELESS
AT THE
MUNICIPAL
COURT OF
MONTREAL**

THE LIMITS OF RESTORATIVE JUSTICE

« [We] must not do in the name of diversion or restorative justice what we would not do in the name of punishment »

- Don Stuart, *Criminal Law: a Treatise*,

« Alternatives too often focus on the shallow-end offenders rather than the deep-end offenders »

- Stanley Cohen, *The Punitive City* (1979)