

# REFORMS TO STRENGTHEN CANADA'S BAIL SYSTEM AND HELP KEEP COMMUNITIES SAFE



On December 5, 2023, amendments to the *Criminal Code* to address repeat violent offending with weapons including firearms, knives and bear spray, and intimate partner violence, received Royal Assent. These changes will come into force on January 4, 2024.

These targeted reforms are one important way to improve the effectiveness of the bail regime and to strengthen public confidence in our criminal justice system.

## AMENDMENTS

These reforms will:

- **Create a new reverse onus targeting serious repeat violent offending involving weapons.** This applies to accused persons charged with a serious offence (an offence with a maximum penalty of at least 10 years imprisonment) involving violence (used, threatened or attempted), the use of a weapon, and where the accused was previously convicted in the previous five years of an offence with the same criteria.
- **Expand the list of firearms offences that trigger a reverse onus,** specifically unlawful possession of a loaded (or easily loaded) prohibited or restricted firearm, breaking and entering to steal a firearm, robbery to steal a firearm, and making an automatic firearm.
- **Broaden the existing reverse onus regime addressing intimate partner violence (IPV)** to apply to accused persons who were previously discharged for an IPV related offence, in addition to those who were convicted.
- **Clarify the meaning of the term "prohibition order"** in an existing reverse onus for offences involving weapons to include a bail release order.
- **Require courts to consider an accused person's history of violence when making a bail decision.** This requires bail courts to consider key additional factors in assessing the risk posed by an accused person when making any bail decision.
- **Require courts to state on the record for any bail decision that they have considered the safety and security of the community in relation to the alleged offence,** thereby increasing accountability to the public.
- **Require courts to state on the record for any bail decision how they have considered the particular circumstances of Indigenous accused and accused from vulnerable overrepresented populations,** as required by section 493.2 of the *Criminal Code*.
- **Require a parliamentary review of the amendments** five years after royal assent, or as soon as feasible after that, to assess the effectiveness of these measures.
- **Outline and reaffirm core principles underpinning the bail system,** in a preamble.

## A SHARED RESPONSIBILITY

Canada's criminal justice system is a shared responsibility of the provinces, territories and the federal government. The federal government is responsible for enacting criminal law. Provincial and territorial governments are responsible for investigating and prosecuting most *Criminal Code* offences, conducting bail hearings and enforcing bail conditions within

their respective jurisdiction, including if there is a breach of bail conditions, as well as for most custodial facilities where people are held while awaiting trial.

Federal, provincial and territorial governments continue to work together to further improve the criminal justice system and make it more efficient.

## PRINCIPLES THAT GOVERN THE LAW OF BAIL IN CANADA

The legislation includes a preamble that outlines core principles that underpin the law of bail in Canada, and aims to support the consistent implementation of these reforms across the country. These reforms follow extensive engagement and collaboration with the provinces and territories.

- Canada's criminal justice system contributes to a safe, peaceful and prosperous society and the bail system plays a critical role in achieving this objective.
- Canada's criminal justice system, including the bail system, is a shared responsibility between the federal, provincial and territorial governments.
- Repeated acts of violence, serious offences committed with firearms and other weapons and random acts of violence all have a harmful impact on victims and communities and undermine public safety and confidence in the criminal justice system.
- A proper functioning bail system is necessary to maintain confidence in the criminal justice system, including in the administration of justice.
- A proper functioning bail system respects and upholds the rights guaranteed by the *Canadian Charter of Rights and Freedoms*, including the presumption of innocence, the right to liberty and the right not to be denied reasonable bail without just cause.
- Detention is justified when it is necessary according to the grounds for detention set out in the *Criminal Code*, including for the protection of public safety and to maintain confidence in the administration of justice.
- Bail decisions are informed by other important considerations, such as the need to consider the particular circumstances of accused persons, including those from populations that face disadvantages at the bail stage and are overrepresented in the criminal justice system.
- Confidence in the administration of justice is eroded in cases when accused persons are released on bail while their detention is justified, including because of risks to public safety, or when accused persons are unnecessarily detained.

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## DEFINITIONS

### Bail:

Bail is when a person charged with a criminal offence is released from custody while awaiting their trial. An individual can be released with or without conditions and if conditions are imposed, they must be followed. Reasonable bail is a constitutional right, protected by the *Canadian Charter of Rights and Freedoms*, but not everyone who is charged with a crime receives bail.

### Reverse onus:

An onus is a legal term that shows who has the responsibility to prove or disprove something, such as an element of an offence or a defence. The general rule in bail is that when a Crown prosecutor seeks the detention of an accused person, they have the onus to show the court that there are sufficient reasons to detain the accused.

When a reverse onus applies in bail proceedings, the burden of proof shifts from the prosecution to the accused. In a reverse onus, the presumption is that the accused will be detained while awaiting their trial unless they can demonstrate to the court that they should be released.

### Intimate partner violence:

Intimate partner violence, also known as spousal or domestic violence, is a prevalent form of gender-based violence. It refers to multiple forms of harm caused by a current or former intimate partner or spouse.

