

Province struggles with jail overcrowding

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TORONTO – Nearly half of Ontario’s jails are overcrowded, a six-year high that sees cells meant for two people at times hold three or more as the province struggles with a rising tide of inmates who have yet to have their day in court.

Statistics by the Ministry of Community Safety and Corrections reveal that on an average day last year 14 of the province’s 29 jails held more prisoners than they were designed for.

The jump in overcrowding comes as no surprise to Shawn, who was recently released from the jam-packed Elgin-Middlesex Detention Centre in London, Ont., after 18 months in pretrial custody.

He says overcrowding forced him to flop down on a narrow stretch of floor between two occupied beds in a cramped seven-by-two metre cell. Lying on a thin, worn mattress he had to rest his head next to the shared toilet.

“If you’re sleeping people step on you, then if they’re urinating they splash on you,” said Shawn, 35, who has been in the London jail more than a dozen times and gave only his first name for fear of retribution.

Shawn said cramming three inmates into a space meant for only two makes it easy for minor disputes between cellmates to escalate into outright violence.

“If there’s only two of you then one guy can go to the door and cool down, (but) when you’ve got three there’s nowhere to go,” added Shawn, who is in the early stages of a lawsuit against the province over his treatment in jail.

Last year the province-wide capacity rate hit 98.5 per cent, matching a peak set in 2008/09 and coming in slightly above the average rate in the intervening four years, earlier figures obtained through freedom of information show.

The London jail was at 105 per cent capacity and has had more inmates than beds in five of the past six years.

The overcrowding high comes as the province’s correctional system is going through a rare transition, with the ongoing closure of several jails, including facilities in Toronto and Sarnia, and the construction of a major correctional complex in southwestern Ontario as well as a 1,650-bed “superjail” in Toronto’s west end.

The new facilities will bring in 280 net new beds to what is currently a 9,020-bed system that last year housed an average 8,806 people each day.

The province says most of those inmates were held on remand - awaiting a bail hearing or trial. It’s a cohort which has surged to nearly two-thirds of the provincial penal population today from one-third back in 1996.

Though the number of total annual inmate admissions has dropped by more than 10,000 in the last three years, so too has the number of beds, of which there were nearly 500 more back in 2010.

The province expects its daily prisoner count to jump by more than 1,500 inmates within two years as a result of tougher crime laws passed by the Harper government, said Craig MacBride, spokesman for Corrections Minister Madeleine Meilleur.

But MacBride said that for now, jails are well equipped to handle bursts in their inmate count.

“The ministry has policies and procedures in place at each correctional facility to manage overcrowding/capacity issues” and also takes steps to ensure beds are freed up when needed, MacBride said in an email.

In an interview with AdvocateDaily.com, Toronto criminal lawyer [Jacob Stilman](#) says jail overcrowding should come as no surprise to anyone familiar with the criminal justice system.

“What is ironic is that in an era where Canadian society is witnessing a steady reduction in crime rates, jail capacity is increasing and so is overcrowding,” says Stilman. “Clearly there is a disconnect between what is actually occurring on the streets and the manner in which the court system is dealing with those who do find themselves in trouble with the law.”

The problem can likely be traced to several factors, says Stilman.

“First, there have been changes to the Criminal Code, which have raised the availability of mandatory minimum sentences, and also created further ‘reverse onus’ bail provisions, wherein the accused must demonstrate why he ought to be released, as opposed to the Crown having to justify his detention,” he says.

“Mandatory sentence provisions also tend to expand the likelihood of pre-trial detention, since the bail courts are likely to perceive persons facing the prospect of mandatory jail as being greater risks at the bail proceeding.”

A considerable amount of the blame also rests at the feet of the prosecution, says Stilman.

“Crown attorneys are likely to oppose bail even when pre-trial release is clearly mandated,” he tells AdvocateDaily.com. “Frequently, bail hearings devolve into highly contested proceedings, where well-intentioned sureties are cross-examined for hours in a highly confrontational manner.”

There is also the problem, says Stilman, of overly-restrictive bail conditions being imposed for relatively minor situations.

“House arrest provisions are being imposed, particularly in the case of young persons,” he says. “While a release of any sort is preferable to a detention order, the problem is that some conditions will inevitably be breached. When this occurs, the likelihood of a further release on bail is greatly reduced, and the offender begins to accumulate a record for non-compliance which will make bail in the future increasingly unlikely.”

James Stribopoulos, associate dean at Osgoode Hall Law School in Toronto, said the remand rise likely stems from the heightened complexity and lengthier duration of the disclosure process, in which prosecutors hand over case information to defence lawyers.

“Hence, the remand population has grown substantially,” he said.

Advocacy groups and the union representing jail guards have blamed chronic overcrowding and understaffing for the rise in violence, while some judges have cited overpopulation in Ontario’s jails as a reason to shorten sentences.

Several usual suspects pop up on the latest list of overflowing jails.

The notorious 504-bed Toronto Don Jail was the most busy facility in the province at 117 per cent capacity - or nearly five inmates for every four beds - narrowly beating the Niagara Detention Centre, while the Windsor Jail rounded out the top three at 111 per cent capacity.

The Toronto and Windsor jails have been overcrowded for all of the last six years, while the Niagara facility was over capacity for the last five, statistics show.

And at the 382-bed maximum-security jail in London, there were last year on average 45 more inmates each day than free beds, leaving many with hastily arranged accommodations.

“Due to capacity issues the facility had three inmates to each cell and one cell with five inmates,” states an internal ministry briefing note on a visit to the jail last October by the local Tory member of the provincial parliament.

“As well, some intermittent inmates were housed in admitting and discharge” areas, the document states. It lists several violent incidents in the days around the visit.

Lawyer Kevin Egan, who is representing Shawn and more than 100 current and former London jail inmates in suits against the province, says that in some cases, five inmates have to share a cell with only one bunk bed.

“They’re really inviting violence,” he said of the continued overcrowding.

Shawn said the London jail was so packed he was forced not only to sleep on the cell floor, but eat on it too.

He said splitting the space with two inmates made him nearly lose control and attack a cellmate.

“With two other people something’s got to give.”

“Jail’s supposed to be punishment but we’re still human,” Shawn said.

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