

**STEERING COMMITTEE ON JUSTICE EFFICIENCIES
AND ACCESS TO THE JUSTICE SYSTEM**

REPORT ON BAIL REFORM

MAY 2016

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INTRODUCTION

Over the past decade there have been numerous calls for reform to the legislative regime and operational processes governing bail. The complexity of the legislation and its application as well as the absence of any substantial updating since 1972 are factors that suggest a need for reform in this area.

An additional concern that has drawn increasing attention derives from reports that over the past decade the number of people on remand custody has outnumbered inmates serving custodial sentences in provincial and territorial custodial institutions.¹ In 2014/2015 adults in the remand population accounted for 57% of the custodial population.² Aboriginal adults represented almost one-quarter of admissions to remand, a rate which far exceeds their proportion of the Canadian population.³

A number of commentators have argued that this shift in the proportion of remand to sentenced population reflects a burgeoning growth in the number of people detained in remand. It is suggested that “risk aversion” and a “culture of adjournments” have caused more people to spend more time on remand.⁴ On the other hand, there are those who question whether the bail system is too lax. Concerns about protection of the public arise when crimes of violence are committed by persons on bail.⁵

Available data suggests that 41% of all adults charged with criminal offences are held by police for a bail hearing. 66% of those accused persons held for a bail hearing are released either on bail, or by disposal of their charges.⁶ In the result, 14% of people charged with criminal offences are held on remand prior to their trial.

Accurate issue identification and effective reform depends upon a foundation of reliable evidence of the context including the myriad of factors and decisions that are made by various participants in the criminal justice process. Our review of available data shows that there is a dearth of comprehensive, objective and reliable information about the bail process that would permit strong inferences or accurate conclusions about its operation.

¹ “Remand” is defined as the detention of persons who have not been convicted and are awaiting a court appearance, including convicted persons awaiting sentence and dual status offenders. Adult Correctional Statistics in Canada, 2013/14, Juristat, Chart 1, Average rate of adults in custody by 12 jurisdictions, 2003/2004 to 2013/2014 at p. 2, Statistics Canada 2015, p. 2.

² Adult Correctional Statistics in Canada, 2014/2015.

³ Statistics Canada, Table 251-0022 - *Adult correctional services, custodial admissions to provincial and territorial programs by aboriginal identity*.

⁴ John Howard Society of Ontario, September 2013, “*Reasonable Bail*”; Canadian Civil Liberties Association, July 2014, “*Set up to Fail: Bail and the Revolving Door of Pre-Trial Detention*”; Cheryl Marie Webster, Anthony N. Doob and Nicole M. Myers, “*The Parable of Ms. Baker: Understanding Pre-Trial Detention in Canada*” Current Issues Crim. Just., 2009; Nicole Myers, “*Shifting risk: Bail and the use of sureties*”, Current Issues Crim. Just., 2009

⁵ “Alberta Law Review: Endorsing a Call for Change”, Nancy Irving, February 29, 2016, at page 2 and footnotes 2 and 3. The Review was commissioned after a fatal shooting of an RCMP officer by a repeat offender who was on bail.

⁶ “Police and Judicial Detention and Release Characteristics: Data from the Justice Effectiveness Study, 2013, Research and Statistics Division, Department of Justice, 2013. In concrete numbers, of the 897 cases studied, 591 involved a police release.

The absence of reliable, objective, comprehensive data about various aspects of the diverse bail processes across this country has hampered the accurate identification of issues and conversations about reform in bail.⁷

Nevertheless, the Steering Committee has been able to reach consensus on a number of meaningful reforms which we believe would advance the objectives of the bail process. We offer several recommendations, some of which have been previously made in the Federal Provincial Territorial (FPT) forum and elsewhere,⁸ that are aimed at improving the efficiency and effectiveness of the bail regime without compromising the values underlying the Criminal Justice System (CJS).

First, we recommend the creation of a dedicated national bail data collection process that captures all relevant information that informs bail decisions and accounts for unique regional and local bail practices. Each jurisdiction has unique bail processes and data collection methods. A national bail data collection program designed to collect comparable information in a consistent manner would enhance the reliability of inferences and permit comparative analysis. Information to be collected would commence with the decision to arrest and would end with the conclusion of the case.

It is essential that a national bail data collection process identify with clarity and precision, what is being measured and how measurements are made. For example, any analysis of the remand population must distinguish between remand counts, remand admissions and average days⁹ on remand as they measure different things. Failure to distinguish between these concepts has led to confusion.

Second, as we noted earlier, available data reveals that the police release 59% of people they arrest and charge with criminal offences. Of the 41% held by police for a bail hearing, 66% are judicially released¹⁰ on their first or second appearance in court, most often on consent of the Crown. The group of “consent” releases suggests that more accused persons could be released by police if they had enhanced powers of release.

We recommend several ways to enhance and modernize the powers of police to release persons charged with a criminal offence. Those include: incorporating guiding principles, simplifying the form of release, eliminating the “officer in charge” and peace officer distinction, increasing the statutory conditions available to police and providing police with the power to release on “fail to appear” charges. We also recommend increased training for police as they are provided with enhanced powers.

⁷ The absence of empirical data was a “major challenge” noted in the Alberta Bail Review and is the foundation for recommendation 31 calling on the government of Alberta to improve bail related data collection with respect to the bail process in that province: see p. 71 – 72.

⁸ “*Report on Early Case Consideration*”, 2006, [The 2006 Report], p.16

⁹ “Admissions” are counted each time a person begins any period of supervision in a correctional institution or in the community. “Average counts” provide a snapshot of the daily correctional population and are used to provide an annual average count. Average time served in remand represents the annual average time served in remand per accused [in days].

¹⁰ On bail or by the final disposition of the case [e.g., guilty plea].

Third, at present the *Criminal Code* requires that persons on remand be brought before a court within 30 or 90 days for an administrative review of their remand order. The *Criminal Code* does not specifically permit an accused person to waive this administrative review, potentially resulting in the accused person being transported to court for every administrative review, whether desired or not. We recommend that the ability to waive that review be expressly stated.

Fourth, criminal court statistics show that cases involving an administration of justice charge,¹¹ including failure to comply and failure to appear charges, constitute a quarter of all cases and that percentage has increased over the last ten years.¹² Sentencing data illustrates that in the last ten years, a custodial sentence was imposed in almost half of all cases involving a conviction for an administration of justice offence.¹³

The impact of convictions for administration of justice offences is significant in the Indigenous community and, some contend, contributes to the overrepresentation of Indigenous people in the CJS.¹⁴ Indigenous adults account for one-quarter of admissions to remand and this is increasing.¹⁵ We cannot ignore the growing problem of the over-representation of Indigenous people in remand.

We believe that an alternative approach to the resolution of failure to comply and failure to appear offences is warranted. The Steering Committee recommends the incorporation of an extrajudicial regime in the *Criminal Code* (e.g., depending on the nature of the breach and the circumstances, the police would issue a warning rather than lay a charge for an administrative breach). This regime could be modelled on the *New South Wales (Australia) Bail Act* (2013), subsection 77(3),¹⁶ which provides police with a “ladder” approach and articulates factors to guide the police in deciding what response is warranted by the circumstances [e.g. take no action, issue a warning, arrest or lay a charge]. The adoption of this regime, together with encouragement of an alternative approach to resolution by the Crown and presiding justice, could contribute to a reduction in the number of court cases that include breach of bail condition charges.

Fifth, the benefits of bail supervision programs have been well documented. In the past the Steering Committee recommended increased support by government for greater access to more

¹¹ A large group of offences are captured in the “administration of justice” charge category. In addition to offences by and against public officials, they include the following: s. 145.(3-5.1a) Failure to comply with conditions/appear, etc.; s. 810. Fail/refuse recognizance ; s. 811.(ab) Breach of recognizance under s.810; s.145.(2ab) Failure to attend court; s. 161.(4ab) Breach of probation order; s. 733.1(1ab) Fail to comply probation order; s. 753.3(1) Breach of long-term order; s.127.(1ab) Disobeying order of court; s.128.(ab) Misconduct of officer in executing process; s. 139.(1a-d) Obstruct justice; s. 140.(1a-d) Public mischief; s. 131.(1) Perjury.

¹² Statistics Canada. *Table 252-0053 - Adult criminal courts, number of cases and charges by type of decision.*

¹³ Statistics Canada, *Table 252-0057 – Adult criminal courts, guilty cases by most serious sentence.* See also “Trends in offences against the administration of justice”, Juristat CCJS, October 15, 2015, <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14233-eng.pdf>.

¹⁴ *Administration of justice offences among Aboriginal people: Court officials’ perspective*, Research and Statistics Division, Justice Canada, 2013. See also *Aboriginal overrepresentation in the criminal justice system: causes and responses*, Scott Clark, March 2015.

¹⁵ Statistics Canada. *Table 252-0022 - Adult correctional services, custodial admissions to provincial and territorial programs by aboriginal identity.*

¹⁶ http://www.austlii.edu.au/au/legis/nsw/consol_act/ba201341/s77.html.

bail supervision programs. We continue to believe, as we did in 2006, that “considerations of fairness and the public interest in reducing custodial costs justify government support for bail supervision programs that promote the attendance of accused persons in court without requiring pre-trial incarceration”.¹⁷

Sixth, the *Criminal Code* directs that the consent of the Crown is required before a justice may order the release of an accused on a recognizance of money. We recommend the removal of this requirement as it serves no purpose and may create delay.

It is our view that these recommended reforms would provide the evidentiary foundation for issue identification and the development of further reforms. The proposed recommendations would also reduce time spent on remand by persons who could be appropriately released without impacting on the safety of the community, as well as improve the efficiency of our courts.

1. BACKGROUND

1.1 The Steering Committee

In 2003, FPT Ministers Responsible for Justice and the judiciary created the Steering Committee on Justice Efficiencies and Access to the Justice System. The Steering Committee is an independent body composed of six federal and provincial deputy ministers responsible for Justice, three representatives from the Canadian Judicial Council, three representatives from the Canadian Council of Chief Judges, one representative from the Canadian Bar Association, one representative from the Barreau du Québec, one representative from the Canadian Council of Criminal Defence Lawyers, and two representatives from the police community. This group works together to recommend solutions to problems relating to the efficient and effective operation of the CJS, without compromising its fundamental values.

The Steering Committee examines significant issues related to justice efficiencies and access to the CJS that are systemic and national. Recommendations and reports prepared by the Steering Committee are submitted to FPT Deputy Ministers and to Ministers for consideration. Past reports prepared by the Steering Committee include: *Report on Mega-trials* (2005), *Guiding Principles for Effective Case Management* (2005), *Report on Early Case Consideration* (2006), and the *Report on Jury Reform* (2009).

1.2 Past Recommendations

Over a decade ago the Steering Committee observed that the justice system was taking longer to resolve adult criminal cases. One of the many consequences of an increased elapse time to trial is an increase in time spent in remanded custody by those denied bail. The Steering Committee offered recommendations on ways to improve processes and relationships in the justice system with the goal of decreasing the number of court appearances necessary to resolve a case.

¹⁷ The 2006 Report, Recommendation Eight: Bail Supervision and Verification Programs.

In that context the Steering Committee examined issues relating to police release from custody and bail. The Steering Committee engaged in consultations with participants in the CJS as well as stakeholders, and provided recommendations in these areas, as well as others.¹⁸ The need for modernization and reform of the police power to release was emphasized then and continues to be an area ripe for reform.

The Steering Committee also examined the relationship between an increased mean elapsed time from first to last court appearance and breaches of conditions and administration of justice charges. The Steering Committee noted that as “the number of court appearances increase, so too does the possibility that the bailed accused will fail to appear as required or otherwise breach his terms of release”.¹⁹ The Steering Committee recommended that consideration be given to the repeal of the reverse onus provision [s. 515(6)(c)] in order to address the increasing rate of administration of justice offences.

The *Report on Early Case Consideration* was approved by Ministers in 2006. The recommendations pertaining to police release from custody and interim release²⁰ included the following:

- modernize police powers of release;
- encourage police discretion to release on arrest and enhanced education;
- provide “information sheets” to an accused on arrest;
- use “bail application officers” to assist in bail hearings;
- increase the availability of bail supervision and verification program;
- repeal reverse onus provision on administration of justice charges;
- use alternative surety approval mechanisms;
- create detention centre communication protocols;
- increase the use of audio and video remand systems; and
- provide the brief and disclosure in a timely fashion.

Several of the operational recommendations have been implemented by various jurisdictions. As we noted earlier, there has been no comprehensive statutory reform of the bail legislative regime since 1972.

1.3 Recent Work

In February 2013, the Steering Committee formed a Subcommittee to again examine bail practices and issues pertaining to remand. The mandate of the Subcommittee was to conduct a focussed literature review, examine issues and make practical recommendations relating to bail practices across the country.

One of the challenges encountered in developing specific proposals for bail reform was the lack of accessible and reliable information about the operation of the current bail system, as well as objective evidence to assess whether the system is achieving its intended outcomes.

¹⁸ The 2006 Report, p.8.

¹⁹ *Ibid*, p. 17-18.

²⁰ *Ibid*, p. 11-23.

In an effort to obtain reliable data about bail that would inform its examination, in February 2014 the Steering Committee endorsed a proposal for a National Bail Data Collection and Survey Project (NBS). The objective of the project was to collect detailed, comprehensive reliable data to assist in development of policy and process change and identify areas in the bail process requiring more detailed examination.

The project contemplated a retrospective file review of completed adult *Criminal Code* cases from the initial bail appearance through to its conclusion, over a three month period in 2011, in several sites in five provinces. Ontario, Quebec, British Columbia, Alberta and Nova Scotia participated in this project that concluded in the fall of 2015.

In an effort to obtain comparable data, each participating jurisdiction was asked to review criminal files from 6 court sites: 2 “small”, 2 “medium” and 2 “large” court sites. Data to be collected from the files was comprehensive and included the number of appearances, the reasons for any adjournments, the charge category, the identification of domestic violence related offences, substantive charges underlying administration of justice charges, mental health issues, prior criminal record, onus, the outcome, the position of the Crown, sureties, community supervision and conditions of release. In addition, local bail practices and processes were to be described by the various participating jurisdictions.

Survey responses and analysis of sample data received from the participating jurisdictions highlighted different procedures and practices among the participating provinces. For example:

- British Columbia and Quebec have a pre-charge approval practice;
- British Columbia uses its Corrections Branch, Community Supervision Division to supervise individuals released on bail in the community;
- Alberta uses cash bails frequently as a method to enforce bail conditions;
- Ontario rarely uses cash bails (in *Criminal Code* offences);
- Ontario has dedicated bail courts; and
- Nova Scotia and Ontario use sureties to supervise accused persons in the majority of cases where bail is granted.

Significant regional differences in operational bail processes affected the ability of the NBS participants to collect comparable information (e.g., some jurisdictions did not have a dedicated bail “docket” or “bail court”). This led to difficulty in identifying files in the bail phase and obtaining bail decisions/outcomes made in the first bail phase.

Each province has unique data collection process with different information collected. For example, information pertaining to consent releases and cases where bail was completed with disposition²¹ was not captured in all provinces. Where data collection processes existed, they were unique to their region, and not necessarily susceptible to comparison. Further, the data was collected by different bodies [either courts or Crown] and ownership of the data was an issue.

²¹ Where a bail decision was not rendered because the case concluded with a guilty plea, a stay or withdrawal of charges.

Where comparative practices existed, the manner of data collection was not identical. Some jurisdictions were able to conduct detailed file reviews while others relied upon a pre-existing court database.

These differences posed impediments to efforts to undertake an evidence-based analysis of the current bail system in Canada and to develop credible proposals for reform.

Several important lessons were learned from this process which informs the Steering Committee's recommendations. The results of the NBS were presented to the Steering Committee at its October 27, 2015 meeting.

2. THE BAIL PICTURE

We have seen that jurisdictions have their own approach to bail. Many factors contribute to the size of the remand population in any jurisdiction and there is variability in each province and territory.²² Police practices, availability of community services, prosecution and defence practices and court practices all influence what happens in bail in that jurisdiction.

National data that is presently collected by various surveys can suggest trends. The picture that emerges from national statistics may not reflect what happens on a local, regional and provincial or territorial level. Information about bail that is collected from individual files supplements data that is collected nationally to more accurately portray what happens during the bail process.

A national bail data collection process that incorporates a comprehensive file review could provide essential information that would (i) permit an accurate identification of issues that warrant attention, (ii) reveal possible solutions and (iii) alert policy makers to potential impacts or consequences of policy changes. Such a data collection project has already been tried at the national level, with the Justice Effectiveness Study²³, and by the Steering Committee, with the NBS. The lessons learned from these two projects could help inform the development of a more substantial and permanent bail data collection process.

In the following section we paint a picture of the bail processes that has emerged from our review of available data which has informed our examination of the bail issue. The data derives from Statistics Canada as well as from the two bail file reviews conducted by the Justice Effectiveness Study and the National Bail Survey and Data Collection.

We seek to paint the bail picture for two purposes – first to demonstrate the necessity of a national bail data collection project that includes a robust file review and second to provide an overview of the bail context that has informed our discussion. Contextual information provided by a comprehensive file review provides essential evidence for decision making on reform.

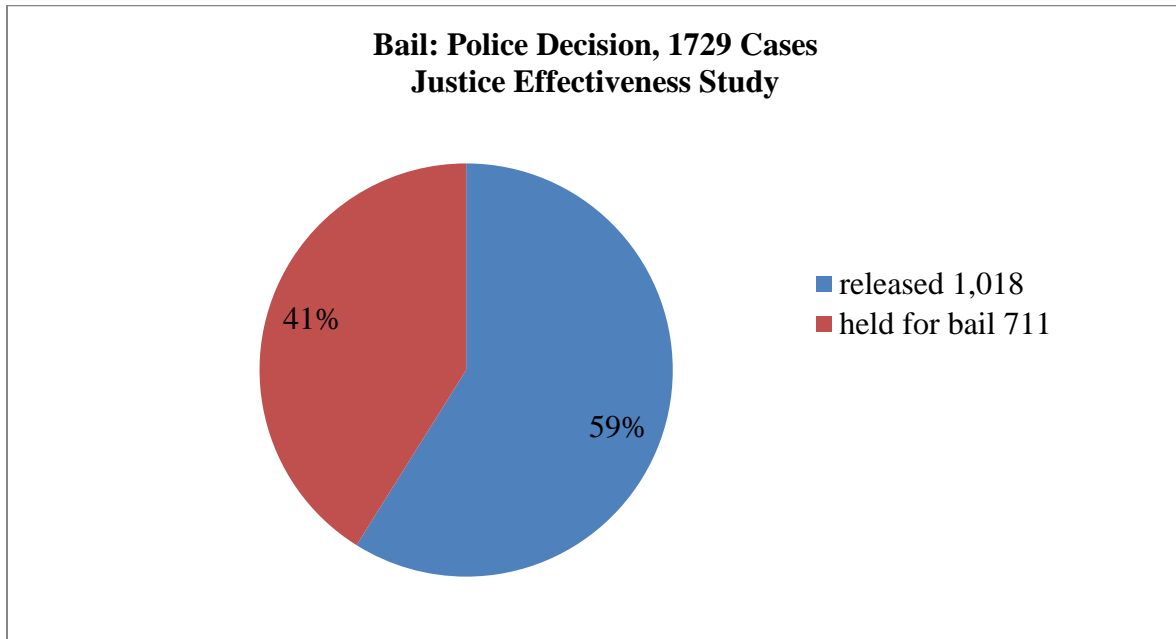
²² Webster, C “Understanding the Inter-relationship of Administration of Justice Charges, Bail, Remand, and the Processing of Cases in Canada: Some Very Preliminary Findings. An Exploration of Variation Across Time and Space. A Report for the Department of Justice, Canada.” April 2016.

²³ Police and Judicial Detention and Release Characteristics: Data from the Justice Effectiveness Study, 2013, p.6.

2.1 Police Decisions

The Justice Effectiveness Study collected information about police conduct through a review of files randomly selected in several sites. Data collected from that Study suggests that almost 60% of persons arrested and charged by police are released.

Where police provided reasons for their decision, the most common reason given for holding an accused person for bail was to ensure attendance at court, followed by the need to ensure the safety or security of a witness. However, the impact of those and other factors differed by site and jurisdiction.²⁴



²⁴ Police and Judicial Detention and Release Characteristics: Data from the Justice Effectiveness Study, 2013, p. 9-13.

2.1.1 Nature of the Charge

Assault was identified as the most serious offence in 22.1% of the cases examined in the Justice Effectiveness Study.²⁵ This was consistent with the findings of the NBS. In the absence of more information, this statistic is relatively benign. However, a detailed file review disclosed more information about these files that permits the identification of potential areas for reform. For example, the NBS file review in Ontario revealed that the majority of assault cases in bail court involved domestic violence.²⁶

The finding that a large part of the work of the bail court in Ontario pertains to domestic violence may inform potential reforms to the bail regime. The circumstances surrounding domestic violence raise specific concerns about the safety of the victim, contact with children, risk analysis, intersection with family court orders, and a raft of other issues that must be considered by the decision maker. Decisions about bail in domestic violence cases require careful attention to numerous risk factors that may exist in often volatile circumstances. Some jurisdictions may have dedicated domestic violence officers who require time to prepare risk assessments for consideration by the court. Various social agencies play a role at this stage by providing assistance to the accused, the victim, any children and other family members.

There is a continuum of risk and not every domestic violence case raises the same concerns about safety. This may be one area where police release powers could be enhanced with additional access to conditions.

2.1.2 Criminal Record

Approximately 65% of accused persons in the sample examined by the Justice Effectiveness Study had a criminal record. Prior convictions for offences of violence, similar offences or administration of justice offences such as failure to comply or failure to appear are relevant to the decision to detain or release on bail.

The presence of a criminal record is not determinative of being held over by the police for a bail hearing. Over half (53%) of those released by police had a criminal record: 23.2% had more than 20 prior convictions, while 40.7% of those released had 1-4 prior convictions.²⁷

Of those accused persons held over by police for a bail hearing, 76.9% had a criminal record: 39.6% of these accused had more than 20 convictions at arrest; 21.8% had 1-4 convictions.

²⁵ Police and Judicial Detention and Release Characteristics: Data from the Justice Effectiveness Study, p. 11-12.

²⁶ NBS, of 1,783 cases reviewed in Ontario, 579 had charges against the person as the most serious offence. 433 of those 579 cases were domestic violence cases. More than half of the domestic violence cases in bail courts in Ontario involved charges for offences against the person [56%] and 36.4% involved administration of justice charges. Over half of those administration of justice charges were “fail to comply” with an order [55%]. Almost three quarters of the accused charged with domestic violence offences had criminal records [72.6%] and they had multiple cases: 317 accused persons accounted for 773 cases [2.4 cases or information per accused].

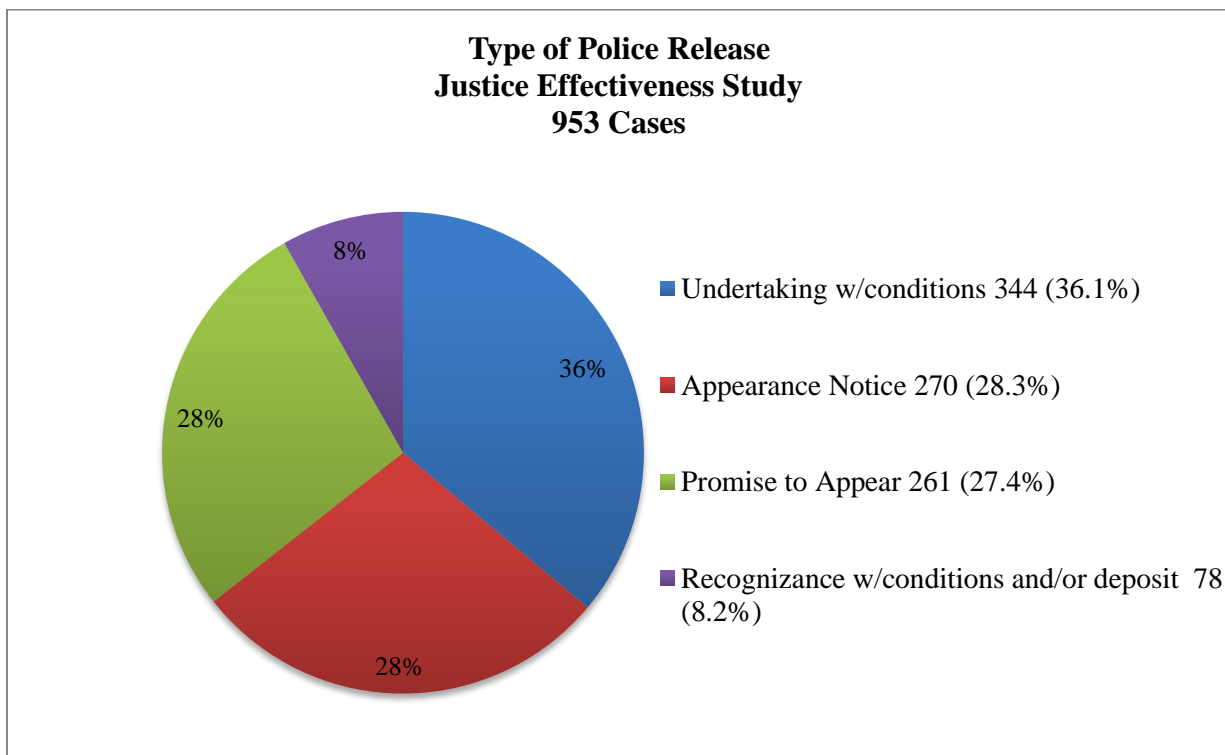
²⁷ Police and Judicial Detention and Release Characteristics: Data from the Justice Effectiveness Study, p.10.

This is consistent with data collected during the NBS. There it was found that, in Ontario, 78.6% of accused persons held for bail had criminal records.

2.1.3 Type of Release

The police are empowered to release an accused on one of four different types of release. An accused may be issued an appearance notice or released on a promise to appear at a particular time in court. Those two types of release are issued without conditions. An accused may be released on an undertaking with conditions or a recognizance with or without a deposit and with conditions.

Over half (55.7%) of the accused persons in the Justice Effectiveness study who were released by police were released without conditions on either an appearance notice or a promise to appear. The remaining 44.3% were released on an undertaking with conditions or a recognizance with or without deposit or conditions.²⁸



The nature of the conditions imposed upon release by recognizance or undertaking [with or without conditions] differed by jurisdiction. Generally, where conditions were imposed, two of the five most common conditions imposed by police were “no communication” (67%²⁹) and

²⁸ p.14, Table 6.

²⁹ As noted above, this represents approximately 59% of the total arrested; the remaining 41% are detained and have their release decision made by the court.

“report as required” (55%). A condition to “keep the peace and be of good behaviour” appeared in 11.8% of those cases where an accused person was released with conditions.

2.2 The Bail Hearing

The Justice Effectiveness Study found that 93.4% of all initial judicial interim release hearings were dealt with in one appearance. There was no data analysis of subsequent appearances. In one location studied, 67.6% of the accused who were remanded had consented to their detention. In another location, 49.4% consented to their detention.³⁰

National surveys and the Justice Effectiveness Study did not collect information about the position of the Crown at the bail hearing. That information was collected during the National Bail Survey and proves informative. This kind of granular information helped to unveil an important area for potential reform.

While comparative analysis is not possible, the data collected from Ontario revealed that accused persons in almost half [46%] of the cases in bail court were released on consent of the Crown.³¹ This large number of consent releases, often on the first appearance, suggests that enhancing the police power of release, and augmenting training, could render the bail process more efficient without jeopardizing the safety of the community. Another important point captured by the comprehensive file review in Ontario was that a bail decision was not sought or rendered in 35% of the cases.

This data provoked further examination. In Ontario, in 2015, guilty pleas were entered in 69% of the cases where a bail decision was not made.³² It is not known with precision how many of the accused persons who did not obtain a bail decision were dual status offenders³³ for whom release was not realistic or how many were simply accumulating pre-trial credit. This information is significant, particularly when trying to derive meaning from the remand data collected by national surveys.

In Ontario, detention orders were issued in 14% of the 1,783 cases presented in bail court.³⁴ This means that less than 10% of the 1,097 accused persons who appeared in bail court were ordered detained.

³⁰ p. 22.

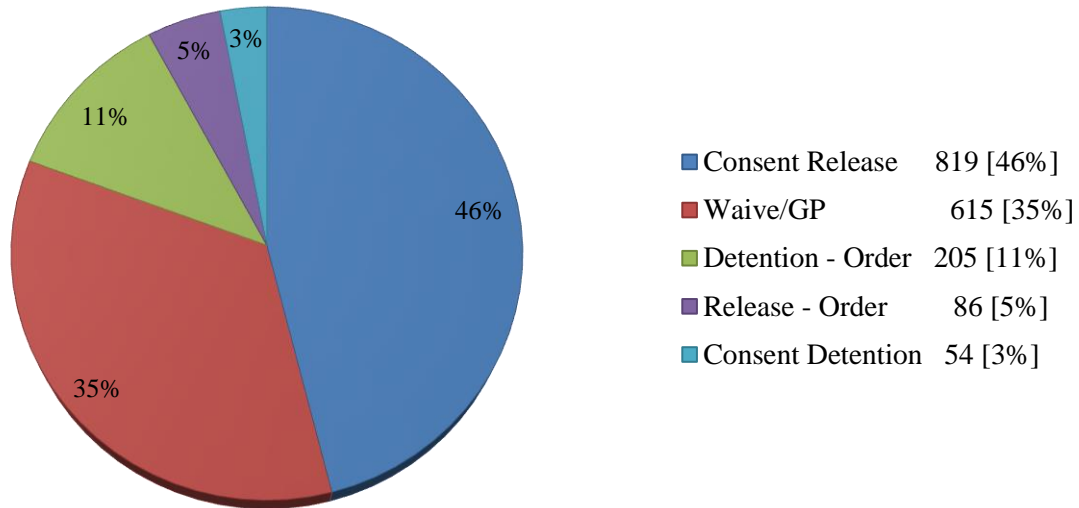
³¹ NBS data, Ontario.

³² Source, ICON offence based statistics, Criminal Cases disposed OCJ Jan-Dec 2015. The rate of guilty pleas for all cases starting in bail court, whether or not there was a bail decision, was 57%. The overall rate of guilty pleas for all disposed cases in Ontario in 2015 was 47%.

³³ Persons who are serving custodial sentences while awaiting trial on other charges. There was no data on the number of cases that were withdrawn or stayed as the result of diversion or alternative measures.

³⁴ From NBS data collected in Ontario. All cases in bail courts in 6 locations over a 3 month period [April 1-June 30, 2011] were captured in the project. In all 1,783 Ontario adult criminal case files were analyzed, representing 1,097 accused with an average of 1.4 cases per offender.

**Judicial Decision:
National Bail Survey, Ontario
1,783 Cases [1,097 Accused]**



Of the 905 cases subject to a release order, 188 cases involved a release on the accused’s own recognizance, 93 cases involved a bail supervision program and 624 cases had release orders that required a surety. The 905 cases represent roughly 400 – 500 accused persons. A surety was ordered for about 2/3 of that group. Conditions were noted on 876 of the 905 cases subject to a release order. The two most common conditions imposed were “reside at address” [680 cases or 75.1%] and “abstain from communication” [662 or 73.1% of the 876 cases where conditions were noted]. Additional contextual information is that domestic violence cases accounted for almost half of the cases in the Ontario bail courts that were examined. In 2013/2014, Indigenous persons accounted for 24% of all admissions to remand, up from 19% in 2005/2006.³⁵ The proportion of Indigenous persons admitted to remand appears to have been increasing across most jurisdictions, despite fluctuations in overall admission to remand numbers.³⁶

2.3 Time on Remand

In 2014/2015, on any given day, there were 13,650 adults in remand in the provinces and territories.³⁷ The Justice Effectiveness Study found that 65% of the persons held for a bail hearing were released on their first court appearance.³⁸ National Statistics suggest that more than half (53%) of adult offenders released from remand in 2014/2015 were held for one week or less

³⁵ Statistics Canada, Table 252-0022, Adult correctional services, custodial admissions to provincial and territorial programs by Aboriginal identity, CANSIM (database).

³⁶ Webster, C., *supra* note 23.

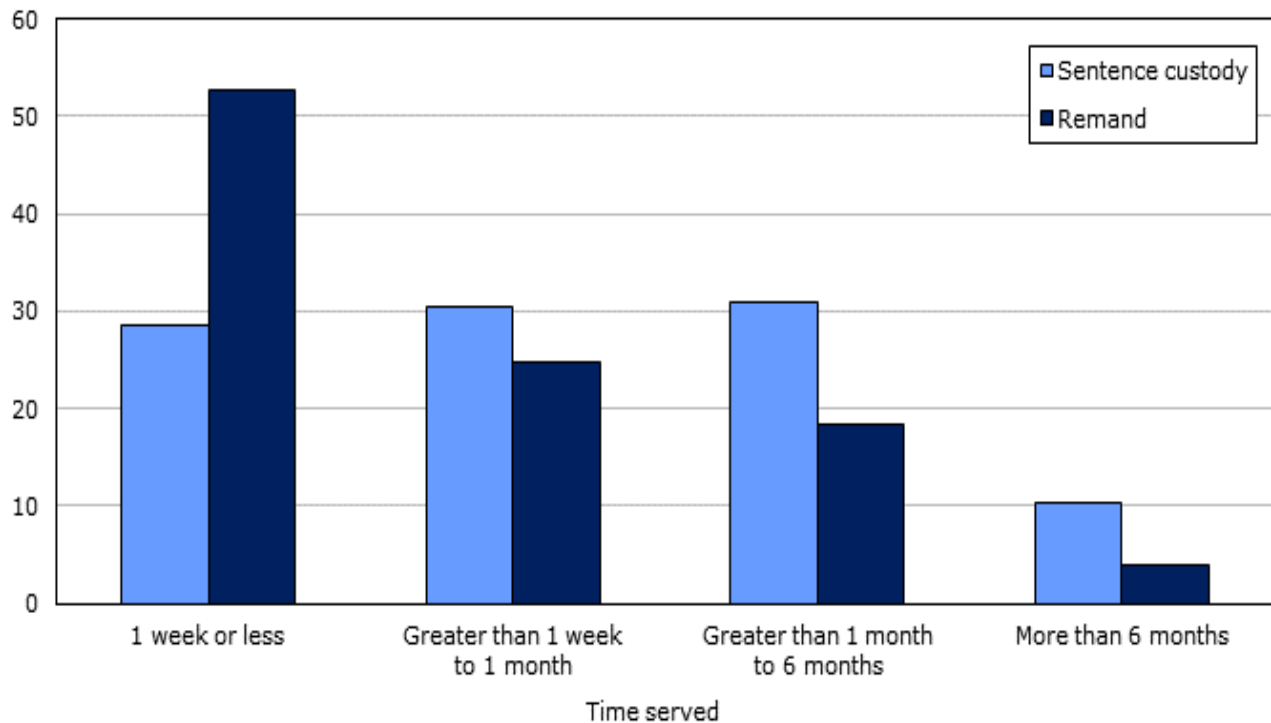
³⁷ Adult Correctional Statistics 2014/2015, p.3, In 2014/2015 on any given day there were 10,364 offenders in sentenced custody in the provinces and territories.

³⁸ Justice Effectiveness Study, *supra* note 6, at p.16.

and more than three-quarters (78%) were held for one month or less.³⁹ Most accused persons admitted to remand are released in a short period of time.

Chart 3
Percentage of releases from adult provincial/territorial custody, by time served, 2014/2015

percent of releases



Note: Excludes Alberta due to the unavailability of data.

Source: Statistics Canada, Canadian Centre for Justice Statistics, Adult Correctional Services Survey, 2014/2015.

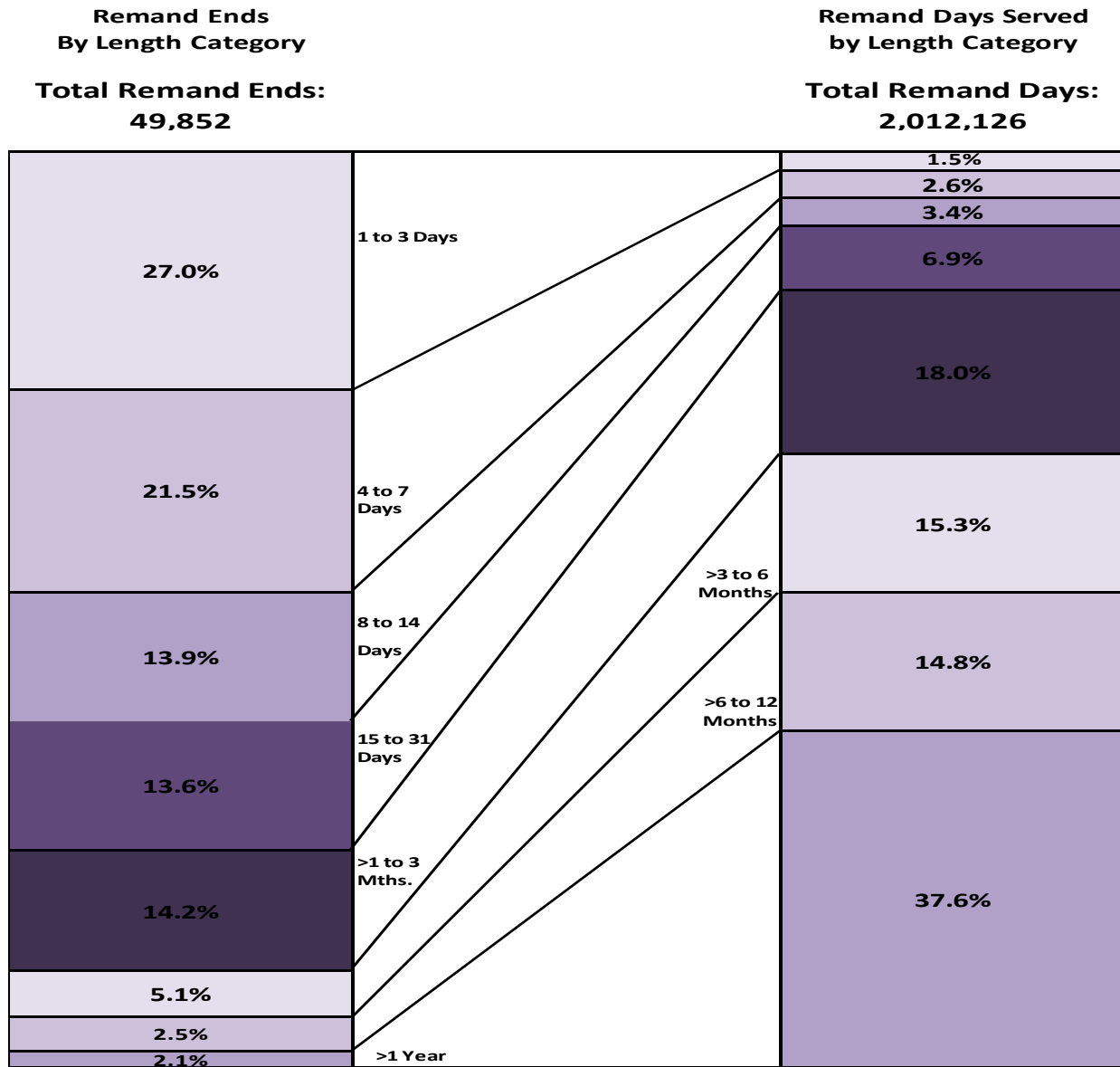
More detailed data from Ontario suggests that high remand numbers are driven by people who are on remand for longer than one year. As demonstrated in the following diagram, in Ontario, in 2014-2015, 76% of those admitted to remand were on remand for less than 31 days. Less than 10% of the remand population account for almost 70% of the remand days.

The size of the remand population is a function of the number of admissions and the length of the remand stay. In Ontario, the admissions to remand are down almost 30% from 2007.⁴⁰ However, the average time spent in remand has continued to increase, continuing a trend that has persisted since 1990.

³⁹ Adult Correctional Statistics, 2014/2015, p.7.

⁴⁰ Webster, C., *supra* note 23, at pages 10-12.

LENGTH OF TIME SERVED ON REMAND: 2014/15



It has been observed that it may be this group of longer-term detainees that is “driving up the remand numbers”.⁴¹

While the number of people admitted to remand in Ontario has decreased, data from the Canadian Centre for Justice Statistics (CCJS) shows that the number of people spending more

⁴¹ This was noted by Prof. Doob in “The Bail Process in Ontario: An Overview”, Centre for Criminology and Sociological Studies, University of Toronto, June 5, 2013, at p. 5 and by C. Webster in “Understanding the Inter-relationship of Administration of Justice Charges, Bail, Remand, and the Processing of Cases in Canada: Some Very Preliminary Findings.” (2016), p. 10-14.

time in remand in Ontario is increasing. In 2000/2001, 36 persons spent more than 24 months in remand. By 2013/2014 that number had increased to 236.⁴²

2.4 The Remand Population

Data provided to Statistics Canada by reporting provinces and territories for which both custody and community data were available suggests that the number of offenders being supervised, in custody or community supervision, in the provinces and territories continues to decrease significantly, down 16% compared to 5 years earlier.⁴³

More than 8 in 10 adults under correctional supervision in the provinces and territories are in the community (82%). The vast majority of offenders supervised in the community are on probation (89%). A term of probation was imposed in 43% of all criminal cases in 2013/2014.⁴⁴

This high number of offenders on probation may be significant when examining the increasing number of administration of justice offences, which include breach of probation. According to national statistics, failing to comply with an order and breach of probation accounted for 9% of adults charged (as the most serious charge) in 1998. This number grew to 18% in 2014.⁴⁵

While the number of convicted adults under provincial/territorial correctional supervision has been in decline, admissions to custodial remand have been progressively comprising a larger share of the incarcerated population on a proportional basis.⁴⁶ On any given day in 2014/2015 there were 13,650 adults in remand awaiting trial or sentence and 10,364 adults in sentenced custody in the provinces and territories.⁴⁷

3. RECOMMENDATIONS

3.1 National Bail Data Collection Process

Our attempt at conducting a national file review has led us to appreciate the challenges in collecting granular information about a bail process that includes many participants and numerous factors that influence decisions. By our brief reference to “The Bail Picture”, we hoped to express how important it is to consider the full context in any attempt to devise policy on bail.

⁴² Webster, C., *supra* note 23, p.13.

⁴³ Adult correctional statistics in Canada, 2014/2015, p.2.

⁴⁴ Adult court statistics in Canada, 2013/2014, p.5.

⁴⁵ Webster, C., *supra* note 23. Webster found significant variability across cities in the same province with respect to their charging practices for administration of justice offences. The rate of adult charges for all violations and the administration of justice offences is considerably higher in Edmonton than in Calgary. Additionally, the direction of the changes over time is all of declines, except for the rate at which adults in Edmonton are charged with breach of probation.

⁴⁶ Adult Correctional Statistics in Canada, 2013/14, Juristat, Statistics Canada 2015 p.4.

⁴⁷ Adult Correctional Statistics 2014/2015, p.3.

RECOMMENDATION 1: DEVELOP AN INFORMATION GATHERING PROCESS

We recommend that the federal government work with the provinces and territories to devise an information gathering process that accurately reflects the operations of the different jurisdictions and collects all relevant data that would permit legitimate inferences and conclusions about the bail process.

Reliable and comprehensive data is essential to the accurate identification of issues and assessment of the working of the bail process. A robust data collection process must account for the differences in local bail practices and criminal processes.

Information and research suggests that there is a lack of communication between courts about the possible intersection of criminal and family court orders that may be in conflict.

We recommend that the federal government work with the provinces and territories to facilitate information sharing in concurrent proceedings.

3.2 Police Power to Release

Part XVI of the *Criminal Code*, “Compelling Appearance of an Accused Before a Justice and Interim Release” contains the provisions governing arrest, release by police, and release or remand by a justice. The police powers of release are set out in sections 497-502. The provisions portray a complex array of rules that govern the release of an accused person by the police.

Data collected from the NBS revealed that a large number of accused who are detained by police for a bail hearing are released at bail on consent of the Crown with or without sureties and on conditions. This high rate of consent release suggests that more accused persons could be released by police.

In its 2006 Report, the Steering Committee recommended that police make better use of the available statutory forms of release in sections 498 and 499 of the *Criminal Code*, and recommended additional police education in this regard. The Steering Committee also recommended that the police powers of release be modernized. The Steering Committee substantially agrees with past work done by FPT groups to simplify and consolidate forms of release on bail, remove the “peace officer/officer in charge” distinction and expand conditions of release. We also recommend the statutory articulation of a principle of restraint which would ensure that only conditions considered to be necessary, linked to the statutory grounds for detention, and relevant to the offence and the circumstances would be imposed. We also recommend additional police training on how to exercise their discretion in relation to the statutory powers of release.

RECOMMENDATION 2: PROVIDE GUIDING PRINCIPLES

The following guiding principles should be clearly communicated and be given the force of legislation. These principles should be included in the legislation in order to provide guidance to police officers:

- **a principle of restraint should be exercised in decision-making when restricting an individual’s liberty interest through interim release;**
- **an express direction that only conditions considered to be necessary and linked to the statutory grounds for an accused’s detention be imposed. Those conditions must be relevant to the offence and the circumstances of the offence;**
- **a reminder of the presumption of innocence and the Charter right not to be denied reasonable bail without just cause;**
- **a reminder of the importance of the public interest and of the public safety, having regard to all the circumstances including any substantial likelihood that the accused will, if released, commit a criminal offence or interfere with the administration of justice.**

The enhanced education and training of police officers should include reference to these principles as guidance when making decisions about releasing an accused or holding that person for a bail hearing.

At present, forms of police release permitted by the *Criminal Code* are overly complex and difficult to discern. The form of release could easily be simplified without any negative impacts.

RECOMMENDATION 3: SIMPLIFY THE FORM OF RELEASE

We recommend that the numerous forms of release in the *Criminal Code* be simplified and streamlined in order to create a more consistent and coherent system.

The *Criminal Code* provides an “officer in charge” with greater powers of release than a “peace officer”.⁴⁸ The rationale for the distinction is historic and there is no modern reason for providing the “officer in command of the police force responsible for the lock up” with greater power to release an accused person than the arresting officer. The abolition of this distinction was recommended by the Law Reform Commission of Canada in 1987, and echoed by other FPT groups.

⁴⁸ The release authority of a peace officer is set out in ss. 497 and 498; and for the officer in charge in ss. 498 and 499. See also subsections 503(2) and (3) which provide both the peace officer and officer in charge with the same authority to release where, inter alia, an accused is arrested without warrant.

RECOMMENDATION 4: ELIMINATE “OFFICER IN CHARGE” AND “PEACE OFFICER” DISTINCTION

The Steering Committee agrees that there is no reason to maintain the distinction in light of modern education and training of police officers and current operational structures (e.g., specialized police teams).

In 2006, the Steering Committee recommended that the police make better use of the available statutory forms of release, including release with appropriate conditions. The Steering Committee remains of the view that the police powers to release should be expanded to permit release with fewer limits to available conditions.

RECOMMENDATION 5: INCREASE STATUTORY CONDITIONS AVAILABLE TO THE POLICE

The Steering Committee recommends that the police be provided with the power to vary conditions they have imposed. Specific training and education should accompany any expansion of conditions available to the police.

Subsection 499(2) of the *Criminal Code* and subsection 503(2.1) set out the conditions of release that may be currently imposed by a police officer or an officer in charge who is prepared to release an accused on an undertaking. Those conditions are:

- a) to remain within a territorial jurisdiction specified in the undertaking;
- b) to notify a peace officer or another person mentioned in the undertaking of any change in his or her address, employment or occupation;
- c) to abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the undertaking or from going to a place specified in the undertaking except in accordance with the conditions specified in the undertaking;
- d) to deposit the person’s passport with the peace officer or other person mentioned in the undertaking;
- e) to abstain from possessing a firearm and to surrender any firearm in the possession of the person and any authorization, licence or registration certificate or other document enabling that person to acquire or possess a firearm;
- f) to report at the times specified in the undertaking to a peace officer or other person designated in the undertaking;
- g) to abstain from
 - (i) the consumption of alcohol or other intoxicating substances, or
 - (ii) the consumption of drugs except in accordance with a medical prescription; and
- h) to comply with any other condition specified in the undertaking that the peace officer or the officer in charge considers necessary to ensure the safety and security of any victim of or witness to the offence.

The Steering Committee recommends that the following statutory conditions be added to the list of conditions that a police officer may impose pursuant to subsection 499(2) of the *Criminal Code*:

- obligation to appear in court when required by the court;
- prohibition on entering a specified area;⁴⁹
- prohibition from possessing a firearm, cross-bow, and other prohibited or restricted weapon in circumstances similar to when a justice can impose this condition under subsection 515(4.1); and
- conditions deemed necessary to ensure the safety of any designated person.

It is important that an accused who is contemplating an undertaking to comply with conditions be fully aware of the meaning of the conditions and the consequences of any non-compliance. The availability of counsel to provide legal advice is essential at this stage.

The Steering Committee recommends that the enhancement to the authority of the power of police to impose additional conditions be restricted to the four conditions set out above. The authority to require an obligation to “keep the peace and be of good behaviour” and the general prohibition on possessing or using a pager or cell phone or other electronic device should not be granted to the police.

The Justice Effectiveness Study disclosed that the “keep the peace and be of good behaviour” condition was found in 11.8% of cases where police released an accused on an undertaking or a recognizance.⁵⁰ The *Criminal Code* does not expressly authorize the police to impose a “keep the peace and be of good behaviour” condition. It is not a condition enumerated in subsection 499(2) or subsection 503(2.1) of the *Criminal Code*. Nor is it authorized by paragraph 499(2)(h) which permits any other condition necessary to ensure the safety and security of the victim or witness.⁵¹ It should be noted that this condition is also not expressly enumerated in the conditions that may be imposed by a justice under subsection 515.1(4) but it may be authorised by paragraph 515.1(4)(f) which permits “such other reasonable condition specified in the order as the justice considers desirable”. This broad authority is not granted to the police.

It has been suggested that this condition is more appropriate in a post-trial context⁵² where the presumption of innocence no longer applies. In fact, it is an express mandatory condition of a probation order (paragraph 732.1(2)(a)), a conditional sentence (paragraph 742.3(1)(a)) and a peace bond (paragraph 810(3)(a) and subsections 810.01(3) and 810.2(3)). It is our view that a person who is presumed innocent should not have his or her behaviour additionally restrained by such a condition imposed by the police. If the circumstances justify concern about the accused’s behaviour, the accused could be held for a bail hearing.

Concerns have also been raised about granting the power to impose a general prohibition on the use of cell phones. Electronic devices are an important component of daily life for the vast majority of the population. Any restriction on this activity without necessity to ensure the safety or security of the victim or witness is not presently authorised and no rationale for expansion of the police power in this regard has been shown.⁵³ Where the circumstances might warrant such a

⁴⁹ Similar to the Order of Prohibition set out in section 161 of the *Criminal Code*.

⁵⁰ Justice Effectiveness Study, p.15.

⁵¹ *R v Barnett* 2010 ONSC 3720 at para 10.

⁵² G. Trotter, *The Law of Bail in Canada*, 6-43 – 6-44.

⁵³ See *R v Barnett*, *supra*

restriction, the public interest would require that the accused be held for a hearing and the issue considered by a justice.

When an accused person who is released with a condition that he appear in court on a specific date fails to appear, the justice may issue a warrant for his arrest: section 512 of the *Criminal Code*. Where the justice issues a warrant for the accused's arrest, section 511 of the *Criminal Code* requires that the order state that:

“the accused be forthwith arrested and brought before the judge or justice who issued the warrant or before some other judge or justice having jurisdiction in the same territorial division, to be dealt with according to law”.

A police officer who executes the warrant is required to return the offender to the court where a justice may authorize the offender's release pursuant to section 499 by making an endorsement on the warrant (subsection 507(6)). A police officer may release an offender arrested by warrant only if the warrant is endorsed (subsection 499(1)).

The effect of these provisions is that every person who fails to appear and is arrested by the police, where the warrant is not endorsed, must be held and brought before the court, even if the police do not lay a separate ‘failure to appear’ charge. The Steering Committee observes that there are many occasions where the circumstances would not warrant police detention of the accused, in particular where police do not charge the accused with “failure to appear”.

RECOMMENDATION 6: PROVIDE POLICE POWER TO RELEASE ON CHARGE OF “FAILURE TO APPEAR”

The Steering Committee recommends that the *Criminal Code* be amended to grant police the discretion to release the offender who fails to appear for a court appearance where the police officer considers that release is appropriate, on the accused's prior form of release or on an undertaking or recognizance.

The complexity of the legislative regime creates confusion. As has been noted in the past, police training and education on the power to release is imperative.

RECOMMENDATION 7: ENHANCE EDUCATION AND TRAINING

Whether amendments to the legislative regime are made or not, education and training for police as to how to use the legislative tools and how to exercise their discretion is essential.

Prosecutors can play an important role in providing training and ongoing advice to police services on how to appropriately exercise their powers of release. The broad availability of prosecutorial advice would be a helpful resource to police services in addressing powers of release and accountability. It is important that informed decision making by police and Crown counsel, in the exercise of their discretion, be supported by their superiors.

3.3 Administrative Review Regime

Section 525 provides for the administrative review of a detention order after a period of 90 days where the Crown proceeds by indictment, and 30 days if by summary conviction. The automatic review is a guard against excessive pre-trial detention. The custodian of the accused is required to apply to the court for a hearing date for the administrative review. It has been recommended that the provision be amended to require a 90 day administrative review for all offences with a provision that the accused can waive the review. This recommendation is said to respond to operational concerns expressed by corrections officials who advised of difficulties encountered because the Crown's election is often unknown.

RECOMMENDATION 8: PROVIDE POWER TO WAIVE

The Steering Committee does not believe an amendment to the time frame for the administrative review is warranted. However, to ensure that an accused is not forced to attend court for an administrative review hearing, the Steering Committee recommends that the ability of a waiver be expressed in the legislation.

3.4 Bail Breach Charges

RECOMMENDATION 9: POLICE CAUTION FOR “LESS SERIOUS” BAIL BREACHES

The Steering Committee recommends the adoption of an extrajudicial approach to address minor or less serious administration of justice offences that involve breaches of bail conditions.

The Committee has come to this view in light of the large proportion of administration of justice offences in the Canadian CJS, the increase in the “failure to comply with court order” offences⁵⁴ and the allocation of valuable court resources to relatively minor breach offences (e.g., breaches of curfews). There is a need to reduce time and resources on minor and less serious cases. A different approach is warranted to seek to improve the efficiency of the justice system.

In examining alternative approaches, the Steering Committee considered legislation from other jurisdictions, and was interested in the approach taken in New South Wales. The *New South Wales (Australia) Bail Act (2013)*⁵⁵ provides a model to be emulated in Canada. The Act sets out a ladder approach to be followed by police officers responding to circumstances where a person has failed to comply with, or is about to fail to comply with, a bail acknowledgment or a bail condition. The officer may respond in the following manner:

- take no action;
- issue a warning;
- issue a notice that requires the person to appear to court/before a justice;
- issue a court attendance when the failure is an offence;
- arrest the person; or

⁵⁴ See Canadian Civil Liberties Report, Justice on Target etc. See also <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14233-eng.pdf>.

⁵⁵ *Supra*, footnote 15.

- apply to get a warrant to arrest the person.

That legislation directs the police to consider several factors in deciding whether to lay a charge or use a warning:

- the relative seriousness or triviality of the failure or threatened failure;
- whether the person has a reasonable excuse for the failure or threatened failure;
- the personal attributes and circumstances of the person, to the extent known to the police officer; and
- whether an alternative course of action to arrest is appropriate in the circumstances.

The Steering Committee recommends that a similar approach be adopted and reflected in the *Criminal Code* to assist police officers in considering the least restrictive means of responding to a breach of a bail condition.

The ladder approach commended by the Steering Committee contemplates that a police officer could respond to a case where a bail condition has been breached, in one of four ways:

1. take no action;
2. issue a warning;
3. refer the case to a justice (no charge); or⁵⁶
4. charge.

In our view, the Australian process could be echoed in the Canadian context by empowering a justice to vary the bail conditions or to make another order when the accused is charged with a “less serious” bail breach, instead of finding the person guilty or not guilty. We appreciate that this imports a different approach and recommend that the FPT forum considers how this principle could be implemented.

RECOMMENDATION 10: ENCOURAGE ALTERNATE RESOLUTIONS

The Steering Committee recommends that Crown counsel be encouraged to consider diversion as an appropriate resolution for minor cases involving a breach offence. Where the offence consists of a breach of a bail condition, the Crown should consider whether it would be appropriate to consent to a variation of the condition.

The Steering Committee believes that the increase in administration of justice offences, specifically breach offences, is an issue that should be addressed by all justice participants. The main concern is that minor offences are consuming time and resources that should be devoted to more serious cases. What is sought to be addressed, and averted, is the “snowball effect” of minor breaches being piled upon minor offences, establishing a pattern of reoffending by an accused person who could be diverted. This phenomenon is prevalent with respect to vulnerable populations (e.g., young offenders, people with mental health issues or Fetal Alcohol Spectrum Disorder and Indigenous persons) who come into contact with the CJS.

⁵⁶ This would be appropriate where the condition is sought to be varied and a charge not warranted. In appropriate circumstances, the case could be treated in a manner similar to the process used when a breach of a conditional sentence is alleged (see subsection 742.6(9) of the *Criminal Code*).

In its 2006 Report, the Steering Committee recommended the repeal of the reverse onus provisions in paragraph 515(6)(c) of the *Criminal Code* that imposes a reverse onus on a person accused of failing to attend court or failing to comply with an undertaking or recognizance (subsections 145(2) to (5)). Concern about reverse onus provisions continue to resonate with the Steering Committee, specifically with respect to section 145 offences pertaining to bail breaches.

Currently, an accused who was originally released by the police or granted judicial interim release and who breaches a minor term of the release shall be detained in custody unless the accused can show why detention is not justified under the three grounds set out in subsection 515(10) of the *Criminal Code*. If the accused is unable to satisfy the reverse onus imposed by paragraph 515(6)(c), the accused will be remanded in custody.

One consequence of the reverse onus provision is that the accused person cannot be released by police and is held for a bail hearing. At the bail hearing, the accused bears the onus of dislodging the presumption of detention. In some circumstances, it may transpire that for a minor breach of a bail condition, the length of time the accused may ultimately spend in pretrial custody would be greater than the length of an appropriate sentence following conviction for the original offence and the subsequent failure to comply.

We appreciate that compliance with the conditions of release is paramount to the success of the bail system and the proper administration of justice. Failure by the accused to appear in court or to respect one of the other conditions of release is a very important factor to consider when examining the appropriateness of releasing the accused. It is also reasonable to consider that the alleged failures by the accused increase the probability of non-attendance in court or that detention is necessary for the protection or safety of the public. For these reasons, the reverse onus seems reasonable and necessary, indeed essential, to maintain public confidence in the administration of justice. In other words, from this perspective, public confidence in the bail system demands that an accused who has demonstrated an inability to honour court commitments justify her or his release.

However, it is also important to acknowledge that the reverse onus regime was created to ensure that an accused would have to show cause why her/his detention in custody was not justified prior to trial for the most serious crimes.

The reverse onus provisions have been the subject of criticism. For example, there is no appreciable difference in the bail hearing or the bail outcome in cases in which the onus is reversed. Also, there is a wide disparity between the severity of offenses that attract a reverse

RECOMMENDATION 11: FURTHER STUDY THE REVERSE ONUS FOR BAIL BREACHES

The Steering Committee believes that this issue requires further study. We recommend that consideration be given by the FPT forum to the repeal of paragraph 515(6)(c) of the *Criminal Code* and to further examine the alternatives to the imposition of a reverse onus for a minor bail breach offence, so that a justice presiding in bail court will no longer be required to order that an accused charged with a section 145 offence be detained in custody unless the accused shows cause why detention is not justified.

onus: murder, organized crime, terrorism, firearms etc., versus failure to attend court and failure to comply with condition of undertaking or recognizances.

3.5 Bail Supervision

Bail verification and supervision programs provide important services to persons held by police for a bail hearing. The major functions of the programs are: (i) to identify the availability of a surety; (ii) to provide neutral, verified information about the accused to the bail court justice; and, (iii) to provide supervisory, counselling and referral services for persons released on bail with conditions of supervision.

In its 2006 Report, the Steering Committee recommended the increased use of bail supervision programs to provide monitoring, referrals and supervision beyond simply verifying an accused person's reporting conditions.

Data collected on the effectiveness of bail supervision programs operating in 18 court locations in Ontario demonstrates the effectiveness of the programs and reveals that rates of release are higher in bail supervision sites. In 2013/2014, 90% of bail verification and supervision program clients appeared at all their court appearances.⁵⁷ In addition, bail verification and supervision programs provide linkages for accused persons who require access to programs and treatment for addictions, mental health and other social, housing and health services.

The availability of bail verification and supervision programs is inconsistent throughout Canada. In some jurisdictions, this role has been assumed by external community-based agencies on a transfer fee basis. In others, the state administers the program. For example, in British Columbia, the provincial probation and parole services has assumed the function of the bail supervision and verification programs. In some jurisdictions, there is no existing agency to perform this function.

RECOMMENDATION 12: INCREASE THE AVAILABILITY OF BAIL SUPERVISION AND VERIFICATION PROGRAMS

The Steering Committee recommends that the federal government work with provinces and territories to facilitate and support the expansion of bail supervision and verification programs.

⁵⁷ Bail Verification and Supervision Year-end summary statistics 2013-2014, Agency and Tribunal Relations Division, MAG, Ontario

3.6 Crown Consent on Cash Bail

The *Criminal Code* permits a justice to release an accused on an undertaking with conditions. A justice may release an accused on his entering into a recognizance before the justice, without sureties, on his depositing with the justice the sum of monies directed by the justice, if the prosecutor consents. There is no modern policy or principle for this requirement which may have the effect of creating delay.

RECOMMENDATION 13: REMOVE CROWN CONSENT ON CASH BAIL

The Steering Committee recommends the removal of the words “on consent of the prosecutor” from paragraph 515(2)(d) of the *Criminal Code*.

APPENDIX: SUMMARY OF RECOMMENDATIONS

1. We recommend that the federal government work with the provinces and territories to devise an information gathering process that accurately reflects the operations of the different jurisdictions and collects all relevant data that would permit legitimate inferences and conclusions about the bail process.

We recommend that the federal government work with the provinces and territories to facilitate information sharing in concurrent proceedings.

2. The following guiding principles should be clearly communicated and be given the force of legislation. These principles should be included in the legislation in order to provide guidance to police officers:
 - a principle of restraint should be exercised in decision-making when restricting an individual's liberty interest through interim release;
 - an express direction that only conditions considered to be necessary and linked to the statutory grounds for an accused's detention be imposed. Those conditions must be relevant to the offence and the circumstances of the offence;
 - a reminder of the presumption of innocence and the *Charter* right not to be denied reasonable bail without just cause;
 - a reminder of the importance of the public interest and of the public safety, having regard to all the circumstances including any substantial likelihood that the accused will, if released, commit a criminal offence or interfere with the administration of justice.

The enhanced education and training of police officers should include reference to these principles as guidance when making decisions about releasing an accused or holding that person for a bail hearing.

3. We recommend that the numerous forms of release in the *Criminal Code* be simplified and streamlined in order to create a more consistent and coherent system.
4. The Steering Committee agrees that there is no reason to maintain the distinction between officer in charge and peace officer in light of modern education and training of police officers and current operational structures (e.g., specialized police teams).
5. The Steering Committee recommends that the police be provided with the power to vary conditions they have imposed. Specific training and education should accompany any expansion of conditions available to the police.

The Steering Committee recommends that the following statutory conditions be added to the list of conditions that a police officer may impose pursuant to subsection 499(2) of the *Criminal Code*:

- obligation to appear in court when required by the court;
- prohibition on entering a specified area;⁵⁸
- prohibition from possessing a firearm, cross-bow, and other prohibited or restricted weapon in circumstances similar to when a justice can impose this condition under subsection 515 (4.1); and
- conditions deemed necessary to ensure the safety of any designated person.

The Steering Committee recommends that the enhancement to the authority of the power of police to impose additional conditions be restricted to the four conditions set out above. The authority to require an obligation to “keep the peace and be of good behaviour” and the general prohibition on possessing or using a pager or cell phone or other electronic device should not be granted to the police.

6. The Steering Committee recommends that the *Criminal Code* be amended to grant police the discretion to release the offender who fails to appear for a court appearance where the police officer considers that release is appropriate, on the accused’s prior form of release or on an undertaking or recognizance.
7. Whether amendments to legislative regime are made or not, education and training for police as to how to use the legislative tools and how to exercise their discretion is essential.
8. The Steering Committee does not believe an amendment to the time frame for the administrative review is warranted. However, to ensure that an accused is not forced to attend court for an administrative review hearing, the Steering Committee recommends that the ability of a waiver be expressed in the legislation.
9. The Steering Committee recommends the adoption of an extrajudicial approach to address minor or less serious administration of justice offences that involve breaches of bail conditions.
10. The Steering Committee recommends that Crown counsel be encouraged to consider diversion as an appropriate resolution for minor cases involving a breach offence. Where the offence consists of a breach of a bail condition, the Crown should consider whether it would be appropriate to consent to a variation of the condition.
11. The Steering Committee believes that the issue of reverse onus for bail breach requires further study. We recommend that consideration be given by the FPT forum to the repeal of paragraph 515(6)(c) of the *Criminal Code* and to further examine the alternatives to the imposition of a reverse onus for a minor bail breach offence, so that a justice presiding in bail court will no longer be required to order that an accused charged with a

⁵⁸ Similar to the Order of Prohibition set out in section 161 of the *Criminal Code*.

section 145 offence be detained in custody unless the accused shows cause why detention is not justified.

12. The Steering Committee recommends that the federal government work with provinces and territories to facilitate and support the expansion of bail supervision and verification programs.
13. The Steering Committee recommends the removal of the words “on consent of the prosecutor” from section 515(2)(d) of the *Criminal Code*.