



Community Confidence in Justice: Advocacy Paper

May 2022

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Executive Summary

We are not alone: after a 2020 pandemic-driven decline in property related offending, communities across British Columbia are once again experiencing increased property crime. Frustratingly, a disproportionate amount is committed by offenders who persistently re-offend; seemingly unabated by a “catch and release” justice system.

In support of City Council’s community safety priority, this paper builds on the [City’s Complex Needs Advocacy Paper](#) (July 2021) by reiterating the need for adequate care while focusing on the continued imperative for adequate consequences in relation to prolific property offenders in our community. We hear, know, and share the frustration that residents and business owners are experiencing with property crime in our community.

PROPERTY CRIME

- Breaking and entering
- Mischief
- Theft (including identity)
- Possession and trafficking of stolen property
- Fraud
- Mischief
- Arson
- Altering / destroying a vehicle ID number

This paper seeks to contextualize property crime locally, underline the impact of prolific property offenders, and highlight the provincial health and criminal justice challenges driving a “catch and release” system of offender management. This system is impacting police responses, affecting local government taxation, and sowing discontent in our community while undermining public confidence in the administration of justice. It cannot be understated that public trust in the institutions we rely on to keep us safe affects the social fabric of our community and is critical to our quality of life.

Statistically, Kelowna’s reported property crime rate is among the highest in Canada, yet these misleading media taglines use base population for calculations and fail to consider the effect of an estimated two million visitors to our region annually. Notwithstanding, property crime is, indeed, a significant and real issue for our community. In recent years, the City has

invested unprecedented resources in policing, community safety and social development initiatives. We are proud of these investments and progressive steps. However, it is the submission of this paper that the most impactful solutions reside with provincial and federal governments through their mandates for health, housing, and justice.

Crime and social issues are extraordinarily complex. While many offenders experience underlying health, mental health and social environment conditions, our community requires – and deserves – effective and accessible health *and* justice responses to address offender needs and behaviour. This paper is not intended to over-simplify the issues nor go into academic depth. Rather, its aim is to generate awareness and discussion specific to select issues in our justice system, and to advocate for provincial action.

Ultimately, focused advocacy for our community will afford the opportunity for meaningful dialogue and collaborative engagement with the provincial government as we aim for adequate care *and* consequences for offenders. While upholding the need for improved access to health-based responses, this paper brings a balanced approach with its focus on five recommended areas for criminal justice advocacy.

ADVOCACY ACTION:

1. Increase local BC Prosecution Service (BCPS) resources, including dedicated Crown for prolific offenders;
2. Provincial review of the [2021 BCPS’ Charge Assessment Guidelines](#), including its full disclosure policies;
3. Increase data accessibility within BCPS’ annual reports;
4. Provincial review of the [2021 BCPS’ Bail – Adult Policies](#) and/or practices; and
5. City collaboration with the provincial government on advocacy to the federal government.

1.0 Introduction

We are approaching a precipice in our communities' safety, sense of safety, and confidence in the criminal justice system. Property crime is increasing in Kelowna despite considerable investment and initiative in recent years by the City, RCMP and our partners. This situation detrimentally impacts our residents and businesses.

Despite a 2020 pandemic-driven decline in property crime, these improvements have since been erased. Our residents are, once again, experiencing more property crime offences and are increasingly frustrated by the inadequate sanctions and responses of a "catch and release" system. The City and RCMP share the frustration of our community given, in large part, the levers for impactful change lie with the provincial and federal governments, outside of local government and police authorities.

Upstream, social issue drivers – including housing, mental health, and problematic substance use – are provincially mandated, although local governments are reluctantly assuming increased roles and costs given the imperative need for action. Criminal justice processes via Crown, the Courts and Corrections are provincially and federally mandated and significantly directed by precedent-setting case law.

The legislative landscape has rapidly and significantly changed in the past two decades. Today, more police resources are required to complete significantly more investigative and administrative work, as required by the courts, than ever before. Further, since the Supreme Court of Canada (SCC) precedent setting Jordon case in 2016, this work must now also be completed faster. While local governments increase police budgets at unsustainable rates in response, the impacts – and symptoms – of this altered landscape are evident across the criminal justice system.

While policing time and costs are increasing, a review of BC Prosecution Service (BCPS) Annual Reports (2016/17 to 2020/21) uncovers that, today, files take longer to conclude while charge approvals, conviction rates and sentencing outcomes are decreasing. Specifically, the Reports illuminate:

- Average days for BCPS to conclude a file increased 118 per cent (85 to 185 days);
- Decisions of "no charge assessment" increased by 75 per cent;
- Accused persons approved to court declined 25 per cent; and
- Of those that do make it to court, guilty judgements declined by 20 per cent and stays of proceedings increased by 26 per cent.

These outcomes, aggravated by an increasing profile on routine bail of persistent and prolific property offenders, undermine public confidence in the administration of justice. To be clear, it is evident and well-known that the BCPS and its highly professional staff are working tirelessly within a legislatively and administratively complex system. It is equally evident that systemic change at the provincial (and federal) level is urgently needed to ensure a balanced approach; one that enables social / health responses (care) to address offender's underlying conditions while also improving accountability (consequences) - especially for those without underlying conditions - to disrupt their pattern of reoffending and the cost to our community.

"When offenders repeatedly commit property crime without consequences or public denunciation as part of a catch-and-release system, people's personal sense of safety, their ability to fully participate in all that Kelowna has to offer, and the success of our local businesses unjustly suffer. It undermines essential public confidence and trust in our justice system."

Darren Caul
Community Safety Director

In recent years, City Council has invested in additional policing resources at unprecedented levels. Although insufficient on its own, it is an important lever necessary to reduce crime and increase community safety. This investment is among numerous driven and/or supported by the City of Kelowna in recent years.

City of Kelowna Safety Investments

- \$32 million invested to increase public safety personnel (2016-2022)
- 84 per cent increase in the RCMP Contract budget (\$27.9M in 2016 to \$51.4M in 2022)
- Established Social Development Manager (2017) and Community Safety Director (2019) positions
- Sponsor of the Journey Home Strategy
- Facilitated the addition of 350+ new supportive housing units and 125+ net new emergency shelter beds
- \$4M in government grants accessed for social development projects
- Launched (2019) and co-leading a cross-sectoral Community Inclusion Team
- Supported and advocated for the Kelowna Integrated Court (launched 2021)
- Developed Complex Needs Advocacy Paper (2021)
- Leading Kelowna's first Community Safety Plan (2022): a tangible, five-year action plan in collaboration with government and community partners to address local drivers of crime.

These efforts, in conjunction with the City's role as a provincial leader in its advocacy for complex care housing and supports, are vitally important yet they cannot accomplish the level of impact necessary for our community. Systemic change is required at provincial levels to improve upstream outcomes such as improved social and health prevention/intervention and downstream outcomes such as improved accountability and reduced risk of re-offending. Offenders require care (i.e., treatment), management, and meaningful consequences (i.e., criminal justice sanctions) to reduce their risks and reoffending.

Hospitals and jails are provincial institutions for which doctors/health authorities and the Crown/judiciary are, appropriately, the gatekeepers. Police serve to investigate reported crime, *recommend* individuals to be charged, and/or present accused to be remanded into a correctional or hospital facility. The path to change for a better local outcome is for local government and police to continue taking concrete action within their scope of authority, while driving a provincially directed, informed advocacy approach.

We are committed to a continued path of leadership and action, including advocacy toward a balanced approach of adequate care and consequences for offenders.

2.0 Crime Reduction and Community Safety: A Priority for All

The City's Community Safety and Citizen surveys consistently find that while citizens generally feel safe in our community and their neighbourhood, property crime is worrisome and their top crime concern. In the 2020 Citizen Survey, 87 per cent of citizens stated that they feel Kelowna is a safe community. In the most recent Community Safety Survey (2022), 96 per cent of respondents stated that they feel safe in their neighbourhood during the daytime and 77 per cent feel safe during the night, although this reflected a 3 per cent and 5 per cent, respectively, decline.

At the same time, three in five residents (59 per cent) stated that they "worry most or some of the time" about vehicle-related theft in their neighbourhood while nearly two in five residents (38 per cent) cite that they worry

about home burglary. Indeed, about a quarter of residents surveyed in 2022 and 2019 stated that they were a victim of crime in the previous year, with 88.5 per cent falling victim to property crime. However, it was notable that nearly six in ten property crime victims experienced crime more than once in the previous 12 months.

Given these figures, it is no surprise that more than half (51 per cent) of surveyed residents perceived that crime, generally, has increased while 68 per cent believed property crime has increased over the last two years. It followed that residents cited property crime / breaking and entering as “the most important crime-related problem” in Kelowna in 2022 (43 per cent). Further, residents cited “decreasing property, petty and drug crime rates” as the top police / Council priority in keeping our city safe. The experiences, perceptions and messages from residents surveyed were heard. They are clear, consistent and valid; supported by crime statistics that, while imperfect, persistently highlight the problem of property crime in our community.

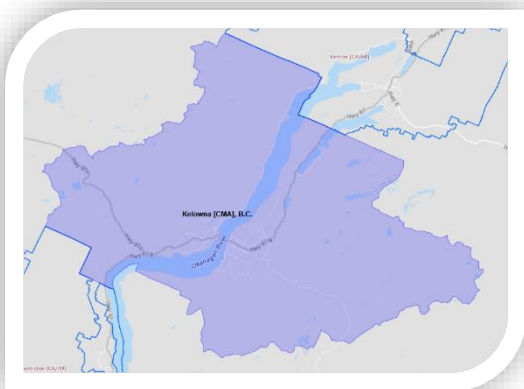
3.0 Property Crime: A Statistical Picture

Crime statistics offer the most accessible metrics for understanding the scope of the problem. However, they serve as an imperfect barometer, at best, and their shortcomings cannot be understated. Foremost, crime statistics capture only incidents that are detected *and* reported.

For a variety of reasons, victims choose to not report crime to police. By example, 51 per cent of 2022 Community Safety Survey respondents who were a crime victim the previous year indicated that they did not report the crime, an increase from 46 per cent in the 2019 survey. Significant to this paper, these respondents cited a feeling that “police could not do anything” most often (42 per cent) as their reason for not reporting the crime. It is also notable that crime statistics can be impacted significantly by global events (i.e., pandemic), demographic changes, socio-economic factors, police enforcement priorities and reporting practices, technological advancements, and legislative amendments.

Crime statistics are typically presented as rates / 100,000 population to enable cross-jurisdictional comparisons. In Kelowna, however, dividing total property crime by our population (144,500 in 2021) fails to contemplate the impact of the two million visitors we welcome annually. Consequently, official crime statistics and national comparisons present a significantly skewed picture of Kelowna’s actual crime problem. This misrepresentation feeds media headlines which, unfortunately, can impact resident’s sense of safety, and our city’s reputation.

3.1 KELOWNA CMA & CRIME SEVERITY OVERVIEW



The Kelowna Census Metropolitan Area (CMA) includes Kelowna, West Kelowna, Lake Country, and Peachland. According to Statistics Canada, between 2016 and 2020, Kelowna CMA’s non-violent (property) crime severity consistently ranked between second and fifth among the 35 national CMAs; second in 2019 and 2020. In contrast, Kelowna CMA’s violent crime severity ranked 14th and ninth of the 35 CMAs in 2019 and 2020, respectively.

Driven by statistically high property crime rates, Kelowna CMA’s *total* crime (non-violent & violent) severity ranked between third and sixth among Canada’s 25 CMAs between 2016 and 2020; fourth in 2019 and third in 2021.

3.2 KELOWNA – PROPERTY CRIME PROFILE

Across Canada, property crime consistently accounts for nearly three in five reported crimes yet Kelowna’s statistical *rate* of (reported) property crime presents (Table 1) as consistently and significantly higher than provincial and national rates. As discussed previously, Kelowna’s high ratio of visitors to population produces a significantly skewed and troublesome statistical picture.

TABLE 1: Property Crime Rate / 100,000 Population by Jurisdiction (2015 to 2020)

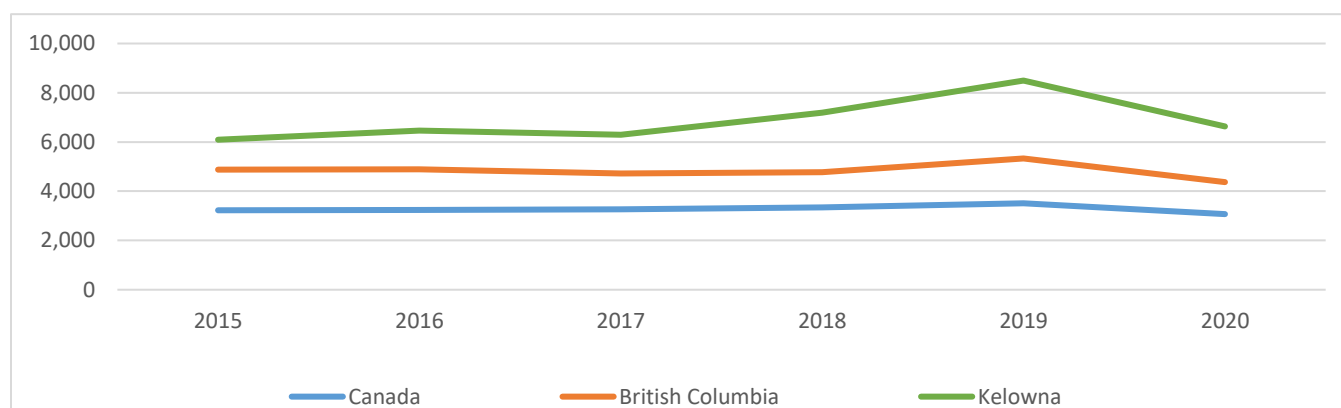


Table 2 provides the actuals by jurisdiction between 2015 and 2020 and illustrates that while property crime rates were relatively stable from 2015 to 2018 (2017 in Kelowna), rates rapidly and significantly increased by 2019 in Kelowna and across British Columbia. In fact, Kelowna’s 2019 reported property crime rate increased an alarming 39.4 per cent between 2015 and 2019, compared to 9.4 per cent provincially and 8.6 per cent nationally.

Of note is that our provincial property crime rate is also consistently and significantly higher than national rates. In fact, between 2015 and 2020, the British Columbia property crime rate was, on average, 47 per cent higher than the national rate year over year. Our provincial property crime rate in 2019 was its highest in a decade.

TABLE 2: Actual Property Crime Violations / 100,000 Population by Jurisdiction (2015-2020)

	2015	2016	2017	2018	2019	2020
Canada	3,231	3,239	3,265	3,349	3,510	3,071
British Columbia	4,871	4,892	4,717	4,775	5,331	4,370
Kelowna	6,092	6,460	6,299	7,194	8,495	6,637

In 2020, the most recent year for comparative data, all jurisdictions experienced a significant decline in property crime; an anomaly explained only by the altered daily routines brought on by the COVID-19 pandemic. These declines ranged from 13 per cent nationally, 18 per cent provincially to 22 per cent in Kelowna.

However, residents and businesses, particularly, experienced an alarming increase in property crime in summer 2021. Kelowna RCMP responsively increased patrols in known problem areas and restructured to create a larger Proactive Enforcement Team, including a Target Team dedicated to property crime and prolific offenders.

In March 2022, Kelowna RCMP publicly presented its [preliminary 2021 crime data report](#) which affirmed what our community experienced; property crime rebounded to levels only marginally below the high 2019 pre-pandemic figures. Upon closer examination, the impact of persistent and prolific property offenders was evident.

4.0 Prolific Property Offenders

A cursory review of several police agencies in British Columbia suggests there is no universal system to define or differentiate between various levels of repeat offenders. Terminology amongst the police agencies ranges from *priority offenders*, *repeat offenders*, *prolific offenders*, and *super prolific offenders*. Further, the threshold for the quantity of offences used for each term varies from five to 30+. However, what is overwhelmingly consistent among varied cities and police agencies is that a relatively small number of individuals are responsible for a very high-volume of offences, require significant police resources and attention, and persistently return to the community – sometimes hours later - only to re-offend again, thus perpetuating the “catch and release” cycle.

For the purposes of this paper, the Southeast District RCMP, inclusive of Kelowna, uses the term *repeat offenders* to describe individuals who are active criminally with a high number of “negative contacts” (Suspect, Suspect Chargeable, Charged, Recommended Charges) and criminal convictions. In December 2021, the District identified 15 individuals as repeat offenders responsible for an aggregate of 1,039 negative contacts year to date. The majority (779) were in the Kelowna Regional Detachment area. These 15 repeat offenders accumulated an aggregate of 262 charges. At the time of reporting, RCMP noted that while six were in custody, the remaining nine were out in the community.

The costs for our police, court, and correctional systems to respond to these offenders cannot be understated. However, while there has been a growing interest generally to monetize the cost of crime in Canada, there appears to be only limited and outdated research available, even less specific to prolific property offenders.



4.1

PROLIFIC OFFENDERS: A POLARIZED PROFILE

In its 2021 analysis of prolific offenders locally, the Southeast District RCMP illustrated the breadth and depth of offender activities through three anonymized profiles:

Offender #1:

- Since 2016, 346 RCMP files generated and 29 convictions for property crime and assault offences.
- Currently has “no go” conditions for 11 business locations.
- Routinely released with conditions and reoffends.

Offender #2:

- Since 2016, 51 criminal charges, including 29 for failure to comply with court orders.
- 17 criminal code charges (Aug to Dec 2021) for property crime, driving offences and failure to comply.
- Accused released with few conditions (Sept. 2021), arrested for breaching conditions (Oct 2021) and re-released.

Offender #3:

- Since November 2018, 194 police files.
- In 2021, subject of 23 criminal convictions for property crime and breach of court orders.
- In November 2021, offender received two weeks’ custodial sentence for 17 convictions.

The underlying causes of criminality and its solutions are among the most complex issues of our time. They are systemic, social, and economic; cross cutting all orders of government and their multiple departments, especially provincial health and justice departments. Discussions and debates around crime are difficult, political, and

ideological. Too often, the problem and proposed responses are over-simplified and polarized based upon one's view of offenders as fitting neatly into one of two profiles:

- 1) people offend because of underlying social, economic and health conditions (i.e., trauma, mental health, problematic substance use, poverty, and homelessness) for which treatment and access to support services are seen as necessary and sufficient to prevent criminality or "break the cycle;" or
- 2) people *choose* to commit crime for which swift, certain, and proportional criminal justice sanctions will, presumably, deter them from choosing crime in the future. While simple "tough on crime" notions (i.e., longer custodial sentences) are contrary to evidence about what works to deter crime, sentencing also serves the purpose to denounce unlawful conduct, separate offenders from society and provide reparations for harm done.

In fact, police report that the profile of prolific property offenders varies. While many are known to experience some form of underlying mental health, trauma, or addiction-related health condition, this is not true for all. At the same time, it is known that the rate of victimization, generally, experienced by vulnerable individuals is disproportionately high. It follows that just as there is no single profile of an offender, there is no single solution that will work for all. Every individual, their criminal offending, and what will work to interrupt their current cycle of criminality differs yet, universally, all require provincial health and/or justice system responses.

There is no single, simple profile of a prolific property offender. The most effective solutions are not based upon a model of care or consequences but, instead, a tailored and balanced approach along a continuum of care and consequence.

CARE AND COMPASSION FOR OUR MOST VULNERABLE

There are complex links, although not always direct, between homelessness, mental illness, and addictions.

While there are some individuals experiencing these vulnerabilities and health issues who are engaged in criminal activities, it is also true that people in vulnerable situations are more likely to be the victims of crime.

Frustratingly for police, the public and local governments, the capacity and responsiveness of the health and justice systems are increasingly constrained. Consequently, response options for police who routinely arrest the same offender are decreasingly accessible day and night. Whether it is decreased accessibility to treatment, support services, health professionals and hospitals, depleted Crown resources affecting decreasing charge approvals, or legislative and policy changes driving increased use of bail with limited restrictions, the compounded effects are evident.

While these circumstances are largely beyond local control, police are unfortunately perceived and projected as part of the "catch and release" system and under pressure to do more. Responsively, local governments are funding police at unsustainably increasing rates. Continued local government investment is, indeed, necessary to maintain a base level of police responsiveness to crime generally, especially for timely response to emergencies / crimes in progress. However, over-reliance on police to

curb property crime, especially prolific property offenders, is misguided given the levers necessary for impactful improvement reside within the provincial health and justice systems.

Encouragingly, it appears that our community is becoming increasingly aware of the complexities of the issues, the nuanced roles and limitations of local police and government, as well as the imperative role of provincial health, among other. In the 2022 Community Safety Survey, while 77 percent of residents overall believe police

play a large role in community safety, this was immediately followed by hospitals (67 per cent), schools (62 per cent), mental health services (59 per cent), community services (57 per cent) and family, youth, and social services (56 per cent).

This awareness and understanding, however, does not affect the bottom-line for our residents and businesses. Property crime is too prevalent. It continues to increase and is having a negative impact in our community while becoming increasingly costly and exasperating to the victims, to police officers and to the City. Accordingly, Council and the City have prioritized community safety and have proudly advanced and/or supported numerous initiatives in recent years.

5.0 City of Kelowna Investment, Action, and Leadership

In 2019, as part of a plan to advance the community's [Imagine Kelowna Vision 2040](#), City Council identified six priorities for its 2019-2022 term. Among these, community safety was established with a clear mandate to:

- reduce crime, particularly property crime;
- increase sense of safety; and
- use data and analysis to understand problems and target responses.

The City established new specialized positions and departments to lead action in the areas of social development (2017) and community safety (2019).

Investing in more police officers

In recent years, City Council has invested in community safety at unprecedented levels. In Kelowna's 2022 Financial Plan, community safety reflected the largest budget investment and accounted for 35 per cent of the Plan.

Since 2016, the City added 47 RCMP members, 40 support staff, and nine Bylaw Officers. Today, the RCMP contract budget is 84 per cent higher than it was in 2016 (\$51.4M compared to \$27.9M). In 2022, with 222 RCMP Members budgeted for our City, Kelowna ranks as the fourth largest RCMP contingent in Canada.

COMMUNITY SAFETY
accounted for
35%
of the City's 2022 Financial Plan. This is the largest investment area in this year's budget.

Between 2010 and 2020 (the most recent year available for comparison), Kelowna added 58 RCMP members, more than all other communities in British Columbia except Surrey and Richmond. During the same period, the provincial government increased provincial RCMP resources in our region by one.

Journey Home Strategy & 350+ new supportive housing units

Since 2017, the City of Kelowna has invested increasingly in social development resources and related initiatives, most notably the [Journey Home Strategy](#). Today, City staff routinely work in partnership with key provincial partners (i.e., Interior Health and BC Housing) alongside several local non-governmental agencies toward improving the underlying social conditions in our community, including for those experiencing homelessness.

Through the Journey Home Strategy, and in partnership with BC Housing, seven new housing with supports buildings opened between 2017 and 2021 providing stable, supportive shelter for more than 350 people who may, otherwise, be sheltering outdoors. During the same period, an additional two net new shelter sites opened to provide more than 125 emergency beds. The escalating demands, however, continue to outpace this growth. Today, there are more than 100 people *visibly* sheltering outdoors in just the downtown and north end, alone.

Community Inclusion Team

In 2020, the City launched a “Community Inclusion Team” which brings together provincial government and non-governmental organizations involved in the housing sector to better coordinate efforts and enable a smooth transition of new emergency or supportive housing sites in neighbourhoods. Today, new supportive housing sites are subject of considerable joint planning and coordination, including community engagement / committees, a crime prevention through environmental design audit and improvement process, and dedicated community safety resources to prevent and otherwise identify and address issues early.

Kelowna Integrated Court

In 2021, after years of leadership by the John Howard Society of Okanagan and Kootenay (JHSOK) supported by City advocacy, the provincial government [launched](#) the Kelowna Integrated Court; the third in the province. For offenders concurrently experiencing problematic substance use, mental health and/or homelessness, the Court enables a comprehensive assessment of an individual’s needs and a sentencing plan that reflects the need for care and consequences. While the Court celebrates its first year, its success relies upon the accessibility of necessary health and housing supports/services and its ability to enforce alternative sentencing measures.

Community Safety Plan

In 2021, the City joined a small list of local governments in western Canada taking initiative to lead a cross-sector of community and governmental partners in the creation of a Community Safety Plan. This is a tangible, focused, five-year action plan to collaboratively improve local conditions that may contribute to an individual’s risk to become criminally involved or vulnerable to crime. In partnership with provincial government ministries, [Kelowna’s Community Safety Plan](#) launched in April 2022 and represents a significant and sustained commitment to action and leadership.

6.0 Advocacy for Adequate Care and Consequences

Continued City investment, action and leadership is vitally important. These efforts reflect considerable progress toward an understanding that many offenders require housing and health-based responses to address their underlying needs and curb their repeat offending. The provincial government is clear in its intention to ensure that individuals whose offending behaviour is fueled by addictions and/or mental health are not unduly criminalized but, rather, receive the care they need. The City of Kelowna, as evidenced with its [Complex Needs Advocacy Paper](#) (July 2021), is supportive of such policy notions if they ensure timely and sustained access to a requisite level of effective services, supports and treatment.

Indeed, incarcerating individuals with underlying illnesses for short periods of provincial custody, during which they will not have access to the level of care needed, is not the answer. [Provincial leadership and investment in development of complex care housing and supports](#), therefore, is bold and applauded. However, it is critically important to highlight that:

- Complex care housing and supports sites are currently in the preliminary planning stages - not yet in place in our community - and will not likely meet the full scope of current local needs; and
- Not all property offenders have underlying health conditions driving their offending behaviour or, alternatively, are ready or committed to a *voluntary* treatment path.

Therefore, when discussing the issue of property crime and prolific offenders in our community today, caution should be exercised before citing (planned) complex care as the answer. Until such time as complex care sites,

reflective of the size and realities of this population, are operational in Kelowna (and the Okanagan Region), our community continues to grapple with property crime while police continue to operate within a “catch and release” system.

Especially in the continued absence of an appropriate, accessible health-based response to crime, the ability of the criminal justice system to respond remains imperative; to stop property offenders from committing further crimes, protect the public, and maintain public confidence in the administration of justice. The criminal justice system must continue its work to protect society and to contribute to respect for the law and the maintenance of a just, peaceful, and safe society by imposing sanctions that achieve its purpose and principles of sentencing, relevant to repeat property offenders, which includes:

- to denounce unlawful conduct and the harm done to victims or the community that is caused by unlawful conduct;
- to deter the offender and other persons from committing offences; and
- to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims or the community.

A focus of concern that we are experiencing, as are other communities across British Columbia, is the sense of diminished attention and priority within the criminal justice system in relation to individuals that routinely commit property offences and flaunt criminal justice conditions and court orders (i.e., breaches of conditions or failures to appear).

Some offenders appear emboldened, unabated by a system that is seemingly incapable to hold them accountable and to denounce the unlawful conduct.

When criminals consistently cycle through the justice system, or back-and-forth between the health and justice systems, and persistently re-offend without intervention or sanction, “the system” is not working; justice and our community is not being served. On behalf of our community, the City is well-positioned to advocate for change based on the following facts and observations:

- City of Kelowna is increasingly investing in police and community safety resources at significant local taxpayer expense;
- Local police are in an untenable position, unreasonably expected to remediate property crime without adequate, enabling provincial health and justice systems;
- Driven by an ever-changing legislative landscape, the criminal justice system is evidently under-resourced and under duress;
- BCPS, locally, is under-resourced and appears to be in the unenviable position of reluctantly triaging-out police-recommended charges “in the public interest” of pursuing more serious crimes; and
- A costly and vexing “catch and release” system frustrates community, undermines economic prosperity among our businesses, and diminishes public confidence in the administration of justice.

It is opined here that there are tangible actions the provincial government can and should consider which would address some of the current challenges that prolific property offenders present and serve to restore the public’s perception of justice being served.



6.1 ADEQUATE CROWN PROSECUTION RESOURCES LOCALLY

As with most communities, the impact of prolific property offenders cannot be understated. In December 2021, Southeast District RCMP identified 15 in the district, predominately Kelowna, who were subjects of an alarming number of property-offences and police calls (>1,000). This creates tremendous pressure and resource strain for local police and, thereafter, the Crown (BCPS) which is responsible for assessing police recommendations to charge an accused person. This process involves police remitting a Report to Crown Counsel (RCC) to the BCPS which, in turn, independently, objectively, and fairly assesses whether to charge based on the available evidence against a two-part test:

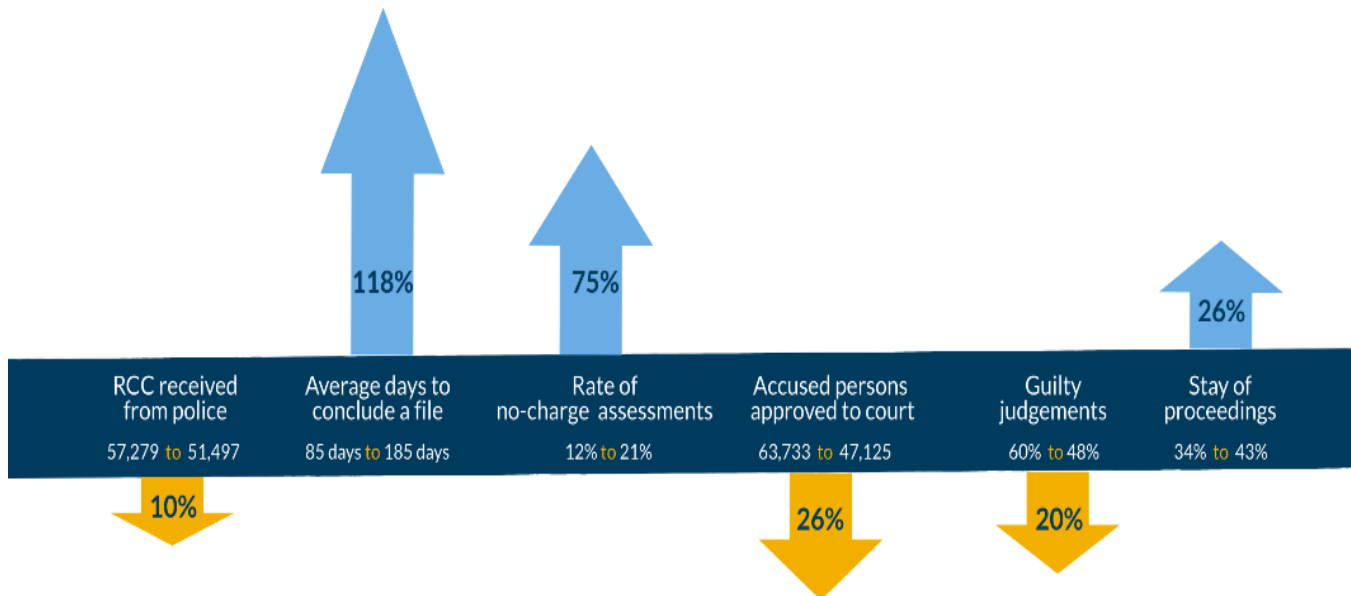
1. Whether there is a substantial likelihood of conviction; and, if so,
2. Whether the public interest requires a prosecution.

It is widely understood that the legislative landscape in Canada has rapidly and significantly impacted all facets of the criminal justice system. Driven by precedent setting cases, and federal legislation, the volume, procedural complexity, and timeliness of work required by police, Crown and courts today is exponentially more than just 10 years ago. In particular, the 2016 Supreme Court of Canada case of *R v. Jordan* imposed presumptive time limits to compel the system to reduce delay, or risk having cases involving the most serious of offences stayed.

It is evident that system leaders and decision-makers are working earnestly to adapt to these new demands. It is equally apparent, however, that the system has insufficient capacity (i.e., courthouses, judges, court clerks, and Crown). Consequently, it appears that the system is adapting by streamlining processes, downloading where feasible, and adopting guidelines and policies that enable necessary deferral or diversion of lower priority or less serious offences (i.e., property crime). A review of the BCPS' Annual Reports from 2016/17 to 2020/21 offers an insightful and concerning picture of its workload and outcomes.

BCPS Annual Reports

2016/17 to 2020/21



For local government and police, the cumulative effect is that they require *more* police and city support resources to do *more work* that is more procedurally complex *in shorter timeframes* in the face of heightened legislative thresholds with outcomes including:

- decreased charge approvals;
- fewer accused people proceeding to court; and
- fewer found guilty when they do.

These outcomes are undoubtedly discouraging for all who are involved in the criminal justice system, and most certainly for the people and businesses who rely on the system to protect them from further harm.

Numerous court decisions have exponentially increased the volume, complexity, and timeliness of work required by police and Crown. These dedicated professionals are doing their best within a significantly and rapidly changing landscape.

Of particular concern locally is that the regional BCPS office is understaffed. In March 2022, the BC Crown Counsel Association publicly shared that “at least five more prosecutors” are required in the Kelowna office which, purportedly, has 15 prosecutors. Based on local observations, this is likely a conservative figure. The Association added, “it’s important that we have a properly resourced justice system to make sure criminals are arrested and prosecuted in a timely manner to protect the public.”

The contention of this paper is that any system with inadequate resources is pressured to adapt and, in this case, the BCPS adapted with its January 2021 adoption of guidelines / policies that enable and perhaps encourage its independent prosecutors to triage out less serious offences (i.e., property crime) “in the public interest”.

ADVOCACY ACTION:

Call on the Province for at least five prosecutors to be immediately added to the Kelowna BCPS’ office and, further, that one or more prosecutors be dedicated to managing prolific offender files.



6.2 BCPS’ CHARGE ASSESSMENT GUIDELINES

In January 2021, the BCPS updated its [Charge Assessment Guidelines](#). These are used by prosecutors in the course of their duties to assess whether to approve charges recommended by police. At issue is whether the interpretation and application of these Guidelines is resulting in fewer provable property offences being approved for court and, consequently, a catch and release system without accountability for even the most prolific property offenders; questions which can be answered through an independent review of the Guidelines and increased BCPS data reporting in its annual reports.

The concern raised here is whether the Guidelines, intentionally or unintentionally, enable and encourage an under-resourced local BCPS to triage out less serious offences (i.e., property crime) without sufficient deference to the volume, persistence, and impact of these offences in our community. More to the point, are local prosecutors in the unenviable position of reluctantly *not* approving police recommended charges – rationalized as “not in the public interest” - because doing so would inhibit their ability to prosecute more serious offences?

Similar concerns and questions were raised by Terrace City Council in March 2022 before it passed a [resolution](#) to lobby the provincial government to ensure the BCPS “consider “public safety and fairness when dealing with prolific offenders” and develop guidelines as to what constitutes “the public interest”.

Specifically, the Guidelines comprehensively advance numerous factors for BCPS’ prosecutors to consider during their assessment of police recommended charges, including:

- Resources of the criminal justice system;
- Costs of prosecution;
- Seriousness of the offence;
- Loss or harm was minor in nature; and
- Likelihood of a significant sentence upon conviction.

Further, the Guidelines urge restraint noting that:

- Justice does not require that every provable offence must be prosecuted; and
- Prosecution should be reserved for cases requiring the full force of the criminal justice system, with all its available sanctions.

When these are considered in the context of property offenders, the Guidelines appear to enable, empower and even encourage BCPS prosecutors to *not* approve recommended charges, even in provable cases where there is a substantial likelihood of conviction. Of particular concern is the extent to which BCPS’ resource constraints locally are driving an interpretation and application of the Guidelines which is leading to:

- a reduction in the number of property crime RCCs receiving charge approval by BCPS;
- any reactionary reduction in the number of property-crime RCCs submitted by police; and
- an overall reduction in offender accountability, and public confidence in our justice system.

Noteworthy, the Guidelines favour charging *repeat* offenders by directing consideration of the following factors:

- the alleged offender was under an order of the court at the time of the offence; and
- reasonable grounds for believing the offence is likely to be continued or repeated; and
- the offence occurs frequently in the location it was committed.

The Guidelines also encourage consideration of the “...need to maintain public confidence in the administration of justice.” However, given the alarming catch and release cycle of prolific offenders, many who were under an order at the time of their offence and re-released, as well as the high frequency of documented property crime, we are left to seriously question the extent to which these factors are being duly considered or weighed locally.

The volume of property crime impacts a remarkably high number of people in our community, including their personal sense of safety and overall quality of life. For some in our business community who experience repeated property crime and are incurring escalating security-related costs, this issue threatens their economic viability while also undermining Kelowna’s international reputation, and economic reliance, as a tourist destination.

Any system under duress must adapt but triaging out prolific offenders is downloading the problem to local police and government while eroding public confidence in the administration of justice.

BCPS' Charge Assessment: Full Disclosure Policy

A second, more technical issue arising from BCPS charge assessment practices relates to its policy requiring full disclosure from police before charge approval (subject to exceptional circumstances or public safety concerns). Full disclosure is a process that can take police several weeks or even months if laboratory work is required. This policy arose from 2018 recommendations following a BCPS review after a stay of proceedings in a first-degree murder case.

In an October 2021 case, highlighted by the Kelowna RCMP through the media, the interpretation and application of this policy resulted in a person accused of murder being released on bail, "free" within the community within hours of the alleged offence and arrest. It is noted that once the BCPS receives full disclosure from police, charge approval may be significantly delayed further while BCPS completes its review of what are often very complex files. Moreover, as discussed below, recent federal caselaw makes it more difficult to detain an accused pre-trial, to impose conditions while the accused is in the community on bail, and to charge or convict an accused for breaching conditions.

Of concern is the extent to which the convergence of BCPS' full disclosure policy and recent caselaw may be resulting in more people accused of serious, violent offences being released and "free" for extended periods in communities while the wheels of justice churn. The impact of this situation on public confidence in the administration of justice is real, while its impact on public safety is less clear. A review of the BCPS' full disclosure policy in this broader legislative and public context would uncover whether the risks mitigated by the policies continue to outweigh any ensuing risks invited.

ADVOCACY ACTION:

It is recommended to advocate for provincial review of the 2021 BCPS' Charge Assessment Guidelines, including the interpretation and application of its full disclosure policy, to assess impacts and uncover any consequences they are inviting.

It is further recommended that advocacy include encouraging the BCPS to include more detailed data respecting its resources and outcomes (i.e., RCC charge approvals by crime type) comparatively by region in its annual reports.

While the BCPS is notably independent, such enhanced transparency and accountability will better enable communities to understand its pressures, recognize the demanding work of its professional staff, and become better informed about its role as the "gate-keeper" to our criminal justice system.



6.3 BCPS' BAIL POLICIES IN CONTEXT

Bail in Canada refers to the release (or detention) of a person charged with a criminal offence prior to being tried in court or sentenced. The Canadian Bill of Rights and the Canadian Charter of Rights and Freedoms guarantee the right *not to be denied reasonable bail without just cause*. It is linked to the fundamental presumption of innocence. Unlike charge assessment which affords considerable latitude for BCPS' discretion, whether a person is detained in a correctional centre or released to a community while awaiting trial is more prescribed by the Criminal Code of Canada and case law. Pre-trial detention, referred to as remand (in custody), can only occur:

- To ensure the accused’s attendance in court;
- For the protection or safety of the public;
- To maintain confidence in the administration of justice.

In recent years, precedent-setting SCC cases have resulted in a higher threshold to detain accused people pre-trial, and reduced control and accountability among those who are on bail awaiting trial in communities, notably:

- R. v Antic (2017) punctuates that accused must be released to community unless otherwise justified;
- R. v Zora (2020) requires Crown to prove an accused “knowingly or recklessly” breached their bail condition for any conviction to occur.

In plain terms, these cases mean that accused persons must, generally, be released into the community, with the least restrictive conditions if any, and the legal threshold to charge and convict a person for breaching any conditions while on bail is higher than ever before. The implications for police and BCPS are obviously significant, and undoubtedly contributing to the evident “catch and release” system that is eroding public confidence in the administration of justice.

Moreover, since the beginning of the pandemic in spring 2020, enhanced health risks inherent to overcrowded correctional facilities in BC have led provincial correctional officials to depopulate provincial centres, as reported in the [media](#). Whether pandemic or legislatively driven, the number of active property offenders who would have been incapacitated while awaiting trial or serving a short provincial sentence are, instead, in our community.

It is within this context that the BCPS released its revised [Bail – Adult Policies](#) in January 2021. While it is difficult to distinguish which of the above factors are most detrimental, police report a noticeable change in offender behaviour and system response that warrants further examination, specifically:

- A perceived increase in bail and, more concerning, bail with few or no conditions;
- Increase in the frequency and number of accused failing to appear in court, as required;
- Decreased accountability for administrative breaches (i.e., failure to appear / abide by court orders); and
- A concerning increase in bail for accused persons facing even the most violent of charges (i.e., homicide) while awaiting full disclosure from police, as highlighted in local [media](#), and described above.

Of particular concern is the expected increase and public profile of cases wherein the accused is routinely bailed, with limited or no conditions, not held accountable for breaches and subsequently accused of recommitting crime while on bail. Particularly if the accused is charged with a more egregious, violent offence, such scenarios will have chilling effect on public sense of safety and confidence in the justice system.

Accordingly, Kelowna RCMP are now closely monitoring and tracking instances of accused reoffending while on bail (with or without conditions), accused failing to appear in court and their corresponding resource implications, as well as sanctions / accountability imposed for those who fail to abide by conditions or fail to appear in court.

Within the purview of the provincial government, it is the position here that an adequately resourced BCPS, with dedicated Crown personnel for prolific offenders, are best positioned to prepare and present cases appropriate for pre-trial detention, bail with strict conditions, and/or advance charges for breach of bail conditions.

ADVOCACY ACTION:

Advocacy for provincial review of the 2021 BCPS’ Bail Policies, including their interpretation and application in the context of limited resources and a constrained federal legislative framework, to optimize accused attendance to court, protection / safety of public and public confidence in justice.



6.4 SUPPORT FOR PROVINCIAL GOVERNMENT ADVOCACY

We recognize and value that the City of Kelowna and the provincial government have a strong history of working together on solutions. As an example of successful advocacy to date and demonstrating a willingness to start addressing the challenges with prolific offenders collaboratively, the [May 5, 2022 announcement by the Province](#) is now investigating this issue. There is a genuine desire and commitment to improve conditions in Kelowna surrounding crime and prolific property offenders in partnership with the provincial government.

The focus of this advocacy paper is, intentionally, on actions that are within the purview of the provincial government and which, if advanced, will impact local crime conditions in Kelowna. Notwithstanding, it is recognized that just as local police and governments are limited and constrained, so too are provincial governments. Some changes – particularly in relation to the current legislative state of Canada’s bail system – rests with the federal government.

ADVOCACY ACTION:

The City of Kelowna would be well-served to support the provincial government in collaborative advocacy efforts for mutually agreed changes to legislation or policies federally.

While bail legislation and policies are at issue here, there is another relevant and rapidly emergent policy shift noted amidst the ongoing opioid crisis, specifically one focused to protect individuals experiencing addictions from being criminalized and subject to criminal justice responses. The Public Prosecution Service of Canada (PPSC) – responsible for prosecuting drug-related offences - issued [new guidelines](#) in summer 2020 for its federal prosecutors to avoid prosecuting simple drug possession cases unless major public safety concerns are at play.

With similar features found in the 2021 BCPS’ Guidelines, the PPSC Guideline on Prosecution of Controlled Substances is to pursue drug-related charges only in "the most serious cases", to seek alternative measures (i.e., restorative justice or drug treatment court) to divert simple possession cases away from system, and to assess whether prosecution "serves the public interest".

This situation is included here as another example of a low-profile, yet high-impact guideline introduced - in this case by federal Crown - that the public is largely unaware of; another guideline that impacts community safety and sense of safety and has invited misplaced critique of police as unresponsive when they are, in fact, legislatively and systemically constrained. At a minimum, federal public education about the shifting policy landscape will equip community members to better understand the rationale for such change and its effect on police responses to their drug related calls for service.

It is recognized that just as police and local governments are limited and constrained, so too are provincial governments. There is a desire and commitment to improve conditions in Kelowna in partnership with the provincial government.

7.0 Conclusion

While overall Kelowna citizens say they feel safe, they consistently express concern about property crime and social issues. Accordingly, in 2019, City Council established community safety as a priority for its term. Since, the City has led, launched, or otherwise supported numerous community safety and social development initiatives including the Journey Home Strategy, the JHSOK Kelowna Integrated Court, a Complex Needs Advocacy Paper and, most recently, a five-year Community Safety Plan. During this period, Council has invested in policing and community safety resources at unprecedented levels, although it is recognized that yet more is needed.

Crime statistics offer, at best, a consistent and imperfect barometer, particularly in Kelowna given crime rates fail to consider the impact of two million visitors annually in our region. Notwithstanding, it is evident after a temporary, pandemic-driven decline in 2020, property crime has increased significantly and rapidly. Accordingly, respondents to the City's bi-annual 2022 Community Safety Survey expectedly identified property crime as the top crime related problem to be addressed.

Property offences consistently account for nearly 60 per cent of all reported across all jurisdictions. Impacting countless citizens and businesses, property crime threatens our individual sense of safety, our quality of life, the economic viability of businesses, and our reputation as a safe, thriving community which welcomes – and relies upon - an estimated two million visitors annually.

A relatively small number of prolific property offenders are responsible for an overwhelming portion of property crime incidents. Their offending puts extreme pressures on finite police resources, particularly in the context of health, housing, and justice systems that provide inadequate care for an offender's underlying issues (i.e., trauma, mental health, and problematic substance use) and/or consequences for their persistent offending. These systems are under evident strain and while the health-oriented alternatives to the justice system (i.e., integrated courts and complex care housing and supports) are encouraging, these remain in their infancy.

The City of Kelowna understands and supports a balanced approach – care and consequences, heart and hammer – as evidenced by its continued commitment to housing first approaches, advocacy for the Kelowna Integrated Court, development of its Complex Needs Advocacy Paper, and its advocacy here for improved offender management and accountability. This paper illuminates the issue and impact of persistent and prolific property offenders to generate awareness, discussion, and an advocacy agenda; one that is within the purview of the provincial government, focused on opportunities we believe will better position and guide the independent and professional BC Prosecution Service in its mission to promote public safety, justice, and respect for the rule of law.

The City of Kelowna appreciates a strong history of collaboration and partnership with the provincial government on issues of mutual concern and looks forward to bringing the issues raised here forward for continued discussion and action.