Canadian Association of Police Boards (CAPB)

Submission on

Bill C-10 – *Safe Streets and Communities Act*
to

The Standing Senate Committee on Legal and Constitutional Affairs

Remarks by Derek Mombourquette
CAPB Vice President

Ottawa
February 23, 2012

Table of Contents

I.	Opening Remarks	3-7
II.	Youth Justice and Sentencing	8-10
III.	Impact of Bill C-10 on Aboriginal Communities	11-13
IV.	Mental Health Strategy	14-18
V.	International Transfer of Canadian Offenders Back to Canada, Criminal Records and Corrections and Conditional Release	19-23

I. OPENING REMARKS

Mr. Chair and Members of the Committee:

My name is Derek Mombourquette. I appear before you on behalf of the Canadian Association of Police Boards (CAPB) of which I am the Vice President.

Thank you for giving us an opportunity to offer our comments on a legislation that is very important to our organization, as it is to you and to the Government.

CAPB is the national voice of civilian oversight of municipal police. We represent more than 75 municipal police boards and commissions from different parts of Canada. Together, they employ in excess of 35,000 police personnel, accounting for approximately three-quarters of the municipal police personnel in Canada.

As Senator Runciman knows from his days as Ontario's Solicitor General, these boards and commissions are responsible for managing police services of their municipalities, setting priorities, establishing policy and representing the public interest through civilian oversight.

For the past several years, our members have been very concerned about delivering adequate and effective policing at a cost that their communities can afford and sustain. It is their shared view that an

exclusive – or even dominant – focus on enforcement of the criminal law through investigation and prosecution is not helpful in achieving this objective. Prevention and rehabilitation are no less critical.

It is their view, which I respectfully submit to your Committee, that they need the support and partnership of all orders of government to also pay significant attention to programs and strategies that prevent crime, provide those in prison with opportunities to rehabilitate themselves and reduce recidivism.

Our response to Bill C-10 is based on these premises. We believe, and I am sure you know this already, that research has consistently supported the validity of this multi-pronged approach.

CAPB supports the principles underlying Bill C-10 and agrees with the comments made by the Honourable Rob Nicholson during his appearance before the Parliament's Standing Committee on Justice and National Security on October 6, 2011. As the Justice Minister said, the proposed legislation is intended "to protect families, stand up for victims, and hold individuals accountable."

Our organization supports, in particular, the intent behind those parts of the bill that deal with trafficking in, importing and exporting drugs, or possession for the purpose of exporting; all forms of child sexual abuse; and the ability of victims of terrorism to seek redress for loss and damage that occurred as a result of a terrorist act committed anywhere in the world.

With respect to the rest of Bill C-10, we have some concerns that are consistent with the premises I have mentioned earlier.

Mr Chair, as you are well aware, there is over-representation in the prison system of young people who are Aboriginal/First Nations and Black.

The Justice Minister has said that the bill will affect only that 5% of youth which is engaged in serious and violent crimes. This is reassuring, though we note that the percentage has remained pretty constant, which suggests that there is a continuous inflow of youth into the criminal justice system. CAPB is particularly concerned that the legislation will have a disproportionate impact and even more young people from the backgrounds I have mentioned will be incarcerated

CAPB has serious concerns, as well, about the potential for disproportionate impact on people with mental illness and on children who may end up in foster care when their mothers – especially those who are poor and single parents – receive mandatory sentences.

We recognize and respect the Government's commitment to move forward with the legislation virtually as proposed. With great respect, we urge that the enactment of this bill needs to be accompanied by meaningful measures which provide for:

1. Investments in prevention,
2. Full consideration of mental health in sentencing and better treatment of people with mental illness in prison, and
3. Rehabilitation with focus on enhancing the ability of local public safety agencies to prevent repeat offence by people leaving prisons after long periods of incarceration.

We are aware that these measures cannot be implemented by the Federal Government alone or unilaterally. Other orders of government, especially the provincial and territorial governments, have an important role to play.

We would submit to you that the ability of our members to provide for adequate and effective policing services that are also affordable and sustainable has been seriously hampered by the compartmentalization that currently exists in the criminal justice system due to jurisdictional divisions.

Our final recommendation, therefore, is that, in tandem with the passage of Bill C-10, the Government of Canada take the initiative to work in partnership with its provincial and territorial partners as well as other key stakeholders to develop a seamless and comprehensive delivery system that combines strong enforcement and prosecution with meaningful programs for prevention and rehabilitation.

Only then, we say to you with great respect, our streets and communities will be truly safe.

These are my general comments, Mr Chair. Our submission includes detailed comments on four specific topics: Youth Justice and Sentencing; Impact of Bill C-10 on Aboriginal Communities; Mental Health Strategy; and International Transfer of Canadian Offenders Back to Canada, Criminal Records and Corrections and Conditional Release.

I will be glad to answer any questions.

Thank you.

II. YOUTH JUSTICE AND SENTENCING

Introduction

The stated purpose of the youth justice portion of the *Safe Streets and Communities Act* is "to help ensure that violent and repeat young offenders are held accountable through sentences that are proportionate to the severity of their crimes and that the protection of society is given due consideration." This purpose appeals to the public concerned about the perceived rise in violent crime, especially among youth.

CAPB's Position

The current legislation focuses on treating youth in an age appropriate manner by emphasizing non-custodial sentences designed to promote rehabilitation, correction and prevention. The proposed legislation places the emphasis on detention of youth. CAPB acknowledges that there are some youth for whom detention, and in some cases lengthy detention, is the most appropriate course of action. The current legislation provides for that remedy.

At the same time, CAPB urges the government to concentrate on the proactive measures involving prevention, treatment and rehabilitation.

Drivers of the Bill

Government desires to promote safe communities and address victimization by facilitating a get tough on crime approach. This is a response to the traumatic consequences of the violent actions of some youth and was attempted to be addressed by the predecessor Bill C-4 – *Sebastien's Law* named for Sebastien Lacasse.

General Points of Concern

It has been pointed out by organizations such as the Canadian Mental Health Association that Canada currently imprisons more young people than most other industrialized nations. Decades worth of evidence from the United States, Britain, and Australia among others, have clearly demonstrated that a "get tough on crime" approach of increasing incarceration rates of young offenders results in increased crime.

One of the primary principles of Bill C-10 is to hold young people accountable for their actions, yet it ignores the fact that many young people do not understand the concept of accountability.

Another general point of concern pertains to the cost impact of Bill C-10. The initial increase in the cost of incarceration is the most obvious impact. However, this may be much less than the lost opportunity cost experienced by communities who will have a greater number of unproductive incarcerated youth with a greater likelihood of becoming unproductive incarcerated adults.

Specific Points of Concern

The addition of sentencing principles of deterrence and denunciation will serve to increase the period of incarceration but will do nothing to deter crime among youth as they do not have the same power of reason and prediction as adults. Even among the adult population general deterrence has a weak influence on crime at best.

Bill C-10 will allow publication ban to be lifted where a young person is found guilty of a violent offence, even if tried as a young offender. This will present another barrier to a youth trying to enter the work force or change their life's direction while providing nothing of benefit, in terms of security, to the community.

The bill defines "serious crime" as an indictable offence for which a maximum sentence is 5 years or more will be required and "violent offence" as resulting in bodily harm and/or threats or attempts to commit such offences, including reckless behaviour endangering public safety. These definitions may cast a very wide net resulting in more youth being incarcerated rather than diverted from the system. This will have a particularly disproportionate impact on Aboriginal/First Nations and Black youth, given that they are already over-represented in the prison system.

The bill requires mandatory police record keeping of any extrajudicial measures. This will place an additional burden on police time and costs while undermining the purpose of extrajudicial measures.

Under Bill C-10, the Crown must consider applying for an adult sentence or inform the court that they are not making the application for youth 14 and over who commit serious violent offences. This requirement will place Crowns on the defensive by opening their actions to the court of public opinion which will not necessarily possess all the facts of a case.

Recommendations

As the government intends to proceed with the legislation as written, CAPB recommends that:

1. there be greater investments in the proactive measures of prevention, treatment, education, community support and rehabilitation within the community;

2. while the youths are in a detention facility education, treatment and rehabilitation be the primary focus; and.

3. the mental health of youth be considered during sentencing and that appropriate treatment is provided while in detention, including pretrial detention.

III. IMPACT OF BILL C-10 ON ABORIGINAL COMMUNITIES

The Context

The Federal Government's intended passage of Bill C-10, for all intents and purposes is to give Canadians a greater sense of safety and security. To a certain extent this same sentiment may also be found amongst individuals within Aboriginal communities. However, it is anticipated that its passage will have a global negative impact on Aboriginal people in Canada.

What the Research Shows

According to a 2006 report from the Correctional Investigator of Canada, the federally incarcerated population in Canada declined by 12.5 percent from 1996 to 2004, but the number of First Nations peoples in federal institutions increased by 21.7 percent. The number of incarcerated First Nations women also increased by 74.2 percent over the same period.

Aboriginal youth are also over-represented among criminalized young people. Research shows that Aboriginal young people are criminalized and jailed at earlier ages and for longer periods of time than non-Aboriginal young people.

Additional research shows the higher rate of incarceration for Aboriginal peoples has been linked to systemic discrimination and attitudes based on racial or cultural prejudice, as well as economic and social realities, substance abuse and a cycle of violence across generations.

Following recommendations to the 2005-2006 Annual Report, the Correctional Investigator recommended that, in the next year, the Correctional Service implement the following:

- implement a security classification process that ends the over classification of Aboriginal offenders;
- increase timely access to programs and services that will significantly reduce time spent in medium- and maximum-security institutions;
- significantly increase the number of Aboriginal offenders housed at minimum-security institutions;
- significantly increase the use of unescorted temporary absences and work releases;
- significantly increase the number of Aboriginal offenders appearing before the National Parole Board at their earliest eligibility dates;
- build capacity for and increase the use of section 84 and section 81 agreements with Aboriginal communities; and,

- significantly improve (above the required employment equity level) the overall rate of its Aboriginal workforce at all levels in institutions where a majority of offenders are of Aboriginal ancestry.

In light of the Correctional Investigators report, Statistics Canada analysis which indicates that the population of Aboriginal people is growing faster than the average Canadian rate and considering the possible negative impact Bill C-10 may have on Aboriginal People, it may be deduced that Aboriginal People will be put at a further disadvantage within Canadian society.

The aspect of new and increased mandatory minimum sentences and removing the discretion of judges will make Aboriginal People's over-representation in the criminal justice system much worse. As an example, Aboriginal people already represent approximately 80% of inmates in institutions in the prairies; Bill C-10 will further increase Aboriginal representation in jails.

Additionally, Aboriginal youth comprise a majority of our populations and are over represented in jails already. Bill C-10 will have more Aboriginal youth in custodial centers before trial. Our youth at risk require intervention and support services to prevent ongoing criminal behaviour rather than detention.

Bill C-10 and Previous Judicial Directions

These below provisions of the Criminal Code and the Supreme Court ruling have been applied in sentencing by judges. It is felt that Bill C-10 will remove the discretionary authority of Canada's Judiciary in this respect:

- Section 718.2(e) of the Criminal Code, states that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders."

- In R. v. Gladue, the Supreme Court of Canada instructed sentencing judges to consider other systemic issues faced by Indigenous offenders, including social and economic conditions and the legacy of dispossession and colonization. The Supreme Court also established that Indigenous offenders should, in certain cases, be treated differently from other offenders.

The 2010 Correctional Investigators report indicated that the "Gladue Principles" were applied to varying degrees at different federal institutions in relation to the assessment of the Aboriginal inmate. In consideration of the above, it could be perceived that by passing Bill C-10, the Government of Canada is willfully ignoring to recognize decisions from the Courts and recommendations from

Correctional Services Canada that address over representation of Aboriginal People in the criminal justice system.

What Needs to be Done

A significant amount of studies have been done to research the reason why Aboriginal Peoples represent a higher percentage of inmate population. From an Aboriginal perspective, the passage of Bill C-10 will add another reason, but this one will be codified within Canadian Law.

In summary, this is not meant to be entirely critical of the proposed legislation but to further induce critical thinking on how to collaboratively address the issue of over representation of Aboriginal inmates within the justice system. Everyone should have the confidence in a judicial system that protects society. From an Aboriginal perspective, Bill C-10 addresses a symptom.

What we need to address are solutions to the cause. First Nations communities need to take ownership and be active partners in this solution. We also must understand the reality that all communities may be at opposite ends of the scale with available human and financial resources to address the issue of “over representation of Aboriginal Inmates in Federal Institutions.” One thing is certain: once an inmate is released they eventually will come back to their community.

If the root causes of social and economic availability and equality are not addressed, the cycle of recidivism is sure to repeat itself. Aboriginal People will view Bill C-10 as another form of legislation meant to oppress them and further the perceived divide between them and Canadian citizens.

IV. MENTAL HEALTH STRATEGY

The Issue

At its Annual General Meeting held in August 2011 in Regina, the Canadian Association of Police Boards (CAPB) passed the following resolution, which had been put forward by the Calgary Police Commission, regarding the need for a national mental health strategy.

> WHEREAS mental health issues do not receive the appropriate level of focus and concern by our governments, including lack of funding, treatment and resources for individuals and their families affected by mental illness; and
>
> WHEREAS this lack of funding and treatment creates a burden on frontline policing, remand and correctional services, hospital emergency rooms and social service agencies, as well as a risk to individuals working in these settings; and
>
> WHEREAS it would be beneficial to treat these individuals appropriately to prevent the burden on non-mental health services and prevent these individuals from entering the criminal justice system, which is not equipped to respond to their needs;
>
> THEREFORE BE IT RESOLVED that the Canadian Association of Police Boards urge the Federal Government to work with provincial and territorial governments to develop and implement mental health strategies to fund treatment and prevention in order to ensure that individuals with mental health issues are dealt with appropriately.

Until the middle of the twentieth century, Canada embraced without question a system of institutionalized care for those who suffered from a spectrum of mental illnesses. Fortunately, mental illness is now recognized as an illness that merits holistic treatment of individuals, including community-based supports that enable many to return to better health and productive lives.

Unfortunately, the supply of health care services for mental illness, including mental illness resulting from addictions, has not kept up with demand, resulting in an increasing number of those with mental health issues coming into conflict with the law. In 2012, we have a policing / mental health crucible in which police officers, trained in law enforcement, are the 24/7 first-line mental health care responders by default. At a time when communities are struggling to maintain a level of sustainable policing for safety and security, police resources are being diverted to issues that would be much better addressed within a health care system.

The increasing frequency of people committing criminal offences as a direct result of an untreated mental illness has also led to mental illness being "treated" within the criminal justice system rather than the health care system. In effect, correctional institutions regrettably have become the institutionalized care of the twenty-first century for those with mental illness.

Background and Supporting Information

A Report on Mental Illnesses in Canada, published by Health Canada in 2002, acknowledged that mental illnesses indirectly affect all Canadians through illness of a family member, friend, or colleague; it also concluded that 20 percent of all Canadians will personally experience a mental illness in their lifetime. Causes of mental illness range from genetics to environmental factors and from substance abuse to aging. In other words, the existence of mental illness within our immediate communities cannot be ignored and will not disappear. While much is still unknown about mental illness, one fact remains clear: those with an untreated or sporadically treated mental illness often end up interacting with police.

The article "Criminalization of Mental Illness," published by the Canadian Mental Health Association in March 2005, reported that research had revealed that a person with a mental illness was more likely to be arrested for a minor criminal offence (causing a disturbance, mischief, minor theft) than a non-ill person. A number of factors were attributed to this phenomenon, such as:

- a lack of community support (housing, income, or mental health services);
- a high rate of substance abuse (often self-medication);
- difficulties in treating someone for a mental illness who has committed a crime or who is considered dangerous;
- problems with treatment (non-success with medications, denial of aberrant behaviour, lack of follow-up / no continuity of care);
- lack of cross-training for criminal justice and mental health professionals (active dialogue among courts, police services, and mental health professionals would clarify roles and responsibilities); and
- a lack of timely access to mental health assessment and treatment (long wait times and too few mental health clinics).

Estimates of untreated mental illness in the criminal justice system range from 15 to 40 percent of those incarcerated. While police are often criticized for being parties to the "criminalization" of mental illness, families, friends, and neighbours often turn to police and the justice system in a desperate attempt to acquire much-needed medical care for those with mental illness and/or to prevent their self-harm or their further victimization of others.

These factors and general lack of understanding and awareness about mental illness result in many people with mental illness in crisis coming into contact with

police. A Canadian Mental Health Association (BC Division) study found that over 30 percent of interviewees with serious mental illness had contact with police while making, or trying to make, their first contact with the mental health system. Police officers are, by default, becoming the first point of access to mental health services for persons with mental illness, earning them the nickname “psychiatrists in blue.”

There is ambivalence among police officers about whether they should be in fact dealing with mental health issues. This ambivalence is reinforced if there is a lack of comprehensive, ongoing training of police officers in recognizing mental illness and in mental health crisis intervention, as well as a lack of contact with and support from mental health and emergency services.

In addition to the detrimental impact of someone needing mental health care being driven instead into the criminal justice system, the impact on police in these ever-increasing situations can be equally negative: police officers have been traumatized by the shooting deaths of persons in mental health crisis, deaths that might have been prevented if officers had received appropriate training. As well, police suffer frustration at long wait times at emergency departments, refusals to admit persons to hospital, a lack of mental health service alternatives, and a lack of coordinated support.

Some police services have dedicated officer positions to address recurrent calls for service related to mental health issues. Others have entered into agreements with community-based mental health crisis teams or have mental health care workers accompany officers on particular calls. However, the best solution lies in decreasing the chance of police interaction with those who in effect require health care. Situations involving a police response involve risk to both police officers and suspects, and there is not always time for police to assess the cause of someone’s violent or erratic behaviour.

Police budgets have grown at an unsustainable rate over the past decade, partly because of the need to address the alarming increase in mental health issues impacting community safety. Using law enforcement agencies is a costly way to address mental health emergencies and crises, both in public funds and in the collateral damage to all involved. The larger social impact can range from a criminal record barring suitable employment to young children being traumatized by witnessing a parent being taken away by police. Shooting deaths of persons in mental health crisis affect not only the police officers involved but also their family members and those close to the victim of mental illness.

The Solution

Given the current statistics on the certainty of police interaction with those suffering from mental illness, an immediate benefit to all concerned would be the adoption of standardized training for law enforcement officers and other front-line

police personnel to assist them in identifying signs of mental illness and to provide alternate strategies for response.

In the long term, however, resources have to be dedicated to public and community-based mental health care and supports. Although police may often be the initial responders, once matters of safety have been addressed, police should be able to leave matters in the hands of appropriate mental health services in a timely manner and with some assurance that the same individual will not be the subject of a call the following day. A cell should not be the substitute for a non-existent hospital bed or a safe and healthy home life.

What the Federal Government Can Do

At the federal level, to ensure that individuals with mental health issues are dealt with appropriately, a national mental health strategy, developed in cooperation with provincial and territorial governments, needs to be implemented so that:

- people with mental illness are treated rather than punished;
- systems are in place for police to refer offenders to mental health services instead of the criminal justice system, which services would include screening, treatment, and follow-up care;
- new models are instituted for police response to incidents involving mental health issues, including the ability to function within interdisciplinary teams;
- police agencies have policies and procedures in place to support the application of training geared to provide basic skills and knowledge on appropriate strategies for responding to incidents involving a person with mental illness; and
- courts become more educated on the issues and the solutions for persons with mental illness and ensure post-release support.

References

Canadian Mental Health Association, BC Division. "Criminalization of Mental Illness." *Building Capacity: Mental Health and Police Project*. Vancouver, March 2005.

Canadian Mental Health Association, BC Division. "Police and Mental Illness: Increased Interactions." *Building Capacity: Mental Health and Police Project*. Vancouver, March 2005.

Canadian Association of Chiefs of Police Human Resources Committee. *Contemporary Policing Guidelines for Working with the Mental Health System*. Prepared by the Police/Mental Health Subcommittee, Dorothy Cotton PhD,

CPsych, and Chief of Police Terry Coleman, MOM, MA, MHRM, Co-Chairs. Ottawa, July 2006.

Health Canada. *A Report on Mental Illnesses in Canada*. Ottawa, 2002.

Mental Health Commission of Canada. *Police Interactions with Persons with a Mental Illness: Police Learning in the Environment of Contemporary Policing*. Prepared for the Mental Health and the Law Advisory Committee by Terry G. Coleman, PhD(C), and Dr Dorothy Cotton. Calgary, May 2010.

V. INTERNATIONAL TRANSFER OF CANADIAN OFFENDERS BACK TO CANADA, CRIMINAL RECORDS AND CORRECTIONS AND CONDITIONAL RELEASE

Introduction

These three components of Bill C-10 are not directly within the scope of CAPB's work, insofar as they deal with matters that do not concern the delivery of municipal policing services. Nevertheless, our police services do play an important role in respect of these matters; as well, public safety is affected by the results of decisions which will be made under the proposed provisions.

CAPB does not make any specific recommendations vis-à-vis these aspects of Bill C-10. Instead, it identifies certain concerns and supports the recommendations made by organizations such as the Canadian Bar Association and the Criminal Justice Association of Canada.

International Transfer of Canadian Offenders Back to Canada

The Minister is currently required to make the determination to allow for the transfer of an inmate back to Canada based on the following criteria:

- whether the offender's return to Canada would constitute a threat to the security of Canada;
- whether the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;
- whether the offender has social or family ties in Canada;
- whether the foreign entity or its prison system presents a serious threat to the offender's security or human rights;
- whether, in the Minister's opinion, the offender will, after the transfer, commit a terrorism offence or criminal organization offence within the meaning of section 2 of the Criminal Code; and,
- whether the offender was previously transferred under this Act or the *Transfer of Offenders Act*, chapter T-15 of the Revised Statutes of Canada, 1985.

The amendments proposed in Bill C-10 offer new criteria for the Minister to consider for transfer back to Canada:

- whether, in the Minister's opinion, the offender's return to Canada will endanger public safety, including
    - the safety of any person in Canada who is a victim, as defined in subsection 2(1) of the Corrections and Conditional Release Act, of an offence committed by the offender,

    - the safety of any member of the offender's family, in the case of an offender who has been convicted of an offence against a family member, and
    - the safety of any child, in the case of an offender who has been convicted of a sexual offence involving a child;
- whether, in the Minister's opinion, the offender is likely to continue to engage in criminal activity after the transfer;
- the offender's health;
- whether the offender has refused to participate in a rehabilitation or reintegration program;
- whether the offender has accepted responsibility for the offence for which he or she has been convicted, including by acknowledging the harm done to victims and to the community;
- the manner in which the offender will be supervised, after the transfer, while he or she is serving his or her sentence;
- whether the offender has cooperated, or has undertaken to cooperate, with a law enforcement agency; and
- any other factor that the Minister considers relevant.

While there is support for the extension of the criteria the Minister must consider before allowing for the transfer of an offender back to Canada, there are concerns raised with the Ministerial Decision to determine who is and who isn't approved to return to the country. By allowing the decision of transfer to be at the discretion of the Minister, there is concern about arbitrary and inconsistent decision making that will cause more harm than good. Political decisions are feared by some organizations. As well, there is an ongoing debate that the new changes would infringe on Human Rights. Thus, according to the Canadian Bar Association:

> The Ministerial discretion . . . would allow arbitrary and inconsistent refusals to transfer Canadian offenders back to Canada. Instead, we propose criteria for consideration be limited to dual criminality and citizenship, which would eliminate political considerations, arbitrariness and inconsistency, and give appropriate weight to the citizen's right of return, the Charter and the Rule of Law. The proposal in Bill C-10 is more likely to endanger the Canadian public, than protect it. Rehabilitating offenders in a manner consistent with the values of Canadian society is the key to the safety of our communities.

Criminal Records Bill

There are a number of changes proposed in the legislation. These are as follows:

- replace the term "pardon" with the term "record suspension";

- require the Parole Board of Canada to submit an annual report that includes statistics on the number of applications for record suspensions and the number of those ordered;
- extend the ineligibility periods for applications for a record suspension from three to five years for summary conviction offences, and from five to 10 years for indictable offences; and,
- make certain people ineligible to apply for a record suspension, including those convicted of a sexual offence in relation to a minor, or those convicted of more than three offences – each of which was prosecuted by indictment or is a service offence that is subject to a maximum punishment of imprisonment for life, and for each of which the person was sentenced to imprisonment for two years or more.

There seems to be support for the last provision, especially in respect of those convicted of a sexual offence with a minor. One item for discussion would be the extension of ineligibility for summary convictions. Is this necessary? What does this accomplish? There is strong concern about the longer wait times for pardons and it is felt that replacing this with record suspension will have an insignificant impact.

The Criminal Justice Association of Canada makes the following comments in their Position Paper concerning implications of the so-called three strike rule in the proposed legislative changes for offenders applying for record suspensions:

> We disagree with banning three strikes offenders from receiving a pardon or record suspension. If the criminal justice system believes in the capacity of the system to assist in the rehabilitation of offenders, then such persons must be able to prove that they have corrected their behavior, reintegrate into society, and lead crime-free lives. Those who manage to turn their lives around, even after many years of struggling to remain within the law, should have the opportunity to have their record suspended. In addition, given that many crimes are committed by young persons, it would be wise not to condemn a person eternally for his or her mistakes during youth.

There is, likewise, widespread concern regarding extending waiting times for summary and indictable convictions. Statistics show that this will do nothing to help society, or the offenders in terms of rehabilitation and reintegration into society. Statistics from the National Parole Board (NPB) indicate that the current wait times are sufficient.

Corrections and Conditional Release Act

Additions to the legislation include the following elements:

- Exclude from Accelerated Parole Review (APR) offenders convicted of offences such as criminal organization offences; child pornography; high treason; sexual exploitation of a person with a disability; causing bodily harm with intent (using an air gun or pistol); torture; luring a child by way of the Internet; and, dangerous operation of motor vehicle during flight from police.
- Provide that, when reviewing the cases of offenders eligible for APR, the NPB apply the higher test of general recidivism, rather than the test of violent reoffending (as is the case under current legislation).
- Increase the ineligibility period for Accelerated Day Parole Review for offenders serving more than six years.

Concern has been expressed by the Canadian Bar Association (CBA) that the new legislation represents a significant problem. According to the CBA:

> The only independent critique of the Roadmap acknowledged that the CCRA reflected a contemporary model of corrections with values and principles embodied in the Charter of Rights and Freedoms and concluded, "in sharp contrast, the Roadmap is a flawed moral and legal compass. It points in the wrong direction without reference to the fundamental values and principles of human rights. The Panel's analysis reveals such fundamental misunderstandings and misinterpretation of the Canadian correctional context that both its observations and recommendations are indelibly flawed."

Some organizations have expressed concern regarding judicial decisions on parole eligibility. The John Howard Society of Alberta, which promotes restorative justice, has made the following comments regarding proposed changes to the Bill;

> We must express our profound disagreement with the concept of judicial determination of parole eligibility. This provision will have a number of negative effects. First, it will place an unnecessary restriction on the exercise of discretion of the National Parole Board members and will undermine the credibility of the National Parole Board in the minds of the public. In the case of non-violent, first-time offenders, the Parole Board is seen as capable of making sound decisions. However, in the case of violent offenders or serious drug offenders, the authority and competency of the National Parole Board is undermined by the proposal for the sentencing judge to set parole eligibility. Furthermore, it will not be clear to the public that, once the judicially set parole date has been reached, the Parole Board will decide the actual release date.

CAPB shares the concerns that have been expressed by these organizations.