



**Submission to Senate Committee on Legal and Constitutional Affairs**  
**Bill C-14, *An Act to amend the Criminal Code, the Youth Criminal Justice Act, and the National Defence Act (bail and sentencing)***

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## Overview

Public safety matters. People in Canada are understandably alarmed by headlines where a person allegedly re-offended while on pre-trial release. When those headlines are recurrent, it is natural to ask the question: is our safety being put at risk by how the bail system operates and what will our elected officials do to fix it?

The right answer to this question is crucial. It is crucial because the bail system exists both in and out of the headlines. Out of the headlines, the percentage of people in provincial and territorial jails in pre-trial detention in Canada is at a record level. Many people are released on pre-trial release and never allegedly re-offend. Conditions in some Canadian prisons have judges expressing collective shock year after year.

Bill C-14 is not the right answer to this question. It is not the result of a careful and deliberate evidence-based proposal to address perceived shortcomings in the bail system. As the Minister of Justice has put it, “It’s not as though there is an effective national dataset that will demonstrate conclusively that certain changes will or will not have a desired impact.”<sup>1</sup>

The legislation before this committee will capture non-violent and first-time alleged offenders. It will contribute further to record rates of pre-trial detention in Canada. It will worsen the crisis in many pre-trial detention facilities. And it will do all of this on the hope that, somehow, public safety will also be improved by the proposed measures. This brief will outline the reality of the crisis of pre-trial detention in Canada, and propose eight amendments to address some of the most significant shortcomings contained in Bill C-14.

## About CCLA

The CCLA is an independent, non-governmental, non-partisan, non-profit, national civil liberties organisation. Founded in 1964, CCLA and its membership promote respect for and recognition of fundamental human rights and civil liberties. For over fifty years, CCLA has litigated public interest cases before appellate courts, assisted Canadian governments with developing legislation, and published expert commentary on the state of Canadian law.

The CCLA’s major report on pre-trial detention in Canada, [\*Set Up to Fail: Bail and the Revolving Door of Pre-Trial Detention\*](#), is regularly cited by courts across the country. In 2024, the CCLA published a follow-up report, [\*Still Failing: The Deepening Crisis of Bail and Pre-Trial Detention in Canada\*](#).

The CCLA routinely intervenes before courts on major cases interpreting s. 11(e) of the *Charter*, the right not to be denied reasonable bail without just cause. The CCLA intervened before the Supreme Court of Canada in landmark cases on bail, including *R. v. Antic* (2017), *R. v. Myers* (2019), and *R. v. Zora* (2020).

# Bail is the safeguard of liberty for the innocent.

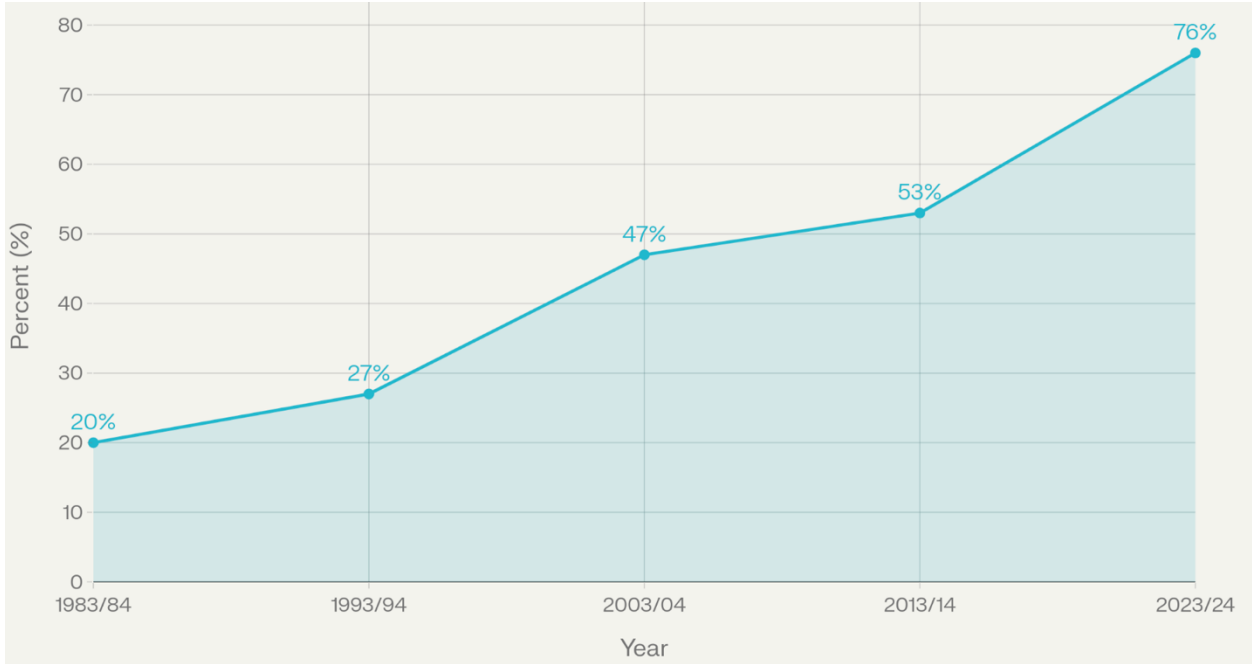
The right not to be denied reasonable bail without just cause is an essential element of an enlightened criminal justice system. It entrenches the effect of the presumption of innocence at the pre-trial stage of the criminal trial process and safeguards the liberty of accused persons.<sup>2</sup>

- The Supreme Court of Canada in *R. v. Antic* (2017)

There were 228,425 criminal cases in Canada in 2023-2024. Less than half – 46% – resulted in a finding of guilt.<sup>3</sup> Without bail, tens of thousands of innocent people in Canada each year would be imprisoned. Before evidence is heard, before arguments are made, and before a judge or jury has passed judgment, bail is all that stands between an innocent person and a prison cell. This is why the right not to be denied reasonable bail without just cause is a constitutional right under s. 11(e) of the *Canadian Charter of Rights and Freedoms* and part of Article 9 of the *International Covenant on Civil and Political Rights*.

Canada has experienced sharp growth in pre-trial detention over the last several decades. Today, the vast majority of people in provincial and territorial prisons have not been found guilty of the offence(s) they are charged with. The sharp rise in pre-trial detention is reflected in the makeup of provincial and territorial prisons. In 1984, the percentage of provincial and territorial prisoners in pre-trial detention was 20%. As of 2024, that number is 76%.

Pre-Trial Detention as a Percentage of Provincial/Territorial Prisons (1983-2024)<sup>4</sup>

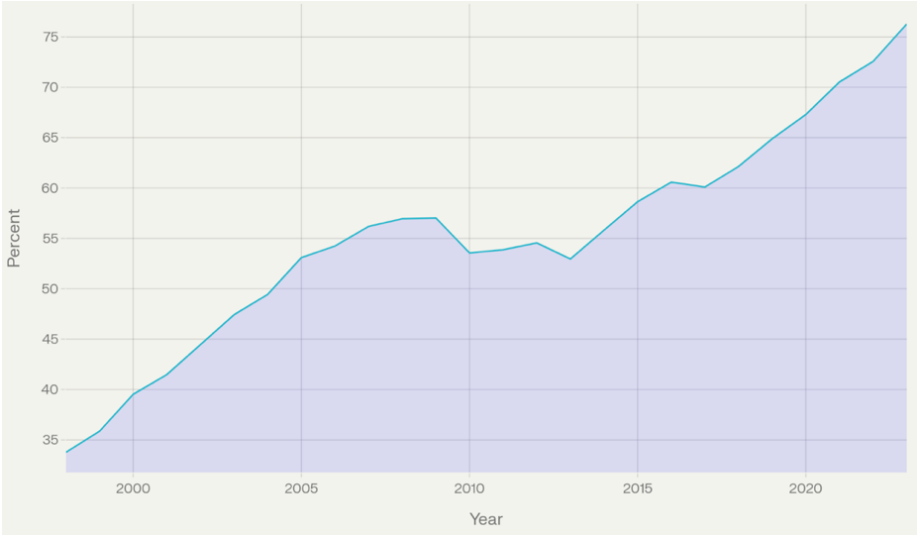


Bill C-75, which some assert created 'lenient' bail practices, has coincided with the continued increase of pre-trial detention in provincial and territorial prisons.

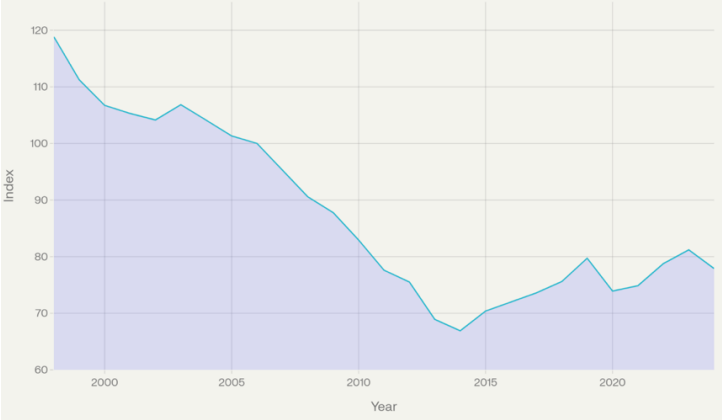
# Pre-trial detention is not lenient or a proven significant contributing factor to the overall crime rate.

The crime rate cannot be distilled to the simple narrative that lenient bail has led to an overall increase of violent or non-violent crime.<sup>1</sup> The percentage of people in pre-trial detention has continually risen in Canada since 1998, while both the overall crime severity index and violent crime severity index have fluctuated upward and downward over that period.

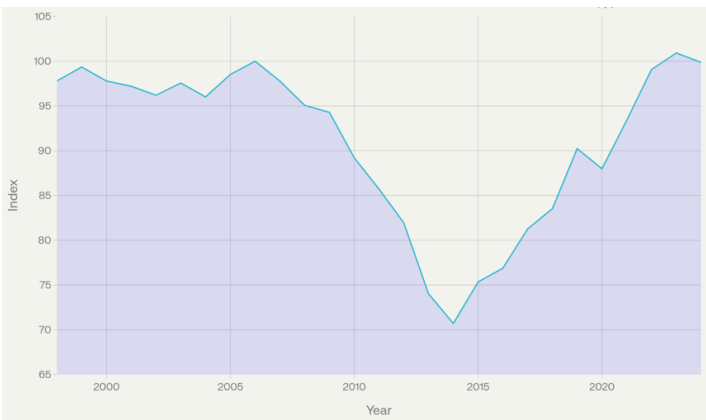
Pre-Trial Detention as a Percentage of Provincial/Territorial Prisons (1998-2024)<sup>5</sup>



Overall Crime Index (1998-2024)<sup>6</sup>



Violent Crime Index (1998-2024)<sup>7</sup>



In a similar fashion, the offences targeted with new reverse onus provisions in Bill C-14 show significant variation. For example, sustained declines over the long-term are

<sup>1</sup> N.B. The offence data which follows is police-reported data. It does not include information on what offences resulted in a conviction or information on whether a person had a prior conviction for the same offence or was on pre-trial release at the time of the alleged offence. That information is not collected by any level of government in a systematized fashion.

observable for offences which are not clearly correlated with specific bail-related legislative or policy changes.

- **Break and enter offences have declined 75% in Canada since 1998.** In 2024, the decline was 11%.
- **Motor vehicle theft offences have declined 57% in Canada since 1998.** In 2024, the decline was 17%.<sup>8</sup>

Conversely, extortion offences are on a sustained rise, save for a decline in 2024.<sup>9</sup> Widely reported cases of people allegedly re-offending on bail cause legitimate concern, warrant reflection, and justify evidence-based policy interventions. However, the sweeping generalizations made by some about the leniency of the bail system being a significantly contributing factor to overall crime rates or rates for specific offences is not borne out by the available evidence.

## There is insufficient data to measure re-offending or evaluate the impact of bail reform.

The last three Canadian Ministers of Justice have readily admitted there is inadequate data to assess the impact that legislative changes restricting bail, such as new reverse onus provisions, will have.

- Former Minister Lametti noted that it is "a fair point" that his government was pursuing policy without underlying data and "there are data gaps" that the provinces have committed to filling."<sup>10</sup>
- Former Minister Virani, testifying before the Senate Committee on Legal and Constitutional Affairs in 2023, conceded the "data is not sufficient at this point" and that "my provincial and territorial counterparts committed to better data collection on bail so that we will be able to see what kind of impact this legislation has."<sup>11</sup>
- Minister Fraser recently said, "It's not as though there is an effective national dataset that will demonstrate conclusively that certain changes will or will not have a desired impact."<sup>12</sup>

Despite these statements, the federal government has announced no new strategy, initiative, or proposal to improve data collection on the bail system. This is not a new phenomenon. Over 50 years ago in 1976, when the first reverse onus bail provision was introduced, it was observed:

Both in the House of Commons and during the proceedings of the Standing Committee on Justice and Legal Affairs, there were calls for an empirical foundation to justify the proposed changes. As the Department of Justice had foregone an earlier opportunity to have the functioning of the *Bail Reform Act* evaluated by researchers at the Centre of

Criminology, University of Toronto, the government was forced to rely upon anecdotes and speculation.<sup>13</sup>

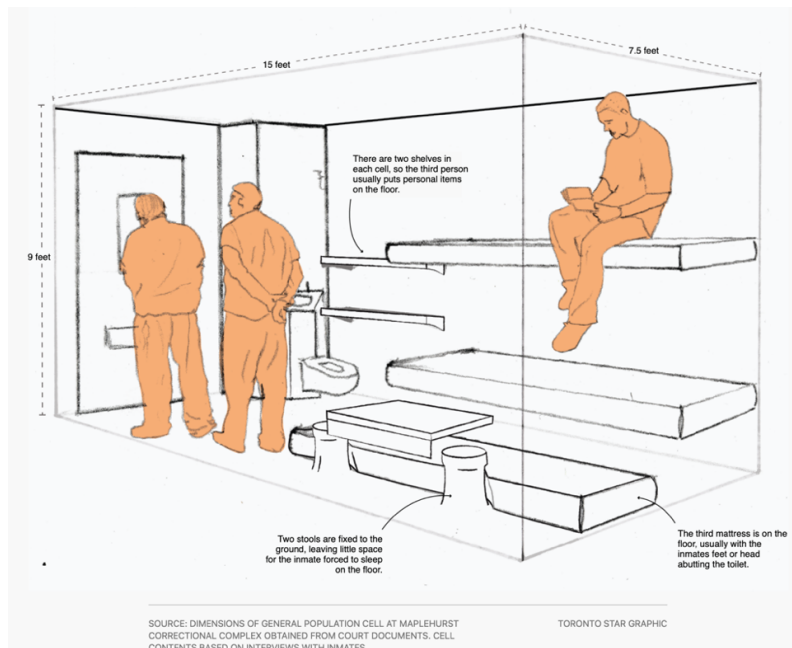
With Bill C-14, Parliament is asked yet again to enact specific restrictions on access to bail without adequate data to assess their impact.

## Pre-trial detention conditions are horrific in many Canadian jurisdictions.

“It must be said that the conditions faced by such individuals are often dire. Overcrowding and lockdowns are frequent features of this environment, as is limited access to recreation, health care and basic programming...[Pre-trial detention] comes at a significant cost in terms of their loss of liberty, the impact on their mental and physical well-being and on their families, and the loss of their livelihoods.”<sup>14</sup>

- The Supreme Court of Canada in *R. v. Myers* (2019)

In 1965, Professor Martin Friedland C.C. published *Detention Before Trial*. The book laid bare a dysfunctional bail system, galvanized the press and public opinion, and led to the enactment of the *Bail Reform Act* in 1972. Among Professor Friedland’s observations were that “the conditions in institutions for persons held in custody pending trial were deplorable.”<sup>15</sup> Dire conditions continue to persist in provinces and territories across the country. In Ontario, a record 82% of people in provincial prisons are in pre-trial detention.<sup>16</sup> The strain on the system means that triple bunking and lockdowns – where prisoners may be restricted to their cell for 22 hours or more – are common.



The overall conditions in some facilities have been described by courts as “shocking”, “unacceptable”, a form of “degradation”, “close to unconscionable”, “regressive”, contrary to “minimum standards established by the United Nations”, “inexcusable”, and “oppressive”.<sup>17</sup> As one recent decision put it:

Despite a multitude of decisions, from every level of Court in Ontario, decrying this abuse of vulnerable inmates, absolutely nothing has been done to alleviate this unjustifiable treatment of people at the mercy of the state. It is mind boggling that a country that prides itself on its purported respect for human rights is turning a blind eye to these documented, undeniable and inexcusable cruelties.<sup>18</sup>

In Manitoba, a recent count found that provincial institutions were running at 134% of rated capacity, raising concerns around overcrowding, understaffing, and volatility among correctional staff. Institutional stakeholders have specifically stated that upcoming federal bail reform will increase pressure on the system.<sup>19</sup>

In Nova Scotia, courts and advocacy groups have recognized the habitual reliance on lockdowns in provincial prisons because of inadequate capacity.<sup>20</sup> In some cases, this has led to prolonged segregation which may effectively amount to solitary confinement.<sup>21</sup>

In Quebec, the provincial Ombudsperson noted in his 2023-2024 Annual Report that, “periods of cell confinement are unduly prolonged, and that detainees do not have access to a change of clothes, mainly due to staff shortages.”<sup>22</sup>

The poor conditions in pre-trial detention, absence of programming, disruptions to connections in the community, and loss of employment are powerfully destabilizing forces on individuals, which undermines public safety upon their release.<sup>23</sup>

## Pre-trial detention raises the risk of wrongful convictions because of false guilty pleas.

While reverse onuses lack empirical justification, they contribute to the staggering growth of Canada’s rate of pre-trial detention. This should come as no surprise: reverse onuses make bail more difficult to obtain. Professor Friedland noted in a 2012 follow up to his ground-breaking work in the 1960s his suspicion “that the reverse onus provisions have significantly contributed to the dramatic increase in the number of persons held in custody in Canada in the last twenty years.”<sup>24</sup>

In addition to poor conditions in pre-trial detention, the Canadian criminal justice system is plagued by delay in matters proceeding to trial. Chronic trial delay necessitated the Supreme Court of Canada’s ground-breaking decision in *R. v. Jordan*, which set strict time limits for matters to proceed to trial. Trial delay, however, has persisted in Canada.<sup>25</sup>

The combination of poor conditions and trial delay incentivizes the innocent to plead guilty.<sup>26</sup> Innocent persons in pre-trial detention face serious risks to their welfare, lost employment, and disrupted connection to their communities. The presumptive ceilings for time to a reasonable trial established in *Jordan*, 18 months for offences in provincial court and 30 months for offences in superior court, provide little solace in these circumstances. And those limits would no longer be maximum ceilings under Bill C-16 recently tabled by the federal government.<sup>27</sup>

A person can also be held in pre-trial custody for longer than they would likely be sentenced if found guilty of the underlying charge. This further pressures an individual to plead guilty in order to be released from jail with a sentence of 'time served'. This is an affront to the presumption of innocence; as held by the Supreme Court in *Antic*, "[a]n accused is presumed innocent and must not find it necessary to plead guilty solely to secure his or her release."<sup>28</sup>

## Amendment 1: Remove reverse onuses that will capture first-time and non-violent alleged offenders.

Bill C-14 proposes to create six offence-specific reverse onus provisions. A particularly concerning aspect of the proposal are new reverse onus provisions that would capture persons with no criminal record and where the allegations do not involve violence. In combination with the provisions of Bill C-14, which weaken core principles of the law of bail like restraint, this will create a situation where a class of individuals will face daunting challenges obtaining release. Yet those individuals are a far cry from the profile of offender which has been relied upon to justify Bill C-14.

### Reverse Onus Provisions

Bail entrenches a core *Charter* right into the criminal justice process: the presumption of innocence. A reverse onus provision weakens that presumption. It is the person charged with an offence, instead of the state, who must prove why they should be released. Parliament has embarked on a trend of increasing the number of reverse onus provisions in the *Code* since the *Bail Reform Act* was first brought into force. However, the government has not provided any evidence that reverse onus provisions have made the bail system more effective or improved public safety.

### Overbreadth

The Government of Canada has identified one of the two main areas of reform in Bill C-14 as "stricter bail laws to address violent and repeat offending, and organized crime".<sup>29</sup> As with several of the new offence-specific reverse onuses, there is no statutory language which limits the scope of their application to a person who has previously breached a pre-trial release order or has a criminal record. However, two new reverse onus provisions are at a particularly high risk of overbreadth.

First, the reverse onus for organized crime-related auto theft. This offence is not restricted to members of a criminal organization. It includes anyone who acts "at the

direction of” or “in association with” a criminal organization.<sup>30</sup> Therefore, young adults or other vulnerable persons who are recruited into criminal activity by a criminal organization and are accused for the first-time of an offence would be captured.

For example, an 18 year-old person with no prior criminal record, who is recruited by an older member of a street gang, and allegedly acted as a lookout during the theft of a motor vehicle. The charge is later withdrawn by the Crown because it is not in the public interest to proceed.

Second, the reverse onus for break and enter of a home. This would capture break and enters motivated by socioeconomic circumstances, such as substance use challenges, that does not result in any physical harm or injury.

For example, a 25 year-old person who experiences substance use challenges who breaks a window and enters an unoccupied home to steal electronics. She later receives a conditional discharge, in part because of mitigating socioeconomic circumstances and successful rehabilitative efforts since being charged.

These are not far-fetched cases. Recruitment of teenagers and young adults by criminal organizations is the subject of ongoing national coverage and discussion. Outcomes like a withdrawal, conditional discharge where there are mitigating circumstances, or an acquittal are regular occurrences in the justice system. These new reverse onuses will mean that people who should have been released pending trial are not. Or, they are only released after spending more time in pre-trial custody because of the higher burden and more complex release plan required of them in a reverse onus situation.

## Amendment 2: Remove the disapplication of the principle of restraint.

Restraint has a constitutional dimension and legislative footing.<sup>31</sup> It requires “primary consideration to the release of the accused at the earliest reasonable opportunity” – which Bill C-14 would eliminate for all reverse onus provisions – and “on the least onerous conditions that are appropriate in the circumstances, including conditions that are reasonably practicable for the accused to comply with, while taking into account the grounds referred to in subsection 498(1.1) or 515(10)”.<sup>32</sup>

The role of pre-trial release in upholding the presumption of innocence informs why restraint matters. At this stage, any restriction on a person’s liberty is based upon what has been alleged, not proven in court. In this context, it is sensible that the starting point is the accused not be imprisoned. Recall here that half of criminal cases do not result in a conviction and many charges do not involve allegations or a history of violence. Even with the codification of restraint under s. 493.1 of the *Code*, the proportion of people in pre-trial detention provincial and territorial prisons has reached record levels in Canada.

Restraint does not prohibit the imposition of appropriate conditions to ensure attendance in court, protect public safety, and maintain confidence in the administration of justice.<sup>33</sup> Restraint guards against release conditions covering an excessively broad range of activities without reasonable justification. For example, a condition prohibiting

an accused from being in a large geographic zone, coupled with a strict curfew, which significantly impedes their ability to maintain gainful employment while on release without a corresponding public safety rationale.

Given that: the principle of restraint is constitutionally entrenched; no evidentiary or jurisprudential analysis has been tabled suggesting restraint contributes to alleged offences on release; and restraint is a critical part of upholding the presumption of innocence, the CCLA recommends its disapplication be removed from Bill C-14.

## Amendment 3: Remove requirements for consecutive sentencing.

Sentencing for a criminal offence in Canada is a case-specific and nuanced process. The fundamental principle of sentencing is proportionality: a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. A judge must also weigh the statutorily established objectives of sentencing, such as denunciation, rehabilitation, and deterrence. A judge must also take into consideration other enumerated principles and aggravating or mitigating factors.<sup>34</sup>

A person may commit a criminal offence for a myriad of reasons and their life circumstances can vary widely. They may be economically desperate. They may be a hardened offender. They may be a young person with no prior encounter with the law. By the time of sentencing, their rehabilitative efforts may also vary. They may have pleaded guilty and accepted responsibility. They may have joined a program to exit criminal activity. It is for this reason the role of a sentencing judge, and their ability to exercise discretion, is critical. The sentencing judge hears from the Crown, the offender, and the victim. They may hold a hearing so aggravating factors can be established. They will receive material providing detailed insight on the person before them.

Bill C-14 would narrow the discretion that a sentencing judge possesses to craft a proportionate sentence. In the normal course, a judge may sentence a person convicted of multiple offences to have their sentences run consecutively or concurrently. A consecutive sentence is where each sentence is stacked atop another. A concurrent sentence is served at the same time. This choice is part of what ensures the totality principle in sentencing is upheld: the cumulative sentence imposed should not exceed the overall culpability of the offender.<sup>35</sup>

Bill C-14 would restrict the discretion of a judge to impose concurrent sentences where violent or organized-crime related motor vehicle theft occurs during a break and enter, a second or subsequent motor vehicle theft, and the combined offence of extortion and arson. The government has not provided a rationale for why discretion must be narrowed in these specific circumstances. Nor has the government tendered an analysis of current sentencing patterns that would justify the proposed change.

The elimination of this discretion places a sentencing judge in a challenging position. Judges are bound by the totality principle, whereby a sentence cannot be unduly long or harsh. However, in order to abide by that principle where they may only impose

consecutive sentences, judges may have to create artificially short consecutive sentences. The tension between the consecutive sentencing requirement and adherence to the totality principle may also result in additional litigation. It is critical that when Parliament legislates on the sentencing options available to judges, it does so from an evidence-based framework. That is not the case here, and so the provision should be removed.

## Amendment 4: Remove the sentencing aggravating factor related to essential infrastructure offences.

Section 10 of Bill C-14 introduces a new aggravating factor for any theft, robbery, or mischief which interferes with access to or functioning of “essential infrastructure” or causes it to be unsafe or unfit for use.<sup>36</sup>

The *Criminal Code* defines essential infrastructure to include: transportation, information and communication technology, water and wastewater management, energy and utilities, health services, food supply and food services, government operations, financial, and any other infrastructure prescribed by regulations.<sup>37</sup> This is not a closed list.

This new aggravating factor risks putting a chill on some forms of non-violent protest which may result in a criminal conviction. The offence of mischief, for example, includes any obstruction, interruption, or interference of the lawful use, enjoyment, or operation of property. Civil disobedience of this variety has been at the heart of many renowned civil rights movements such as the American civil rights movement.

Under this new aggravating factor, where a group of people are convicted of mischief relating to essential infrastructure during a protest activity, they will be subject to a greater penal sanction by virtue of that fact if they are convicted of a prescribed offence. Notably, the government has not identified what aspect of current sentencing law has resulted in unfit sentences for offences affecting essential infrastructure. Under these circumstances, Parliament should reject this provision.

## Amendment 5: Retain judicial oversight over the release of information identifying a young person under the *Youth Criminal Justice Act*.

Bill C-14 would weaken the requirement in the *Youth Criminal Justice Act* that police seek a court order before releasing information that could identify a young person. The new provision is reproduced on the next page.

**70 Section 110 of the Act is amended by adding the following after subsection (4):**

**Publication — urgent situation**

**(4.1)** A police officer may publish information that identifies a young person without a court order referred to in subsection (4) if the police officer has reasonable grounds to believe that

**(a)** the young person has committed or is likely to commit an indictable offence; and

**(b)** the urgency of the situation is such that the immediate publication is necessary for all of the following reasons:

**(i)** the young person is an imminent danger to the public and the publication could aid in the prevention of serious bodily harm or death,

**(ii)** the publication is necessary to assist in apprehending the young person, and

**(iii)** the court order could not, with reasonable diligence, be obtained.

**Publication — more than 24 hours**

**(4.2)** The court order must be obtained if the publication is required for more than 24 hours after it has been made.

**70 L'article 110 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

**Publication en situation d'urgence**

**(4.1)** Un agent de police peut publier des renseignements révélant l'identité d'un adolescent sans obtenir l'ordonnance visée au paragraphe (4), s'il a des motifs raisonnables de croire, à la fois :

**a)** que l'adolescent a commis un acte criminel ou commettra vraisemblablement un acte criminel;

**b)** que l'urgence de la situation est telle que la publication immédiate est nécessaire pour l'ensemble des raisons suivantes :

**(i)** l'adolescent pose un danger imminent pour le public et la publication pourrait contribuer à éviter des lésions corporelles graves ou la mort,

**(ii)** la publication s'impose pour faciliter l'arrestation de l'adolescent,

**(iii)** l'ordonnance ne peut, avec toute la diligence raisonnable, être obtenue.

**Publication au-delà des 24 heures**

**(4.2)** Si la publication des renseignements est requise pour une période de plus de vingt-quatre heures, l'ordonnance du tribunal doit être obtenue.

The *YCJA* contains a mandatory publication ban on the identity of a young person charged with a criminal offence to protect their unique privacy interests and strengthen their rehabilitative prospects by avoiding the stigma or labelling of publicity. Recall that the *YCJA* applies to persons as young as twelve years-old.<sup>38</sup> A police officer must obtain a court order before publishing the identity of a young person. The police may still publish information about an incident or event without a court order, as long as it does not reveal a young person's identity.

The government has not identified specific situations which justify this legislative change. Courts operate with procedures to ensure the speedy consideration of urgent applications. Once the identity of a young person is published, it cannot be undone. The role of judicial oversight of this exceptional power would be significantly narrowed by Bill C-14. Without an evidentiary foundation to justify this change, it is not warranted.

If Parliament retains this new power, the CCLA suggests an amendment to this provision, which would retain some judicial oversight of the process. As drafted, the legislative text would mean that wherever police publish the identity of a young person for less than 24 hours, there is no opportunity for judicial oversight.

The CCLA proposes the following language to remedy these concerns:

**For greater certainty**

(4.3) Reasonable diligence requires a peace officer to make an *ex parte* application to obtain a court order under s. 110(4) of this *Act*. Where a court order cannot be obtained in the time period set out in the application:

(a) a peace officer may exercise the powers under this section;

(b) upon hearing the application, a court may order the removal of the published information;

- (c) for greater certainty, a court may rule on the merits of the application even if a court order is no longer required.

This amendment would ensure that a peace officer must, in fact, be unable to obtain an order from the court in the time required under the circumstances. Where, for example, an application is filed and a court is able to make an order in the time period requested, judicial oversight should not be eliminated. Requiring an application also ensures these powers are exercised by a peace officer who is aware they will be reviewed.

The current legislative text also requires a court order only if the publication is required for more than 24 hours after it has been made. The CCLA proposes that court availability to review the application should drive when judicial oversight occurs. If a court can hear the application before 24 hours has elapsed, it should still be able to play a judicial oversight role. This would also ensure, if the decision by a peace officer was not made on reasonable grounds, it can still be reviewed, and if necessary, reversed. Judicial oversight should also not be extinguished if the police remove the published information. A court should retain discretion to rule on the merits of the application to assess police compliance with the statutory criteria, where appropriate.

## Amendment 6: Remove or reduce new criminal record restrictions on sureties.

Bill C-14 introduces s. 515(2.11) to the *Criminal Code*, which would bar an individual from being named a surety if they were convicted of an indictable offence in the past 10 years. The criminal record of a surety is a common consideration when deciding if they are suited for the role. There are, of course, reasons as to why a criminal record may disqualify someone from being a suitable surety. The presence or absence of a criminal record is regularly noted in pre-trial release decisions determining whether a surety is suitable.

However, this provision ousts the discretion of a justice to assess the nature of a prior conviction and the surrounding circumstances. The provision cannot account for cases where individuals are rehabilitated or were experiencing exceptional events such as time-specific substance use challenges. Nor can it account for a pre-trial release plan where compelling evidence demonstrates that a surety will be a reliable enforcer.

For example, the new provision would bar the mother of an accused person from serving as a surety because she experienced substance use challenges nine years ago which have now resolved and has a conviction for simple possession of a controlled substance. This is not a far-fetched scenario, there are several reported cases of convictions for simple possession where the Crown proceeded by indictment, but the accused was acquitted of non-possession offences.<sup>39</sup>

This provision will have a particularly negative impact on communities which are overrepresented in the criminal justice system, such as Indigenous and Black persons. As a result of overcriminalization and a history of systemic oppression, there are a

disproportionately greater number of people who possess a criminal record in these communities, including for indictable offences.

The CCLA recommends this provision be removed. In the alternative, the scope of the provision should be significantly narrowed and include a safety valve clause. For example:

(2.11) Despite subsection (2.1), a judge, justice or court shall not name a person as surety if the person was convicted of an indictable offence within three years before the day on which the release order is made.

(2.22) Despite subsection (2.11), if no other suitable surety is available and it is in the interests of justice, a judge, justice or court may name a person to whom 2.11 applies as a surety, and will justify that decision with a statement in the record.

The proposed amendment would reduce, though not eliminate, overbreadth concerns and ensure some judicial discretion is maintained.

## Amendment 7: Strengthen the new statutory data reporting requirement.

Bill C-14 introduces a requirement for the Minister to table an annual report on judicial interim release. The CCLA, civil society organizations, and experts have long called for improved data collection on the bail system to ensure evidence-based policy. We commend the inclusion of this requirement. However, it is imperative that data collection be conducted in a careful and accurate fashion. This is particularly important to ensure that the report and information that is generated can be relied upon for its objectivity.

A critical element of this task is ensuring the correct variables and metrics are measured. In making that determination, the input of individual and organizational experts would be valuable. As would a clear role for Statistics Canada, whose mandate the report would clearly engage and whose role is explicitly non-partisan. Further, any such report must include and examine the rate of pre-trial detention, which has been a marked upward trajectory for the past several decades. Therefore, the CCLA recommends the following amendment (proposed changes underlined):

### 4.3 (2)

(a) data on judicial interim release outcomes, including in respect of compliance with release conditions, recidivism by accused at large on release orders, rates of pre-trial detention, and incidents requiring public attention, **and**;

(3) In creating the report, the Minister shall:

(a) consult with individuals and organizations who possess expertise on data collection and the criminal justice system;

(b) coordinate the collection of data in the report with Statistics Canada.

## Amendment 8: Clarify requirement for judicial reasons under s. 515(13.1) of the *Code*, to address overrepresentation of Indigenous, Black, and vulnerable persons.

In 2023, the Senate amended the last round of bail legislation: Bill C-48, *An Act to amend the Criminal Code (bail reform)* to strengthen the consideration of s. 493.2 of the *Criminal Code*. Section 493.2 requires a justice to give particular attention to the circumstance of Black, Indigenous, and other vulnerable groups in pre-trial detention, in part to address the overrepresentation of those groups in the criminal justice system and pre-trial detention.<sup>40</sup>

The amendment was proposed by the Canadian Civil Liberties Association, moved by Senator Bernadette Clement, and supported by organizations who testified before the committee, including the Canadian Association of Black Lawyers, Indigenous Bar Association, Women's Legal Education Action Fund (LEAF), and Association of Legal Aid Plans of Canada. The purpose of the amendment was to ensure judicial consideration of s. 493.2 by mandating consideration, on the record, of whether it was applicable to an accused person, and how it applied if so. The statutory text reads:

### **Aboriginal accused or vulnerable populations**

**515 (13.1)** A justice who makes an order under this section shall include in the record of proceedings a statement that sets out both how they determined whether the accused is an accused referred to in section 493.2 and their determination. If the justice determines that the accused is an accused referred to in section 493.2, they shall also include a statement indicating how they considered their particular circumstances, as required under that section

Senator Clement explained during the study of Standing Committee on Legal and Constitutional Affairs:

By requiring a statement in the record of proceedings as to how a justice has considered section 493.2 of the code, our amendment seeks to address the fact that judges sometimes do not properly take this provision into consideration, which can have a devastating effect on racialized people in the criminal justice system.<sup>41</sup>

In a similar vein, then Minister of Justice Virani in the House of Commons, said: "What the proposed amendment from the Senate would do is ensure that bail courts are fulfilling their obligations to consider these particular circumstances in every applicable case and recording that they have done so."<sup>42</sup>

The CCLA has monitored the bail jurisprudence since the enactment of Bill C-48 to see how s. 515(13.1) has been followed. Based on our review, it is evident that Parliament's intent in enacting this provision has not been realized. Justices are not stating on the record they have considered whether s. 493.2 applies and setting out the reasons for that determination. CCLA located only three cases where s. 515(13.1) was cited, notwithstanding it requires a statement on the record in every pre-trial release decision.

Therefore, we recommend the following amendment to ensure Parliament's intent in enacting s. 515(13.1) is clarified and therefore complied with by the courts:

**s. 515(13.2)** For greater certainty, a justice shall make the determination and statement required under section 515(13.1) in every order made under this section.

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<sup>1</sup> Paula Tran, "We need to get these bills adopted": Justice Minister Sean Fraser on criminal justice reform", *The Ottawa Citizen* (29 December 2025), online: [www.ottawacitizen.com/news/minister-sean-fraser-interview](http://www.ottawacitizen.com/news/minister-sean-fraser-interview).

<sup>2</sup> *R. v. Antic*, 2017 SCC 27, at para. 1.

<sup>3</sup> Statistics Canada, Table 35-10-0027-01 Adult criminal courts, number of cases and charges by type of decision (reference period: 2023–2024; charge and case: total cases), (7 October 2025), online: [www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510002701](http://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510002701).

<sup>4</sup> Chart generated via data from Statistics Canada, Table 35-10-0154-01 Average counts of adults in provincial and territorial correctional programs (reference period: 1983/1984 to 2023/2024), (22 September 2025), online: <https://doi.org/10.25318/3510015401-eng>. N.B. Ratios are rounded to the nearest percentage point.

<sup>5</sup> Chart generated via data from Statistics Canada, Table 35-10-0154-01 Average counts of adults in provincial and territorial correctional programs (reference period: 1998/1999 to 2023/2024), (22 September 2025), online: <https://doi.org/10.25318/3510015401-eng>. N.B. Ratios are rounded to the nearest percentage point.

<sup>6</sup> Charts generated from data via Statistics Canada, Table 35-10-0026-01 Crime severity index and weighted clearance rates, Canada, provinces, territories and Census metropolitan areas (crime severity index and violent crime severity index, reference period: 1998-2024), (22 July 2025), online: <https://doi.org/10.25318/3510002601-eng>.

<sup>7</sup> *Ibid.*

<sup>8</sup> Statistics Canada, "Police-reported crime statistics in Canada, 2024" (22 July 2025), online: <https://www150.statcan.gc.ca/n1/daily-quotidien/250722/dq250722a-eng.htm>.

<sup>9</sup> Chart generated based on data from Statistics Canada, Table 35-10-0177-01 Incident-based crime statistics, by detailed violations, Canada (offence: extortion [1620], reference period 1998 to 2024), (22 July 2025), online: [www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510017701](http://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510017701).

<sup>10</sup> Anna Mehler Paperny, "Canada proposes new bail bill despite lack of supporting data, minister says", *Reuters* (18 May 2023), online: [www.reuters.com/world/americas/canada-proposes-new-bail-bill-despite-lack-supporting-data-minister-says-2023-05-18](http://www.reuters.com/world/americas/canada-proposes-new-bail-bill-despite-lack-supporting-data-minister-says-2023-05-18).

<sup>11</sup> Study of Bill C-48, An Act to amend the Criminal Code (bail reform), Standing Senate Committee on Legal and Constitutional Affairs, 44th Parl, 1st Sess, Meeting No 69 (27 September 2023), online: <https://sencanada.ca/Content/SEN/Committee/441/lcjc/69ev-56339.pdf>.

<sup>12</sup> Paula Tran, "We need to get these bills adopted": Justice Minister Sean Fraser on criminal justice reform", *The Ottawa Citizen* (29 December 2025), online: [www.ottawacitizen.com/news/minister-sean-fraser-interview](http://www.ottawacitizen.com/news/minister-sean-fraser-interview).

<sup>13</sup> Gary T. Trotter, "Pearson and Morales: Distilling the Right to Bail" (1993) 17 *Criminal Reports* (4th), at p. 150.

<sup>14</sup> *R. v. Myers*, 2019 SCC 18, at para. 26.

<sup>15</sup> Martin L. Friedland, "The Bail Reform Act Revisited", 16 *Canadian Criminal Law Review*, at p. 317.

<sup>16</sup> Julie Ireton, Valerie Ouellet, "Ontario jails set to hit overcrowding record as bail reform looms, data shows" *CBC News* (8 December 2025), online: [www.cbc.ca/news/canada/ontario-jails-overcrowding-data-9.7003336](http://www.cbc.ca/news/canada/ontario-jails-overcrowding-data-9.7003336).

<sup>17</sup> *R. v. Crawford*, 2025 ONCJ 385, at para. 67, summarizing observations from a series of decisions.

<sup>18</sup> *R. v. Garlow*, 2025 ONCJ 575, at paras. 70-71.

<sup>19</sup> Caitlyn Gowriluk, "Remand populations pushing Manitoba jails well over capacity" *CBC News* (28 September 2025), online: [www.cbc.ca/news/canada/manitoba/jail-population-remand-over-capacity-1.7645416](http://www.cbc.ca/news/canada/manitoba/jail-population-remand-over-capacity-1.7645416).

<sup>20</sup> Canadian Press, "Prisoner advocacy group calls on Nova Scotia to launch independent review of jails" (17 September 2024), online: [www.ctvnews.ca/atlantic/article/prisoner-advocacy-group-calls-on-nova-scotia-to-launch-independent-review-of-jails/](http://www.ctvnews.ca/atlantic/article/prisoner-advocacy-group-calls-on-nova-scotia-to-launch-independent-review-of-jails/).

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- <sup>21</sup> Laura Beach, Hans Loewing, Meg MacDonald, Megan Ross & Sheila Widerman, *East Coast Prison Justice Society Visiting Committee 2022-2023 Annual Report* (2023), online: [www.eastcoastprisonjustice.ca/uploads/1/3/8/1/138152103/ecpjs\\_vc\\_annual\\_report\\_2022-23\\_final.pdf](http://www.eastcoastprisonjustice.ca/uploads/1/3/8/1/138152103/ecpjs_vc_annual_report_2022-23_final.pdf).
- <sup>22</sup> Protecteur du citoyen, "2023-2024 Annual Report — Detention facilities: fundamental rights compromised" (19 September 2024), online: [protecteurducitoyen.qc.ca/en/news/press-releases/2023-2024-annual-report-detention-fundamental-rights-compromised](http://protecteurducitoyen.qc.ca/en/news/press-releases/2023-2024-annual-report-detention-fundamental-rights-compromised).
- <sup>23</sup> Mark T. Berg & Beth M. Huebner, "Reentry and the Ties that Bind: An Examination of Social Ties, Employment and Recidivism" (2011) 28:2 *Justice Quarterly*, at p. 382; Daniel S. Nagin, Francis T. Cullen & Cheryl Lero Jonson, "Imprisonment and Reoffending" (2009) 38:1 *Crime & Justice*, at p. 115.
- <sup>24</sup> Martin L. Friedland, "The Bail Reform Act Revisited", 16 *Canadian Criminal Law Review*, at p. 320.
- <sup>25</sup> Canadian Press, "How Many Criminal Cases in Each Province or Territory Were Halted by Time Limits?" (8 November 2024), The Canadian Press News, online: [https://www.thecanadianpressnews.ca/national/how-many-criminal-cases-in-each-province-or-territory-were-halted-by-time-limits/article\\_3582aa4e-3c6b-5712-b543-9b038aa6633c.html](https://www.thecanadianpressnews.ca/national/how-many-criminal-cases-in-each-province-or-territory-were-halted-by-time-limits/article_3582aa4e-3c6b-5712-b543-9b038aa6633c.html).
- <sup>26</sup> Gail Kellough & Scot Wortley, "Remand for Plea: Bail Decisions & Plea Bargaining as Commensurate Decisions" (2002) 42:1 *Brit J Criminology*, at p. 186.
- <sup>27</sup> Dale Smith, "How Bill C-16 Could Undermine the Jordan Decision" (2 February 2026), online: *CBA National Magazine* [https://nationalmagazine.ca/en-ca/articles/law/in-depth/2026/how\\_bill\\_c-16\\_could\\_undermine\\_the\\_jordan\\_decision](https://nationalmagazine.ca/en-ca/articles/law/in-depth/2026/how_bill_c-16_could_undermine_the_jordan_decision).
- <sup>28</sup> *R. v. Antic*, 2017 SCC 27, at para. 66.
- <sup>29</sup> Department of Justice Canada, "Bail and Sentencing Reform Act: Proposed legislation to make bail laws stricter and toughen sentencing laws" (23 October 2025), online: [www.justice.gc.ca/eng/csj-sjc/pl/c14/index.html](http://www.justice.gc.ca/eng/csj-sjc/pl/c14/index.html).
- <sup>30</sup> *Criminal Code*, s. 333.1(4).
- <sup>31</sup> The constitutional dimension arises from the right not to be denied reasonable bail without just cause under section 11(e) of the *Charter*, which also reflects the presumption of innocence under s. 7. The legislative footing is found in section 493.1 of the *Criminal Code*.
- <sup>32</sup> *Criminal Code*, s. 493.1.
- <sup>33</sup> *Criminal Code*, s. 515(4)
- <sup>34</sup> *R. v. J.W.*, 2025 SCC 16, at paras. 38-46.
- <sup>35</sup> *R. v. Marshall*, 2021 ONCA 28, at para. 8.
- <sup>36</sup> Bill C-14, cl. 10, at p. 3.
- <sup>37</sup> *Criminal Code*.
- <sup>38</sup> *R. v. D.B.*, 2008 SCC 25, at paras. 85-87.
- <sup>39</sup> *R. v. Smith*, 2025 ONSC 3928; *R. v. Jenkins*, 2014 BCSC 493; *R. v. Richards*, 49 C.C.C. (2d) 517 (1979) (Ont. C.A.).
- <sup>40</sup> See Department of Justice Canada, *Overrepresentation of Black People in the Canadian Criminal Justice System* (2022), online: [www.justice.gc.ca/eng/rp-pr/jr/obpccjs-spnsjpc/index.html](http://www.justice.gc.ca/eng/rp-pr/jr/obpccjs-spnsjpc/index.html); *R. v. Summers*, 2014 SCC 26, at para. 67.
- <sup>41</sup> Standing Senate Committee on Legal and Constitutional Affairs, Evidence, 44th Parl, 1st Sess, Meeting No 73 (18 October 2023) (clause-by-clause consideration of Bill C-48, An Act to amend the Criminal Code (bail reform)) at 73:28 (Sen Bernadette Clement), online: <https://sencanada.ca/Content/SEN/Committee/441/lcjc/73ev-56382.pdf>.
- <sup>42</sup> Hon Arif Virani, House of Commons Debates, 44th Parl, 1st Sess, vol 164, No 259 (30 November 2023) at 19276.