



**SUBMISSION**

Standing Committee on Justice Policy

**Study on Reform of  
Canada's Bail System**

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## John Howard Society of Ontario

Centre of Research & Policy

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About the John Howard Society of Ontario

For more than 90 years, we've worked to keep the humanity in justice.

Today we continue to build a safer Ontario by supporting the people and communities affected by the criminal justice system. Our 19 local offices deliver more than 80 evidence-based programs and services focused on prevention, intervention and re-integration across the province. These range from helping youth develop the life skills that will let them achieve their full potential, to helping families navigate issues of criminal justice, to providing job training for those leaving incarceration so they can contribute to their community in a meaningful way. We promote practical, equitable policies while raising awareness of the root causes of crime and calling on Ontarians to share responsibility for addressing them. Within the system itself, we advocate for the fair treatment of every individual. Each year, our work impacts the lives of more than 100,000 Ontarians.

The John Howard Society of Ontario (JHSO) appreciates the opportunity to provide submissions to the Standing Committee on Justice Policy's study on the reform of Canada's Bail system. JHSO has years of experience studying bail and providing services to support those involved with the system. Since our 2013 report, [Reasonable Bail?](#), there have been important advancements made, but further attention is due. Preserving the constitutional right to reasonable bail is essential for promoting public safety and maintaining a fair and functioning criminal justice system.

Contrary to recent public assertions, our bail system is not lenient. Despite historically low crime rates and the constitutional presumption of release, reasonable and timely bail is increasingly difficult to obtain. Over the past few decades, an increasing number of cases start in bail court and the remand population has risen significantly. Individuals on remand account for the vast majority of people inside provincial correctional institutions across Canada. In Ontario, remanded individuals account for an average of 77% of the daily population of individuals in provincial institutions in 2020/2021.<sup>1</sup> That is over 5000 legally innocent people detained on any given day in Ontario.<sup>2</sup>

The impacts of even short stays in remand are immense, and affect individuals, their families and communities as a whole. Even a few days or weeks in detention can put an individual's housing or employment at risk. Detention exacerbates mental health issues and can create lasting impacts on individuals due to the experience of overcrowding with limited access to programming, healthcare and social supports. Lack of appropriate resources for individuals in provincial correctional institutions contributes to safety risks for incarcerated individuals and staff alike. The experience of incarceration destabilizes individuals and can contribute to, rather than prevent, a cycle of criminal justice involvement.

It is important to recognize that stricter application of bail laws inevitably results in the overincarceration of Black and Indigenous people, and individuals experiencing poverty, homelessness and mental health issues. These populations are already overrepresented in admissions to pre-trial detention in Ontario. In 2020/2021, Black adults made up 5% of the adult population in Ontario but 14% of the admissions to custody.<sup>3</sup> In 2020/2021, Indigenous people made up 17% of custodial admissions<sup>4</sup> but only represent 2.9% of people in the province.<sup>5</sup> People with no fixed address are also more likely to be denied bail.<sup>6</sup> Without support systems and accessible community services, individuals are left to languish in provincial correctional institutions.

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<sup>1</sup> Ministry of the Solicitor General (2019) Adult Correctional Institutions.

[https://www.auditor.on.ca/en/content/annualreports/arreports/en21/1-14AdultCorrections\\_en21.pdf](https://www.auditor.on.ca/en/content/annualreports/arreports/en21/1-14AdultCorrections_en21.pdf) page 2

<sup>2</sup> Statistics Canada. (2020) Table 2: Average daily counts of adults under correctional supervision, by type of supervision and jurisdiction, 2018/2019. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016/tbl/tbl02-eng.htm>

<sup>3</sup> Government of Canada. (2022) Overrepresentation of Black People in the Canadian Criminal Justice System. <https://www.justice.gc.ca/eng/rp-pr/jr/obpccjs-spnsjpc/index.html>

<sup>4</sup> Statistics Canada. (2022) Adult custody admissions to correctional services by Indigenous identity.

<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510001601&pickMembers%5B0%5D=1.7&pickMembers%5B1%5D=2.3&cubeTimeFrame.startYear=2016+%2F+2017&cubeTimeFrame.endYear=2020+%2F+2021&referencePeriod.s=20160101%2C20200101>

<sup>5</sup> Government of Ontario. (2022) 2016 Census Highlights. <https://www.ontario.ca/document/2016-census-highlights>

<sup>6</sup> Kellough, Gail, and Scot Wortley. "Remand for plea. Bail decisions and plea bargaining as commensurate decisions." *British Journal of Criminology* 42.1 (2002): 186-210.

There is also a significant cost associated with incarcerating people as opposed to providing alternatives in the community. It costs upwards of \$300 per day to house an individual in a correctional institution.<sup>7</sup> This amounts to millions of dollars spent each year to incarcerate individuals that are legally innocent and awaiting trial.<sup>8</sup>

Public safety is of utmost importance in Canada. However, concerns about public safety at the bail stage must consider fundamental rights recognized by the *Charter*, including the right not to be denied reasonable bail without just cause and the presumption of innocence. Current provisions of the *Criminal Code* already permit pre-trial detention where it has been established that it is necessary to protect the safety of the public. Bail decision making has become increasingly restrictive, leaning towards greater pre-trial limits on liberty. This has been recognized by a number of studies and higher courts in Canada. Stricter bail laws incarcerate more people before trial that do not pose a genuine risk and counteract efforts to promote public safety by increasing their likelihood of being charged or convicted of a crime in the future.

Effective responses to crime focus on addressing root causes of violence including intersections between poverty, racism, racial/ethnic and gender inequities. Overincarceration is one of many factors that make violence more, not less, likely to occur. Instead, we should look to community-based intervention programs that disrupt cycles of violence and support those at elevated risk. To meaningfully contribute to community safety and prevent violence, investments in programming and supports in communities across the province should be a primary focus.

At the bail level, community-based programs can ease the burden on correctional institutions and promote the health and safety of staff, prisoners and the greater community. By relying more on existing community-based alternatives to pre-trial detention, the province would be building on a community infrastructure that has proven success in supervision while simultaneously being more fiscally responsible. Community based supports also meet the needs of individuals to promote stabilization and prevent further charges.

Bail supervision programs are a low cost, community alternative to remand. They have a proven track record of ensuring individuals return to court and comply with the conditions of their release. Despite the important role they play, bail supervision programs are currently under-resourced in Ontario and many service providers are operating the program at a deficit. Investment into these programs is a tangible way to support individuals and contribute to community safety.

There are also “bail beds”, currently operated by JHS in Thunder Bay and Ottawa that provide supervision and supports to individuals on bail. These programs have proven successful as the beds are consistently at capacity and the residences have the ability to support clients for prolonged stays, saving the province money in what would otherwise be extended stays in remand facilities.

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<sup>7</sup> Office of the Auditor General of Ontario. (2019) Annual Report 2019. [https://www.auditor.on.ca/en/content/annualreports/arreports/en19/2019AR\\_v3\\_en\\_web.pdf](https://www.auditor.on.ca/en/content/annualreports/arreports/en19/2019AR_v3_en_web.pdf)

<sup>8</sup> Government of Canada. (2022) Overrepresentation of Black People in the Canadian Criminal Justice System. <https://www.justice.gc.ca/eng/rp-pr/jr/obpccjs-spnsjpc/index.html>

The current model for bail beds could be expanded to other areas of the province relatively quickly. With appropriate resources, it could also be tailored to suit the needs of individuals deemed higher risk, such as those charged with gang and firearm-related offenses. A model with more intensive staffing levels and additional supports for clients deemed higher risk, would provide an effective, individualized alternative to incarceration in provincial correctional facilities.

Focusing on community-based programs and supports is a cost efficient, effective response to crime that would also help ease the burden on provincial courts and institutions. We would appreciate the opportunity to work with your government to address some of the current challenges our criminal justice system faces and promote safer communities across Ontario. Thank you for considering our submissions.