



SUBMISSION

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Consultations

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Submitted by:

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About the John Howard Society of Ontario

The John Howard Society of Ontario (JHSO) is dedicated to creating genuinely safer communities by helping to foster a truly effective criminal justice system. We help achieve this goal in a variety of ways and with a suite of programs and services that we offer through our 19 local offices across Ontario. We provide over 80 different programs and services that help over 100,000 individuals across Ontario annually. Services range from prevention programs for high risk youth through to housing and reintegration services for those who have been released from prison back into our communities.

Founded in 2003, the Centre of Research, Policy & Program Development (the Centre) is the research and policy arm of JHSO, and is the only organization of its kind in Ontario. It facilitates interdisciplinary innovation by combining partnerships with front-line service providers and creative and academically qualified researchers and analysts. This results in research that helps people. The Centre is a leader in non-partisan research, evidence-based programming, and policy development in the justice sector.

Introduction

Please accept this document as the submission of the John Howard Society of Ontario to the 2016 Pre-budget consultations of the Standing Committee on Finance and Economic Affairs. We are pleased to have the opportunity to provide input into this process. The total provincial expenditures related to criminal justice and social services are immense, and there are many opportunities for savings, both in the short-term and the long-term. Our provincial correctional institutions are facing growing resource pressures and operational challenges. These challenges are by no means new, but seem to be hurtling toward a breaking point. The overcrowded conditions, the high proportion of unsentenced (“remand”) prisoners, the prevalence of mental health issues among prisoner populations; these are but a few of the systemic issues that make our jails less safe, less healthy and less effective. Our provincial jails are overcrowded and at capacity; prisoners sleep two or three to a cell designed for one, at times on a mattress on the floor. Paradoxically, crime rates have been steadily dropping for years.

There is a clear way to both reduce provincial expenditures on corrections and create safer communities: by relying less on detention for people who should not be there in the first place. By relying on community-based alternatives to incarceration, both before a person is sentenced and after, the province would be building on a community infrastructure that has proven success in supervision and reintegration while simultaneously being more fiscally responsible.

Bail

In our 2015 pre-budget submission, we highlighted the findings of our 2013 report entitled, [*Reasonable Bail?*](#), which shows how bail in Ontario has drifted far from its legislated purpose as outlined in the *Criminal Code*, resulting in significant costs to taxpayers and more people involved in the criminal justice system, with no benefit to community safety. Bail remains a challenge in Ontario – one that continues to cost taxpayers.

In Ontario, we spend hundreds of millions of dollars detaining *legally innocent* people every year. In 2014 approximately 61,000 prisoners were admitted to our provincial jails. It costs, on average, \$217.93 per day¹ to incarcerate a person in Ontario’s jails. By comparison, supervising an individual in the community typically costs around \$5 per day. Over 60% of prisoners in our provincial jails are on remand – that is, awaiting bail or trial – and in most instances (70%) the most serious charge they are facing is non-violent. In addition, even a short remand stay can be profoundly disruptive and costly; people can lose their jobs and homes and become dependent on government-funded social services. As noted in our 2015 submission, Don Drummond, in his 2008 Report presented to the provincial government, indicated that:

¹ 2014-2015 per diem. Source: Correspondence from MCSCS Dec 3/2015.

“Given the projected annual expenditures for this sector, Ontario must address the trend of increasing custody remand and the additional costs associated with this trend if the province is to balance its budget by 2017–18.” (Drummond Report, 353)

In *Reasonable Bail?* we argue that in order to address the costly remand issue, targeting bail is essential. Decision-making in Ontario’s bail courts is strongly influenced by an organizational risk aversion that ultimately undermines the rights of the accused person to timely and reasonable bail. Contrary to what federal legislation dictates around bail, bail in Ontario is difficult to obtain, often requires that individuals find a suitable “surety” and comes with overly restrictive conditions which often have no objective connection to the alleged crimes committed or actual risk to community safety. These bail conditions often make otherwise legal behaviour a criminal offence, such as being out past 9:00pm or consuming alcohol.

These bail conditions set vulnerable and marginalized individuals up for failure. For instance, people with mental health and/or addictions issues are frequently mandated to abstain from the substances to which they are addicted, or ordered to seek “treatment” where no such services exist in individuals’ communities. Our justice system is, in a real way, policing mental illness and addiction and this is extremely costly. Our courts and provincial jail admissions are in large part driven by people’s failure to comply with these types of onerous conditions: approximately 1 out of every 5 people admitted to Ontario’s jails are there for a charge of failing to comply with a court order. In other words, one-fifth of people admitted to our jails are there for the crimes like drinking alcohol or entering a liquor store (when they were ordered not to as a condition of bail).

Other jurisdictions have successfully reduced their pre-trial detention rates through policy and practice changes; Ontario could similarly minimize both the fiscal and human costs associated with high remand populations. Current and past provincial government strategies aimed at reducing inefficiencies in the court processes are not focused explicitly on reducing remand populations and therefore will not necessarily achieve this outcome. Nor would they address the substantive issues plaguing bail in Ontario. Reducing delays in court cases may have some impact on remand rates, but it will not, for instance, change how many criminal court cases start their life in bail court – that is, how many charged persons are detained upon charge or arrest rather than released. It will also not guarantee that the quantum of bail accused persons receive is reasonable, consistent with the *Charter*. In order to address these complex systemic issues, and incidentally, balance its budget, the provincial government must make a strong commitment to addressing bail and remand in a substantive and inter-ministerial way.

The provincial government committed to addressing the systemic issues around bail and remand in Ontario in the Premier’s 2014 mandate letters. We encourage the Ministry of Finance to support these priorities in the upcoming budget to ensure that they are addressed strategically and systematically across the province.

JHSO Recommendations:

- a) Commit to developing a targeted inter-ministerial strategy to improve the administration of bail and reduce remand rates in Ontario, working in collaboration with community partners. Bail is an issue that implicates and impacts both MAG and MCSCS, so developing an inter-ministerial strategy is important. As noted, the issues relating to bail are systemic and in many ways entrenched cultural practices; a province-wide policy and culture shift is necessary. A comprehensive bail strategy should incorporate many of the evidence-based findings from recent research on bail in Ontario and Canada. This strategy should include a review and revision of the MAG Crown Policy Manual Bail Hearings section to reflect the best practices identified in the evidence and through justice stakeholder consultation. It should also examine police releasing practices and policies. This strategy should invest in pilot projects at select courthouses – where there is buy-in and commitment to change bail practices from key court actors - to apply “ladder of release” and other Bail Expert Table and relevant evidence-based bail report recommendations.
- b) Expand support for the existing MAG-funded Bail Verification and Supervision Programs in order to reduce unnecessary incarceration and ensure that more Ontarians have access to equitable and timely bail. An expanded program capacity (i.e. staffing ratios) would translate into more timely releases and more individuals from marginalized populations accessing bail (and therefore saving the government both correctional and criminal court costs).
- c) Invest in housing for those awaiting trial (i.e. “bail beds”) who are homeless and lack a fixed address. Accused persons who lack a fixed address do not have equal access to bail in Ontario, and finding suitable residences or residential sureties often results in costly and unproductive delays in criminal courts. Providing housing that is supportive – not shelters – would not only improve the timeliness of release decisions in courts, but would also help stabilize populations who may be otherwise hard-to-reach. It would be most practical to have the housing operated by the transfer payment agencies who already operate the MAG-funded Bail Verification and Supervision Program (BVSP), since many clients who would be housed in the bail beds may also be required to report to the BVSP. This recommendation could start as a pilot project in select communities, run by agencies with existing housing expertise and capacity. Funding should be provided for a designated number of bail beds for several years, and there should be an evaluation component that monitors and evaluates the program outcomes.
- d) See the additional Recommendations relevant to the provincial government outlined in [Reasonable Bail?](#) for further suggestions on cost-effective solutions that improve court efficiency while reducing pressures in pre-trial detention centres. The report is available on our website: www.johnhoward.on.ca

Alternatives to Provincial Incarceration

Incarceration is an inherently damaging experience. People do not typically leave jail better off than when they went in. In fact, some studies suggest that incarceration increases the likelihood that people reoffend when they are released.² Even a correctional environment that emphasizes rehabilitative programming takes its toll: while in jail, people lose critical connections to stabilizing factors such as their employment or their family. When a person commits a crime, we want to hold them accountable. We also want to ensure that our responses to crime are serving to make our communities safer, and not the other way around. Given how damaging – and costly – incarceration is, we should strive to avoid these negative outcomes and costs wherever possible: jail should be reserved for people who truly need to be there. 75.5% of people sentenced to jail in Ontario receive sentences for 3 months or less.³ Certain offences and certain individuals require incapacitation in jail – this is without dispute. In recent years, however, mechanisms that allow low-risk individuals serving sentences to reintegrate gradually into the community, under strict supervision, have eroded to the point of obsolescence.⁴ These options - temporary absence passes, halfway houses and provincial parole – save the province dollars while improving community safety. It is time for Ontario to realign its budgetary and correctional priorities. Fortunately, the Ministry of Community Safety and Correctional Services has indicated that transformation of corrections is a priority.⁵

Conditional release options such as temporary absence passes (TAs) and parole are important ways for Ontario to reduce correctional populations while intensively supervising reintegrating individuals in the community. These forms of release have been shown to be more effective than holding prisoners until statutory release or warrant expiry in numerous studies. In short, providing prisoners supports and supervision to assist them with a gradual re-entry is much more effective at reducing reoffending and other negative outcomes (e.g. homelessness) than simply releasing prisoners at the end of their sentence.⁶ Before their closure in 1995, many people released on TAs or parole who required stable housing or other support services would reside in provincial halfway houses. The average daily count in halfway houses was approximately 400 just prior to closure.⁷ The importance of availability of halfway houses or other transitional housing supports cannot be

² Gendreau, P., T. Little and C. Goggin (1996). Predicting Adult Offender Recidivism: What Works! User Report. Ottawa, ON: Solicitor General of Canada.

³ MCSCS (2015). 2014-2015 Adult Profile. Source: Email correspondence from MCSCS.

⁴ Doob, A.N. Webster, C.M. Manson, A. (2014). Zombie Parole: The Withering of Conditional Release in Canada. *The Criminal Law Quarterly*, 61, 301-328.

⁵ <http://www.cbc.ca/news/canada/toronto/programs/metromorning/correctional-services-1.3398244>

⁶ Motiuk, L. Cousineau, C. and J. Gileno. (2005). The Safe Return of Offenders to the Community. Correctional Service Canada. Retrieved from: http://www.csc-scc.gc.ca/research/092/sr2005-safe_return2005_e.pdf

⁷ John Howard Society of Ontario. (1998). Adult Provincial Prisons in Ontario: The current picture and trends.

Retrieved from:

<http://www.johnhoward.on.ca/wp-content/uploads/2014/09/facts-12-adults-provincial-prisons-in-ontario-the-current-picture-and-trends-december-1998.pdf>

understated: a significant proportion of prisoners leaving jail are homeless and would benefit from a supportive housing environment.⁸

The province could save significant amounts of money in the long-term by investing in community corrections in the short-term. The sustainable and effective solution to prison overcrowding and stretched correctional budgets is correctional reform: the province must develop strategies to reduce prison populations, rather than looking to spend money accommodating ballooning prison populations through new and bigger correctional facilities. Certainly, all correctional facilities should be safe, secure and functional. Resources to ensure that all existing provincial institutions are well-equipped, well-staffed and have programming options, would be freed up if significant proportions of those currently in jail were being managed in the (much less costly) community.

JHSO Recommendations

- a) Develop an actionable strategy for reducing provincial prison populations, with a particular focus on expanding conditional and gradual release options (in conjunction and collaboration with the above noted strategy focusing on bail reform).
- b) As part of the above noted strategy, explore reinstating and meaningfully funding provincial halfway houses and community residential facilities for prisoners on conditional release or parole and/or persons whose custodial sentence can be safely served in the community.
- c) The government should also consider funding community criminal justice organizations to operate Reporting Centres for individuals who are on TAs or provincial parole, but not residing in halfway houses (should the government choose to reinstate them). These highly structured non-residential Reporting Centres— like those that currently operate for federally sentenced individuals⁹ – could provide monitoring, substance abuse testing and programming, and a full menu of supports that address education and employment, mental health and addictions, and longer-term housing needs of high risk clients. Federally, the Reporting Centres are not viewed as a replacement for halfway houses or community residential facilities, but instead they provide a less intensive supervision option for those transitioning back to the community who need it. Even if provincial halfway houses are not reinstated, Reporting Centres could relieve much of the overcrowding pressures in provincial correctional institutions while offering a safer supervised transition and re-entry mechanism.

⁸ John Howard Society of Ontario. (2012). Effective, Just and Humane: A Case for Client-Centered Collaboration. Retrieved from: <http://www.johnhoward.on.ca/wp-content/uploads/2014/09/effective-just-and-humane-a-case-for-client-centered-collaboration-may-2012.pdf>

⁹ Reporting Centres are sometimes referred to as Transition Centres. See for example St. Leonard's Society Toronto's document, Day Reporting Centres: A Service Delivery Model. (*Note, St. Leonard's Toronto is now a part of John Howard Society of Toronto). Available from: <http://www.stleonardstoronto.com/pdf/Day%20Reporting%20Centres.A%20Service%20Delivery%20Model.pdf>