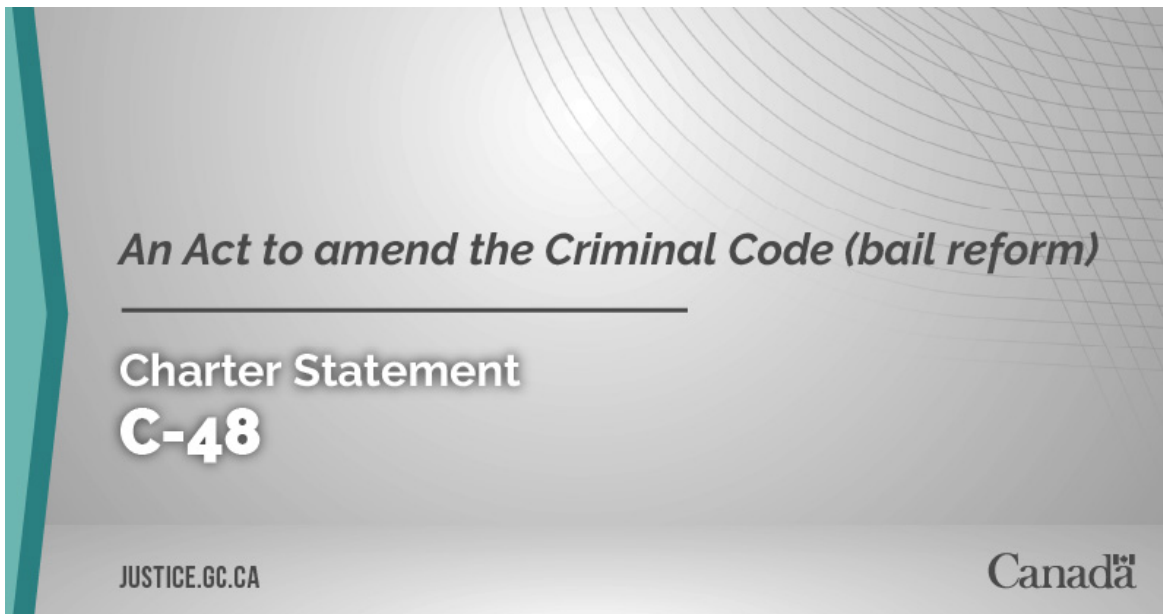




## Bill C-48: An Act to amend the Criminal Code (bail reform)



**Tabled in the House of Commons, June 02, 2023**

### Explanatory Note

Section 4.2 of the *Department of Justice Act* requires the Minister of Justice to prepare a Charter Statement for every government bill to help inform public and Parliamentary debate on government bills. One of the Minister of Justice's most important responsibilities is to examine legislation for inconsistency with the *Canadian Charter of Rights and Freedoms* ["the Charter"]. By tabling a Charter Statement, the Minister is sharing some of the key considerations that informed the review of a bill for inconsistency with the Charter. A Statement identifies Charter rights and freedoms that may potentially be engaged by a bill and provides a brief explanation of the nature of any engagement, in light of the measures being proposed.

A Charter Statement also identifies potential justifications for any limits a bill may impose on Charter rights and freedoms. Section 1 of the Charter provides that rights and freedoms may be subject to reasonable limits if those limits are prescribed by law and demonstrably justified in a free and democratic society. This means that Parliament may enact laws that limit Charter rights and freedoms. The Charter will be violated only where a limit is not demonstrably justifiable in a free and democratic society.

A Charter Statement is intended to provide legal information to the public and Parliament on a bill's potential effects on rights and freedoms that are neither trivial nor too speculative. It is not intended to be a comprehensive overview of all conceivable Charter considerations. Additional considerations

relevant to the constitutionality of a bill may also arise in the course of Parliamentary study and amendment of a bill. A Statement is not a legal opinion on the constitutionality of a bill.

## Charter Considerations

The Minister of Justice has examined Bill C-48, *An Act to amend the Criminal Code (bail reform)*, for any inconsistency with the Charter pursuant to his obligation under section 4.1 of the *Department of Justice Act*. This review involved consideration of the objectives and features of the Bill.

What follows is a non-exhaustive discussion of the ways in which Bill C-48 potentially engages the rights and freedoms guaranteed by the Charter. It is presented to assist in informing the public and Parliamentary debate on the Bill. It does not include an exhaustive description of the entire bill, but rather focuses on those elements relevant for the purposes of a Charter Statement.

Bill C-48 contains a preamble recognizing key principles governing the bail system in Canada, including Charter rights in relation to bail. Bill C-48 would make several amendments to the Criminal Code. The amendments strengthen Canada's bail system, particularly in relation to repeat violent offending and offences involving firearms or other weapons, such as knives or bear spray. They seek to better ensure the protection of public safety and to maintain public confidence in the administration of justice.

The Bill would establish several new situations where a reverse onus would apply in a bail hearing. The usual rule in bail proceedings is that the burden is on the prosecution to demonstrate to the court that there is just cause to detain the accused person pending trial. The three statutory grounds for pre-trial detention are: to ensure the appearance of the accused in court when required, to protect the safety of the public, and to maintain confidence in the administration of justice. In a reverse onus proceeding, the presumption is that the accused person will be detained while awaiting their trial, unless they can demonstrate to the court that they should be released by showing that there is no just cause for their detention.

The Criminal Code currently provides for a reverse onus where a person is charged with certain specific firearms-related offences. Bill C-48 would add four other firearms-related offences to this list: specifically, those under Criminal Code sections 95 (possession of prohibited or restricted firearm with ammunition), 98 (breaking and entering to steal firearm), 98.1 (robbery to steal firearm), and 102 (making an automatic firearm). The Bill would also enact a new reverse onus that would apply to serious repeat violent offending involving firearms and other weapons. This new reverse onus would apply where a person is charged with a serious offence (i.e. one with a maximum penalty of at least 10 years imprisonment) involving violence (used, threatened or attempted) and the use of a weapon, where the person has been convicted within the last 5 years of an offence meeting the same criteria. Finally, the Bill would expand the existing reverse onus for repeat intimate partner violence, which currently applies where the accused was previously convicted of such an offence. Bill C-48 would broaden the reverse onus so it would also apply to situations where the accused was previously discharged for an intimate partner violence offence. Persons who are discharged have been found guilty or pled guilty to the offence charged.

Section 11(e) of the Charter guarantees that any person charged with an offence has the right not to be denied reasonable bail without just cause. This right entrenches the effect of the presumption of innocence at the pre-trial stage of criminal proceedings and safeguards the liberty of accused persons. There is “just cause” to deny bail if two requirements are met: first, the denial of bail must occur only in a narrow set of circumstances; and second, the denial must be necessary to promote the proper functioning of the bail system and not be undertaken for any purpose extraneous to the bail system.

Provisions establishing a reverse onus for bail may engage section 11(e) because they have the potential to result in a denial of bail for an accused person. The following considerations support the consistency of Bill C-48’s reverse onuses with the Charter.

First, the reverse onuses would result in a targeted restriction on the entitlement to bail under specific and narrow circumstances, rather than an absolute denial of release. They would result in a denial of bail for those accused persons who fail to demonstrate, on a balance of probabilities, that the three statutory grounds for pre-trial detention do not apply in their case.

Second, the reverse onuses for firearms-related offences are tailored to persons accused of committing offences that seriously undermine the effectiveness of the laws governing firearms. The federal framework governing firearms is designed to ensure public safety and relies on a combination of regulatory requirements and criminal offences, including offences to address gun crime and gang violence. Bill C-48 would add to the existing list of firearms offences that are subject to a reverse onus on bail, targeting offences that involve the intentional violation of the laws regarding firearms, and can lead to risks of dangerous misuse of firearms and/or diversion of firearms into the black market. Persons accused of these offences are more likely to pose a risk to public safety if released on bail, and their release may reasonably be expected to undermine confidence in the administration of justice.

Third, the two reverse onuses in relation to violent repeat offending are tailored to situations where the accused person is more likely to pose a serious risk to public safety if released on bail. As a group, persons meeting the criteria set out in the Bill have been found to pose an elevated risk of violent re-offending if they are released pending trial. For example, accused persons who have previously committed intimate partner violence offences have been found, as a group, to pose an elevated risk of violence, escalating the risk of reoffending towards their intimate partners. For these categories of accused persons, reversing the usual presumption in favour of release advances the purposes and objectives of the bail system, including the protection of public safety and maintaining confidence in the administration of justice.

---

**Date modified:**

2023-06-02