

## **TORONTO BAIL PROGRAM**

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The Toronto Bail Program is a private, non-profit, charitable organization which provides Bail Verification and Supervision services under contract to the Ministry of the Attorney General. The general purpose is to provide the Court with verified information about an accused person and provide a supervision service to accused that fit the programs criteria in order to provide the Courts with an alternative form of release.

Historically, the use of Bail was incorporated in the American federal law through the Constitution, particularly the Bill of Rights (1789). Traditional practises relied exclusively upon the posting of money to ensure the accused subsequent appearance in appearance in Court. As a result, the affluent were usually released while the poor remained in jail until trial, resulting in a high incidence of pre-trial detention.

In response to such inequitable and infrequent pre-trial release practices and the resultant high costs of pre-trial detention, alternatives to existing arrest and bail procedures began to be discussed.

The Manhattan Bail Project, sponsored by the Vera foundation was established in 1961 to test the relationship of non-monetary bond release and the likelihood of an accused's appearance at trial. Probation staff interviewed defendants in custody prior to their first Court appearance about their personal circumstances and status in the community. The information was verified and presented to the Court to assist the Judge in determining whether and under what terms the accused could be granted pre-trial release. If the verified information indicated that the individual seemed likely to appear for subsequent Court dates and trial voluntarily, he or she could now be released on a recognizance without financial conditions needing to be met. The Manhattan Bail Project later offered supervision as an additional condition to release. The outgrowth of the Manhattan Project was the proliferation of a variety of recognizance release projects in many states.

The Federal Bail Reform Act of 1966 in the U.S. created a presumption in favour of non-monetary pre-trial release where appropriate and codified the tradition that detention be related solely to concerns of flight.

In the early 1970's, England was experiencing a rapid increase in its remand population in its institutions. In 1974, a study into pre-trial procedures by the Home Office noted that the sort of verified information provided to bail Courts by the US Manhattan Bail Project was needed in England and Wales to speed up and improve the bail process. As a result, the Inner London Probation and After-care Service (ILPAS) and Vera began to collect data and verify information to be presented to the bail Court. Within a few months, however, their role was expanded to include securing accommodation and other resources for people appearing for bail hearings, following up clients on bail etc. As

well, in October 1976 a Bail Centre was opened to provide short-term social work intervention with pre-trial clients requesting the service. In addition to providing the aforementioned services, supervision as an alternative form of release was also introduced. England also pioneered the use of Bail Hostels as one solution to the high rate of pre-trial detention. In 1971, the first Bail Hostel was opened in East London.

In Canada, the British North America Act of 1867 gives the Federal Government exclusive power in the area of criminal law. The Criminal Code of Canada first passed in 1892, codifies criminal law in Canada and details procedures for arrest, release, sentencing etc. In 1972, the Criminal Code was amended to address concerns that the existing bail system, which was based on financial conditions, was discriminatory to the poor and resulted in a high and costly incidence of pre-trial detention. Legislation, generally known as the Bail Reform Act, provided for far reaching reforms in arrest and pre-trial release procedures. However, it was met with a multitude of difficulties in legal interpretation and the large incidence of abuse by people who did not appear in Court or who committed further offences while on bail led to a public outcry.

The difficulties indicated that a more formalized system of pre-trial release was necessary. In 1975, the Criminal Law Amendment Act was passed which made substantial changes in the basic philosophy set forth in the original Bail Reform Act. However, though the circumstances were made somewhat more difficult to qualify for bail, alternate forms of pre-trial release such as Promise to Appear, undertakings and a recognizance with or without conditions continued to exist as alternatives to surety and cash bails.

In response to concerns raised as a result of the Bail Reform Act, the British Columbia Corrections Branch began a bail supervision pilot project in Vancouver in 1974. The philosophy of the program was to provide an alternative form of release to individuals who might otherwise remain in custody until trial. Similarly, in 1977 the Alberta Solicitor General's Department began a pre-trial release program in Calgary, which involves interviewing, verification, selection and supervision.

By 1979, the Ontario Government was dealing with similar issues and was under some pressure by various groups to establish similar programs. In 1979, the Bail Project was set up as a 6 month pilot project in two Courts as a response to the constantly growing remand populations. Unlike other jurisdictions where Bail Supervision was undertaken through existing Probation Services, the Bail Project in Ontario was launched with the cooperation of the John Howard Society, the Elizabeth Fry Society and the Salvation Army. The success of the project in Toronto, led to the expansion to all the Toronto Court Houses and to the establishment of similar projects in other cities as well. In April of 1980, the project became the Toronto Bail Program and was incorporated in 1983 as an independent, not-for-profit agency funded by the Ontario Ministry of Correctional Services.

There were two main reasons that the Ministry of Correctional Services implemented the concept of Bail Supervision. The first was Economic. At the time over 60% of the

inmate population was made up of remand inmates, many who remained in custody because they were unable to meet a surety or cash Bail. The Ministry was faced with the choice of building an additional detention facility. By implementing Bail Supervision as an option they were able to avoid this cost.

The second reason was Philosophical relating to the principle of the presumption of innocence until proven guilty and the fair and equal treatment of all persons regardless of their socio-economic status. Thus Bail Programs mandate was to assist those persons who do not have the financial and community or familial ties to meet a surety or cash release that were deemed releasable by the Court to the Supervision of the Bail Program

Similar to the experiences in other jurisdictions, there are two distinct functions of the Bail Verification and Supervision Programs in Ontario. The verification function and the supervision function.

Verification involves receiving referrals from Duty or Private Counsel, checking the criminal record of the accused and interviewing the accused in custody to determine whether or not the accused meets the Programs criteria. Efforts to contact potential sureties and to verify as much information as possible are made and the Court is advised of the accused suitability for community supervision. Information regarding an accused community and familial ties as well as information related to previous convictions particularly Failure to appear and failure to comply with Court orders, employment, educational status and medical and addiction issues is collected and verified to the extent that this is possible, and may be shared with Police, Crown Attorney, Duty/Defence Counsel and the Court.

The Programs criteria are not the same as primary, secondary and tertiary grounds that is applied by the Crown or by the Court. The Program does not make a recommendation to the Court as to whether or not an accused should be released but only advises the Court that in the absence of an appropriate surety or an alternative form of release, the Program is prepared to provide community supervision should the Court see fit to release the accused. The criteria are set out by the Service Agreement with the Ministry of the Attorney General.

Should the Court accept community supervision as an appropriate alternative, the accused is then released on a recognizance with conditions which would include a reporting condition and a residence condition requiring the accused to report to the Bail Program as directed and to reside at a residence approved of by the program. The Bail Program also takes responsibility for trying to ensure that the accused abides by any other of the conditions that the Court may have imposed. In many cases, a referral to temporary housing must be arranged prior to an accused being released.

Following the Show Cause or Bail Hearing and the release of the accused person, Supervision begins. Upon a person first reporting to the Bail Program, an Intake process takes place. The intake begins with the formalizing of a Plan of Supervision and with a Supervision Contract which outlines the day(s) of the week a person will be required to

report and the rules and expectations of the Program. The Plan of Supervision will address the conditions on the release order as well as other issues which may have been identified during the interview and verification stages. These issues would include housing, treatment for mental health and/or addictions, employment or education and other counselling for anger management or other personal issues. Supervision necessarily includes some personal counselling and assistance around the legal process but most often requires referrals to specialized services. The goal is to provide accused persons with constructive, professional help at the earliest point in the justice process. Studies have shown that people are generally more motivated to make positive changes in their lives at the pre-trial stage. Should the accused fail to report or breach other terms of their recognizance, the Bail Program issues an arrest warrant for failure to comply under section 145 (3) of the Criminal Code of Canada. A person remains under supervision so long as their recognizance remains in force until their matter has been dealt with.

Bail Supervision is not currently available in every Province in Canada nor is it available in every community in the Province of Ontario. There are 13 Bail Programs in the Province of Ontario operated by a number of different not-for-profit organization. Each program operates under a standard contract with the Ontario Ministry of the Attorney General. Under the contract each agency must belong to the Ontario Association of Bail Verification and Supervision Services and this Association is responsible for regular program reviews to ensure that Ministry Standards are being followed.

Some of the challenges face by the program included becoming accepted by other justice sector. The police have arrested the accused and make a recommendation to the Crown Attorneys on the release or detention of the accused. The adversarial nature of the judicial system where the Crown Attorney represents the interest of the state and the accused is represented by Defence Counsel means the Program has to follow a fine line between the two. The local practises in different Judicial Districts and indeed between different Courts in the same Judicial District are another challenge faced by the Program. In many cases, because the Programs are run by not-for-profit agencies, there is a perception that we as a Program are prejudiced in favour of the accused and as a result would not enforce the conditions of release. There have also been situations where changes to the Criminal Code or Court practices have been implemented without advising or consulting the Program. In cases where secondary ground concerns have been raised by the Crown, can also be a problem we face. The nature of our Supervision makes it difficult if not impossible to address. For example, conditions involving a curfew or boundaries, because the Program does not have a residential component we are not in a position to monitor the accused's movements. The key in addressing all of these issues is communicating, educating and demonstrating to all these partners how program operates and how it can be successful and the limits of Supervision.

With any new change in practice or with new Judicial appointments and changing Crown Attorneys or Defence Counsel in the Courts this communication and education must be ongoing.

In the year ending March 31<sup>st</sup>, 2011, 12,772 accused were interviewed in custody across the province of Ontario. Of these cases 4,577 or approximately 35% were released to the Supervision of a Bail Program. In addition, 3,066 of these individuals were released as a result of a surety being found or on their own Recognizance.

The monthly caseload size over this period ranged from a low of 2,665-2,826. Out of 371 cases closed over the course of the year, 4,442 cases closed, 3,928 attended all Court appearances for an appearance rate of 98%.

In spite of the success of the existing Bail Programs in Ontario, there are significant challenges. The fact that Bail Supervision is not available in all jurisdictions limits the effect of the Program. The other issue that we continue to face is that the remand population continues to increase. Anecdotal evidence suggests that the remand population is currently at 70% of the institution population while the sentenced population continues to decrease. The use of alternative sentencing practices has obviously had an impact on reducing the sentenced population in our institutions and has further highlighted the remand population.