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1st Session
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Wednesday 1 February 2023

Chair: Lorne Coe
Clerk: Thushitha Kobikrishna

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 1 February 2023

Mercredi 1er février 2023

The committee met at 0900 in committee room 2.

BAIL REFORM

The Chair (Mr. Lorne Coe): Good morning, everyone. I call this meeting of the Standing Committee on Justice Policy to order. We're meeting today to resume consideration of public hearings on the study of the reform of Canada's bail system as it relates to the provincial administration of justice and public safety with regard to persons accused of violent offences or offences associated with firearms or other weapons.

As a reminder, committee members and others who are watching or listening in, the deadline for written submissions is 7 o'clock today.

Are there any questions before we begin?

As a reminder, our presenters today have been scheduled in groups of three for each one-hour time slot. Each presenter will have seven minutes for their presentation. After we've heard from all three presenters, the remaining 39 minutes of the time slot will be for questions from members of the committee. The time for questions will be broken down into two rounds of 7.5 minutes for the government members, two rounds of 7.5 minutes for the official opposition and two rounds of 4.5 minutes for the independent member.

ONTARIO ASSOCIATION OF POLICE SERVICES BOARDS

ONTARIO BAR ASSOCIATION

MS. NICOLE MYERS

The Chair (Mr. Lorne Coe): I will now call on Lisa Darling, the executive director of the Ontario Association of Police Services Boards, to introduce herself so that we can capture your name and your affiliation for the purposes of Hansard, to my left, who is recording today's proceedings. Please state your name for Hansard, and then you can begin. I will let you know when you've got a minute left in your presentation and, as you just heard, following that, questions will be put to you. Thank you.

Ms. Lisa Darling: Good morning. Lisa Darling with the Ontario Association of Police Services Boards.

The Chair (Mr. Lorne Coe): Thank you very much. I'd like you to move your mike closer to you please, not only for the committee members, but we do have people watching today and listening who might have some hearing challenges. In deference to that, please speak clearly into the microphone. Thank you. You can begin.

Ms. Lisa Darling: Thank you. Good morning, Chair and committee members. I'm the executive director of the Ontario Association of Police Services Boards. On behalf of our membership, I'd like to thank you for providing me the opportunity to speak with you today.

I would like to acknowledge that we are meeting on the traditional territory of many nations, including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples, and it's now home to many diverse First Nations, Inuit and Métis peoples.

I would also like to extend our condolences to the family, colleagues and loved ones of the Honourable David C. Onley, the former Lieutenant Governor of Ontario.

I'm going to begin by explaining a little bit about what the organization I'm here representing does. The OAPSB is the leading voice for police governance in Ontario. Police services boards play a critical role overseeing and monitoring the delivery of policing services to their local communities. Just under half of our membership is made up of municipal mayors and councillors, and the other half are members of the public. All are dedicated to keeping their communities safe. They are not members of law enforcement.

The OAPSB serves our memberships and our communities in a couple of ways. Our first job is to help local police services boards fulfill their legislative and community responsibilities by providing training and guidance to the people who are appointed to the boards. Our equally important job is to advocate for improvements in public safety, laws and regulations. It is for this responsibility that I am here to speak with you today.

On the topic of bail reform and community safety with respect to violent crime, I can report that this has been a long-standing issue for police services boards across Ontario. The preventable and tragic murder of provincial constable Pierzchala—the most recent of four senseless on-duty deaths by firearm of police officers in Ontario—has brought this issue to the forefront.

As the person charged to speak on behalf of the bodies responsible for governing police services in Ontario, I can tell you that bail reform is a community safety matter that is not new, and it hits home to everyone. We hear regularly from communities we serve and live in. Our boards have heard stories from intimate partner abuse survivors, small

business owners who have been violently assaulted while being robbed, and we also hear from families of homicide victims.

I've received numerous phone calls and emails from members from across the province asking what the OAPSB is doing to ensure our voice is heard on this topic. Support for the expansion of the reverse onus bail provisions for offenders who pose a significant risk to public safety is overwhelming: specifically, firearms possession offenses, violent offences involving firearms, and chronic or repeat violent offenders.

In June of 2022, the OAPSB wrote a letter to the federal Minister of Justice and Attorney General, and the Minister of Public Safety. We wrote this letter in support of the Toronto Police Services Board's request for legislative changes related to bail reform. We also supported the request for the addition of a first-degree murder charge for accused persons and an increase in parole ineligibility for offenders convicted who discharged a firearm in a congregate setting.

We recognize that these requests for legislative changes lie with the federal government. However, we also recognize that the complexities of all issues impacting community safety and well-being require a collaborative commitment to be successful, and bail reform is no exception.

Our membership believes that there is an opportunity to create a swift and practical impact at the provincial and local levels to ensure that our communities remain safe places to live, work, run a business and raise a family.

The recommendations of our members are as follows:

(1) additional training for justices of the peace;

(2) better metrics and monitoring to support consistency and accountability with bail conditions;

(3) additional crown, judicial and administrative resources in the justice system;

(4) more rigour for bail releases involving sureties; and

(5) additional resources and/or technology to monitor compliance for those offenders on house arrest or on bail with conditions.

To add more context to our recommendations, we believe that those in the justice system, and specifically our justices of the peace, could benefit from additional training and education with respect to enforceable bail provisions and the impacts of ineffective releases on public safety. Better metrics should be kept on justices of the peace. This is not suggested to be punitive but rather an additional opportunity to identify unusual patterns or a history of complaints to assist specific individuals who could benefit from additional training and support. Additional oversight and mentoring in circumstances where systemic issues have been identified would add accountability to the process and could help mitigate many of our communities' concerns.

Our members also called for the need for more human resources and administrative supports in the justice system. Our court system is overburdened. The need for more judicial resources, including crown attorneys and additional personnel to fulfill the critical administrative functions of the courts, is required.

More rigour around sureties is also required. Where historically, a pledge is as good as a deposit, better compliance requires better tracking in this area. The need for confidential determination of a proposed surety's financial means should be a necessary requirement for determining the appropriate amount of the surety's pledge.

The Chair (Mr. Lorne Coe): You have one minute left.

Ms. Lisa Darling: For those whom the crown and courts deem to have failed to uphold their responsibilities as surety for an accused person, the result should be the forfeiture of the pledged amount.

House arrest, as a bail condition, is also an issue. Compliance monitoring in this area is lacking, and the use for technological means and human resources is needed to ensure those on house arrest are, in fact, kept at home.

Although not specific to bail of an accused of violent offences, our membership also called for the need for consistent and accessible record-keeping for tracking police interactions across jurisdictions. We need to ensure that those who consistently demonstrate a lack of respect for the courts by breaching conditions of release are held accountable if brought before the courts on a subsequent substantive charge.

This is an important issue, and our boards play a pivotal role in these discussions. I understand you may request further detail with respect to our recommendations and I look forward to any questions you may have. Thank you again for providing me the opportunity to be here today.

The Chair (Mr. Lorne Coe): Thank you very much for your presentation.

I'd like to call forward, please, the Ontario Bar Association, and in particular, Jane Stewart. And if it's not Jane Stewart, then you can introduce yourself, sir, and your title with the bar association.

Mr. Daniel Goldbloom: Good morning, Mr. Chair. My name is Daniel Goldbloom. I am the public affairs liaison from the Ontario Bar Association, criminal justice section. I am, in fact, joined by Ms. Stewart, also from the OBA. I'm a criminal defence lawyer practising in Toronto; I'm in my 10th year of practice. Ms. Stewart works at Justice for Children and Youth and is focused on youth matters.

The Chair (Mr. Lorne Coe): If you could draw the microphone closer to you, sir, please. Thank you very much.

You heard how long you have for your presentation, and I will remind you when you have one minute left in your presentation. You can start, sir, please.

0910

Mr. Daniel Goldbloom: Thank you. I appreciate that, Mr. Chair. I'd like to thank the committee for the opportunity to come and give submissions to you today on behalf of the Ontario Bar Association.

I want to start with a statement of our shared goal here: It's a justice system that everyone can equally and reliably trust to protect our rights, keep us safe and guard against unfairness. Community safety is something that we all care about, and the thrust of our submissions is that the best way to ensure community safety is to have swift, speedy

trials for those accused of the most serious offences that pose the most risk to public safety.

Now, I won't repeat the submissions of other legal organizations that have testified. We support much of what was said, and it's crucially important to remember that there are fundamental rights at stake here and that it's incredibly destabilizing if we can't count on the government to protect those rights. I know that people are worried about their safety in this tumultuous post-pandemic world, and so community safety is the issue that the OBA wants to focus on.

Now, in addition to being a criminal defence lawyer, I live in this community. My wife and I are raising two young children in downtown Toronto, so, like all of you, I care deeply about community safety, both when I get up in the morning and go to work and when I get home and am with my family. I see dozens of clients in my practice whose lives are destroyed by communities made unsafe by historical and continued injustices, and my heart goes out to all those who have lost loved ones or who feel unsafe in their communities.

It's long been tempting when we're scared that we turn to more aggressive sacrifices of rights in order to bolster our safety. And I don't think that trade-off ever enhances safety in the long run, but I want to talk about that in the context of bail.

So one of the proposed solutions that has come up is adding more reverse onus provisions to the Criminal Code, and I think it's important that we assess where we are at on that. Many firearms-related offences already have reverse onus provisions. In cases where somebody is already out on bail and is charged with an additional offence, they are already in a reverse onus position. So for most of the people we're talking about, that is already in place. Shifting to reverse onus for more and more provisions potentially disadvantages those who are systematically disadvantaged either by race or Indigeneity or other people who are marginalized and those who can't get a lawyer to assist them in bail, so they will sit longer waiting for their bail hearing to happen.

But when we look at what the justice system is supposed to do, it is supposed to hold swift trials for people who are charged with the most serious offences, and if they are found guilty, both separate them from the community, where that is appropriate, and also provide rehabilitation in order to assist with their eventual reintegration into the community. If you are being held in pretrial custody, that is not available to you. We cannot rehabilitate people—and the system is not designed to rehabilitate people—who are held pending a determination of their guilt or innocence.

For those who will ultimately be found guilty after a trial, the more time they serve in pretrial custody, the less time they are going to serve in post-trial custody, serving a sentence where they have those rehabilitative tools. And I'm sure everyone here has heard stories about overcrowding in jails and about offenders getting additional credit due to those poor conditions. The quicker we have their trial, the quicker we can move, for those who are ultimately found guilty, to a sentence that is aimed also at rehabilitation.

But for those who are ultimately not found guilty, whose charges are dropped or who are acquitted after a trial, we all know that liberty lost can never be regained. Those people will be separated from their communities. They will be separated from jobs, from school, from other pro-social supports. In the long term, that makes us less safe, when we cut people off from society and prevent people from accessing the kinds of pro-social supports that are the best prevention against recidivism and future criminality.

I think we all know that certain groups are overrepresented in the criminal justice system in terms of those who are more likely to be arrested and prosecuted. When we increase the push for pretrial detention, that push—and the people who are held in custody before any determination of their guilt or innocence—does not fall evenly on the population. It falls in concert with the overrepresentation of certain groups.

The Chair (Mr. Lorne Coe): Mr. Goldbloom, you have a minute left, sir.

Mr. Daniel Goldbloom: Thank you very much. I'll move to the thrust of our submissions here. The longer a person is held in pretrial custody, the more likely they are to get out on bail. A detention review happens every 90 days to determine if that person should be released. One of the reasons why we might see people getting picked up again and again is because they are on bail for an extremely long period of time. According to the Supreme Court's decision in Jordan, for a trial in the provincial court, you have up to 18 months to bring the person to trial; in the Superior Court, you have 30 months. That's two and a half years. That's an incredibly long amount of time to wait for justice.

When we are talking about bail reform, we are talking about community safety—

The Chair (Mr. Lorne Coe): Thank you, sir. Your presentation is concluded.

I would like to call forward Nicole Myers. Welcome. For the record, just state your name for Hansard. Thank you very much.

Ms. Nicole Myers: Thank you, Mr. Chair and committee members. My name is Nicole Myers. I'm an associate professor at Queen's University, and I have been studying issues around bail and pretrial detention for almost two decades.

Following a tragic incident, it's understandable that people—especially the police, in this instance—are outraged. They want to know how something like this happened and how to prevent something like this from happening again. I agree that the bail system requires attention and review. While a tragic incident may be what motivates this critical review of the law and the operation of the system, systematic, empirical data must be what informs our conclusions about the system and directions for change. It's important that we engage in law reform that is both principled and

evidence-based, rather than simply reactionary. The direction of the proposed reforms is not in line with empirical evidence.

When thinking about bail, we must be mindful of the foundational principles of our criminal justice system, including the presumption of innocence and the right to reasonable bail. The Supreme Court of Canada has emphasized that we must exercise restraint when it comes to the bail decision, that the starting position for every accused is unconditional release. To hold people accountable for their actions, to sanction or punish them, we must first convict people of the offence for which they have been charged. It is dangerous, and indeed a slippery slope, to provide additional mechanisms to punish people when they are presumed innocent of the allegations.

What we know in Canada is that our crime rates, including violent crime rates, remain at historic lows. The bail decision in Canada has generally become more restrictive and more risk-averse over time. There are more people in pretrial detention than there are in sentenced custody in our provincial institutions. The number of people in pretrial detention in Ontario has exceeded those in sentenced custody since 2001-02. Across Canada, 67% of the people in provincial custody are in pretrial detention, and in Ontario it is 77%. The rate with which we hold people in pretrial has more than doubled in the last 40 years, and the number of actual individual people held in pretrial detention has more than quadrupled in that time.

Given the rate, number and proportion of people in remand, it is clear in Canada we are not lenient when it comes to pretrial detention. Many people are serving time before they have been found guilty. One of the difficulties we have is that it is incredibly difficult to accurately and reliably predict somebody's risk. It is hard for us to know who is going to go on to commit crime generally, and who is going to go on to commit a serious, violent offence in particular. The reality is criminal justice system actors are making the best decision possible with the information available, and unfortunately, sometimes it turns out badly.

0920

Our criminal justice system cannot be expected to identify, address or eliminate all future risks. Accurately predicting this risk is impossible. Attempts to predict risk are both unreliable and discriminatory, especially against Indigenous peoples, Black people, racialized communities and women. More restrictive risk-averse decision-making will result in detaining more people who do not actually pose a risk, and the law already provides mechanisms to keep people in pretrial custody where appropriate, including reasons for public safety.

Keeping a person in pretrial removes them from the community and may provide some short-term safety; this protection, however, is temporary. It is undermined by the long-term negative public safety outcomes. We need to be mindful that custody is extraordinarily expensive, but it's also criminogenic. Even short periods of time in custody make it more—not less—likely that someone is going to commit offences in the future. And there are many reasons for this, some of which include pretrial being overcrowded, harsh, dangerous, and rehabilitative programs being virtually absent. Removing people from the broader community is also incredibly destabilizing, disrupting connections to the community, families, employment and other social supports.

Looking at what is proposed in the Premier's joint letter to the federal government, I quote, "The justice system fundamentally needs to keep anyone who poses a threat to public safety off the streets." This statement is overly broad. It ignores the law on bail, the imperative to protect legal rights and is impossible to achieve.

The more specific proposal around reverse onus provisions is not the way to go. Reverse onus provisions are problematic, as they fail to acknowledge the incredible inequality in power and resources between an accused person and the state. They also invert the foundational principle of the presumption of innocence. When a person's liberty is at stake, the state ought to bear the onus to demonstrate why their detention is justified, rather than an accused person bearing the onus of demonstrating why they ought to be released. If the risk of an accused is significant, the crown will make these submissions to the court and the accused can be detained. And if they are released, they're going to be subject to conditions of release and monitoring.

It is a slippery slope to pursue making the system more restrictive when our provincial jails are already full of legally innocent people. Reverse onus provisions, then, are not only unnecessary, but they erode the very foundation of the presumption of innocence and the right to reasonable bail, while having a questionable, if any, impact on public safety.

Tightening the bail system and increasing our reliance on pretrial detention will have discriminatory outcomes. It is those who are most marginalized, the most over-policed, most disproportionately incarcerated that are going to experience this, compounding the disadvantage that they already experience and then having the precise opposite effect of what we're trying to achieve here, by making communities less, rather than more, safe.

The best way forward, in my view, is a thorough and principled review of the law that brings together justice system actors, academics and community stakeholders—

The Chair (Mr. Lorne Coe): You have one minute left in your presentation.

Ms. Nicole Myers: Thank you—to consider the purposes of bail and how to best balance rights and public safety. The administration of the courts is worthy of further attention. Consider how to improve case processing and access to justice, including restoring and increasing funding to legal aid. We must improve efforts to keep people in the community, and when they are incarcerated, it's for the shortest period of time possible. One of the ways we might consider doing this is also to help set up and encourage police to use judicial referral hearings so that the courts can focus their attention on those cases that are the most serious and risky.

The crisis in our system is not one of an overly lax and lenient system. What happened is undoubtedly tragic. There are opportunities for reflection and change. The question here, then, is one of priority. Are we as a community more interested in short-term public safety or long-term public safety? I encourage you to uphold the principal purposes and limits of the criminal law by prioritizing the latter. Thank you.

The Chair (Mr. Lorne Coe): Thank you to each of you for your presentation.

Prior to starting our first round of questions, starting with the government, I just want to remind the committee members gently to identify to whom your question is directed, because we do have a guest on Zoom as well. Please put your hand up if you wish to ask a question so that myself and Hansard and my Clerk can keep a record of who is asking questions. MPP Dixon, you had your hand up.

Ms. Jess Dixon: I did. Thank you, Chair. My first question is for Ms. Darling. Ms. Darling, I'm so glad that we have your years of expertise before the committee. I appreciate that. I wanted to ask you, frankly: You spoke about the members' experiences, very obviously, with JPs and the decision-making. Do you have any comment from your members? When it comes to reverse onus bail hearings, do your members feel that the fact that it's reverse onus is actually having any impact on the ultimate decision that's being made by the justice of the peace?

Ms. Lisa Darling: Thank you for the question. I don't know if I could say that there's a specific one with reverse onus. A reverse onus doesn't necessarily mean the person is going to be kept in custody. And often when there is a reverse onus, there still can be an agreement between the crown and defence if they can fashion a reasonable release based on conditions that they feel are appropriate under certain circumstances.

I think the biggest issue that we're experiencing in relation to ineffective releases or concerns with justice-of-the-peace releases are the enforceability of some of the conditions that are being placed. When there is either a joint release or any kind of release into the public, some of the conditions that are put on individuals are very difficult for law enforcement to ensure they are upholding those conditions. For instance, if a person is supposed to reside in more than one location and there are no specifics as to when they're supposed to reside in those locations or what times they're supposed—if they have a curfew and they have more than one location, it's difficult for law enforcement to ensure they're actually abiding by the rules. There are several other examples I could give, as well, in relation to that.

Ms. Jess Dixon: Thank you. I have one more question, if I may—

The Chair (Mr. Lorne Coe): Yes.

Ms. Jess Dixon: —to Ms. Myers. From my nine years as a crown attorney—you spoke about the increase of people in remand who are essentially in the pretrial detention stage. What is your comment on my experience that at this point in time we have people who are released within hours or perhaps one night of arrest 10, 15 or 20 times, so that the time they are finally, ultimately held we have between 10 and 20 files that need to be reviewed, at which point, no longer qualifying for release, they accumulate pretrial detention at one and a half to one? Would you disagree that that is a factor in why we are seeing an increase in people currently on remand who have not actually been convicted yet?

Ms. Nicole Myers: Thank you for the question. I'm just hoping I can clarify just precisely what you're asking there. Are you asking about how a lot of the folks in pretrial are individuals who have been released multiple times and continue to come back with other charges, or am I misunderstanding you?

Ms. Jess Dixon: That has been my experience, versus having a large number of individuals who have been held upon initial or even second arrest for low-level offences.

Ms. Nicole Myers: I certainly think we have a difficulty, sort of a bifurcation of the population, in that we're going to have a group of people who are going to be released very quickly, and then we have another group of individuals who are going to make multiple bail appearances before a decision is made, and then an even smaller number of people who are going to make many, many appearances before they're ultimately going to be detained.

Certainly we have a difficulty of trying to figure out how to manage individuals who are being released and then committing other offences, or there are allegations that they have failed to comply. I think some of the challenge there, what we want to focus our time on, is thinking about how we figure out who are going to be those who are more serious that we focus our attention on than those who are more minor or engaged in more nuisance-level styles of behaviour, so that the court can then focus the time and resources to then go, "How do we best manage and address those who are the most risky and most serious?"

We are ultimately left with a lot of difficulties with people who are released and continue to come back. However, I don't think holding more people in pretrial detention for longer periods of time is the appropriate mechanism to address that problem.

Ms. Jess Dixon: Thank you.

The Chair (Mr. Lorne Coe): Thank you, MPP Dixon. I have MPP Bailey, please.

Mr. Robert Bailey: My question is to Ms. Myers. Could you explain, Ms. Myers, what you meant by "more serious cases"? I think I wrote down "judicial referral." What does that really mean?

Ms. Nicole Myers: With the enactment of Bill C-75, we created what were called "judicial referral hearings," the idea being here that there are people who are out in the community who may fail to comply with their conditions—and perhaps have not committed a new underlying substantive offence, but it's allegations of failing to comply. The idea here was that we could provide police with additional mechanisms, that rather than holding somebody for a bail hearing, we could simply refer them back to the court, where they can meet in front of a judicial officer who reviews their conditions and sees if they're appropriate. Do they need to be adjusted, increased, or do we need to

acknowledge you're no longer of an appropriate risk to stay in the community?

One of the difficulties is that despite this being created—and perhaps, in the context of a pandemic, it explains why—these are being rarely, if ever, used. I think it's an appropriate mechanism to consider the opportunities for how this may help us filter out some people who are more minor so, again, the court can focus its time and attention on those who are the most serious and the most risky.

0930

Mr. Robert Bailey: Thank you.

The Chair (Mr. Lorne Coe): The government has two minutes left in their questioning. Do I have another question, please? Yes, MPP Saunderson.

Mr. Brian Saunderson: Thank you to each of you for coming in and attending today and providing your insight.

Ms. Myers—my question actually is open to the floor, but you talk about how do we focus. That seems really to be the task that we're looking at in this committee. From all the witnesses we've heard, I think there's an acknowledgement that we're talking about a fairly defined and small portion of those offenders who come before the courts.

We've heard some statistics from the OPP and Toronto city police. Last year, there were 2,200 bullet casings picked up off the streets, so that's at least 2,200 bullets that were fired in the city. Guns are becoming a problem, and we're seeing, particularly in firearms offences, where there has been repeated release of offenders who are charged with violent offences involving guns. In some cases, they're picking up people who have contravened bail conditions three times. The issue is, then, how do we laser in on that group? How do we identify that group, and how do we prevent them from going on the streets while at the same time being mindful of the considerations you've brought forward today?

I don't know who wants to start that first. I know it's a hard question and it's exactly what we're looking at, but we're looking for your advice on how to find the best way forward on this.

Ms. Nicole Myers: Thank you. I'll provide a couple of comments, but I want to leave space for others to pitch in as well.

I think some of the things that we look at are: The bail courts are overloaded with cases. In Ontario, 50% of people who are charged with an offence are held for a bail hearing, so the volume that's going through court is enormous. Yes, there is a proportion of people who are going to be released within 24 hours or after a single appearance, but there are a lot of people where that's simply not the case. It's because they need to arrange their counsel or they need to arrange a bail plan to present to the crown. So we have a lot of people who are having to be taken back and forth to the detention centre and appearing again in court, which consumes court time. This then starts to limit our ability to focus on those that are more serious.

The Chair (Mr. Lorne Coe): Thank you, Ms. Myers.

We now are going to turn to the official opposition for their questions. MPP Wong-Tam.

MPP Kristyn Wong-Tam: To our presenters, including those who are attending virtually, thank you for your presentation.

I want to pick up on my colleague's comment about judicial referral hearings, so thank you, Ms. Myers, for bringing that forward.

But my question is going to be going to Lisa Darling. Considering that the police are the ones who get to use the judicial referral hearing option, do you know how often our members of the various police outfits that you represent are actually referring to that one tool that's provided to them to expedite bail hearings?

Ms. Lisa Darling: Thank you for the question. I don't have a number to tell you how many. I can advise that it's something I'm aware of in my past experience, that it was something that was utilized in the jurisdictions I was in, with regard to specific types of offences. So for the lower-level offences where the risk to public safety wasn't as great, we would defer people to other programs as opposed to putting them through the court system.

MPP Kristyn Wong-Tam: Okay, thank you.

Because Nicole Myers actually mentioned that it rarely gets used, would you agree that it's rarely used by the police, although it's an option before them? Even though you don't have the statistics, how often is it used?

Ms. Lisa Darling: I couldn't say for all jurisdictions because I'm not familiar with all jurisdictions. I can say that it was used as frequently as we could based on the criteria we had for individuals who met the criteria for those judicial—

MPP Kristyn Wong-Tam: Referral hearings?

Ms. Lisa Darling: Referral hearings, yes.

MPP Kristyn Wong-Tam: Just out of curiosity, if you can, for the record: Which jurisdiction did you work in?

Ms. Lisa Darling: I worked for the OPP. The ones I'm referring to are Northumberland county and Peterborough county.

MPP Kristyn Wong-Tam: Okay, thank you.

My next set of questions are going to be very specific to the court backlogs, the access to deliberation and access to justice. We heard, yesterday, from a number of leaders who lead both provincial as well as localized police units, including those who are representatives of the associations and unions. I'm very curious, because the comments have largely been focused on legal reform, and much of the attention was directed to Ottawa and what Ottawa needed to do.

But what I'm hearing today is a slightly different presentation. All of you have identified the challenges are also administered by courts. Therefore, would it be helpful to, number one, clear the backlog as quickly as possible with—I'm seeing lots of nods. So, number one, clear the backlog, but what would it take to clear the backlog in the courts and who is ultimately responsible? Which ministry is responsible and what do they need to do? I'm going to start with Daniel.

Mr. Daniel Goldbloom: Yes, we certainly agree. Clearing the backlog should be a priority. The ministries that would be responsible would be the Ministry of the Attorney

General and Ministry of the Solicitor General. These ministries need the resources in order to deal with the causes of the backlog. They need the resources to deal with getting disclosure out in criminal prosecutions and the resources to be able to identify the most serious cases that pose a risk to community safety and be able to prioritize them.

The bail system right now is in crisis. It's in a resource crisis. There are cases—I'll give you one example. There was a case called Simonelli, a case where dozens of serious firearms and organized crime charges were thrown out, where there was never a trial on the merits because of delays in getting the accused to have a bail hearing. That is what happens when we over-clog the bail system. So we need to have the resources available both to the police and to the crown attorneys and, frankly, to Legal Aid Ontario in order to be able to assist those accused persons in dealing with bail and working together, all criminal justice system participants working together, to move these things forward quickly.

And if I can briefly speak to judicial referral hearings: I have not been to every jurisdiction in the province; I've never heard of one happening. My colleagues and I have asked around in Toronto to crown attorneys, "When are we doing these?" They say, "We don't know. We don't do them." So that's a question for the Ministry of the Attorney General, but I think that may be a resource issue as well.

MPP Kristyn Wong-Tam: Thank you.

The Chair (Mr. Lorne Coe): The opposition has two minutes and 52 seconds left in your questions.

MPP Kristyn Wong-Tam: I'm going to invite Ms. Stewart into this conversation, just because you're not in the room, but I also recognize that you work with a specific group of clientele. You work with children and youth and the protection of the rights of children and youth. Can you provide some insight on what you're hearing today, if you can reflect on your co-presenters' deputations as well?

Ms. Jane Stewart: Yes, absolutely. Thank you very much for the question. So we know that for young people in particular, the factors that my colleague has spoken to about—

The Chair (Mr. Lorne Coe): Before you respond, can you introduce yourself, please, for the record?

Ms. Jane Stewart: I'm sorry. My name is Jane Stewart. I'm here in my capacity as vice-chair of the youth law section of the Ontario Bar Association and I'm a staff lawyer at Justice for Children and Youth, where I've been for seven years, practising on behalf of children and young people and, in particular, in youth criminal justice cases.

For young people in particular, the focus is on rehabilitation and reintegration as being essential and fundamental to the long-term protection of community safety and the public. So when we have a focus on detaining young people, we don't have the resources to address their matters in a speedy way. We disrupt that in the same way that we do for adults, but it has special significance for young people. Young people in particular need the support of community, need access to community services, need access to family. Provisions or policies that disproportionately detain them, whether that's pretrial or post-trial, are disruptive and stigmatize young people as offenders and, ultimately, are criminogenic.

So having speedy trials, having speedy resolution of youth cases in particular, has particular significance, and those are principles that are protected under the law and should be of special importance and special attention in addressing the backlogs and the issues that we see in the bail system and in the criminal justice system generally.

MPP Kristyn Wong-Tam: Chair, if I can just get a time check?

The Chair (Mr. Lorne Coe): You have 25 seconds.

MPP Kristyn Wong-Tam: With all that, I'm just going to say thank you very much for this round of answers.

The Chair (Mr. Lorne Coe): We now move to our independent member, MPP Blais, please, for his questions.

Mr. Stephen Blais: My question is for—sorry, I've forgotten your name—the gentleman from the bar association.

Mr. Daniel Goldbloom: Daniel Goldbloom.

Mr. Stephen Blais: Daniel Goldbloom. Thank you, Mr. Goldbloom. You mentioned, I think both in your presentation and your response, the backlog in the court system and the necessity and importance of fixing that and the resources that are needed. You said "resources"—we all know that means money—but is that for physical space, more judges? What is the problem? Is it the number of judges to hear it? Is it crown prosecutors? Is it space to actually conduct the meetings? What combination of factors is creating the backlog?

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Mr. Daniel Goldbloom: I think it's a combination of factors. You have multiple pressure points in the system, but everything you've identified is an issue: a lack of judicial officers to hear these cases; a lack of resources to process disclosure, the evidence that's collected in the course of an investigation; and the lack of crown attorneys to screen everything and prioritize.

Mr. Stephen Blais: On the disclosure piece, is that computer systems?

Mr. Daniel Goldbloom: Let me give you one tangible example. Recently, the Toronto police brought in body-worn cameras for most officers who are on the street. That means that in every case you have hours and hours of video, and those need to be processed and provided. I can tell you, there have been delays of three, six, nine months in providing those for cases, and that entire time you have an individual who is on bail, subject to conditions, and who the police have to monitor for bail compliance, which is not an effective use of resources.

Mr. Stephen Blais: I appreciate that.

Yesterday we heard from a number of presenters, both law enforcement and, actually, criminal defence attorneys and their associations, about what they consider to be a fairly successful pilot project where judges were handling bail hearings instead of justices of the peace. What are your views on that? I think it also links to the comments that I believe Ms. Myers made about the training for justices of the peace. Clearly, judges have more background and legal education.

Mr. Daniel Goldbloom: I think it's important that the justice system continue to be flexible in using all resources available to deal with the bail crisis that we have, however the justice system sees fit to do that, both by the use of justices of the peace and judges. I think the bottom line is, are these matters able to be heard quickly, and do we have the resources available to deal effectively and efficiently with the most serious offences in a timely manner?

Mr. Stephen Blais: I've just been reminded that perhaps that comment came from Ms. Darling from the police services boards.

So, again, your thoughts—and if there's time, Nicole, yours as well, after.

Ms. Lisa Darling: Yes, I agree that crown attorneys can decide what cases they feel are most appropriate to be put before a judge who has more training, but I also believe that there are ways that justices of the peace could be trained better than they currently are. Better metrics need to be kept for justices of the peace, to keep track of the work that they're doing, to help—not as a punitive thing, but to actually monitor it and use it for training for justices of the peace across Ontario, for specific locations. If you get a baseline for people, if you collect metrics—which I don't believe are captured right now—and you have a baseline, you can use that to gauge whether people are consistently applying the law. It doesn't mean that they're doing anything wrong, but it's worth looking at to see whether something positive is happening there or there's something that needs to be corrected.

Mr. Stephen Blais: What about, instead of giving the prosecutor that discretion, just all bail hearings, or all bail hearings, say, for gun crime or violent crimes—so that you create a pool of almost specialty judges who deal with that item in particular and can build up the knowledge and the resources etc.?

Ms. Lisa Darling: If the system would permit it, if there are enough resources to do it and the types of offences are clearly defined, then yes.

Ms. Nicole Myers: I'm inclined to agree—enhanced training for justices of the peace, consideration of what cases may be appropriate to go before a judge. Other jurisdictions across the country very regularly use judges. There are, of course, advantages and disadvantages. It's going to be more resource-intensive, but we can imagine the kind of training that a judge has is different, as well as the ability to navigate the kind of legal arguments that are being made by players before the court. A justice of the peace simply may not have that same level of training and expertise. We need to recall that the bail decision is one of the most critical and important legal decisions that is made—

The Chair (Mr. Lorne Coe): Thank you very much. That concludes our first round of questions.

We'll now move to the government for the second round, starting with MPP Hogarth, please.

Ms. Christine Hogarth: Thank you all for being here today and sharing your thoughts. It's a very important topic we're having today. Today we're talking about persons accused of violent offences and offences associated with firearms and other weapons.

Ms. Darling, you mentioned that bail reform is a community safety matter.

Mr. Goldbloom, you mentioned that community safety is paramount when we have this discussion.

I want to ask this question to all three of you: What do you believe are the risks in keeping the current bail provisions in place? I'll start with Ms. Darling.

Ms. Lisa Darling: I think there just isn't enough rigour in the process right now. There have been examples stated of people returning before the courts. Toronto, I'm sure, presented some information yesterday about the percentage of people who have been released on gun crimes who have come before the courts again on another gun-related violent offence. If we don't add rigour to the system—there are things we could do right now to improve the system that currently exists, to protect citizens better than we are right now, and there are also things that legislatively could happen.

Even in relation to releases with surety, if we aren't going to collect a deposit, we still need to estreat that money if the surety does not abide by their responsibilities. And if there's a challenge with the courts and the money isn't on deposit, then we need to change the legislation to allow for deposit and surety on serious cases.

Ms. Christine Hogarth: Okay.

I don't know if you mind me calling you Nicole. Nicole, what are your thoughts on the risk of keeping the current bail provisions in place when we're talking about violent offences?

Ms. Nicole Myers: If we continue to do what we're doing, we're going to continue to over-incarcerate people who don't necessarily need to be there. We're going to continue to see our provincial jails overloaded with people who are to be presumed innocent, which we know has criminogenic effects—makes people more likely to commit offences, not less likely—and completely, then, diminishes our time to engage in rehabilitative efforts with folks once they've been convicted, as that time gets deducted off of their sentence.

So it's that the system has got things sort of on the flip. What we need to do is reverse things, where we're holding a very small number of very risky and seriously dangerous people in pretrial and the rest of the folks are out in the community being monitored. Once we've convicted somebody, that's the point at which we're able to intervene with a sanction or punishment.

Ms. Christine Hogarth: Thank you. And Daniel?

Mr. Daniel Goldbloom: Thank you very much for the question. I think it's very difficult to separate the legislation from the way that practically the bail system is run and the backlogs. We're just not in a position right now with the system to focus adequately on the cases that I think we're all talking about today that need to be dealt with in a serious way. There's too much clogging up the bail system.

Ms. Christine Hogarth: And I don't want to leave you out there—is it Jane? I'm sorry, I'll make sure I've got your name right: Jane.

Did you want to weigh in on this?

Ms. Jane Stewart: Yes, thank you. Certainly for young people, the presumption should be in favour of release so that they can continue to benefit from the supports of their community, family and school—stability—while they're waiting for their matters to be determined.

For young people in particular, custody is a matter of last resort, and that's even in a post-finding-of-guilt context. So for young people in particular, pretrial release and access to community and resources, and monitoring in the community, is the way forward, absolutely.

Ms. Christine Hogarth: Okay. And I just have one additional question, then I'll pass it off. Anybody can weigh in on this. When we talk about resources, police resources and resources going to other areas or programming, do you believe it's a good use of police resources to reincarcerate repeat offenders, violent offenders who have been released on bail, instead of assuring those repeat offenders are in jail? Would anyone like to comment on that?

Mr. Daniel Goldbloom: Sure. I think it's important that when we use the word "offender," we talk about what that means. And in this country, people are presumed innocent of a crime until they're proven guilty and convicted at a trial. I think it's quite clear in the question that, no, we don't want a system where people are repeatedly arrested again and again and again. The longer we have to wait between a charge and a trial, the more risk there is. So the faster we can have those trials, the less of a risk to public safety.

Ms. Christine Hogarth: Although sometimes these offenders are let go within 24 hours.

Mr. Daniel Goldbloom: Well, yes, you have a right to have bail addressed within 24 hours, and we do it a lot slower in this province than they do in other jurisdictions. For example, in Alberta a lot of these hearings are done over the phone.

Bail hearings are not trials. They are summary hearings that are to address these matters quickly so that we can make a determination and move on. There's no inherent value in having an accused person sit for three days, a week or two weeks before having their bail hearing or having bail be addressed. We want to deal with these things as quickly as we can instead of having people be in remand, like 70% of the people who are in our jails in this province are.

Ms. Christine Hogarth: Okay. Did anyone else want to comment?

Ms. Nicole Myers: The costs of custody are prohibitively expensive, not only in terms of what it costs to hold somebody, but all the social and legal costs that flow from that. By disrupting someone's connection to the community, their employment and their housing, we're making them a higher risk rather than a low risk.

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So it's not necessarily that there's a perfect solution here, but it is a difficult balance when we think of—yes, there are a lot of resources that get put into monitoring people and tracking people and bringing people back into the system, but there's also a lot of costs of holding people in custody outside of what it costs to operate a prison.

Ms. Christine Hogarth: Okay. Ms. Darling, did you want to add from your perspective?

Ms. Lisa Darling: Thank you. I just wanted to suggest that when the court system releases people with house arrest or serious conditions, we need people to monitor for that. We can't assume that people are doing what they're supposed to do. There has to be someone ensuring that. That is what we owe to our communities, and that's for public safety.

Ms. Christine Hogarth: Thank you. No further questions.

The Chair (Mr. Lorne Coe): I now have MPP Jones, and you have one minute, sir.

Mr. Trevor Jones: I want to thank every participant who has offered deputation because that perspective will enhance our awareness. And hopefully, we can hone in on target: the small but dangerous, motivated and deliberate offenders. It's a reminder to this committee and everyone participating that legally innocent also means legally criminally accused. Because the threshold is so demanding and so onerous—there are so many things that have to happen to bring an accused or an offender before a court or a summary hearing, that we have to keep perspective on that.

So I would like to ask Professor Myers, do you think that bail reform will save lives?

Ms. Nicole Myers: I think bail reform is necessary. I think if we can save lives, that is certainly an objective worth pursuing, but whether or not we can look to the law and say that making an adjustment in law is going to be enough to save lives certainly is subject to question. If we're interested in really saving lives, then what we need to do is invest in communities—

The Chair (Mr. Lorne Coe): Thank you very much for your response.

We're now going to turn to the official opposition. MPP Wong-Tam.

MPP Kristyn Wong-Tam: My question is going to be for Lisa Darling again. On behalf of the Ontario Association of Police Services Boards, you put forward five very clear and succinct recommendations, so thank you for that. Three of them, I believe, could be categorized under the banner of monitoring and supervision. One request is better metrics and monitoring to support consistency and accountability with bail conditions. Another request is more rigour for bail releases, including sureties. The third is additional resources and/or technology to monitor compliance for those offenders on house arrest or bail conditions.

Yesterday, we heard a range of answers from our presenters on who is responsible for bail supervision, who is responsible for bail monitoring. The range of answers went from: The offender themselves should be self-monitoring, self-supervising. We heard that police could do it, but they don't do it. We also heard that there could be the creation of a compliance unit somewhere.

But one thing that came out of all those answers was that we do not have a province-wide centralized body for monitoring or supervision for bail conditions or compliance. Would it be helpful for this government, for our province, to create one? And who should be leading that?

Ms. Lisa Darling: I do think it would be beneficial to at least have a program where specific standards and expectations are in place. We do have GPS monitoring across the province, different companies doing that monitoring. More rigour needs to be put into that process as well to ensure, I would suggest, that if someone is breaching that condition and there is an alarm, that it goes directly to the enforcement agency to deal with that matter. Better statistics need to be kept on those companies if they are going to be subcontracted in that way to ensure that if there are alarms, if there are concerns, that they are being tracked, to see how often the law enforcement agency of that jurisdiction was notified and how they were dealt with, to see, really, if the system is working and how many times there are breaches that we're not aware of as police organizations.

MPP Kristyn Wong-Tam: Thank you. With the passing of Constable Pierzchala, one of the details that has come out so far from the media is that of the two accused, one person had hacked off a monitoring bracelet from their ankle and the other was someone who had missed a court hearing but was never brought in. I'm just really curious: Is it bail reform that we really, truly need, or is it bail reform plus addressing the lack of judicial expediency in the courts, to address the bail conditions, supervision and monitoring that we truly need—so a full package, as opposed to one thing, but perhaps a series of things?

I'm going to turn to our lawyers here.

Mr. Daniel Goldbloom: I think you can guess my answer by this point: It's speedy trials.

I don't have all the details of that particular case that you're talking about. I think it has been a motivator in bringing us all together today. But as far as I understand, for that individual, a great deal of time had passed between the original charge and when the incident happened with Officer Pierzchala, so in the OBA's view it's primarily a resourcing issue.

MPP Kristyn Wong-Tam: Thank you.

I'm going to share my time with my colleague.

The Chair (Mr. Lorne Coe): You have three minutes, 36 seconds, MPP Vanthof.

Mr. John Vanthof: Thank you to all the presenters. Yesterday we heard from a lot of police organizations who described the bail system as a revolving door or an open door. Today we hear—and we heard this yesterday too—that over 70% of the people in our provincial correctional facilities are awaiting a trial, are awaiting access to justice.

It was obvious the representatives of the police yesterday were frustrated. You could hear their pain. You could feel their pain. I'm going to ask the question: Is lack of access to speedy trials in Ontario potentially causing deaths here, because our system is so clogged that the people we should be focusing on are falling through the cracks, because our system is full of people who do not pose or might not pose a threat to society, but simply because they're waiting trial?

Mr. Daniel Goldbloom: I think it's very difficult to answer in any particular case whether you can make a causal link between the system that we have and the death of a specific individual. But, that said, you've seen reporting in the last couple of days about the number of people who are dying in pretrial custody, and the huge proportion of those people are awaiting trial.

One of the questions earlier was about whether bail reform will save lives, and one way in which dealing with the bail system can save lives comes to the offenders or the accused people who are regularly coming before the courts on low-level offences, clearly motivated by addiction issues. If we can intervene, if we can have more resources for those individuals, to connect them to mental health supports, to supportive housing and other things that are going to stop that revolving door, that is going to be of tremendous assistance to saving lives for those individuals, and also to assisting the system in taking those cases out that are clogging it up, so we can focus on the important cases.

Mr. John Vanthof: Thank you very much for that answer.

I believe it was Ms. Darling who talked about increased training for justices of the peace. I'd just like to put on the record that in many parts of the north, access to any justices of the peace is an issue, so not only do we need—and I fully agree we need better training, but we need access to the courts, access to a speedy trial, access to the justices of the peace, access to the bail system.

The scope of this committee is very restrictive, and I understand that, but we're not going to fix the system or try to fix what's broken with a very restrictive answer. I think the crux of this is access to the justice system—and I see nods. Is that basically what's the problem here, the lack of access to justice? I think people in Ontario would be shocked to know that over 70% of the people in our correctional facilities are awaiting their trial, are awaiting access to justice.

Mr. Daniel Goldbloom: If you ever speak to an American about how long it takes to get to trial in Ontario, they're shocked. They can't believe that it can take a year and a half for trials in the lower courts, and up to two and a half years in the Superior Court.

Mr. John Vanthof: Because I know the first time that I toured a correctional facility in Ontario, in Monteith, and I talked to some of the people who were detained there—

The Chair (Mr. Lorne Coe): Thank you very much, MPP Vanthof.

We'll now move to our independent. MPP Blais.

Mr. Stephen Blais: Mr. Goldbloom, I believe you referenced the 2-to-1 or 3-to-1 ratio on sentencing for pretrial detention, and basically the lack of rehabilitative services or reduction in those services as a result of that. Are those services not provided pretrial, when someone is remanded pretrial, to someone who has never been in jail or in the system? Explain to me how that works.

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Mr. Daniel Goldbloom: I'll answer briefly, and I know Professor Myers wants to also respond to that. Fundamentally, the state cannot get into the business of rehabilitation before we have a finding of guilt and a conviction. That's a fundamental problem that we have.

In terms of what you're mentioning for a 2-to-1 or 3-to-1 credit, that's not precisely a way that the courts consider it, but that's sort of a technical lawyer thing that nobody is interested in hearing me explain for 20 minutes. The issue is that when you have triple-bunking, overcrowding and conditions that don't even meet the UN Mandela rules for prisons in this province, that is repeatedly taken into account on sentencing by judges, and so they end up serving way less time afterwards. If we all believe that one of the functions of the justice system is to rehabilitate people after we give them a fair hearing on whether they're guilty or not, we can't front-end-load it. We can't do it before they have their trial.

Mr. Stephen Blais: Sure.

Professor Myers?

Ms. Nicole Myers: In addition to not being able to do it on the front end, we need to remember that in provincial jails generally, even for those who are sentenced, there's very limited rehabilitative programming. Part of it to remember is that most of these sentences are very short. There simply isn't the time to intervene in these ways. There are long wait-lists. There are a lot of people who need these things, and they're not necessarily resourced, as well.

But the criminological evidence is also clear that the best place for rehabilitation is in the community. That is where it is going to have the longest-term, most-effective impact, is if these programs are delivered in the community rather than in custody.

Mr. Stephen Blais: Thank you. Go ahead.

Mr. Daniel Goldbloom: In 10 seconds: Probation and parole are the officers who are responsible for assisting with rehabilitation. Those officers have no role before somebody is convicted.

Mr. Stephen Blais: Yes, okay.

Thank you, Mr. Chair.

The Chair (Mr. Lorne Coe): That concludes our questions for each of our presenters. Thank you very much for taking your time to be with us today. I would ask you, then, to leave the main table, and we're going to continue on with our meeting. We have three other presenters starting at 10 o'clock. Thank you again.

CANADIAN PRISON LAW ASSOCIATION

CANADIAN CIVIL LIBERTIES ASSOCIATION

JOHN HOWARD SOCIETY OF ONTARIO

The Chair (Mr. Lorne Coe): Committee members, joining us by Zoom this morning are three organizations: the Canadian Prison Law Association, the Canadian Civil Liberties Association and the John Howard Society of Ontario.

I now call on Simon Borys, the director of the advocacy committee for the Canadian Prison Law Association, to start your presentation. You will have seven minutes. I will let you know when you have a minute left in your presentation. As you probably observed, there will be two rounds of questioning, first from the government members, the official opposition and then the independent member.

If you could please start your presentation from the Canadian Prison Law Association. For the record, identify yourself for Hansard, please.

Mr. Simon Borys: Thank you, sir. For the record, my name is Simon Borys. I'm the director of the advocacy committee of the Canadian Prison Law Association and a member of the executive of that organization. I'm also a practising criminal defence and correctional lawyer.

Before I became a lawyer, I was a police officer with municipal service in southwestern Ontario. Having been a patrol officer, working in the community, responding to calls for service, I have a keen awareness of the dangers and challenges facing police officers. I'd like to think that gives me a balanced perspective on issues impacting officer safety, such as bail.

But my perspective and the CPLA's submissions are also informed by my understanding of the law, our Constitution and my practical experience representing accused people in court. That is why I am confident in submitting to this committee that the bail system in Canada is not in need of significant reform, at least not in the sense of tightening it up so that less people are released. I say that with the utmost respect and sympathy for Constable Pierzchala and his family, but a police officer being murdered by someone on bail is, thankfully, a rare event. Policy or legislative change should not, in our respectful submission, be made on the basis of outlier cases, no matter how tragic.

That's not to say that a tragedy like this cannot be a good opportunity to examine and reflect on systems like bail to see if there is room for improvement, and I certainly think there is. But in the CPLA's respectful submission, it would be a knee-jerk reaction to just assume that the best way to improve the bail system is to lock more people up. That's not going to guarantee the safety of the public unless we were to abolish bail altogether and lock up everyone who is accused of committing an offence, which, of course, would not be constitutional, given the right to reasonable bail in section 11(e) of the charter.

A properly functioning bail system will always be a balancing act of the rights of an accused person and the presumption of innocence against the safety of the public. Because this system is operated by human beings who aren't perfect, they won't always get that balance right. But in our respectful submission, that doesn't mean that the system is broken.

A 2013 study commissioned by the Department of Justice, cited in the first footnote of our submissions, found that only 17.5% of defendants who had been released on bail by the court violated the terms of their release and 98% of those violations were only for breaching release conditions or failure to attend court. In other words, only 2% of the 17.5% of accused people who offended after being released by the court actually committed substantive new offences while on bail. While I don't have a breakdown of those offences to provide to you, I think it's reasonable to assume that not all of those were violent or involved weapons.

CPLA submits that this suggests that people who are on bail present a very limited risk to public safety, which makes sense because the Criminal Code already affords justices a broad discretion to deny bail under the secondary grounds for detention if detention is necessary for public safety, which includes the safety of a victim, a witness or a young person. As well, there's a presumption of detention, a reverse onus for getting bail, for people who are charged with certain offences, including several enumerated violent and firearms-related offences, as well as any offence involving violence towards a domestic partner, and that's found in section 515(6) of the Criminal Code.

In light of this, the CPLA submits that it cannot be credibly said that there is simply a revolving door for people charged with violent or weapons offences. That is not the actual problem with the bail system.

The bail system certainly does have its problems, though, and those include:

(1) the frequent use of excessive bail conditions, which can set accused people, especially those experiencing substance abuse problems, homelessness and mental health issues, up for breach charges, which make up about 20% of the cases clogging up the courts;

(2) excessive delays in getting a bail hearing due to lack of judicial and courtroom resources, which can contribute to stays of proceedings in the most extreme cases, but, more importantly, which subjects people who are presumed innocent and may in fact be innocent to what can be cruel, degrading and sometimes dangerous conditions in jail, which can then contribute to miscarriages of justice by incentivizing guilty pleas even for those who are innocent;

(3) the bail system can exacerbate systemic inequalities that already exist in the criminal justice system and in society at large for certain groups, including Aboriginal people, Black people and poor people;

(4) being detained can have significant consequences to the life and livelihood of accused people, including those who are actually innocent, in the form of lost housing, jobs, family time, and social stigma etc.

These problems, which the CPLA submits are the actual problems with the bail system, can be addressed by ensuring sufficient funding for the court system, which includes the role of defence counsel; by devoting more resources to social programs that address the root causes of criminality, especially among young people and marginalized groups; and by supporting bail supervision programs.

I know it's easy for me to sit here and say more money to this and more resources for that, but obviously that money has to come from somewhere. And that is a fair question: Where will that money come from? One option, the CPLA submits, is from the savings of not incarcerating people who don't need to be incarcerated. According to the Office of the Auditor General, cited in footnote 58 of our submissions, in the year 2017-18, the cost of incarcerating inmates was $302 a day. That's over $9,000 a month and over $110,000 per year, per inmate. Unfortunately, I don't have a more recent figure on this data point for you—cost per day per inmate—but I think it's fair to assume that the cost has probably only gone up in the last five years, certainly in the—

The Chair (Mr. Lorne Coe): You have one minute left, sir. Thank you.

Mr. Simon Borys: Certainly, the annual amount of money spent by Ontario to incarcerate people has gone up in the last five years. The cost of incarcerating people can be compared to the cost of supervising them in the community, which is far less.

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In 2012, the Commission on the Reform on Ontario's Public Services produced the Drummond report. In that report, cited in footnote 59 of our submissions, they compared the then cost of $183 a day to an estimated cost of $5 a day for community supervision. So even if that cost for community supervision has gone up since then, it's still significantly less than the cost to incarcerate inmates. The CPLA submits that that reflects that there may be cost savings there which could help with some of these other initiatives that we're proposing and might help to address the bail system.

Those are my submissions, subject to any questions.

The Chair (Mr. Lorne Coe): Thank you, sir. We appreciate your presentation.

Committee members, our next presenter is Laura Berger, who is a staff lawyer with the Canadian Civil Liberties Association. Welcome to the committee. You have seven minutes for your presentation, which can start now.

Ms. Laura Berger: Terrific. Thank you for the opportunity to appear before you this morning. My name is Laura Berger. I am a staff lawyer with the Canadian Civil Liberties Association.

Over the past decade, my organization has engaged in extensive research and advocacy around the interlocking issues of bail and pretrial detention. Our 2014 report, which was entitled Set Up to Fail: Bail and the Revolving Door of Pretrial Detention, has been cited by courts right across the country, including the Supreme Court of Canada.

Right now, we are actually working on a grant-funded report that's aimed at assessing the progress Canada has made since 2014, since Set Up to Fail was released. As part of that research, last year we conducted 79 days of bail court observation right across Canada, and last summer I interviewed over 30 justice system participants in five different provinces and territories, including legal aid lawyers, private bar defence counsel, government officials and service providers who provide front-line services to folks navigating the bail system. My remarks this morning are going to draw on CCLA's original research, as well as decades of social science evidence.

I've listened carefully to the arguments in the policy proposals before you yesterday and today, and in the time that I have, I want to focus the lens on what the evidence tells us about the vast majority of people caught up in our bail system. As you've heard from other witnesses, the evidence paints a really clear picture. Canada's crime rates are at historic lows, but the rate of pretrial detention has actually doubled over the past 40 years. What we know is that these are individuals who haven't been found guilty

or sentenced to imprisonment; rather, they're serving time while waiting for the determination of their bail or waiting for their trial. As you've heard, fully 77% of people in Ontario's jails are remand pretrial prisoners as opposed to sentenced prisoners, so I think it's really important to think about the reality of who is going through our bail system and who we are incarcerating.

Second, I really want to emphasize that Canadian law already provides mechanisms to keep people in pretrial detention where appropriate. The Criminal Code allows for pretrial detention where necessary for the protection or safety of the public, and that has not changed in five decades; that has not changed since the Bail Reform Act was introduced in 1971. Recently, as you've heard, Bill C-75 introduced a number of legislative amendments, but as numerous experts pointed out when the bill was before Parliament, Bill C-75 did not actually introduce any significant substantive changes to the law of bail. I think a close examination of the changes introduced through Bill C-75 would make it really clear that the legislation has not made Canada's bail system weak or lenient.

Similarly, I think it's really important to clarify the scope of the Supreme Court of Canada's decision in Antic and in other decisions affecting the bail system. In Antic, the court reaffirmed existing principles at the heart of our bail system, including the principle of restraint and the ladder principle, which we've heard about. In a nutshell, these principles simply mean that any restrictions on a person's liberty before trial have to be justified.

What we know is that the evidence shows that decision-making in bail courts across Canada has actually become more restrictive and more risk-averse over time. The discretionary decisions that are being made by police, by prosecutors, by judicial actors have tended towards greater, not fewer, restrictions on pretrial liberty. These trends have been clearly documented in academic research. They've also been recognized by the Supreme Court of Canada. We're concerned that Canada has been returning to a past in which pretrial detention was excessive, unfair and inequitable.

As you've heard today, policy decisions have to be based on evidence and not anecdote, but I still think it's worth thinking about the individual stories that don't make the national news.

I always think about a small story in the Ottawa Citizen back in 2016 about a woman who was denied bail on shoplifting charges in Ottawa. She pleaded guilty in order to secure her release because she was worried about missing her chemotherapy appointment.

I think about Lesley Ann Balfour, an Indigenous single mother of four from Norway House in Manitoba. She spent 51 days in pretrial detention, being bounced around between many different jails in the province. She offered to plead guilty simply to secure her release and to be able to go home. When she was finally released, the crown dropped the charges against her.

As these examples illustrate, depriving people of their liberty before they have been found guilty of any offence comes at an extremely steep cost. It means lost jobs. It means lost housing. It means disruption to families and communities.

I've heard repeatedly before this committee that we're not talking about those people; we're talking about chronic, violent, repeat offenders. I want to point out two issues with that characterization.

First, the proposed reforms would apply to a much wider range of people. That's because Criminal Code offences often capture a wide range of conduct, from more to less blameworthy—

The Chair (Mr. Lorne Coe): Excuse me. You have one minute left in your presentation.

Ms. Laura Berger: Thank you.

The Premiers have proposed a reverse onus attached to section 95 of the Criminal Code, but the Supreme Court of Canada has recognized that that very provision captures a wide spectrum of conduct, including offences which involve little or no danger to the public.

I also want to mention that a pattern of breaching court orders does not necessarily mean dangerousness. We often release people on bail conditions that set them up to fail: curfews, geographic restrictions, prohibitions against possessing drugs and alcohol. In my research, I've heard again and again about people who fail to comply with court orders not because they don't respect the court but because they are struggling to survive. Any attempts to make our bail system stricter will hurt those people.

I'm happy to talk more about these issues and to answer any questions and to point out what evidence-based solutions—

The Chair (Mr. Lorne Coe): Thank you very much. Your presentation has concluded. We'll no doubt be coming back to you with questions as we proceed through the two rounds.

Members, we have another presenter, from the John Howard Society of Ontario: Christin Cullen—I believe she's on the Zoom call—the chief executive officer.

You have one of your colleagues here in the committee room. Would you be so kind as to introduce yourself, please, for the record, as well as your colleague here in the room?

Ms. Christin Cullen: My name is Christin Cullen. I am the chief executive officer at the John Howard Society of Ontario. With me today in the room is my colleague Safiyah Husein, our senior policy analyst. She'll be presenting to you in person.

The Chair (Mr. Lorne Coe): Thank you very much. Good morning.

Ms. Safiyah Husein: Good morning. We really appreciate the opportunity to provide submissions today to this committee.

Our organization works to build a safer Ontario by supporting the people and communities affected by the criminal justice system. Our 19 local offices deliver more than 80 evidence-based programs and services focused on prevention, intervention and reintegration across the province. We have years of experience studying bail and providing services to support individuals involved with the system.

As you've heard from other witnesses, contrary to recent public assertions, our bail system is not lenient. Despite historically low crime rates and the constitutional presumption of release, reasonable and timely bail is increasingly difficult to obtain. Over the past few decades, an increasing number of cases start in bail court and the remand population has risen significantly. As you've heard, in Ontario, remanded individuals account for an average of 77% of the daily population in provincial institutions, which means that's over 5,000 legally innocent people detained on any given day.

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So why should we worry about rising remand populations? The impacts of even short stays in remand are immense and affect individuals, their families and communities as a whole. Even a few days or weeks in detention can put an individual's housing or employment at risk. Detention exacerbates mental health issues and creates lasting impacts on individuals due to the experience of overcrowding, with limited access to programming, health care and supports. The experience of incarceration destabilizes individuals and often contributes to, rather than prevents, a cycle of criminal justice involvement. There are also significant financial implications. It costs upward of $300 a day to house an individual in a correctional institution. This amounts to millions of dollars spent each year.

It is important that we consider who is most affected by remand. Black and Indigenous people, and individuals experiencing poverty, homelessness and mental health issues, are already overrepresented in admissions to pretrial detention in Ontario. Black adults make up 5% of the adult population in the province, but 14% of admissions to custody. Indigenous people make up 17% of custodial admissions, but only 2.9% of people in the province. People with no fixed address are also more likely to be denied bail. Stricter application of bail laws will result in further overrepresentation of Black and Indigenous populations, and work contrary to efforts to reduce systemic discrimination.

So what should be done? Community-based intervention programs disrupt cycles of violence and support those at elevated risk. And there is some good news: There is an existing community infrastructure that has proven success in supervision while simultaneously being more fiscally responsible. Bail supervision programs are a low-cost community alternative to remand. They have a proven track record of ensuring individuals return to court and comply with the conditions of their release. JHS and other service providers operate bail verification and supervision programs across the province.

Here's how they work: Clients are referred by duty counsel or the crown attorney. Every client undergoes a thorough intake and risk assessment that informs the development of an individualized plan to reduce the risk in community and address their needs. The caseworker reviews their conditions, the criminal justice process and next court dates, and will work with them to identify what the pressing issues are and where they might need extra support. If there's immediate help needed, like a place to sleep, the caseworker can help with that. They will also be given referrals to things like mental health services, addiction treatment, housing supports, legal services, supports to address domestic violence risk, and court supports. This is a crucial piece of the program that addresses individual needs and risk factors, and directly contributes to community safety.

Meetings will be set with the client on a schedule that depends on their risk and need level. Those deemed higher-risk may have a meeting with their caseworker a few times a week, while others may do so once a month. At each meeting, the caseworker reviews the conditions of release, provides them support in navigating the system and reminds them of any court dates, and provides any referrals they may need to legal services. They will also review the client's plan and make any required adjustments.

The process differs slightly based on jurisdiction, but if the client breaches their conditions, the program staff either registers the breach directly with the courts or reports it to police, who will then issue it with the courts. If there is any indication of violence, the bail worker will report that directly to the police.

BVSP is an integral part of the bail system. Across the province, BVSP programs have a general success rate of 88% to 90%. This means that around 90% of clients successfully complete the program without any new breaches or new charges.

The issue here is that they are severely underfunded. Many service providers are operating these programs at a deficit. For example, staff who are meant to carry 35 client cases can find themselves consistently averaging caseloads of more than 60. Investment into BVSP is an evidence-based, tangible way to strengthen the bail system.

There are also bail beds currently in operation by JHS in Thunder Bay and Ottawa that provide supervision and supports to individuals on bail for those with no fixed address, and this provides an amenable release plan to the courts. The beds are consistently at capacity and the residences have the ability to support clients for prolonged stays, saving the province money in what would otherwise be extended stays in remand facilities.

The current model for bail beds could easily be expanded to other areas of the province, and quite quickly. With appropriate resources, they could also be tailored to suit the needs of individuals deemed higher-risk, such as those charged with—

The Chair (Mr. Lorne Coe): You have one minute left in your presentation, please. Thank you.

Ms. Safiyah Husein: Thank you. They could also be tailored to suit the needs of individuals deemed higher-risk, such as those charged with gang- and firearm-related offences. A model with more intensive staffing and additional supports for clients deemed higher-risk would provide an effective individualized alternative to incarceration in provincial correctional institutions.

Violence is a complex, nuanced issue, and there are no quick fixes. We all have a role to play to address these issues, but while there are no shortcuts, there are steps that will provide tangible results. Community-based supports

meet the needs of individuals to promote stabilization and prevent further charges. Investment in community-based services is paramount in addressing community safety.

We appreciate you listening to us today, and the John Howard Society of Ontario looks forward to working together with you as a partner on this.

The Chair (Mr. Lorne Coe): Thank you very much for your presentation. Thank you to all three parties.

We're now going to start our first round of questioning with the members of the government. Do I see a hand up? Yes, MPP Hogarth, please.

Ms. Christine Hogarth: Thank you to everyone for being here today. One thing we have learned and one thing we all learned and one thing we all know: We all have a right to feel safe in our own homes, and we all have a right to feel safe in our communities. We heard a lot from our officers yesterday, of all levels, of reasons for bail reform, so it's great to have all you here and your perspectives that you bring from your different areas of life. That's what we're here to learn.

One thing we did hear yesterday, and this is a fact, is that in 39% of all Toronto firearm-related homicide cases—so that's homicides, people being killed—the accused was out on bail at the time of the alleged offence. These are repeat offenders shooting people, killing people. This is what we're talking about today. We talk about public safety with regard to persons accused with violent offences or offences associated with firearms and other weapons. We really made sure that we were specific in what we were discussing today.

So with those questions and with the right to feel safe in our own homes, do you all think—or, I'd like to ask you individually: Do you think that bail reform will save lives? I'll start with you, Mr. Borys. Do you believe that bail reform will save lives?

Mr. Simon Borys: Thank you for the question. I suppose it depends on what you mean by "bail reform." I think that there are certainly ways to improve the bail system, as we've discussed and as you no doubt heard about yesterday. Anything that actually strengthens the bail system in an objective and rational way certainly, I think, has the potential to save lives.

Ms. Christine Hogarth: Okay. Thank you.

How about Ms. Berger: Do you believe that bail reform will save lives?

Ms. Laura Berger: I don't believe that the introduction of more reverse onuses into the Criminal Code will save lives.

Ms. Christine Hogarth: Okay. Thank you.

And I'm not sure who wants to answer from the John Howard Society, but do you believe that bail reform will save lives?

Ms. Safiyah Husein: I think that in order to save lives, there needs to be an approach that takes a lot of different factors into play. There are a number of factors that relate to violence, including issues of poverty, inequities within society and a lack of community-based supports. If we look at it holistically and approach it from an evidence-based perspective, then we can save lives.

Ms. Christine Hogarth: Okay. Were you aware that Constable Pierzchala, who was murdered, was murdered by somebody who was out on bail on prior weapons convictions?

Ms. Safiyah Husein: Yes.

Ms. Christine Hogarth: Okay. I just want to make sure we've got that on the table here.

The second question would be for Laura Berger. Since you don't believe bail reform would save lives, do you believe that having violent repeat offenders on the street is better for public safety than keeping them in custody?

Ms. Laura Berger: I believe that our justice system has tools—that our justices of the peace, our judges and our crowns have tools—to address situations where there's a demonstrated risk. And I believe that if we really want to enhance community safety, you've heard about a lot of solutions that can serve that purpose, including investing in programs that are proven, that are evidence-based, to reduce crime where incarceration does not.

Ms. Christine Hogarth: Okay. So all of you have mentioned resources into programming. Do you think that it's a good use of police resources to reincarcerate repeat offenders out on bail instead of ensuring that those repeat offenders are not released in the first place—so a good use of resources?

Ms. Laura Berger: I think it would be a really poor use of—when you look at the number of individuals who are released on bail and then go on to do something terrible, what you're forgetting is that from the outset, from that bail decision, we're actually really terrible at predicting who that sliver will be. So the proposals that we've heard would mean incarcerating everybody, would mean incarcerating a lot of people who could be released safely into the community. I think it's a terrible use of resources to spend over $300 a day to keep a large number of legally innocent people in jail.

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Ms. Christine Hogarth: Does anybody else want to weigh in on that? Is it a good use of police resources to arrest reoffenders—people who are shooting up others, maybe going home and beating their wife?

Ms. Safiyah Husein: I'll add to what Laura just said. I think if we cast a wider net and more people are held in remand, as I mentioned, there is a destabilization effect that happens because of loss of employment, loss of housing, exacerbation of mental health issues that exist, and then those people return to community. So I think we have to consider, when we're talking about the use of resources, what the effect of casting that wider net is for people who enter the criminal justice system when they shouldn't be there.

Ms. Christine Hogarth: Are we concerned that some violent offenders may have—we'll go with "beating your wife" again. I'm not sure how many times that's appropriate. They're let out again and then they go back and possibly kill her. Do you believe that the community programs would stop that from happening?

Ms. Safiyah Husein: I'd like to cite the example of the Bail Verification and Supervision Program that I mentioned. One of the key parts of the program is actually addressing

risk factors like domestic violence. As we've heard from other witnesses at this committee, the evidence shows that community-based interventions are more effective than those resources allocated towards interventions while somebody is in custody. With the appropriate programming and connections to those programs in the community and with supervision when required, those risk factors can be addressed effectively.

Ms. Christine Hogarth: Does anybody else want to weigh in on that?

The Chair (Mr. Lorne Coe): You have a minute and four seconds left.

Ms. Christine Hogarth: I'll just leave it in case my colleagues have another question.

The Chair (Mr. Lorne Coe): I don't see any hands.

Ms. Christine Hogarth: Okay. Would anybody else want to comment on that instance about community programs and helping that individual who may go home after beating their wife once, come back and perhaps kill her? Go ahead.

Ms. Laura Berger: I think what you've heard, in terms of what experts and criminologists would say—the problem is that we don't know who that person will be. What you're talking about is not intervening after someone has committed an offence, but you're trying to predict, among a large number of people arrested, who will then go on to commit an offence. As you heard, in terms of our statistics, we know that the vast majority of people released on bail do not commit new substantive offences. So the only way to be absolutely, ironclad—

The Chair (Mr. Lorne Coe): Thank you very much for that response.

We're now turning to the members of the official opposition for their questioning. MPP Wong-Tam.

MPP Kristyn Wong-Tam: My first question is to Simon Borys from the Canadian Prison Law Association. Would it be helpful to have a central body to supervise as well as monitor bail compliance? And who should that be?

Mr. Simon Borys: I'm not sure if it needs to be a centralized body. The reason I say that is because there are unique considerations in different jurisdictions—rural versus city. I think that perhaps on a local level, it might be more effective to have organizations doing that in a smaller type of setting, similar to the way John Howard Society has a bail supervision program in Toronto that seemingly works well for Toronto's particular considerations. So whether it needs to be centralized at the top of that pyramid or not, I do think that there are local considerations that shouldn't be forgotten in a kind of top-down approach.

MPP Kristyn Wong-Tam: With respect to a province-wide system around monitoring, sharing of information, all of that, do you believe that would be of benefit, even if there are tailored, individual units for the region's specific needs—but having a province-wide supervisory, centralized body for monitoring bail conditions? Right now, there does not exist one.

Mr. Simon Borys: I'm not sure. I guess it depends on what the nature of that organization is, what the scope of its mandate is and how it carries it out. We do, in a sense, have a body or bodies that are able to oversee bail conditions, and that is the police. I know that's not their job directly, but they are aware of what the conditions are and they can devote resources to targeting particular people if they feel like they're high-risk. Whether there needs to be an additional body at that level across the province—I think I'd have to say it would depend on the circumstances of what that committee is about.

MPP Kristyn Wong-Tam: Thank you, Mr. Borys. I think yesterday we heard from the police units—there was a range of answers, to the point that individual offenders should be self-monitoring, self-supervising, to perhaps that some police outfits could do it, but perhaps there should be another provincial compliance unit. So I'm trying to get to a place of consensus, and clearly we've got a range of opinions on that one. But we do recognize, I think it's important to state, that supervision of bail releases and conditions is one that we need to be able to monitor. There really seems to be an ad hoc approach to it—in the province of Ontario, anyway.

I'm going to ask a question to Laura Berger of the CCLA. I know you mentioned that you heard and tuned into the presentations yesterday. Yesterday there were suggestions that perhaps a cash bail requirement would perhaps bring us to safer communities.

My question to you is: Should the courts seek a requirement of upfront cash deposits? And if so, will this prejudice marginalized communities or perhaps struggling Ontario families who are already trying to make ends meet? Should we be asking those accused for cash deposits, similar to the US?

Ms. Laura Berger: I think I can say, pretty categorically, no. I would not like to see a return to a cash bail system. There are very good reasons why Canada moved away from that kind of system.

In fact, one of the concerns that we have is that our current bail system already discriminates against folks who don't have middle-class ties, who don't have that kind of stability in the community. Even without a requirement to deposit a certain amount of money, cash bail, there's often an assumption that to secure release on bail, you have to provide an address that you're going to be living at.

In Ontario, unlike other provinces, there's a real expectation that you're going to be released with a surety. That's a family member, a member of the community, who is going to monitor you and is going to report any bail breaches.

It's interesting to note that in British Columbia, for instance, sureties are very rarely used. This is a local practice or an assumption that has really built up over time in Ontario. The problem is that if you're someone who doesn't have strong ties in the community; if you don't have a parent who can take a day off work, come down to the courthouse, give evidence and fill out the paperwork; if you don't have a cousin who can clear out their basement for a place for you to live, then it can be really hard to secure release. And so, when I've interviewed legal aid lawyers, duty counsel, folks who are working on the front lines, they talk about their clients spending days and weeks

in jail while they run around trying to put together a bail plan, basically trying to figure out where this person is going to go when they're released. If someone is unhoused, can we find a bed for them? People are waiting in jail because there's no stable housing for them.

So what I would say is that cash bail would absolutely bring us back to a regressive era in which the poor and the disenfranchised spend more time in jail, but I think we're already there, and that's why we say that the bail system is broken.

MPP Kristyn Wong-Tam: Thank you, Ms. Berger. I want to just follow up on this question a little bit more, and if you can keep your answers truncated, that would be helpful.

Ms. Laura Berger: Sure.

MPP Kristyn Wong-Tam: There was an assumption yesterday that perhaps more stringent cash bail could encourage more compliance, so therefore the pressure is on that person to not lose their cash bail deposit. But would you agree that that more stringent cash bail requirement could discourage the reporting of breaches, because people would be fearing that they're losing their deposits?

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Ms. Laura Berger: Yes, absolutely I would agree with that.

MPP Kristyn Wong-Tam: Okay. Thank you. Are there other resources or supports that could make the sureties more successful in their efforts of monitoring people on bail? Right now they're sort of left on their own. They've come before the courts and they've made a commitment to take responsibility for someone else's actions, but they're not connected in partnership with the police and they're not given any additional resources. They're just sort of out there.

Can we resource them better, and, if so, what should those resources be?

Ms. Laura Berger: Absolutely. I think that's absolutely the case. For instance, investments in legal aid would go a long way because, as it stands, if your loved one is arrested and you perhaps are interested in serving as a surety, if you show up in the courthouse—especially with COVID restrictions—you may not have anyone to talk to, to help you navigate through the system. So I think that investments in legal aid and programs like the John Howard Society—I know that the Ministry of the Attorney General has an Indigenous bail initiative, where they've been working—

The Chair (Mr. Lorne Coe): Thank you for that response. The time has concluded for questions from the official opposition.

I now will move to our independent member, MPP Blais, for his questions. Thank you.

Mr. Stephen Blais: Thank you everyone for your presentations.

For Ms. Berger: I'm certainly sympathetic to the stories you told about the person shoplifting and needing chemotherapy, but I would hope that you are equally sympathetic to the family of Constable Pierzchala, who was murdered by someone out on bail for a violent crime.

This committee's work is really narrow in scope and really only looking at violent crime with the use of a weapon, a firearm and the like, and not broad-ranging changes in the totality of the system. You mentioned that simply putting reverse onus for section 95 offences could be—I'm not sure the exact word you used, but say "dangerous" or "negative" to the system, because there's a broad interpretation of what the violations of 95 are. I'm wondering how—just as someone, as a layman walking down the street, I don't really want the people walking beside me to have a loaded handgun in their belt. I don't want them going to the park and accidentally hitting my kid because they're shooting at whoever it is they're intending to shoot at. I don't want them to shoot at all obviously, but you know where I'm going.

So where is the balance in terms of public safety and the issues that you were referring to for lower-level offences? I agree no one should need to plead guilty just to get chemotherapy treatment. Unfortunately that's not really what we're looking at today.

Ms. Laura Berger: Yes, I bring up those stories knowing that they're anecdotes, but the point that I was really trying to make is that if we set broad rules and we label everyone charged with a certain offence as a violent criminal who shouldn't secure bail, we're going to inevitably capture a much wider range of people.

So what do we need? We need a system that looks at the evidence in front of the court, that looks at a person's situation and tries to make the best risk-based decision possible, and that means equipping our crowns, our judges and our justices of the peace to look not at labels or stereotypes about violent offenders, but to look at the person in front of them. That's the system that we have, where public safety is one of the key priorities. And then, as you've heard from my colleagues from John Howard, we actually have a ton of evidence-based ways to try and combat gun violence that have an effect on crime rates. I just don't think it's at the point of detaining more people in pretrial detention that's going to have that impact.

Mr. Stephen Blais: I'm very sympathetic to the view that there are wide-ranging changes in the justice system that need to be made. But just in particular to this idea, what you're saying I don't think is in conflict with the idea that those accused of violent crime or gun crime should demonstrate that they are safe to be released. It would still be a judgment decision; it would still be based on what supports are available to them in the community or not, what they have to lean on if they are released. It's just that they have to demonstrate that those supports are there; they have to demonstrate that they have the capacity to not reoffend. It's very similar to, if not exactly, what you're discussing from a judgment perspective. And so I'm wondering why for the most violent of crimes that is inappropriate.

Ms. Laura Berger: Right. I think it's the case that if the state wants to restrict someone's liberty, it should be the state that needs to bear that onus and needs to justify it. But I would agree with you that, with a reverse onus or without a reverse onus, ultimately, it's a discussion in court.

And I think what you heard from criminal defence lawyers yesterday is that, in fact, when people are charged with firearms offences, they have to put together a really good bail plan, and it is already the case that our courts take firearms offences and firearms charges very seriously.

Mr. Stephen Blais: I'm sorry; my time is very limited. I appreciate your point, but something we heard from the Toronto police yesterday—in 2021, there were 772 people released on bail for firearms offences. Of that, 165—

The Chair (Mr. Lorne Coe): MPP Blais, that concludes our first round of questioning. Perhaps you can come back to that question on the second round, sir. Thank you very much.

We're now going to start the second round of questioning, starting with the members of the government. MPP Saunderson, please.

Mr. Brian Saunderson: We heard significant evidence yesterday—first of all, thank you all for your input today. I certainly understand your response about making sure we zero in on the right people. I think what we've agreed to or come to a fairly firm consensus based on what we heard yesterday and today: We're really talking about 3% of our criminal population or those charged. Mr. Blais was going to cite some statistics from the city of Toronto regarding those that were out on bail for gun offences; the 172 he cited of that, approximately 50% reoffended or were recharged with violent offences while they were out on the first bail, and of those, 50% were then charged on a third occasion while they were out on bail from those offences.

We had a statistic yesterday that in 39% of all firearm-related homicides in Toronto, the accused was out on bail at the time the offence was committed. I don't think those are acceptable statistics, and unless someone disagrees with that, I'm not going to ask you that in a question. I see nodding. So understanding that we have an issue on that—and Ms. Berger, you talked about zeroing in and trying to focus in on those, and that's really, I think, the crux of this matter here.

So we've heard that the Attorney General has a fairly successful guns and gangs bail unit team that specializes in those types of hearings, and we heard yesterday from a number of the witnesses that they were familiar with that and they thought it was a successful venture. So do you think there's ways that we can augment our bail system to properly screen those people so that we're not broadening the net but we're narrowing the focus? And I would be interested, starting with you, Ms. Berger, on how we could do that.

Ms. Laura Berger: Well, as I think you've heard from some of my colleagues, one way is to try and divert low-level offences out of the bail system and out of the criminal justice system, because we know that our courts are immensely busy. They are backlogged, and they are dealing with a tremendous number of charges. The vast majority of those charges and the vast majority of those situations are not firearm homicides.

I think if we want a system that responds appropriately to extremely serious allegations of violence, it makes sense to think about those folks who are—you know, that in 20% of cases going through our criminal justice system, the highest, the most serious offence is an administration of justice charge. That could be a failure to appear in court; that could be breaching a bail condition. If we were able to try and divert a lot of those cases out of the justice system, then we'd have a more nimble system that would be better able to respond to very serious allegations of crime.

Mr. Brian Saunderson: Mr. Borys, do you have suggestions on how we can narrow that focus and make sure that we're dealing appropriately with those that pose the most risk?

Mr. Simon Borys: Thank you for the question. It seems to me that the people who are making up these statistics about committing homicides and committing violent offences or offending when they're back out again, maybe once, twice or more—it seems to me that those people are at a high likelihood of being not just involved in criminal activity, but involved in a lifestyle, and not even necessarily by choice, but also by circumstance. That is going to keep drawing them back into this culture, this subculture of criminality and violence.

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If people who are in those kind of living situations—whether it's a geographic one, whether it's a financial one, whether it's one that has to do with their substance use or mental health issues—can be identified through the bail process while they're in the bail process, perhaps those people can be targeted for additional kinds of support that might help to reduce that reoffending. Just releasing somebody back into the life they've been already involved in that led them to this in the first place, it certainly has the potential to allow a recurrence of that, because you can't just leave the lifestyle—and I don't mean gang lifestyle, specifically. I mean a lifestyle of poverty, a lifestyle of living in a particular area. So perhaps it's identifying some of the commonalities between the people who are making up these troubling statistics that you cited.

Mr. Brian Saunderson: And just to close the circle: I know that the secondary consideration on a bail hearing is community safety. We've certainly heard from our police services, particularly in the city of Toronto, that they're hearing from their communities, some of our racialized communities and vulnerable communities, that these gun crimes are disproportionately impacting them. So while I appreciate the social determinants, potentially, of crime and what gets you into the system, they're also disproportionately impacting those communities.

I think this committee is looking at ways that we can strike that appropriate balance and protect those communities, as well as understanding how those individuals got into the system. But we're talking about a very small group.

With that, the question is: Hearing that, do you believe that the current system is functioning well or needs reform?

Mr. Simon Borys: My answer would be that I think, generally speaking, the system we have now does function fairly well. I think, as I said, an incident as with Constable Pierzchala is a relatively rare type of incident, thankfully. I realize people other than police officers are also harmed

by violence and weapons—I understand that—but I do think that overall, especially given those statistics from the Department of Justice I cited, that would show that the system is working generally well.

There's always room for improvement. I'm pleased to see the government taking the interest to try to identify some of those ways. I think we're all on the same page in that sense as to wanting to improve things. But I don't feel, from my perspective, that the system is terribly in need of reform or overhaul, especially not in the sense of tightening up the restrictions on people who get out.

Mr. Brian Saunderson: Any others?

Ms. Safiyah Husein: I would just say—oh, sorry.

Mr. Brian Saunderson: Yes, please go ahead—do I have time? Yes?

The Chair (Mr. Lorne Coe): Go ahead.

Ms. Safiyah Husein: I would just say there are definitely opportunities to strengthen the system. I think it's important. The other witnesses have talked about disrupting that cycle that can lead people to reoffend and to have further charges. I think when we look at addressing violence, it's important to look at community-based supports that are shown and proven to actually disrupt those cycles of violence and look at the determinants of violence and criminal justice involvement. I think that's definitely one area that we can further invest in to strengthen the system and improve community safety overall.

The Chair (Mr. Lorne Coe): Thank you for that response. The time has concluded for the government's questioning.

To the official opposition, please. MPP Wong-Tam.

MPP Kristyn Wong-Tam: Thank you again to the presenters for your remarks so far. I'm very interested in hearing about the expediency of the courts—or, right now, the lack thereof. Legal aid in Ontario has had their funding reduced by 30%. At the same time, we're seeing inflation and cost of living adjustments. They're really struggling, as far as I can tell, to keep their doors open. They have reached a crisis point that I am aware of.

I'm going to direct this question to the CCLA. My question to you is: How important is it that Legal Aid Ontario, as well as the court systems, are properly funded in order for us to clear up the backlog?

Ms. Laura Berger: It's vitally important, and let me try briefly to explain why. If individuals don't have legal representation, don't have duty counsel services to help navigate through the bail system, that is a major cause of inefficiency. One of the things that we've studied in our research is the fact that folks often get brought into bail court but their matter isn't dealt with on that day. They get adjourned, which means they spend another night in jail—it costs $302—and they get brought back into court. They take more court time. Perhaps they get adjourned again, and again, and again. That's often because they're having a hard time navigating the system, and there has been no one able to help them put together a bail plan.

So legal aid resources are vitally important, not just for the protection of the rights and interests of people who are accused, which, I think you'll agree, is fundamental in our justice system, but defence counsel and, particularly, legal aid counsel help the system work effectively. I think the suggestion that we can invest in crowns, in police, in court resources without adequately resourcing legal aid—it just doesn't work. The system cannot work more efficiently without adequate staffing and resources for legal aid.

MPP Kristyn Wong-Tam: Because this committee has a very limited scope with the study of trying to reform bail requirements, specifically for dangerous offenders and those who have wielded weapons and firearms, we don't get to that in this committee room—not today—but it is something that I believe the government should get to. Is that your recommendation?

Ms. Laura Berger: Absolutely. I understand that your committee has a narrow mandate, but the criminal justice system, like all complex systems, is many-tentacled, and it's really difficult to solve solutions in isolation. So I believe a whole-of-government approach that looks at social needs, social services, health care services, as well as the operation of the court system, is ultimately what is necessary.

MPP Kristyn Wong-Tam: Therefore, would you agree that swift and speedy trials for serious and violent offenders, as well as effective bail supervision and monitoring, are the best ways to keep communities safe? Is that a fair statement?

Ms. Laura Berger: I would say that they are indispensable. The best ways—as I say, I think that we also need a whole bunch of other things, including investment in health care and education and community resources, so maybe I wouldn't say "best," but I would say that they are necessary and vital.

MPP Kristyn Wong-Tam: Ms. Cullen, would you agree with that?

Ms. Christin Cullen: I do agree. I think that swifter time to trial is something that we have to take into consideration because it allows somebody to be brought to justice sooner, which everybody wants to see and is a fundamental principle of a well-functioning criminal justice system. We also want to see the community supports that are available to people well-resourced, so that we don't have a situation where somebody is just put into an institution, suspended from the community for a period of time and then released back into the community with the same risk, if not a higher risk, that they would have had before going into an institution.

MPP Kristyn Wong-Tam: Mr. Borys, your answer to that question?

Mr. Simon Borys: Frankly, I don't think I have much to add beyond what my co-presenters said. I certainly endorse that those are essential elements of a properly functioning system.

MPP Kristyn Wong-Tam: A time check, Chair?

The Chair (Mr. Lorne Coe): Two minutes and 37 seconds.

MPP Kristyn Wong-Tam: Thank you.

My final set of questions is to the presenters from the John Howard Society. Ms. Cullen, Ms. Husein, you both alluded to the fact that there need to be more supports in

the community in order for people to be rehabilitated. So it's not just a matter of keeping them incarcerated. And of course, there are lots of funding considerations to keeping people in jail, especially when there's no pathway to rehabilitation.

Has Ontario adequately provided funding for mental health programs to support people released on bail as well as those currently in detention? Has Ontario provided adequate funding for supportive housing or addiction recovery programs for people who have been released on bail or are perhaps in detention? My understanding is that while they're in detention, they don't really get a lot of services. But would it be beneficial, since their time in pretrial detention seems to be months, if not years, these days?

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Ms. Safiyah Husein: I think my short answer would be: No, I don't think there are enough resources allocated currently.

What we hear from staff who work at the BVSP is individuals out on bail may be in dire need of mental health supports but have to be put on wait-lists that are anywhere from six weeks and two years. Often, staff within the John Howard programs are providing counselling in-house to fill that gap. We certainly don't see enough access to mental health care or supports while folks are in pretrial detention. And there certainly needs to be greater access to supportive housing and affordable housing options to ensure that people are stabilized in the community and to address those risk factors.

MPP Kristyn Wong-Tam: Thank you very much. Ms. Cullen?

Ms. Christin Cullen: I agree with my colleague Safiyah. There is definitely room to better fund some of the underresourced programs and community supports. We see that we could do better with supportive housing and housing stock in community. Mental health programs and services have very long wait-lists, which is not helpful for somebody who needs support immediately. I think that it's definitely necessary to look at the value that the Bail Verification and Supervision Program adds and think about ways it could be better resourced to support people—

The Chair (Mr. Lorne Coe): Thank you very much. Your response is concluded. That concludes the questions from the official opposition.

To the independent member, please: MPP Blais.

Mr. Stephen Blais: Ms. Berger, I believe you had mentioned that there is sometimes a very open interpretation of section 95 and what types of offences get caught up in that. I'm not a lawyer, but in reading it, it seems to me that section 95 is: If you have a loaded weapon that's prohibited or restricted or the ammunition is nearby and, effectively, you don't have the paperwork to be allowed to have that in your possession, that's a section 95 breach.

So I'm wondering how that can be more loosely interpreted to—your point was that some people who are perhaps not violent will get caught up in that. I'm trying to understand, based on that particular law, how that comes about.

Ms. Laura Berger: Yes, absolutely. I'm happy to answer that, but I would also direct you to the decision Nur, which is a 2015 decision by the Supreme Court of Canada. So, for instance, the Supreme Court indicated that that provision could catch "the licensed and responsible gun owner who stores his unloaded firearm safely with ammunition nearby, but makes a mistake as to where it can be stored." That's an example. The Supreme Court also gives examples of someone who inherits a firearm and, before she can apprise herself of the licence requirements, commits an offence, or a spouse who finds herself in possession of her husband's firearm and breaches the regulations.

I think you also heard yesterday from Legal Aid Ontario staff that duty counsel often see everyone who lives in a house where a firearm has been found being charged. Now, those charges may eventually be dismissed for folks who are innocent, who didn't know that the firearm was there—brothers, sisters, grandparents, parents—but the point is that those charges are laid. So at the bail stage, we don't yet know whether that person is legally innocent or not. I think the point is that conduct, in many Criminal Code offences and certainly when we're talking about the stage of charges, captures many more people.

Another example I can give you from my research: being charged with break and enter. That sounds really serious. I've heard about a young man who was charged with breaking and entering because he broke into a parkade in wintertime to find a warm, sheltered place to sleep. So the name of a charge, that label, doesn't always correspond to dangerousness. That's the point I'm trying to make.

Mr. Stephen Blais: Sure. Okay. Are you familiar with the pilot project that was run in Ontario where bail hearings were conducted by judges and not justices of the peace? What's your view on that particular project?

Ms. Laura Berger: My view is that this recommendation should ask the Ministry of the Attorney General for any evaluation reports that they may have, because as you heard yesterday, I haven't been able to find an evaluation report. Anecdotally, having interviewed staff and lawyers who worked in the courts where those pilot projects happened, I have heard really positive things. But I haven't been able to get my hands on a systematic evaluation. I think if we run a pilot project, we should really take a look and see if those are things that should be expanded province-wide. That could be a recommendation that this committee can bring forward.

Mr. Stephen Blais: Perfect, thank you.

Mr. Borys, same question.

Mr. Simon Borys: Sorry, the question with respect to the pilot program judges—

Mr. Stephen Blais: The pilot project, yes.

Mr. Simon Borys: I don't think I have enough experience to comment on that particular program. Sorry.

Mr. Stephen Blais: No, that's fair enough.

John Howard Society, I'll open it to you.

Ms. Christin Cullen: I would echo Ms. Berger's comments that an evaluation would be an excellent next step for that project.

Ms. Safiyah Husein: I was going to say the same thing.

Mr. Stephen Blais: Sure, wonderful.

Thank you, Mr. Chair. I appreciate it.

The Chair (Mr. Lorne Coe): Thank you, MPP Blais. The time is concluded for these two rounds of questioning.

Thank you each for your presentations, and have a good afternoon. We're going to carry on with our committee meeting. We wish you well.

MS. LINDSAY JENNINGS
MS. LYDIA DOBSON
CONGRESS OF ABORIGINAL PEOPLES

The Chair (Mr. Lorne Coe): Committee members, we're now at five past 11. We have our presenters, two of whom are on Zoom: Lindsay Jennings, Lydia Dobson. And with us in the committee room, from the Congress of Aboriginal Peoples, is Kim Beaudin, vice-chief. We'll take our presentations in the order that I just read them.

I will now call on Lindsay Jennings. You will have seven minutes for your presentation. I will let you know when you have one minute left in your presentation. That will be followed by two rounds of questions from the government members of the committee, the official opposition and the independent. I'll be moderating the questions and answers.

Can we start, please, with Lindsay Jennings? Please state your name for Hansard, and then you can begin your presentation.

Ms. Lindsay Jennings: Thank you very much. My name is Lindsay Jennings. I just want to acknowledge the privilege that I have to be able to speak to you all for seven minutes.

I am a person who has survived the correctional system. I am also someone who has survived horrific intimate partner violence. As Ms. Hogarth put it, I was beaten by my partner due to the release of bail.

I am the current co-chair of the Transition from Custody Network, led by the Sol Gen and provincial HSJCC, working to address the gaps in discharge planning and to increase continuity of care for people moving in and out of the correctional system. I also chair the expert advisory committee for the Fresh Start Coalition, which is advocating for an automatic record suspension regime. Finally, I am a research associate with the Tracking (In)Justice project. This project is a law enforcement and criminal justice transparency project. Over the past seven years, I have been dedicated to addressing preventable deaths in provincial custody and a more ethical, supportive and compassionate process for the families of the loved ones who had died.

I am here today with one goal: I am here to level the playing field with current and up-to-date data and statistics that the police and government seem to ignore. In Ontario, between 1961 and 2009, which is 48 years, data from Statistics Canada show 44 homicides against police at a rate of less than one per year. Between 2010 and 2021, five officers were killed in Ontario, including Constable Marc Hovingh and Constable Jeffrey Northrup in 2020 and 2021, respectively.

In contrast to this, though, we have info on homicides by police. The Tracking (In)Justice project—which, again, is a law enforcement and criminal justice transparency project—documented and analyzed over 700 instances of police-involved deaths when force was used, from 2000 to 2022. Findings indicate, on average, there are approximately 30 people killed each year by Canadian police services; however, police-involved deaths have been on the rise, 57 people being killed in 2021. As of January 2022, we know of 74 people dying in connection with police use of force. That means last year the highest rate of police-involved deaths across Canada has been recorded. This also means that 74 people never got their day in court. They never got an opportunity for a bail hearing; they got a death sentence.

Our data also indicates that shooting deaths are occurring with increased frequency. Notably, Black and Indigenous people are overrepresented in relation to their population size.

With the level of deaths due to police, we can see that the police do not produce safety. They have created violence and unsafe contexts for people and communities. To produce safety in our communities, we don't need so-called bail reform. What is needed is less police, less prisons and, instead, more investments into community.

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Speaking of corrections, yesterday the Chief Coroner of Ontario released a report on the increasing deaths inside our provincial correctional systems, for which I served as an expert in the panel review and contributed to creating the report. The report is called An Obligation to Prevent. Their report identified that 186 people died in provincial custody from 2014 to 2021. The report identified that 70% of our correctional population is on remand on any given day. In each year, individuals on remand make up the largest proportion of deaths among persons in custody, with the highest proportion in 2020, at 91%.

In this report, there are 18 recommendations. The last recommendation is quoted like this: "The final recommendation confronts a hard reality and may call for hard decisions, in the near future. Capacity limitations sit at the core of the unsafe and unhealthy conditions that must be improved considerably if further deaths and serious harms are to be prevented. The frequency of lockdowns and general staffing deficiencies present ongoing barriers to effective care, humane conditions, meaningful programs and the connections to family that are all essential to well-being for those in custody. Security and control alone are inadequate to keeping people safe and to meeting their complex needs. Recovery, life skills and transitional supports must be equal parts in the equation if persons-in-custody are to return to healthier lives in the community."

A question that was repeatedly asked yesterday was, will this bail reform save lives? As someone with lived experience of bail, incarceration and horrific intimate partner violence, my answer is no. The evidence says no; the statistics say no. And, in the words of a chief of police yesterday, data trumps all. Thank you very much.

The Chair (Mr. Lorne Coe): Thank you very much for that presentation.

Our next presenter, committee members, is Lydia Dobson, please. You have seven minutes. Thank you.

Ms. Lydia Dobson: Hi. Good morning. My name is Lydia Dobson. I'd like to acknowledge that I'm coming to you from Ottawa, which is located on unceded, unsurrendered Anishinaabe territory.

I am the director of the prison law practicum at the University of Ottawa. I also teach criminology at Carleton University. I've worked as a representative for people in remand court in Ottawa, and I've worked on the Ontario Prison Law Strategy of Legal Aid Ontario. I have extensive experience working with prisoners and with their families, which I'd like to share with you today with their consent. I've worked on the JAIL hotline, which takes calls from prisoners experiencing human rights violations at the Ottawa-Carleton Detention Centre. I also have experience as an articling student at Koskie Minsky, which is a firm that represents prisoners in several multi-million-dollar class actions against the province of Ontario and the federal government.

The first issue I'd like to address is the concept of violent crime. We're hearing this term be thrown around quite a bit by politicians and by police chiefs when we're calling for reverse onus provisions. Recently, the Police Association of Ontario called for bail reforms that would see violent offenders, repeat offenders and people with gun charges held in Ontario prisons until their trials.

The Criminal Code does not have a special classification for violent crimes, so the numbers that I'm sharing with you today are based on Statistics Canada definitions and Ontario Court of Justice definitions of what a violent crime is, or a crime against a person. This includes assaults, murders, threats of violence, sexual assault and robbery—robbery because it involves a weapon. Now, it's noteworthy that some of these already attract reverse onus provisions, so what we're talking about is reverse onus provisions for the less serious so-called violent crimes.

I want to give you a few examples of people that I'm aware of who have been charged with these violent crimes. A man living in poverty in Toronto was charged with assault because he threw a piece of paper, the loitering ticket he received, back at a Toronto police officer. This is a person who had no other place to go and was charged with loitering. We're also aware that many women who are experiencing domestic violence are charged with assault and other related charges due to their attempts to flee violence. When we're talking about these so-called violent criminals, I want you to really recognize all of the people who would be encompassed within this definition.

When police are talking about reverse onus bail provisions on all violent crimes, I want to talk a little bit about what that would look like. Right now, if we were to implement these changes, we would see admissions to custody in Ontario more than double. The usual amount per year is around 40,000. We're looking at about 100,000 people.

Now, what would this cost? If each person was to spend one day waiting for their bail hearing and then was released on bail, the cost would be an additional $17 million. But what we do know is that the average person awaiting a trial who is not released on bail waits for 215 days in Ontario. So what would that cost, if we held everyone who is considered violent until a trial? It would cost $3.8 billion, and this doesn't account for the delays that would be caused as a result of so many people, this massive influx. We also know that only 18% of people who are released on bail actually breach their conditions and only 2% of those breaches are violent. So what's being proposed as a solution to violence is to spend potentially $3.8 billion locking up 60,000 more people in Ontario, when we know that less than 1% of those people will likely commit a violent crime.

We also know that Black people in Ontario spend 46% longer on remand than white people. We know that Indigenous people are more likely to be refused bail altogether. And we know that people who don't have a fixed address or somebody they can rely on to be a surety make up the largest proportion of people who are refused bail, so they are essentially being refused because they're poor.

The next set of costs I want to talk to you about are costs of litigation. I'm sure you've heard from anybody who has a legal background that the reverse onus provisions being contemplated are unlikely to survive charter scrutiny. I developed a report with my students from the prison law practicum that outlines the ways that the proposed changes would violate section 7 of the charter, section 11(e) of the charter, section 12 of the charter and section 15 of the charter.

We have also provided you with a brief summary of the Supreme Court of Canada decision which talks about mandatory minimums for section 95 offences and labels them as unconstitutional. I want to read you a quote that says imprisonment for people who have "essentially committed a licensing infraction is totally out of sync with the norms of criminal sentencing set out in the s. 718 of the Criminal Code and legitimate expectations in a free and democratic society."

Federal and provincial governments have paid out millions and millions of dollars to prisoner class actions for unconstitutional practices and changes that are simply unconstitutional. I am certain that if the proposed changes that we're hearing from police chiefs and police associations are implemented, governments will stand to lose millions and millions more in litigation.

Finally, if you're not convinced by the billions and billions of dollars that the government would waste on mass incarceration of 60,000 people per year when less than 1% of those people are likely to commit a violent crime, I want to appeal to you as human beings. Prisoner deaths have doubled in the last 10 years. In the last five years, 161 people died in Ontario jails, and the average age of death is between 25 to 49, so we're not talking about people dying of old age or natural causes. I've taken calls from too many young people on the brink of suicide in these facilities, too many people whose entire lives have been destroyed because of the violence and the trauma that

they've endured while incarcerated, and too many mothers who have lost their children.

The proposed reverse onus bail provisions will not prevent violence; they will do the opposite by exposing more people to violence and death in Ontario prisons.

So we have four recommendations:

(1) Before making any opinions on reverse onus bail provisions, I want you all to visit a remand facility and talk to the people living there. Then I want you to imagine your own family members, your parents or your children, spending 215 days in that facility, legally innocent.

(2) I want to suggest that we provide community supports for people at risk of criminalization. Instead of wasting billions of dollars on mass incarceration and charter litigation, let's look at the ways that we can actually prevent violence before it happens by investing in housing and mental health supports, and not just reacting to it with policing and restrictive bail.

(3) Our third recommendation is not to implement reverse onus provisions. As I've stated, this will only lead to increased death. It will deepen racial injustice, and it will—

The Chair (Mr. Lorne Coe): Thank you. The time for your presentation is concluded.

I'll now turn to the Congress of Aboriginal Peoples.

Welcome, Vice-Chief. For the record, for Hansard, please identify yourself and then start your presentation, which will be seven minutes. I'll let you know when you have about a minute left. Thank you very much.

Vice-Chief Kimberly Beaudin: Thank you for having me. My name is Kimberly Beaudin. I'm the national vice-chief of the Congress of Aboriginal Peoples. I presently hold the justice file; I've done that for the last six years.

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A little bit about my background: I'm a Treaty 6 descendant from Michel First Nation and also a descendant of the Red River Métis. In addition to that, in terms of my background with respect to justice issues, I was thrown into it and it became a passion to me over the years. I'll just give you a little about that too: I was in outreach work for Str8 Up, a program in Saskatoon where we worked with ex-gang members. Our job was to ensure that they didn't get back into gangs. I can tell you that some of the stories I've heard relate to a lot of violence, guns and those kinds of things, and we had a lot of work to do on that end. I also worked quite closely in terms of people with mental health issues. I did that for about 10 years. So this is where I come from. I'm not a lawyer, but I'm certainly an advocate and that's one thing I'll hold.

At CAP, we are a federally funded recognized representative organization for off-reserve and non-status Indians in Canada. We represent Indigenous communities out of each and every province in Canada, as well. Our communities have been called "the forgotten peoples" for their exclusion from legal, constitutional and justice-related matters. Our communities are targets of over-policing, under-protection, violence and discrimination at every step in the justice system.

Proposals to tighten bail conditions are not in everyone's interests, nor would they achieve the intended goals. According to the Department of Justice study, the vast majority of individuals—over 80%—released on bail never break the conditions on their release. Of those who violate those conditions, 98% are administrative issues of justice, such as failure to abide with curfews or attend counselling—not really matters of criminal law.

Fewer than one in 300 individuals break criminal laws while out on bail. One in 300 individuals is lower than the baseline crime rate with respect to the general population. Any random person is more likely to commit a crime then someone who is out on bail. A mistake by a single judge does not justify a collective punishment for all accused persons who have been convicted of any crimes or went through the judicial process. The solution is to address the poverty and service failures that cause crime in the first place. We pour millions and millions of dollars into punitive measures—police, jails, prisons—and fail to support individuals and communities that are at risk.

There are problems with our bail system. They are excessive, punitive conditions, and people continue to wait for a long time before their day in court. Punitive bail conditions are unhelpful and dangerous. A study by the John Howard Society showed that nearly 81% of persons with known alcohol issues were given orders to abstain from alcohol. Alcohol withdrawal is a matter of willpower and can be fatal. Others on bail are denied the right to return home and wind up paying a fortune for emergency accommodations or wind up on the street. Punishing a person with conditions that could kill them is not in the interest of public justice or public safety.

These conditions are exacerbated by longer waits for their day in court. On average, today an accused is waiting 14% longer compared to the early 2000s. Delays for criminal trials can stretch on for years before legal proceedings even happen. The longer someone waits, the longer their life is on hold and the longer they are subjected to punitive conditions, and more harm is done to people who have not been convicted of any crime. An innocent person held in jail could be pressured to sign false confessions or wind up held longer than they should be if found guilty. Jails are notorious for their violence, gang recruitment, and abuses by guards and inmates. Innocent people can wind up forced into gangs for their own safety. Once they are recruited, it's far more difficult to get them out—and that's actually a fact.

Recently in Toronto, a judge wrote that an entire case related to a firearms offence was because of delays and failure to produce evidence. The judge described the police behaviour as "bordering on negligent" and "among the worst of disclosure-delayed matters that have come into my court." This kind of behaviour by police is not consistent with claims to take firearms crimes seriously.

No one can blame underfunding, either. Canadian police are amongst the highest-paid people in Canada. For example, a constable in Ontario can earn as much as $266,000 in 2022. On top of their generous salaries, police are permitted to moonlight in the private sector, as well,

which is known as paid duty. Meanwhile, basic social services are not available for communities that CAP represents. Education and employment continue to be starved for resources.

We need to look at the root causes of crime, which are poverty, lack of opportunity. Responding to one crime with collective punishment against the other people who haven't even been convicted of anything is ineffective, wasteful and immoral.

Indigenous communities have not been given a voice in the bail process, either. We need to hear from community members, our elders and community leaders, as well. Thank you.

The Chair (Mr. Lorne Coe): Thank you very much, sir, for that presentation. You are right within the time allocation; you had a minute to spare.

We're now going to start with our questions, with the government members. May I see a hand? Is there a question, please, for this delegation? Yes, MPP Dixon, please.

Ms. Jess Dixon: Thank you. My question is to Ms. Dobson. I'm a crown attorney; that's my background. I'm certainly familiar with much of what you were saying. I suppose what I'm looking for a comment on is that this committee, I would say, was in part spurred by the death of Greg Pierzchala. However, if we look, for example, at the GTA, the vast majority of victims of homicide, specifically firearm-related homicide, are young, racialized men, where the profile of both the victim and the offender tends to be the same because of long-standing societal issues leading to involvement in that type of criminal behaviour.

This committee is, in a sense, a response to an emergency where we are, I think, united in the idea that there is much we can do as far as prevention. But what we are looking at is: How do we, in the next several years, prevent this type of death that we are seeing? We were told by another presenter about the circumstances of Greg Pierzchala's death being rare, and indeed they may be, but that completely denies the existence of the large number of dead young men in the GTA.

We've seen statistics. They are accurate, as far as a number of the perpetrators of these types of homicides and offences of violence are out on bail for other offences. There is a culture of disrespect and non-compliance with court orders that, I would say, is present and is leading to those deaths. Given what I think of as an emergency with the number of young men who are dying on our streets, what do you suggest we do in order to protect them if being found with a gun in your hand is not sufficient to keep you in jail and therefore protect those that you may be targeting? What is your suggestion in that emergency situation?

Ms. Lydia Dobson: I would say, first of all, it's very important to acknowledge how many Black, racialized and Indigenous people are dying in prisons. Placing them into those institutions is not decreasing deaths of those populations; it will increase those deaths.

I would also point to our second recommendation, which is to provide community supports for people who are at risk of criminalization. I don't think that it is just an inherent problem. Like you mentioned, there's a systemic history that is leading people towards these acts of violence. Providing housing, providing education, providing sufficient community supports would make a huge difference.

Like I said, the actual numbers show that less than 1% of people released on bail are actually committing violent crimes, so I would argue that your position that this is the cause of the emergency is factually incorrect. This is less than 1% of people, and putting them in prisons will cause them to be more likely to die. We need to be investing in community structures that could support them as they're trying to make a better life.

Putting someone through this kind of incarceration system is not making it better. We know that people who go into remand facilities are not being provided with rehabilitation services; they are being put in some of the most horrific and life-ending circumstances that they'll ever experience. When you put somebody in a jail instead of releasing them on bail, they're experiencing more violence, they're experiencing more trauma. You're potentially subjecting them to conditions that would make them more likely to commit future acts of violence.

Ms. Jess Dixon: Do I have a follow-up?

The Acting Chair (Ms. Christine Hogarth): Go ahead. You have three minutes and 22 seconds.

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Ms. Jess Dixon: We've heard some aspects about corrections. If we are to say that we offer more programming in custody, changing custodial environments, what do you have to say to that? Because, again, I don't think anyone here is going to disagree that prevention is a very important aspect and, indeed, a financially sensible aspect, but, again, we are not talking about those who are in the time of prevention. We are talking about those who have been catapulted into extremely dangerous behaviour, not just for others, but for themselves as well. We heard quite a bit from Toronto police about the concern of what they call congregate-setting shootings, where we have shootings into parties, open areas, birthdays, that type of thing.

So what do we do when we have individuals who—again, yes, because of a lot of systemic factors in their lives—have been catapulted into this life of crime, who would casually carry a loaded handgun on the streets? What do we do when they are found committing that offence?

Ms. Lydia Dobson: Well, we already have reverse onus provisions for people who are charged with murder, so I'm not sure what you mean when you talk about people who are shooting into a crowd, because if that's happening, the reverse onus provisions already exist.

When you are asking what we should do and whether or not putting more programming into provincial remand facilities would be a solution, I would say that when you are taking someone and removing them from their families, from their parents, from their children, from their communities—and disproportionately taking Black and Indigenous people away from their communities—and placing them into carceral institutions, you are impeding their

ability to succeed. It causes a massive amount of financial hardship. It causes future trauma.

To be quite honest with you, I have spoken with—and I'm sure you have too—many people who have been incarcerated in remand facilities. Like I said, it would cost billions of dollars to lock up all the people that we're thinking about locking up right now. I don't think our government has the financial resources to provide the kinds of supports that could make these facilities real places where rehabilitation could take place. Rehabilitation takes place in the community and not in these institutions, not by removing people from the sources of the things that they need to succeed.

The Chair (Mr. Lorne Coe): You have 36 seconds for a quick question.

Ms. Jess Dixon: Ultimately, if we have an individual who, say, is found late at night in a car, who has a related record—perhaps, drug trafficking—who is found with a loaded handgun, do you believe that person is best served in the community and the community is best protected by having that person at large in the community?

Ms. Lydia Dobson: So we are talking about a person who has a drug offence and has not committed any violent crime and has a loaded gun with them, is that correct?

Ms. Jess Dixon: Yes.

Ms. Lydia Dobson: Okay. Absolutely, yes—

The Chair (Mr. Lorne Coe): Thank you for that response.

We're now going to move to the official opposition. MPP Wong-Tam, please.

MPP Kristyn Wong-Tam: My question is going to be for Mr. Beaudin. In written submissions to this committee from the Nishnawbe Aski legal services as well as presentations from the Nishnawbe Aski police chief yesterday, there were concerns raised that without a focus on equity and bail reform risks, that somehow—and the lack of consultations with First Nations and Indigenous people—it could further erode the presumption of innocence. Would you agree with that statement?

Vice-Chief Kimberly Beaudin: Absolutely, yes.

MPP Kristyn Wong-Tam: Do you have concerns about the intensifying over-criminalization of Indigenous people, the disproportionate number of Indigenous people in incarceration as well as sitting in pretrial detention, and perhaps even those who are facing their death while in the custody of police or in the correction facilities? Is that a concern of yours as well?

Vice-Chief Kimberly Beaudin: That's a really big concern for us.

MPP Kristyn Wong-Tam: And in the context of this conversation and the mandate of this committee, especially with the task that's at hand—we are tasked with trying to address bail reform. The province of Ontario is a very big place. I think the observation so far in the presentations from those who are from the Indigenous community coming forward is that there needs to be a more tailored approach for various communities or perhaps even in the various regions of Ontario. Is that an assessment that you would agree with?

Vice-Chief Kimberly Beaudin: Absolutely. We believe that Indigenous communities should take ownership of their communities, of their people and their members, whether they're First Nation living off- or on-reserve. That has to happen. I believe, too, that if we did that, you'd see a big difference in terms of having less Indigenous people involved in the justice system itself.

MPP Kristyn Wong-Tam: So going beyond the specialized Indigenous bail hearing process, it's about making sure that there's an Indigenous approach to the criminal justice system, the judicial system. Is that something that your community would be interested in pursuing?

Vice-Chief Kimberly Beaudin: Absolutely. I had the opportunity to attend Indigenous courts in Alberta, for example. Even though it was only one day—I understand there are some here in Ontario. It should actually be five days a week. I think the resources should be put into that. I really believe it would make a difference, because you have community people, you have elders, you have community supports who attend that process to ensure that he or she is not tied up in the system and it's a continuing revolving door. I think it's really important.

MPP Kristyn Wong-Tam: It's interesting that you're also using the term "revolving door," because we've heard that terminology used on several occasions by all police outfits—including "revolving door" and "catch-and-release."

We have been hearing some conflicting presentations. One is that bail reforms are needed because too many dangerous criminals are being released into the public, they're in harm's way of police officers as well as the general public, and oftentimes firearms are discharged in congregate settings. I'm also hearing that bail is sometimes overly burdensome, especially for those who don't pose a danger to public safety. So it's two different forces coming together at this committee.

We've also heard that there's a chronic underfunding of the court system—so therefore significant backlogs. We've also heard that there is an absolute lack of supports for those who are sitting in detention as well as those who are in community, and there is a lack of bail supervision and monitoring. So it's a system collapsing, a system in crisis overall.

We also heard from our police chief in Toronto that dangerous people charged with firearms and intimate partner violence could be released after multiple offences and serious offences.

So there's a number of things that are coming here.

Is it your opinion that this committee and the study that we have under way—that we should be asking for further data on whether or not we need a Toronto- and perhaps other-area-specific approach to bail reform and bail supervision, bail monitoring, and perhaps something different that's province-wide? We're hearing a couple of conflicting things—and if we take a one-size-approach solution to bail reform and bring on more reverse onus conditions, that we'd be catching too many in the net. So

would it be of benefit if this committee took a step in asking for more information to take a look at what's happening in Toronto specifically, or urban centres specifically, where we're seeing those multiple releases, and then take another look at what's happening across Ontario?

Vice-Chief Kimberly Beaudin: Yes, it certainly would be.

You touched on reverse onus, and I wanted to say something about that. I'm very concerned about that process. If you take a look at the dangerous offender designation, for example—that's reverse onus. We're having huge numbers of people who are designated as dangerous offenders in Canada. The majority of those people are Indigenous people. When you take a look at their cases—and you don't even have to take a real deep dive into it—you will find that they don't even fit a dangerous offender, yet they're being targeted and actually designated by the courts as such. Why? Because they don't have the lawyers, they don't have the resources, they really have no way to fight back. Because all the pressure is on them and—when, in essence, a lot of times that they were there in the first place had to do with issues around poverty and housing and addictions, and it all built up administratively.

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I'm not sure if people are aware around here, but I know people who have—one person in particular who jumps out, who was designated a dangerous offender. He had never spent one day in a federal penitentiary, was never charged with any sexually based offence, was never charged with anything, aggravated assault. This guy was designated a dangerous offender and sits there in jail today. It is stunning.

This is why I worry about this. This is a slippery slope here that we're going down, and I'm hoping that the committee will take a serious look at it.

One thing I also want to stress: I was a justice of the peace in Saskatchewan for years. I never mentioned that earlier. What was really frustrating was the revolving door to me with respect to what was happening, particular to Indigenous people, because in Saskatchewan, it's like 85% right now that are provincially incarcerated. The numbers are all over—each and every province is higher and it just goes down—

The Chair (Mr. Lorne Coe): Thank you for that response.

We're now going to move on to the questions from the independent. MPP Blais, please.

Mr. Stephen Blais: To Ms. Dobson: We've heard from defence attorneys and from police organizations some anecdotal evidence in support for a recent pilot project relating to the use of judges in bail hearings as opposed to justices of the peace. I think both groups agreed about the efficiency of the process and both agreed about their point of view that the outcomes were more fair or more justifiable. That was the general tone, I think, of presentations from both groups. So I'm wondering, as someone who works in the system, if you're familiar with the pilot program and what your view of it is.

Ms. Lydia Dobson: I'll say that I don't think I have enough information to speak to that. I usually work with people after they have become incarcerated, dealing with the situations that they have experienced while they're incarcerated. I don't know about this pilot project, so I won't speak to that.

Mr. Stephen Blais: Okay. You referenced some costs and numbers involved in prolonging or increasing the number of people who are incarcerated as a result of reverse onus. I guess I'm wondering two things: Why is the assumption that all involved would be denied bail? It's not a complete denial of bail; it's asking them to demonstrate that they would be safe if they were released. So why is the assumption that everyone would be denied bail?

Ms. Lydia Dobson: I'm projecting numbers for you based on some of the statements that have come from police chiefs and police associations. So we recently heard the Ontario police association say that they would like to see everyone held until their trial date who has committed a repeat offence, a violent offence or a gun offence. I'm responding to that.

Mr. Stephen Blais: Okay. You mentioned a couple of times that reverse onus already exists for a number of situations, but we heard yesterday there were dozens, if not hundreds, of basically repeat weapons offences, gun offences, in the city of Toronto. If the reverse onus situation already exists, what is leading to hundreds of offenders on gun crimes repeatedly being granted bail for gun crimes? It's not that there was a gun crime, they were put on bail and then they were shoplifting or something. It was a second or third—and we even had statistics about a fourth—gun crime. So if that reverse onus is there and there is a risk that it will increase the number of people in custody, how is it that these dozens and hundreds of cases already exist?

Ms. Lydia Dobson: I'm not sure I understand what you're asking.

Mr. Stephen Blais: We received statistics that say something like 20% of those released on gun-crime bail committed a second gun crime. Of those people, 50% committed a third gun crime. Of those people, another 50% committed a fourth gun crime. So if reverse onus already exists for all of those people, why would—

Ms. Lydia Dobson: It doesn't already exist for all those people.

Mr. Stephen Blais: Oh, I thought you said—

Ms. Lydia Dobson: What the Premiers are asking for is for section 95 offences to be included. That's what we're looking at, right?

Mr. Stephen Blais: Yes.

Ms. Lydia Dobson: Section 95 offences involve just having a loaded gun.

Mr. Stephen Blais: Possession, yes.

Ms. Lydia Dobson: So just having a loaded gun on its own I don't think warrants someone going to jail. I understand your position, but I think that there's a lot of people who own loaded guns in rural communities and have licences for those guns—

Mr. Stephen Blais: Yes, but section 95 is about prohibited or restricted weapons, right? So we're not talking about shotguns or hunting rifles. We're talking about, I would assume, mostly handguns. What is the rationale to

be walking around with a loaded handgun if you're not a police officer or somebody who is licensed to have one?

Ms. Lydia Dobson: I'm not justifying people walking around with handguns; that's not what I'm saying at all. What I'm saying is that someone having a licence or having a prohibited weapon does not, in and of itself—

The Chair (Mr. Lorne Coe): Thank you for the response.

We're now going to move on to our second round of questioning, starting with the government members. Do you have any questions? Seeing no hands, we will move over to the official opposition, please. You can start your questions. MPP Vanthof, please.

Mr. John Vanthof: This committee has been an incredible experience. We are continuing here—I think facts have been brought out that the general population would be shocked with, including that over 70% of the people in Ontario correctional facilities are awaiting access to justice, not that they are there because they have been convicted of something and are serving a sentence because of something. I think that's what the general population thinks. That's what I thought before I became an MPP. That's what I thought the first time I toured the Monteith correctional centre in my riding, and that's where I learned that that is not the case. That tells me that access to bail is too restrictive in the province, because a lot of those people are not violent offenders, are not a risk to society.

But on the flip side, we're hearing from the police and, certainly, the police chief of Toronto that there are problems with the way bail is administered. I respect his position, and I also very much respect the work that police officers do. But there is an inherent conflict there.

Part of the conflict, or part of what we perceive, is basically that people in Ontario do not have access to the justice system as quick as they should have. We're spending a lot of time talking about bail. But if people who are accused of committing a serious offence had access to a speedier trial, would that also have the potential of saving people's lives? I open that up to—your name escapes me—the lady on the bottom screen. She hasn't had an answer yet.

Ms. Lindsay Jennings: Yes, it's Lindsay Jennings.

Mr. John Vanthof: Thank you.

Ms. Lindsay Jennings: Look, I think that that would be one great step forward. I do also just want to note that bail is also discretionary. Bail is used to allow people out, but the police also use bail as a way to gather information and to make relationships with people who are committing crimes to become informants. Police officers make deals within the court systems, under the table with the crown, to release certain people with serious offences in order to surveil them in the community, track them and try to get them with more alleged crimes. This is my direct experience. I was under surveillance and stalked by police for years, letting me out on bail every single time. And every time they did that, it was because they caught me with, really, administrative breaches. But they knew that they wanted to catch me with something bigger, and so they would continually let me out. I also just want to make sure that we understand that there is an under-the-table, political dimension to this, and there are discretionary times that the police release people on serious offences in order to create cases and build their ulterior motives.

Mr. John Vanthof: Thank you.

Ms. Dobson, would quicker access to justice help the situation that we're dealing with today?

Ms. Lydia Dobson: Absolutely. We're already seeing massive delays in our systems because of COVID-19. I also want to circle back to something else that you mentioned, just about being able to access a lawyer. I want to note that the Ford government made a $133-million cut to Legal Aid Ontario just a few years ago, and this is having profound impacts on our current system.

If we actually put in place what we're proposing to change or what police associations are proposing to change, what we would see is a massive influx of people who would be required to have a bail hearing just a few years after we have slashed our Legal Aid Ontario funds to support bail hearings. We would be in crisis. It could not feasibly happen. With the suggestions that are being made, our system would collapse. It could not survive these numbers.

Mr. John Vanthof: Thank you. I have a question for Mr. Beaudin—well, it touches everyone. Many times it has come up here in the last couple of days that perhaps the system would work better if justices oversaw bail hearings as opposed to justices of the peace. But I know in many First Nations communities, and many other parts of the north actually, they don't even have access to justices of the peace in a timely manner. Could you comment on how Indigenous people are affected by, actually, a complete lack of access to justice because they don't even have access to a justice of the peace?

Vice-Chief Kimberly Beaudin: Yes, well, in terms of Indigenous people, when they enter the judicial system, the justice system, a lot of times it's very foreign to them, and they don't have the resources. One thing I've noticed over time, and it affects every province, is that they're cut off from their families as well. For example, they enter the system and they don't even have enough money to call their relatives, their relations, to let them know where they are and why they're in jail or why they're in prison, that kind of thing. It's quite disturbing. When you come into an urban centre, for example—if you're from up north and you're in an urban centre, and nobody knows where you are, people in their families and their communities are wondering what happened to them. Here they are, they're tied up in a justice system that is very foreign to them. You have language barriers, for example.

I like the concept of having the judges, actually. They're more—well I shouldn't say "more." But they would have more judicial, I guess you could say, "capabilities"—maybe that's the word to use—to make a decision.

The other thing I was wondering about—and I'm not familiar in terms of Ontario, but it could be the same. In Saskatchewan, for example, the police act as the prosecution. I don't know if that happens here. When I say that, it's because they don't have a prosecutor—and this usually happens on weekends, after hours, long weekends, those

kinds of things. It makes a huge difference. You will have the police department—whether it's the RCMP, whether it's the municipal police force, like Saskatoon for example—acting as the prosecution, and then they're actually acting as the person who had arrested that particular individual. It's kind of odd. There's a big gap right there, and that's a funding element that plays out. I'm not sure if that happens in Ontario, but nowhere in the Criminal Code does it say that the police should be the prosecution as well, play that role as the crown—because that's the role they play. I just wanted to mention that.

Mr. John Vanthof: How much time do I have?

The Chair (Mr. Lorne Coe): You have 12 seconds, sir.

Mr. John Vanthof: Okay.

Thank you very much for coming. I think you've opened up all our eyes—all the presenters. Thank you very much.

The Chair (Mr. Lorne Coe): We have our independent. MPP Blais, please.

Mr. Stephen Blais: Chief, I was going to ask you about the thought about the judges and justices. I think you answered that, so I appreciate that.

To the two other presenters, thank you very much for coming. I don't have anything else.

The Chair (Mr. Lorne Coe): All right. Thank you, MPP Blais, and thank you to the presenters for being with us today and for your answers to the questions. This concludes your part of the committee meeting. Thank you for being with us.

Committee members, we are now on the cusp of recessing and reconvening at 1 o'clock in this room for our next presenter. This committee is recessed until 1 o'clock.

The committee recessed from 1154 to 1300.

The Chair (Mr. Lorne Coe): Good afternoon, everyone. The committee is now in session. We're going to resume consideration of public hearings on the study on the reform of Canada's bail system as it relates to the provincial administration of justice and public safety with regard to persons accused of violent offences or offences associated with firearms or other weapons.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair (Mr. Lorne Coe): Our next scheduled presenter is Mr. Scott McIntyre from the Ontario Public Service Employees Union.

Welcome, Mr. McIntyre. We appreciate you taking the time to be with us this afternoon. You're going to have seven minutes for your presentation, followed by questions from the committee members. There will be two rounds of questions, which I will moderate. Please state your name for Hansard, then you can begin your presentation, sir.

Mr. Scott McIntyre: Honourable members, my name is Scott McIntyre. I'm honoured to appear before the Standing Committee on Justice Policy to discuss bail reform, and I do so in my capacity as the elected provincial bargaining unit representative for the Ministry of the Solicitor General, probation and parole services. I'm a probation and parole officer by trade, and this coming June, I will be entering my 34th year of service.

I am here to advise that the problems that beleaguer bail supervision and pose great risks to public safety are the same or similar to those that also afflict probation and parole services. I am here to point out what those shared concerns are and to provide actionable solutions that will enhance public safety and create greater accountability for those placed under community supervision orders such as bail, probation, conditional sentence or provincial parole.

The common denominator between bail supervision and probation and parole supervision is that they are both forms of community supervision. Their shared defect is that neither has a system in place that ensures compliance monitoring of such conditions as house arrest and curfews, for example, nor a system that seeks the whereabouts of accused persons who have allegedly breached their bail, probation, conditional sentence or provincial parole conditions, and who subsequently have an outstanding warrant issued for their apprehension.

I believe that Ontario needs to place bail supervision under the sole control of the Solicitor General, Correctional Services, like the vast majority of Canadian provinces already do. Ontario is one of the few provinces where bail is not under the corrections portfolio.

Further, I believe that Ontario must create a community corrections compliance unit, which would be a separate classification of peace officers employed under the Solicitor General, Correctional Services, whose mandate would include:

—the conducting of community compliance checks for persons bound by community supervision orders such as bail, probation, conditional sentence and provincial parole that have such conditions as house arrest, curfews, residence, employment, non-associations and the like;

—seeking the whereabouts of and executing the outstanding warrants for the apprehension of offenders wanted for breach of bail, probation, conditional sentence or provincial parole violations;

—transportation of such offenders back before a court of jurisdiction.

Currently, this too is a significant problem, as police often come in contact with individuals who are wanted on warrants for breach of bail or probation and are hundreds and hundreds of kilometres away from their court of jurisdiction. For example, if the police in Sault Ste. Marie stop an offender for speeding who is wanted on a breach of bail or breach of probation warrant out of Brampton, what often takes place is neither police department—in this example, the Sault police or Peel police—want to incur the time nor expense to transport the accused back to their court of jurisdiction—in this case, the Brampton court—and ultimately, the accused is released and free to go about their business.

The mandate would also include officers of the community corrections compliance unit attending bail or show-cause hearings and, for accused persons with a supervision history with probation and parole services, utilizing those supervision records and providing the court with

information as to the offenders' presenting risks, response to prior terms of community supervision, and making recommendations to the court on the subject's suitability for release—same or similar to what probation officers currently do when our criminal courts order pre-sentence reports that are completed by probation and parole officers. Probation services have great records on offenders' needs, risks and responsivity. Unfortunately, that information is rarely shared with bail court, but if it were, I believe the judiciary would make a much more well-informed decision as to the risk of releasing an accused on bail who has a prior community corrections file.

I first identified the aforesaid problems and the need for a community corrections compliance unit back in 1999, when I was invited to a same or similar committee to this as chaired by the then minister of corrections, the Honourable Rob Sampson. Since that time, I've made similar presentations and written proposals to each successive minister, their aides, along with senior ministry bureaucrats. Such garnered great attention in May of 2017, when I participated in a Global National investigative report done by Carolyn Jarvis. It was in four parts and it was entitled Who's Watching: Ontario's Troubled Probation System. She examined the lack of compliance monitoring and enforcement within probation and parole services, the lack of seeking the whereabouts of absconders wanted on breach-of-probation warrants and the significant threat such posed to public safety.

The problem with the lack of compliance and offender monitoring within probation and parole is the exact same problem that beleaguers bail supervision. Bail supervision transfer payment agencies—John Howard, Elizabeth Fry, Salvation Army and the like—do not perform feet-on-the-ground compliance monitoring, nor do they seek the whereabouts of absconders.

Through the 2017 freedom-of-information request, we learned that Ontario probation and parole officers issued more than 4,500 warrants for offenders who had breached and whose whereabouts were unknown. I'm not sure what the exact numbers are now, but I can confidently say that we continue to issue a high number of warrants, and the bail supervision program likely does the same.

We do a fantastic job writing up breach warrants and putting them on the CPIC system, but such is not the case when it comes to tracking down these absconders and executing these warrants. It's well known amongst the criminal element that there's a lack of compliance monitoring and a lack of warrant enforcement within the bail system. The Global National investigative report brought this to light.

In 2017, as part of this documentary, the then president of the Ontario Association of Chiefs of Police, Chief Charles Bordeleau, was asked by Carolyn Jarvis, "Who's responsible for checking on the offender?" His response was that "it is the core responsibility of probation." He further added, "Local police services do not go actively looking for those individuals that have warrants. That's the responsibility and core function of probation."

The province of Ontario has the repeat offender parole enforcement unit, otherwise known as ROPE. Their website indicates that the ROPE unit is a "multi-agency, provincial team that locates and apprehends parolees unlawfully at large in the province of Ontario"—

The Chair (Mr. Lorne Coe): Mr. McIntyre, you have one minute left in your presentation.

Mr. Scott McIntyre: Thank you. So they look for those that have escaped custody.

Carolyn Jarvis interviewed, in 2017, the ROPE unit's Detective Constable Steve Sermet. They do 800 offender interactions, and about 90% of them are on federal parolees. The problem is that there's no system like that for provincial offenders. The ROPE unit does not perform compliance monitoring; it only executes warrants.

Bringing bail supervision under the corrections umbrella like the majority of Canadian provinces will, in effect, be a viable solution within community corrections. Such would go a long way in restoring public confidence and would resolve the ongoing public safety threat of not having a compliance unit or system of enforcement. Thank you for your time and consideration.

The Chair (Mr. Lorne Coe): Thank you very much, Mr. McIntyre. We're going to start the round of questions now with the government, followed by the official opposition and then our independent member.

Government members, questions for Mr. McIntyre? Yes, MPP Saunderson, please.

Mr. Brian Saunderson: Thank you, Mr. McIntyre, for your presentation today. I'm interested in your submission about looking at monitoring bail compliance. You said that you've made this presentation a few times before; hopefully, this time we can get some traction for you.

Do you have experience with how it works in other provinces? Because you mentioned that other provinces have it under the Solicitor General. Do you know, with the system that you're promoting, if there's a specific province that we should be looking at?

Mr. Scott McIntyre: I understand, in speaking with my colleagues out in Alberta, that 40% of their total offender population is bail—40%. That's where I would be looking. They have bail supervision. I'm sure they provide client services. I'm not sure how effective their tracking and monitoring is. I would speculate that it's not great.

I think that this is a systemic problem, that there's nobody out there who actually does feet-on-the-ground compliance checks of house arrest or curfew for bail, let alone probation or parole. We have relationships with local police that may do it on an as-needed basis, but, as Chief Bordeleau pointed out, it's not their function; it's ours. It's corrections' function.

Mr. Brian Saunderson: Just to follow up on that, then, when you say that it's a corrections function, currently corrections is under the Solicitor General?

Mr. Scott McIntyre: Correct.

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Mr. Brian Saunderson: Okay. What you're proposing, then, is that we look at a way to leverage the current parole and probation monitoring services, and expand that into the bail compliance?

Mr. Scott McIntyre: What I'm saying is, bring bail from MAG into the Solicitor General. At the same time, create a community corrections compliance unit whose mandate would be to do the feet-on-the-ground compliance checks. If we're out there doing house arrest curfew checks on our clients currently under our supervision, either on a probation order, a conditional sentence order or provincial parole, why wouldn't we go across the street and check on a bail offender who also has the same or a similar house arrest curfew or non-association conditions? It only makes sense.

Right now, probation and parole services are not out in the community doing compliance checks. That was the focus of the 2017 Global National investigative report on the problems that beleaguer probation and parole. The official opposition at that time was very adamant that there were problems with it. For four days, we saw they were calling for the resignation of ministers and a call for an inquest, and yet here we are, almost six years later, and these problems still plague us. We need to have compliance monitoring. We have to have that.

When they cut their GPS bracelets off, who's looking for them? We do a really good job issuing these warrants for their arrest, but who's out there looking for them?

Mr. Brian Saunderson: I take your point, and there has been some discussion about that to date.

Just so I'm clear: This community corrections compliance unit that you're recommending would also help to perform compliance checks for people out on parole and probation as well? Because what you're indicating now is that your capacity to do that in an organized way is lacking, from what I take from your comments.

Mr. Scott McIntyre: That's correct. Just so you know, the unfortunate death of that OPP officer at the hands of someone who was on bail, who, as I understand it, cut their GPS bracelet off—Recovery Science is the private sector transfer payment agency that does GPS monitoring for both bail and probation, parole and conditional sentences, our clients. They have a contract with the Ministry of the Attorney General and correctional services, as well—the Solicitor General.

It could have very well been a conditional-sentence offender who cut their bracelet off. The accused in this matter could very well have been a conditional-sentence offender, and we would be here looking at reform for probation, parole and conditional sentences. But instead, it was a bail offender.

The similarities, in my opinion, are strikingly similar. To me, it's a moot point whether he was on bail or whether he was on a conditional sentence order. The fact is that both those types of offenders are released from court. Both those offenders are able to be placed under global positioning system surveillance. Both those offenders should be monitored in the community for compliance monitoring; they're not. Both those offenders, when they abscond or breach and a warrant is issued—some law enforcement entity should be out there seeking them.

I've listened and I've heard others comment to this standing committee that they're not in favour of a compliance unit. I think what they're saying is they're not in favour of the police creating a compliance unit the same or similar to the federal ROPE unit. I'm here to advocate for the creation of a compliance unit, but under the Solicitor General correctional services portfolio.

We have 121 brick-and-mortar offices—probation does. We have 25 institutions. We've got hundreds of employees who are professional in our ability to supervise, to provide offender programming etc. So we've got the capability and the infrastructure, as well. We have reporting centres. We have well over 100 reporting centres, in addition to the 121 area and satellite offices in the remote areas of this province, particularly up in the northwest, that service an Indigenous population.

We've got the footprint, we've got the feet on the ground and we've got the infrastructure. I think it's time to take a serious look at creating the compliance unit under a mandate of compliance monitoring and warrant execution and, just as equally important, transportation. I think it should not be allowed to let an accused go when he's in custody just because he's hundreds of kilometres away from his court of jurisdiction, and I had that happen to me. I had a domestic violence offender—

The Chair (Mr. Lorne Coe): Thank you, sir, for your response. That concludes the government's questioning in this particular round. MPP Jones, I'll come to you on the second round of questioning, please.

Now to the official opposition: MPP Wong-Tam, please.

MPP Kristyn Wong-Tam: Thank you so much, Mr. McIntyre, for your presentation. I have been asking over the past day or so about who is in charge: Where does the buck stop when it comes to supervision and monitoring of those released on bail? You've brought forward a proposal and a resolution that I think could be a very elegant solution to the problem that we're facing, but there seems to be a lot of confusion on how to implement.

You've just put forward a recommendation now that because the infrastructure and the expertise already sits within the Ministry of the Solicitor General, especially within their correctional services unit, that expanding that compliance unit to provide supervision and monitoring of those released on bail with conditions is not too difficult, is what you're saying. Is that correct, because it already exists?

Mr. Scott McIntyre: In my respectful opinion, correct.

MPP Kristyn Wong-Tam: But you also said in your submission that you have been before this committee or similar committees before at Queen's Park, and that you've provided this information to previous governments—or perhaps this government; I'm not sure. Can you just be very specific on who you have spoken to, and when did you start putting forth these recommendations?

Mr. Scott McIntyre: In 1999, to Rob Sampson, on a similar committee, looking at reforms to community corrections, and every single minister of correctional services—they've gone by the name of Minister of Public Safety, Minister of Correctional Services, Solicitor General—and their aides, and every single deputy minister right through down to our community services assistant deputy ministers.

MPP Kristyn Wong-Tam: I know this might be difficult, because I'm going to ask you a question about why no one has paid attention to this—because you've been a long-

time advocate, your credentials are significant, and your written submission was excellent and very clear. You're coming to us with receipts and also proactive solutions. Why has no government taken responsibility or action on this so far?

Mr. Scott McIntyre: Good question. I'd like to know. I'm speculating here, but perhaps it's not politically popular to cancel contracts with private sector transfer payment agencies that are under the MAG portfolio. Perhaps past and present provincial governments assessed the lack of community supervision, compliance monitoring and the lack of warrant search-and-executions as being low risk, low priority.

I say that; however, if you look at the 2017 Global National investigative report—you can stream it; it's on Google. The official opposition's response to that very damning investigation was significant, calling for the resignation of ministers and inquests. I was hopeful that when this current government formed government we would see change, but we haven't.

It could be due to cost considerations. Even though I know that there would be money saved by cancelling with transfer payment agencies, I have no idea what the costs would be. I haven't put a business case—it's not my subject matter expertise—but those are some speculations.

MPP Kristyn Wong-Tam: Thank you, sir. So the 2017 opposition calling on the government of the day for an inquest, demanding resignation of their Solicitor General and Attorney General at that time, would place opposition leader Patrick Brown as the one who was calling for the inquest, calling for the resignation. And it would have placed, I believe, Premier Wynne in the position of answering that request. Is that correct?

Mr. Scott McIntyre: Correct.

MPP Kristyn Wong-Tam: Okay, thank you. I'm really grateful for your deputation because I really am very interested in getting to the proper solutions and adequately tailored solutions to build and make our communities safer. I don't think there's anybody in this committee room who's not interested in reinforcing community safety, but we want to be able to go about it with the right tools. Right now, as it stands, there is a request to do more at the federal level and to expand the reverse onus, sort of, blanket coverage. You're saying that the tools are here, you have the infrastructure—these are some of the things that the province can do in the short term.

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What else can the province do in the short term to get us to safer communities so we can actually get to swifter court outcomes, so we can actually move people through, especially those who are truly dangerous and who are repeat offenders with discharge of firearms? How do we keep them inside the facilities—whereas everyone else who is not a dangerous offender, we need to get them to a pathway of rehabilitation. What more can the government do in the short term?

Mr. Scott McIntyre: I think an immediate response would be to place a probation and parole officer in the form of a court liaison officer into every single bail court. I would say a significant number of accused who are before the court on new charges where bail is being considered have a prior community corrections probation and parole history, so if they do, we can access that—and it's particularly important if it's recent.

As I said in my presentation, we do an excellent job assessing needs, risks and responsivity. Certainly, like we do for pre-sentence reports, we can inform the judiciary of an offender's suitability for release and, if release is being considered, what terms and conditions would be suitable.

Of course, we would need additional staffing resources. We are already in a workload crisis situation. We've got Canada's highest offender population under community supervision. Our recidivism rate is terrible.

That's what I would do: I would put court liaison officers in every single court with access to our offender tracking information system.

MPP Kristyn Wong-Tam: With respect to things that can happen quickly, in terms of longer-term solutions, with respect to that specific sort of lever—aside from potential cancellation of private contracts with transfer agencies, is there another reason that you could see why the government doesn't want to do this? I'm thinking about Officer Pierzchala, whose life we lost. I'm thinking about the individuals in our community who have been exposed to harm—especially if it could have been prevented. This is the part that is actually getting me a little bit hot under the collar.

If we could have done more to actually save lives a lot sooner, as opposed to just asking for bail reforms, what stopped our government from doing it?

Mr. Scott McIntyre: Perhaps there are senior bureaucrats—again, I speculate—within the ministry who don't agree with this solution. Perhaps it's cost-prohibitive in their viewpoint—

The Chair (Mr. Lorne Coe): Excuse me, Mr. McIntyre. That concludes the official opposition's time and your response to that question.

I'll go to the independent member. MPP Blais.

Mr. Stephen Blais: Thank you for your presentation.

I know you said that you have not done a business case or analysis on the costs involved in the proposal, but was there any research done at all at the time of this previous committee meeting you're talking about—or is it simply, "We think it looks good on paper. It seems to make sense. I agree."? Is that basically the extent of the work?

Mr. Scott McIntyre: I have not followed up with it. I'm not sure if any of the bureaucrats over the decades have looked into costing.

One of the points I made was that we have an enforcement unit, rightly so, in Ontario that protects the natural resources of our province—fish, game and wildlife—yet we don't have that component that does compliance checks. It doesn't make sense to me, where the priorities are to have an enforcement unit that looks at enforcement from a Provincial Offences Act offence as compared to the Criminal Code, where we know that we supervise offenders who have got weapons convictions and weapon use, yet we're not out there making sure that they're home

when they're supposed to be and not out in the community, and the victim safety of that—

Mr. Stephen Blais: I have two questions. What is the typical caseload of one of your officers who's monitoring people who are out on parole—just to get a sense of how many you might need—and then is that work largely done from a desk in an office or are they out on the road, physically out in the community, checking on people?

Mr. Scott McIntyre: It fluctuates. Pre-pandemic, I would say the average was around 60 to 65 offenders per probation and parole officer.

I want to make it very clear: In my respectful opinion, there is no community supervision within the community. We are not feet-on-the-ground; we are not in the community. I have advocated that we should be turning back to decades ago, when I first started in the 1990s, when we actually were out there doing the house arrests/curfew checks. We were working in conjunction with the police in their various abatement programs.

We've become very clinical in nature. I personally believe that we have way more client service eggs in that basket. We do an excellent job with respect to client services, rehabilitation, cognitive behavioural therapy, and we've taken those public safety eggs out of that basket. We've always been able to strike a balance between the two; we were taught that. That's not the case anymore. It's very clinical work now. I call it the white-coating of probation and parole services. It's been at great risk and great cost to public safety.

As I said, this offender who allegedly killed that OPP officer could very well have been a conditional sentence offender with a bracelet, as compared to a bail offender. He could have been one of ours.

Mr. Stephen Blais: Sure. Thank you, Mr. Chair.

The Chair (Mr. Lorne Coe): We're now back to the government. MPP Jones, please, followed by MPP Dixon.

Mr. Trevor Jones: Good afternoon, Mr. McIntyre. Thank you for sharing what's certainly a unique and extensive perspective and experience in a very specialized area of the judiciary and law enforcement. We appreciate that perspective, and you've definitely given us food for thought, because I can see my colleagues around the table are taking copious notes.

In your experience, can you identify any risks there might be to maintaining the status quo in keeping the current bail system as it is in place? Can you share with us your insights?

Mr. Scott McIntyre: Absolutely. Thank you very much for the question. The continued and growing risk of not performing compliance monitoring checks—again, house arrest/curfew, be it individuals who are on bail supervision or probation, parole or a conditional sentence—is that there will continue to be recurrence of non-compliance. There will continue to be no threat of being sought after when not complying or when a warrant has been issued.

Don't take my word for it. Please watch the 2017 documentary that I've referenced where Carolyn Jarvis actually interviews convicted sex offenders who are under house arrest or curfew and had been so for years, and that nobody at any time ever went and performed a compliance check. Right now, we do those compliance checks with the assistance of police when we think that there's a reason of concern. There doesn't need to be a reason of concern; there shouldn't be a reason of concern. They interviewed a judge. The judge said that when they place these conditions on an individual—why not reasonably assume someone in some law enforcement capacity at some point in time goes and checks on it? So the risk is continued re-offending.

Mr. Trevor Jones: Thank you for that, sir. Through you, Chair, if I just might add, I appreciate your passion on the topic. This is definitely a well-thought-out plan to implement over a long period of time. I realize you've had the audience of many senior bureaucrats and many different, perhaps, Solicitors General or other cabinet members by similar titles. I can appreciate that the infrastructure required must be tremendous, because we had some of our senior police leaders note quite quickly that that infrastructure already exists in a 24/7 service that is armed, that has telecommunications, that has training and that has use-of-force options, and I think those are all considerations.

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But it does leave us food for thought and moves that conversation forward, so your points aren't lost on that. I thank you for that. Is there anything else you might want to add?

Mr. Scott McIntyre: Two things: I think that a viable concern of the government—successive governments as well as bureaucrats—is that the rate of non-compliance is so significant that if you created a compliance unit and went out there and started monitoring, there would be hundreds, if not thousands, of breaches. What do you do with those individuals? We don't have the infrastructure.

Here you've got the current government spending millions of dollars, having cancelled the electronic monitoring centre down by the Toronto South Detention Centre, which was owned and operated by us, by correctional services, and giving the electronic monitoring to Recovery Science and not wanting to put any resources into the compliance unit, which all governments know that it's a viable solution. There's that aspect of why, maybe, there's resistance to this, because they think that the compliance rate is so bad that we don't have the capacity to incarcerate everybody.

The Chair (Mr. Lorne Coe): Thank you, sir, for that answer. MPP Dixon, please?

Ms. Jess Dixon: How much time do I have, Chair?

The Chair (Mr. Lorne Coe): You have two minutes and 52 seconds.

Ms. Jess Dixon: Thank you very much for this information, sir. I can tell you, as a crown attorney until last year, and basically got myself here as a result of feeling similar frustrations, I wanted to ask—if we have this concept of the compliance unit, are you lacking information as well as the infrastructure and funding to have something like that created? Presuming we skip over all the political machinations of making it happen, do you

have the information? Because one of the things that I've been wondering, because I don't know what it's like from the parole side—have you ever had a chance to look at SCOPE?

Mr. Scott McIntyre: I've taken a look at similar compliance units in the United States—

Ms. Jess Dixon: Sorry, I'm just going to interrupt you because—SCOPE, the crown attorneys' program, in Ontario—

Mr. Scott McIntyre: No, no, sorry.

Ms. Jess Dixon: Okay, because SCOPE has been around for maybe seven years, 10 years now. So at this point in time, when you access SCOPE, depending on your permissions, you can basically see the entire detailed history, all the occurrences, all synopses, the convictions, the bail, the notes—everything about every single person that's been charged with a criminal offence in the province of Ontario. It used to be that the police had that and the crowns had less information, and I think we might be at the point now where we actually have more.

So when you are looking at a person, what information do you actually have about them? Or is it essentially that not only do you need a compliance unit, but you also need all of the information that in some ways the crown attorney has amassed through its own record-keeping?

Mr. Scott McIntyre: High-risk offenders usually, typically, have extensive community corrections files that go maybe as far back as when they were young offenders. We have lists of family, friends, girlfriends, jilted girlfriends, ex-wives—you name it, we got it. It's not a stretch of any difficulty to probably find out where they are or where they ought to be. We have the most amount of information, probably, of any law enforcement agency on these people because of our relationship with them.

Creating a compliance unit under corrections alleviates any breach of confidentiality. It would be shared information. We have that information. We have needs/risk assessments that we do. Probation parole officers are especially trained in risk assessments, including but not limited to sex offender risk assessments, domestic violence risk assessments—

Ms. Jess Dixon: Just because we are short on time, I'm going to interrupt and ask you another quick question. Do you—

The Chair (Mr. Lorne Coe): MPP Dixon, the government time has concluded.

We're over now to the official opposition and MPP Wong-Tam.

MPP Kristyn Wong-Tam: Mr. McIntyre, I'd like to pick up on a point that you raised regarding a private contractor by the name of Recovery Science. Exactly what does Recovery Science do, and who are they under contract to?

Mr. Scott McIntyre: I know very little about them other than that they first came to our attention—when I say "our attention," I mean the government's attention. We have ministry-employee relation committee notes from several years ago where some of our clients, I believe out in Ottawa, were placed on forms of electronic monitoring under the supervision of Recovery Science. They have subsequently grown in size and recently were awarded, I understand, a contract for the Global Positioning System of monitoring bail, under the MAG purview, as well as Solicitor General conditional-sentence clients. That's really all I know. We've had presentations from them with respect to how they monitor the notification process and then whose responsibility it is—in our case, it's the conditional sentencing supervisor—to be informed of a violation—whereabouts unknown or what have you, or say they clip their ankle bracelet or whatever off, their GPS unit—of what our process and policy is.

MPP Kristyn Wong-Tam: I don't want to force you to answer a question that you don't have the answer to, so thank you for being so truthful.

I want to come back to the issue that you raise about the police perhaps being resistant to being asked to deal with bail compliance, because that was a comment I heard on several occasions as of yesterday, when I asked who should be in charge and where does the buck stop when it comes to supervision and monitoring of those on bail conditions releases. Are you surprised that the police provided an answer that they felt that—and there were two answers. One was, "It might be something that we could do, but we don't have the resources to do it." On the other hand, another answer would be, "No, it's not us. That's someone else." But it wasn't clear who the "someone else" was. So there seems to be some confusion in the police outfits on who does the bail supervision and monitoring. In your opinion, who does that right now in Ontario?

Mr. Scott McIntyre: Bail supervision—there are areas of the province where there are transfer payment agencies, like Elizabeth Fry, Salvation Army, John Howard Society, who have those contracts with MAG. My understanding is that when those agencies are not there, then the courts direct bail clients to report to their local police, and that would be to attend a police station on a schedule set by the court. I would assume that if there's a violation, the local or provincial police detachment would have the responsibility to issue the warrant and go look for them—but we know that doesn't happen regularly.

I used to work in Brampton. I had a good relationship with then-Chief of Police Noel Catney. We've got Chief Bordeleau on record with that investigative report. It's the same message. Police generate their own warrants. They have their own backlog. They don't need additional work added to that backlog, be it from bail supervision programs or correctional services. Pre-pandemic, we were at over 40,000 clients supervised by 864 probation officers.

MPP Kristyn Wong-Tam: So what you're saying is that by not having a centralized body province-wide to take care of supervision of those released on bail, it effectively becomes a de facto downloading on the police, because they will end up having to do the work even if it's not necessarily within their purview. They could be, of course, monitoring the situation—but not direct supervision in the community. What you're saying is that if we

don't take a systematic, province-wide approach to create a supervision and monitoring program for bail compliance, that's going to be downloaded to the police, who are not equipped to do the job. Is that a fair assessment?

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Mr. Scott McIntyre: I agree; 100% I agree.

MPP Kristyn Wong-Tam: That might explain why the police are so reluctant to take on bail compliance, because, number one, it's not their job, but at the same time, they're not resourced to do it. But nobody else is doing it, so they're forced to do it because they're responsible for community and public safety.

Mr. Scott McIntyre: Correct.

MPP Kristyn Wong-Tam: Okay. Do you think that Ontario's current bail supervision transfer payment agencies, such as the John Howard Society, Salvation Army—they have limited scope, but certainly in Toronto we see them. Do you think they're doing a sufficient job of on-the-ground compliance with their investigations, in your view, based on the resources that they've been given by the province? Are they doing enough?

Mr. Scott McIntyre: My personal experience—and I have to sort of tailor this: I'm not aware of any feet-on-the-ground enforcement. If anything, it may be the same or similar to probation services' collateral contacts with friends, family, employers, what have you, sitting from the confines of an office. You've got to ask yourself, to what degree is there effective supervision if you're not actually out in the community? I'm not aware of any of these transfer payment agencies, bail supervision contracts, performing any form of feet-on-the-ground compliance monitoring, and certainly not warrant enforcement or warrant execution.

MPP Kristyn Wong-Tam: Thank you, Mr. McIntyre. So it sounds to me that in your opinion—based on what you've shared with us and by way of your answers to the questions to this from the government bench as well as from the opposition side—the solution to bail compliance, bail supervision, bail monitoring is all within the grasp of the provincial government. We need to take some action, and we need to do it very quickly, but the request before this committee about tighter and stricter bail conditions, bail reform—none of that really helps us if we don't do this other piece, which is actual bail supervision, bail monitoring and bail compliance. Is that correct?

Mr. Scott McIntyre: Sure, and—

The Chair (Mr. Lorne Coe): Your time has expired. Mr. McIntyre, do not respond to the question. Thank you.

I have our next questioner: our independent, MPP Blais.

Mr. Stephen Blais: I am fine, Mr. Chair. Thank you.

The Chair (Mr. Lorne Coe): All right. Good. That concludes our questioning for today.

Thank you, Mr. McIntyre. We can excuse you now.

Mr. Scott McIntyre: Thank you, members. My pleasure.

The Chair (Mr. Lorne Coe): That is our final presentation. As a reminder, the deadline to send in a written submission will be 7 p.m. today.

Is there any other business? I have MPP Hogarth.

Ms. Christine Hogarth: Thank you, Mr. Chair. I move that the committee enter closed session for the purpose of discussing committee business.

The Chair (Mr. Lorne Coe): Thank you very much. We have a motion to move into a closed session. Is there any debate on the motion? MPP Wong-Tam, please.

MPP Kristyn Wong-Tam: Sorry, Mr. Chair. I would be curious to know the reason for that, the moving into closed session. We just heard from a day and a half of public deputations. Clearly there are people who are very interested in what we do. We have days that are set out ahead for us to do the actual report writing. What is the reason for us to go in camera now?

The Chair (Mr. Lorne Coe): MPP Hogarth?

Ms. Christine Hogarth: Mr. Chair, I would prefer for that discussion to remain in closed.

MPP Kristyn Wong-Tam: Well, there's—may I? Thank you, Chair.

I guess in reply to that, without being given a very clear rationale why we'd go in camera, and being asked to go in camera to then be given the reason to go in camera, I could not support that motion.

The Chair (Mr. Lorne Coe): Thank you for your comments. The motion is on the floor. All those in favour? Opposed—

Interjection.

The Chair (Mr. Lorne Coe): Yes, MPP Blais. I need your hand up—

Mr. Stephen Blais: Yes, thank you, sir. I just had a quick question to MPP Hogarth. Do we expect that this will be—just your own personal anticipation—a lengthy conversation?

Ms. Christine Hogarth: No.

Mr. Stephen Blais: No? Okay.

Ms. Christine Hogarth: Five minutes.

The Chair (Mr. Lorne Coe): Thank you. I'll call the question. All those in favour? Opposed?

We are now in closed session. Those who need to move and excuse themselves should be doing so now. Thank you.

The committee continued in closed session at 1345.

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