Drivers of Custody: Project Synopsis

This document is intended to function as a general overview of the Drivers of Custody project. The first eight Parts correlate to the main tables that were prepared for this project. The ninth to eleventh Parts discuss other significant drivers of custody that do not correlate to main tables due to their nature. Each "Driver" has a written portion and an accompanying simplified visual timeline. The written portion does not exemplify the precision of the prepared tables, nor is it intended to act as a guide to understanding the tables, as that information can be found in the footnotes of the main tables. Instead, this synopsis provides an overview of each Driver, draws attention to any particular observations the author made while working with the main tables, and states any hypothetical impact on custody that the Driver had.

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I. Mandatory Minimum Sentences

Since 2000, mandatory minimum sentences were continuously implemented for a large range of offences over the course of sixteen different pieces of legislation. Mandatory minimum sentences have only been struck down by the Supreme Court of Canada twice. A mandatory minimum sentence has never been repealed unless the entire offence itself is repealed. There were four pieces of legislation in particular that likely impacted the custody population:

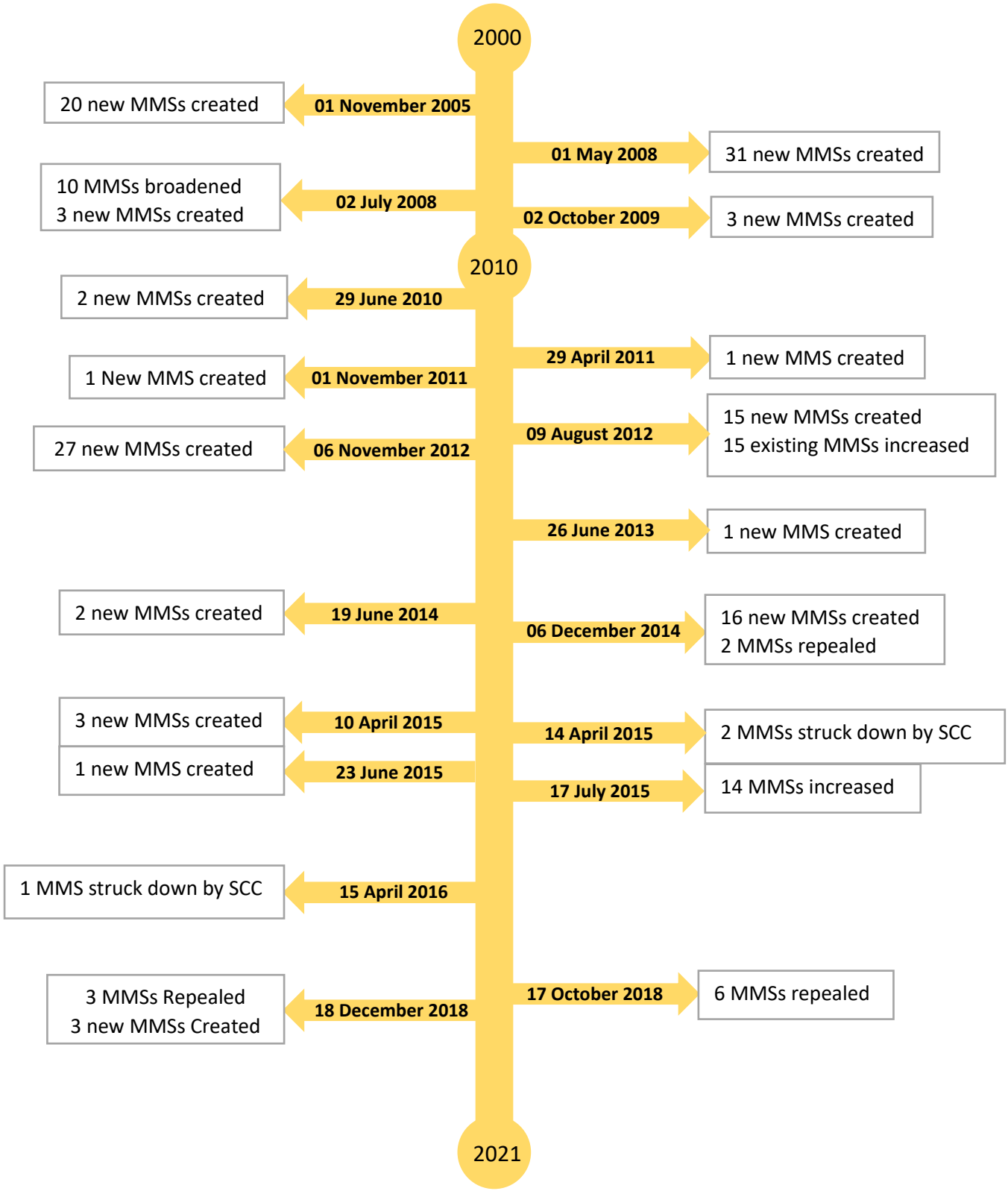
- The first was *An Act to Amend the Criminal Code (protection of children and other vulnerable persons)*[1] (2005), where 20 mandatory minimum sentences were implemented, mostly relating to offences concerning the exploitation of children.
- The second was the *Tackling Violent Crimes Act*[2] (2008), where 34 new mandatory minimum sentences were implemented. The Act additionally altered the age categories pertaining to victims of certain offences. This resulted in more accused being subject to higher mandatory minimum sentences. The *Tackling Violent Crimes Act* primarily targeted offences related to weapons and assault.
- The third was the *Safe Streets and Communities Act*[3] (2012). Between the two dates in which this Act was brought into force, 42 mandatory minimum sentences were implemented with another 15 offences having their mandatory minimum sentence increased from what they were previously set at. The Act targeted offences relating to drugs and increased many mandatory minimums relating to sexual exploitation.
- The fourth was the *Protection of Communities and Exploited Persons Act*[4] (2014), which implemented 16 new mandatory minimum sentences focused on human trafficking and prostitution.

Every mandatory minimum sentence that is implemented has the same hypothetical result on the population in custody. An offence is more likely to increase the custody population if it is subject to a standardized minimum duration of custody. Further, when large waves occur where a number of offences receive mandatory minimum sentences at the same time, it is even more likely that the overall custody population will increase. The four pieces of legislation above represent the four significant “waves” that have occurred since 2000. Hypothetically, these four waves are likely the four times that mandatory minimum sentences increased the prison population most significantly.

A mandatory minimum sentence not only guarantees a standardized amount of time in custody for the specific accused, but also immediately makes an accused ineligible to receive a conditional sentence or to access the mental health courts. Large waves of mandatory minimum sentences are then likely to increase the population in custody not only because they guarantee a person to be in custody for a set duration, but also because they automatically cause an accused to be ineligible for certain systems that are designed to alleviate the custody population.

[1] SC 2005, c 32.
[2] SC 2008, c 6.
[3] SC 2012, c 1.
[4] SC 2014, c 25.

II. Mandatory Minimum Sentences Timeline



III. Remand Credit

The key consideration regarding remand credit is how the rate of credit was being governed in a given time period. Prior to the *Truth in Sentencing Act,*[5] the ratio of time awarded for time in remand was governed by common law. The Supreme Court of Canada's decision in *Wust*[6] was often cited as common law endorsement of a 2:1 credit rate as appropriate. It is significant that this was endorsed as *appropriate,* but there was no explicit limitation to remand credit rate for this time period. In the Courts review of the law of remand credit fourteen years later in *Summers,*[7] the Court recognized that rates of 3:1 and 4:1 were being awarded in this time period, although rarely.[8]

As of the *TISA* coming into force in 2010, a limitation was put in place on the remand credit rate available. The *TISA* set out that the limitation on credit rate was set at 1:1, but the provision did contain an exception for enhanced credit of 1.5:1. Thus, the *legally maximum* credit rate available was actually set at 1.5:1, with the legislative intent arguably being that most accused would receive a credit rate of 1:1.

In terms of how remand credit acted as a driver of custody after the *TISA*, several important observations must be made. First, the *TISA* explicitly indicated that it applied to accused *charged after* the date of coming into force. This specification means that both common law and statutory remand credit guidance were being applied at the same time by sentencing judges depending on the date the accused was charged. Second, there was not yet clear guidance available as to when the 1.5:1 credit rate exception could be invoked, and as such judicial discretion was highly relevant prior to Supreme Court guidance as to whether 1:1 or 1.5:1 credit rate would be applied. In effect, this produced three regimes that were operating for the period of 2010-2014:

- **Option 1:** A sentencing judge processed a case under the common law regime because the person was *charged prior* to 22 February 2010. This would mean that the remand credit awarded would not be subject to any limitation, and the expected credit rate for remand would be 2:1.
- **Option 2:** A sentencing judge processed a case under the *TISA* because the person was *charged after* 22 February 2010, and they adhered to the 1:1 credit rate limitation prescribed by the *TISA.* This would mean that the remand credit awarded was legally limited at 1.5:1, but the expected credit rate for remand would be 1:1.
- **Option 3:** A sentencing judge processed a case under the *TISA* because the person was *charged after* 22 February 2010, and they proactively awarded remand credit to the legally allowed maximum of 1.5:1, meaning the expected credit rate for remand would be 1.5:1.

The result of this overlap is that one must be cautious when hypothesizing how remand credit rate affected custody populations from 2010-2014, as it would depend on what portion of cases were being processed through any one regime. The common law approach under Option 1 would have endured until Saskatchewan was exhausted of persons *charged before* 22 February 2010. The remaining cases of persons *charged after* 22 February 2010 would be filtered through Option 2 and Option 3 depending on the discretion of a given sentencing judge until *Summers* confirmed the correct approach was Option 3. It is impossible to know which Option was the dominant regime for the time period of 2010-2014 without a

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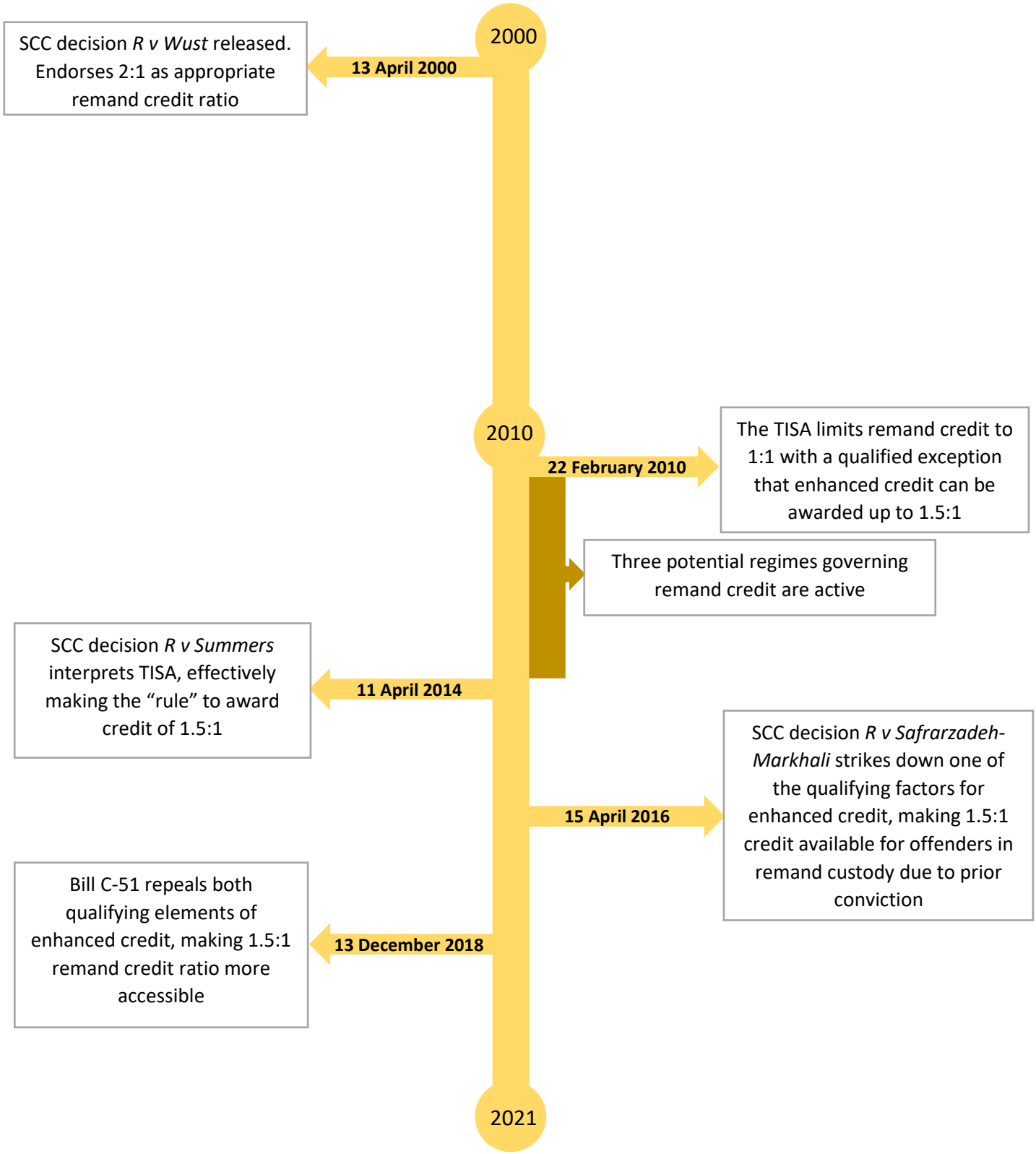
[5] SC 2009, c 29 [*TISA*].
[6] *R v Wust,* 2000 SCC 18, [2000] 1 SCR 455 [*Wust*].
[7] *R v Summers,* 2014 SCC 26, [2014] 1 SCR 575 [*Summers*].
[8] *Ibid* at para 31.

case by case analysis. The more dominant Option 2 was, the more impactful of a Driver remand credit would have been during this time.

In *Summers,* the Supreme Court of Canada confirmed that the 1.5:1 was available as a general rule, as circumstances common to almost every instance of remand would be enough to trigger enhanced credit. Note that this interpretation did not override the legislative limitations on enhanced credit for those detained in custody relating to s.515(9.1), s.524(4) or s.524(8) of the *Criminal Code*. However, these limitations would be, in part, struck down by the Court in 2016, and then repealed in full in 2018 which would allow all accused equal access to enhanced credit rate of 1.5:1.

The hypothesized result is that the acting credit rate limitation unequivocally correlates to the length of time a single accused is in custody, and by extension the custody population generally. The lower the credit rate limit, the higher the rate of custody, as more time would need to be served per person for a sentence. Unlike the other categories of the project, the governing remand credit rate effects every single accused who served time in remand and as such should be considered a particularily impactful driver of custody.

IV. Remand Credit Timeline



V. Reverse Onus of Bail under s.515(6) of the *Criminal Code*

The legal principle of reverse onus of bail has not experienced a complex legislative history over the past 20 years. The regime has not undergone any change in form. Instead, legislative changes have only had the effect of widening the scope of the number of offences that will be subject to reverse onus of bail. Since 2000, any amendments to s.515(6) of the *Criminal Code*[9] have only increased the number of offences subject to reverse onus of bail, with no legislation or case law limiting or challenging the reach of the reverse onus.

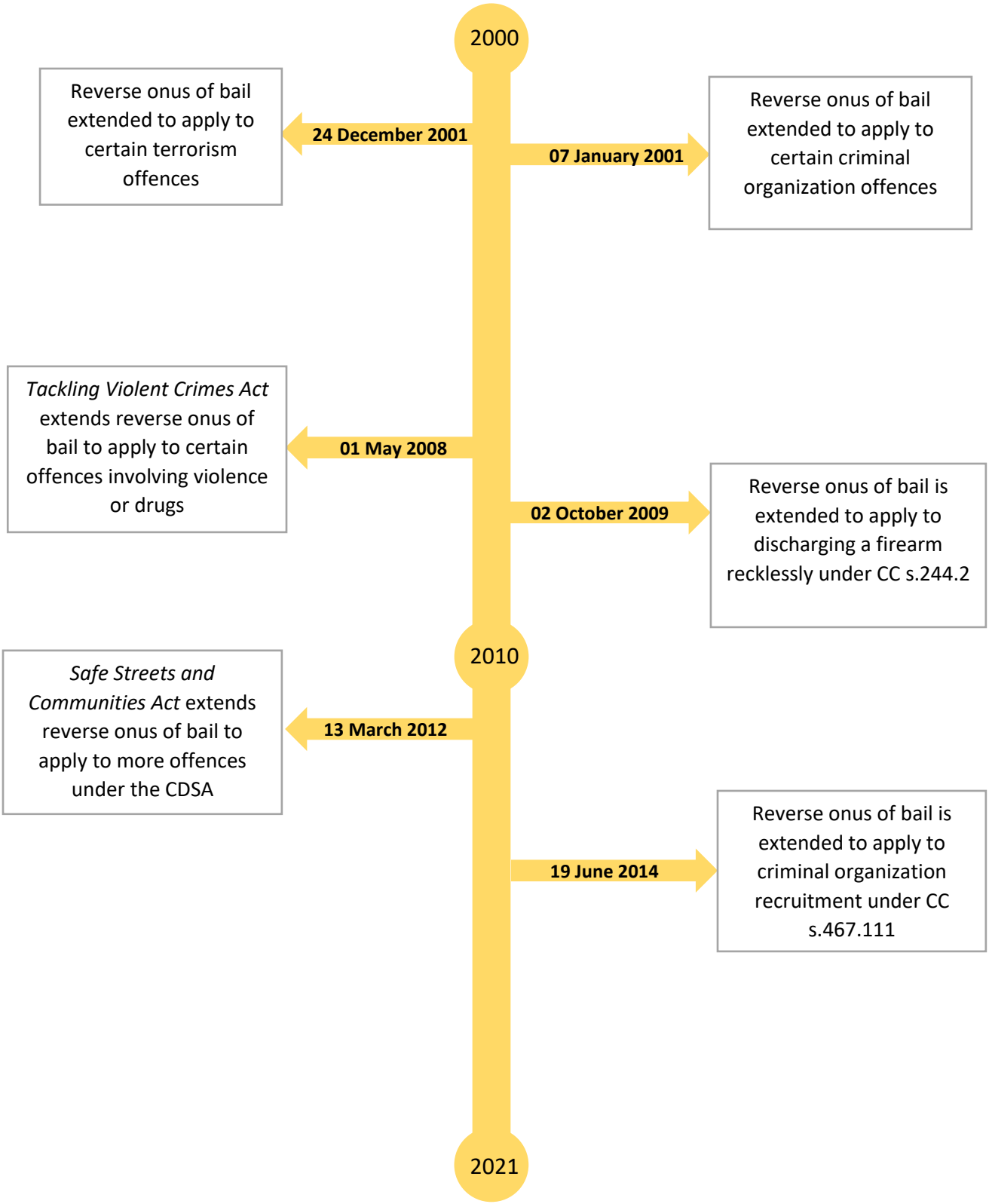
There are two amendment bubbles of significance. One occurring in 2001 and the other occurring in 2008. In 2001, the amendments targeted terrorism and criminal organization offences. It is more likely that the amendments targeting criminal organizations would have an impact as a driver of custody, due to the relative prevalence of that crime over terrorism in Saskatchewan. The second bubble targeted a variety of offences, and was brought into force under the *Tackling Violent Crimes Act* (2008).

The hypothesized effect of an accused being subject to a reverse onus of bail is distinct from the other drivers of custody. Unlike the other drivers of custody explored in this project, which primarily impact the duration a person is in custody after sentencing, the reverse onus of bail instead acts as one additional parameter of a bail hearing which may make custody more likely to occur in the first place. It acts as an additional roadblock, potentially functioning to make it more likely that a person accused of an offence will be placed in custody during their wait for trial. It must also be recognized that a person may be subject to reverse onus and not be detained awaiting trial. Being subject to reverse onus only has the consequence of placing more burden on the accused at the bail stage, and does not necessarily result in more custody.

As this may increase the amount of time an accused spends in remand, it is important to note that the extent the reverse onus affects the population in custody is closely tied to the dominant regime of remand credit. For example, during the time period of 2000-2010 where the remand credit was not subject to a limitation, the reverse onus of bail was likely to have a comparatively softer impact on the overall custody population. Even if the reverse onus could be said to have played a neccesary role in the accused being detained while awaiting trial, that accused was still getting 2:1 credit for their time in remand. Once a remand credit limit was legislated, the reverse onus might still play this necessary role, but now the accused is only getting 1.5:1 credit for their time in remand. In other words, if you can say that the reverse onus did play an neccesary role in the person being detained in remand, such an accused is not only impacting the overall custody population by being detained for this time, but will also *serve more time under their sentence* if the remand credit rate is low, making the reverse onus a more significant driver of custody when remand credit rates are lower.

[9] RSC 1985, c. C-46.

VI. Reverse Onus of Bail Timeline



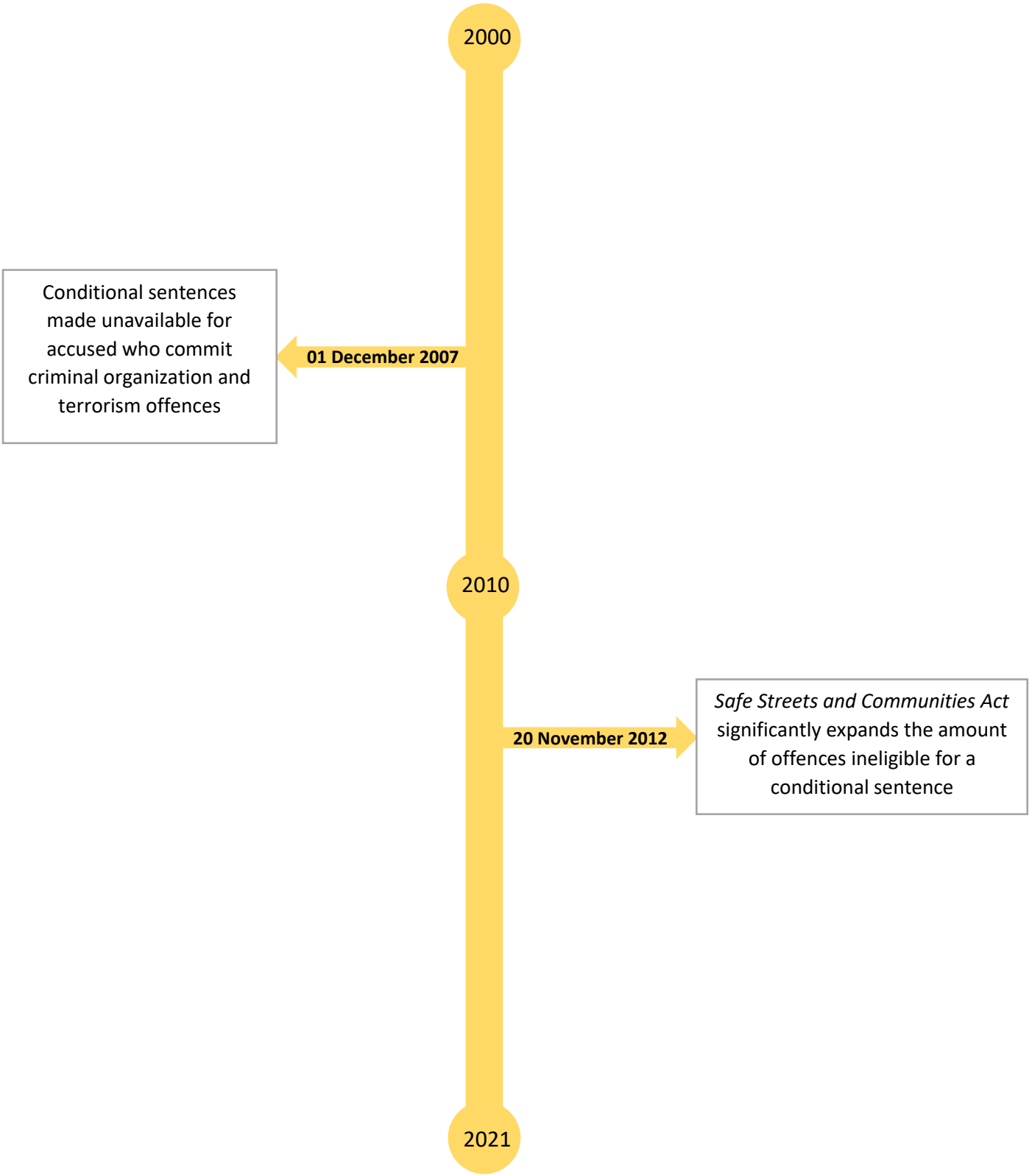
VII. Conditional Sentencing Option

Conditional sentencing has been subject to a relatively straightforward legislative development, with each new amendment narrowing the number of offences that would qualify for conditional sentences. It is significant that for the entire duration of the 20 year period, an offence which carried a mandatory minimum sentence was automatically ineligible to be served as a conditional sentence. In the context of the steady implementation of mandatory minimum sentences, by present there are hundreds of offences which are ineligible for a conditional sentence by way of being subject to a mandatory minimum sentence.

The largest influx of ineligibility is sourced to *The Safe Streets and Communities Act* (2012). Once the full extent of ineligibility caused by the amendments of the conditional sentencing provisions are considered, over 100 offences become potentially ineligible for a conditional sentence. The Act caused even more ineligibility if you consider the 42 mandatory minimum sentences the Act also implemented.

The hypothesized impact of the development of the conditional sentencing provisions is clear: the increasing restriction on eligibility directly correlates to an increase in accused who will be required to serve their sentence in custody. The impact that ineligibility has as a driver of custody has likely increased significantly since 2000. In 2000, ineligibility would be predominantly an exercise of judicial discretion, and only a comparatively small pool of mandatory minimum sentences existed that would bar accused from receiving a conditional sentencing order. At present, the ineligibility restrictions rule out conditional sentences for over a hundred offences, and over a hundred more become ineligible when considering the full extent of mandatory minimum sentences present today.

VIII: Conditional Sentencing Option Timeline



IX: Alternative Courts

It is anticipated that the availability of non-traditional sentencing options will alleviate the custody population. In this way, the Mental Health Court and the Drug Treatment Court likely function to reduce the population in custody. In other words, these Courts are “draggers” of custody rather than drivers.

Starting in 2013 (in Saskatoon and Regina), the Mental Health Courts are intended to provide a more effective way of managing accused who commit crimes due to an issue related to mental health, such as cognitive disability, FASD, or psychiatric disorder. The Mental Health Courts are, by design, an individualized approach. It is important to note that accused who face a mandatory minimum sentence are ineligible to access the Mental Health Court. As seen with how they interact with conditional sentencing, mandatory minimum sentences become a more significant driver of custody when you take into account the ineligibility they cause.

The Drug Treatment Court opened in 2006 in Regina and 2009 in Moose Jaw. The Drug Treatment Courts operate as programs that the accused works through, and when the accused ends the program they are given their sentence. According to the Regina Drug Treatment Court Applicant Handbook, graduating the program successfully “will result in no jail time but could be followed by probation or CSO.” While this has clear implication on how the specific accused will affect the custody population, it also must be recognized that these programs are relatively small (Regina can support 30 accused and Moose Jaw can support 6), and for that reason might not be seen to have a significant impact on the custody population overall.

X: Systemic Discrimination

One of the largest drivers of custody in Saskatchewan may be the enduring systematic discrimination that exists within the criminal justice system. In Canada, the over-incarceration of Indigenous people is a well-recognized crisis. Despite a general decrease in Canadian incarceration rates, Saskatchewan was one of only two provinces to have their overall custody admission rate increase between 2018 and 2019.[10] In 2019, Indigenous people represented 75% of the admitted prison population in Saskatchewan.[11] This is an increase compared to the 2018 figure, where Indigenous people represented 74% of the population admitted to custody.[12]

While the custody admission rate of Indigenous offenders is a common metric for assessing systemic discrimination, this figure alone does not represent the totality of the issue. Recent research conducted by James Scott, a Saskatchewan criminal defence lawyer, brought into focus an additional dimension of this ongoing crisis that is highly significant to this project. Scott examined every written criminal sentencing decision in Saskatchewan from 1996 to 2014 that was available in CanLii. The primary focus was on the *length* of the sentences imposed on Indigenous offenders versus non-Indigenous offenders. Alarmingly, the conclusion was that Indigenous offenders were sentenced to an average of over twice as much time in custody per person in this time period:[13]

> There were 214 Aboriginal people who received written sentencing decisions in CanLII since 1996 and they were sentenced to an average of 87.4 months custody per person. There were 270 [non-Aboriginal] people who received written sentencing decisions in CanLII during that same time period and they were sentenced to 39.3 months custody per person on average.

Indigenous people serving over twice as many months on average for their sentences, in combination with increasing over-incarceration of Indigenous people, poises itself to be an immensely impactful driver of custody in Saskatchewan. As an illustrative example, consider the total months of custody that would need to be served for 100 people in 2019, assuming every offender received the average sentence length indicated by Scott above (all indigenous offenders sentenced to 87.4 months and all non-indigenous people sentenced to 39.3 months). Using the Saskatchewan percentage of Indigenous people admitted to custody, this results in 7537.5 months of custody that would need to be served between the 100 people admitted.[14]

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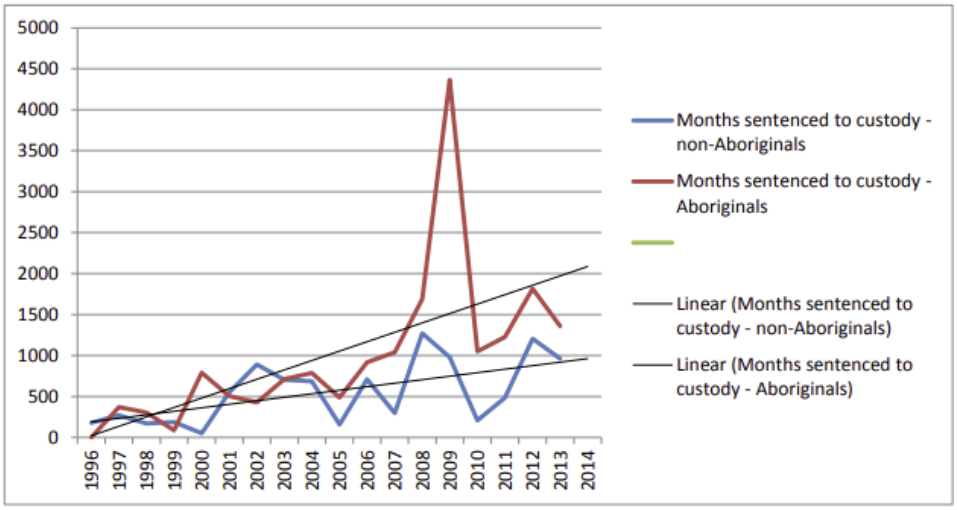
[10] Statistics Canada, Adult and youth correctional statistics in Canada, 2018/2019, by Jamil Malakieh, Catalogue No 85-022-X (Ottawa: Statistics Canada, 21 December 2020). ["Custody Statistics 2019"]
[11] *Ibid*.
[12] Statistics Canada, Adult and youth correctional statistics in Canada, 2017/2018, by Jamil Malakieh, Catalogue No 85-022-X (Ottawa: Statistics Canada, 9 May 2019).
[13] Scott James, "Reforming Saskatchewan's Biased Sentencing Regime" (2017) 65:1/2 Criminal Law Quarterly 91 ["Scott 2017"].
[14] Indigenous people make up 75% of the population admitted to custody in 2019, meaning 75 of the 100 people admitted in this example would be Indigenous. Assuming every offender receives the average sentence:
(75 people each serving 87.4 months) + (25 people each serving 39.3 months) = 7537.5 months in custody to be served.

If we instead substitute the Canadian percentage of Indigenous people admitted to custody in 2019 (31%), then 5421.1 months of custody would need to be served.[15] That means that, Indigenous people were still sentenced at over twice the length of non-Indigenous people on average, 176 years less custody would be served between those 100 people admitted if we incarcerated Indigenous people at the Canadian rate.

As another example, if instead we maintain the Saskatchewan over-incarceration of Indigenous people, but sentence all 100 people at the lower non-Indigenous average sentence length, then 3930 months of custody would need to be served.[16] That means that 300 years less custody would be served between those 100 people admitted if all offenders received the average non-indigenous sentence length.

With this, it is easy to see how these two findings working together can quickly create a profound impact on the custody population. If Indigenous people are receiving sentences twice as long on average, then it is anticipated that over-incarceration of Indigenous people has a severe impact as a driver of custody. OF course, these examples must be taken with caution, as it is important to recognize that this study was limited to criminal sentencing decisions accessible through CanLii, representing a small percentage of all criminal sentencing decisions that occur in Saskatchewan.

It is not possible to know whether the disparity has continued to increase without a similar case-by-case analysis being conducted for 2014-present. However, when considering the months per year that Indigenous and non-Indigenous offenders were sentenced to, Scott was able to show that the disparity was on an increasing trend:[17]



[15] The Canadian percentage of Indigenous people admitted to custody was 31% in 2019, meaning 31 of the 100 people admitted in this example would be indigenous. Assuming every offender receives the average sentence: (31 people each serving 87.4 months) + (69 people each serving 39.3 months) = 5421.1 months in custody to be served.

[16] Indigenous people make up 75% of the population admitted to custody in 2019, meaning 75 of the 100 people admitted in this example would be Indigenous. Assume all offenders receive the non-Aboriginal average sentence: (100 people each serving 39.3 months) = 3930 months in custody to be served.

[17] Scott 2017, *supra* note 13 at 3. Note also the alarming disparity that occurred in 2008-2009. This correlates to the *Tackling Violent Crime Act*, which saw 34 new mandatory minimum sentences introduced targeting offences relating to weapons and assault, as well as the reverse onus under s.515(6) extend.

In this study, the sentence length disparity for specific offence categories was also calculated. The results are significant to this project, with the assault categories being specifically disproportionate:[18]

Offence	Aboriginal Sentence Average	Non-Aboriginal Sentence Average
Aggravated assault	142.4 months per person	42 months per person
Assault with a weapon	122.8 months per person	12 months per person
Assault causing bodily harm	34.3 months per person	2.5 months per person
Assault PO	12.2 months per person	0 months per person
Common assault	19 months per person	3.6 months per person

Depending on the frequency that these specific offences are committed by Indigenous people, the exceedingly high disparity of average months sentenced per person for these specific offences would likely make them a particularly impactful drivers of custody. Beyond amalgamating an extremely informative set of empirical data, Scott also goes on to conclude that it is the "bias in Saskatchewan's criminal justice system" that has contributed to Aboriginal over-incarceration.[19] If one agrees with this submission, then one must give deference to all ways that racial bias is introduced or maintained. In the face of the significant empirical data, each introduction of racial bias has the potential to impact the justice system as a driver of custody.

In line with this, it is important to recognize that these statistics are not derived from a static regime, but rather are derived from an ever-evolving legal framework. With that, advancements and resistances from the case law over the time period of the project will have an impact on the extent that systemic discrimination operates as a driver of custody. The Supreme Court of Canada has several such decisions.

Pre-dating the scope of this project slightly, but well worth noting, the cornerstone case *R v Gladue*[20] acted as Supreme Court guidance on s. 718.2(e) of the *Criminal Code* and interpreted how special considerations should be given to Indigenous offenders. *Gladue* confirmed that s.718.2(e) was more than a mere restatement of the current law, but instead was a codified effort to reduce over-incarceration of Indigenous people.[21] The decision set out and explained the two-part framework which is instrumental for sentencing judges when an Indigenous accused is before them.[22]

Supreme Court guidance came again in 2012 in the decision of *R v Ipeelee.*[23] In *Ipeelee,* the Supreme Court did great work in clarifying the *Gladue* framework,[24] recognized that over-incarceration of Indigenous peoples had worsened,[25] and emphasized the active role of the sentencing judge in tackling Indigenous over-incarceration.[26]

Turning to the province, the climate of Saskatchewan jurisprudence regarding *Gladue* principles has not been uniform. Ample literature exists to substantiate a fully informed inquiry into the Saskatchewan

[18] *Ibid* at 4.
[19] *Ibid* at 14.
[20] [1999] 1 SCR 688, 171 DLR (4th) 385 [*Gladue*].
[21] *Ibid* at para 40.
[22] *Ibid* at para 66.
[23] *R v Ipeelee,* 2012 SCC 13, [2012] 1 SCR 433.
[24] *Ibid* at para 60.
[25] *Ibid* at para 62.
[26] *Ibid* at para 66.

jurisprudence. To name a few, the study by James Scott referred to above, *Reforming Saskatchewan's Biased Sentencing Regime*, includes a thorough discussion of Saskatchewan decisions that were not applying *Gladue* principles.[27] The Indigenous Law Centre's recent final report of the Gladue Awareness Project[28] includes the relevant jurisprudence on the evolution of *Gladue* principles in Saskatchewan. Similarly, Hilary Peterson's recent Thesis considers Saskatchewan cases dealing with *Gladue* principles, including decisions where sentencing judges suffered from a lack of adequate *Gladue* materials.[29]

Identifying systemic discrimination requires us to look beyond case law. The reality is that this driver of custody is not limited to the sentencing judge, and can be generated from any one person involved with an Indigenous person's journey through the criminal sentencing process. As an example, consider the potential impact of any resistance to *Gladue* principles on the part of Crown Prosecution. When one compares the direction provided to Crown Prosecution for Saskatchewan[30] and Ontario[31] regarding *Gladue* principles, differences in orientation surface. The Ontario Guide begins: "There is widespread bias against Indigenous peoples within Canada and there is evidence that this widespread racism has translated into systematic discrimination in the criminal justice system."[32] In stark contrast, the concept of "bias" is not mentioned a single time in the Saskatchewan Guide.

A difference appears again on the topic of *Gladue* Reports. Where the Ontario Guide indicates *Gladue* Reports are preferable,[33] where the Saskatchewan Guide directs that: "Prosecutors should take the position that Courts should presume the [pre-sentence report] is adequate unless and until the [pre-sentence report] is seen to be otherwise."[34] It is important to note that around the same time in Saskatchewan, the final report of the *Gladue Awareness Project* was published and would include a section specifically outlining the significant differences between *Gladue* reports and pre-sentence reports.[35]

This example does not purport to show that the Saskatchewan Guide is overtly racist. However, one must recognize that the attitude of resistance will influence Prosecutors and be a potentially impactful driver of custody. The point being that any role that affects the journey of an Indigenous offender has the potential to introduce racial bias. The jurisprudence and prevailing attitude of the Crown are only two examples.

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[27] Scott 2017, *supra* note 13 at 9-14.

[28] Benjamin Ralston, "Gladue Awareness Project: Final Report" (2020) Indigenous Law Centre, online (pdf): <https://indigenouslaw.usask.ca/publications/gladue-awareness-project.php> ["Gladue Awareness Project"]; The author has also recently published an informative book on the *Gladue* Principles: Benjamin Ralston, *The Gladue Principles: A Guide to the Jurisprudence*, (Saskatoon: Indigenous Law Centre, 2021).

[29] Hilary Peterson, *Applying Gladue Principles Requires Meaningful Incorporation of Indigenous Laws and Perspectives, Including Consideration of Community-Based Alternatives to* Incarceration (Master of Laws, University of Saskatchewan, 2019), online (pdf): <https://harvest.usask.ca/handle/10388/11978>

[30] "Practice Memorandum: Gladue Principles", online: *Saskatchewan* <https://publications.saskatchewan.ca/#/products/103743> ["Saskatchewan Guide"]

[31] "Crown Prosecution Manual" (February 13, 2019) at 61-65, online (pdf): *Ontario* <https://files.ontario.ca/books/mag-crown-prosecution-manual-en-2020-08-14.pdf> ["Ontario Guide"]

[32] *Ibid* at 61.

[33] *Ibid* at 64.

[34] Saskatchewan Guide, *supra* note 31 at 7.

[35] Gladue Awareness Project, *supra* note 28 at 65-70.

The most recent Canadian Statistics show that Saskatchewan was subject to both an increase in custody population and an increase in the percentage of that population that was Indigenous. When that is considered in the context of the average sentence length disparity between Indigenous and non-Indigenous people, this quickly becomes not only an issue of systemic racism, but an issue with very real effects on the overall custody population. The sources, mitigators, and consequences of systemic racism are deeply nuanced. Further investigation into materials such as the *Gladue Awareness Project* is necessary to be adequately informed. The objective of this Part is to explore systemic racism as an impactful driver of custody. Given the empirical data reviewed, it is the author's anticipation that racial discrimination has acted as a leading driver of custody from the period of 2000-2021.

XI: Follow-Up Inquiry: 2013-2014 Female Custody Rapid Increase

In terms of legislation, the most likely contributor to the rapid growth of female custody would be the *Safe Streets and Communities Act,* which came into force in 2012. The legislation tracked by this project that came into force in 2013 and 2014 affected comparatively marginal offences and are unlikely to have contributed to the rapid custody increase for female offenders.

The *Safe Streets and Communities Act* affected the overall custody population in two significant ways. First, the Act introduced 42 new mandatory minimum sentences and additionally increased the length of 15 previously existing mandatory minimum sentences. The second was the wide reaching restriction on eligibility for receiving a conditional sentence.

It is possible that specific offences that were hit hard by the *Safe Streets and Communities Act* were being disproportionately committed by female offenders. If this was the case, the *Safe Streets and Communities Act* may have been impactful in the 2013-2014 raid increase in female custody. In terms of mandatory minimum sentences, the *Safe Streets and Communities Act* targeted primarily sexual offences and drug offences relating to production and trafficking. The Act was more general in the restriction of conditional sentencing eligibility, and reached a large variety of types of offences.

According to a Statistics Canada report on female accused in 2017,[36] the top three offences committed by female offenders at that time were common assault,[37] shoplifting,[38] and committing an administration of justice offence.[39] Neither common assault or shoplifting were affected by the *Safe Streets and Communities Act.* However, administration of justice offences were. The Act amended the *Corrections and Conditional Release Act*[40] to include that peace officers could arrest, without warrant, offenders who had committed a breach of a condition of their parole or statutory release.[41] Breach of condition being an administration of justice offence, and administration of justice offences being the leading 2017 offence committed by women by a healthy margin, it is possible that the amendment allowing peace officers to arrest those who breach their conditions without warrant had a significant impact on the female custody population. Of course, the Female Offender Statistics 2017 only offer approximate insight, and they are by no means necessarily representative of which crimes were committed most in 2013-2014.

The *Safe Streets and Communities Act* represents the most impactful driver of custody in that time period. If female offenders in 2014 were seen to disproportionately commit the offences affected by this legislation, it may have contributed to the rapid increase in custody.

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[36] Statistics Canada, Female offenders in Canada, 2017, by Laura Savage, Catalogue No 85-002-X (Ottawa: Statistics Canada, 10 January 2019). ["Female Offender Statistics 2017"]
[37] *Ibid* at table 2: Offence was committed 30,746 times in Canada in 2017.
[38] *Ibid* at table 2: Offence was committed 30,375 times in Canada in 2017.
[39] *Ibid* at table 2: Offence was committed 50,465 times in Canada in 2017.
[40] SC 1992, c 20.
[41] *Ibid* s.137.1.