

Remand in Ontario

A Backgrounder

A publication of the John Howard Society of Ontario

September 2005

Over the past number of years, the John Howard Society has become increasingly concerned about the steady and dramatic increase in the number of people held in Ontario provincial prisons on remand. The purpose of this publication is to define the problem by outlining the trends, the reasons to be concerned and the likely contributing factors and to suggest some possible ways to reduce the use of remand in Ontario.

What do we mean by "Remand"?

Those on "remand" are individuals who are being held in custody while awaiting a further court appearance. While a relatively small percentage have been tried and found guilty and are awaiting sentencing, the majority are awaiting trial. Some may be awaiting a decision with respect to bail, others have been denied bail and, unless released through judicial review, will remain in custody until their trial.

Remand is a provincial/territorial responsibility: therefore, all remanded prisoners are held in provincial detention centres or jails. With the closure of many of the smaller, local jails, the place of their detention can be far from their home community or not in a major centre, affecting access to lawyers.

(Note: Other categories of the prison population are: "sentenced" - those tried and sentenced - and "Other" -

temporary detention, immigration hold.)

What are the trends?

Data from Statistics Canada and the Ontario Ministry of Community Safety and Correctional Services show significant growth in the remand population in Ontario from 1991/92 to 2004/05. While the number of remand admissions has increased substantially by 32% during this period, the increase in the average count is more dramatic. The

average number of people on remand on any given day in Ontario has more than doubled from 2,270 to 4,669.

The implications of these trends to the remand population in Ontario provincial prisons are:

- **14,014 more admissions;** and,
- **2,399 more people on any day** in 2004/05 than there were in 1991/92.

Now **60%** of the population in Ontario prisons (up from 31% fourteen years ago) is on remand - most of whom are **untried** and therefore, under our system, presumed innocent.

Why should we care?

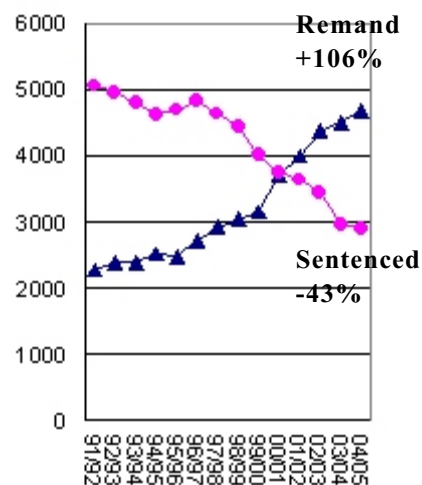
At best, being on remand means being "warehoused" and bored. At worst, it means living in conditions that are dirty, degrading and dangerous.

Being on remand in Ontario exacerbates the "normal toll" of the loss of liberty and prison life on the incarcerated person by virtue of the conditions in which they are held:

- All are held in maximum-security facilities where the restrictions are the most severe, regardless of the nature of the alleged offence or whether the person is a first-time offender or has an extensive criminal background.
- Detention centres are often overcrowded, resulting in three people sharing a cell measuring 4 metres by 2.5 metres with two beds, leaving one

Chart 1

Average Daily Count Remand and Sentenced Ontario 1991/92 to 2004/05



Source: Statistics Canada and Ontario Ministry of Community Safety and Correctional Services

person sleeping on a mattress on the floor near an open toilet.

- Maintaining sanitary conditions is problematic given the overcrowding and the high turnover.

- The person is either locked in the cell for 12 hours a day with the one or often two others with whom he shares the cell or is locked out of the cell to spend that time in a sterile, uncomfortable common room.

- There is little in the way of programs/services as the Ministry of Community Safety and Correctional Services has made a policy decision not to make programs that they deliver to sentenced prisoners available to remand prisoners.

- There are no opportunities for work.

- There are no opportunities for recreational activities, outside of daily periods of “yard time” (and in the superjails, the “yards” are not even outside) with gymnasiums closed or unavailable to remand prisoners.

- All visits are “closed” (behind glass) and visiting areas are uncomfortable and often noisy and dirty.

- The conditions, the uncertainty and the high turnover create a climate of hostility and tension in detention centres - they are often dangerous for both staff and prisoners with a high number of assaults among prisoners and some between prisoners and staff.

It could be argued that such conditions constitute cruel and unusual treatment and, therefore, violate the *Charter of Right and Freedoms*.

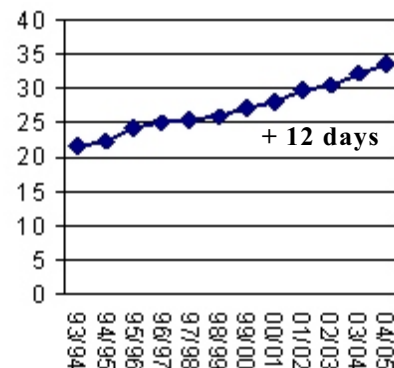
Other reasons for concern include:

- A significant portion of the remand population - conservatively 15% - 20% - are mentally ill. While problematic for all, the conditions in detention centres can exacerbate the problems of the mentally ill.
- Overcrowded facilities and a

constantly changing population with significant numbers of vulnerable people - characteristics typical of detention centres - are breeding grounds for many diseases, such as TB. With overcrowding comes stretched health care resources inadequate to screen, test and treat such diseases appropriately. Not only do we put the individuals who are held or work at these facilities at risk but we can endanger public health when infected prisoners are released back into the community.

Chart 2

Average Days Spent on Remand of Number of Admissions Ontario 1991/92 to 2004/05



Source: Ontario Ministry of Community Safety and Correctional Services

- Every day in custody costs the Ontario taxpayer \$152 per prisoner. Community alternatives are significantly cheaper, a factor important to consider if it relates to a person who can be safely managed in the community.

- Being held in custody even for a very short period of time disrupts one's personal life and can have serious consequences, such as loss of accommodation and employment, and being unable to meet child care responsibilities.

Further, there are important justice considerations, such as:

- Evidence suggests that pre-trial detention is used in a discriminatory manner. The poor, homeless and otherwise disadvantaged are more likely to be denied bail and held in detention because the criteria for assessing the risk of flight (employment status and residential stability) and the imposition of conditions for bail, particularly surety, disproportionately disadvantages certain groups. To deny reasonable bail without just cause violates the *Charter of Rights and Freedoms*.

- Public perception of sentencing, already misunderstood and misinterpreted, may be affected by some sentencing practices that have occurred as a result of the conditions of and/or trends in pre-trial detention. Some judges are giving sentences which have included exceptional credit in sentencing (beyond the normal two days for every one day spent in pre-trial detention) because of the overcrowded and inhumane conditions. As well, there is evidence that sentences of “time served” are increasing due to more time being spent in pre-trial detention.

- Pre-trial detention can have an effect on the outcome of the case and the sentence. Imprisoned accused who plead not guilty are less likely to be acquitted at trial than those who are not detained before trial and, whatever the plea, much more likely to receive a prison sentence if convicted. Further, those detained are more likely to plead guilty and less likely to have their charges withdrawn than those who are not detained. Anecdotal information suggests that some, even those who maintain that they are not guilty, plead guilty to escape the harsh conditions in jail either in anticipation that they will not receive a sentence of imprisonment or will be transferred to a prison for sentenced offenders.

- The treatment of remand prisoners in Ontario violates our international human rights obligations with respect to the treatment of accused persons. The United Nations *International Covenant on Social and Political Rights* (to which Canada is a signatory) and the *Standard Minimum Rules for the Treatment of Prisoners* (which Canada has endorsed) specify that accused persons in detention are supposed to be treated appropriate to their status as untried and presumed innocent. Appropriate treatment is defined to indicate that untried persons are afforded better living conditions and freer access to the community than sentenced prisoners.

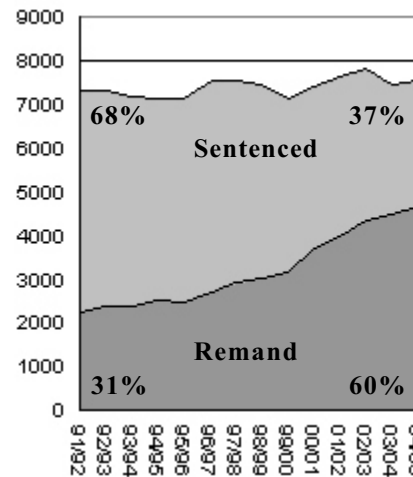
What factors may have contributed to the increase in remand?

What is known about bail and remand in Ontario comes from government studies and reports, specifically the Commission on Systemic Racism in the Ontario Criminal Justice System (1995) and the Criminal Justice Review Committee (1999), analysis of national data and review of the literature by Statistics Canada (1999 and 2003) and research on remand and bail decisions in Toronto in 1993/94 by Kellough and Wortley (2001). They have identified the following as factors which may have contributed to the increase in remand.

- Police practices specifically related to:
 - ▶ their use of discretion to release (via either the charging police officer issuing a notice to appear or the officer-in-charge releasing with a promise to appear), and,
 - ▶ recommendations they make in “show cause” reports submitted to the Crown (either to oppose bail or to impose problematic conditions based on questionable/unverified or irrelevant information).

- Delays in bail hearings due to stretched court and legal resources and lack of preparation for bail hearings.

Chart 3
Distribution of Remand and Sentenced in the Total Population Ontario 1991/92 to 2004/05



Source: Statistics Canada and Ontario Ministry of Community Safety and Correctional Services

- Crime trends, specifically the proportion of violent offences and persons charged with violent offences. (We would suggest that the influence of these factors likely is moderate given that, since 1991, there has been a substantial and steady decrease in the crime rate in all categories of offences including violent crime.)
- An increase in the number of days required to process court cases because of stretched court and legal resources and the number of complex cases.
- The impact of breaches of conditional sentences, a measure enacted in 1996 and being increasingly used by the courts. The response to a breach is more immediate than other community-based sanctions in that they may be

immediately remanded pending determination as to whether to take the matter to court or to release back into the community.

- More mentally ill involved in the criminal justice system (more likely to be arrested and remanded to custody).
- The impact of the 1997 amendment to the *Criminal Code* provisions which added a third ground to deny bail (any other just cause or is necessary to maintain confidence in the administration of justice) to the existing two grounds (to ensure attendance at court and for the protection of the public).
- The impact of public reaction to sensational cases and the findings of inquiries, investigations or inquests on decision-makers in the justice system who have considerable discretion (perhaps more risk-averse, more cautious in their interpretation of the law as a result).

What can be done to reduce the use of remand in Ontario?

Those government studies and reports referred to previously suggest a number of recommendations relating to bail and remand, specifically the following:

- Action supportive of greater use of police diversion, such as;
 - ▶ the development of guidelines for the use of police discretion not to charge,
 - ▶ training which focuses on correctional research and an understanding of community resources for referrals where appropriate, and,
 - ▶ appropriate job evaluation schemes.
- Actions supportive of better use of police powers to release those charged prior to trial, including;
 - ▶ critical review of the criteria used by the police to determine release

under their authority and current practices, and,

- ▶ the development of guidelines to encourage release by the police consistent with the law.
- Better ways to ensure that the information the Crown receives relating to decisions as to whether to oppose bail is relevant and factual, either through more control over “show cause” reports prepared by the police or the establishment of an independent agency for assessment and verification purposes.
- A better understanding of the factors associated with the risks relevant to bail and the development of assessment tools to be used by decision-makers that is not only evidence-based but also practical in its application.
- Additional resources to ensure that those remanded pending a decision with respect to bail receive speedy bail hearings and decisions without unnecessary delays which would include:
 - ▶ additional bail courts in busy jurisdictions,
 - ▶ more “after-hours” bail courts,
 - ▶ more Crown counsel and duty counsel assigned to bail courts in busy locations,
 - ▶ establishment of “bail interview officers” to assist duty counsel,
 - ▶ reducing the number of appearances through examining

administrative efficiencies (ie transportation) and opportunities to consult with counsel prior to arriving at the courthouse.

- Collecting information on persons being held in pre-trial custody, particularly why they are being held, and using this information to guide priorities for government action and to better inform the judiciary of practices within each jurisdiction and across the province.
- Limiting the use of financial conditions and other surety requirements that are problematic for the poor and those lacking community supports.
- Analysis of conduct restrictions imposed and establishment of mechanisms to ensure that they are necessary to achieve the objectives of attendance at court and the prevention of offences, applied fairly, relevant to the alleged offence and take into account the consequences of a breach.
- Developing alternatives to pre-trial detention, such as pilots for expanded bail verification programs, bail hostels and alternative-to incarceration centres and evaluating the pilots to ensure that these measures have no “net-widening” effects.
- Appropriate actions targeted at keeping the mentally ill out of prison, including:

- ▶ the necessary investments to improve the adequacy and accessibility of mental health resources in the community and other support services, such as housing and welfare assistance (*Recently the Ontario government has made a significant step in this direction - an additional \$27.5 million annually for programs and services has been allocated for the mentally ill at risk of involvement with the criminal justice system*),
 - ▶ an assessment process in place to identify mentally disordered inmates upon admission and, where a placement in a psychiatric facility is warranted, to effect the transfer as quickly as possible,
 - ▶ use of specialized courts for mentally disordered accused, and,
 - ▶ case management in prisons that not only involve community mental health professionals but also integrate them in the process of discharge planning, including for those on remand.

Evidence should drive the agenda for change; however, research in this area is woefully lacking and what is available is not current or province-specific. We do need further research on bail and remand in order to establish and prioritize effective solutions.

Effective, just and humane responses to crime and its causes

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