

ACCESS TO JUSTICE
& LAW REFORM
INSTITUTE
OF
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Research Paper

Community Agency Bail Programs

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Bail verification and supervision programs (BVSP)

A Department of Justice Canada report describes these programs as:

community-based services that assist individuals who, because of their financial circumstances or lack of social ties, are at risk of being denied bail on the primary ground - risk of non-appearance. In exchange for the accused’s pretrial release, bail program staff undertakes to supervise the accused and to promote his or her compliance with bail conditions and attendance at subsequent court dates.¹

BVSPs provides supervision and support to low-risk accused who do not have the finances or social ties to be released safely into the community on bail pending trial. The programs ensure

¹ Cited in Megan Mitchell, “Risk Aversion in the Bail Setting: An Examination of the Predictive Validity of an Ontario Bail Supervision Program’s Risk Assessment Tool” (2015) 1 at 27, available at: https://ruor.uottawa.ca/bitstream/10393/32572/1/Mitchell_Megan_2015_thesis.pdf.

they are supervised while in the community, attend court dates, meet their bail conditions and helps them navigate the criminal court process. Some BVSP are also able to offer specialized supports and services for people suffering from mental illness and struggling with poverty, homelessness and addictions.²

The oldest bail verification and supervision program in Canada is the Waterloo Bail Program (WBP), which was established in the early 1970s. The WBP serves youth (ages 12-15) with support from donations in the community and adults over the age of 16 with funding from the Ontario Ministry of the Attorney General.³

In Ontario, the Ministry of the Attorney General (MAG) mandates that, regardless of the organization that administers them, all BVSPs in the province follow the same standards and guidelines and fulfill the following three functions:

- to identify the availability of a surety
- in the absence of an acceptable surety, to provide verified, neutral and factual information about an accused person at judicial interim release proceedings, to assist the court in selecting suitable candidates for bail release and/or bail supervision
- to provide supervisory, counselling and referral services for people who are released from custody by the courts, where the condition of release directs that such people be supervised⁴

These functions in turn are intended to serve the following objectives:

- to reduce the number of accused who are held in custody awaiting trial
- to reduce the number of remand admissions and the days stayed in jails and detention centres by inmates on remand,
- to provide verified information about an accused to the court at his/her first court appearance and/or bail hearing, regarding the suitability of the accused for the bail program,
- to offer bail supervision to the court as an alternative to traditionally imposed monetary or surety bail conditions,
- to interview accused in custody before bail hearings in an attempt to expedite their release by mobilizing community resources on their behalf,
- to facilitate appropriate referrals to and follow-up with community agencies,
- to assist the accused to understand the pre-trial release process and to comply with the terms of his/her release,
- to ensure that the accused is aware of the appeal process and to facilitate access to this process.⁵

² Government of Ontario, *Progress on Ontario's Plan for Faster, Fairer Criminal Justice* (2017) available at: <https://news.ontario.ca/mag/en/2017/10/progress-on-ontarios-plan-for-faster-fairer-criminal-justice.html>.

³ Waterloo Bail Program, *About* (n.d.) available at: <https://www.waterloobailprogram.ca/about>.

⁴ Waterloo Bail Program, *Mandate from the Ontario Ministry of the Attorney General* (n.d.) available at: <https://www.waterloobailprogram.ca/mandate>.

⁵ Waterloo Bail Program *Objectives* (n.d.) available at: <https://www.waterloobailprogram.ca/objectives>

More generally, BVSPs in Ontario are regulated by the Ministry of Attorney General's *Bail Verification and Supervision Program: Standards and Procedures Manual*. This manual stipulates that accused persons can only be released to the supervision program when an appropriate surety is not available and after consideration of a candidate's previous response to supervision, ability to understand and willingness to comply with the program requirements. It also outlines standards for client contact and reporting and specifies that clients should report on at least a weekly basis, except where this has been documented as unreasonable or unnecessary. The manual further outlines expectations for file management, supervision meeting agendas, the use of case notes and the collection, storage and disclosure of information.⁶

The Ontario Association of Bail Verification and Supervision Services is responsible for reviewing and evaluating all BVSPs every three years to ensure compliance with all standards outlined in the manual.⁷

Program eligibility

In Ontario, bail services are available to persons 16 years of age and older accused of a criminal offence(s) who are:

- Awaiting initial bail proceedings
- Remanded for show cause hearing
- In custody and unable to meet their surety or cash bail
- Appealing a bail decision which has resulted in detention⁸

The bail program may not agree to supervise someone if:

- they did not follow the rules when you were in the bail program in the past
- they failed to report as required by the bail program in the past
- they have been charged with a serious violent crime
- they haven't agreed to be supervised by the bail program⁹

Procedure for entry into program and verification process

In Ontario, referrals to this program result from various sources such as: the Courts, the Crown Attorney, Defence, Duty Counsel, Correctional Staff, Court Workers, community agencies, family, friends and self. The bail verification process involves the completion of an interview to gather information that will be shared with the courts to assist in making a determination

⁶ Megan Mitchell, "Risk Aversion in the Bail Setting: An Examination of the Predictive Validity of an Ontario Bail Supervision Program's Risk Assessment Tool" (2015) 1 at 29-30, available at: https://ruor.uottawa.ca/bitstream/10393/32572/1/Mitchell_Megan_2015_thesis.pdf.

⁷ Ibid.

⁸ The Elizabeth Fry Society, Sudbury, *Bail Verification and Supervision Program* (n.d.) available at: <https://efrysudbury.com/programs/bailverification/>.

⁹ Community Legal Education Ontario, *I'm being held for a bail hearing. How will the court decide if I can be released?* (2018) available at: <https://stepstojustice.ca/steps/4-learn-about-bail-program>.

regarding release from custody. Following the interview, the bail worker takes the appropriate steps to verify the information provided by the accused. Upon completion of the verification process the Bail Worker advises the Courts, Crown Attorney and Defence/Duty Counsel of the availability of a surety or suitability for supervision under the BVSP.¹⁰

The John Howard Society of Peel-Dalton-Dufferin outlines the following guidelines for the verification process, which they note are adapted from the Ministry of Attorney General's *Bail Verification and Supervision Program: Standards and Procedures Manual*.

To identify eligible individuals for the Bail Program, the Worker will:

- Make every effort to have early and adequate access to accused people in court lock-ups, jails and detention centres.
- Review the process of verification, bail and supervision with accused persons, explain the limits of confidentiality (that any information relevant to the bail process will be shared with appropriate justice officials) and gain consent to proceed, in writing if possible.

To provide verification, the Bail Program Worker will:

- Interview the accused person to identify appropriate and agreed sources of information regarding surety and his/her suitability for supervision.
- Investigate and verify the identified sources, taking care to avoid jeopardizing positive involvements, such as employment.
- Assess the provision of bail supervision considering the following factors:
 - Unavailability of a bail surety.
 - Not more than three previous failures to appear in court or comply with previous court or probation orders.
 - Ability to comprehend legal obligations and expectations. o Ability and willingness to comply with suggested conditions of release. o Conditions necessary for effective supervision.
- Inform the court of the accused person's suitability for supervision and availability of an appropriate surety, through the Bail Program or alternate course of action.¹¹

Risk assessment protocols

The recommendations of the American National Symposium of Pretrial Justice make clear that conducting an interview with the accused and identifying their risk factors should be one of the first activities done by a bail supervision program. This is to ensure the judge at the first bail hearing is fully informed when making a release decision, and then to assist the supervision agency to determine the appropriate supervision case plan.¹²

¹⁰ The Elizabeth Fry Society, Sudbury, *Bail Verification and Supervision Program* (n.d.) available at: <https://efrysudbury.com/programs/bailverification/>.

¹¹ Dufferin Caledon Domestic Assault Review Team, *John Howard Society of Peel-Halton-Dufferin: Services* (2010) 1 at 3, available at: http://www.dufferincaledondart.com/download/agencies/John_Howard_Society_Peel.pdf.

¹² Ian Gauthier, "Evidence-Based Judicial Interim Release Practices for the Alberta Community Corrections and Release Programs Branch" (2015), 1 at 24-25, available at:

The interview is the central component of the risk assessment. The literature suggests that the employee responsible for supervision conduct the interview as soon as possible after the accused is arrested. Depending on how the jurisdiction has arranged their operations, the interview can be conducted at the police station, courthouse, or the detention centre.¹³ The responses from the interview are used to score the accused, which creates a rating that indicates their level of risk. The following factors are generally considered as part of a risk assessment:

- Current criminal charge
- Pending charges currently before the courts
- Criminal history
- Failure to appear in court in the past
- Violent offences
- Length of time in their residence
- Employment status
- Drug/substance abuse¹⁴

Ideally, the jurisdiction will develop its own tool using local data in order to capture the unique risk factors of that area, or, if it implements an existing tool, it should be evaluated to ensure it is a valid indicator of risk for that jurisdiction.¹⁵

Expectations for supervision

In Ontario, supervision begins when an accused person is released from custody on a judicial interim release order (Bail Order) with a condition of bail directing them to participate in a BVSP.

The Elizabeth Fry Society of Sudbury notes that it is the responsibility of each client in its BVSP to:

- Report to the Elizabeth Fry Society for intake
- Establish and maintain a regular reporting schedule with a Bail worker
- Attend all scheduled court dates
- Abide by all of their conditions of bail
- Work with their Bail Worker to implement a case plan that addresses issues that may have contributed to them coming before the courts¹⁶

Conversely, it is the responsibility of the Bail Worker to:

- Supervise and meet regularly with each client
- Remind each client of court dates and review bail conditions at each appointment

https://dspace.library.uvic.ca/bitstream/handle/1828/7024/Gauthier_Ian_MPA_2015.pdf?sequence=1&isAllowed=y.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ The Elizabeth Fry Society, Sudbury, *Bail Verification and Supervision Program* (n.d.) available at: <https://efrysudbury.com/programs/bailverification/>.

- Review possible consequences of non-compliance with their Judicial Interim Release Order (Bail Order)
- Assist each client to develop and implement a case plan
- Provide ongoing client support and assistance through case management
- Initiate referrals to community programs and services¹⁷

The John Howard Society of Peel-Dalton-Dufferin outlines the following guidelines for supervision from receipt of the bail release order through to the closure of a file.

Upon receipt of a bail release order, the Bail Program will

- Assign a Bail Program Worker to see the accused person as ordered by the court.
- Attempt to establish contact with the accused person within three working days.
- Where a reporting schedule is discretionary, a minimum of weekly, in-person appointments will be set.

At the initial and subsequent supervision interviews, the Bail Program Worker will communicate, document and update the following.

- The conditions of the Judicial Interim Release Order.
- The schedule and method of reporting.
- The possible consequences of non-compliance.
- A review of impending court dates.
- The purpose of bail supervision, including the limits of confidentiality.
- The terms of the Bail Supervision Contract.

Following the initial interview, the Bail Program Worker will determine and document the presenting problem, needs and plan of supervision. Included will be:

- A mandatory formal assessment (LSI-OR) to determine areas of risk and need.
- A goal plan to address the identified risk factors.
- Referral to needed programs dealing with substance abuse, employment, etc.

If an accused person, placed on supervision with the Bail Program, fails to comply with the conditions of release, the Bail Program Worker will inquire into and review each alleged violation to assess whether to initiate enforcement proceedings. The following will be taken into consideration:

- The seriousness of the alleged violation.
- Extenuating circumstances.
- Admissible evidence.

If enforcement proceedings are deemed necessary for the accused person a warrant under Section 145.(3) of the Criminal Code will be issued.

A case will be designated as inactive when:

- A warrant has been issued under Section 145.(3) of the Criminal Code.
- The accused is confined or detained in a correctional or treatment facility for a period exceeding 90 days.

A case will be closed upon:

- Revocation/surrender of the bail order.

¹⁷ Ibid.

- The termination of all orders requiring Bail Program supervision.¹⁸

Expansion of BVSPs in Ontario

In early 2017, the Ontario Liberal government provided increased funding for BVSPs to do the following:

- Expand the program to provide services for the entire province. Prior to this time, this program serviced only half of the province's court locations.
- Enhance existing program services and supports to facilitate the successful release on bail of low-risk accused into the community pending trial, and avoid future conflict with the law.
- Train Specialized Bail Verification and Supervision Program staff to provide vulnerable populations, including those with mental illness and Indigenous people, with improved access to housing, medical services, treatment, and supervision in the community.
- Extend the program to serve a number of weekend court locations across the province.¹⁹

With the provision of additional funding under the Liberals, the number of BVSPs was expanded to include the following regions: Waterloo Region, Toronto, Newmarket, Hamilton, Barrie, Brampton, St. Catherine, Ottawa, Cornwall, London, Sudbury, Sault Ste. Marie, Orangeville, Milton, Brantford, Oshawa, Thunder Bay and Windsor.²⁰

As part of the expansion of BVSPs in Ontario in 2017, a new Indigenous bail and remand program was also developed. As with other BVSPs in the province, this program is regulated in large part by the Ministry of Attorney General's *Bail Verification and Supervision Program: Standards and Procedures Manual*,²¹ but also includes more services for Indigenous people by incorporating distinct policies, training and staff positions, so that they can remain in their communities while awaiting trial.²²

What data should be collected to assess outcomes?

The Crime and Justice Institute produced a 2013 guide for bail supervision programs entitled "Creating an Effective Pretrial Program" that includes the following table of quantitative data

¹⁸ Dufferin Caledon Domestic Assault Review Team, *John Howard Society of Peel-Halton-Dufferin: Services* (2010) 1 at 3-4, available at: http://www.dufferincaledondart.com/download/agencies/John_Howard_Society_Peel.pdf.

¹⁹ Government of Ontario, *Progress on Ontario's Plan for Faster, Fairer Criminal Justice* (2017) available at: <https://news.ontario.ca/mag/en/2017/10/progress-on-ontarios-plan-for-faster-fairer-criminal-justice.html>.

²⁰ Waterloo Bail Program, *About* (n.d.) available at: <https://www.waterloobailprogram.ca/about>.

²¹ Ininew Friendship Centre, *Indigenous Bail Program* (2008) available at: <http://www.ininewfriendshipcentre.ca/bail.htm>.

²² Government of Ontario, *Progress on Ontario's Plan for Faster, Fairer Criminal Justice* (2017) available at: <https://news.ontario.ca/mag/en/2017/10/progress-on-ontarios-plan-for-faster-fairer-criminal-justice.html>.

points that BVSPs should collect for the purpose of their own monitoring, evaluation and learning.²³

²³ Kristy Pierce-Danford and Meghan Guevara, *Creating an Effective Pretrial Program: A Toolkit for Practitioners* (2013) Crime and Justice Institute, 1 at 17, available at: https://safeandjust.org/wp-content/uploads/CSJ_pretrial_toolkit.pdf.

DATA MEASURES	DATA DESCRIPTIONS
OUTCOME MEASURES – INDICATORS OF EFFECTIVENESS IN ACHIEVING A STATED MISSION OR INTENDED PURPOSE	
Appearance Rate	The percentage of supervised defendants who make all scheduled court appearances
Safety Rate	The percentage of supervised defendants who are not charged with a new offense during the pretrial stage
Concurrence Rate	The ratio of defendants whose supervision level or detention status corresponds with their assessed risk of pretrial misconduct
Success Rate	The percentage of released defendants who (1) are not revoked for technical violations of the conditions of their release, (2) appear for all scheduled court appearances, and (3) are not charged with a new offense during pretrial supervision
Pretrial Detainee Length of Stay	The average length of stay in jail for pretrial detainees who are not statutorily ineligible for pretrial release
PERFORMANCE MEASURES – QUANTITATIVE OR QUALITATIVE CHARACTERIZATIONS OF PERFORMANCE	
Universal Screening	The percentage of defendants eligible for release by statute or local court rule that the program assesses for release eligibility
Recommendation Rate	The percentage of time the program follows its risk-assessment criteria when recommending release or detention
Response to Defendant Conduct	The frequency of policy-approved responses to compliance and non-compliance with court-ordered release conditions
Pretrial Intervention Rate	The pretrial agency’s effectiveness at resolving outstanding bench warrants, arrest warrants, and capiases
MISSION-CRITICAL DATA – STRATEGICALLY LINKED TO OUTCOMES AND PERFORMANCE; TRACKS PROGRESS IN AREAS AND ON ISSUES THAT SUPPLEMENT SPECIFIC MEASURES	
Defendants Released by Release Type and Condition	The number of release types ordered during a specified time frame
Caseload Ratio	The number of supervised defendants divided by the number of pretrial officers/case managers
Time From Non-financial Release Order to Start of Pretrial Supervision	Time between a court’s order of release and the pretrial agency’s assumption of supervision
Time on Pretrial Supervision	Time between the pretrial agency’s assumption of supervision and the end of program supervision
Pretrial Detention Rate	Proportion of pretrial defendants who are detained throughout pretrial case processing

Program Outcomes

The Waterloo Bail Program (WBP) reports that, in 2010, more than 55 verifications were conducted by the program each month on average, totalling over 650 for the year, accounting for 35% of all persons who appeared in the bail courts in Kitchener, Ontario. Of persons verified

by the program, 10% were released to a surety or on their own recognizance.²⁴ On any given day, 157-197 people were under supervised release through the WBP between its two offices in Kitchener and Cambridge. 99.3% of scheduled court appearances were attended by persons who completed with the program during the year. At trial, 20.3% of people supervised had all charges withdrawn or were found not guilty. This means that these people were not detained in custody unnecessarily while awaiting trial.²⁵ In the interests of public safety, the WBP reports failure to comply with conditions of release, in which case a warrant is issued. In 2010, 10% of case closures resulted from breaches.²⁶

In 2012, a report by the Department of Justice Canada Steering Committee on Justice Efficiencies and Access to the Justice System advocated for the expansion of BVSPs across the country as an effective method of managing individuals on bail. The Steering Committee pointed out that, in 2003/2004, 81% of clients in these programs attended all court appearances, thereby avoiding additional charges for failing to appear.²⁷ Additionally, the Steering Committee pointed out that 37% of program clients are never found guilty of the offences for which they were initially charged, indicating that these programs have helped to protect legally innocent citizens from unnecessary detention.²⁸ Further, 19% BVSP clients were released to either a surety or on their own recognizance, demonstrating the value of the verification process and avoiding the costs of programme supervision or custody.²⁹

The John Howard Society of Ontario has also demonstrated that clients on a BVSP who are unsuccessful on bail (that is, who incur new criminal charges) are typically not being charged with new substantive offences, but are instead mainly being charged for failing to comply with their bail conditions, suggesting that these individuals do not typically pose any significant risk to society while on bail.³⁰

Program Costs

The John Howard Society of Ottawa reports that each of its BVSP workers has an average caseload of 50, and that the specialized caseworker for clients with identified mental health issues has a caseload of 15.³¹ Generally speaking, BVSPs cost roughly three to five dollars a day

²⁴ Waterloo Bail Program, *WATERLOO REGION BAIL PROGRAM OUTCOMES: Statistics for 2010* (2010), available at: <https://www.waterloobailprogram.ca/outcome>

²⁵ Ibid.

²⁶ Ibid.

²⁷ *The Final Report on Early Case Consideration of the Steering Committee on Justice Efficiencies and Access to the Justice System* (Ottawa: Department of Justice, 2015) available at: https://www.justice.gc.ca/eng/rp-pr/csj-sjc/esc-cde/ecc-epd/p7.html#a3_3

²⁸ Ibid.

²⁹ Ibid.

³⁰ Megan Mitchell, "Risk Aversion in the Bail Setting: An Examination of the Predictive Validity of an Ontario Bail Supervision Program's Risk Assessment Tool" (2015) 1 at 28, available at: https://ruor.uottawa.ca/bitstream/10393/32572/1/Mitchell_Megan_2015_thesis.pdf.

³¹ Ottawa Sun, 'Watershed moment' for bail: Ottawa supervision program nearly doubles in size, by Andrew Seymour (Ottawa: Ottawa Sun, December 22, 2016), available at: <https://ottawasun.com/2016/12/22/watershed->

per client to operate, compared to detention, which costs, on average, 162 dollars per day per prisoner.³²

Best Practices for BVSPs

The John Howard Society of Ontario conducted a pilot site report in which the Ottawa chapter participated. The internal report produced these best practice recommendations for Ontario non-profit bail supervision programs.

- Dedicated courthouse worker (not a rotating position) with permanent office space that is available to interview clients as they arrive from the police station/detention centre.
- Development of strong working relationships with courthouse staff (i.e. Duty Counsel, Defense Counsel, Crown Attorneys, court clerks, Ottawa Police Special Constables).
- Implementation of an electronic database to review current and closed files to determine suitability for re-release on the program.
- Use of a standardized risk assessment tool.
- Supervision meetings are designed as more than a sign-in. The development and implementation of a case plan is part of every case.
- Depending on the level of risk and stability/follow-through with the case plan the reporting schedule could be changed to bi-weekly.³³

From the perspective of the John Howard Society of Ottawa, operationalizing these best practices in turn entails:

- A program employee is stationed at the courthouse. This employee receives the bail files from duty counsel, crown counsel, and the court and interviews the accused persons to determine eligibility for the program.
- If the accused is eligible, program staff conducts a risk assessment using a program called Caseworks, developed by Orbis Partners. The risk assessment is used to develop the accused's pretrial case plan.
- All clients report weekly at a minimum. Breaches are processed if there has been two consecutive missed appointments or a breach of residency. Other infractions that are reported to program staff are forwarded to the police.³⁴

In the American context, the National Association of Pretrial Services Agencies released a report in 2006 highlighting specific best practices for bail supervision programs:

[moment-for-bail-ottawa-supervision-program-nearly-doubles-in-size/wcm/6623f0fd-0cea-4b65-9f07-fad2b1bfce81](https://www.naspa.org/wp-content/uploads/2016/06/moment-for-bail-ottawa-supervision-program-nearly-doubles-in-size/wcm/6623f0fd-0cea-4b65-9f07-fad2b1bfce81)

³² Megan Mitchell, "Risk Aversion in the Bail Setting: An Examination of the Predictive Validity of an Ontario Bail Supervision Program's Risk Assessment Tool" (2015) 1 at 28-29, available at:

https://ruor.uottawa.ca/bitstream/10393/32572/1/Mitchell_Megan_2015_thesis.pdf.

³³ Ian Gauthier, "Evidence-Based Judicial Interim Release Practices for the Alberta Community Corrections and Release Programs Branch" (2015), 1 at 39, available at:

https://dspacelibrary.uvic.ca/bitstream/handle/1828/7024/Gauthier_Ian_MPA_2015.pdf?sequence=1&isAllowed=y.

³⁴ *Ibid.*, at 40.

- Formalized cooperative agreements between the pretrial diversion program and key stakeholders to assure program continuity and consistency.
- Uniform and validated risk and needs assessment to determine the most appropriate and least restrictive levels of supervision and the types of services needed.
- Intervention plans tailored to an individual participant's risks and needs and developed with the participant's input.
- Graduated sanctions short of termination as a response to participant behavior.
- Independent program evaluations.³⁵

The same report also identified three “emerging practices” that appear to help pretrial diversion programs meet goals and objectives, but lack sufficient empirical foundation to demonstrate their efficacy:

- Written policies and procedures backed by a formal mission statement.
- An automated management information system that supports internal performance measurement and independent evaluation.
- Auditing of external service providers; ensuring that program delivery that is not delivered by the program is evaluated on its efficacy³⁶

Additionally, in 2010, the American Pretrial Justice Institute published the “Pretrial Services Program Implementation: A starter kit,” a comprehensive guide for how to organize an agency that supervises bail clients and outlining best practices. The guide includes recommendations for six “core practices”

1. Impartial universal screening of all defendants, regardless of charge;
2. Verification of interview information and criminal history checks;
3. Assessment of risk of pretrial misconduct through objective means and presentation of recommendations to the court based upon the risk level;
4. Follow-up reviews of defendants unable to meet the conditions of release;
5. Accountable and appropriate supervision of those released to include proactive court date reminders; and
6. Reporting on process and outcome measures to stakeholders.³⁷

In addition to these “Core Practices”, the Pretrial Justice Institute advocates for legislating the existence of a pretrial services agency and their responsibilities, using the Illinois Pretrial Services Act as an illustrative example. An entire section of the kit prescribes how a program should be planned and implemented, with a focus on having clear values, missions, and performance targets.³⁸

Recommendations for Improving Service Delivery

In his 2016 report on Bail and Remand in Ontario, Raymond Wyant, former Chief Judge of the Provincial Court of Manitoba, also made the following more general recommendations regarding the administration of BVSPs in Ontario:

³⁵ Ibid., at 23.

³⁶ Ibid., at 24.

³⁷ Ibid.

³⁸ Ibid.

- The contract is with the Ministry of the Attorney General (MAG), which creates the appearance of conflict given that agents of MAG (Crown Counsel) appear in court on applications for release. This is especially an issue given that, in some locales, crown counsel will put pressure on representatives of BVSPs in terms of who they should accept or not and impose local conditions on these programs. Wyant recommended that responsibility for these programs be transferred to the Ministry of Community Safety and Correctional Services for administration.
- BVSPs are limited in who they can accept into their programs, with one estimate suggesting that 87% of those in these programs were considered low-risk. Wyant recommended that additional supports be put in place through BVSPs to provide opportunities to those who may be of higher risk to be released on bail.
- Each BVSP has its own internal qualifications for admission. For example, in both Ottawa and Brantford, if an accused has a certain number of breach of administration of justice charges in a certain time period (e.g. 2 in four as it is in Ottawa or 3 in 4 in Brantford) they are automatically denied consideration. Wyant recommended that individuals should be judged on a merit basis and not automatically be disqualified by certain criteria.
- Wyant recommended that the programs operate on weekends at Weekend and Statutory Holiday Courts, which they were not uniformly doing at the time of his study.
- Wyant recommended that the programs be universally available across the province, which they were not at the time of his study.³⁹

Many of these recommendations echo those made by the John Howard Society of Ontario in their 2013 report on BVSPs. In particular, Recommendation 12 advises that BVSPs should only be used for moderate and moderate-high risk clients and that lower risk individuals should be considered for release on their own recognizance so as to avoid widening the net of individuals requiring pretrial supervision.⁴⁰ The report cautions that accepting low-risk clients into such intensive programs can actually be harmful to public safety and will increase government costs while taking away resources from higher risk individuals in need.⁴¹

Who Should Provide this Service?

Ontario's BVSPs are delivered through contracted agencies, including regional John Howard Societies, Elizabeth Fry Societies, and St. Leonard's Societies.⁴² In British Columbia, by contrast, bail supervision is delivered directly by the province, through the Community Corrections Division of the Ministry of Public Safety and Solicitor General. The provincial probation service

³⁹ Raymond Wyant, *Bail and Remand in Ontario* (2017) Ontario Ministry of the Attorney General, available at: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/wyant/>.

⁴⁰ Cited in Megan Mitchell, "Risk Aversion in the Bail Setting: An Examination of the Predictive Validity of an Ontario Bail Supervision Program's Risk Assessment Tool" (2015) 1 at 29, available at: https://ruor.uottawa.ca/bitstream/10393/32572/1/Mitchell_Megan_2015_thesis.pdf.

⁴¹ Ibid.

⁴² Legal Aid Ontario, *A Legal Aid Strategy for Bail* (2016) available at: <https://www.legalaid.on.ca/en/publications/paper-legal-aid-strategy-for-bail-2016-11.asp>

in BC provides community supervision to over 22,000 individuals each year, including over 7,500 persons who are subject to a bail order.⁴³

In his 2016 report on Bail and Remand in Ontario, Raymond Wyant, former Chief Judge of the Provincial Court of Manitoba, speculated about possible benefits associated with transferring responsibility for the administration of these program to the Community Corrections Division of MCSCS, presenting the following justifying reasons:

- Community corrections has offices and reporting centres all over the province and could supply this service almost universally through their current scheme of offices and reporting centres.
- If operated by one agency, consistency and uniformity in approach would be enhanced.
- Information on an accused would be much more readily accessible for the purpose of assessing their eligibility for bail. Many have already had probation files and probation officers familiar with their background and risk factors and risk assessments may already be available. At present, information from probation officers on issues of bail appears to be sporadic. On occasion, a crown attorney may inquire of a probation officer as to background of an accused and, on occasion, a probation officer may reach out to the crown if they have concerns. But these are individual and not regular occurrences.
- Having one supervising agency for BVSPs would also provide benefits in terms of information access and sharing. At present, probation cannot share information on an accused with a BVSP without written consent of the accused. This is a real barrier to information sharing which could put the public at risk. At the very least, the more information you have about an individual, the better you can program for them.
- Further, probation and parole are risk managers. They have the expertise and they are also familiar with electronic monitoring.⁴⁴

Criticism of BVSPs

In her 2015 Master's thesis, "Risk Aversion in the Bail Setting: An Examination of the Predictive Validity of an Ontario Bail Supervision Program's Risk Assessment Tool," Megan Mitchell maintains that, given that they are operated by community agencies, "pretrial supervision programs reflect the neoliberal trend of offloading responsibility for public safety onto the community itself, as well as the high regard for cost-effective service delivery."⁴⁵

Mitchell writes that "BVSPs also reflect the culture of risk aversion, given that these programs take on a parallel supervisory or 'policing' role similar to those of sureties, thereby releasing the administration of justice from reputational risk."⁴⁶ This is evidenced in the fact that, in their

⁴³ Ibid.

⁴⁴ Raymond Wyant, *Bail and Remand in Ontario* (2017) Ontario Ministry of the Attorney General, available at: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/wyant/>.

⁴⁵ Megan Mitchell, "Risk Aversion in the Bail Setting: An Examination of the Predictive Validity of an Ontario Bail Supervision Program's Risk Assessment Tool" (2015) 1 at 27, available at: https://ruor.uottawa.ca/bitstream/10393/32572/1/Mitchell_Megan_2015_thesis.pdf.

⁴⁶ Ibid.

2013 report, The John Howard Society of Ontario recommended that all BVSPs adopt the use of a ‘short-screener’ assessment tool to be completed for all supervised clients, suggesting that such an assessment tool could also be used to guide the allocation of resources and to track clients’ progress through the duration of their supervision.⁴⁷ A number of BVSPs in Ontario have adopted as a required component of their intake process the Service Planning Instrument™ (SPIn), which is a Risk-Need-Responsivity model assessment tool that offers the option of completing either a 90-item Full Assessment or a 35-item Pre-Screen Assessment.⁴⁸

Both the SPIn Full Assessment and Pre-Screen Assessment measure static risks, dynamic needs and client strengths, referred to as protective factors. Static scales include: criminal history, response to supervision and aggression/violence, while dynamic scales include: substance use, social influences, family, employment, stability, attitudes and social/cognitive skills. In addition to these 10 risk scales, SPIn also records data on mental health, but marks this domain with ‘service attention flags’. Completing the Pre-Screen Assessment produces an overall classification of low, moderate or high risk to reoffend, as well as separate classifications for static risk, dynamic risk and protective circumstances and a diagram of areas of concern on which to focus case planning.⁴⁹

Although it is widely used for this purpose, Mitchell notes that pretrial supervision is not listed by its manufacturer as one of the settings in which SPIn can be used. As Mitchell maintains, the pretrial context is unique and different from a post-sentencing context because bail workers are typically concerned with clients attending court dates and following bail conditions at least as much, if not more, than they are with the traditional concern of recidivism.⁵⁰ Adopting a quantitative as well as qualitative methodology, her study uses a representative sample of 100 supervision clients from one Ontario BVSP to examine the validity of SPIn in predicting bail supervision outcomes.⁵¹ Her study found that bail client risk level, as determined by the SPIn Pre-Screen tool, was not predictive of bail supervision outcomes, an especially concerning finding given that risk classifications should guide all subsequent decisions regarding an individual’s supervision.⁵² Accordingly, she recommends that BVSPs that choose to use risk assessment instruments should use only those tools that have been validated for the pretrial setting and the specific program’s demographics, and that validation studies should be conducted regularly to ensure continued predictive validity.⁵³

Mitchell’s study also found that clients in her sample were largely considered to be low risk, generally had few charges (mostly of a non-violent nature), and by and large, did not incur new substantive or failure to appear charges.⁵⁴ Although BVSPs have been promoted as one strategy of reducing high remand rates, they may in fact actually represent a form of net widening in

⁴⁷ *Ibid.*, at 31.

⁴⁸ *Ibid.*, at 32.

⁴⁹ *Ibid.*, at 33.

⁵⁰ *Ibid.*, at 32.

⁵¹ *Ibid.*, at 1.

⁵² *Ibid.*, at 94.

⁵³ *Ibid.*, at 114.

⁵⁴ *Ibid.*, at 88.

which a greater number of individuals are now being subjected to more intrusive criminal justice responses than they would have been in the past. This is because, before the popularization of BVSP, Mitchell speculates that low risk individuals might have been more likely to have been released on their own recognizance or even on an undertaking.⁵⁵ Accordingly, like Wyant and the John Howard Society of Ontario, she also recommends that admission to BVSPs should be limited to accused persons who pose at least a moderate risk on primary or secondary grounds and who are facing probable detention.⁵⁶

Bail beds programs

Recognizing that homelessness or lack of stable housing is a significant factor keeping many vulnerable people in custody who may have otherwise been granted bail, Bail Beds program are intended to provide safe, supportive and supervised housing for accused persons who require enhanced supervision in the community in order to be able to meet their bail conditions.⁵⁷

The Ottawa-Carleton Detention Centre Task Force made the following recommendation in their 2017 report: “[Ministry of Community Safety and Correctional Services (MCSCS)] and [Ministry of the Attorney General (MAG)] should work with partner ministries such as the Ministry of Health and Long Term Care (MOHLTC) and community agencies to review the feasibility of funding bail beds for offenders whom the court determines could be appropriately housed and supervised in the community.”⁵⁸

In his 2016 report on Bail and Remand in Ontario, Raymond Wyant, former Chief Judge of the Provincial Court of Manitoba, made a similar recommendation, writing:

That the Government of Ontario, in cooperation with community agencies, move to provide more bail beds for the homeless, more shelters, additional support for those suffering from mental illness including residential support, mental health crisis beds and community mental health supervision programs for those released on bail, more support for addictions programs (including the consideration of “wet facilities”), more support for women, more support for indigenous offenders and others in need to ensure that, where appropriate, alternatives to custody can be utilized in the bail context.⁵⁹

In 2017, the Ontario Liberals launched a Bail Bed program to fund 70 beds in five locations across the province including: Barrie, Kitchener, Ottawa, Thunder Bay, and Toronto. The

⁵⁵ Ibid., at 89-90.

⁵⁶ Ibid., at 113.

⁵⁷ Government of Ontario, *Progress on Ontario's Plan for Faster, Fairer Criminal Justice* (2017) available at: <https://news.ontario.ca/mag/en/2017/10/progress-on-ontarios-plan-for-faster-fairer-criminal-justice.html>.

⁵⁸ Ottawa-Carleton Detention Centre Task Force, *OCDC Task Force - Progress Report #3* (2017) Ontario Ministry of the Solicitor General, available at: <https://www.mcscs.jus.gov.on.ca/english/Corrections/OttawaCarletonDetentionCentreTaskForce/OCDCTaskForceProgressReport3.html>.

⁵⁹ Raymond Wyant, *Bail and Remand in Ontario* (2017) Ontario Ministry of the Attorney General, available at: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/wyant/>.

program, which is provided by community-based agencies, began with a 20-bed facility in December 2016 in Thunder Bay.⁶⁰ In Ottawa, the men's program is being delivered by the John Howard Society of Ottawa, while the women's program is being delivered by the Elizabeth Fry Society, with 12 bail beds available with each organization.⁶¹

Services Provided

In addition to supportive and supervised housing, accused in the bail beds program in Ottawa have access to life skills programming, cultural support and services and employment and education services (through service provider partnerships with community organizations).⁶²

In Kitchener, a bail beds initiative was established in 2017 as a partnership between the Waterloo Bail Program (WBP) and the Charles Street Men's Shelter. 55 per cent of the individuals released from custody into the WBP were being released directly to shelter, with the Charles Street Men's Shelter receiving the largest proportion of referrals. The province provided funding to support 10 bail beds. While not providing any additional beds above the current 51-bed capacity of the shelter, the funding allows for more staff time and involvement with residents at the shelter who are also dealing with the criminal justice system.⁶³

In 2018, a new bail beds program was launched in Kenora as a partnership between the Kenora District Services Board (KDSB), the Kenora Chiefs Advisory (KCA) and the Ne-Chee Friendship Centre. As the Chief Administrative Office for KDSB noted, part of the rationale for the program was the fact that over 70% of all bail violations in Kenora each year are attributed to individuals failing to abstain from alcohol or drugs and breaching the rules of their residency.⁶⁴ There are two main components to the program: Bail Supervision Programming (similar to that which is provided through BVSPs) and Housing with Supports Programming. Ne-Chee Friendship Centre is responsible for providing bail supervision programming, and the KDSB and KCA is responsible for providing housing with support programming. The KDSB additionally provides property management resources.⁶⁵

The John Howard Society of Thunder Bay also operates a bail beds program which is available to persons enrolled in their BVSP. The Training & Development Manager at the John Howard

⁶⁰ Ibid.

⁶¹ Ottawa-Carleton Detention Centre Task Force, *OCDC Task Force - Progress Report #3* (2017) Ontario Ministry of the Solicitor General, available at: <https://www.mcscs.jus.gov.on.ca/english/Corrections/OttawaCarletonDetentionCentreTaskForce/OCDCTaskForceProgressReport3.html>.

⁶² Ibid.

⁶³ House of Friendship, *Province supports Bail Beds program* (2017) available at: <https://www.houseoffriendship.org/province-supports-bail-beds-program/>

⁶⁴ Kenora District Services Board, *Comprehensive partnership for Bail Bed Program in Kenora* (2018) available at: <http://www.kdsb.on.ca/Press%20Releases/2018/June%202018/Multi-Agency%20Press%20Release%20-Comprehensive%20partnership%20for%20Bail%20Bed%20Program%20in%20Kenora.pdf>

⁶⁵ Kenora Online, *New bail bed program detailed*, By Ryan Forbes (Kenora: Kenora Online, June 28, 2018) available at: <https://www.kenoraonline.com/local/new-bail-bed-program-detailed>

Society of Thunder Bay indicated that the following services are available to persons enrolled in these programs:

The services and supports provided really depends on the individual enrolled in the program, their level of need and risk. Clients with a high level of mental health needs or struggling with addiction have access to a Mental Health & Addictions Case Manager that is a part-time position funded by the Ministry of Attorney General. All clients in the Bail [Verification and Supervision] Program report to the Bail Supervisor Case Manager. This position is responsible for the supervision of clients on bail. This entails meeting with clients based on their reporting schedule, reviewing conditions with clients, reminding them or informing them of their next court date, working closely with both clients and their lawyers to share information and try to ensure everyone is on the same page and making referrals at clients request. If clients are residing here as part of the Bail Bed Program, they have access to a Residential Case Manager who develops Resident Action Plans and provides general case management services. This includes referrals to other organizations for specialized services and psychosocial counselling (ex: assisting with the development of coping skills, assistance with problem solving, etc.). We use a brokerage model here meaning we have many community partners and refer clients out to existing services in the community. We invite community partners to deliver services directly on-site or provide an information session of how clients can get connected to services.

We also have a Recreation Therapist that creates recreational opportunities for clients to engage in and teaches them the skills needed to create their own recreational opportunities. We view Recreational Therapy as a harm reduction approach towards addiction and homelessness.

We also have a Social Navigator that assists individuals with finding community housing once they have completed their court matters and if they are in need of housing. Individuals once completed in the Bail Bed Program are welcomed to stay within the JHS Residence as part of the Community Integration Program. Once they transition out of the residence, the Social Navigator will continue to follow up with clients in their new community residence for up to 1 year.

We offer Life Skills based on the needs of clients; we also offer a five (5) session Anger Management Program for men that clients can choose to participate in or not.⁶⁶

Program Outcomes

The Training & Development Manager at the John Howard Society of Thunder Bay reported that, anecdotally, their bail bed program:

has a very low breach rate. This is due to not only how we operate our program here but also some of the directives handed down by the Ministry to Crown Attorney's Judges,

⁶⁶ Personal correspondence.

and Justice of the Peace'. There has been a shift in what conditions are imposed by the courts. For example, abstain conditions are being imposed less especially if it is identified that the individual struggles with addiction; we are also seeing less curfew conditions being imposed; and we advocate for the condition "an addressed approved by the John Howard Society" versus having a condition imposed to a specific address. We advocate and ask for these conditions so that if a person relapses, we have the opportunity to continue to work with them if they are willing. We do not permit anyone into the JHS Residence that is intoxicated by drugs/alcohol/other; that being said, when clients do return under the influence, we are able to send them to our local shelter for the evening where they can be monitored in a dorm setting. They are asked to return the next day to JHS to connect with staff and discuss what has led to the behaviour. If the client can't get stable and continue to struggle with addictions and other conditions, then we might have to lay the breach.

Also, clients might start with accessing the Bail Bed Program to get released and then once they are able to demonstrate stability or they find another suitable address, we can then approve the address change without going through the courts or lawyers (which can take a lot of time and cause a lot of frustration). We find that as helpful as our service is, that sometimes there is an expiration date that people experience from being in this setting for too long. We unfortunately have multiple remands that people go through; we have one gentleman who has been residing with us for almost 3 years now as he addresses his matter and it works for him. Others only need and can stay here for a couple months before they need to transition in the community to maintain their stability and progress forward. The less conditions, the better for us; one condition that we ensure is always imposed is: "must be amendable and adhere to the rules of residency in the JHS Residence". This condition still allows us the authority to make decisions for the program but allows the flexibility to work with people where they are at.⁶⁷

Program Costs

Until 2017, the John Howard Society of Manitoba operated a bail beds program with space for 26 residents. The average length of stay for people in the program was about eight months, but occasionally it was more than a year. Sometimes all the beds were full, but on average about 16 beds were used each night. In early 2017, these numbers began to dwindle further to about 8 residents each night. The program supported people both at the residence and in the community and cost about \$441,000 each year, but the funds were ultimately cut in 2017 by the Manitoba Department of Justice.⁶⁸

⁶⁷ Personal correspondence.

⁶⁸ CBC, *Bail residence program ending after John Howard Society funding cut*, By Kelly Malone (Winnipeg: CBC News, November 8, 2017) available at: <https://www.cbc.ca/news/canada/manitoba/bail-residence-program-ending-john-howard-society-1.4394309>