

*Prepared for*  
**Coverdale**  
**Justice Society**



*Prepared by*  
**Amanda Cash**



# Fixing our Bail System



*A comprehensive analysis of Canadian Bail  
Practices and Implementation in Nova Scotia*

# BACKGROUND



# Bail in Canada



Canada's bail system plays a crucial role in promoting public safety, maintaining trust in the justice system, and upholding the *Canadian Charter of Rights and Freedoms*. Bail allows for individuals charged with criminal offenses to be released from custody while they await trial, typically with specific conditions to adhere to. However, not everyone charged with a crime receives bail, and the decision to grant it is made by a judge or justice of the peace during a bail hearing.

The three main purposes of the bail process, as outlined in the *Criminal Code*, are to ensure the accused appears in court as required, to assess and manage potential risks to public safety if the accused is released, and to maintain public confidence in the justice system. Conditions of release are tailored to address specific risks posed by the accused and are intended to prevent new criminal offenses during the pre-trial period.

The *Canadian Charter of Rights and Freedoms* guarantees the right to reasonable bail as a constitutional right. The law of bail must be interpreted in the context of this fundamental right, which includes considering whether detention is necessary to ensure court attendance, protect public safety, or maintain public confidence in the justice system. The Supreme Court of Canada has emphasized that the release of accused persons is the norm, and detention should be the exception.

The responsibility for Canada's criminal justice system is shared between the federal government and the provinces and territories. The federal government enacts criminal law and procedures, including the provisions governing the law of bail and the prosecution of federal offenses. The provinces and territories are responsible for the administration of justice, prosecuting most criminal offenses, conducting bail hearings, and enforcing bail conditions.

When it comes to bail proceedings, the burden of proof traditionally falls on the Crown prosecutor to demonstrate just cause for the accused's detention. However, in certain circumstances, such as when the accused is charged with serious offenses like murder or sexual assault with a firearm, the burden of proof may shift to the accused, requiring them to show cause for their release.

Bail conditions imposed by the court aim to address the specific risks posed by the accused and prevent new criminal offenses. The "ladder principle" guides the determination of the level of restrictions imposed, with the least restrictive conditions necessary being favored. Breaching bail conditions can result in bail revocation, detention, and potential new criminal charges, making future bail harder to obtain.



# Case Law and Legislation

The bail system in Canada is primarily governed by the Criminal Code of Canada ("CCC"), which sets out the principles and procedures for granting bail to accused individuals awaiting trial. The relevant sections of the Criminal Code that pertain to bail are found in Part XVI (Sections 493 to 529), and they outline the rules and criteria that judges must consider when deciding whether to grant bail or release an accused person pending trial. The key points and principles related to bail under the Criminal Code of Canada are as follows:

1. **Presumption of Innocence:** The CCC upholds the fundamental principle that every person accused of a crime is presumed innocent until proven guilty. This principle is foundational to the bail process.

2. **Right to Reasonable Bail:** Generally, individuals charged with an offense have the right to reasonable bail, except in specific circumstances where detention is necessary to ensure their attendance in court, protect the public, or maintain confidence in the justice system.

3. **Three Grounds:** When considering bail, the court must decide whether the accused should be detained or released based on three grounds: ensuring attendance in court, public safety concerns, and confidence in the justice system.

4. **Conditions of Release:** The court can impose conditions on an accused person's release to address concerns about potential flight risk or public safety. These conditions may include depositing a sum of money as bail, providing sureties (people who will supervise the accused), staying away from certain places or individuals, or surrendering travel documents.

5. **Reverse Onus:** In some situations, the burden of proof shifts to the accused to show why they should be released, especially when facing certain serious charges or having a previous criminal record.

6. **Bail Reviews:** Accused individuals have the right to seek a bail review if their initial bail hearing results in detention or conditions they believe are unjust.

7. **Judicial Discretion:** Judges have significant discretion in making bail decisions, allowing them to consider individual circumstances and tailor bail conditions to each case.

Several influential cases in Canadian legal history have shaped the landscape of bail administration. These cases have contributed to the development of principles governing the bail process, emphasizing individual rights, fair treatment, and protection of the public. Some of the most influential cases in the past several decades include:

1. *R. v. Myers*, [1985] 1 S.C.R. 91: This case highlighted the importance of considering an accused person's personal circumstances, including socioeconomic factors, when determining bail. It emphasized the need for bail judges to take a holistic approach in their decision-making process.

2. *R. v. Morales*, [1992] 3 S.C.R. 711: In this landmark decision, the Supreme Court of Canada set out the framework for assessing an individual's detention pending trial. The court established the principles of "bail is the rule, detention is the exception" and the presumption of innocence, which have since become foundational in Canadian bail law.

3. *R. v. Hall*, [2002] 3 S.C.R. 309: This case addressed the issue of reverse onus in bail hearings. The court held that placing the burden on the accused to demonstrate why detention is not necessary is not inherently unconstitutional, as long as the burden does not undermine the presumption of innocence or create an unfair disadvantage.

4. *R. v. St-Cloud*, [2015] 2 S.C.R. 328: In this case, the Supreme Court clarified that pre-trial detention should be reserved for exceptional circumstances, such as cases involving substantial risk to public safety or flight risk, and not for punitive purposes.

5. *R. v. Antic*, [2017] 1 S.C.R. 509: In this significant Supreme Court ruling, the court reaffirmed the Morales principles and clarified that when considering bail, courts should prioritize the least restrictive measure necessary to secure the accused's attendance at trial and protect the public. The decision emphasized the need for proportionality in bail conditions.

# Bill C-75 (2019)

Bill C-75 was a criminal justice reform legislation passed in Canada in 2019. One of its key objectives was to address issues related to bail and pre-trial detention in the Canadian legal system. The bill aimed to make the bail process more efficient and fair while reducing court delays and overcrowding in prisons. Here are some key aspects of the bail reform introduced by Bill C-75:

1. **Judicial Referral Hearing:** The bill introduced a new type of hearing called the "judicial referral hearing" to allow judges to refer accused individuals to appropriate programs or services that could address the underlying causes of their criminal behavior. This measure was intended to provide alternatives to traditional remand, especially for individuals with mental health issues or substance abuse problems.

2. **Replacing "Reverse Onus" Provisions:** The bill eliminated or modified certain provisions that placed the burden on the accused to show why they should be released on bail. This change aimed to ensure that individuals are not unfairly detained solely because they could not meet stringent bail conditions.

3. **Police Discretion:** Bill C-75 expanded police discretion to issue a summons in lieu of an arrest for less serious offenses, reducing the number of people held in custody unnecessarily.

4. **Diversions and Restorative Justice:** The legislation encouraged the use of diversion programs and restorative justice processes as alternatives to formal court proceedings, especially for low-risk, non-violent offenders.

5. **Streamlining the Bail Process:** The bill sought to streamline the bail process to reduce delays and avoid unnecessary detention periods. It aimed to make bail hearings more efficient and less time-consuming.

6. **Consideration of Indigenous Background:** The legislation required courts to consider the unique circumstances of Indigenous accused persons during bail hearings. This included taking into account Gladue principles, which focus on the historical and systemic factors that may have contributed to the individual's involvement in the criminal justice system.

## Bill C-48 (Proposal)

The Government of Canada introduced proposed reforms to the *Criminal Code* on May 16, 2023, aiming to strengthen the bail system by making the bail process tougher on the accused. These reforms target repeat violent offenders, crimes involving firearms and dangerous weapons, intimate partner violence, and community safety.

The proposed changes include creating a new reverse onus for serious repeat violent offenses involving weapons, expanding the list of firearms offenses triggering a reverse onus, and broadening the existing reverse onus regime for intimate partner violence. The bill also requires courts to consider an accused person's history of violence and community safety when making bail decisions.

The proposed reforms highlight core principles that govern the bail system, emphasizing its critical role in maintaining public safety, respecting the rights guaranteed by the *Canadian Charter of Rights and Freedoms*, and considering the circumstances of accused individuals, especially those from disadvantaged populations.



The push for reform stems from the belief that the current bail system is akin to a "catch-and-release" approach, promptly returning accused individuals to the community without adequate adherence to their release conditions. Critics argue that the rights of the accused are being prioritized over those of the victims and public safety.

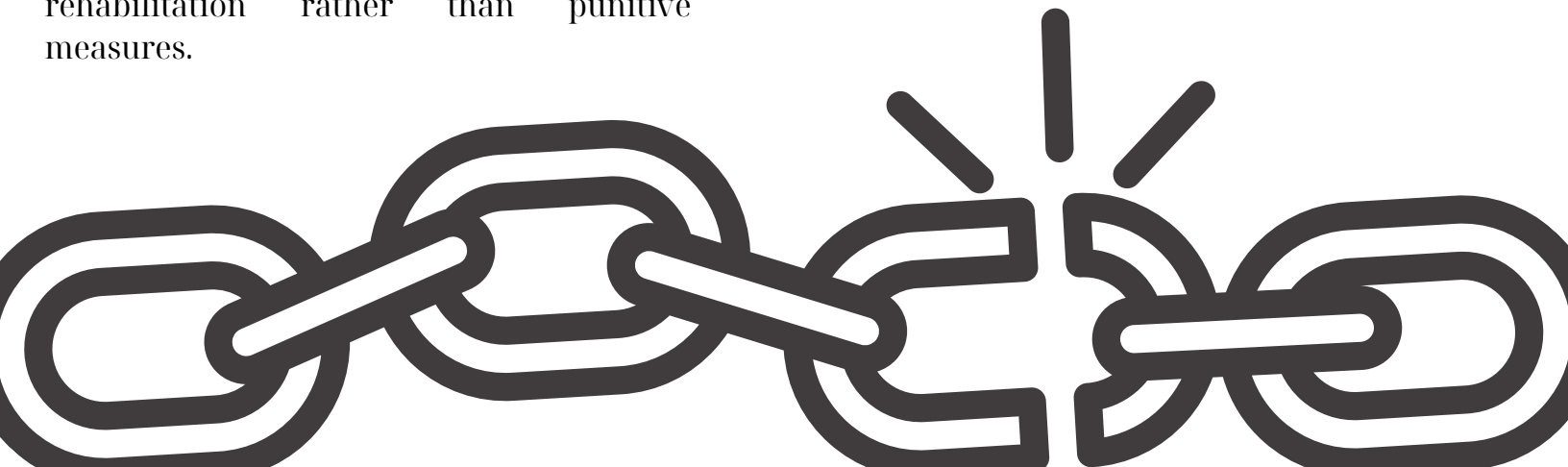
The direction of bail reform in Canada, as exemplified by Bill C-75 and the proposed reforms to the *Criminal Code*, reflects a nuanced and evolving approach aimed at ensuring fairness, protecting individual rights, and promoting rehabilitation. While acknowledging the importance of public safety, it is crucial to consider the impact of these reforms on the rights and well-being of the accused.

The initial reforms introduced by Bill C-75 were significant steps toward addressing systemic issues within the bail process. By eliminating or modifying reverse onus provisions and expanding police discretion to issue summons instead of arrests for minor offenses, the legislation aimed to prevent unfair and unnecessary pre-trial detention. The introduction of judicial referral hearings and the emphasis on diversions and restorative justice programs demonstrated a recognition of the underlying factors contributing to criminal behavior and a commitment to rehabilitation rather than punitive measures.

However, it is essential to critically examine the proposed reforms to the *Criminal Code* and the potential implications for the rights of the accused. While there are concerns over public safety and high-profile cases involving individuals released on bail, it is important to avoid knee-jerk reactions that could jeopardize fundamental principles of justice and individual rights. Stricter measures, such as expanding reverse onus provisions and considering an accused person's history of violence, should be evaluated in terms of their potential impact on the presumption of innocence and the right to a fair trial.

Furthermore, it is crucial to recognize that marginalized populations, including Indigenous accused individuals, face unique challenges within the criminal justice system. Any reforms must take into account the systemic factors that contribute to their involvement in the justice system and ensure their rights and circumstances are given proper consideration during bail hearings.

Finding a balanced approach to bail reform that upholds the principles of fairness, justice, and rehabilitation is a complex task. It requires engaging in thoughtful discussions and considering evidence-based strategies that protect both individual rights and public safety. By promoting alternatives to pre-trial detention, addressing root causes of criminal behavior, and upholding the presumption of innocence, we can strive to create a bail system that is truly fair, just, and compassionate for all accused individuals.



# Bail Process in Nova Scotia

What happens if I get charged with a crime?

The officer may let you go with an order to appear in court, and may require you to sign an undertaking to follow certain conditions upon release.

You may be held in custody until a bail hearing

A bail hearing is a legal procedure conducted by a judge or justice of the peace to determine whether a person accused of a crime will be held in custody or released until their trial or case resolution. When awaiting the hearing, individuals are typically held at a police station or detention facility. According to the Criminal Code, the accused person has the right to a bail hearing within 24 hours of their arrest, provided a judge is available. If a judge is not immediately accessible, the hearing must take place as soon as possible. All accused individuals are entitled to consult with a lawyer for their bail hearing, either one they have retained or, if they cannot afford legal representation, they can seek advice from duty counsel.

During the bail hearing, it is the duty of the Crown to present arguments and evidence to support why the accused should not be granted bail. According to the Charter, there is a presumption of release, meaning that by default, the accused should be released unless the Crown can provide justifiable reasons against it. The accused person is given the chance to propose a release plan that addresses any concerns the court may have regarding public safety or their future court appearances, aiming to alleviate those concerns.

In deciding whether prolonged detention pending trial will be necessary, the court must consider the following three grounds:

1

Detention is deemed necessary to ensure court attendance as required.

2

Detention is deemed necessary for public safety

3

Detention is required to maintain confidence in the justice system

## The Ladder Principle

The "ladder principle" guides the determination of the level of restrictions imposed, with the least restrictive conditions necessary being favored.

The ladder represents varying degrees of supervision, with less restriction at the bottom and more at the top. For instance, an undertaking without conditions is at the bottom, while house arrest is at the top. Normally, a person with no criminal record and no charges is assumed to be at the bottom of the ladder. However, if the allegations against them are serious, the court may move them up the ladder to address concerns about their release. As the number and severity of offenses on a person's record increase, they move higher up the ladder, resulting in stricter supervision.



## Surety

"A surety release is one of the most restrictive forms of release"

Surety refers to a person who takes on the responsibility of ensuring that an accused person (the defendant) complies with the conditions of their release from custody while awaiting trial. The surety is responsible for ensuring that the accused person complies with all the conditions of their bail. If the accused fails to meet these conditions or does not appear in court as required, the surety may be held financially responsible for the full amount of the bail set by the court.



## Common Conditions include:



curfews



medical/addiction treatment



reporting to police/bail supervision



no contact orders



house arrest



bans on computer/cell phone/internet use



drug/alcohol abstinence



geographical boundaries

## Bail Support Programs

- Coverdale Justice Society
- John Howard Society
- Elizabeth Fry Society
- Mi'kmaw Legal Support Network





# UNDERSTANDING THE PROBLEM



# Demand for Funding

According to Statistics Canada, the number of individuals held in custody awaiting a bail hearing or trial now surpasses the number of those in custody due to a criminal conviction.

When the court decides not to detain a person charged with a crime, they are released while awaiting trial. The court may impose certain conditions of release based on the information and evidence presented during the bail hearing. For instance, the accused may be required to refrain from contacting the victim(s) or visiting specified locations. Most often, housing is a requirement as well. For homeless or low income individuals, this can prove problematic.

At the peak of the COVID-19 crisis, the Affordable Housing Association of Nova Scotia, which was receiving money from the federal Reaching Home program, was providing housing and support for inmates in need of community housing at around \$60,000 per month. Since that program has wrapped up, countless inmates have been denied bail as their bail plan lacks any viable or affordable housing option.

This program was actually saving the province money. As noted by Coverdale Director, Ashley Avery, the average daily cost per adult in custody is \$271 per day, while the program has been operating at about \$125 per day: "Not only [was] this model incredibly successful, it [was] cost-effective".

# Importance of Housing

The presence, or lack thereof, of a stable housing option plays a significant role in obtaining bail approval. When a person is charged with a crime and seeking release on bail while awaiting trial, one of the key considerations for the court is to assess the risk of the accused not appearing for their court dates or posing a danger to the public if released. Having stable and suitable housing can be crucial in addressing these concerns and increasing the chances of bail approval. This proves problematic for unhoused/housing insecure defendants.

“The housing crisis has a direct impact on the bail system, as adjudicators are unwilling to release individuals without a fixed address. One defence counsel stated they have 'never seen someone released who didn't have a home' and that 'women trying to get bail will put themselves in an unsafe housing situation just so they can get out [of custody]'” (Set Up to Fail, 74)

Some of the key reasons why housing is integral in the bail process include:

- Addressing flight risk
- Stability and support
- Supervision and monitoring
- Public safety considerations

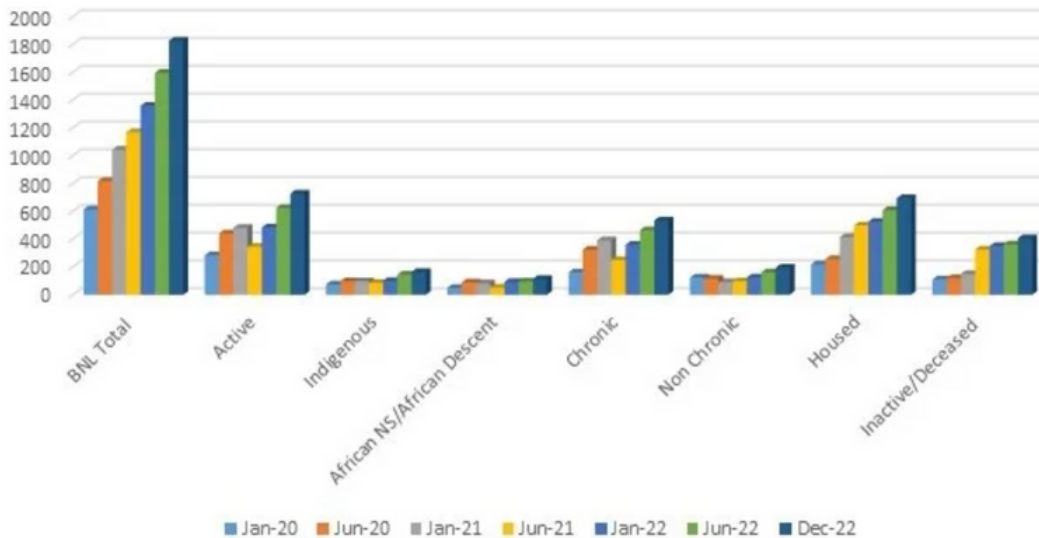
Some provinces in Canada have pretrial release programs that focus on assisting accused individuals with securing suitable housing, among other support services. These programs aim to facilitate the pretrial release process and address the underlying factors that may contribute to the accused's involvement in the criminal justice system.

“Restrictions on pre-trial liberty should only be imposed to the extent that they are necessary to ensure attendance at trial, address a substantially likely risk to public safety, or to maintain confidence in the administration of justice.”

(Set Up to Fail, 17)

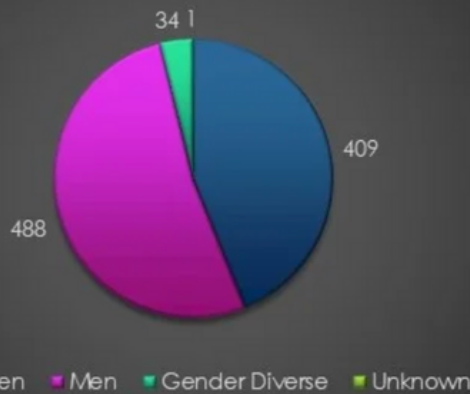
# Data on Housing Insecurity Courtesy of the Affordable Housing Association Nova Scotia:

BNL Numbers Jan 2020-Dec 2022

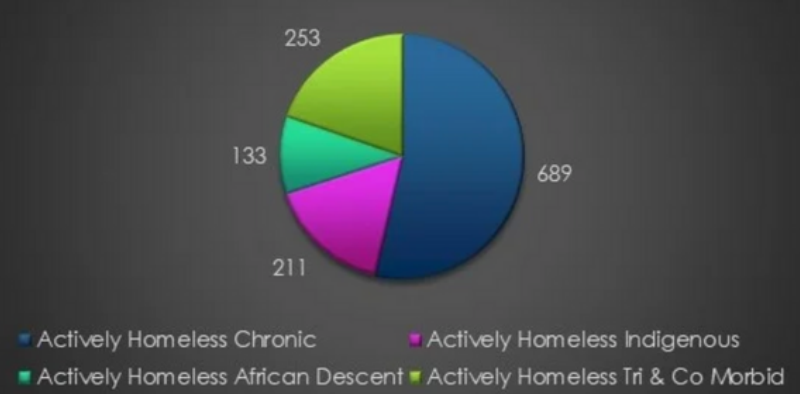


A "BNL", or a, ByName List is a real-time list of people experiencing homelessness in our community.

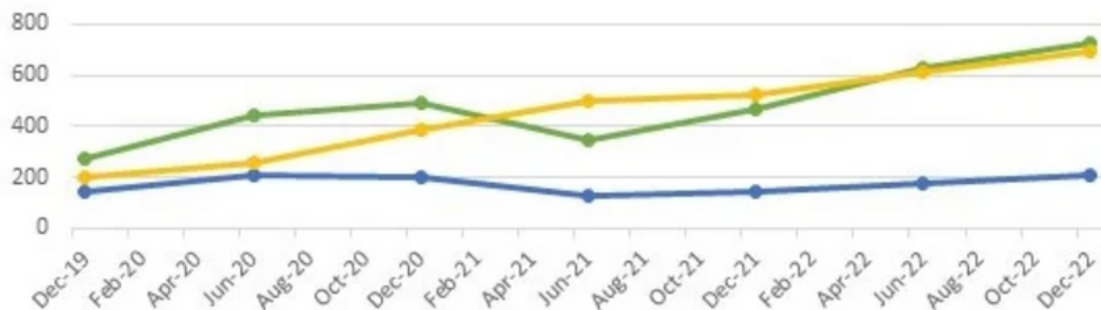
Actively Homeless - 932



Actively Homeless - 932



BNL Numbers December 2019-2022



	Dec-19	Jun-20	Dec-20	Jun-21	Dec-21	Jun-22	Dec-22
Actively Homeless	269	440	489	345	467	625	727
Actively Tri&Co	143	211	197	125	144	176	206
Housed	203	256	388	498	524	609	695

Actively Homeless Actively Tri&Co Housed

# Addressing the "cycle of detention, restrictive release and re-arrest"

There is a growing demand for government-funded pretrial release programs that provide alternatives to incarceration, promote rehabilitation, and improve the overall administration of justice.

While bail is theoretically designed to be fair and just, there are concerns about a cycle that emerges when pretrial release conditions are too restrictive or when individuals lack the resources to meet those conditions.

To break the cycle of detention, restrictive release, and re-arrest, there is a pressing need for government-funded pretrial release programs. These programs should aim to provide alternatives to traditional incarceration, prioritize community safety, and address the root causes of criminal behavior. Several reasons support the demand for such programs:

- 1. Addressing Systemic Inequities:** Pretrial detention disproportionately affects marginalized communities and individuals with limited financial resources. Government-funded pretrial release programs can help address systemic inequities by providing support to those who are unable to afford bail.
- 2. Focus on Rehabilitation:** Rather than simply detaining accused individuals, these programs emphasize rehabilitation and support services. They can include mental health counseling, substance abuse treatment, and educational opportunities, addressing underlying issues contributing to criminal behavior.
- 3. Cost Savings:** Government-funded pretrial release programs can be cost-effective compared to incarcerating individuals, which places a significant financial burden on the justice system. These programs can reduce pretrial detention rates, thus lowering the overall cost of the criminal justice system.
- 4. Improve Public Safety:** By addressing the root causes of criminal behavior and providing necessary support, these programs can promote successful reintegration into society, reducing the likelihood of reoffending and enhancing community safety.



In 2014, Nova Scotia had the highest proportion of inmates (68 per cent) who were in jail on remand in the country



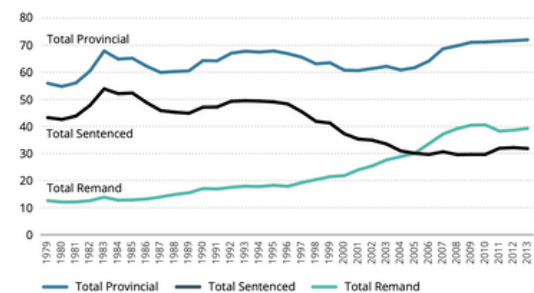
**98%**

of new charges during bail are related to the conditions of release rather than new offenses (Canada wide).



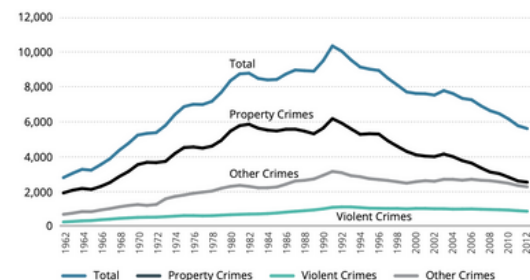
80% of individuals in provincial custody in Ontario are legally innocent

Canada's "remand rate has nearly tripled in the past 30 years"...



Despite the rate of crime continuing to decline...

Figure 4: Total Police-Reported Crime Rate per 100,000 Residents for Canada, 1962-2012



"public expenditure is not buying an increase in public safety"

(Set Up to Fail, 10)



# FINDING A SOLUTION



## Different Approaches in Different Provinces

Bail is a critical component of Canada's criminal justice system, ensuring that accused individuals can await trial outside of custody while adhering to certain conditions. However, the cycle of detention, restrictive release, and re-arrest raises concerns about the fairness and effectiveness of the bail process. Government-funded pretrial release programs offer a promising solution to break this cycle, addressing systemic inequities, focusing on rehabilitation, and promoting public safety. By investing in these programs, Canada can move closer to a justice system that is both fair and effective, fostering better outcomes for accused individuals and society as a whole.

Ontario's Bail Verification and Supervision Program has lead the way in establishing supervision and support to individuals released on bail, particularly those who may not have a strong community support network. The program's goal is to enhance the success of pre-trial release and reduce the likelihood of re-offending while awaiting trial. Under this program, individuals released on bail are assigned to a bail program officer who conducts verification of the proposed sureties, ensuring they meet the required criteria. The bail program officer also provides supervision, monitoring, and assistance to the accused during their release period.



In British Columbia and Manitoba, unlike Ontario and Nova Scotia, sureties are not always required to supervise an accused's bail. Surprisingly, despite this difference, the rates of charges and convictions for failure to comply are almost identical across these provinces. In the Western provinces, sureties for bail are typically reserved for the most serious offenses and cases where the accused has been arrested after being released on a less restrictive form of bail.

The heavy reliance on surety releases, combined with housing requirements, creates a discriminatory environment for accused individuals, particularly for those who lack access to individuals in the community with sufficient resources to qualify as sureties. This situation disproportionately affects marginalized populations, including those with mental health and addiction issues.

Post-pandemic, the demand for bail verification and support has surged due to various interrelated factors. The backlog of cases resulting from disruptions in court operations, coupled with the pandemic's economic impact, has led to increased requests for assistance in meeting bail requirements. Additionally, the pandemic's toll on mental health has highlighted the need for extra support and supervision during the bail process. Moreover, the recognition of social inequalities and an emphasis on alternatives to traditional incarceration have fueled calls for more accessible and equitable bail verification programs.

The following literature review will explore the research conducted by ***The Canadian Civil Liberties Association and Education Trust*** and ***The Access to Justice & Law Reform Institute of Nova Scotia*** to explore the demand and efficacy of such programming.



A large, light blue graphic of a document with a lightbulb icon and two checkboxes, serving as a background for the title.

# **Set Up to Fail: Bail and the Revolving Door of Pre-Trial Detention**

CANADIAN CIVIL LIBERTIES ASSOCIATION AND  
EDUCATION TRUST

**July 2014**

CANADIAN  
CIVIL LIBERTIES  
ASSOCIATION



ASSOCIATION  
CANADIENNE DES  
LIBERTES CIVILES



# Systemic Discrimination and Bail

I'm not saying it's a class-based system, . . . and I'm not saying it's prejudicial, but if you're more middle class and you have money, a house, a job and attachments here, you're a lot more likely to get bail.

– Halifax defence counsel

Income makes a huge difference. . . . Even though the amount of the recognizance is supposed to be something that is meaningful for the person, you look much more compelling if you can pledge \$100,000, \$250,000, \$500,000 recognizance than if you can pledge \$2, even if \$2 is all the money that you have. So wealth makes a huge difference.

– Toronto defence counsel

The revolving door of pre-trial detention – arrest, release with conditions, re-arrest for breach of conditions – has its most devastating impact on individuals with marginal social support, who are already struggling with addiction, health problems, poverty and discrimination.

## Summary

"Set Up to Fail" examines the issue of pre-trial detention and the challenges faced by individuals caught in the revolving door of the bail system in Canada. The report highlights the negative consequences of the current bail system, which often leads to individuals being detained for extended periods before their trials. It emphasizes that pre-trial detention disproportionately affects marginalized communities, contributing to the perpetuation of social inequalities.

The authors argue that the current bail system fails to adequately consider individual circumstances, resulting in unnecessary detention. The report points out the lack of resources and support services available to individuals during the bail process, making it difficult for them to meet bail conditions and secure their release.

Furthermore, the report discusses the impact of pre-trial detention on individuals' mental health and employment prospects. It suggests that prolonged detention can lead to a higher likelihood of guilty pleas, even for those who may have been innocent, due to the pressure and limited access to legal resources.

The report concludes with recommendations for improving the bail system in Canada. These include providing more accessible and affordable bail options, ensuring adequate legal representation, increasing support services, and implementing evidence-based decision-making processes that consider individual circumstances.

# Demand for a Need Responsive Model

It is crucial to acknowledge that certain segments of our society require the bail process to be responsive to their distinct needs and realities.

## Addiction and Mental Health

For individuals with mental health conditions, typical processes such as custody, bail conditions, and traditional forms of incarceration may be inappropriate. Strict conditions are highly likely to be breached, and detention centres are generally not equipped to provide adequate mental health treatment.

The focus of incarceration is primarily on punishment and security, rather than addressing the underlying mental health issues. There is growing recognition that alternatives to incarceration, such as specialized wellness courts, diversion programs, and community-based treatment options, can be more effective in addressing the needs of individuals with mental illness. These approaches aim to provide comprehensive treatment, support, and rehabilitation, which can reduce recidivism rates and improve outcomes for mentally ill offenders.

## Indigenous Peoples

The use of Gladue submissions during the bail stage to provide comprehensive information about the accused's background, personal history, circumstances, and available Indigenous resources or services upon release is critical.

Offering coordinated training to both duty counsel and private bar practitioners on effectively making Gladue submissions during bail hearings is necessary for proper implementation.

The Province ought to implement culturally sensitive interviewing techniques for Indigenous clients, as well as education on the traditional and cultural background of Indigenous people and available services within the community.

## Racialized and Multicultural Community Members

Duty counsel, as well as private practitioners, ought to be trained in cross-cultural communication when representing immigrants or racialized communities locally.

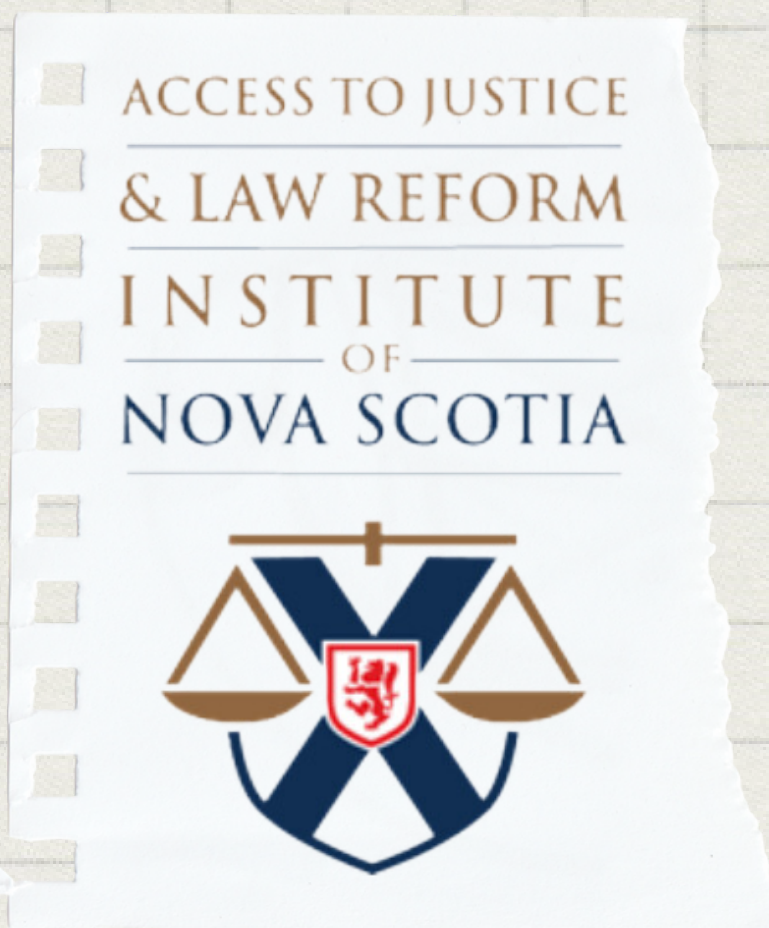
Translation services should be expanded to ensure language barriers are properly addressed, and culturally appropriate support services should be readily available to ameliorate the bail process for racialized individuals.

For African Nova Scotian individuals, the use of Impact of Race and Culture Assessments (IRCAs) is imperative to formulate critically comprehensive background information (similar to Gladue Reports. For more information of the importance of IRCAs, see *R v Anderson*, 2021 NSCA 62.

## Youth

The Province has work to do on developing a strategy to successfully promote the principles detailed in the Youth Criminal Justice Act (YCJA) during the bail stage. The excessive use of custody in detaining young people, in particular, ought to be addressed as it violates section 29 of the YCJA.

# **"Community Agency Bail Programs"**



**July 2019**

# 1) Bail Verification and Supervision Programs (BVSPs)

Ontario's Bail Verification and Supervision Program (BVSP) is a community-based initiative designed to assist individuals who are granted bail while awaiting trial. The program is funded by the Attorney General and aims to provide support, supervision, and monitoring to individuals who may face challenges meeting their bail conditions or who require assistance in reintegrating into the community.

Under the BVSP, trained bail verification and supervision workers are employed by community agencies, including the Elizabeth Fry Society and the John Howard Society. These workers collaborate with the justice system to help ensure compliance with bail conditions and promote public safety. The program operates in several regions across Ontario.

The primary objectives of the BVSP include:

1. **Verification:** Bail verification workers assess the suitability of potential program participants by conducting interviews, verifying residential addresses, and confirming compliance with bail conditions.

2. **Supervision and Support:** Once a person is deemed eligible for the program, supervision workers provide ongoing support and monitoring. This may involve regular check-ins, assistance with accessing community resources, referrals to support services, and addressing any issues that may arise during the pre-trial period.

3. **Public Safety:** The BVSP aims to reduce the risk of reoffending while individuals are on bail. By actively engaging with program participants, addressing any underlying issues, and providing necessary support, the program aims to enhance public safety.

In Ontario, such bail services are provided to individuals aged 16 and above who are accused of criminal offenses. These services are available in the following situations:

- When awaiting the initial bail proceedings.
- When remanded for a show cause hearing.
- When in custody and unable to meet the requirements of surety or cash bail.
- When appealing a bail decision that has resulted in detention.

The bail program may decline to supervise someone if:

- They have previously failed to comply with the rules while in the bail program.
- They have a history of non-compliance with reporting requirements.
- They are charged with a serious violent crime.
- They have not agreed to be supervised by the bail program.

In early 2017, the Ontario Liberal government increased funding for BVSPs with the following objectives:

- Expand the program to cover the entire province, as it previously only serviced half of the court locations.
- Enhance existing program services and supports to facilitate successful release on bail for low-risk accused individuals, reducing future conflicts with the law.
- Provide specialized training to BVSP staff to improve access to housing, medical services, treatment, and supervision in the community, particularly for vulnerable populations such as those with mental illness and Indigenous people.
- Extend the program to include weekend court locations across the province.

Part of the 2017 expansion also included the development of a new Indigenous bail and remand program. This program aligns with the Ministry of Attorney General's Bail Verification and Supervision Program standards but incorporates specific policies, training, and staff positions to better serve Indigenous people, allowing them to remain in their communities while awaiting trial.

## 2) Bail Beds

Bail Bed programs in Ontario, as surveyed by the Access to Justice and Law Reform Institute in this report, aim to address the issue of homelessness or lack of stable housing, which often prevents vulnerable individuals from being granted bail and leads to their prolonged custody.

Bail Bed funding provides safe, supportive, and supervised housing to accused persons who require enhanced community supervision to meet their bail conditions.

In 2017, the Ottawa-Carleton Detention Centre Task Force recommended that the Ministry of Community Safety and Correctional Services (MCSCS) and the Ministry of the Attorney General (MAG) collaborate with partner ministries such as the Ministry of Health and Long Term Care (MOHLTC) and community agencies to explore the feasibility of funding bail beds for offenders who can be appropriately housed and supervised in the community.

Similarly, in a 2016 report on Bail and Remand in Ontario by Raymond Wyant, former Chief Judge of the Provincial Court of Manitoba, it was suggested that the government, in partnership with community agencies, should provide more bail beds for the homeless, additional support for mental health issues, including residential support and crisis beds, as well as community mental health supervision programs for those released on bail. The report also highlighted the need for increased support for addiction programs, women, indigenous offenders, and other individuals in need, to ensure that alternatives to custody are available when suitable.

In response to these recommendations, the Ontario Liberals launched the Bail Bed program in 2017. This program initially funded 70 beds in five locations across the province, including Barrie, Kitchener, Ottawa, Thunder Bay, and Toronto.

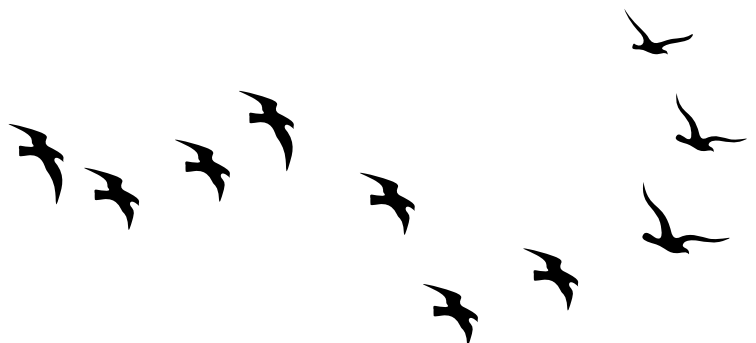
Community-based agencies deliver the program, with the John Howard Society of Ottawa and the Elizabeth Fry Society providing bail beds for men and women, respectively. The program started with a 20-bed facility in Thunder Bay in December 2016

Accused individuals in the Ottawa bail beds program have access to life skills programs, cultural support, mental health and addiction counselling, and employment/education services through partnerships with community organizations.

In Kitchener, a bail beds initiative was established in 2017 through a partnership between the Waterloo Bail Program (WBP) and the Charles Street Men's Shelter. The majority of individuals released into the WBP were directed to the shelter, with the Charles Street Men's Shelter receiving the highest number of referrals. Funding was provided for 10 bail beds, allowing for increased staff involvement with shelter residents involved in the criminal justice system.

In Kenora, a new bail beds program was launched in 2018 as a partnership between the Kenora District Services Board (KDSB), Kenora Chiefs Advisory (KCA), and the Ne-Chee Friendship Centre. The program was motivated by the high rate of bail violations attributed to substance use and residency rule breaches. It comprises Bail Supervision Programming provided by the Ne-Chee Friendship Centre and Housing with Supports Programming provided by the KDSB and KCA, with additional property management resources from the KDSB.

These programs have a significant impact in reducing breach rates. By providing appropriate support, individuals are given the opportunity to succeed rather than feeling coerced into pleading guilty or experiencing a cycle of detention resulting from challenging and difficult-to-meet bail conditions being violated.





# Bail Support Beyond Ontario

## British Columbia

British Columbia's Ministry of Public Safety and Solicitor General directly oversees bail supervision through the Community Corrections Division. The program, known as "Strategic Community Supervision," annually provides community supervision to over 22,000 individuals, including around 7,500 people subject to bail orders. Using a risk/need/responsivity model, the program aims to reduce recidivism by up to 30%.

Approximately 56% of individuals under correctional supervision in British Columbia have been diagnosed with substance abuse or mental health disorders, adding to the complexity of their needs. Addressing these needs can be challenging. This program has a unique opportunity to bring about positive change and significant benefits for both offenders and the public, in this regard.

BC boasts 56 Community Corrections offices, where probation officers play a vital role in supervising offenders, ensuring compliance with court orders, and collaborating with individuals to access community support, modify behavior, and reduce the likelihood of reoffending. These officers employ evidence-based case management strategies, striving to strike a balance between supervision and enforcement while promoting positive life changes.

It is estimated that supervising an offender in the community costs only \$7 a day — a stark contrast to the \$194 daily expense of supervising an offender in jail.

Successful rehabilitation results in reduced threats to community safety, decreased economic and social costs, and increased social productivity when offenders reintegrate as contributing members of society.

## Manitoba

In Manitoba, the government has made significant strides in bolstering bail supervision and community-based sentence programs. This year, Justice Minister Kelvin Goertzen unveiled comprehensive plans to enhance existing programs and introduce fresh initiatives to strengthen bail supervision and community-based sentences. This includes allocating additional resources to the Criminal Organization High Risk Offender Unit and launching a pilot adult bail management program.

The expansion of the Criminal Organization High Risk Offender Unit involves recruiting a full-time psychologist, increasing the number of probation officers, and adding community corrections workers. The aim is to provide enhanced supervision services to an additional 100 high-risk offenders, doubling the program's current capacity.

The pilot adult bail management program, based in Winnipeg, prioritizes increased supervision and support for 25 male and 25 female offenders facing serious charges. By addressing public safety concerns and promoting compliance with release order conditions, the initiative seeks to reduce risks associated with offenders on bail and explore effective frameworks for bail management and community-based supervision.

Manitoba is also initiating a request for proposals to establish an upgraded and state-of-the-art electronic monitoring program. By implementing secure and confidential electronic monitoring for judicially reviewed offenders, the province aims to proactively prevent crime, alleviate policing burdens, and promote targeted offender supervision.

## Newfoundland

In Newfoundland, a pilot program initiated in 2020 has sought to assess the efficacy of a government-funded bail support program. Led by Memorial University Graduate students Hayley Crichton and Pegah Memarpour, with the backing of the Minister of Justice and Public Safety, the program aimed to address high incarceration rates, understand the root causes of incarceration, and reduce reoffending.

Around 50% of the inmate population in Newfoundland at that time was on remand, awaiting trial. The government's objective was to explore bail supervision as an alternative option for judges to consider, providing robust supervision for remand inmates instead of imprisonment.

Newfoundland's current Bail Supervision Program is tailored for eligible adult individuals (18+) in custody awaiting a bail hearing and is exclusively available in St. John's, Newfoundland and Labrador. To qualify, the accused must be willing to adhere to release conditions but unable to fulfill monetary obligations or secure a suitable surety or housing.

The program serves as an alternative to custody for eligible accused individuals who would typically receive bail but lack certain requirements, such as a surety or stable living arrangement. Eligibility is determined through a process involving a lawyer's assessment, completion of a bail supervision referral form, and an interview by a Bail Verification Officer.



# Conclusion

In conclusion, the direction of bail reform in Nova Scotia should draw inspiration from successful initiatives implemented in other provinces, such as Ontario, British Columbia, Manitoba, and Newfoundland. These examples highlight the potential for effective bail supervision programs and community-based sentences to address the root causes of incarceration, reduce recidivism rates, and promote public safety.

British Columbia's Strategic Community Supervision program demonstrates the positive outcomes of comprehensive case management and evidence-based interventions. By addressing the risks and needs of individuals in custody and providing robust community supervision, BC has successfully reduced recidivism rates and promoted successful rehabilitation. The cost-effectiveness of community supervision compared to incarceration further emphasizes the potential benefits of investing in such programs.

Manitoba's proactive approach to bail supervision, including the strengthening of the Criminal Organization High Risk Offender Unit and the introduction of an electronic monitoring program, showcases the potential for robust supervision for high-risk offenders granted bail. These initiatives prioritize public safety and compliance with release order conditions while leveraging technological advancements to enhance restorative justice possibilities.

In Newfoundland, the pilot program for bail support offers a promising alternative to custody for eligible individuals awaiting a bail hearing. By providing robust supervision and support, the program aims to address high incarceration rates and reduce reoffending, ultimately offering a more compassionate and effective approach to bail.

In Ontario, the Bail Verification and Supervision Program (BVSP) has proven to be an effective community-based initiative in assisting individuals who are granted bail while awaiting trial. By providing support, supervision, and monitoring, the BVSP aims to reduce the risk of reoffending and promote public safety.

The expansion of the program, including specialized training and the development of an Indigenous bail and remand program, further demonstrates a commitment to addressing the specific needs of individuals in the bail system.

These examples provide valuable insights and potential strategies for Nova Scotia's bail reform efforts. The province should consider implementing a comprehensive bail supervision program that focuses on case management, risk assessment, and evidence-based interventions. Collaborations with community agencies, the use of electronic monitoring technology, and the establishment of specialized programs for vulnerable populations can further enhance the effectiveness of the bail system.

The implementation of bail bed programs, as seen in Ontario, can address the issue of homelessness and lack of stable housing that often hinder individuals from being granted bail. Providing safe and supportive housing, along with necessary support services, can contribute to successful reintegration and reduce the likelihood of reoffending.

Learning from the successes and challenges faced by other provinces, Nova Scotia has the opportunity to create a more fair and effective bail system that serves the needs of individuals, communities, and the justice system as a whole.

While organizations like Coverdale have been at the forefront of striving for positive change in bail reform, government funding is essential to support and advance these efforts. Adequate funding would allow Nova Scotia to implement comprehensive bail supervision programs, enhance community-based sentences, and introduce innovative approaches that align with the initiatives of other provinces. It would provide the necessary resources for effective case management, specialized programs, and collaborations with community agencies. By investing in bail reform, Nova Scotia can ensure the sustainability, effectiveness, and fairness of its bail system, ultimately promoting public safety and successful rehabilitation for individuals involved in the justice system, while ultimately cutting costs.

# Works Cited

Access to Justice & Law Reform Institute of Nova Scotia. "Demand and Efficacy of Bail Verification Programs."

Affordable Housing Association of Nova Scotia. "Housing Support for Inmates During COVID-19 Crisis."

"Alternatives to Incarceration for Individuals with Mental Illness." Canadian Mental Health Association.

"Bail Bed Programs in Ontario." Access to Justice and Law Reform Institute.

"Bill C-75: An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts." Parliament of Canada, 2019.

"Canadian Charter of Rights and Freedoms." Part I of the Constitution Act, 1982.

Canadian Civil Liberties Association and Education Trust. "Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention."

"Criminal Code of Canada." Part XVI (Sections 493 to 529).

Crichton, Hayley, and Pegah Memarpour. "Bail Support Program in Newfoundland." Memorial University.

"Gladue Submissions in Bail Hearings." Indigenous Legal Traditions in Canada.

Goertzen, Kelvin. "Enhancing Bail Supervision in Manitoba." Manitoba Justice Department.

Jones, El. "Province Rejects Bail Housing Plans for Women, Spends \$150,000 on Electronic Monitoring Instead." Halifax Examiner, November 18, 2020.

"Mental Health and Incarceration." Canadian Journal of Psychiatry.

Ontario Ministry of the Attorney General. "Bail Verification and Supervision Program."

Ottawa-Carleton Detention Centre Task Force. "Recommendations on Bail Beds." 2017.

"Proposed Reforms to the Criminal Code." Government of Canada, May 16, 2023.

*R v Anderson*, 2021 NSCA 62.

*R. v. Antic*, [2017] 1 S.C.R. 509.

*R. v. Hall*, [2002] 3 S.C.R. 309.

*R. v. Morales*, [1992] 3 S.C.R. 711.

*R. v. Myers*, [1985] 1 S.C.R. 91.

*R. v. St-Cloud*, [2015] 2 S.C.R. 328.



"Set Up to Fail." Canadian Civil Liberties Association and Education Trust.

Statistics Canada. "Number of Individuals in Custody Awaiting Bail Hearing or Trial."

"Strategic Community Supervision in British Columbia." Ministry of Public Safety and Solicitor General.

"Training for Legal Practitioners on Gladue Submissions." Indigenous Justice Division, Ministry of the Attorney General.

Wyant, Raymond. "Bail and Remand in Ontario." 2016.

*Youth Criminal Justice Act*, SC 2002, c 1.

