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Race matters when awaiting trial, data shows

Black people in Ontario spend longer in jail awaiting trial than white people facing the same charges, government data shows.



The Toronto East Detention Centre is shown in an exterior view. A Ministry of the Attorney General spokesperson said officials “recognize that racialized communities face systemic barriers and we have been and will continue to tackle these issues,” (GARY YOKOYAMA / THE HAMILTON SPECTATOR FILE PHOTO)

By [NOOR JAVED](#) News reporter
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Black people in Ontario spend more time in jail awaiting trial than white people, even when charged with the same type of crime, according to data recently released by the province.

Government officials admit it's yet another systemic barrier faced by minorities as they manoeuvre through the justice system, and say they are working to find solutions.

But legal advocates say Ontario's bail system has become one of the "most onerous in the country" and the province is simply offering a "colour-blind approach to a colour-coded problem."

"There is systemic anti-Black racism in that there are many in the legal system who are not trained, encouraged or directed to consider the systemic barriers facing African-Canadians when they call for a surety," said Anthony Morgan, who specializes in human rights law at Falconers LLP.

A surety is a friend or family member who agrees to supervise the accused in the community and forfeit a specified sum of money if bail conditions are violated.

"If you look at the stats of socio-economic marginalization, African-Canadians are dramatically overrepresented in unemployment, underemployment and poverty rates," he said "So when you call on that same community to have to present a surety, there are barriers."

The data, which spans 2011 to 2016, includes more than 20 categories of crime, ranging from homicide to fraud to impaired driving. In the most recent data, from 2015-16, there were just over 6,000 cases involving Black people and more than 31,000 cases involving white people. Some of these people would have been in custody on more than one occasion.

In more than half the categories in the bail data, Black people were in jail, on average, longer than white people, although in a few cases not as long as other minority groups.

In two categories — weapons offences and serious violent crimes — Black people were in jail significantly longer awaiting trial than fellow white inmates, outstaying them by more than a month in the former category, and 45 days in the latter.

In a number of categories, such as theft and traffic offences, white people were held in remand longer. In a few categories, the difference between the two groups was an extra day or two in jail.

In some categories, such as impaired driving, those who identified as Southeast Asian were remanded for an average of 19 days, while white people stayed in jail for an average of seven. In the case of traffic infractions, those from West Asian/Arabic backgrounds waited in jail an average of 40 days, as opposed to Black people, who were held for 20 days.

The data, obtained first by Reuters news agency through access to information requests, was provided to the Star by the Ministry of the Attorney General. Ontario asks inmates to identify their race when they are jailed.

In addition to statistics for Black and white inmates, the data also included information on members of the Asian, Hispanic, West Asian/Arab and Indigenous communities, and those who declined to identify their race.

Ministry officials “recognize that racialized communities face systemic barriers and we have been and will continue to tackle these issues,” said spokesperson Andrew Rudyk.

“Bail is a critically important part of the criminal justice process,” Rudyk said, adding that last December the province created the Bail Action Plan to “support vulnerable and low-risk accused — many of whom are Indigenous or racialized — who may have otherwise been denied bail because they lacked appropriate supports like housing or programming.”

The ministry is working to expand the existing bail verification and supervision program to help “facilitate the successful release on bail of

low-risk accused pending trial,” Rudyk said. It has also launched a new “bail beds” programs that “provides supervised housing for low-risk individuals in five Ontario communities, making duty counsel available at six correctional facilities across the province to allow for more effective bail hearings and developing a new, culturally responsive program to provide supports to Indigenous people going through the bail and remand process,” he added.

The ministry has also appointed three prominent legal experts to provide “advice on modernizing Crown policies on bail,” he said.

“This includes providing advice on the use of sureties and bail conditions which we know disproportionately impact vulnerable populations and racialized communities,” said Rudyk. He says the ministry is also working with partners to provide training in diversity and unconscious bias to those who administer the justice system.

Cash bail was largely eliminated in the 1970s to make the bail process less burdensome on the poor. But some critics say Ontario’s heavy reliance on a surety as a condition of bail has become just as taxing for poor and marginalized people.



Anthony Morgan, a Toronto lawyer, says "the province's solutions (to problems in its bail system) don't go far enough, because they don't explicitly identify anti-Black racism as a problem within our justice system, within how decisions are made at every level." (JIM RANKIN/TORONTO STAR FILE PHOTO)

“The province’s solutions don’t go far enough, because they don’t explicitly identify anti-Black racism as a problem within our justice system, within how decisions are made at every level,” said Morgan, who has worked at the African Canadian Legal Clinic. “Until we get there . . . no one-size-fits-all program is going to help adjust these very particular disparities affecting African-Canadians.” he said.

A recent Supreme Court decision called Ontario’s surety system one of the “most onerous forms of release” and noted a justice or judge should apply less onerous bail conditions unless the Crown can prove a need for tougher terms.

The ministry says the numbers, while up to date, “should not be considered to be a comprehensive representation of the remand

population,” as inmates self-identify, and the same individual may be admitted multiple times. Moreover, the court tracking system does not track racial identity, and therefore there is no data on rates or types of bail or conditions.