

# Criminal Justice System Modernization Strategy

March 2018



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# Modernizing Manitoba's Criminal Justice System

## Minister's Message

As Minister of Justice and Attorney General, I am accountable for the work that Manitoba Justice does every day to contribute to safer communities across Manitoba.

We, in Manitoba Justice, have completed an internal review to determine how we can improve services to better protect the safety of Manitobans and build up their confidence in the criminal justice system.

What we found is that many aspects of Manitoba's criminal justice system have been moving in the wrong direction for too long. Manitoba continues to have some of the highest incarceration and violent crime rates in the country. Too many individuals leaving custody reoffend within two years of release, contributing to cycles of crime in our communities. Indigenous people remain overrepresented in our jails and are disproportionately the victims of crime. Cases take too long to get to trial, with the risk of charges for serious, violent offences being stayed due to unreasonable delay.



Manitoba Justice has already taken concrete action to address many of these challenges but, while early results show promise, much more needs to be done. As outlined in the 2017 Speech from the Throne, our government is committed to being tough on crime but also tough on what causes crime.

What is required now to accomplish our goals is a modernization of Manitoba's criminal justice system. Modernization involves transformative culture change with a focus on producing real results for Manitobans. It means employing evidence-based, proactive strategies that have been proven to work in other jurisdictions. It also means finding innovative, made-in-Manitoba solutions to challenges and reporting on our progress to all Manitobans.

I am proud to release this plan, which will act as the foundational guide for Manitoba Justice as we implement necessary changes to modernize our criminal justice system.

I am confident that this four-point strategy—with its emphasis on crime prevention, targeted resources for serious criminal cases, more effective use of restorative justice and responsible reintegration of offenders—will help create safe communities and timely justice for all Manitobans.

Although the focus of our plan is specific to criminal justice, it is part of a broader effort to bring about foundational culture shifts throughout government to better serve the public. To achieve positive results, we must transform the way we tackle issues and problems.

This is an opportunity for all stakeholders in our criminal justice system to innovate to address the issues that matter to Manitobans.

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Hon. Heather Stefanson

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## Manitoba's Current Situation

The Manitoba government is spending increasing amounts of money to incarcerate more people. Criminal cases take too long to complete, and victims and accused persons often wait months, if not years, for a serious matter to conclude. Community safety remains a significant concern for citizens and the province.

When considering the path forward for Manitoba and the efforts to modernize the criminal justice system, there are many factors that must be taken into account. This section identifies the issues that underscore the need for change and highlight where improvements must be made.

*High Violent Crime Rate:* Manitoba has the second-highest violent and total crime rates among provinces.<sup>1</sup> This has been a consistent trend when comparing our province to national data. Manitobans are less satisfied with their personal safety from crime when compared to citizens in most other provinces.<sup>2</sup> The impact of crime and negative perceptions of crime is far-reaching. It hurts too many families and communities across Manitoba.

*Highest Adult Incarceration Rate:* For seven years in a row, Manitoba has had the highest adult incarceration rate among the provinces.<sup>3</sup> From 2006-07 to 2016-17, the average number of adults in provincial custody increased by 64 per cent.<sup>4</sup> As a result, the number of adult offenders in custody exceeds the capacity of our jails. Indigenous people make up only 18 per cent<sup>5</sup> of Manitoba's population, but represent 74 per cent of adults in provincial correctional facilities. Overcrowding is expensive, increases safety risks for correctional staff and inmates, and reduces opportunities for effective inmate rehabilitation. We must ensure the long-term sustainability of our system while improving public safety.

*Lower Recidivism Rates with Community Supervision:* Supported reintegration and structured community supervision are associated with lower recidivism. Offenders who complete a community-based sentence are less likely to become involved in subsequent criminal activity. In Manitoba, recidivism means that someone has been convicted of a criminal offence and sentenced to provincial custody or probation supervision within two years of completing a sentence.

- Jail sentence: 33 per cent recidivism rate<sup>6</sup>
- Community-based sentence: 15 per cent recidivism rate<sup>7</sup>
- Winnipeg Drug Treatment Court program: 11 per cent recidivism rate<sup>8</sup>

*High Number of People In Custody on Remand:* Two-thirds of the people in Manitoba's correctional facilities are on remand, which means they are waiting for their matter to be heard in court. Individuals on remand generally do not access programming that requires them to admit they committed the offence, which negatively affects their rehabilitation and ability to successfully reintegrate into the community.

*Timeliness of the Criminal Justice System:* Criminal court cases can take many months to conclude, and serious charges can remain in the court system for years. The Supreme Court of Canada is concerned about criminal court delays and has set timelines for completing cases, which means the system must become more effective and efficient.<sup>9</sup>

## Manitoba's Criminal Justice System Objectives

- To reduce crime, improve community safety and reduce the number of individuals coming into conflict with the law and the criminal justice system.
- To deal with each case in a manner appropriate to the seriousness of the offence and the circumstances of the offender.
- To more effectively use restorative justice options to improve public safety, reduce delay in the court system and ultimately reduce reliance on incarceration, especially in the case of Indigenous offenders.
- To reintegrate offenders from custody to the community with essential supports to prevent further offences and re-contact with the criminal justice system.

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## The Plan

Manitoba Justice is committed to working collaboratively with all of our partners in government, law enforcement, the court system, and in our communities to support a safer province.

By working together to enhance the operation of the criminal justice system, we can improve the lives and well-being of those affected by crime and help build public confidence in a system that is responsive to the needs of Manitobans.

## Crime Prevention

### Community Mobilization

Families and individuals who come into conflict with the law are often engaged with multiple service providers or face barriers in accessing support. Community mobilization brings together resources to help people in crisis. This has been effective in improving outcomes for those who are in frequent contact with the criminal justice system by improving their ability to address the issues that contribute to their criminal behaviour.

Community mobilization involves provincial government departments, community agencies and police representatives working together to support people in finding stable housing, employment, reuniting with their families and improving their capacity to deal with issues. In turn, this helps reduce the likelihood of future conflict with the law and improves community well-being.

Manitoba Justice will continue to work with existing community mobilization initiatives such as Block-by-Block in the William Whyte and Dufferin neighbourhood, Dauphin at Risk Teens, the Selkirk Team for At-risk Teens, and Southwest Teens At Risk to support their work with the goal of reducing crime.

## Collaboration with Police

Manitoba Justice works with law enforcement partners and other stakeholders to support the effective use of police resources. This work is ongoing and increasingly encompasses initiatives targeting early interventions that are most likely to help reduce criminal behaviour in the future. Manitoba Justice is committed to ensuring effective delivery of policing and law enforcement services across Manitoba. We will be taking a careful look to ensure best alignment of policing services in the province.

## Mental Health and Addictions

Currently, the Drug Treatment Court and Mental Health Court provide integrated support to eligible offenders in Winnipeg to help them successfully address addiction and mental health issues that resulted in criminal behaviour. These problem-solving courts are an alternative to the traditional court system, recognizing better outcomes can be achieved through treatment instead of incarceration.

However, we have to address the needs of people with chronic and acute substance abuse issues in a broader way. Manitoba Justice will work with other departments across the provincial government, as well as, community stakeholders to develop well-integrated and coordinated approaches to intervention and treatment that improve public safety outcomes and the lives of Manitobans.

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## Targeted Resources for Serious Criminal Cases

### Changes to Crown Policies and Procedures

In August 2017, new policies and procedures were put in place for Manitoba's Crown attorneys to help determine the best way to deal with a criminal charge as quickly as possible. The new policies and procedures require Crown attorneys to review files early and make prompt decisions about whether a matter should proceed in the traditional criminal justice system, or, if it would be better handled through restorative justice or other means. In conjunction with the new policies and procedures, the volume of cases reviewed by Crown attorneys before charges are even laid has expanded. In this way, prosecutors can assess the appropriate criminal justice system response at the earliest point in time.

The new procedures also require Crown attorneys to consider their role in addressing the overrepresentation of Indigenous people in custody at each stage of proceedings. This is in keeping with the Calls to Action of the Truth and Reconciliation Commission and direction from the Supreme Court of Canada.

The Supreme Court's decision in *R v. Jordan*, which imposed timelines for the completion of all criminal matters of 18 months in provincial court and 30 months in superior court, absent exceptional circumstances, requires Crown attorneys to carefully manage cases. The new Crown policies and procedures compel Crown attorneys to consider delay at every stage of a prosecution, with the goal of ensuring that charges for serious, violent offences are never stayed due to unreasonable delay.

The number of matters at risk of being stayed due to delay in Manitoba continues to decrease as strategies to mitigate delay have been implemented.

### Preliminary Inquiry Reform

Preliminary inquiries are court hearings whose primary purpose is to determine if there is sufficient evidence for an accused person to stand trial for a criminal offence. They often add months or even years to criminal proceedings. Their usefulness has been called into question by modern developments in criminal law. In December 2016, Manitoba's justice minister, along with the chief justices and chief judge of the three levels of court, put forward a draft Manitoba proposal to the federal justice minister requesting her to consider a four-year pilot project for preliminary inquiry reform. The pilot project would replace preliminary inquiries with an out-of-court discovery process for offences punishable by 10 years or more. Despite this and similar calls from other attorney generals across the country, no changes have been made at the federal level.

In the absence of preliminary inquiry reform and, in light of the Supreme Court's call to improve the timeliness of criminal justice, Manitoba's Crown attorneys have increased the use of direct indictments so more matters can proceed to trial without a preliminary inquiry. In appropriate cases, a direct indictment can ensure a more effective and efficient criminal process while helping victims of crime receive timely justice.

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## More Effective Use of Restorative Justice

### Restorative Justice

Restorative justice is an approach frequently used as an alternative to the traditional criminal justice system. The offenders, victims or community representatives seek a resolution that repairs the harm caused by the crime. The process allows the offender to make amends to the victim or the community. It often includes requiring the offender to obtain treatment or counselling to address the underlying issues that led to his or her behaviour.

Using restorative justice often moves the resolution of less serious matters out of a courtroom and into the community, creating more time for more serious matters to be dealt with in the court system. This can improve the timeliness of the justice system as a whole. Restorative justice has also been associated with lower recidivism rates,<sup>10</sup> making it a more effective option in many circumstances. Moreover, Justice Canada reports that the average cost per community-based justice program participant is lower than the average cost of sending an offender through the criminal justice system.<sup>11</sup>

Restorative justice is often culturally appropriate and responsive to the needs of Indigenous communities overrepresented in the criminal justice system. The Truth and Reconciliation Commission has recently called on governments across the country to find ways to reduce the overrepresentation of Indigenous people in the justice system, as offenders and as victims. Increasing the use of restorative justice in partnership with Indigenous communities is one way to help achieve this goal.

### More Effective Use of Diversion Options

Matters can be diverted to restorative justice programs at any point in the criminal justice process, but the positive effects are often greatest when cases are diverted early.

To improve outcomes for those involved and increase the efficiency of the court system, the Manitoba Prosecutions Service is making more effective use of alternative measures including diversion to restorative justice programs than in the past.

Police services are also working with Manitoba Justice to make better use of restorative justice options in appropriate cases. Manitoba Justice will continue to work with police agencies, Indigenous leadership and other community partners to more fully incorporate the use of restorative justice options going forward. These efforts improve outcomes for victims and offenders and reduce court backlog by removing certain matters from the courtroom.

## The Restorative Justice Centre

In October 2017, Manitoba Justice launched the Restorative Justice Centre, which has improved the province's capacity to more effectively use restorative justice. It brought together departmental staff who were already working in restorative justice and Probation Services to assess matters where a restorative justice referral has been made, connect the individuals involved with community-based programs or other supports and ensure that all partners in the system work together more seamlessly. The goal is to ensure the right restorative justice programs are engaged to better address risk and underlying causes of criminal behaviour.

The Centre augments programming currently offered by community service providers and allows Crown prosecutors to focus their time on cases proceeding through the traditional court system. It helps ensure referrals to programs are made on a timely basis and provides a meeting place and resource for restorative justice agencies, and groups to gather and share knowledge.

### Victim Services Support

Manitoba Justice Victim Services Branch will continue to provide support to victims of serious crimes as defined under *The Victims' Bill of Rights* as well as victims of domestic violence and child victims. This includes safety planning, referrals to community service providers, and risk-assessment. Victim Services' risk assessments are essential to informing decisions regarding the use of restorative options in domestic violence cases. Staff work with the Restorative Justice Centre to support victims in matters where the offender may be referred to a restorative justice program. Victim Services also provides ongoing, dedicated support to families of missing and murdered Indigenous persons.

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## Responsible Reintegration

### Reduced Reliance on Incarceration

With appropriate community supports, many individuals can be released from custody pending their court hearing. The Supreme Court of Canada has recently released a decision addressing this issue,<sup>12</sup> which emphasizes that accused persons should generally be granted bail. We will ensure that the spirit and guidance of that decision are followed in Manitoba. However, where the release of the accused would jeopardize the safety of the victim or the public, Manitoba prosecutors will continue to oppose release on bail. This approach is consistent with Manitoba Justice's broader philosophy of early review of each file and targeting resources to effectively address serious, violent matters.

At the sentencing stage, incarceration is appropriate in many cases where an individual poses a risk to public safety or has committed a serious offence. Often, however, a non-custodial sanction will enhance community safety and improve prospects for rehabilitation. At each stage of the process, we will consider a range of alternatives - from contact with police all the way through to release and reintegration of offenders back into the community.

### Responsible Reintegration Initiative

The average length of time a person spends serving a sentence in a provincial correctional facility is less than two months. During that time, they may have lost a job, housing, their families or connections to other supports. These lost connections make it more difficult for someone to return to the community successfully after they've served a sentence – and make them more likely to reoffend in the future. This is the issue we want to address through the Responsible Reintegration Initiative (RRI). Through the RRI, eligible offenders are released to serve a portion of their sentence in the community with appropriate support to ensure an effective transition. The RRI ensures that offenders leaving custody have support from probation officers to assist them in managing their risk to re-offend and help them address challenges like substance abuse and unemployment. This promotes improved public safety and reduced recidivism.

## Partnerships to Support Offenders Leaving Custody

Even short periods of incarceration can lead to individuals losing their jobs, personal belongings or the ability to maintain housing. Although programs like the RRI will help address these issues, meaningful reintegration requires collaboration between government departments and community agencies. The provincial government will work with community agencies to help offenders better access their services and promote reintegration into the community.

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## Real Results for Manitobans

Manitoba Justice has already taken significant steps to modernize our criminal justice system to ensure the safety of all Manitobans. Police services are also working with Manitoba Justice to make better use of restorative justice options in appropriate cases.

By establishing strong partnerships with community-based organizations and Indigenous communities, Manitoba Justice has better incorporated the use of restorative justice options for criminal matters. Moreover, the recent restructuring of Probation Services will allow probation officers to work with more offenders leaving custody and help them find housing, access addictions treatment and seek job training in order to help end cycles of crime and improve community safety.

While there is still more work to be done, early data shows promise in several areas:

- The number of delay motions filed has declined<sup>13</sup>
- More effective use of diversion options by the Manitoba Prosecutions Service<sup>14</sup>
- The average number of adults in custody has declined in the last few months<sup>15</sup>

## Accountability

The Manitoba government is committed to transparency and public reporting to Manitobans. Manitoba Justice will ensure we are meeting our objectives by being truly accountable to Manitobans.

Beginning in 2019, Manitoba Justice will report annually on the following:

- Recidivism rates<sup>16</sup>
- Time to Disposition for criminal cases
- Number of delay motions filed
- Number of adults in custody
- Number of youth in custody
- The proportion of inmates who are waiting for their matter to be heard
- Use of diversion and restorative justice options

## Conclusion

There are many pressures on the criminal justice system in Manitoba - often interconnected and complex. Together, they have a significant impact on how effectively and efficiently the system operates.

To create meaningful improvements, Manitoba Justice recognizes we must focus on crime prevention, targeted resources for serious criminal cases, more effective use of restorative justice and responsible reintegration. Restorative justice must be used more effectively to repair harm and ensure offender accountability. We must also support collaboration that results in early interventions and more targeted responses to reduce the likelihood of an individual's future contact with the criminal justice system.

For those cases that are prosecuted in criminal courts, timeliness, effectiveness and consistency are essential to protecting the public and maintaining confidence in the administration of justice.

Criminal justice modernization will be an on-going process that encompasses a variety of initiatives ultimately targeted to improving public safety and enhancing the long-term sustainability of the system in Manitoba.

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## Footnotes

1. Juristat Police-reported crime statistics in Canada, 2016 by Kathryn Keighley Canadian Centre for Justice Statistics (CCJS), Released on July 24, 2017, page 37, Table 2b.
2. Juristat Canadians' perceptions of personal safety and crime, 2014 by Samuel Perrault CCJS, Released on December 12, 2017.
3. Government of Canada, Statistics Canada, Table 251-0005. The table was customized to show Incarceration rates per 100,000 adults for provinces and territories for the period 2006/2007 and 2015/2016.
4. See Appendix E – Adult Custody Population Averages.
5. Government of Canada, Statistics Canada, Statistics Canada, Aboriginal Peoples Highlight Tables, 2016 Census: <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/hltfst/abo-aut/Table.cfm?Lang=Eng&T=103&PR=46&S=88&O=A&RPP=25>.
6. Manitoba Justice Adult Recidivism Indicators : [https://www.gov.mb.ca/justice/manitoba\\_corrections/recidivism.html](https://www.gov.mb.ca/justice/manitoba_corrections/recidivism.html)
7. *ibid.*
8. Winnipeg Drug Treatment Court Program Evaluation for Calendar Year 2015, Michael Weinrath PhD, and Calum Smee, March 2016: [http://www.manitobacourts.mb.ca/site/assets/files/1081/wdte\\_evaluation\\_2015.pdf](http://www.manitobacourts.mb.ca/site/assets/files/1081/wdte_evaluation_2015.pdf). The WDTC measures recidivism as convictions for new predatory or drug crimes within 24 months following graduation.
9. *R. v. Jordan*, 2016 SCC 27.
10. Evaluation of Aboriginal Justice Strategy December 2016 - Department of Justice.
11. *Ibid.*
12. *R. v. Antic*, 2017 SCC 27
13. See Appendix C
14. See Appendix D
15. See Appendix B
16. Manitoba Justice Adult Recidivism Indicators: [https://www.gov.mb.ca/justice/manitoba\\_corrections/recidivism.html](https://www.gov.mb.ca/justice/manitoba_corrections/recidivism.html)

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# APPENDIX A

## List of Stakeholders

This plan is a framework for change. We know that collective efforts are key to achieving lasting positive changes.

Some aspects of the plan have already been put into place. To make these improvements, we relied on existing partnerships with community organizations and other government agencies and had discussions with many stakeholders, including those listed below.

As we advance our plan, we are committed to working collectively across government and with all our partners to modernize the criminal justice system.

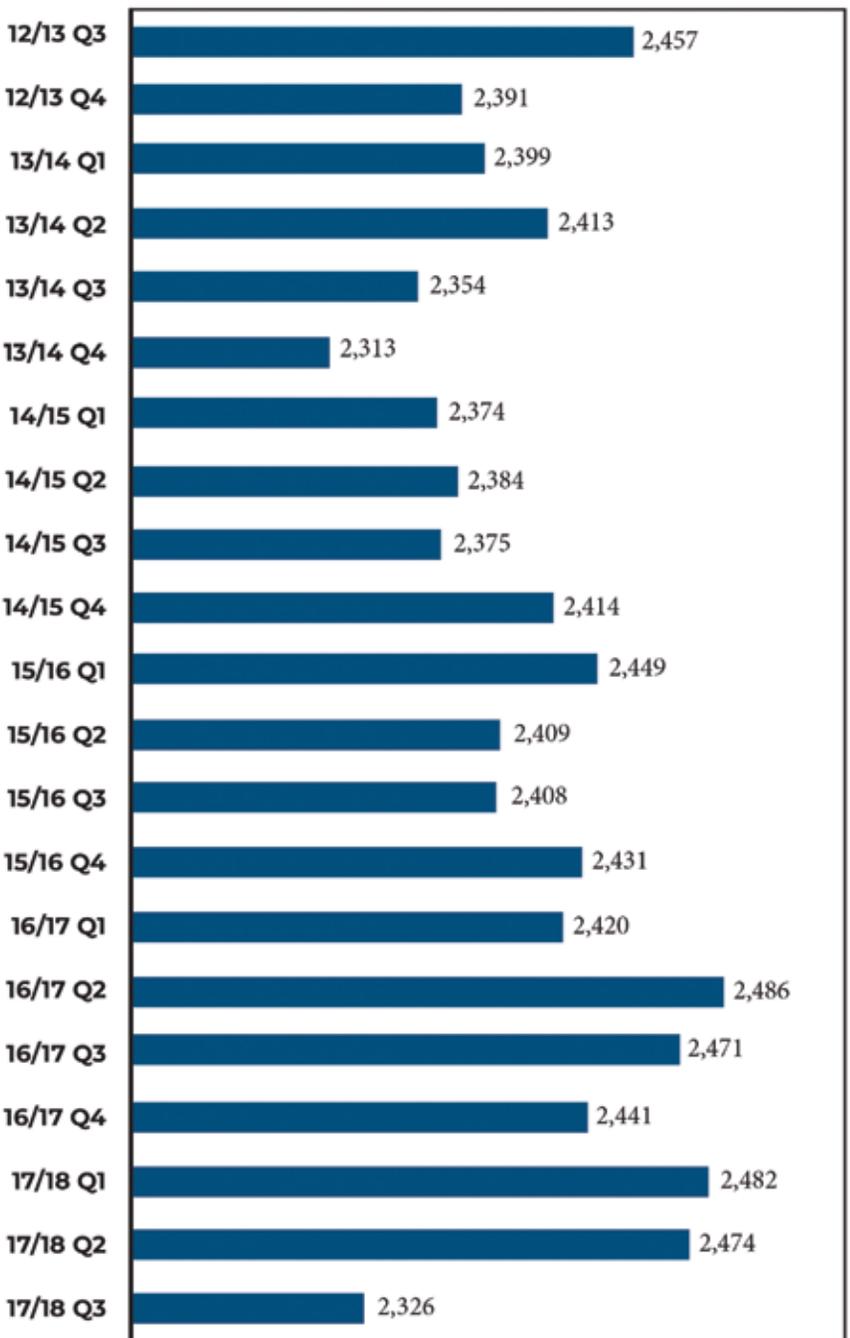
1. Chief Justices and Chief Judge of Manitoba's courts
2. Cross Lake Band of Indians Mino-Menostamatowin
3. Fisher River Cree Nation Ochekwianasowewin Restorative Justice
4. Hollow Water First Nation Community Holistic Circle Healing Program
5. Manitoba Keewatinowi Okimakanak (MKO) First Nations Justice Strategy
6. Manitoba Metis Federation (MMF) Community Justice Program
7. Norway House Cree Nation Restorative Community Justice Strategy Program
8. Onashowewin
9. St. Theresa Point First Nation Justice Program
10. Southern Chiefs Organization (SCO) Restorative Justice Program
11. Mediation Services
12. John Howard Society of Brandon – Westman Mediation
13. Salvation Army
14. John Howard Society of Winnipeg
15. Elizabeth Fry Society
16. Restorative Justice Association of Manitoba
17. Royal Canadian Mounted Police
18. Winnipeg Police Service
19. Brandon Police Service
20. Legal Aid Manitoba
21. Block-by-Block Community Safety and Wellbeing Initiative

# APPENDIX B

## Total Adult Custody Population

The province is responsible for managing adult offenders on remand and for those sentenced to less than two years in custody. This chart captures the average number of adults in provincial correctional facilities in Manitoba each quarter.

## Average Adult Custody Population



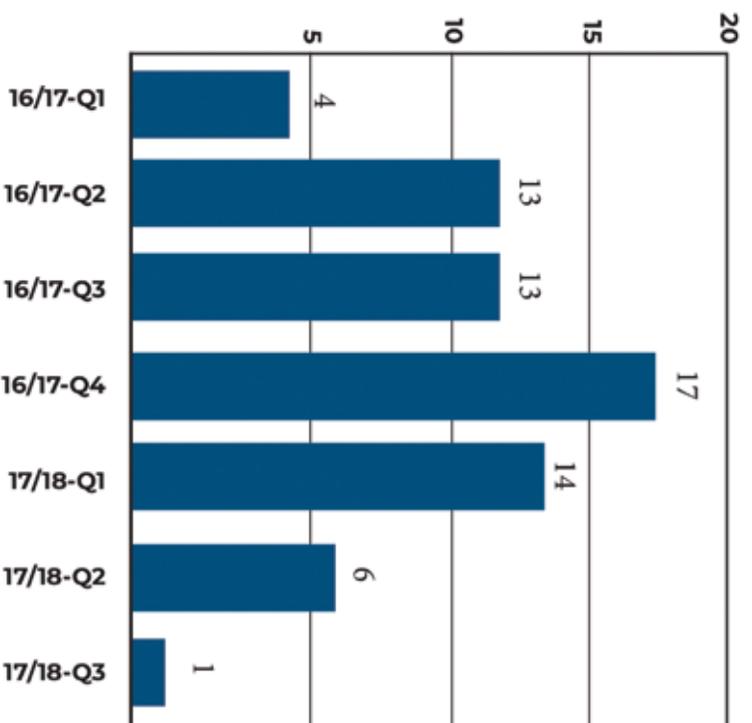
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# APPENDIX C

## Delay Motions

On July 8, 2016, the Supreme Court of Canada released its decision in *R. v. Jordan* which imposed timelines for the completion of criminal matters, absent exceptional circumstances. These timelines are 18 months in Provincial Court and 30 months in the Court of Queen's Bench. Where a defence lawyer believes their client's right to a trial within a reasonable time has been violated, they may file a delay motion which allows a judge to decide whether or not to enter a stay of proceedings. This chart captures the number of delay motions filed during each quarter.

## New Motions/Applications

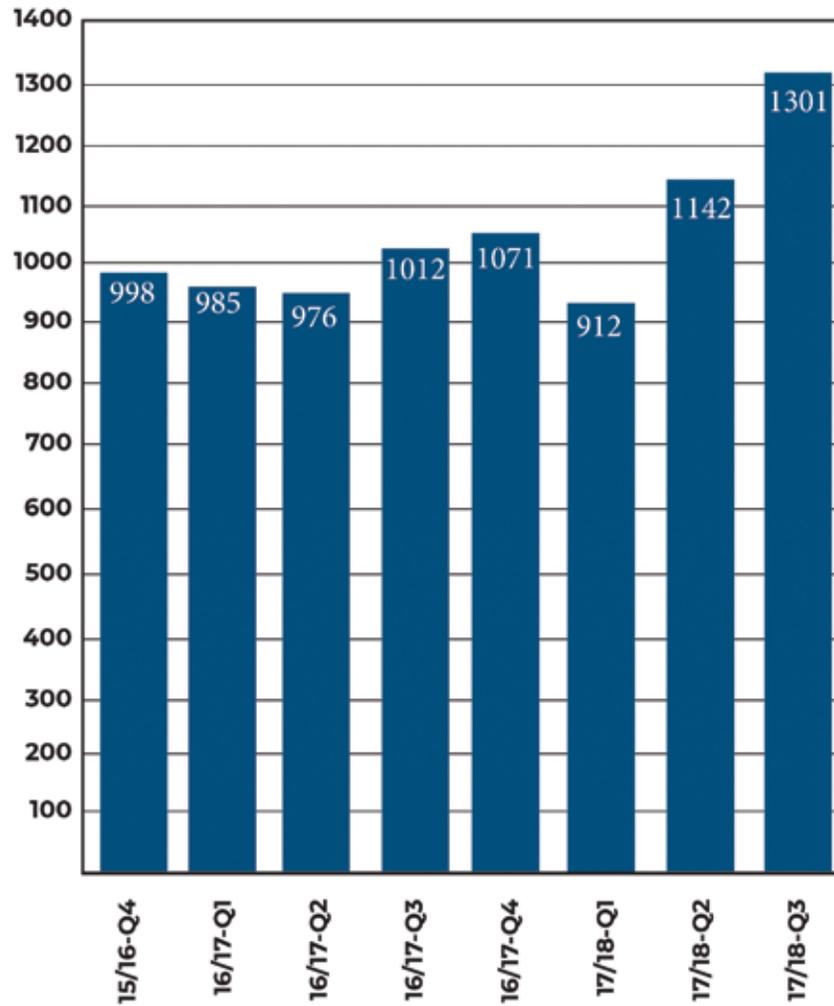


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# APPENDIX D

## Use of Diversion Options by the Manitoba Prosecutions Service

Diversion is an alternative to the formal court process. Diversion includes referrals to counselling and restorative justice programming. This chart captures the number of cases diverted by the Manitoba Prosecutions Service each quarter.



# APPENDIX E

## Adult Custody Population Averages

This chart captures the average adult custody count per fiscal year in Manitoba correctional facilities.

Current as of February 28, 2018

