RESPONSE TO PROPOSED CORRECTIONS AND CONDITIONAL RELEASE ACT

JOHN HOWARD SOCIETY OF ALBERTA

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The John Howard Society of Alberta supports and promotes the notion of restorative justice as a foundation upon which to consider fundamental reform of the justice system. The Bill as drafted does not reflect the restorative paradigm and tends to further entrench retribution as the focus of justice. The current Canadian justice system is based on the notion of retributive justice. Retributive justice punishes proven violations of the law through an adversarial legal process, with the aims of preventing crime and protecting society. The community does not play a leading or even significant role and social stigma attached to those being punished is long-lasting. Offender remorse and victim forgiveness are relatively unimportant factors in this mode of doing justice and, as a consequence, harm is left largely unrepaired. The offender often plays a passive role in the proceedings and the victim plays no role at all.

The restorative model of justice involves the offender, the victim and the community in negotiation and dialogue aimed at restitution, reconciliation and restoration of harmony. Offenders take an active part in the restorative process, with remorse, repentance and forgiveness being important factors. The stigma arising from an offence may be removed through conforming behaviour on the part of the offender. The restorative justice model also looks at the social, economic and moral context of the criminal behaviour, while still holding the offender responsible for his or her actions. Our comments on Bill C-36 must be read with knowledge of our bias favouring restorative justice and of our hesitancy to endorse any further legislative entrenchment of retribution.

Reports, Royal Commissions, proceedings of numerous consultations and the package of discussion documents circulated under the title Directions for Reform have all indicated the need for massive public education regarding the operations of the criminal justice process, the need for immediate, wide-ranging reform and an end to incremental, short-term and reactive tinkering when it comes to the administration of justice. With this as the context, we eagerly anticipated the legislation we were sure would flow subsequent to the Directions for Reform consultations. Bill C-36 falls substantially short of our expectations. It fails to address sentencing, it fails to provide the "glue" which would unify the system into a cogent whole and it fails to provide for measures which would educate the public.

The proposed legislation is not totally without merit. We cautiously approve of the fast-track release of first-time non-violent offenders. Our approval is tempered by what this suggests regarding the ability to predict dangerousness and the continued development of policy based upon categorizing offenders. Property offenders may or may not be violent. They may or may not be good release risks. Emphasis should be given to making quality client-specific release decisions based on what is known about the individual, not on what we suspect to be true about a class or type of offender.

The John Howard Society of Alberta supports the change from earned remission to statutory release. However, we are opposed to any provision for the preventive detention of certain categories of offenders. The provisions for preventive detention discriminate against a certain class of inmate on the vague grounds of supposed likelihood of re-offending in a certain way. It relies on the ability of members of the National Parole Board to predict future dangerous behaviour. The suggestion that

anyone has the ability to predict that an offender will re-offend within a particular time frame (i.e., before warrant expiry date) has limited credibility.

We would also like to express our concern about including drug offenders with those who are subject to judicial determination of parole eligibility and detention during statutory release.

Despite the lack of research evidence to suggest that drug offenders are less successful on conditional release than other categories of offenders, this legislation targets them as a threat to the protection of society. Including drug offenders in the group of offenders whose release would be based upon judicial determination of parole eligibility and who would be subject to highly restrictive preventive detention provisions uses this category of offenders as a scapegoat to make the system appear tougher. These measures are not designed to implement policy based upon research. We can only conclude they are designed to satisfy public fear based upon misconception. It is incorrect to establish or justify the belief in the minds of the public that drug offenders are dangerous in the same way as violent offenders; these two categories of offenders should not be lumped together as if there were some inherent connection between the two.

The government anticipates an increase in the prison population of approximately 160 inmates after 6 years, as a result of the provisions for judicial determination of parole eligibility and preventive detention. This acceptance of an increase in the prison population is contrary to the statement in Directions for Reform that "reducing this dependency on prisons is needed to achieve greater effectiveness, balance and restraint in our system" (p. 10). Because the proposed legislation does not include sentencing reforms, we cannot comment on how this projected increase in the number incarcerated will be impacted by diversion proposals for less serious offenders from prison to community-based alternatives which may come at a later date. In any case, it is unacceptable for the government to allow any increase in the prison population as a result of this legislation.

In spite of the fact that this proposed legislation will likely bring about an overall increase in the prison population, it proposes no concomitant increase in programming. There have been no new funds allocated for improving or increasing institutional programming.

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.

Second, judicial determination of parole eligibility will create even more disparity in sentences for offenders charged with similar crimes. The facts that the provision only applies to certain categories of offenders, and that judges may or may not implement the provision in each applicable case, create a considerable amount of disparity created in the sentences received by these categories of offenders.

Third, judicial determination will create confusion in the public. It will not be clear to the public which cases are eligible for judicial determination, and why judges do not use the provision in all of the eligible cases. In addition, some victims of non-violent crimes may not understand why they are not being "protected" in the same manner as other victims.

There are other aspects of the proposed legislation which will do little to increase public understanding of the criminal justice process. One example of an area of increased complexity in the Bill which will likely create confusion is the increase in the number of factors taken into account in conditional release decisions. When determining eligibility for the various types of release, six factors will be taken into account: the security classification of the inmate, the security level of the institution, sentence length, offence type, judicial discretion and previous criminal history. The mere presence of legislated factors to be considered will neither ensure better decisions nor increase consistency. Instead of clarifying conditional release, the Bill increases the number of factors to be taken into account, thus adding further confusion to an already misunderstood process and creating a sense of false hope and security in the minds of the public who will be led to believe that the legislated consideration of these factors will make them safer.

The government is aware that confusion and lack of understanding of the purposes and operations of the criminal justice process foster distrust, fear and anger. Directions for Reform clearly stated that the realities of the system must be communicated to the public, that the public must be informed in order to be an effective voice in shaping the justice system. Yet, this proposed legislation complicates rather than simplifies some procedures and practices and creates a false sense of security in the minds of the public about how the system is responding to crime. It suggests that new initiatives are being introduced, while in reality it is legislated status quo. In addition, there are no provisions in the proposed legislation in terms of public education to address acknowledged misperceptions about the system on the part of the public.

The Solicitor General has stated that this proposed legislation is a response to expressed public concerns about safety. Correspondence from the Ministry of the Solicitor General to the Church Council on Justice and Corrections included the statement that "the government recognizes that for some offenders incarceration may be the only way to ensure public protection for a greater portion of the sentence." In Directions for Reform, the government stated that "inaccurate public perceptions should not dictate public policy." However, it is highly inaccurate for the government to support the premise that public safety is upheld simply by keeping offenders in prison for longer periods. Public safety must necessarily rely on a number of factors such as crime prevention programs, effective programming in prisons and effective release planning.

The consultation document, Directions for Reform, indicated that piecemeal, incremental change has been a significant problem contributing to the lack of integration and balance among the various components of the system. The expectation established during the consultation process was that there would be fundamental, comprehensive reform of the system as a whole. However, the absence of sentencing reforms has signalled that this new legislation is not what the government forecasted in the consultation document. It is, in fact, piecemeal change of certain aspects of the system and largely a codification into law of existing practices.

The government cannot expect a proper response to reforms to corrections when we have not been informed as to how sentencing will be reformed. Any reforms to sentencing policy and practice will necessarily impact on corrections and conditional release practice. Reforming corrections and conditional release without jointly reforming sentencing has, in effect, put the cart before the horse.

Finally, it is unacceptable that there is no mention of the need for a comprehensive crime prevention strategy. Merely responding to crime has proven to be an ineffective solution to the problem. The criminal justice system needs to address the underlying social and economic conditions which are factors in the development of criminal behaviour. This need to look at crime prevention was acknowledged in Directions for Reform, but is not included in the proposed legislation. We enthusiastically support the goal of public protection; however, merely reacting to crime will not produce any lasting change.