

The John Howard Society of Canada
Submission to the House of Commons Committee
on Justice and Human Rights

Safe Streets and Communities Act: Bill C-10

41st Parliament, 1st Session
October 18, 2011

Mission Statement of the John Howard Society of Canada:
“Effective, just, and humane responses to the causes and consequences of crime.”

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Opening Statement, October 18, 2011

The John Howard Society of Canada's position is that Bill C-10 will not make streets or communities safer despite the huge outlay of taxpayer's money. It will instead make our communities less safe while eroding rights and principles of justice.

Objectives of this Presentation

Given the time constraints, I will simply reaffirm the comments that JHS has made previously on components of this Bill and focus my remarks on new provisions and the cumulative impacts.

Basic Problems with the Omnibus Bill

The merging of ideologically inconsistent Bills into a single Omnibus Bill provides a philosophically incoherent response to serious social issues. Problems include:

- Adult criminal justice principles are inappropriately applied in the youth justice system
- Sentencing principles are incongruously applied to correctional management and parole decisions resulting in a re-punishing of the offender rather than a scrupulous execution of the court-imposed punishment or sentence
- Discretion is improperly limited for sentencing judges preventing proportionate sentences and augmented for ministers and officials dealing with the cross-border and other matters
- Personal accountability and state paternalism are blended such that a 15-year-old is deemed too young to consent to sexual activity yet is held criminally liable if he lacks the maturity of judgment to detect the absence of consent in another

Provisions Not Yet Examined by Committees

Two significant changes to the Youth Justice amendments warrant a thorough discussion because of their Charter implications:

- The introduction of the criterion of the public's confidence in the administration of justice as a ground for the detention of youth prior to trial may violate Charter rights to reasonable bail; and
- The removal of the 'beyond a reasonable doubt' standard for young persons to receive an adult sentence is contrary to the Supreme Court decision in *R. v. D. B.* and thus may violate s. 7 Charter rights

None of the proposed amendments to the Corrections and Conditional Release Act has been before Committee. They are premised on the corrections Roadmap, and we fully endorse the response to that document made by Michael Jackson and Graham Stewart in 'A Flawed Compass.' The Corrections and Conditional Release Act was the product of a studied law reform process with significant consultation and deliberation resulting almost 20 years ago in a legislative framework emulated and praised around the world. The evidence for making significant changes to this legislative framework, however, has not yet been presented. These amendments require serious thought, consultation, and revision. Legislative reform is not needed to address pressing issues in corrections, including crowding and access to programs.

Failure to Make Communities Safer

Given the evidence that increased penalties do not deter crime and the omission of crime prevention programs from this Bill, the only way it could achieve its policy objectives of making communities safer is through successful rehabilitation and community reintegration.

But, Bill C-10 actually impedes supervised and supported reintegration by:

- limiting the transfer of Canadians serving sentences abroad and instead waiting until they are deported home after sentence expiry and without reintegration support
- limiting pardons
- reducing access to conditional releases.

This Bill will exacerbate the current serious crisis of crowding in provincial, territorial, and federal custody by massively increasing the numbers in custody through:

1. the imposition of mandatory minimum sentences;
2. restrictions on community-based sentences, which evidence shows are effective; and
3. further restriction on release for those who are in custody

It is urgent to reduce rather than increase prison overcrowding to ensure the safety of both inmates and corrections staff as well as for effective corrections and rehabilitation.

If nothing is done and the courts find, as they already have in the United States, that our current levels of crowding amount to cruel and unusual punishment, offenders will be released or not sent to custody, and there is no guarantee that it will be the less risky offenders who will remain in the communities. If this occurs, the

ultimate impact of the Bill will certainly be to make streets and communities less safe.

We were heartened by Minister Toews' response to the Committee that the National Parole Board could safeguard against overcrowding, and we look forward to the amendments to Bill C-10 that would achieve this objective, although further measures would be needed to address the crisis in provincial prisons.

Conclusion

We recommend that the Bill not be passed in its present form since the evidence shows that it will not achieve its stated purpose of making communities safer.

If the Bill is passed, then given the current crisis of prison crowding in Canada, we urge that the Bill not be proclaimed in force until provinces, territories, and the federal government can assure Parliament that the expected increase in offenders can be accommodated without exceeding 100% capacity of our prisons. We hope that the Justice Minister will seriously consider his statutory obligation to ensure that all legislative proposals are Charter-compliant before approving a Bill that so seriously threatens to create a degree of prison overcrowding which would be cruel and unusual under section 12 of the Charter.