

# Processes to Manage Bail Hearings and Case Management of Adult Criminal Prosecutions

Justice

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Report of the Auditor General  
December 2023

**Assessment of  
Implementation Report**

**Auditor  
General**  
OF ALBERTA

The logo for the Auditor General of Alberta, featuring a stylized orange and yellow graphic element resembling a corner or a bracket.

# About our Assessment of Implementation Report

Management is responsible for implementing our recommendations. We examine implementation plans and perform procedures to determine whether management has implemented our recommendations when management has asserted they have been implemented. We repeat our recommendations if we do not find evidence they have been implemented. We may also issue new recommendations for matters that come to our attention during our assessment.

Our assessments of implementation are conducted under the authority of the *Auditor General Act*. The Office of the Auditor General applies Canadian Standard on Quality Management 1. Accordingly, we have maintained a comprehensive system of quality control, including documented policies and procedures regarding compliance with applicable professional standards and applicable ethical, legal, and regulatory requirements.

Our office complies with the independence and other ethical requirements of the Chartered Professional Accountants of Alberta Rules of Professional Conduct, which are founded on fundamental principles of integrity and due care, objectivity, professional competence, confidentiality, and professional behaviour.

# Assessment of Implementation Report

## Processes to Manage Bail Hearings and Case Management of Adult Criminal Prosecutions

### *Justice*

(June 2021)

#### Summary of Recommendations

**IMPLEMENTED** Recommendation:

Resume its bail results analysis and evaluate and report on the effectiveness of implemented solutions

**IMPLEMENTED** Recommendation:

Continue cause analysis of cases stayed due to *Jordan* applications

**IMPLEMENTED** Recommendation:

Comply with Triage Practice Protocol tracking and reporting requirements

### Introduction

Albertans should be confident the Department of Justice (the department) has processes in place to effectively administer the justice system—for the accused, for victims and for the public.

When serious criminal charges are at risk of being dismissed by the courts due to bail hearings exceeding statutory time requirements, or trials not completed within *Jordan* time limits, there is a risk this confidence is eroded and justice is not seen to be done. Albertans need assurance the department is identifying and addressing the root causes for these delays.

In 2020, we audited whether the department had processes and procedures to ensure the effective management of:

- bail hearings, focusing on Alberta Crown Prosecution Service (ACPS) processes to ensure an accused is taken before a justice for a bail hearing within 24 hours of being arrested

- adult criminal prosecutions, focusing on ACPS case management processes to ensure actions attributable to the Crown do not contribute to trials exceeding *Jordan* time limits
- adult criminal prosecutions, focusing on ACPS application of the Triage Practice Protocol and adherence to its tracking and reporting requirements

We found that the department had stopped its detailed results analysis for the bail hearing process, had only completed one historical cause analysis for cases stayed because of *Jordan* applications and there were errors and omissions in many of the Triage Practice Protocol (the protocol) submissions.

In our 2020 audit, we made three recommendations to the department:<sup>31</sup>

- resume its detailed results analysis of the various steps in the bail hearing process and evaluate and report on the effectiveness of solutions it implements to improve identified problems in the bail hearing process
- continue its cause analysis of cases, which have been judicially stayed or pre-emptively stayed by ACPS because of *Jordan* applications to identify contributing shortcomings in practices, or behaviour it can control and correct
- ensure the tracking and reporting requirements of the Triage Practice Protocol are followed by all ACPS offices

In our assessment of implementation, we found the department has implemented all three recommendations.

## Recommendation: Resume its bail results analysis and evaluate and report on the effectiveness of implemented solutions

### IMPLEMENTED

#### Context

The *Criminal Code of Canada* requires that a person arrested, but not released from custody by police, must be brought before an available justice within 24 hours of their arrest. Failure to meet this requirement can be considered a *Charter of Rights* breach and could negatively impact any future prosecution against them.

In 2019, 11 per cent of all first-appearance bail hearings exceeded this statutory 24-hour limit, from a high of 18.2 per cent in April to a low of 4.6 per cent in December.

In our 2020 audit, we found ACPS had not performed, or reported, results analysis against target processing times for the various steps of the bail hearing process, or on files that go over 24 hours, since May 2019. We also found there was no documented evidence to show ACPS had evaluated the effectiveness of the process or operational changes it had made to correct identified deficiencies in the bail hearing process.

<sup>31</sup> *Report of the Auditor General—June 2021*, page 8.

## Our current findings

The department implemented our recommendation to resume its bail results analysis and evaluate and report on the effectiveness of implemented solutions.

ACPS performs monthly bail results analyses which includes target processing times for the various steps in the bail hearing process. For calendar year 2022, hearings that exceeded 24 hours after an arrest dropped to approximately one per cent—down from 11 per cent in 2019.

To monitor and evaluate the effectiveness of the process, key stakeholders meet regularly to review the bail analyses, identify trends, and develop opportunities for improvement.

### Recommendation:

## **Continue cause analysis of cases stayed due to *Jordan* applications**

### **IMPLEMENTED**

### Context

The 2016 Supreme Court's *Jordan* ruling imposed new maximum time limits for trials to be concluded from when charges are laid—18 months in provincial court and 30 months for Court of King's Bench. If trials exceed these time limits, and delay is attributed to the Crown, the defence could submit a *Jordan* application to the judge to find the accused's *Charter* rights were breached and stay all charges. *Jordan* numbers are publicly reported every six months on March 31 and September 30.

In our original audit, we found ACPS did one historical cause analysis in 2019 of cases that were stayed because of *Jordan* applications. It concluded only the police needed to improve their practices. However, we noted judicial comments in Alberta-based *Jordan* stay decisions made after this analysis showed various shortcomings in Crown practices. During our initial audit, we found no evidence that ACPS had completed or scheduled further similar case cause analyses.

## Our current findings

The department implemented our recommendation to continue cause analysis of cases stayed due to *Jordan* applications.

Since our 2020 audit, the department has completed two cause analyses, one for cases between October 25, 2016 and September 30, 2021, and the other for cases between October 1, 2021 and September 30, 2022.

The analyses provide a detailed evaluation of the reasons for the pre-emptive and judicial stays, a summary of the issues and possible solutions for the delays.

The latest Alberta *Jordan* Analysis indicates “the average number of criminal files entering the provincial court in Alberta over the last six years was approximately 100,000 files per year. With 408 *Jordan* applications brought over six years, during that time, less than one percent of files entering the system have been impacted by *Jordan* applications and less than 0.02 per cent have resulted in a successful application or proactive stay by the Crown.” The one factor that caused or contributed to the largest number of stays was unavailability of court and Crown resources.

The department has implemented and evaluated solutions identified in the cause analyses. Management informed us they plan to continue with annual cause analysis reporting.

Recommendation:  
**Comply with Triage Practice Protocol tracking  
and reporting requirements**  
**IMPLEMENTED**

## Context

One response by ACPS to the *Jordan* decision and resource constraints was bringing in a Triage Practice Protocol. Effective February 27, 2017, the protocol requires all otherwise viable criminal cases not prosecuted (triaged) to be tracked and reported internally to the assistant deputy minister responsible for ACPS. The objective of the protocol is to provide a standardized method for prosecutors to prioritize their cases; focus efforts on serious and violent crime; and prevent significant cases from being dismissed or stayed because of *Jordan* rulings.

In our 2020 audit, we found errors and omissions in many of these required monthly submissions between mid-2017 and mid-2019.

## Our current findings

The department implemented our recommendation to comply with Triage Practice Protocol tracking and reporting requirements.

We examined the protocol monthly summaries submitted by the Edmonton and Calgary ACPS offices between January 2022 and December 2022 and compared these against the combined report submitted to senior management. We found the department is tracking and reporting as per the reporting requirements set out in the protocol.