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Bill C-48: Proposed changes to strengthen Canada's bail system

On May 16, 2023, the Government of Canada introduced Bill C-48 that proposes changes to the *Criminal Code's* bail provisions to promote community safety and reinforce public confidence in the administration of justice.

Bill C-48 would make targeted changes to the *Criminal Code's* bail regime to address serious repeat violent offending with firearms, knives, bear spray and other weapons. Bill C-48 also proposes changes at the bail stage to address the enhanced risks posed by intimate partner violence (IPV). The proposed changes seek to improve the safety of people and communities across Canada.

The proposed changes were developed in close collaboration with all provinces and territories, including at a special meeting of [Federal-Provincial-Territorial Meeting of Ministers responsible for Justice and Public Safety](#) on March 10, 2023. The proposed changes are also informed by engagement with other partners and stakeholders, including law enforcement, community organizations and Indigenous partners. These changes respond directly to calls for reform from provincial Premiers and the policing community.

The reforms proposed in Bill C-48 are only one part of a broader solution to ensure the objectives of the bail system are being met. Canada's bail system is the joint responsibility of federal, provincial and territorial governments. The federal government establishes the criminal law, within the bounds set by the *Charter of Rights and Freedoms*. Provincial and territorial governments are responsible for the administration of justice, including most bail hearings and enforcement of bail conditions, as well as for most facilities where people awaiting trial are held.

Law reform is an important part of maintaining and enhancing public safety, but programs, policies and investments are also critical in fostering safer communities. This includes investments to enhance bail enforcement, as well as improving access to housing, mental health and addictions supports. All levels of government agree that improved data collection is necessary to fully understanding how the criminal justice system, particularly bail, operates.

Additional Resources

[Strengthening Canada's bail system to keep communities safe](#) - News Release (May 16, 2023)

[Progress made to strengthen Canada's bail system during Justice and Public Safety Ministers meeting](#) - Communiqué (March 10, 2023)

Infographics

STRENGTHENING CANADA'S BAIL SYSTEM TO IMPROVE PUBLIC SAFETY AND REINFORCE PUBLIC CONFIDENCE IN THE JUSTICE SYSTEM

Proposed legislative amendments to the Criminal Code to address repeat violent offending, crime involving firearms, dangerous weapons, intimate partner violence, and community safety.

On May 16, 2023, the Government of Canada introduced proposed reforms to the *Criminal Code* to strengthen Canada's bail system. These targeted reforms are one important part of the solution to improve the effectiveness of bail laws and to promote public confidence in our criminal justice system.

PROPOSED CHANGES

The Bill would:

- Create a new reverse onus targeting serious repeat violent offending involving weapons. This would apply to accused persons charged with a serious offence (an offence with a maximum penalty of at least 10 years imprisonment) involving violence (used, threatened or attempted), the use of a weapon, and where the accused was previously convicted in the previous five years of an offence with the same criteria.
- Expand the list of firearms offences that trigger a reverse onus, specifically unlawful possession of a loaded (or easily loaded) prohibited or restricted firearm, breaking and entering to steal a firearm, robbery to steal a firearm, and making an automatic firearm.
- Broaden the existing reverse onus regime addressing intimate partner violence (IPV). The current reverse onus, which applies to anyone charged with an offence involving IPV and who has a past conviction for such an offence, would be expanded to apply to accused persons who were previously discharged for an IPV related offence.

A SHARED RESPONSIBILITY

Canada's criminal justice system is a shared responsibility of the provinces, territories and the federal government. The federal government is responsible for enacting criminal law. Provincial and territorial governments are responsible for the administration (management) of justice, including investigating and prosecuting most *Criminal Code* offences, conducting bail hearings and enforcing bail conditions within their respective jurisdiction.

Including if there is a breach of bail conditions, as well as for most custodial facilities where people are held while awaiting trial.

Federal, provincial and territorial governments continue to work together to further improve the criminal justice system and make it more efficient.

PRINCIPLES THAT GOVERN THE LAW OF BAIL IN CANADA

The Bill includes a preamble that outlines core principles that underpin the law of bail in Canada, and aims to support the consistent implementation of these reforms across the country.

These proposed reforms follow extensive engagement and collaboration with the provinces and territories.

- Canada's criminal justice system contributes to a safe, peaceful and prosperous society and the bail system plays a critical role in achieving this objective.
- Canada's criminal justice system, including the bail system, is a shared responsibility between the federal, provincial and territorial governments.
- Repeated acts of violence, serious offences committed with firearms and other weapons and random acts of violence all have a harmful impact on victims and communities and undermining public safety and confidence in the criminal justice system.
- A proper functioning bail system is necessary to maintain confidence in the criminal justice system, including in the administration of justice.
- A proper functioning bail system respects and upholds the rights guaranteed by the *Canadian Charter of Rights and Freedoms*, including the presumption of innocence, the right to liberty and the right not to be denied reasonable bail without just cause.
- Detention is justified when it is necessary according to the grounds for detention set out in the *Criminal Code*, including for the protection of public safety and to maintain confidence in the administration of justice.
- Bail decisions are informed by other important considerations, such as the need to consider the particular circumstances of accused persons, including those from populations that face disadvantages at the bail stage and are overrepresented in the criminal justice system.
- Confidence in the administration of justice is eroded in cases when accused persons are released on bail while their detention is justified, including because of risks to public safety, or when accused persons are unnecessarily detained.

For more information visit [JUSTICE.GC.CA](https://www.justice.gc.ca)

DEFINITIONS

Bail: Bail is when a person charged with a criminal offence is released from custody while awaiting their trial. An individual can be released with or without conditions and if conditions are imposed, they must be followed. Reasonable bail is a constitutional right, protected by the *Canadian Charter of Rights and Freedoms*, but not everyone who is charged with a crime receives bail.

Reverse onus: An onus is a legal term that shows who has the responsibility to prove or disprove something, such as an element of an offence or a defence. The general rule in bail is that when a Crown prosecutor seeks the detention of an accused person, they have the onus to show the court that there are sufficient reasons to detain the accused.

When a reverse onus applies in bail proceedings, the burden of proof shifts from the prosecution to the accused. In a reverse onus, the presumption is that the accused will be detained while awaiting their trial unless they can demonstrate to the court that they should be released.

Intimate partner violence: Intimate partner violence, also known as spousal or domestic violence, is a prevalent form of gender-based violence. It refers to multiple forms of harm caused by a current or former intimate partner or spouse.

Department of Justice Canada / Ministère de la Justice Canada

Canada

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- [Bill C-48: Strengthening Canada's bail system to improve public safety – PDF Version](#)

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Proposed reforms to the bail system

The Bill proposes a number of changes to help address the challenges posed at the bail stage by repeat violent offending with weapons, including for offences involving firearms, knives, and bear spray.

These proposed changes would amend the bail provisions of the *Criminal Code* to:

- create a new reverse onus to target serious repeat violent offending involving weapons
- expand the list of firearms offences that trigger a reverse onus
- broaden the reverse onus targeting repeat offenders of intimate partner violence (IPV)
- clarify the meaning of the terms “prohibition order” in an existing reverse onus for offences involving weapons
- require courts to consider an accused person’s history of convictions for violence, and community safety and security concerns, when making a bail decision

Under the *Charter*, a person charged with an offence has the right not to be denied reasonable bail without just cause.

i **Bail** is when a person charged with a criminal offence is released from custody while awaiting their trial. Accused persons are presumed innocent until they have been found guilty of the offence charged. This is why the burden of proof (“onus”) is typically on the prosecution to show why an accused person should be denied bail and held in custody while awaiting trial.

A **reverse onus** is when the burden of proof shifts from the prosecution to the accused. In a reverse onus situation, the presumption is that the accused will be detained while awaiting their trial unless they can demonstrate to the court that they should be released.

Just cause requires consideration of whether detention is required to make sure the accused comes to court, or to keep the public, including victims, safe or to maintain the public’s confidence in the administration of justice.

Creating a new reverse onus to target serious repeat violent offending involving weapons

This Bill would add a reverse onus for an accused person charged with a serious offence (an offence with a maximum penalty of at least 10 years imprisonment) involving violence (used, threatened or attempted) and the use of a weapon, where that accused was previously convicted (within the previous five years) of an offence with the same criteria.

Expanding the list of firearms offences that trigger a reverse onus

This Bill would add a number of firearms offences to an existing reverse onus for bail, specifically:

- Unlawful possession of a loaded (or easily loaded) prohibited or restricted firearm (section 95)
- breaking and entering to steal a firearm (section 98)
- robbery to steal a firearm (section 98.1); and,
- making an automatic firearm (section 102)

Broadening the reverse onus targeting repeat offenders of intimate partner violence

This Bill would expand the current reverse onus provision, added by former Bill C-75, which applies to anyone charged with an offence involving IPV under the *Criminal Code*, and who has a past conviction for such an offence, to apply to accused persons who were previously convicted as well as those who previously received a discharge for an IPV related offence for which they had been found guilty.

i A **discharge** is a sentence that can be ordered under section 730 of the *Criminal Code* after an accused person has either pled guilty or been found guilty of a crime after a trial. Someone who is discharged of a crime is not considered to have been convicted. An **absolute discharge** will no longer appear on a criminal record after one year. A **conditional discharge** is conditional on the offender successfully abiding by all the terms on a probation order and not accruing further findings of guilt. If the offender complies with all of these requirements, their discharge will no longer appear on their criminal record after three years.

Clarifying the meaning of the terms “prohibition order” in an existing reverse onus for offences involving weapons

The *Criminal Code* already imposes a reverse onus at bail for those who have allegedly committed an offence involving a firearm or other specified weapons while subject to a weapons prohibition order.

The Bill would clarify that the meaning of prohibition order includes a court’s release order for bail. This means that a reverse onus at bail would apply when a person is charged with having committed an offence involving a firearms or certain other weapons, such as a prohibited weapon or prohibited device, while they were bound by a condition in a release order to not have a firearm or certain weapons in their possession.

Requirement for courts to consider, for any bail decision, an accused person’s history of convictions for violence, and community safety and security concerns, when making a bail decision

This Bill would explicitly require courts to consider additional factors in assessing the risk posed by an accused person when making any bail decision.

The *Criminal Code* currently requires that before making a bail order, courts must consider any relevant factor, including the criminal record of the accused person or if the charges involve intimate partner violence (subsection 515(3)).

This provision of the *Criminal Code* would be amended to further require courts to consider if the accused’s criminal record includes any past convictions for violent offending. The Bill would also amend subsection 515(13) to require a court to include, on the record, a statement that they have considered the safety and security of the community in relation to the alleged offence when making a bail order, thereby increasing accountability to the public. This measure would respond to the unique needs of


remote and northern communities who have expressed concerns about accused persons being released into isolated communities that are not large enough to keep accused persons away from their alleged victims.

Requirement to begin a parliamentary review of Bill C-48 after 5 years to assess the effectiveness of the measures

This Bill would include a clause requiring a parliamentary review of Bill C-48 to start five years after the Bill receives royal assent. This would help to assess the effectiveness of the legislative measures.

Preamble affirming core principles of the bail system

The Bill includes a preamble that outlines certain core principles that underpin the law of bail in Canada. The preamble reinforces, amongst other things, the shared responsibility of federal, provincial and territorial governments for the criminal justice system and that a denial of bail is justified where it is necessary for the protection of public safety, to maintain public confidence in the administration of justice or to ensure an accused person attends court.

 A **preamble** helps to provide information on the general objective and purpose of a law and can be used by courts to inform the interpretation of the provisions enacted.

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