RESPONSE TO DANGEROUS OFFENDER PROPOSALS

JOHN HOWARD SOCIETY OF ALBERTA

1993

EXECUTIVE SUMMARY

On May 25, 1993, Doug Lewis, Solicitor General of Canada, released draft legislation which would expand existing dangerous offender laws. The proposed changes are in response to growing public fear that significantly dangerous offenders are being released from prison on a regular basis. In addition, the recent Stephenson Inquest recommended that laws should be drafted to detain beyond warrant expiry inmates who have committed sexual offences against children. The federal government has responded to these concerns by releasing these proposed amendments. These proposals have not yet been introduced into the House of Commons.

The first major change proposed in the draft legislation concerns the detention of an inmate beyond the end of the sentence for those inmates found to be dangerous. Amendments to the Criminal Code and the Corrections and Conditional Release Act would allow the National Parole Board to refer cases to the Attorney General of inmates thought to be extremely dangerous. The Attorney General

could then decide to proceed under a dangerous offender application in which the courts could decide to detain the inmate indefinitely or for a specified period of time after the completion of the original sentence. A new section would be added to the Criminal Code which would detail the criteria to establish the dangerousness of an offender who has already served his or her sentence.

If an offender is found to be dangerous, the presiding judge would have several options available. The first option is for the offender to be detained indeterminately, subject to review. A second option is that upon the expiration of the offender's sentence according to law, the offender could be detained for a determinate period and be released on supervision for a period not exceeding ten years and subject to any conditions the court may prescribe. A third option is that the offender could be detained for a determinate period. The fourth option is that the offender could be released subject to any conditions the court may impose. In addition, the Bill does not prohibit the Attorney General from making another dangerous offender application at the end of any determinate sentence given during the first application. If an inmate is re-sentenced to a period of additional time, he or she would be eligible for parole after one year. The case would then have to be reviewed annually by the National Parole Board to determine any progress.

The second major change in the draft legislation is the addition of provisions to the Corrections and Conditional Release Act which make it easier for the National Parole Board to deny statutory release to sexual offenders whose crimes were against children. Offences which would be considered "sexual offences involving a child" include sexual interference, invitation to sexual touching, incest, anal intercourse, sexual assault and others. Under the proposals, these inmates would be reviewed for statutory release under the same process which exists for violent dangerous offenders.

The key factor in understanding the difference between criteria for denial of statutory release for violent offenders and the denial of statutory release for offenders who committed a sexual offence involving a child is that for violent offenders, there has to be proof that the offence caused serious harm and the offender is likely to commit an offence causing serious harm before the expiration of the sentence. For offenders convicted of a sexual offence involving a child, there would not be the requirement to prove serious harm, only that the offender committed such an offence and there is reason to believe that he or she would do so again before the expiration of the sentence.

The third major change in the new legislation concerns the issue of sentence calculation. Existing legislation has been criticized because it allows offenders who commit an offence during conditional release to be eligible for parole on the eligibility dates of the existing sentence, without regard to the additional sentence for the new offence. In order to clarify and correct this loophole, the draft legislation contains amendments which clearly define sentence calculation on new offences.

The John Howard Society of Alberta agrees that there are a small number of offenders who would be dangerous to the community upon release. We support the pursuit of an appropriate mechanism for dealing with these select few offenders. However, we do not agree that the proposed legislation detailed above is the most appropriate response to these concerns.

First, Canada already has adequate laws to address legitimate concerns for public safety. Canada's existing dangerous offender legislation is one of the toughest in the world, allowing for indeterminate

sentences for offenders deemed by a court to be dangerous. While this legislation has been criticized for its flaws, the answer should be to revise this existing law to make it more effective, not to take the same flawed process currently in place and simply make it available at another point in the system. While it is argued that there will be additional information available at the end of the sentence that should be taken into account in a dangerous offender application, it is also true that some of the witnesses and information which were available at the time of sentencing may no longer be available at the end of the sentence. This will be particularly true in cases where the original sentence was lengthy.

In addition to the dangerous offender laws already in place, there is the potential to make more effective use of the mental health laws for dealing with these offenders. If the system does not have adequate grounds to classify an offender as dangerous at the time of sentencing but has legitimate concerns at the end of the offender's sentence that he or she would be dangerous upon release, there should be an option available to ensure that this person is not released into the community. However, it is double jeopardy to re-sentence the offender for the same crime at the end of his or her sentence. Rather, if the person is such a risk to the community, he or she should be held in a mental health institution under the mental health laws. This would protect against double jeopardy for offenders, would ensure public safety and would ensure that the offender would receive appropriate treatment to bring about behaviour that would be acceptable in the community.

The John Howard Society of Alberta recognizes that there are flaws and problems with the various provincial mental health systems as well. Part of the difficulty is that mental health laws and systems are provincial matters under the Constitution, while criminal law, including the dangerous offender legislation, is a federal matter. We acknowledge that the necessary changes to the mental health laws to provide adequate services for these offenders and protection for the public will be difficult to achieve. However, that does not negate the need to seek these amendments. There is a federal-provincial task force working on finding a better fit between the mental health and criminal justice systems. We question why the government released this legislation prior to awaiting the recommendations of this task force.

We recognize the value of current programming for offenders to prepare them for release. However, given that the offender would likely have received some treatment or programming during incarceration, if the offender is still deemed to be dangerous, then it seems clear that this programming has been ineffective for that particular offender. Recognizing that further incarceration is not likely to be beneficial, a better solution would be to make use of the possibilities for rehabilitation offered by the mental health system.

Another reason that we are opposed to this legislation relates to the increased use of indeterminate sentences. We have always expressed serious opposition to the notion of indeterminate sentences. Therefore, we have grave concerns about any draft legislation which proposes to allow for increased use of indeterminate sentences. Indeterminate sentences, particularly when they are to be invoked at the end of a sentence, offend the general criminal law principles that an offender should only be sentenced once for the same crime and that the punishment should be known. We believe that indeterminate sentences are cruel and are not conducive to rehabilitation. We would also point out

that the Canadian Sentencing Commission recommended the elimination of indeterminate sentences (Canadian Sentencing Commission, 1986).

We also oppose this legislation because we believe that the proposal would establish different classes of victims. Under this legislation, there would be a presumption that serious harm would be caused to all child victims, but the same assumption would not be made about adult victims. We believe that this designation of different classes of victims establishes a precedent that certain victims are more deserving of special status and protection or that there is more value placed on the hurt caused to them. This creates the possibility of further classification of victims and value judgements about assessing serious harm and deserving victims. The sentence originally handed down should have reflected the level of harm done; it should not be revisited at the time of release.

The John Howard Society of Alberta believes that the criminal justice system is not the answer to protecting the public from offenders who have already served their time and who are later felt to be a danger to the public. If there is reliable psychiatric evidence that an offender is dangerous to the community, then clearly the offender should be dealt with under mental health laws. The offender would have already served the time deemed by the court as adequate to punish the offender for the crime committed; he or she should not continue to be punished for the same crime or for possible future crime. Any offender deemed dangerous at the time of release should be dealt with in the mental health system where he or she will receive appropriate treatment and under which there are provisions for indeterminate care. The criminal justice system is not the solution to what is so clearly a mental health issue.

Finally, we are, once again, disappointed with the response of the government to legitimate community concerns. The public wishes to be ensured of protection from violent, dangerous offenders. Rather than take the time to develop a response that was appropriate and that did not create unnecessary laws, they responded with the introduction of a law which is inherently flawed and which does not appear to be based on a serious examination of all of the options. In addition, this draft legislation was released with the intent to have the consultations take place over the summer which makes it extremely difficult for community groups to prepare thoughtful and timely responses. The government does a disservice to the legitimate concerns of the public by rushing to introduce legislation which, in all likelihood, will not adequately address the problem of dangerous offenders.

It is recognized by the government that Canada does not need more law. Justice Minister Pierre Blais told an audience in July that Canada has "far too many laws" and that "(T)he perception is that the law can resolve many of the ills that surround us. The reality is that it cannot," (Canadian Press, 1993). The Minister then went on to state that the "the response to crime is a call for more laws, in the belief that the law alone can resolve crime. The law cannot...Ultimately, too much criminal law can become an instrument of oppression."

We urge the government not to introduce this draft dangerous offender legislation. We believe that it is inherently flawed and is not the most appropriate response to genuine concerns for public safety. We encourage the government to re-assess current laws for the potential that these concerns can be more appropriately addressed through modifications to and increased use of existing laws.

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INTRODUCTION

On May 25, 1993, Doug Lewis, Solicitor General of Canada, released draft legislation which would expand existing dangerous offender laws. The proposed changes are in response to growing public fear that significantly dangerous offenders are being released from prison on a regular basis. In addition, the recent Stephenson Inquest recommended that laws should be drafted to detain beyond warrant expiry inmates who have committed sexual offences against children. The federal government has responded to these concerns by releasing these proposed amendments. These proposals have not yet been introduced into the House of Commons.

Apart from miscellaneous administrative amendments, there are essentially three major changes proposed. First, existing laws regarding the detention of dangerous offenders during the statutory release period have been expanded to more readily include inmates who have committed sexual offences against children. Second, the Bill would allow the courts to extend an offender's sentence either indeterminately or for up to ten years if that offender is found to be dangerous. Third, the sentence calculation process for offenders on conditional release who re-offend has been simplified and strengthened. Taken all together, these changes attempt to quell public fear by "getting tough."

DANGEROUS OFFENDER STATUS

Existing Legislation

In 1977, legislation aimed specifically at dangerous offenders replaced existing habitual offender and dangerous sexual offender provisions in the Criminal Code. The current provisions for dangerous offenders can only be used at the time of sentencing; they are not applicable after an offender has served any portion of a sentence. While indeterminate sentencing may seem severe to prisoners, the public sees it as an effective way to deal with dangerous offenders. The individual being sentenced to preventive detention as a dangerous offender must have been convicted of a serious personal injury offence. Section 752 of the Criminal Code defines a serious personal injury as follows:

> (a) an indictable offence, other than high treason, first degree murder or second degree murder, involving
>
> > (i) the use or attempted use of violence against another person, or
> >
> > (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,
>
> and for which the person may be sentenced to imprisonment for ten years or more, or

> (b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault). (Criminal Code, § 752)

The Criminal Code states that the provincial Attorney General must give consent before a hearing can be held. In addition, the testimony of at least two psychiatrists is required regarding the issue of dangerousness. One psychiatrist is nominated by the defense and the other is nominated by the prosecution. Psychologists or criminologists may also present evidence as to whether the offender is dangerous.

Section 753 of the Criminal Code describes the following criteria for determining dangerousness:

> (a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing:
>
> > (i) a pattern of repetitive behaviour by the offender, of which the offence for which he has been convicted forms a part, showing a failure to restrain his behaviour and a likelihood of his causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his behaviour,
> >
> > (ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his behaviour, or
> >
> > (iii) any behaviour by the offender, associated with the offence for which he has been convicted, that is of such a brutal nature as to compel the conclusion that his behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint, or
>
> (b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted, has shown failure to control his sexual impulses and a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses,

> the court may find the offender to be a dangerous offender and may thereupon impose a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the offence for which the offender has been convicted. (Criminal Code, § 753)

The Criminal Code also states that dangerous offenders are eligible for parole after serving three years. At that time and every two years thereafter, the dangerous offender status is reviewed and the possibility of parole is considered.

Proposed Legislation

The draft legislation contains amendments to the Criminal Code and the Corrections and Conditional Release Act which would allow the National Parole Board to refer cases to the Attorney General of inmates thought to be extremely dangerous. The Attorney General could then decide to proceed under a new application in which the courts could decide to detain the inmate indefinitely or for a specified period of time after the completion of the original sentence.

The additions to the Corrections and Conditional Release Act would allow Correctional Services Canada to refer an inmate's case to the National Parole Board if there was evidence which suggested that the inmate would present a significant threat to the community upon release (Solicitor General, Draft Legislation, § 132.1). The Board would then review the case and determine, based on guidelines similar to those which exist for denial of statutory release, whether it should be referred to the Attorney General of the province in which the inmate is incarcerated. The Board, however, would not be permitted to refer a case to the Attorney General any earlier than one year prior to the expiration of the inmate's sentence.

If the Attorney General feels that there is sufficient evidence for a judge to conclude that the offender is indeed dangerous, the Attorney General would make an application under proposed section 753.1 of the Criminal Code. In order for the judge to conclude that the offender is dangerous, it would have to be established:

> (a) that the offender is serving a sentence for a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing
>
> > (i) a pattern of repetitive behaviour by the offender, of which the serious personal injury offence forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through the failure in the future to restrain his or her behaviour,

(ii) a pattern of persistent aggressive behaviour by the offender, of which the serious personal injury offence forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or

(iii) that the offender is serving a sentence for a serious personal injury offence, that is of such a brutal nature as to compel the conclusion that the offender's behaviour is unlikely to be inhibited by normal standards of behavioural restraint; or

(b) that the offender is serving a sentence for a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by way of his or her conduct in any sexual matter, including any such conduct involved in the commission of the serious personal injury offence, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain or other evil to other persons through failure in the future to control those impulses (Solicitor General, Draft Legislation, § 753.1(2))

If an offender is found to be dangerous, the presiding judge would have several options available. The first option is for the offender to be detained indeterminately, subject to review. A second option is that upon the expiration of the offender's sentence according to law, the offender could be detained for a determinate period and be released on supervision for a period not exceeding ten years and subject to any conditions the court may prescribe. A third option is that the offender could be detained for a determinate period. The fourth option is that the offender could be released subject to any conditions the court may impose. In addition, the Bill does not prohibit the Attorney General from making another dangerous offender application at the end of any determinate sentence given during the first application. If an inmate is re-sentenced to a period of additional time, he or she would be eligible for parole after one year. The case would then have to be reviewed annually by the National Parole Board to determine any progress.

The existing law states that an offender can appeal the sentence. The proposals would allow the inmate to appeal the order or the sentence. The remainder of the existing appeal provisions remain intact.

DENIAL OF STATUTORY RELEASE

Existing Legislation

Most prisoners are eligible for full parole after having served one third of their sentence. Inmates who have committed particular offences set out in the Corrections and Conditional Release Act (Schedules I and II - See Appendix A) may not be eligible for parole until they have served one half

of their sentence; parole eligibility for these offenders may be determined by the sentencing judge. For those inmates who have been uncooperative or who represent a threat to society, parole can be denied and they can be required to serve up to two thirds of their sentence. After two thirds of the sentence, offenders are required to be released on statutory release. Only offenders who are significantly dangerous can be denied statutory release.

Sections 129 - 132 of the Corrections and Conditional Release Act allow the National Parole Board to deny an inmate statutory release if they feel that the inmate poses a specific threat to the community. In order to be denied statutory release, an offender must have been sentenced to two years or more for specified violent offences (see Appendix A). Correctional Services Canada refers these cases to the National Parole Board based on the following criteria:

> (a) in the case of an offender serving a term of imprisonment that includes a sentence set out in Schedule I, that
>
> > (i) the commission of the offence caused the death of or serious harm to another person, and
> >
> > (ii) there are reasonable grounds to believe that the offender is likely to commit an offence causing death or serious harm to another person before the expiration of the offender's sentence according to law; or
>
> (b) in the case of an offender serving a term of imprisonment that includes a sentence for an offence set out in Schedule II that there are reasonable grounds to believe that the offender is likely to commit a serious drug offence before the expiration of the offender's sentence according to law. (Corrections and Conditional Release Act, § 129(2))

If the Service feels that an offender represents a threat to society based on these criteria, the case is referred to the National Parole Board.

Upon receiving a referral, the Board must inform the offender of the review and must review the case. There are a number of factors which must be considered by the Board when reviewing these cases (Corrections and Conditional Release Act, § 132 (1)). These factors include a pattern of persistent violent behaviour, evidence of physical or mental illness, evidence that the offender plans to commit another offence and the availability of supervision programs (See Appendix B). Based on these factors, the National Parole Board will decide whether the dangerousness of the offender warrants denial of statutory release.

If, at the end of the review, the National Parole Board is satisfied that the offender would be a risk to the community upon release, the Board has two options available. They can order that the offender not be released from imprisonment until the expiration of the sentence. Or, if they feel that

sufficient resources exist in the community, they can order the offender to reside at a community-based residential facility, in a psychiatric hospital or in a penitentiary designated for dangerous offenders (Corrections and Conditional Release Act, § 130(3)).

If the National Parole Board is not satisfied that the offender is dangerous, but is concerned that he or she will re-offend (given that the offender committed an offence under Schedule I or II), they can order the offender to be released with the condition that if statutory release is revoked at any point, the offender will not be eligible for statutory release again until the end of that sentence according to law (Corrections and Conditional Release Act, § 130(4)). If the National Parole Board is completely unsatisfied with the application, they can dismiss the case and allow the offender to be released.

Proposed Legislation

The draft legislation adds provisions to the Corrections and Conditional Release Act which make it easier for the National Parole Board to deny statutory release to specific sexual offenders. Section 129 of the Corrections and Conditional Release Act would be changed to indicate that denial of release could be considered for offenders who committed an offence under Schedule 1 (see Appendix A), and where:

> (ii) the offence was a sexual offence involving a child and there are reasonable grounds to believe that the offender is likely to commit a sexual offence involving a child before the expiration of the offender's sentence according to law; (Solicitor General, Draft Legislation, § 129(2)(a))

Offences which would be considered sexual offences involving a child include sexual interference, invitation to sexual touching, incest, anal intercourse, sexual assault and others (See Appendix C). Under the proposals, these inmates would be reviewed for statutory release under the same process as violent dangerous offenders.

The proposed legislation indicates that the following factors should be considered by the National Parole Board when deciding whether to deny statutory release for this category of offenders:

> (a) a pattern of persistent sexual behaviour involving children established on the basis of any evidence, in particular,
>
> > (i) the number of sexual offences involving a child committed by the offender,
> >
> > (ii) the seriousness of the offence for which the sentence is being served,

(iii) reliable information demonstrating that the offender has had difficulties controlling sexual impulses involving children,

(iv) behaviour of a sexual nature associated with the commission of any offence by the offender, and

(v)a substantial degree of indifference on the part of the offender as to the consequences to other persons of the offender's behaviour.

(b) reliable information about the offender's sexual preferences indicating that the offender is likely to commit a sexual offence involving a child before the expiration of the offender's sentence according to law;

(c) medical, psychiatric or psychological evidence of the likelihood of the offender committing such an offence owing to physical or mental illness or disorder of the offender;

(d) reliable information compelling the conclusion that the offender is planning to commit such an offence; and

(e) the availability of supervision programs that would offer adequate protection to the public from the risk the offender might otherwise present until the expiration of the offender's sentence according to law. (Solicitor General, Draft Legislation, § 132 (1.1))

Essentially, these amendments would make it easier to deny statutory release to inmates who have committed sexual offences against children. The key factor in understanding the difference between criteria for denial of statutory release for Schedule I offenders and the denial of statutory release for offenders who committed a sexual offence involving a child is that for Schedule I offenders, there has to be proof that the offence caused serious harm and the offender is likely to commit an offence causing serious harm before the expiration of the sentence. For offenders convicted of a sexual offence involving a child, there would not be the requirement to prove serious harm, only that the offender committed such an offence and there is reason to believe that he or she would do so again before the expiration of the sentence.

SENTENCE CALCULATION UPON RE-OFFENCE DURING PAROLE OR STATUTORY RELEASE

Recently, existing legislation has been criticized because it allows offenders who commit an offence during conditional release to be eligible for parole on the eligibility dates of the existing sentence, without regard to the additional sentence for the new offence. In order to clarify and correct this loophole, the draft legislation contains amendments which clearly define sentence calculation on new offences.

Under the draft legislation, sections 120(4-8) of the Corrections and Conditional Release Act would be amended to provide guidelines for determining parole eligibility and statutory release dates with respect to offenders who recidivate. In terms of the parole eligibility of an offender who receives an additional sentence which is to be served CONCURRENTLY to the original one, the offender would not be eligible for parole until the later of

> (a) the day on which the offender has served the period of ineligibility in relation to the sentence of imprisonment the offender was serving when the sentence of imprisonment was imposed, and
>
> (b) the day on which the offender has served the period of ineligibility in relation to the sentence of imprisonment that includes the additional sentence of imprisonment as provided by section 139(1). (Solicitor General, Draft Legislation, § 120 (4))

For an offender whose new sentence is to be served CONSECUTIVELY to the original sentence, he or she would not be eligible for parole until the period of ineligibility (one third of the sentence) of both sentences is served. Furthermore, in the case of an offender who receives a sentence to be served CONSECUTIVELY in relation to a portion of the original sentence (ie., from the date of sentencing on the re-offence), the offender is not eligible for parole until the latest of: the eligibility date for the original sentence, the eligibility date for the additional sentences from the date of imposition or the eligibility date for both of the sentences. The maximum ineligibility period for an offender who is convicted of a new offence is 15 years.

Offenders whose statutory release has been revoked are not again eligible for statutory release until two thirds of the remaining portion of their sentence expires. If their statutory release is suspended because they have received a new sentence to be served CONCURRENTLY, the new statutory release date is two thirds of the remaining sentence, including the sentences for additional offences. Those whose statutory release is suspended because of a new sentence to be served CONSECUTIVELY are not eligible for statutory release until two thirds of both the remaining portion and the additional sentence are served. When a new sentence is imposed CONSECUTIVELY to any portion of the original sentence (ie., consecutive to the statutory release date of the original sentence), the new statutory release date is two thirds of the same guidelines for parole eligibility.

These new guidelines clarify the issue of sentence calculation for offenders who recidivate. They eliminate the possibility of offenders being released from prison shortly after receiving new sentences.

CONCLUSION

The John Howard Society of Alberta agrees that there are a small number of offenders who would be dangerous to the community upon release. We support the pursuit of an appropriate mechanism for dealing with these select few offenders. We also support the proposed changes regarding sentence calculation. However, we do not agree that the proposed legislation detailed above is the most appropriate response to these concerns. We do not support the introduction or passage of the proposed legislation for a number of reasons.

First, Canada already has adequate laws to address legitimate concerns for public safety. Canada's existing dangerous offender legislation is one of the toughest in the world, allowing for indeterminate sentences for offenders deemed by a court to be dangerous. While this legislation has been criticized for its flaws, the answer should be to revise this existing law to make it more effective, not to take the same flawed process currently in place and simply make it available at another point in the system. While it is argued that there will be additional information available at the end of the sentence that should be taken into account in a dangerous offender application, it is also true that some of the witnesses and information which were available at the time of sentencing may no longer be available at the end of the sentence. This will be particularly true in cases where the original sentence was lengthy.

In addition to the dangerous offender laws already in place, there is the potential to make more effective use of the mental health laws for dealing with these offenders. If the system does not have adequate grounds to classify an offender as dangerous at the time of sentencing but has legitimate concerns at the end of the offender's sentence that he or she would be dangerous upon release, there should be an option available to ensure that this person is not released into the community. However, it is double jeopardy to re-sentence the offender for the same crime at the end of his or her sentence. Rather, if the person is such a risk to the community, he or she should be held in a mental health institution under the mental health laws. This would protect against double jeopardy for offenders, would ensure public safety and would ensure that the offender would receive appropriate treatment to bring about behaviour that would be acceptable in the community.

The John Howard Society of Alberta recognizes that there are flaws and problems with the various provincial mental health systems as well. Part of the difficulty is that mental health laws and systems are provincial matters under the Constitution, while criminal law, including the dangerous offender legislation, is a federal matter. We acknowledge that the necessary changes to the mental health laws to provide adequate services for these offenders and protection for the public will be difficult to achieve. However, that does not negate the need to seek these amendments. There is a federal-provincial task force working on finding a better fit between the mental health and criminal justice

systems. We question why the government released this legislation prior to awaiting the recommendations of this task force.

We recognize the value of current programming for offenders to prepare them for release. However, given that the offender would likely have received some treatment or programming during incarceration, if the offender is still deemed to be dangerous, then it seems clear that this programming has been ineffective for that particular offender. Recognizing that further incarceration is not likely to be beneficial, a better solution would be to make use of the possibilities for rehabilitation offered by the mental health system.

Another reason that we are opposed to this legislation relates to the increased use of indeterminate sentences. We have always expressed serious opposition to the notion of indeterminate sentences. Therefore, we have grave concerns about any draft legislation which proposed to allow for increased use of indeterminate sentences. Indeterminate sentences, particularly when they are to be invoked at the end of a sentence, offend the general criminal law principles that an offender should only be sentenced once for the same crime and that the punishment should be known. We believe that indeterminate sentences are cruel and are not conducive to rehabilitation. We would also point out that the Canadian Sentencing Commission recommended the elimination of indeterminate sentences (Canadian Sentencing Commission, 1986).

We also oppose this legislation because we believe that the proposal would establish different classes of victims. Under this legislation, there would be a presumption that serious harm would be caused to all child victims, but the same assumption would not be made about adult victims. We believe that this designation of different classes of victims establishes a precedent that certain victims are more deserving of special status and protection or that there is more value placed on the hurt caused to them. This creates the possibility of further classification of victims and value judgements about assessing serious harm and deserving victims. The sentence originally handed down should have reflected the level of harm done; it should not be revisited at the time of release.

The John Howard Society of Alberta believes that the criminal justice system is not the answer to protecting the public from offenders who have already served their time and who are later felt to be a danger to the public. If there is reliable psychiatric evidence that an offender is dangerous to the community, then clearly the offender should be dealt with under mental health laws. The offender would have already served the time deemed by the court as adequate to punish the offender for the crime committed; he or she should not continue to be punished for the same crime or for possible future crime. Any offender deemed dangerous at the time of release should be dealt with in the mental health system where he or she will receive appropriate treatment and under which there are provisions for indeterminate care. The criminal justice system is not the solution to what is so clearly a mental health issue.

Finally, we are, once again, disappointed with the response of the government to legitimate community concerns. The public wishes to be ensured of protection from violent, dangerous

offenders. Rather than take the time to develop a response that was appropriate and that did not create unnecessary laws, they responded with the introduction of a law which is inherently flawed and which does not appear to be based on a serious examination of all of the options. In addition, this draft legislation was released with the intent to have the consultations take place over the summer which makes it extremely difficult for community groups to prepare thoughtful and timely responses. The government does a disservice to the legitimate concerns of the public by rushing to introduce legislation which, in all likelihood, will not adequately address the problem of dangerous offenders.

It is recognized by the government that Canada does not need more law. Justice Minister Pierre Blais told an audience in July that Canada has "far too many laws" and that "(T)he perception is that the law can resolve many of the ills that surround us. The reality is that it cannot," (Canadian Press, 1993). The Minister then went on to state that the "the response to crime is a call for more laws, in the belief that the law alone can resolve crime. The law cannot...Ultimately, too much criminal law can become an instrument of oppression."

We urge the government not to introduce this draft dangerous offender legislation. We believe that it is inherently flawed and is not the most appropriate response to genuine concerns for public safety. We encourage the government to re-assess current laws for the potential that these concerns can be more appropriately addressed through modifications to and increased use of existing laws.

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APPENDIX A

SCHEDULE I

1. An offence under any of the following provisions of the Criminal Code:

(a) paragraph 81(2)(a)	(causing injury with intent);
(b) section 85	(use of firearm with intent);
(c) subsection 86(1)	(pointing a firearm);
(d) section 144	(prison breach);
(e) section 151	(sexual interference);
(f) section 152	(invitation to sexual touching);
(g) section 153	(sexual exploitation);
(h) section 155	(incest);
(i) section 159	(anal intercourse);
(j) section 160	(bestiality, compelling, in the presence of or by child);
(k) section 170	(parent or guardian procuring sexual activity by child);
(l) section 171	(householder permitting sexual activity by or in presence of child);
(m) section 172	(corrupting children);
(n) subsection 212(2)	(living off the avails of prostitution by a child);
(o) subsection 212(4)	(obtaining sexual services of a child);
(p) section 236	(manslaughter);
(q) section 239	(attempt to commit murder);
(r) section 244	(causing bodily harm with intent);
(s) section 246	(overcoming resistance to commission of offence);
(t) section 266	(assault)
(u) section 267	(assault with a weapon or causing bodily harm);
(v) section 268	(aggravated assault);
(w) section 269	(unlawfully causing bodily harm);
(x) section 270	(assaulting a police officer);
(y) section 271	(sexual assault)
(z) section 272	(sexual assault with a weapon, threats to a third party or causing bodily harm);
(z.1) section 273	(aggravated sexual assault);
(z.2) section 279	(kidnapping);
(z.3) section 344	(robbery);
(z.4) section 433	(arson - disregard for human life);
(z.5) section 434.1	(arson - own property);
(z.6) section 436	(arson by negligence); and
(z.7) paragraph 465(1)(a)	(conspiracy to commit murder).

2. An offence under any of the following provisions of the Criminal Code, as they read immediately before July 1, 1990:

(a) section 433	(arson)
(b) section 434	(setting fire to other substance); and
(c) section 436	(setting fire by negligence).

3. An offence under any of the following provision of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 4, 1983:

(a) section 144	(rape);
(b) section 145	(attempt to commit rape);
(c) section 149	(indecent assault on female);
(d) section 156	(indecent assault on male);
(e) section 245	(common assault); and
(f) section 246	(assault with intent).

SCHEDULE II

1. An offence under any of the following provisions of the Narcotic Control Act:

(a) section 4	(trafficking);
(b) section 5	(importing and exporting);
(c) section 6	(cultivation);
(d) section 19.1	(possession of property obtained by certain offences); and
(e) section 19.2	(laundering proceeds of certain offences).

2. An offence under any of the following provisions of the Food and Drugs Act:

(a) section 39	(trafficking in controlled drug);
(b) section 44.2	(possession of property obtained by trafficking in controlled drug);
(c) section 44.3	(laundering proceeds obtained by trafficking in controlled drug);
(d) section 48	(trafficking in restricted drug);
(e) section 50.2	(possession of property obtained by trafficking in controlled drug); and
(f) section 50.3	(laundering proceeds of trafficking in restricted drug).

(Corrections and Conditional Release Act of 1992)

APPENDIX B

(1) For the purposes of review and determination of the case of an offender pursuant to section 129, 130 or 131, the Service, the Commissioner or the Board, as the case may be, shall take into consideration any factor that is relevant in determining the likelihood of the commission of an offence causing the death of or serious harm to another person before the expiration of the offender, sentence according to law, including

(a) a pattern of persistent violent behaviour established on the basis of any evidence, in particular,

(i) the number of offences committed by the offender causing physical or psychological harm,

(ii) the seriousness of the offence for which the sentence is being served,

(iii) reliable information demonstrating that the offender has had difficulties controlling violent impulses to the point of endangering the safety of any other person,

(iv) the use of a weapon in the commission of any offence by the offender,

(v) explicit threats of violence made by the offender,

(vi) behaviour of a brutal nature associated with the commission of any offence by the offender, and

(vii) a substantial degree of indifference on the part of the offender as to the consequences to other persons of the offender's behaviour;

(b) medical, psychiatric or psychological evidence of such likelihood owing to a physical or mental illness or disorder of the offender;

(c) reliable information compelling the conclusion that the offender is planning to commit an offence causing the death of or serious harm to another person before the expiration of the offender's sentence according to law; and

(d) the availability of supervision programs that would offer adequate protection to the public from the risk the offender might otherwise present until the expiration of the offender's sentence according to law.

(2) For the purposes of the review and determination of the case on an offender pursuant to section 129, 130 or 131, the Service, the Commissioner or the Board, as the case may be, shall take

into consideration any factor that is relevant in determining the likelihood of the commission of a serious drug offender before the expiration of the offender's sentence according to law, including

(a) a pattern of persistent involvement in drug-related offences established on the basis of any evidence, in particular,

(i) the number of drug-related offences committed by the offender,

(ii) the seriousness of the offence for which the sentence is being served,

(iii) the type and quantity of drugs involved in any offence committed by the offender

(iv) reliable information demonstrating that the offender remains in drug-related activities, and

(v) a substantial degree of indifference on the part of the offender as to the consequences to other persons of the offender's behaviour;

(b) medical, psychiatric or psychological evidence of such likelihood owing to a physical or mental illness or disorder of the offender;

(c) reliable information compelling the conclusion that the offender is planning to commit a serious drug offence before the expiration of the offender's sentence according to law; and

(d) the availability of supervision programs that would offer adequate protection to the public from the risk the offender might otherwise present until the expiration of the offender's sentence according to law.

(Corrections and Conditional Release Act, § 132)

APPENDIX C

"sexual offence involving a child" means

(a) an offence under any of the following provisions of the Criminal Code:

(i) section 151	(sexual interference);
(ii) section 152	(invitation to sexual touching);
(iii) section 153	(sexual exploitation);
(iv) subsection 160(3)	(bestiality in presence of child or inciting child to commit bestiality);
(v) section 170	(parent or guardian procuring sexual activity by child);
(vi) section 171	(householder permitting sexual activity by child);
(vii) section 172	(corrupting children);
(viii) subsection 212(2)	(living off the avails of prostitution by a child), and
(ix) subsection 212(4)	(obtaining sexual services of a child), or

(b) an offence under any of the following provisions of the Criminal Code involving a person under the age of eighteen years:

(i) section 155	(incest);
(ii) section 159	(anal intercourse);
(iii) subsections 160(1-2)	(bestiality and compelling bestiality);
(iv) section 271	(sexual assault)
(v) section 272	(sexual assault with a weapon, threats to a third party or causing bodily harm), and
(vi) section 273	(aggravated sexual assault), or

(c) an offence involving a person under the age of eighteen years under any of the following provisions of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 4, 1983:

(i) section 144	(rape);
(ii) section 145	(attempt to commit rape);
(iii) section 149	(indecent assault on female), or
(iv) section 156	(indecent assault on male).

(Lewis --- Draft Legislation, 1993, § 129(9))