



Remand and Overcrowding

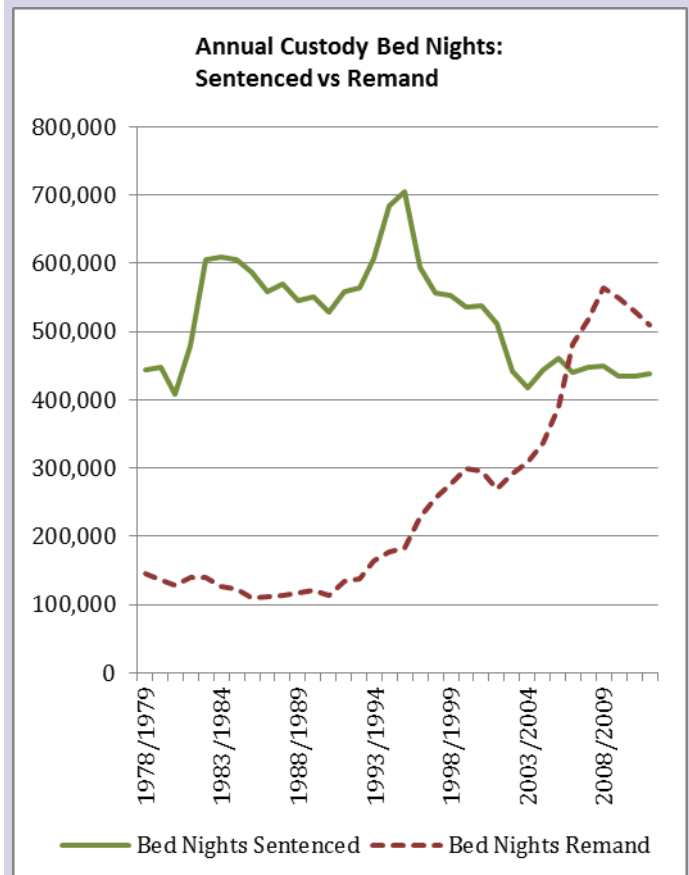
Anyone arrested and held in custody has the right to a bail hearing within 24 hours, or as soon as possible. The judge or Justice of the Peace decides whether the person is to be released into the community on bail with a promise to appear, or if they will be remanded in custody. Sometimes, the judge decides it is not justified to detain the individual, but they may place conditions on the release, such as geographical or association restrictions. In cases where the judge decides detention is justified, the individual will be held in pretrial detention.

There must be reasonable grounds for someone to be held in custody while awaiting trial. Under The **Criminal Code of Canada, Section 515(10)**, these reasons are:

- for protection of the public
- to ensure the arrestees attendance in court
- to maintain public confidence in the Justice System

There are a few exceptions where the onus is on the accused to prove that they should not be held in custody. Under The **Criminal Code of Canada, Section 524**, these exceptions are:

- when an accused is charged with committing an indictable offence (a more serious offence usually tried in court by a judge or jury) while already released on another indictable offence
- if the individual is charged with an indictable offence and is not an ordinary resident of Canada
- when the accused fails to appear in court or breaches a condition previously given
- if the accused is charged with specific offences under the Narcotics Control Act



Individuals on remand are being held in custody while awaiting a further court appearance, although a small percentage have been tried, found guilty, and are awaiting sentencing, or a transfer to a sentenced institution. Someone held in remand is either placed in a pretrial center or in a Provincial correctional facility.

Section 11 of the Canadian Charter of Rights and Freedoms requires that those arrested:

- be considered innocent until proven guilty
- have the right to not be denied reasonable bail without a valid reason
- are tried within a reasonable time

For those held in custody prior to trial, there is concern about the deprivation of freedom, most especially if there is the possibility of infringement on these rights. As the BC Civil Liberties Association (BCCLA)

points out in its 2012 report, “Justice Denied: The Causes of B.C.’s Criminal Justice System Crisis”, there is significant concern about the criminal justice system in BC in general, and some of these concerns involve the use of remand.

Because there is a presumption of innocence for those accused of a crime, but not yet tried, those accused held in remand are serving time in custody before they have been found guilty. Those subsequently convicted of a crime can be given credit towards their sentence for time served. However, those who are found innocent cannot have that time returned to them. As

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“Given that approximately 35% of criminal charges in Canada never result in a finding of guilt, a significant portion of those held in pretrial custody in B.C. will serve time in prison, but will not be found guilty of any offence. These figures raise significant concerns about the unjustified infringement of liberty occasioned by the overuse of remand” (BCCLA, 2012).

Although it is not an issue of infringing on the Charter right that individuals have not to be denied reasonable bail without a valid reason, evidence suggests that pretrial detention discriminates against certain sectors of the population. The poor, the homeless, and those suffering from addiction, or mental health issues are more likely to be denied bail and held in

detention because they lack stability in important areas like housing and employment that are necessary to meet the requirements of bail.

Due to a currently backlogged court system in BC, many individuals are not being tried within a reasonable time.

“The delays in setting trial days have reached crisis levels. The average time between charge and trial has gone up 28% since 2005 and the backlog has become unmanageable. Forty percent of cases have been in the system for over 10 months, and are at significant risk of being dismissed for undue delay” (BCCLA 2012)

Quantifying the Growth in Remand

Over the last 30 years, both the number of inmates admitted to BC correctional facilities and the average length of stay has increased. This applies to both sentenced facilities and pretrial facilities. In that period, the number of remand custodial admissions has grown from 4,705 in 1982/1983 to 13,518 in 2008/2009, while the average time served increased from 10 days to 12 days. (The Assistant Deputy Minister reported in February 2013 that the average length of stay in custody had reached 30 days.)

In an attempt to measure the impact of the growth in admissions, and increase in length of stay on occupancy levels, a metric that captures both the effects is used. This measure is comparable to the Bed Nights measure used in hotel industry which measures the number of beds provided each night. Bed Nights per year is a good indicator of the growth in demand for both sentenced beds and remand beds over the last 30 years. Bed Nights is defined as follows:

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Bed Nights= Average Daily Count for the year x Number of days in the year

Between 1979 and 2012

- the number of Bed Nights for all BC Corrections institutions increased from 588,380 to 1,025,431, an increase of 74 percent
- the number of Sentenced Bed Nights increased from 443,840 to 450,447, an increase of 1 percent
- the number of Remand Bed Nights increased from 144,540 to 564,144, an increase of 290 percent
- As of February 28, 2013, of the 2,525 in BC Corrections custody, 53% were sentenced and 47% on remand

Contributing Factors to the Growing Remand Population

As indicated in the quantitative analysis, both the number of admissions and the length of stays in remand are trending upwards. Some causal factors accounting for these trends are:

More Mentally Disordered Offenders (MDOs) in the criminal justice system

Coinciding with the trend of de-institutionalization of those with mental illness has been an increase in the number of Mentally Disordered Offenders, both in remand centres and sentenced institutions. Although it's not true of all MDOs, many have difficulty understanding the court process, and communicating effectively with a lawyer. This delays the court process which increases the length of stay in remand for the accused, as well as contributing to the court backlog, which lengthens the stay of all accused in remand. This reliance on processing Mentally Disordered Offenders through the court system is due, in part, to a lack of alternative measures for handling those with mental illness in the criminal justice system. "An investment in mental health services and intervention programs is needed to direct those in crisis to services, rather than into the criminal justice system". (BCCLA 2012)

Backlog in the Courts

Greater demands on the court system without matching increases in resources, such as legal aid and court staff, have caused a backlog in cases, lengthening the stay of those accused that are in remand. Since 2001, the budget for court services including administrative staff and security has been reduced by

42%, while the funding for legal aid has been reduced by 36%. The increase in complexity and the volume of evidence that is collected in police investigations has also slowed the process of the criminal justice system. Police gather greater amounts of information resulting in lengthier court preparation by Crown Prosecutors, and then greater time spent by Defence Counsel reviewing information at disclosure. Although the use of experts in court, and gathering information has greatly improved the accuracy of the criminal justice system, it has also, unfortunately, slowed proceedings.

More Accused without Representation

Due to the technical skills required in the criminal justice system, processing an accused who is representing himself through the court system takes longer than processing an accused with representation. A 36% cutback in legal aid funding since 2001 has increased the number of unrepresented individuals, which has increased the length of stay for those accused in remand, and has contributed to court backlogs, lengthening the stay of all accused in remand.

An increase in the number of individuals unable to secure bail

The poor, the homeless, and those suffering from addiction or mental health issues are more likely to be denied bail and held in detention because they lack a phone or they lack stability in important areas like housing and employment that are necessary to meet the requirements of bail (BCCLA 2012)

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BCCLA 2012

Understanding Overcrowding

Overcrowding in prisons and in jails (remand centres) occurs when the number of inmates in an institution or in a living unit (range, tier) exceeds its rated capacity.

The number of inmates may be below the maximum occupancy for the institution, but overcrowding can still occur because of limitations on who can be housed in which living units. Living units in Remand Centres in BC can be divided in to two types of units – general population units where the majority of inmates are housed, and separate custody units, where inmates that need to be segregated from the general population for their safety, for the safety of others, or for the safety of the institution are housed. Typically, the living units are divided into General Population units, Segregation units, Protective Custody units, and Health Care units. The Segregation units and Protective Custody units must be managed separately from the general population, and separately from each other. In addition, some inmates, even though they are housed within the same population, such as general population, must be kept separate from each other for reasons of incompatibility, because they are co-accused in the same offence, are members of rival criminal gangs, among other reasons. Housing all of

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these groups in the one institution severely limits the options for distributing inmates evenly throughout the living units.

Transferring inmates to other institutions isn't always an option. Most importantly, the accused is preparing for trial and needs access to his legal counsel, which cannot be achieved if he is transferred to an institution in another geographic area of the province. Secondly, there is a limited number of other institutions the accused can be transferred to, even within a geographic area. Although it is not desirable to house remand inmates in sentenced institutions, exceptions have been made, and are now the norm in BC and within other provinces. However, even the number of sentenced

institutions within a geographic area is limited, especially in the Lower Mainland/Fraser Valley area. Many of the existing smaller centres have been closed over the last 10 years, the result of increasing security needs, and financial efficiencies. Although prison expansion or additions to existing capacity has occurred at nearly all provincial correctional centres, the options for transfer are quite limited.

The Impact of Overcrowding in Remand

Overcrowding has an impact on the inmates, the staff and on the physical plant itself.

Higher Maintenance costs for the Institution

An institution that is over capacity is more expensive to keep in good working order because repair and maintenance are difficult when all of the institution is always fully occupied. In addition, the level of use of all the shared equipment and facilities is far above the level of use the facilities were designed to service. Reduced maintenance cycles and over-use both lead to premature wear and increased maintenance costs of both equipment and facilities.

Impact on Living Conditions

Overcrowding subjects the inmates to all the expected inconveniences and indignities that come with living in crowded quarters, as well as increased safety concerns.

One result of overcrowding in Remand centres has been the increased use of double bunking. Similar to a university residence, some accommodation in prisons is designed to house two people, called shared-accommodation cells, while the majority are designed

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to accommodate one person, called single-occupancy cells. Double bunking occurs when two or more inmates are placed in a cell constructed for one. Prior to 2002, double-bunking was used as a last resort in BC's provincial institutions facing a bed shortage; now it is common practice. In the last ten years, the use of double bunking in BC provincial institutions has increased by almost 100 percent (Ministry of Public Safety 2002).

Overcrowding also increases tension in an already volatile environment. The atmosphere on a remand living unit was described by one staff member as,

"...40 guys whose tension are high at all times, because of various reasons (Remand, away from family, not able to make phone calls, withdrawing from drugs or alcohol, scared, they have mental issues, having no help from healthcare, they have enemies or contact concerns with another inmate, etc)...(Boyd, 2011)"

Tensions increase because of the noise, the lack of space and the lack of privacy. BC Remand Centre cells are approximately 96 square feet. Double-bunking a cell of that size would allocate approximately 48 square feet of space to each occupant. For sake of comparison, an average single-accommodation room in a BC university residence will provide between 100 to 140 square feet for its lone occupant, while shared accommodation will provide between 75 and 120 square feet for each occupant.

Overcrowding also strains all the shared resources in the institution. With the increase in demand upon healthcare, programming, libraries, education, access to services may become compromised. Access to services is further constrained for those inmates that are under controlled movement, and require a staff escort whenever they leave their living unit. At peak times of the day, available staff can fall short of requirements, leading to long wait times for inmates trying to get to programs, get health services, or to receive visits.

Impact on Safety

When prisons become overcrowded, the emphasis for staff is to meet basic operational requirements. Keeping inmates safe, fed, and exercised - the minimum requirements of custody - consumes all staff resources. A 2011 study of the working conditions of Correctional Officers in BC indicates that they have many concerns about the current conditions in BC jails

Overcrowding in California

The 2011 case of *Brown v. Plata* focused on the California prison system. The US Supreme Court concluded that California's prisons were "severely overcrowded, imperiling the safety of both correctional employees and inmates." It held that the California prison system was committing serious constitutional violations, primarily due to overcrowding and required that California reduce its prison population to 137.5 percent of capacity, down from the 195 percent of capacity it held in 2011 (*Brown v. Plata*, 131 S. Ct. 1910(2011)).

In BC, the determination of acceptable levels of overcrowding has not yet been defined.

and prisons with respect to overcrowding as well as concerns about the safety of staff and of the inmates that are held there.

"During my first seven years of employment as a correctional officer staff to inmate ratio was one officer to twenty inmates. If the inmate count went over twenty we double staffed. Even with double staffing the count on any unit never exceeded 28 inmates. Most inmates were single bunked, and only a few were double bunked. This kept work load manageable, and a lot less stressful. Since 2002, the inmate count, and staff to inmate ratio has increased to one staff for up to 60 inmates; and almost every inmate is double bunked. This has increased stress among the inmates and resulted in increased violence in our work place, and drastically increased work-load and stress for staff." (Boyd, 2011)

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