

# **Bail Experts Table Recommendations**

**Justice on Target  
Ministry of the Attorney General  
Province of Ontario**

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# Introduction

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## Context

In 2012, 48.2% of Ontario's criminal cases began in bail court. Though both reported crime and reported violent crime have declined in recent years, this number has remained relatively constant. While those cases including charges related to administration of justice, federal and violent offences, were more likely than not to start in bail court, "the notion that the police detain accused people for bail hearings largely because of violence" is not supported by the data.<sup>1</sup> The available data also shows that on average over 25% of cases for which a bail decision was made in 2012 took three or more appearances (excluding cases with three or more bail appearances that did not reach a bail decision) – an increase from the previous decade.<sup>2</sup>

During the same period that reported crime declined, Ontario's remand population significantly increased; currently, approximately 60% of prisoners in Ontario's provincial prisons are on remand. It is also significant that administration of justice offences are the most serious charges for a "non-trivial" number of persons on remand<sup>3</sup>. Also of the cases that appeared in the bail phase in 2012 but later had charges withdrawn, over 22% had three or more bail appearances.<sup>4</sup>

These statistics indicate that there is significant opportunity to increase the efficiency and more effective use of resources in the bail phase in Ontario. Dr. Anthony N. Doob writes that "a savings in appearances should, overall, provide capacity in the Ontario courts to respond appropriately and quickly to future demands that are placed on them."<sup>5</sup>

This committee has made recommendations to improve the efficiency and effectiveness of the bail phase while balancing the principles embodied in the *Canadian Charter of Rights and Freedoms* and the *Criminal Code*. These recommendations are focused on streamlining processes and enabling effective and efficient decision-making; they do not seek to restrict the exercise of discretion by justice participants. They address the whole bail phase – from the point of arrest to the determination of an accused person's bail status.

The report of the Fourth National Criminal Justice Symposium noted as follows:

"When considering reforms to the bail system consistent with constitutional and *Criminal Code* requirements, improvements should aim to enable decision makers to make the best decisions in the interest of the accused person, complainants/victims, and the public interest, including, in particular, concern for the safety of the public."<sup>6</sup>

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<sup>1</sup> Anthony N. Doob, 'The Bail Process in Ontario: An Overview', Centre for Criminology and Sociolegal Studies, University of Toronto, 5 June 2013, 17. .

<sup>2</sup> Doob 2013, 19.

<sup>3</sup> Anthony N. Doob, 'Bail and Remand: One Problem or Two?', Centre for Criminology and Sociolegal Studies, University of Toronto, 4 January 2012, 12.

<sup>4</sup> Doob 2013, 20.

<sup>5</sup> Ibid, 27.

<sup>6</sup> 'Re-inventing Criminal Justice: The Fourth National Symposium Final Report', The Fourth National Criminal Justice Symposium, British Columbia, 13/14 January 2012, 2.

This committee agrees with this statement of principle and it is at the foundation of these recommendations.

### Mandate of the Bail Experts Table

The bail phase is often the first stage in the criminal justice process for an accused person. During consultations conducted by the Justice on Target (JOT) strategy in the spring of 2012, bail was identified as an important area of focus for the strategy moving forward. It is an area of concern for all justice participant groups, and enhancements could help inform improvements to later stages of the criminal justice court process. There are also opportunities to set clear bail metrics and observe progress of initiatives within a relatively short timeframe. The collaboration of all key justice participant groups is required to implement changes to the bail process.

The Bail Experts Table was established to be a forum for discussion, consultation and input into improving the bail process in Ontario. It is inclusive of representatives of all key criminal justice participant groups who have expert knowledge of the bail process. Its mandate is to provide expert advice regarding issues and potential improvements to the bail process to the Expert Advisory Panel and justice sector leadership, in the form of recommendations.

While this committee addressed the entire bail phase, separate and complementary committees had been struck to analyze issues and make recommendations to improve both Weekend and Statutory Holiday (WASH) and fly-in bail courts. While this committee has not made specific recommendations about improving WASH or fly-in bail courts, many of the recommendations and leading practices contained in this document, if implemented, would also serve to improve the effectiveness and efficiency of these courts.

### Membership / Composition:

The Bail Experts Table is comprised of the following members:

- Regional Senior Justice of the Peace Bridget Forster (co-chair)
- Lori Montague, Director and Ministry Lead, Justice on Target (co-chair)
- Roman Boychuk, Staff Superintendent, Peel Regional Police, representative of the Ontario Association of Chiefs of Police
- Boris Bytensky, Director, Criminal Lawyers' Association
- Paula Beard, Director, Criminal Law Services, Legal Aid Ontario
- Michael Cantlon, Crown Attorney Etobicoke, Ministry of the Attorney General
- Sam Checchia, Inspector, Court Services, Peel Regional Police, representative of the Ontario Association of Chiefs of Police
- Mary-Ann Cocchetto, Manager, Legal Services Department, Legal Aid Ontario
- Julia Dempsey, Court Clerk and Bail Trainer, Ministry of the Attorney General
- Margot Denomme, Regional Coordinator, Justice on Target, Ministry of the Attorney General

- Rose DiMarco, Inspector, Detachment Commander, Ontario Provincial Police
- Anthony N. Doob, Professor Emeritus, University of Toronto
- Associate Chief Justice Peter D. Griffiths, Ontario Court of Justice
- Sarina Kashak, Director of Court Operations, Central East Region, Ministry of the Attorney General
- Lynn Kenn, Director, Management and Operational Support, Ministry of Community Safety and Correctional Services
- Susan Kyle, Executive Director, Justice on Target, Ministry of the Attorney General
- Ted Ofiara, Assistant Crown Attorney, Ministry of the Attorney General
- Karyn Slaven, Regional Manager, Victims and Vulnerable Persons Division, Ministry of the Attorney General
- Beverly Wexler, Counsel, Crown Law Office – Criminal, Ministry of the Attorney General.

Other key contributors to these recommendations include:

- Katelyn Leonard, Program Consultant, Justice on Target, Ministry of the Attorney General
- Nicole Myers, Assistant Professor, University of Ontario Institute of Technology
- Lori Santamaria, Executive Assistant, Management and Operational Support Branch, Ministry of Community Safety and Correctional Services
- Debra Whittall, Communications Lead, Justice on Target, Ministry of the Attorney General
- Amy Shulist, Regional Coordinator, Justice on Target, Ministry of the Attorney General.

## Process

This committee began by discussing what an “ideal bail court” would look like, and used the results of these discussions to form a prioritized list of issues that warranted further discussion. This committee then utilized the expertise of those around the table, recommendations made by other previous committees and some academic research to inform its discussions about potential solutions to the identified issues. In order to obtain further input, particularly from groups not represented at the table, consultations were also conducted with experts and community service organizations, including the following:

- The Association of Bail Verification and Supervision Programs
- Members of the defence bar
- Justice Gary Trotter, Superior Court of Justice
- Human Services and Justice Coordinating Committee
- The John Howard Society of Ontario
- Jonathan Rudin, Aboriginal Legal Services Toronto
- The Ontario Crown Attorneys’ Association
- The Salvation Army.

“Leading Practices” included in these recommendations indicate identified best practices which are currently in use in one or more locations, and which should be considered for broader implementation.

## Themes

Throughout this committee’s discussions, the following themes became apparent and are reflected throughout the recommendations:

- Collaboration is critical to ensuring meaningful change at the bail stage. This committee has recommended that local court management committees should address local bail issues and attempt to implement change as appropriate at the local level.
- Timely bail hearings with appropriate information available, are critical to ensuring efficiency. Steps should be taken to ensure all appearances are meaningful, and all adjournments are productive.
- Organizational support for bail court decision-makers is critical in all organizations, particularly the police, judiciary and the Ministry of the Attorney General. Increased support may result in increased confidence in appropriate decision making sooner in the process.
- It is critical that defence and duty counsel, are provided with enhanced access to convenient and secure methods of communicating with in-custody accused at the bail stage. Enhanced access would also benefit third party agencies requiring access to the accused at the bail stage, e.g. Bail Verification and Supervision Program.
- Increased use of technology is a potential long-term and sustainable solution to several of the key issues faced by justice participants at the bail stage. Justice participants should collaborate to explore opportunities for greater use of technology in the bail phase.
- While the discussions focused on regular adult bail hearings and did not delve into specialized cases, the committee feels that it is important to emphasize that some cases require special consideration (e.g. those with Aboriginal accused, accused persons with mental health concerns, female accused, etc.). Youth bail was also not dealt with by this committee, but may warrant future exploration.
- Given the high level of complexity and sensitivity, this committee has recommended that a separate and specialized domestic violence committee should be established. It should include representatives from the key justice participant groups and recognized experts in domestic violence. A proposed terms of reference is to be developed.

## Local Bail Committees

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Collaboration was one of the primary themes throughout this committee's discussions. There was strong consensus that collaboration at the local level is critical to implementing change, and to ensuring the smooth, effective and efficient functioning bail courts.

**Recommendation #1:** *This committee recommends that local leadership committees address issues related to the bail phase on a regular basis. In some locations, this might be a sub-committee of the existing local leadership committee, and in others it might be appropriate to establish a separate "local bail committee". Committees should meet on a regular basis to:*

- *Identify issues at a local level that are causing delay in bail court and develop solutions to address these issues;*
- *Lead the implementation of agreed upon solutions;*
- *Measure and monitor the impact of implemented solutions on the effectiveness and efficiency of bail court;*
- *Troubleshoot any solutions that are not working as intended; and*
- *Sustain changes going forward.*

*This committee recommends that local committees addressing issues related to the bail phase are led by the Regional Senior Justice / Regional Senior Justice of the Peace and/or the Local Administrative Justice of the Peace or Local Administrative Justice. They may also include the following representatives:*

- *A justice of the peace (ideally the Local Administrative Justice of the Peace);*
- *The Crown Attorney, a Deputy Crown Attorney, or a designated case management Crown Attorney;*
- *Representatives of local police services and/or divisions who are familiar with or who support the court process;*
- *Supervisory duty counsel;*
- *A management representative from each correctional institution that feeds into the courthouse, and/or the person(s) responsible for the coordination of prisoner transportation and video technology;*
- *A management court services representative (e.g. the Manager of Court Operations or Supervisor of Court Operations responsible for the criminal court business line);*
- *A member of the local defence bar who will communicate information back to other defence counsel;*
- *A representative of the local Victim / Witness Assistance Program;*
- *A representative from Bail Verification and Supervision Program (where available); and*
- *Representatives from community service organizations (e.g. mental health services, Aboriginal court worker representatives, etc.) who are actively involved in the bail phase, as applicable.*

## Bail Court Organization

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This committee recognizes that there are opportunities to improve the organization of bail court in order to increase efficiency, reduce bail lists, etc. Many of the processes related to bail court organization vary greatly across the province. Each justice participant group has a role to play in ensuring that bail court runs smoothly. For recommendations regarding case management, effective appearances and adjournments, processes related to exercising discretion, etc., see “Bail Appearance Effectiveness” (page 16).

### Prisoner Transportation

This committee has discussed two common areas of concern with prisoner transportation: to and from correctional facilities / police divisions and courthouses, and within courthouses. It is important that required in-custody accused persons arrive at courthouses on time, and early enough in advance of bail court so that other justice participants can sufficiently prepare, including the following:

- Duty / defence counsel need to be able to meet with their clients in advance of bail court;
- Bail Verification and Supervision Program needs time to interview and assess potential clients in advance of bail court; and
- There needs to be adequate time to find an available interpreter if required.

**Recommendation #2:** *This committee recommends that the local committees addressing bail court issues seek to improve coordination between corrections staff and prisoner transport personnel, Crown Attorneys and court services staff. Prisoner transportation processes and bail start times should be coordinated so as to ensure that accused persons arrive at each courthouse in a timely way, so that justice participant groups, including community service workers, can prepare for bail court (i.e. conduct interviews). If necessary, consideration should be given to staggering bail court start times in jurisdictions where there are multiple bail courts / courthouses.*

**Recommendation #3:** *This committee concurs with and would like to adopt the following recommendation made by the Justice Summit Bail and Remand Working Group:*

- *The Committee recommends that each court location have a protocol for contact between the court and Detention Centres. This could:*
  - *Assist the court with list management;*
  - *Provide a method for the detention centres to inform the courts of any developing transportation problems; and*
  - *Allow the court to assist in identifying a priority list for transportation.<sup>7</sup>*

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<sup>7</sup> ‘Bail and Remand Working Group Report’, Ontario Justice Summit, April 2003.

*Additionally, this committee recommends increased coordination between justice participants at the local level, i.e. that correctional services staff work with court services staff, duty counsel, etc. to organize and prioritize transportation of accused persons to the courthouse (e.g. prioritize cases that are ready to proceed).*

There is also an opportunity to increase collaboration between justice participants to ensure that prisoner movement within courthouses is conducted as efficiently as possible.

***Leading Practice #1:*** *This committee recognizes that it is a leading practice for the Crown Attorney to work with court officers / police to develop and share the bail court list, so that accused persons are brought to bail court in the order in which they are ready to proceed. The Crown Attorney should work with the court clerk and duty / defence counsel to determine the order in which prisoners are brought from the cells. Local bail committees should encourage collaboration between the Crown Attorney, court officers and court clerks.*

For recommendations regarding effective transportation of in-custody accused persons to court see “Use of Technology” (page 11), and “Bail Appearance Effectiveness” (page 16).

### Interpretation

Adjournments are frequently required in order to find an interpreter, particularly when it is not known until an accused appears in bail court that interpretation services are required. Further, given the high demand for interpretation services in some locations, it is often difficult to find an available interpreter on short notice to assist in bail court.

***Recommendation #4:*** *To reduce delays caused by the need to find available interpreters, this committee recommends that court services staff be notified immediately if interpretation is required. All justice participants, (e.g. Crown Attorneys, police, duty counsel and defence counsel) who learn of a need for interpretation, whether for an accused person, a surety or witness, have an obligation to notify court services staff if it is not already indicated on the file. For example, police could note the need for an interpreter and the language required when submitting the Information. Court services staff, upon receiving the Information, should immediately contact the interpretation coordinator.*

*While recognizing that interpretation services are in high demand and that there are often few interpreters available on short notice for bail court, this committee would also like to reinforce that qualified consecutive interpretation may be used during the bail phase.*

*As with the above, this committee recognizes also that the court accessibility coordinator should be notified immediately if accommodation for disability is required.*

## Duty Counsel Availability

Currently the first opportunity that duty counsel have to meet with in-custody clients is in the courthouse. There may be opportunities to improve the efficiency and effectiveness of the bail process if duty counsel have an opportunity to meet with their clients prior to transport to court.

**Recommendation #5:** *In order to better meet the needs of accused persons and to assess opportunities for increasing the efficiency and effectiveness of the bail phase, this committee recommends that key justice participant groups discuss opportunities to pilot improvements in facilitating interactions with in-custody clients, including the possibility of making Legal Aid Ontario staff available within institutions. For the purposes of this discussion, stakeholders may include: duty counsel, defence counsel, local police at Central Lock-Ups, Legal Aid Ontario provincial management, correctional services personnel, and other service providers that work with accused persons during the bail phase.*

## List Organization

This committee recognizes the importance of ensuring that bail hearings that are ready to proceed are able to do so as expeditiously as possible. All bail matters that are ready to proceed should be able to do so each day.

**Recommendation #6:** *This committee recommends that the Crown bail vector (or Crown Attorney assigned to bail court) coordinate each morning with other justice participants, particularly defence / duty counsel and court clerks, to develop a prioritized list for bail court. When developing the list, this is a suggested list of factors to consider (the order of which should be determined by local leaders):*

- *Matters with privately retained defence counsel should be given priority;*
- *Matters with sureties who have taken time off work to attend court should be given priority;*
- *Matters that were adjourned from the previous day because of scheduling issues or on the request of the Crown Attorney; and*
- *Consent release and other matters which can be dealt with expeditiously.*

*Local committees may be of assistance in determining a local protocol for list organization.*

**Recommendation #7:** *Wherever feasible, local bail committees should develop local protocols regarding scheduling and timing issues for bail hearings for same day arrests.*

## Consent Releases and Consent Variations

Consent releases that include the calling of witnesses and interviewing of sureties on the record consume court time that could be better utilized for contested hearings. (The issue of surety approval is dealt with further in the section entitled “Conditions of Bail” page 21). Additionally, bail variations with the consent of the Crown Attorney could proceed in a location other than within a courtroom.

***Recommendation #8:*** *This committee recommends that witnesses should not be called in consent release matters, except in the rarest of circumstances. Relying on a “read-in” of allegations and affidavit of surety (when a surety is necessary) should ordinarily be sufficient.*

***Leading Practice #2:*** *This committee recommends that local committees explore alternatives to bail court appearances for consent bail variations, such as written applications approved by a judicial officer in the intake court.*

## Scheduled and Contested Matters

***Leading Practice #3:*** *Each local committee should consider if lengthy bail hearings require scheduling, should there not be court time immediately available to hear them.*

## Use of Technology

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Bail courts across Ontario face complex and resource-intensive issues every day. It has been widely acknowledged that there is an opportunity for the key justice participant groups to collaborate to develop and invest in creative technological solutions to some of these issues.

***Recommendation #9: This committee recommends that each justice participant group make every reasonable effort to maximize the use of technology, including audio and especially video technology, wherever possible and appropriate to improve the effectiveness and efficiency of the bail phase. Consideration should be given to the presumptive use of video as technology becomes more readily available.***

*Special consideration should be given to Aboriginal offenders regarding the use of technology to conduct bail court appearances.*

### Video Technology

Video technology has been identified as a potential solution to several key challenges across the criminal justice system, including, but not limited to:

- Reducing the number of prisoners transported daily throughout the province both between police divisions and / or correctional facilities and courthouses, and within courthouses;
- Providing access to counsel for in-custody interviews;
- Allowing witnesses to testify from remote locations, eliminating travel expenses; and
- Ensuring availability and better geographic utilization of interpreters.

The *Criminal Code* addresses the use of technology for bail appearances in the following way:

- s. 515 (2.2) Where, by this Act, the appearance of an accused is required for the purposes of judicial interim release, the appearance shall be by actual physical attendance of the accused but the justice may, subject to subsection (2.3), allow the accused to appear by means of any suitable telecommunication device, including telephone, that is satisfactory to the justice.
- (2.3) The consent of the prosecutor and the accused is required for the purposes of an appearance if the evidence of a witness is to be taken at the appearance and the accused cannot appear by closed-circuit television or any other means that allow the court and the accused to engage in simultaneous visual and oral communication.

***Leading Practice #4: In order to reduce the need for costly prisoner transportation and increase efficiency, this committee recognizes that it is a leading practice, wherever possible and appropriate to have in-custody accused persons appear in bail court via video technology or telephone. This could be from correctional facilities, police divisions (e.g. on the day of or morning after arrest) or from holding cells within courthouses. Where it is possible and***

*reasonable to do so, this committee supports conducting consent releases and full bail hearings via video.*

**Recommendation #10:** *This committee also concurs with and would like to adopt the following recommendation made by the Steering Committee on Justice Efficiencies and Access to the Justice System: “accused persons should only be transported to court when their actual attendance is required.”<sup>8</sup>*

As video technology is increasingly used across the province, a high level of coordination between justice participant groups, particularly at the local level, will be required to maximize video capacity.

Duty / defence counsel and other justice participant groups (e.g. Bail Verification and Supervision Program and other social service agencies) consult with accused persons when they arrive at the courthouse for in-person bail appearances. It is critical that these groups, especially duty / defence counsel, are also able to consult with clients who will be appearing via video technology and who therefore may not be at the courthouse. This committee recognizes that facilitating such telephone / video access requires a high level of coordination between justice participant groups. The Ministries of the Attorney General and Community Safety and Correctional Services should explore potential alternative models for providing access by defence and duty counsel to in-custody accused persons; see Recommendation #21.

**Recommendation #11:** *This committee recommends that local bail committees and justice participants at the regional level where required, meet regularly to coordinate the scheduling and most effective and efficient use of video technology in the bail phase. These meetings should include those responsible for video coordination from each institution feeding into the courthouse.*

*It has been identified that there is a need for documentation and expansion of effective and efficient business processes in the area of video technology. Local committees should share leading practices between sites and regions, and continuously review and improve processes.*

*With increased use of video technology, consideration should be given to whether it would be beneficial to have a provincial correctional video coordinator.*

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<sup>8</sup> ‘The Final Report on Early Case Consideration’, Steering Committee on Justice Efficiencies and Access to the Justice System, Department of Justice Canada, 2006.

## Electronic Transmission of Information

When Crown briefs do not arrive at courthouses early enough to provide sufficient time for justice participants to prepare for bail court, it can result in delays of the start of bail court and/or cause unnecessary adjournments. In recognition of some of the other challenges experienced, including regarding prisoner transportation, it is important that information arrives at the courthouse early enough so that justice participants can prepare. The movement of paperwork, particularly between courthouses and different jurisdictions, has further been identified as a significant issue in the context of s. 524 revocation hearings.

It is a current WASH court practice in some locations that police services send information required to conduct bail hearings to the court electronically, e.g. by facsimile or email. When original copies of relevant documents are required, they are physically transported from the police divisions / corrections to courthouses, as well as between courthouses, causing delays.

***Recommendation #12:*** *This committee recommends using electronically transmitted information wherever feasible for the purposes of the bail process. It is the view of the committee that original documents are not required to conduct bail hearings, and that electronically transmitted documents are acceptable. To facilitate the timely transmission of documents, this committee recommends that justice participants work together to identify and implement an appropriate, secure electronic means of transmitting documentation.*

# Community Service Organizations and Bail Verification and Supervision Program

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## Community Service Organizations

This committee recognizes the important role that community and social services organizations play in the fair and effective administration of bail court. Organizations based in many courthouses provide services such as public transportation passes, spiritual support to accused persons and contacting sureties. Local bail committees should ensure there is an awareness of such agencies and their respective services.

***Recommendation #13:*** *Community support services that are available to accused persons often vary between jurisdictions. This committee recommends that a member of each local committee responsible for implementing change at the bail phase should be assigned the responsibility of compiling, maintaining and distributing a list of available community supports for accused persons, especially those that provide support to members of marginalized communities and / or persons with mental health concerns. The information distributed should include contact information, details of the support provided and program capacity.*

In most locations across the province, there is an opportunity to further involve community service organizations in processes related to bail, where appropriate, to increase the effective and efficient functioning of bail court.

***Recommendation #14:*** *This committee recommends that justice participant groups, especially Crown Attorneys and duty counsel, work with community and social services organizations to maximize their effective use. It may be appropriate in some instances to integrate community services into local bail practices. Organizations that are very active in the bail phase should also be included in the local bail committee.*

*Further, supporting the work of community service organizations may require, among other things:*

- *Ensuring that, where necessary, community service workers have access to accused persons (e.g. are able to visit court house cells or use video / audio technology to conduct interviews);*
- *Providing access to information such as bail lists; and*
- *Recognizing that extra space in some locations may not be available, where possible, providing office space in courthouses.*

***Recommendation #15:*** *This committee recommends that community service organizations operating at the same courthouse collaborate to share information and streamline processes. There is also an opportunity for organizations to work together to improve client service. For*

*example, an organization interacting with an accused person could inform him / her about supportive services provided by other organizations.*

### Bail Verification and Supervision Program

Bail supervision and Bail Verification and Supervision Programs provide an important alternative to sureties for accused persons who do not have an acceptable surety, but whom would otherwise be eligible for release with a surety. As of October 2013, Bail Verification and Supervision Programs were active in 16 locations across the province. Local knowledge regarding the effectiveness of these programs, and therefore their use, varies significantly across sites.

***Recommendation #16:*** *This committee recommends that an effort be made to raise awareness of the role and effectiveness of Bail Verification and Supervision Programs, particularly among Crown Attorneys, duty counsel, defence counsel and judicial officers. This should be included in ongoing education about the bail phase for each of these justice participant groups.*

***Recommendation #17:*** *This committee recommends that the Ministry of the Attorney General explore expansion of Bail Verification and Supervision Programs. In addition, this committee recommends that an environmental scan of the delivery of similar programs in other jurisdictions be conducted and considered.*

## Bail Appearance Effectiveness

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This committee recognizes that there is a role for each key justice participant group to play in ensuring bail courts function well across the province. There are opportunities for each group to improve processes related to case management, the exercising of discretion, etc., which contribute to increased efficiency and effectiveness of bail courts.

***Recommendation #18: All resources should be brought to bear and court down time should be minimized to ensure that all matters that are ready to proceed each day are completed. Where possible, matters should be completed on their first appearance in bail court.***

### Productive Appearances and Adjournments

This committee recognizes that duty counsel, defence counsel, Crown Attorneys and judicial officers each have a responsibility to ensure that each bail appearance is productive. While some reasonable adjournments are to be expected, they should be productive, i.e. for the purpose of moving cases forward before the next bail appearance and to ensure readiness.

***Recommendation #19: This committee encourages justice participants to ensure that each bail appearance is meaningful / productive, i.e. moves the case forward. Likewise, adjournments should only be requested / granted when they are for a specific, articulated purpose which will ensure that the next bail appearance is productive.***

*Further, defence / duty counsel shall notify the Court as soon as practicable if they will be unable to appear, or if there has been a change that results in the bail hearing not being able to proceed.*

***Recommendation #20: This committee recommends that the local committee and judiciary work together to determine an appropriate contact person, should defence / duty counsel, prisoner transportation personnel or others, need to notify the Court of circumstances that might result in an impact to planned bail court proceedings.***

It is important that duty / defence counsel consult with accused persons prior to bail court in order to ensure that they are prepared for a productive bail court appearance. If counsel do not consult with clients before court, the result is often an increased number of unproductive appearances and adjournments.

Additionally, in some locations, in-custody accused persons are repeatedly brought to court for the purpose of consulting with counsel because there is no other easy method (e.g. phone or video technology) available. These counsel interviews “masking” as court appearances have been identified as a significant strain on resources in some locations.

***Recommendation #21: This committee encourages duty and defence counsel to make every effort to consult with their clients in advance of each bail appearance.***

*This committee further recommends that steps are taken to ensure that the people who need to are able to consult with in-custody clients in a secure manner prior to all bail appearances, including those occurring via video. This should include duty / defence counsel, as well as other justice participant groups, as required (for example, Bail Verification and Supervision Program). To this end, the Ministries of the Attorney General and Community Safety and Correctional Services should explore potential models for providing defence / duty counsel access to in-custody clients.*

**Recommendation #22:** *While defence counsel schedules should be accommodated when scheduling bail hearings, defence counsel should also be reasonable in their time estimates and ensure that they are able to appear for scheduled bail hearings. However, if defence counsel are unable to attend scheduled hearings, they should notify the Court. These issues should be further discussed by the local committees addressing bail issues.*

**Leading Practice #5:** *Consistent scheduling of all key justice participants in bail court (particularly judicial officers, Crown Attorneys, duty counsel and court staff) is a recognized leading practice that results in continuity and a significant increase in efficiency.*

*Where consistent scheduling is not possible, the committee recommends that all key justice participant groups make an increased effort to engage in effective case management practices (see below).*

### Judicial Case Management

This committee is aware that in locations where formal judicial case management at the bail stage has been implemented, it has resulted in a significant increase in the efficiency of bail court, including a noticeable reduction in the amount of “churning” of cases.

Research has shown that the use of video technology in the bail phase may result in an exacerbated culture of remand and inefficient “churning”, caused by the relative ease by which remands and adjournments are conducted via video.<sup>9</sup>

**Leading Practice #6:** *Judicial bail case management forms are a tool to assist judicial officers in ensuring that appearances and adjournments at the bail stage are productive, and assisting the judiciary in holding Crown Attorneys, duty counsel and defence counsel accountable for unnecessary delay. The forms provide an opportunity to collect “tombstone data” regarding the alleged offence and offender, track bail court appearances, record justification for adjournments, and collect other valuable information. This committee recommends that the Ontario Court of Justice strongly consider implementing judicial bail case management forms across the province.*

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<sup>9</sup> Cheryl Marie Webster, "Out of Sight, Out of Mind: A Case Study of Bail Efficiency in an Ontario Remand Court", *Current Issues in Criminal Justice*, 21(1), 2009, 103-126.

*Further, when adjournments are sought, this committee encourages judicial officers to inquire as to a reasonable justification. In some locations, checklists are placed on the dias to prompt judicial officers to inquire further into reasons for adjournment and other issues.*

**Recommendation #23:** *As the judicial bail case management form comprises part of the court record, this committee recommends that each time new information is added to the form, it is read aloud so that counsel are made aware of what it reflects.*

### Police Practices Regarding Exercising Discretion

This committee recognizes the significant impact that police practices, relating to the exercising of their discretion, have on the efficiency and effectiveness of bail courts.

**Recommendation #24:** *This committee concurs with the Steering Committee on Justice Efficiencies and Access to the Justice System, in that police should enhance the use of available statutory forms of release (ss. 498 and 499 of the Criminal Code), “including release with appropriate conditions on a recognizance without surety or with an undertaking as required. ... Police education [should] be supplemented in this regard... [as] increased police training is an essential element of any plan to reduce unnecessary bail appearances.”<sup>10</sup>*

**Recommendation #25:** *This committee recognizes that there are significant opportunities for collaboration among justice participant groups to develop aligned training and education regarding bail-related process. There is an opportunity to increase front-line and Officer in Charge training regarding forms of release, how to exercise discretion, how to be an effective witness in bail court, etc.*

This committee recognizes the importance of ensuring that accurate and sufficient information is accessible to decision-makers at the bail stage, both to ensure that they are able to make informed decisions, and to prevent delays that are often caused when additional information is required.

**Recommendation #26:** *This committee recommends the following as minimum standards for the provision of information required to conduct a bail hearing:*

- *The following information is, in many instances, sufficient to conduct a bail hearing (exceptions that may require more information include domestic violence charges and cases where an accused may be flagged as a high risk offender);*
  - *Criminal record of the accused and outstanding charges; and*
  - *Synopsis of allegations (including the investigative overview);*
- *Additional information that is germane at the bail stage should be included; this could include vetted witness statements;*

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<sup>10</sup> Steering Committee on Justice Efficiencies and Access to the Justice System, 2006, 11.

- *Police services should send three copies, if locally determined, of the Crown bail brief (including two vetted copies) to the courthouse; one copy for each of the Crown Attorney, duty counsel and privately retained counsel.*

*This committee also encourages police services to take steps to ensure that all information contained in the synopsis is accurate, fair and balanced, as this information is relied upon to determine the accused person's bail status. This committee recognizes that there is an opportunity to educate police regarding the purpose of the Crown brief, and its use in bail court.*

*It is also recommended that police services explore opportunities to increase information-sharing between jurisdictions.*

**Leading Practice #7:** *This committee recommends that it is a leading practice for judicial officers and police services to consider applying the release provisions in section 507(6) and possibly (7) of the Criminal Code (endorsing warrants for release) in appropriate cases. Information sufficient to satisfy the judicial officer of the propriety of endorsing the warrant should be provided.*

- s. 507 (6) A justice who issues a warrant under this section or section 508 or 512 may, unless the offence is one mentioned in section 522, authorize the release of the accused pursuant to section 499 by making an endorsement on the warrant in Form 29.

### Crown Practices and Case Management

**Leading Practice #8:** *The bail vettor role has been identified as a leading Crown practice, and has been implemented in many locations across the province. While it may not be necessary or appropriate to assign a dedicated resource to this role, particularly in low volume courts, bail vettor-type functions should be performed by the Crown Attorney assigned to bail court, and consideration should be given to scheduling practices in order to accommodate this role. A sufficiently experienced Crown Attorney arrives at the courthouse early each morning to:*

- *Review Crown briefs and identify bail positions;*
- *Triage the bail court list (in accordance with areas identified as having priority, see Recommendations 6 and 7);*
- *Consult with defence / duty counsel;*
- *Take early plea positions whenever possible;*
- *Provide information to justice participants regarding bail matters, as appropriate; and*
- *Provide guidance to the Crown Attorney in bail court as required.*

*This committee recommends that this role is modified to suit local needs, and implemented in all courthouses across the province.*

**Leading Practice #9:** *This committee would also like to reinforce recommendations made by several other groups, committees and inquests regarding Crown Attorney scheduling:*

- *It is a leading practice to assign at least two Crown Attorneys to bail each day; one inside bail court, and the other as bail vettor outside bail court, where it is appropriate to do so; and*
- *It is important to assign at least one sufficiently experienced Crown to bail each day, particularly to the bail vettor role; or in low volume courts to perform the functions contemplated by the bail vettor role. This will be especially important in large volume sites.*

### Organizational Support

This committee recognizes that there are risks associated with decisions that decision-makers in bail court are required to make each day, and has identified that opportunities exist to increase organizational support for these decision-makers. This could include developing tools and supports (e.g. checklists and decision-trees) for decision-makers at the bail stage (police, Crown Attorneys, judicial officers). This committee's discussions regarding organizational support were broadly consistent with the results of the Fourth National Criminal Justice Symposium.

**Recommendation #27:** *This committee concurs with, and would like to adopt the following recommendations made by the Fourth National Criminal Justice Symposium:*

- 2. Senior levels of all relevant organizations (including the police, prosecution and the judiciary) should create an environment conducive to the appropriate exercise of discretion by providing greater public support, including in the media, for decision-makers in the bail process. ...*
- 5. Greater access by decision-makers to information about the accused and the circumstances of the alleged offence early in the criminal process in order to build confidence and enable better decisions to be made; ...*
- 8. Exchanging information about best practices more widely across jurisdictions.<sup>11</sup>*

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<sup>11</sup> Fourth National Criminal Justice Symposium, 3, 4.

## Conditions of Bail

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*This committee would like to emphasize the importance of organizational support from each key justice participant group in the implementation of the recommendations included in this section.*

In 2011/12, 18.5% of adult remand admissions in Ontario included an “administration of justice” offence as the most serious offence. This was higher than any other category, including “assault & related” offences. Further, the number of cases with at least one administration of justice charge increased significantly from 24.7% in 1999 to 35.5% in April 2012 – a 10.8% increase. Increased frequency and complexity of conditions of bail may contribute to the increasing number of administration of justice charges, and to the likelihood that an accused person will spend time in remand as a result of breaching their Judicial Interim Release Order.

Judicial officers, Crown Attorneys, police, defence counsel and duty counsel must be diligent to ensure that conditions of bail applied to accused persons’ Judicial Interim Release Orders are reasonable, necessary, and directly related to:

- The circumstances of the alleged offence;
- The circumstances of the accused person;
- The primary, secondary and tertiary grounds; and
- Mandated sections of the Criminal Code.

The following provisions of the Criminal Code are often referred as to the “ladder principle”:

- s. 515 (2) Where the justice does not make an order under subsection (1), he shall, unless the prosecutor shows cause why the detention of the accused is justified, order that the accused be released
  - a) on his giving an undertaking with such conditions as the justice directs;
  - b) on his entering into a recognizance before the justice, without sureties, in such amount and with such conditions, if any, as the justice directs but without deposit of money or other valuable security;
  - c) on his entering into a recognizance before the justice with sureties in such amount and with such conditions, if any, as the justice directs but without deposit of money or other valuable security;
  - d) with the consent of the prosecutor, on his entering into a recognizance before the justice, without sureties, in such amount and with such conditions, if any, as the justice directs and on his depositing with the justice such sum of money or other valuable security as the justice directs
  - e) if the accused is not ordinarily resident in the province in which the accused is in custody or does not ordinarily reside within two hundred kilometres of the place in which he is in custody, on his entering into a recognizance before the justice with or without sureties in such amount and with such conditions, if any, as the justice directs, and on his depositing with the justice such sum of money or other valuable security as the justice directs.

- (2.1) Where, pursuant to subsection (2) or any other provision of this Act, a justice, judge or court orders that an accused be released on his entering into a recognizance with sureties, the justice, judge or court may, in the order, name particular persons as sureties.
- (3) The justice shall not make an order under any of paragraphs (2)(b) to (e) unless the prosecution shows cause why an order under the immediately preceding paragraph should not be made.

**Recommendation #28:** *Key justice participant groups should collaborate to develop and provide ongoing education regarding:*

- *The application of the ladder principle;*
- *Options for forms of release; and*
- *Appropriate conditions of release that are in keeping with the circumstances of the offence and offender, and the primary, secondary and tertiary grounds, as well as in keeping with the provision in s. 515 (3).*

*Such education should be delivered to police, Crown Attorneys, judicial officers, duty counsel, defence counsel and other key justice participants as appropriate.*

## Sureties

It is common practice in Ontario to require an accused person who is being released on bail to provide a surety. Further, it has become a common practice to conduct an in-court examination of the proposed surety to determine suitability. In some cases, such examination will be necessary and appropriate; however there may be other methods for all parties to determine surety suitability.

**Recommendation #29:** *This committee encourages justice participant groups to give careful consideration to the use of sureties and appropriate conditions, ensuring that they are used only as necessary.*

**Recommendation #30:** *Little information regarding the use and effectiveness of sureties is currently available. This committee strongly recommends that justice participant groups collaborate to conduct or commission further research into the use of sureties both in Ontario and in other jurisdictions within Canada.*

**Recommendation #31:** *The committee recommends that justice participant groups collaborate to utilize out-of-court surety approval mechanisms such as the Affidavit of Justification by a Surety or approval of sureties in the intake court, where appropriate.*

*When it is determined that in-court examination of a surety is required, efforts should be made to minimize the court time required to satisfy all parties as to the suitability of the surety.*

Concerns were expressed by several members of this committee regarding the amount of bail court time and resources consumed by related processes, including surety approval, and resultant delays and increased “churning”.

Suretias are often not contacted in advance of the accused persons’ first appearance in court or are not available to attend scheduled bail hearing. This often results in adjournments and remands, and can in some instances also lead to the last-minute cancelling of scheduled hearings.

***Leading Practice #10:*** *To reduce the number of adjournments required to contact sureties and ensure their attendance in bail court, this committee recommends that existing pilot programs are considered for expansion; namely, that police services should review or develop protocols that facilitate access, where appropriate, to contact information for potential sureties and privately retained counsel.*

### Estreatment

This committee has heard anecdotal evidence that practices regarding forfeiture of recognizance vary across the province.

***Recommendation #32:*** *This committee recommends a discussion among justice participants regarding the varying estreatment practices. Efficient and uniform practices may be explored through the development of educational supports.*

## Domestic Violence

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Approximately one third of the cases in Ontario's bail courts include domestic violence-related charges. While the majority of the recommendations made by this committee apply (i.e. application of the ladder principle and appropriate conditions of bail), it is recognized that domestic violence cases require special care and sensitivity, particularly concerning potential risks to public safety, vulnerable victims or families. The complexity and sensitivity of the issues in these cases often require more resources and court time at the bail stage than cases that do not involve domestic violence.

***Recommendation #33: Given the high level of complexity and sensitivity surrounding domestic violence cases, a separate and specialized domestic violence committee should be established, to be comprised of representatives from the key justice participant groups and recognized experts in domestic violence.***

*This committee should:*

- *Review the recommendations made by this committee to determine their applicability in the domestic violence context;*
- *Conduct further analysis of domestic violence issues at the bail phase, including analyzing relevant policies and procedures; and*
- *Develop a comprehensive set of recommendations to improve bail processes in domestic violence cases.*

***Recommendation #34: During the course of this committee's discussions it became apparent that domestic violence cases raise a unique and more complex set of issues. Thus, in addition to Recommendation #33 and the recommendations regarding the bail phase more broadly, this committee recommends the following leading practices, which apply in cases of domestic violence:***

- a) Accurate and sufficient information, including input from the complainant / victim, is critical to all decision-makers at the bail phase; every effort should be made to obtain accurate and sufficient information from the complainant / victim at the earliest possible stage.*
- b) Where possible, continuity of Crown and duty counsel, as well as judicial officers, is important to ensure that the bail stage proceeds as efficiently and effectively as possible. Where continuity is not possible, effective case management is critical for domestic violence cases.*
- c) Domestic violence policies vary between police services, including policies regarding holding persons accused of domestic violence for bail hearings. Consistent policies*

*and practices for domestic violence cases should be encouraged for all police services, and should align with Crown policies and practices where possible.*

- d) *Ongoing education regarding the sensitivity and complexity of domestic violence cases at the bail phase should be developed and made available to all key criminal justice participants (including, but not limited to police, Crown Attorneys, judicial officers, duty counsel and defence counsel, if applicable). This education should focus on:*
- The proper application and phrasing of conditions of release (ensuring that they are reflective and appropriate given the circumstances);*
  - The intersection between criminal proceedings and family court issues, and particularly the effect of different court orders that can potentially conflict;*
  - Family dynamics; and*
  - The impact of the criminal process and bail on families and the well-being of children.*
- e) *As a leading practice, the Crown bail vettor or sufficiently experienced Crown Attorney in bail court should be a designated domestic violence Crown or should have received extensive training in domestic violence issues. An education module may be developed for this purpose, and may also be delivered to per diem Crown Attorneys who are assigned to bail court.*
- f) *Police and Crown Attorneys should collaborate to develop a uniform approach to risk assessment, and should develop consistent education regarding its application.*
- g) *In locations where integrated family and domestic violence courts are piloted, practices and policies should be aligned, results should be analyzed, and learnings should be applied more broadly, where possible.*