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Submissions to the Standing Committee on Justice Policy regarding
Bill 75 “Keeping Criminals Behind Bars Act,” 2025
by the Criminal Lawyers’ Association



The Criminal Lawyers' Association provides comments to the Standing Committee on Justice Policy concerning the amendments proposed in Bill 75 "Keeping Criminals Behind Bars Act", 2025 (Bill 75), specifically those concerning the changes to the *Bail Act* requiring accused persons and their sureties to provide a cash deposit.

The Criminal Lawyers' Association - background

With nearly 2000 members, the Criminal Lawyers' Association is one of the largest specialty legal organizations in Canada and is a voice for criminal justice and civil liberties in Canada. Our advice and perspective are sought by all levels of government and the judiciary on issues relating to legislation and the administration of criminal justice. We assist our members in every aspect of the practice of criminal litigation. The CLA develops and hosts continuing education programs for criminal law practitioners and offers the most comprehensive annual criminal defence law conference in Canada.

These comments were prepared by the Executive and members of the Legislation Committee.

Comments and Recommendations

The CLA's position is that the proposed legislation is unconstitutional, unnecessary, and unfair and should not be enacted. Rather than using existing enforcement tools such as estreatment or judicial referral hearings, the amendments will require a complex and costly system that conflates wealth with risk, punishes poverty, and creates structural disincentives



for pro-social sureties. The proposed legislation exceeds provincial authority, intruding on criminal procedure while failing to address the underlying issue of ensuring risk-based, fair, and effective pre-trial release.

Cash bail does not improve compliance compared to recognizance-based release. The amendment would exacerbate chronic overcrowding and inhumane conditions in pre-trial detention – conditions that would already shock the conscience of the average Canadian. Unnecessary detention in intolerable conditions would disproportionately impact Indigenous, racialized, the economically disadvantaged, and women. It leaves courts to continue addressing these conditions by either reducing sentences to account for remand conditions or staying serious and meritorious cases to remedy offenders' mistreatment in pretrial detention.

1. The legislation is unconstitutional and ultra vires

The provincial government is responsible for the administration of the criminal justice system but the federal government has exclusive jurisdiction over the legislation of criminal law.¹ While Schedule 2 of Bill 75 does not in itself prevent an accused from being released, requiring a cash deposit infringes on federal legislation requiring justices to favour a promise to pay over a cash deposit for bail. The proposed amendment to the *Bail Act*, section 8.0.1, runs counter to s. 515(2.02) of the *Criminal Code* which states that:

The justice shall favour a promise to pay an amount over the deposit of an amount of money if the accused or the surety, if applicable, has reasonably recoverable assets.²

¹ *The Constitution Act, 1867*, 30 & 31, Vict, c 3 (UK), ss. 92(14) and 91(27).

² *Criminal Code of Canada*, RSC, 1985 c. C-46, s. 515(2.02) [Emphasis added]



Parliament expressly authorized pre-trial release on a recognizance, with or without sureties, in the place of cash bail. Section 8.0.1 is an attempt to override this federally-enacted legislation. Under s. 515(3) of the *Criminal Code*, a justice or judge *must* impose the least onerous form of release unless the Crown shows why that should not be the case. Requiring a person or surety to liquidate assets to support release imposes an additional obligation that runs contrary to the federal legislation.

The legislation likely suffers from other constitutional infirmities, including the right to reasonable bail under s. 11(e) of the *Charter* by requiring a *de facto* condition for release that the Supreme Court has reserved for extraordinary circumstances.

2. There is no evidence that cash bails are more effective at ensuring bail compliance

The Supreme Court of Canada in *Antic* recognized that a no-deposit bail had the same coercive effect as a cash bail. It warned that courts should not undermine the bail system by speculating, contrary to any evidence, that cash bails are more effective in ensuring compliance with bail conditions.³

In 2017, New Jersey eliminated cash bail with no increase in gun violence. In 2020, New York removed the requirement for a cash deposit for non-violent felony charges and misdemeanour charges, with no significant increase in crimes such as assaults, theft, and drug offences.⁴

³ *R v Antic*, [2017 SCC 27](#) at [para 52](#).

⁴ The Data Collaborative for Justice, [Testing the Long-Term impact of bail reform across New York State: A Quasi-Experimental Evaluation](#), October 2025.



The amendment is also unnecessary. Cash bails are already available under s. 515(2)(d) of the *Criminal Code*. The amount must not be set so high that the accused cannot pay and should only be required “exceptional circumstances”.⁵ Otherwise the amount results in a “*de facto* prison” for the accused.⁶ Cash bails can also be imposed where the accused is not ordinarily resident in the province or does not live within 200 kilometres of the place in which they are in custody under s. 515(2)(e).

3. The legislation is unfair

The amendment will exacerbate chronic overcrowding and inhumane conditions in pre-trial detention by deterring sureties from coming forward. Remand centres are overcrowded and under-resourced. Nearly all Ontario jails are operating at a 123% capacity.⁷ Nearly 80% of incarcerated persons in Canada are either awaiting trial and are presumed innocent or are awaiting sentence. Indigenous people are overrepresented: Indigenous males made up 30% of admissions in 2022/2023, Indigenous females, 49%.⁸ Conditions in pre-trial detention are often overcrowded and harsh: triple-bunking, limited recreation and health care, and lockdowns are common.⁹ Triple-bunking is the norm at many provincial facilities, and at

⁵ *Antic* at [para 67\(h\)](#).

⁶ *Antic* at [para 57](#).

⁷ Toronto Star, “Ontario’s jail conditions are inhumane and disgraceful, judges say. Criminals serving shorter sentences as a result” (July 11, 2025).

⁸ Canada, Department of Justice, “[Just Facts: The Overrepresentation of Indigenous People in the Criminal Justice System](#)” (November 2024).

⁹ *R v Hall*, 2022 SCC 64, at [para 118](#); *R v Myers*, 2019 SCC 18, at [para 26](#).



some facilities, like the Ottawa-Carleton Detention Centre, the possibility of quadrable-bunking looms.¹⁰

Complaints about medical care rose 55% in the last year. Frequent lockdowns, inadequate health care, Indigenous inmates with no access to a native inmate liaison officer, and inmates with mental health issues being placed in segregation are the top complaints.¹¹ Complainants about lack of medical care, in particular, are on the rise.¹² Segregation has been increasing since 2019 despite the Ontario Human Rights Commission urging the province to phase out segregation in its jails.¹³ The proposed legislation will disproportionately affect Indigenous people and racialized Canadians. It will disproportionately affect female accused, who are more likely to experience economic disadvantage.¹⁴

This legislation creates a serious unfairness for working class Ontarians. Many people who come forward as sureties are family members of accused persons willing to satisfy their pledge from the equity they have in their house. For most people, this is all the wealth they have. Though secure, it is not liquid, and cannot become liquid without taking on an interest-bearing loan. Even if the accused fastidiously obeys each and every bail term, their surety would be required to spend hundreds or thousands of dollars in interest to satisfy their financial pledge.

¹⁰ Criminalization and Punishment Project, "[Press Release: From Prisoners at Ottawa-Carleton Detention Centre Demanding an End to Deplorable Conditions of Confinement](#)" (April 17, 2025).

¹¹ CBC News, "[Ombudsman sounds alarm about 'growing state of crisis' in Ontario jails](#)" (June 25, 2025).

¹² CBC News, "[Former Ontario inmates says complaints system is broken after docs reveal medical concerns, abuse allegations](#)" (July 14, 2023).

¹³ Ontario, "[2022 data release of inmates in Ontario](#)" (2002).

¹⁴ [Chapter 1: Legal Aid and Other Legal Needs of Women Accused - SIX DEGREES FROM LIBERATION: LEGAL NEEDS OF WOMEN IN CRIMINAL AND OTHER MATTERS](#)



4. There are other enforcement mechanisms available

In many jurisdictions in Ontario, estreatment of bail¹⁵ is rarely pursued, even after a conviction for a breach of bail. The increased use of estreatment as an enforcement mechanism would have a direct impact—ensuring that sureties were meeting their supervisory requirements.

Secondly, in 2019, the federal government created the “judicial referral hearing” process, giving justices broad enforcement powers to ensure bail compliance, including the power to detain an accused who has breached their bail.¹⁶ A prosecutor must initiate the process by seeking a decision under s. 523.1 of the *Criminal Code*. To our knowledge, this power has not been used in Ontario. Judicial referral hearings have the advantage of efficiently addressing bail compliance issues. Importantly, it creates a mechanism to revoke bail and remand those persons who pose a risk to the public into custody.

Conclusion

It currently costs over \$130,000 per year to house someone in an Ontario jail.¹⁷ Insisting on cash deposits for bail will require the creation of a burdensome enforcement mechanism for sureties and accused persons who cannot comply. Given the lack of evidence that a cash bail system would increase bail compliance, such expensive and ineffective legislation should not be enacted.

¹⁵ Section 771 of the *Criminal Code*.

¹⁶ Section 523.1(3) of the *Criminal Code*.

¹⁷ In Ontario, the 2024 average daily inmate cost was \$357 (Statistics Canada. [Table 35-10-0013-01 Operating expenditures for adult correctional services](#)).



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The CLA would be pleased to discuss these submissions or answer any questions that may arise from them.