

Just Facts

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Research and Statistics Division

Trends in Bail Court Across Canada

This fact sheet is based on publicly available data from a number of Justice Canada, Canadian government (federal and provincial/territorial), and academic publications released from 2009 to 2018. This fact sheet also uses data from an internal research report prepared by Justice Canada in 2013. Despite limited national data related to bail, research highlights a number of bail-related trends across the country.

Research suggests that in recent years police are more likely to detain accused for a bail hearing

A 2009 study reported that the rate of criminal cases that began in bail court in Ontario increased by 38% from 2001 to 2007 (from about 6 per 1,000 residents in 2001 to 8.3 per 1,000 residents in 2007). Further, the proportion of criminal cases beginning in bail court also rose from 39% in 2001 to 50% in 2007.¹

Recent data from the Ontario Court of Justice indicates that the proportion of cases starting in bail court has increased since 2011 (i.e., 46% began in bail court or n = 98,312 in 2017).²

The average time required to complete the bail process increased from 2001 to 2007 but has since decreased

In Ontario, in 2001, it took an average of about four days to complete a bail process. By 2007, this had increased to almost six days. Similarly, the number of appearances required per bail case increased by 20% from 2.12 in 2001 to 2.55 in 2007.³ From July 2017 to June 2018, the average number of days and appearances required for bail cases in the Ontario Court of Justice were 4.1 days and 2.1 appearances for an outcome.⁴

¹ Webster, C.M., Doob, A.N., and Myers, N.M. (2009). The parable of Ms. Baker: Understanding pre-trial detention in Canada. *Current Issues in Criminal Justice*, 21(1):79-102.

² Ontario Court of Justice. (2018). *Criminal Bail Statistics by Region 2011 to 2017*. Retrieved from <http://www.ontariocourts.ca/ocj/files/stats/bail/2017/2017-Bail-Region.pdf>

³ Webster, C.M., Doob, A.N., and Myers, N.M. (2009). The parable of Ms. Baker: Understanding pre-trial detention in Canada. *Current Issues in Criminal Justice*, 21(1):79-102.

⁴ These are cases with a bail outcome, which would be a release order or detention order. Ontario Court of Justice. (2018). July 2017 to June 2018 *Bail Statistics (By Offence) Provincial Overview*. Retrieved from <http://www.ontariocourts.ca/ocj/files/stats/bail/2018/2018-Bail-Offence.pdf>



Research indicates that a “culture of adjournment” has resulted in delays in bail court

There are often delays in hearing bail issues in Canadian courts. The use of adjournments increases these delays.⁵ A study⁶ conducted in eight courts across Ontario, from 2006 to 2008, indicated that a significant number of bail hearings were routinely adjourned; on an average day, bail decisions were delayed for between 57% and 81% of cases.⁷ Similar results were found in a 2013 study conducted in five jurisdictions, where on average 54% of cases were adjourned to another day. This proportion varied by jurisdiction.⁸

The proportion of accused released on bail varies across jurisdictions; there may be no bail decision for accused people in pre-trial detention

Results from Justice Canada’s study, based on closed cases from 2008 in five court locations in four jurisdictions, indicated that overall, about 66% of accused initially detained by police following their arrest were released at their bail hearing.⁹ In Alberta, between 2014 and 2015, of all the first appearance bail hearings that involved the Edmonton Police Service, only 50% of accused chose to seek bail. Of these, about 80% were released by the court.¹⁰

Bail releases are less likely among accused who present specific characteristics

Justice Canada’s 2013 study found that accused were more likely to be held in remand (i.e., denied release at bail hearing) if they were unemployed, had a known criminal history, had previous criminal convictions for failure to appear/comply under s.145 of the *Criminal Code*, or if their most serious offence in the case was fraud or break and enter.¹¹ In cases where the accused’s offence involved firearms, violence, or drugs, additional factors were associated with a lower likelihood of being released on bail, such as being charged with a crime involving a victim and the number of charges in the case.¹²

A number of bail conditions are imposed above “keeping the peace and being of good behaviour” and “reporting as required and directed”¹³

⁵ Office of the Federal Ombudsman for Victims of Crime. (2017). *Bail reform: Getting fair outcomes for victims in Canada’s criminal justice system*. Ottawa, ON. Available online: http://publications.gc.ca/collections/collection_2018/jus/j84-5-1-2017-eng.pdf; Canadian Civil Liberty Association and Education Trust. (2014). *Set Up to Fail: Bail and the Revolving Door of Pre-Trial Detention*. Retrieved from <https://ccla.org/cclanewsites/wp-content/uploads/2015/02/Set-up-to-fail-FINAL.pdf>; Standing Senate Committee on Legal and Constitutional Affairs, Senate of Canada (2017). *Delaying Justice is Denying Justice: An urgent need to address lengthy court delays in Canada* (Final report). Retrieved from: https://sencanada.ca/content/sen/committee/421/LCJC/Reports/Court_Delays_Final_Report_e.pdf

⁶ A total of 4085 cases were observed. Observations took place over 148 days between April 2006 and December 2008.

⁷ Myers, N.M. (2009). Shifting Risk: Bail and the Use of Sureties, *Current Issues in Criminal Justice*, 21(1): 127-147.

⁸ A total of 718 bail cases were observed across five jurisdictions (BC, ON, NS, MB, YK) over 44 days between June and November 2013. Of these, 389 cases were released on bail; Canadian Civil Liberty Association and Education Trust. (2014). *Set Up to Fail: Bail and the Revolving Door of Pre-Trial Detention*. Retrieved from <https://ccla.org/cclanewsites/wp-content/uploads/2015/02/Set-up-to-fail-FINAL.pdf>.

⁹ The study included a sample of 3,093 closed cases from 2008; Beattie, K., Solecki, A. & Morton-Bourgon, K. E. (2013). *Police and Judicial Detention and Release Characteristics: Data from the Justice Effectiveness Study*. Justice Canada.

¹⁰ This represents over 30,000 hearings; Irving, N. L. (2016). *Alberta Bail Review: Endorsing a Call for Change*. Retrieved from https://justice.alberta.ca/programs_services/criminal_pros/Documents/AlbertaBailReview-REPORT.pdf

¹¹ The study included a sample of 3,093 closed cases from 2008 in five courts in four Canadian jurisdictions; Beattie, K., Solecki, A. & Morton-Bourgon, K. E. (2013). *Police and Judicial Detention and Release Characteristics: Data from the Justice Effectiveness Study*. Department of Justice Canada.

¹² Morton-Bourgon, K. E. & Solecki, A. (2010). *Bail Issuances in Offences Involving Firearms, Violence or Drugs*. Research and Statistics Division, Department of Justice Canada.

¹³ Grech, D.C. (2016). *Bail Decision-Making in Common Law Jurisdictions: What can Canada learn from England and Wales* [Power Point slides]. Retrieved July 13, 2016.

A study conducted in a Southern Ontario bail court found that the vast majority (98%) of releases involved bail conditions. On average, each case had 6.2 conditions imposed. Conditions varied in nature; the majority of conditions pertained to residence (77%), no contact (75%), no weapons (77%), and abstaining from areas in the city (60%). Other conditions included attending counseling, notifying police, reporting (e.g., to police), house arrest, curfew, abstaining from drugs/alcohol, and a series of “other” conditions (e.g., no mobile phone/telecommunication equipment). Further, recent research on youth bail conditions showed that on average, youth have seven conditions and there are differences in the quantity and nature of conditions based on the gender of the accused.¹⁴

¹⁴ The study involved a total of 263 court observations; Sprott, J. B., & Manson, A. (2017). YCJA bail conditions: “Treating” girls and boys differently. *Canadian Criminal Law Review*, 22(1), 77.