



ENGAGEMENT • SUMMER 2017

Getting fair outcomes for victims in Canada's criminal justice system

Bail reform

What is bail reform?

Generally speaking, bail is the procedure to determine if a person charged with a criminal offence will be released or detained while awaiting trial.

What is the federal government doing on this issue?

- > Exploring bail reform is part of the modernization work specifically included in the Minister of Justice and Attorney General of Canada's mandate letter.
- > In its 2015 electoral platform, the Liberal Party of Canada committed to amend the *Criminal Code* to reverse onus on bail for accused persons with previous convictions of intimate partner violence.¹ If introduced and enacted, this change would mean that an accused would be kept in custody unless they can demonstrate that their detention is not justified.

What rights to victims currently have with respect to bail?

- > Under the *Criminal Code*, a victim of an offence is entitled to receive – on request – a copy of the bail hearing order (the decision to detain or release the accused, along with any conditions).

Considerations

- > There is currently no legal duty to automatically inform victims when an offender is released on bail. This means victims with legitimate concerns for their safety may not be made aware when the accused person is released and what conditions may or may not be in place.
 - Interviews reveal that only two-thirds of victims were informed about the accused being released

on bail, with just over half of these victims being told about the time of release (55 percent) and about the release conditions (57 percent).²

- > Numerous studies have highlighted serious problems associated with an increasing number of accused persons held in jails and prisons while awaiting bail hearings and trials.
- > Some problems identified with detaining adults while awaiting trial include:
 - *Charter* rights of accused persons - increasing numbers of presumptively innocent people spending days and sometimes weeks in prison before their bail hearing
 - increased costs – e.g. facility costs and costs related to hearing delays
 - inefficiencies – e.g. strain on correctional facilities and hearing delays
 - increased potential for exposure to criminality in prisons
 - an unequal impact on vulnerable populations
- > According to Statistics Canada, there are now more people held in custody awaiting a bail hearing or trial than in custody with criminal sentences (e.g. time in prison as a result of a criminal conviction).³

Ideas for change

- > Amend the law to require that any issuer of a bail order must provide a copy to identifiable victims of the offence so that victims are better positioned to make informed safety planning decisions, and seek protective victim services as needed.
- > Require prosecutors to consult with victims before bail hearings. Prosecutors would then convey necessary details to the deciding judge.

- > Allow victims to submit information directly to the court. A straightforward document to record and submit evidence relating to the security and safety of victims or witnesses could be developed and piloted. These approaches would be consistent with existing victim rights in section 14 of the *Canadian Victims Bill of Rights*.
- > Victims could be provided with detailed and explanatory information related to their safety and security, with clear responsibility assigned to a single, reliably-available resource.⁴

More about bail reform

If a person accused of a crime is taken into custody and held in jail or prison until they appear in court, a bail hearing must be held within twenty-four hours (or as soon as possible).

At a bail hearing, a prosecutor (in most cases) summarizes the nature of the offence(s), the evidence against the accused and the factors that will assist the court in making a decision. During the hearing, the court must also take into account any evidence about the need to ensure the safety of victims or witnesses; this can include the seriousness of the charge or whether it involves violence.⁵ The court then decides whether to detain the accused person before the case goes to trial.

Pre-trial detention, remand and releases

Pre-trial detention also includes remand. It is not uncommon for accused persons to be remanded into prison custody while awaiting their bail hearing.

If the court determines that an accused person should be detained, it orders that they remain in prison pre-trial. Under current federal law, this can be done to ensure appearance in court, to keep the public safe (including victims and witnesses), or to maintain confidence in the administration of justice given the gravity of the offence and similar factors.

Charter rights

A key consideration in many conversations about bail reform is centred on an accused person's rights under section 11 of the *Canadian Charter of Rights and Freedoms* – specifically, an accused person's right “not to be denied reasonable bail without just cause.” The Charter also guarantees legal rights to life, liberty and security of the person. These rights exist for everyone, including victims and persons accused of crimes. To balance how these legal rights are applied, the *Criminal Code* generally requires courts to release accused persons without conditions while they await trial. However, if the prosecutor shows cause at a bail hearing, the court can order pre-trial detention or interim release with necessary conditions.

Criminal charges involving violence

If an offence involves violence against a person – actual, threatened, or attempted – the court must either order that the accused be detained in prison until they are dealt with according to the law, or order their interim release with conditions that ensure the safety and security of victims. If release conditions are not imposed, the court must include a statement of reasons in the court record. Furthermore, the court is required to include a statement in the record that it considered the safety and security of every victim when making its decision.

ENDNOTES

¹ Liberal Party of Canada, *Preventing Domestic Violence and Sexual Assault*, consulted July 2017, <https://www.liberal.ca/realchange/preventing-domestic-violence-and-sexual-assault/>.

² Department of Justice Canada, *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada*, 2004, p. 38.

³ Lindsay Porter and Donna Calverley, *Trends in the Use of Remand in Canada*, Statistics Canada, 2011, <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11440-eng.htm>.

⁴ Department of Justice Canada, *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada*, 2004, p. 146.

⁵ Department of Justice Canada, *Bail*, 24 July 2015, <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/report-signe/bail-liberation.html>.