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Ms. Shaila Anwar
Committee Clerk
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
SENATE OF CANADA
(VIA EMAIL: anwars@sen.parl.gc.ca)

Northwest Territories Submission: Bill C-10 "Safe Streets and Communities Act"

Thank you for the invitation to present a brief to the Standing Senate Committee on Legal and Constitutional Affairs on the impact that Bill C-10 will have on the Northwest Territories.

Please find enclosed the Northwest Territories submission for the Committee's consideration.

Sincerely



Glen Abernethy

Attachment

c Mr. Gary Bohnet, Principal Secretary

BRIEF FROM THE NORTHWEST TERRITORIES MINISTER OF JUSTICE TO THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

BILL C-10, “*Safe Streets and Communities Act*”, or An Act to enact the Justice for Victims of Terrorism Act and amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts

1. General Comments

The Northwest Territories (NWT) has the highest crime rate and the second highest violent crime rate in Canada. The majority of offenders in our correctional facilities are aboriginal (88%¹) and we believe that many of our offenders struggle with cognitive disabilities like Fetal Alcohol Spectrum Disorder (FASD), as well as mental illness, alcohol and drug abuse, and the traumatic impacts of residential schools. Most victims of crime in the NWT know the perpetrator. According to the *2009 General Social Survey*, two-thirds (66%) of victims of non-spousal violent crime in the territories have known their perpetrator in some way (e.g. friend, acquaintance, family member).² Most offenders in our correctional facilities return to their communities, and they and their victims need support.

It is the NWT's position that the most effective way to build safer northern communities is by focusing on crime reduction and prevention in partnership with other territorial government departments (including departments responsible for health, education and social services), the judiciary, aboriginal governments, communities and the police. The federal government, as our main partner, also has a role in these efforts.

In the NWT, it is anticipated that the changes proposed in Bill C-10 will require that more of our already stretched resources are spent on correctional facilities (either building or renovating), more court sittings and travel, and more legal aid lawyers. As a result, fewer resources will be available for what could be argued are more effective approaches such as rehabilitation, crime reduction and prevention initiatives.

2. Cumulative Impacts on the NWT Justice System – Costs of Bill C-10

The NWT along with other provinces and territories is analyzing the impacts of Bill C-10 on the justice system in the NWT. Based on our preliminary work, we anticipate pressures on our courts, legal aid, and corrections as a result of new mandatory minimums, higher penalties for some offences and restrictions on the use of conditional sentences.

In the short term, an increase in the adult offender population in the NWT could be managed, but it is important to highlight what actions may be required to do so. NWT correctional facilities may not be able to take in NWT offenders serving federal

¹ *Adult Correctional Services in Canada, 2008/2009, Fall 2010, Vol. 30 no. 3, Juristat Article, Statistics Canada*

² *Criminal Victimization in the Territories, 2009, January 26, 2012, Juristat Article, Statistics Canada*

sentences or Nunavut offenders. This means NWT offenders will serve their sentences far away from their families and cultural supports, and place more pressures on an already challenging situation for Nunavut. As well, further increases in offender numbers would result in the need for more beds in our adult male facility either through new construction or significant renovations of an existing facility.

With changes to the principles of the *Youth Criminal Justice Act*, we expect that more youth will be held in pre-trial detention, and more youth will be sentenced to custody for longer periods of time. It is anticipated that this would require the construction of a new women and girl's facility much sooner than planned. This may not be possible considering other capital priorities for the NWT Government of the NWT.

3. Mandatory Minimum Sentences

The NWT has concerns about the creation of the proposed mandatory minimum sentences. For example:

- a. Judges may not be able to consider alternatives to custody for Aboriginal offenders. This would conflict with the principles set out in the *Criminal Code* s718.2: "A court that imposes a sentence shall also take into consideration the following principles: [...] (e) 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 fiscal year 2008/09, Aboriginal offenders made up about 88% of sentenced admissions in the NWT.
- b. Such penalties undermine judicial discretion and may limit the use of NWT community programs.
- c. Research shows that mandatory minimum sentences do not have a positive impact on deterring or denouncing drug related crime.³ According to a brief prepared by the Parliamentary Information and Research Service in 2006, "*Lengthier incarcerations due to [mandatory minimum sentences] result in increased prison costs not necessarily offset by any reduction in crime rates and recidivism. There is also an opportunity cost, because fewer public funds are available for law enforcement and crime prevention initiatives. Finally, [mandatory minimum sentences] might have an adverse effect on minority accused, who may be more likely to be charged with offences carrying [mandatory minimum sentences].*"⁴
- d. Mandatory sentences will result in increased rates of imprisonment which will, in turn, put undue pressure on our jails.

4. Amendments to the Controlled Drugs and Substances Act

Despite assurances from the federal government that these amendments target organized crime, we are concerned that Bill C-10 will have impacts that are inconsistent

³ *Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and Justice System Expenditures*. January 2002. Gabor, Thomas and Crutcher, Nicole. Department of Justice Canada

⁴ *Mandatory Minimum Sentences*, January 18, 2006, Raaflaub, Wade Riordan. Parliamentary Information and Research Service, Library of Parliament

with the purpose of the legislation and will not be effective in deterring or denouncing organized drug crime. Further, the definition of serious drug offences and the aggravating factors provided for in the bill will result in mandatory prison terms for people who are already marginalized and may be more effectively dealt with through treatment or alternatives to custody.

Research has revealed that the distinction between user and dealer is not always clear. Users may also deal drugs as a means to support their own use or to earn money to pay debts from drug use.⁵ Mandating minimum penalties precludes the court from considering the circumstances of the offender and their offence, including if the offender is a user or part of "criminal enterprises".

Bill C-10 establishes a mandatory minimum sentence of six months for production of marijuana, and sets the threshold for a plant count at six marijuana plants. Previously, similar legislation was amended by the Senate Committee from five to 200 plants due to concerns that such a low threshold was not in keeping with the intentions of the bill to target organized crime.

Finally, Bill C-10 creates an exemption for offenders who participate in a drug treatment program approved by the province or territory under the supervision of the court. In the NWT and other parts of Canada where drug treatment courts do not exist, offenders would not have the option of participating in treatment and receiving a suspended or reduced sentence. This will be most acutely felt in northern communities where scarce resources will be directed at increased custody rather than supporting services or resources to support these specialized courts and treatment programs.

5. Restriction on the Use of Conditional Sentences

Bill C-10 would remove conditional sentences as an option for some offences. Discussions about reform of conditional sentences took place in 2005. At that time, the NWT along with other jurisdictions supported a model for reform that would balance the concerns expressed by the public and some Ministers while still providing for the use of conditional sentences where the circumstances and the facts of the case support it. Jurisdictions wanted to allow discretion to be used even in the case of "serious offences".

6. Amendments to the Youth Criminal Justice Act

Parliament's introduction of the *Youth Criminal Justice Act* in 2003 was attempting to address concerns about the high number of youth in custody. According to research at the time, a small number of minor offences accounted for a large proportion of cases in youth court and an equally large portion of custodial sentences.⁶

⁵ *Mandatory Minimum Sentences for Drug Offenses: Why Everyone Loses*. Briefing Paper, April 2006. Canadian HIV/AIDS Legal Network

⁶ *The Use of Custody under the Youth Criminal Justice Act*. Department of Justice: <http://www.justice.gc.ca/eng/pi/yj-jj/res-rech/doob-sprott/s1.html>

Over the past seven years, it is clear this Act has succeeded in reducing incarceration of youth: since the Act came into force, custody rates in Canada and the NWT have dropped dramatically. In particular, the incarceration rate for the NWT has dropped by about 68%.⁷ Many youth are currently and effectively being dealt with through police warnings and diversion to community programs.

In 2008, the federal Minister of Justice held a roundtable in the NWT (Yellowknife) with a targeted group of stakeholders working with at-risk youth and young offenders. NWT Justice officials were also in attendance and noted that the majority of participants advised the federal Minister that they thought the *Youth Criminal Justice Act* was working in the NWT. Although this was a small group of stakeholders, participants were clear in their views that the focus of new work and resources should be on supporting community programs for youth, not on amending the Act. Around this same time period, some community leaders and chiefs expressed the view that the Act does not adequately address those youth whose behaviour is a danger to themselves and their community. In recognition of these views and the additional feedback from frontline responders who regularly work with youth, the Department developed the following position:

The NWT supports changes to the Youth Criminal Justice Act to allow for pre-trial detention and in some instances custody for those youth who are "out of control". It is our position, however, that the amendments in Bill C-10 go too far. The NWT does not support amending the principles of the Act, especially amendments that would add deterrence and denunciation to the sentencing principles of the Act. These are adult principles that do not belong in legislation for young people. These principles are not effective for young people and may jeopardize or at the very least conflict with other fundamental principles like rehabilitation and reintegration.

⁷ *Youth Correctional Services*. Statistics Canada. <http://ccjscssj.statcan.gc.ca/>