



**Council of
Elizabeth Fry Societies
of Ontario**

Bail Reform and Fundamental Rights: Why Evidence-Based Responses are Needed

These submissions have been prepared by the Council of Elizabeth Fry Societies of Ontario (CEFSO) and The Canadian Association of Elizabeth Fry Societies (CAEFS) for the consideration of the Standing Committee on Justice Policy.

January 31, 2023

Our submissions are informed by decades of collective experience working with individuals impacted by Canada's bail system.

Evidence-Based Approaches to Public Safety: Recommendations

1. Protect the rights and wellbeing of Ontarians by reducing the number of people in pre-trial detention and increasing non-punitive community-based supports.
2. Align bail conditions with current understandings of best practices stemming from social science and the experiences of people with lived experience of bail or pre-trial detention.
3. Ensure that any proposed changes to policy or legislation uphold the fundamental rights of all Ontarians.

CEFSO, established in 1952, is a membership network of eight Ontario-based Elizabeth Fry Societies. Together, these societies advocate alongside criminalized women and gender diverse people to raise public awareness of the systemic barriers, issues and discrimination faced by criminalized women and gender diverse people. As part of this work, CEFSO monitors the conditions of confinement of provincially sentenced women and gender diverse people, and those who are in pre-trial detention, annually. CEFSO also contributes its expertise through legislative consultation and policy recommendations. Importantly, CEFSO members operate localized Bail Verification and Supervision Programs, Specialized Bail Beds and Court Support services in communities across Ontario.

The Canadian Association of Elizabeth Fry Societies (CAEFS) was established in 1978. Since its inception, CAEFS has worked to advocate for and with federally incarcerated women and gender-diverse people, in part by monitoring conditions of confinement inside all six federal prisons designated for women. In addition to our work inside federal prisons, CAEFS is also the

national voice representing the 24 local community-based Elizabeth Fry Societies located across Canada. Our expertise has been recognized through ongoing and historic engagement with policymakers and government officials. This has included co-chairing the *Creating Choices* Task Force and the steering committee – the foundational document for modern women’s corrections in Canada. We have also been recognized and funded as a National Voluntary Organization with Public Safety. Our critical perspective is welcomed at several national policy tables, including the National Associations Active in Criminal Justice. While these submissions focus especially on Ontario, CAEFS is writing in collaboration with CEFSSO as we recognize that bail reform is a national issue.

Bail Reform - Reactionary Reforms Will Not Make Us Safer

In recent weeks, we have witnessed swift and public condemnation of the law of bail. The argument has been made in Ontario that changing the law to ensure more people are held in jail while waiting for the resolution of their charges will meaningfully enhance public safety. Decades of evidence regarding the bail system and the impact of pre-trial detention demonstrates that this assumption is inaccurate – and if used as the basis for legal reform, has the potential to cause significant harm to individuals and the public.

Effective bail reform in Canada requires an evaluation of the current application of law and examination of evidence-based research, along with robust cross-sector consultation and input. These steps ensure that reforms are rooted in the law and consider the fundamental rights and safety of all people in Ontario, and in Canada. When these critical steps are missed,

and reactionary responses are codified, we risk harming already marginalized groups and creating less public safety – not more.

Criminalized women and gender diverse people in Ontario often experience delays in bail release because of inadequate court time, inconsistency in the application of bail across Ontario, defence counsel scheduling conflicts, and lack of support developing bail plans deemed suitable by the court. Indigenous women and gender-diverse people charged in rural and remote communities, particularly in Northern Ontario, face higher barriers to bail release and are subsequently denied bail on account of the rural location and lack of recognized available resources in their home communities.

A particularly concerning piece of the proposed bail reform is the new suggested reverse onus provision for people charged with firearms offences who are seeking bail. The Canadian Charter of Rights and Freedoms, guarantees the right to a presumption of innocence, the most fundamental principle of criminal law. A reverse onus fails to acknowledge the massive inequality in power and resources between the person who has been accused and the state and infringes on this most fundamental of rights. For those of us who work to monitor the conditions of confinement, we posit that it is especially important for the state to bear the onus of proving that a person's deprivation of liberty is justified. The conditions in Ontario jails are abysmal, with overcrowding, mistreatment of incarcerated people, and lack of supports or programming to name only a few of the issues we have reported on in the past.

A recently released report from the Ontario Chief Coroner's expert panel on deaths in custody spoke to the issues with bail and pre-trial detention on page 10. "For more than two decades,

remand has accounted for all growth in provincial custody numbers, and now represents almost 70% of the in-custody population. The dominant profile of the population has become one of complex needs that require health care, mental health care, addictions treatment and recovery, and transition supports that can facilitate continuity of care and success at living in the community. Almost none of these things can be provided to the required degree in any of our prisons, and most certainly not in a prison where lockdowns due to capacity limitations have become the norm.”

It is clear to those of us who work with people who are seeking bail or who are in pre-trial detention, that the problems with the bail system are not only a reflection of wider problems in the Canadian criminal justice system but also of a lack of investment in community-based supports and services. Interventions upstream and at the bail stage may also reduce problems in other parts of the system. We conclude by reiterating the recommendations that we stated at the outset:

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