

**BILL C-10: AN ACT TO AMEND THE CRIMINAL CODE
(MINIMUM PENALTIES FOR OFFENCES INVOLVING
FIREARMS) AND TO MAKE A CONSEQUENTIAL
AMENDMENT TO ANOTHER ACT**

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LEGISLATIVE HISTORY OF BILL C-10

HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	4 May 2006
Second Reading:	13 June 2006
Committee Report:	21 February 2007
Report Stage:	7 May 2007
Third Reading:	29 May 2007

SENATE

Bill Stage	Date
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First Reading:	30 May 2007
Second Reading:	
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Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

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**BILL C-10: AN ACT TO AMEND THE CRIMINAL CODE
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TO MAKE A CONSEQUENTIAL AMENDMENT TO ANOTHER ACT***

INTRODUCTION

Bill C-10, An Act to amend the Criminal Code (**minimum penalties for offences involving firearms**) and to make a consequential amendment to another Act, was introduced and received first reading in the House of Commons on 4 May 2006, followed by second reading and referral to the House of Commons Standing Committee on Justice and Human Rights on 13 June 2006.⁽¹⁾ Its primary objectives are to increase mandatory minimum terms of imprisonment for individuals who commit serious or repeat firearm offences, and to create the new offences of breaking and entering to steal a firearm and robbery to steal a firearm.⁽²⁾

Bill C-10 was significantly amended by the Standing Committee on Justice and Human Rights, which reported the bill back to the House of Commons on 21 February 2007. All mandatory minimum penalties were removed, leaving the two new offences accompanied only by maximum penalties of life imprisonment. A few other, less substantive provisions remained intact, resulting in an amended bill with 9 clauses, compared to the original 31.

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

- (1) Bill C-10 is available on-line at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2980100&Language=e&Mode=1&File=14>. Bill C-10 is comparable to Bill C-82, An Act to amend the Criminal Code (firearms), which was introduced by the previous government during the 38th Parliament on 25 November 2005 but preceded no further. Bill C-82 would have increased the minimum sentences for unauthorized possession of a prohibited or restricted firearm with ammunition, and for smuggling and trafficking in firearms and other weapons, from one year to two years. Like Bill C-10, it would also have created the offences of breaking and entering to steal a firearm and robbery to steal a firearm.
- (2) See also Justice Canada, News Release, "Minister of Justice Proposes Tougher Mandatory Minimum Prison Sentences for Gun Crimes," Ottawa, 4 May 2006; and Justice Canada, Backgrounder, "Mandatory Minimum Penalties," Ottawa, May 2006.

However, at report stage in the House of Commons, Bill C-10 was restored more or less to its original state, although differences remain between the bill as introduced and the version at third reading (which occurred on 29 May 2007). The most significant differences are the removal of all of the higher penalties that would have been imposed for a third or subsequent offence (instead, the highest penalties will be for a second or subsequent offence); the removal of clauses that would have introduced escalating mandatory minimum sentences for less serious firearm offences;⁽³⁾ and the removal of mandatory minimum penalties for the two new offences of break and enter to steal a firearm and robbery to steal a firearm.

Bill C-10 was introduced in the Senate on 30 May 2007.

BACKGROUND

A. History of Minimum Sentences for Firearm Offences

There are about 40 offences under the *Criminal Code*, including murder, impaired driving and various sexual offences involving children, for which a mandatory minimum sentence of imprisonment must be imposed.⁽⁴⁾ Minimum sentences were first enacted for firearm offences in Canada in 1977.⁽⁵⁾ The legislation imposed a mandatory additional term of imprisonment of at least one year where a firearm is used in the commission of an indictable offence.⁽⁶⁾ In 1995, further amendments to the *Criminal Code* attached four-year mandatory minimum sentences to certain serious offences committed with a firearm, such as attempted murder, sexual assault, kidnapping and robbery.⁽⁷⁾ Where a person commits certain firearm

(3) **Original clause 8 (possession of a firearm, prohibited weapon, restricted weapon, prohibited device or prohibited ammunition obtained through the commission of an offence: *Criminal Code*, s. 96), clause 12 (altering a firearm so that it is an automatic firearm, capable of shooting in rapid succession during one pressure of the trigger: *Criminal Code*, s. 102), and clause 14 (possession of a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, any ammunition or prohibited ammunition contrary to an order: *Criminal Code*, s. 117.01).**

(4) For further discussion of mandatory minimum sentences and links to other information, see Wade Riordan Raaflaub, *Mandatory Minimum Sentences*, PRB 05-53E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 18 January 2006, <http://lopintrabp.parl.gc.ca/lopimages2/prbpubs/inbrief1000/prb0553-e.asp>.

(5) *Criminal Law Amendment Act*, S.C. 1977, c. 53.

(6) *Criminal Code*, R.S.C. 1970, c. C-3, s. 83, as amended. Section 83 later became s. 85: *Criminal Code*, R.S.C. 1985, c. C-46.

(7) *An Act respecting Firearms and Other Weapons*, S.C. 1995, c. 39, s. 139.

offences, or an offence that involves a firearm, weapon or other item that the person was prohibited from possessing at the time, he or she also became subject to a mandatory prohibition order.⁽⁸⁾

B. Constitutionality of Mandatory Minimum Sentences

Mandatory minimum terms of imprisonment are generally inconsistent with the fundamental principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender,⁽⁹⁾ as they do not allow a judge to make any exception in an appropriate case. However, this does not necessarily mean that a minimum sentence is unconstitutional. A mandatory minimum sentence may constitute cruel and unusual punishment, in violation of the *Canadian Charter of Rights and Freedoms*,⁽¹⁰⁾ if it is possible for the mandatory punishment, in a specific matter or reasonable hypothetical case, to be “grossly disproportionate,” given the gravity of the offence or the personal circumstances of the offender.

By way of example, the Supreme Court of Canada concluded in 1987 that a mandatory minimum term of imprisonment of seven years for importing or exporting a narcotic constituted cruel and unusual punishment because it failed to take into account the nature and quantity of the substance, the reason for the offence, or the absence of any previous convictions.⁽¹¹⁾ The applicable provision was accordingly struck down. Conversely, the current mandatory minimum sentence of four years in prison for criminal negligence causing death, where a firearm is used, was upheld by the Supreme Court in 2000, on the basis that such an offence necessarily involves wanton and reckless disregard for life and safety.⁽¹²⁾

(8) *Criminal Code*, s. 109. On a first conviction or discharge, the offender may not possess a firearm, cross-bow, restricted weapon, ammunition or explosive substance for at least 10 years, and may not possess a prohibited firearm, restricted firearm, prohibited weapon, prohibited device or prohibited ammunition for life. On a second or subsequent conviction or discharge, the person may not possess any of these items for life. A discharge, which may be absolute or conditional, means that the person was found guilty but not subject to a conviction, given his or her own interests and those of the public: *ibid.*, s. 730.

(9) *Ibid.*, s. 718.1.

(10) *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11, s. 12.

(11) *R. v. Smith*, [1987] 1 S.C.R. 1045.

(12) *R. v. Morrissey*, [2000] 2 S.C.R. 90.

C. Effect of Mandatory Minimum Sentences on Gun Crime

1. Canada

A study published in 2002 concluded that existing research generally does not support the use of mandatory minimum sentences for the purpose of deterrence, or for the purpose of reducing sentencing disparities.⁽¹³⁾ That said, the evidence was somewhat inconsistent and unclear in the specific context of firearm offences. In contrast to mandatory minimum sentences for drug offences or impaired driving, for instance, the use of such punishment appears to have some impact in reducing gun crime.⁽¹⁴⁾

A study in 1983 found that robberies and homicides with firearms decreased after minimum sentences came into force in 1977, but there may have been a compensating increase in offences not involving firearms, and minimum sentences were only one aspect of the legislation.⁽¹⁵⁾ The study concluded that a direct cause-and-effect relationship between the minimum penalties and declines in crime rates could not be drawn, as screening provisions to determine who may possess or acquire a firearm may have contributed.

In 1995, further amendments to the *Criminal Code* attached four-year mandatory minimum sentences to certain offences committed with a firearm. However, the number of cases was found by Statistics Canada in 1999 and 2000 to be too low to have a noticeable impact on overall sentencing patterns.⁽¹⁶⁾ There does not yet appear to have been a comprehensive study of the effects of the 1995 amendments.

(13) Thomas Gabor, Department of Criminology, University of Ottawa, and Nicole Crutcher, Carleton University, *Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and Justice System Expenditures*, prepared for Research and Statistics Division, Department of Justice Canada, Ottawa, January 2002, <http://canada.justice.gc.ca/en/ps/rs/rep/2002/rr2002-1a.pdf>.

(14) Possible reasons for the difference, among others, are that drug crime tends to be very lucrative, making offenders willing to risk punishment on the basis of the cost-benefit analysis, and impaired driving is better deterred through education and treatment measures.

(15) Elizabeth Scarff, Decision Dynamics Corporation, *Evaluation of the Canadian Gun Control Legislation, Final Report*, prepared for Solicitor General Canada, Ottawa, 1983. The 1977 amendments also put in place stricter controls on the issuance of registration certificates, new types of firearms prohibition orders, and new criminal offences in relation to firearm use. For further analysis of the 1977 legislation generally, see Research, Statistics and Evaluation Directorate, Department of Justice Canada, *A Statistical Analysis of the Impacts of the 1977 Firearms Control Legislation*, Ottawa, October 1996; executive summary available on-line at http://www.justice.gc.ca/en/ps/eval/reports/96/armes/p_00.html; and Gary Mauser and Richard Holmes, Simon Fraser University, "An Evaluation of the 1977 Canadian Firearms Legislation," *Evaluation Review*, Vol. 16, No. 6, December 1992, pp. 603-617.

(16) Julian Roberts and Craig Grimes, *Adult Criminal Court Statistics 1998/99*, Canadian Centre for Justice Statistics, Statistics Canada, Ottawa, March 2000, p. 15; and Liisa Pent, *Adult Criminal Court Statistics 1999/00*, Canadian Centre for Justice Statistics, Statistics Canada, Ottawa, May 2001, pp. 13-14. Mandatory minimum sentences have not been addressed in subsequent issues of *Adult Criminal Court Statistics*.

2. United States

There has been some evidence that mandatory minimum sentences have been effective in the context of gun-related crime in the United States, although again, the results are mixed overall. An evaluation, published in 1992, of mandatory gun-use sentencing enhancements (mandatory additional imprisonment) in six large American cities (Detroit, Jacksonville, Tampa, Miami, Philadelphia and Pittsburgh) found that the laws deterred homicide, although not other violent crimes.⁽¹⁷⁾ However, studies of similar laws in Michigan in 1983 and Florida in 1984 found no evidence that crimes committed with firearms had been prevented.⁽¹⁸⁾

A 1981 evaluation of a 1975 Massachusetts law that imposed mandatory jail terms for possession of an unlicensed handgun concluded that the law was an effective deterrent to gun crime in Boston, at least in the short term.⁽¹⁹⁾ A 1984 study of a 1974 Arizona law, imposing additional minimum prison time where a firearm is used in the commission of an offence, found that offenders committed fewer robberies with a firearm as penalties for firearm use became more severe.⁽²⁰⁾ The law was followed by “highly significant reductions in gun robberies in two large counties, with no evidence of displacement to other robberies or property crimes.”⁽²¹⁾

More recently, in Richmond, Virginia, a 1997 initiative called “Project Exile” established, among other things, a five-year mandatory minimum sentence for certain gun crimes. During the first 10 months of 1998, compared with the same period of the previous year,

(17) Dale Parent *et al.*, *Key Legislative Issues in Criminal Justice: Mandatory Sentencing*, National Institute of Justice, U.S. Department of Justice, Washington, D.C., January 1997, <http://www.ncjrs.gov/txtfiles/161839.txt>, citing D. McDowall, C. Loftin and B. Wiersema, “A Comparative Study of the Preventive Effects of Mandatory Sentencing Laws for Gun Crimes,” *Journal of Criminal Law and Criminology*, Vol. 83, No. 2, Summer 1992, pp. 378-394.

(18) Parent *et al.* (1997), citing C. Loftin, M. Heumann and D. McDowall, “Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control,” *Law and Society Review*, Vol. 17, No. 2, 1983, pp. 287-318; and C. Loftin and D. McDowall, “The Deterrent Effects of the Florida Felony Firearm Law,” *Journal of Criminal Law and Criminology*, Vol. 75, No. 1, 1984, pp. 250-259.

(19) Parent *et al.* (1997), citing G. L. Pierce and W. J. Bowers, “The Bartley-Fox Gun Law’s Short-Term Impact on Crime in Boston,” *Annals of the American Academy of Political and Social Science*, Vol. 455, 1981, pp. 120-132.

(20) Colin Meredith, ABT Associates, Bruno Steinke, Private Contractor, and Sherilyn Palmer, *Criminology, Research on the Application of Section 85 of the Criminal Code of Canada (Working Document)*, prepared for Firearms Control Task Group and Research Section, Department of Justice Canada, Ottawa, December 1994, section 2.5, http://www.cfc-cafc.gc.ca/pol-leg/res-eval/publications/reports/1990-95/sec85_rpt_e.asp, citing L. R. McPheters, R. Mann and D. Schlagenhauf, “Economic Response to a Crime Deterrence Program: Mandatory Sentencing for Robbery with a Firearm,” *Economic Enquiry*, Vol. XXI, 1984, pp. 550-570.

(21) Gabor and Crutcher (2002), p. 14, also citing McPheters, Mann and Schlagenhauf (1984).

the total number of homicides committed in the city was down 36% and the number of firearm homicides was down 41%.⁽²²⁾

3. Effect of Imprisonment Generally

Mandatory minimum sentences are a subset of criminal penalties generally. Accordingly, studies on the overall effect of prison sentences on crime rates and recidivism may be useful. One Canadian meta-analysis found little difference in general recidivism rates, regardless of length of incarceration or whether the offender was given a prison or community sanction. In fact, prison produced slight increases in recidivism.⁽²³⁾ In a follow-up meta-analysis focussing on juvenile, female and minority offenders, it was tentatively concluded that “increasing lengths of incarceration were associated with slightly greater increases in recidivism.”⁽²⁴⁾

4. Incidental Effects of Mandatory Minimum Sentences

A mandatory minimum sentence may not actually bring about severe and consistent sentencing as intended, or may have incidental implications. The possibility of mandatory punishment sometimes results in charges being stayed or withdrawn, or a plea negotiation for a different charge, because prosecutors consider the penalty to be too harsh. Decisions regarding appropriate punishment are therefore transferred from the judiciary to the prosecution.⁽²⁵⁾

(22) U.S. Department of Justice, Office of Juvenile Justice and Delinquency Protection, *Promising Strategies to Reduce Gun Violence*, Washington, D.C., February 1999, pp. 145-147, http://www.ojjdp.ncjrs.org/pubs/gun_violence/173950.pdf.

(23) Paul Gendreau and Claire Goggin, Centre for Criminal Justice Studies, University of New Brunswick, and Francis Cullen, Department of Criminal Justice, University of Cincinnati, *The Effects of Prison Sentences on Recidivism*, prepared for Corrections Research and Development and Aboriginal Policy Branch, Department of Solicitor General Canada, Ottawa, 1999, p. 2; summary available on-line at http://ww2.ps-sp.gc.ca/publications/corrections/199912_e.pdf.

(24) Paula Smith, Claire Goggin and Paul Gendreau, Department of Psychology and Centre for Criminal Justice Studies, University of New Brunswick, *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences*, prepared for Department of Solicitor General Canada, Ottawa, 2002, p. ii, http://ww2.psepc-sppcc.gc.ca/publications/corrections/200201_Gendreau_e.pdf.

(25) Meredith, Steinke and Palmer (1994), section 2.7; and United States Sentencing Commission, *Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, August 1991, pp. ii-iv.

When a charge for an offence carrying a minimum sentence is maintained, the accused has no incentive to plead guilty, more likely leading to a costly trial. Trials may also result in “jury nullification,” which is a jury’s refusal to convict when the mandatory penalty is perceived to be too harsh.⁽²⁶⁾ Another possibility is that a case heard by a judge may lead to the imposition of a less severe sentence on the accused for accompanying charges to compensate for the minimum sentence for a particular charge.⁽²⁷⁾ A survey of Canadian judges found that slightly over half felt that mandatory sentencing laws impinged on their ability to impose a just sentence.⁽²⁸⁾

Incarcerating offenders for longer periods results in increased prison costs, which are not necessarily offset by any reduction in crime rates and recidivism.⁽²⁹⁾ In addition to the direct costs of incarceration, there is also an opportunity cost to the extent that fewer public funds are available to be spent on law enforcement, community programs and crime prevention initiatives. Finally, mandatory minimum sentences may have an adverse effect on minority defendants, who may be more likely to be charged with offences carrying a minimum penalty.⁽³⁰⁾ Australian studies, for example, have shown that mandatory minimum sentences disproportionately affect Aboriginal offenders, which has resulted in the repeal of certain sentencing legislation.⁽³¹⁾

(26) Thomas Gabor, Department of Criminology, University of Ottawa, “Mandatory Minimum Sentences: A Utilitarian Perspective,” *Canadian Review of Criminology*, July 2001, pp. 385-404 (p. 393).

(27) Gabor and Crutcher (2002), p. 30.

(28) Julian Roberts, Rafal Morek and Mihael Cole, *Mandatory Minimum Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models*, prepared for Research and Statistics Division, Department of Justice Canada, Ottawa, 20 September 2005, p. 10, <http://canada.justice.gc.ca/en/ps/rs/rep/2005/rr05-10/rr05-10.pdf>, citing Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach*, Ottawa, 1987.

(29) Gabor (2001), p. 395.

(30) American Bar Association, Justice Kennedy Commission, *Report to the House of Delegates*, August 2004, pp. 27-29.

(31) Roberts, Morek and Cole (2005), pp. 26 and 27, citing Northern Territory Office of Crime Prevention, *Mandatory Sentencing for Adult Property Offenders: The Northern Territory Experience*, Darwin, 2003, http://www.nt.gov.au/justice/ocp/docs/mandatory_sentencing_nt_experience_20031201.pdf; and “Call for Repeal of Western Australian Mandatory Sentencing,” *The Guardian*, Surrey Hills, New South Wales, 28 November 2001. The latter cites Neil Morgan, Harry Blagg, Crime Research Centre, and Victoria Williams, Aboriginal Legal Service of Western Australia (Inc.), *Mandatory Sentencing in Western Australia and the Impact on Aboriginal Youth*, prepared for Aboriginal Justice Council, Perth, December 2001.

DESCRIPTION AND ANALYSIS

Note to the typist: Sections below have been renumbered

A. Preamble

The preamble to Bill C-10 states its objective of promoting peace, freedom and security by taking measures against violence involving firearms, particularly by street gangs. It also acknowledges the need to respect the *Canadian Charter of Rights and Freedoms*, appearing to imply that the government is conscious of jurisprudence indicating the extent to which minimum sentences may be imposed without constituting cruel and unusual punishment. A preamble assists in the interpretation of the purpose and policies behind legislation.⁽³²⁾

B. Higher and Escalating Mandatory Minimum Sentences (Sub-clause 2(2), Clauses 7, 9-11, 13-20)

Bill C-10 increases the minimum terms of imprisonment that must be imposed for certain firearm offences, particularly where the offence has been committed with a restricted or prohibited firearm, in connection with a criminal organization, or by an individual with a previous conviction for a firearm-related offence. Table 1 summarizes the amendments by comparing existing minimum sentences under the *Criminal Code* with those proposed under Bill C-10.

(32) *Interpretation Act*, R.S.C. 1985, c. I-21, s. 13. See also, e.g., *Re Vancouver Sun*, [2004] 2 S.C.R. 332, and *B. v. Ontario (Human Rights Commission)*, [2002] 3 S.C.R. 403.

Table 1

Minimum Sentences Under the *Criminal Code* and Bill C-10

Offence (with <i>Criminal Code</i> section reference)	Current Minimum Imprisonment	Minimum Imprisonment Under Bill C-10
Use of a firearm or imitation firearm in the commission of an indictable offence, ⁽³³⁾ in an attempt to commit an indictable offence, or during flight afterwards (s. 85): Sub-Clause 2(2)	1 year (1 st offence) 3 years (2 nd or subsequent offence)	No Change ⁽³⁴⁾
Unauthorized possession of a prohibited or restricted firearm that is loaded or near readily accessible ammunition (s. 95): Clause 7	1 year (but only if the Crown chooses to proceed by indictment) ⁽³⁵⁾	3 years (1 st offence) 5 years (2 nd or subsequent offence) Crown still has the option to proceed summarily in all cases; if so, maximum is one year (no minimum)
Breaking and entering to steal a firearm (new s. 98): Clause 8	Not applicable (new offence)	No minimum (maximum life imprisonment) ⁽³⁶⁾
Robbery to steal a firearm (new s. 98.1): Clause 8	Not applicable (new offence)	No minimum (maximum life imprisonment) ⁽³⁷⁾
Trafficking in, or possession for the purpose of trafficking in, a firearm, prohibited weapon, restricted weapon,	1 year	Where a firearm, prohibited device, any ammunition or prohibited ammunition:

(33) Except where a firearm (not imitation) is used in the course of 10 more serious indictable offences: criminal negligence causing death, manslaughter, attempted murder, discharge of firearm with intent, sexual assault with a weapon, aggravated sexual assault, kidnapping, hostage-taking, robbery and extortion.

(34) **Except that the current subparagraph 85(3)(b), which refers to first offences committed before 1 January 1978, is removed.**

(35) Where an offence may be prosecuted by indictment or summary conviction (i.e., it is “hybrid”), the Crown has the discretion to prosecute the offence as it considers appropriate, depending on its seriousness, the offender’s criminal record, certain procedural differences and other factors.

(36) **As originally introduced in the House of Commons, Bill C-10 would have attached a minimum term of imprisonment of one year for a first offence associated with break and enter to steal a firearm, three years for a second offence, and five years for a third or subsequent offence.**

(37) **As originally introduced, Bill C-10 would have attached a minimum term of imprisonment of three years for a first offence associated with robbery to steal a firearm, and five years for a second or subsequent offence.**

Offence (with <i>Criminal Code</i> section reference)	Current Minimum Imprisonment	Minimum Imprisonment Under Bill C-10
prohibited device, any ammunition or prohibited ammunition (ss. 99 and 100): Clauses 9 and 10		3 years (1 st offence) 5 years (2 nd or subsequent offence) Where a prohibited or restricted weapon: 1 year
Importing or exporting a firearm, prohibited weapon, restricted weapon, prohibited device, prohibited ammunition or component or part for an automatic firearm knowing that it is unauthorized (s. 103): Clause 11	1 year	Where a firearm, prohibited device or prohibited ammunition: 3 years (1 st offence) 5 years (2 nd or subsequent offence) Where a prohibited or restricted weapon, component or part for an automatic firearm: 1 year
Use of a firearm in the commission of attempted murder (s. 239), discharging a firearm with intent (s. 244), sexual assault with a weapon (s. 272), aggravated sexual assault (s. 273), kidnapping (s. 279), hostage-taking (s. 279.1), robbery (s. 344) and extortion (s. 346): Clauses 13-20	4 years (which minimum includes the punishment for the underlying offence)	4 years (except in the cases below) Where a restricted or prohibited firearm is used, or any firearm is used in connection with a criminal organization: 5 years (1 st offence) 7 years (2 nd or subsequent offence)

C. Determining Subsequent Offences (**Clauses 1, 13-20**)

The higher mandatory minimum sentences for a second or subsequent offence apply not only if the person has previously committed that particular offence, but also if he or she has committed certain other offences. For the purpose of imposing the sentence for all of the offences in the above table except the eight set out in the last row (i.e., use of a firearm in the commission of attempted murder, etc.), an individual is considered to have committed a previous offence if he or she has committed *any* of the offences in the above table, **a firearm offence under three additional sections of the *Criminal Code*,**⁽³⁸⁾ criminal negligence causing death with a firearm under s. 220 of the *Criminal Code*, or manslaughter with a firearm under s. 236 (**clause 1**).

For the purpose of the eight more serious offences in the last row of Table 1, an individual is considered to have committed a previous offence if he or she has committed any of the eight more serious offences, criminal negligence causing death with a firearm, manslaughter with a firearm, or use of a firearm or imitation firearm in the commission of an indictable offence, or in an attempt to commit an indictable offence, or during flight afterwards under s. 85 of the *Criminal Code* (clauses 13-20).

For all sentencing purposes under Bill C-10, a previous offence does not count if more than ten years have elapsed since the conviction, not counting time spent in custody. Further, it is the sequence of convictions that is to be considered, not the order in which the offences were committed (**see the final subsections enacted by clauses 1 and 13-20**). This means, for example, that if an individual illegally imported a firearm and subsequently used a firearms in the commission of attempted murder, but was convicted on **the charge of using a firearm first**, the “second offence” would be importation. As a result, the individual would receive a minimum sentence of five years (second offence on a charge of importation) rather than seven years (second offence on a charge of **use of a firearm in the commission of attempted murder**).

(38) The three additional sections of the *Criminal Code* are those under which Bill C-10, as originally introduced in the House of Commons, would have also imposed escalating mandatory minimum sentences: see footnote 3.

D. Two New Offences (**Clauses 8, 12, 21 and 24**)

Clause **8** of Bill C-10 adds two new firearm offences to the *Criminal Code*, one for breaking and entering to steal a firearm (new s. 98) and the other for robbery to steal a firearm (new s. 98.1). The first offence applies if an individual breaks and enters a place with intent to steal a firearm (even if he or she does not actually steal one), he or she steals a firearm after breaking and entering (even without initial intent to steal), or he or she breaks out of a place after stealing or intending to steal a firearm. “Break” means to break any internal or external part, or to open any thing that is used to close or cover an internal or external opening (*Criminal Code*, s. 321). “Place” means any building, structure, motor vehicle, vessel, aircraft, railway vehicle, container or trailer. It is further clarified that a person is considered to enter as soon as any part of his or her body or any instrument being used comes within the thing being entered, and that a person is considered to have broken and entered if he or she obtained entrance by threat, artifice or collusion with a person within, or entered without lawful justification or excuse by a permanent or temporary opening.

Robbery to steal a firearm applies to an individual who commits robbery with intent to steal a firearm, or in the course of which he or she steals a firearm (even without initial intent to steal the firearm). Robbery means stealing with the use or threat of violence to a person or property; stealing while at the same time wounding, beating or striking a person; assaulting someone with the intent to steal; or stealing while armed with an offensive weapon or imitation (*Criminal Code*, s. 343).

Both offences introduced by Bill C-10 are added to the list of offences in s. 183 of the *Criminal Code*, in respect of which the police may be authorized to intercept communications (clause **12**). References to both break and enter and robbery to steal a firearm are added to a section of the *Criminal Code* under which an aggravating circumstance for the purpose of sentencing is the fact that the offender knew that a person was home, was reckless as to whether the house was occupied, or used or threatened violence against a person or property (clause **21**). Finally, subsection 662(6) of the *Criminal Code* is amended to indicate that if a person is charged with stealing a firearm during a break and enter, but actual stealing cannot be proved, the person may still be convicted of break and enter with intent to steal, even if not charged with the latter (clause **24**).⁽³⁹⁾

(39) Although, when originally introduced in the House of Commons, Bill C-10 attached escalating mandatory minimum sentences to the two new offences of break and enter to steal a firearm, and robbery to steal a firearm, the House of Commons Standing Committee on Justice and Human Rights removed the minimum penalties, leaving only maximum penalties of life imprisonment. The Committee

E. Miscellaneous Amendments (**Sub-clause 2(1), Clauses 3-7, 14, 18, 22 and 23**)

Section 98 of the *Criminal Code* was a transitional provision enacted with the 1995 firearm-related amendments. It is no longer necessary and has been replaced by new provisions in Bill C-10. References to the former s. 98 have been removed from **ss. 91-95** of the *Criminal Code* (**clauses 3-7**).⁽⁴⁰⁾

The offence under s. 244 of the *Criminal Code* has been reworded (clause 14). The nature of the offence is essentially the same, which is to discharge a firearm with intent to injure or endanger someone or to avoid arrest or detention, regardless of the person at whom the firearm is discharged. However, the offence is now referred to as “discharging firearm with intent” rather than “causing bodily harm with intent – firearm,” presumably because bodily harm is not necessary to commit the offence. The new reference is accordingly inserted in two places in the *Criminal Code* (sub-clause 2(1) and clause 22). The offence of hostage-taking is also reworded without any substantive effect or changes to references in other places (clause 18).

Because of changes to the minimum penalties for aggravated sexual assault based on the type of firearm used and involvement of a criminal organization (see clause 16), a distinction is made between the offences of “aggravated sexual assault – use of a firearm” and “aggravated sexual assault – use of a restricted firearm or prohibited firearm or any firearm in connection with criminal organization.” References are accordingly amended in another section of the *Criminal Code* (clause 23).

F. Consequential Amendment, Coordinating Provision and
Coming Into Force (**Clauses 25-27**)

A consequential amendment is made to the *Corrections and Conditional Release Act*⁽⁴¹⁾ to reflect the new reference for the offence of “discharging firearm with

(cont'd)

also deleted the original sub-clause 16(1), by which breaking and entering to steal a firearm would have been added to the list of offences for which a person may be found guilty of constructive murder if he or she causes the death of another in the course of the offence. **The House of Commons agreed with these particular changes at third reading.**

(40) There is also a stylistic change to s. 91 in clause 3. The phrase “unless the person is a holder” is replaced by “without being the holder.”

(41) *Corrections and Conditional Release Act*, S.C. 1992, c. 20.

intent” (clause 25). A coordinating provision makes a similar change, depending on which of Bill C-10 and another Act⁽⁴²⁾ come into force first (clause 26).

The provisions enacted by Bill C-10 (except the coordinating provision just mentioned) come into force on a day to be fixed by order of the Governor in Council (clause 27).

COMMENTARY

One of the five key priorities of the government elected in January 2006 was to make streets and communities safer through measures to counteract crime. The former Minister of Justice and Attorney General stated that getting tough on crime proclaims that Canada believes in a peaceful society that does not tolerate acts of violence, and protects citizens from those violent offenders who might otherwise be sent back to the community to commit another act of violence.⁽⁴³⁾ The new approach rests on the principle that “serious crime deserves serious time.”

Opposition parties have raised questions about the severity of the mandatory minimum sentences proposed under Bill C-10, suggesting that they might not survive a Charter challenge.⁽⁴⁴⁾ While it has been argued that minimum sentences risk being found to be unconstitutional, Department of Justice officials were cited as saying that the bill was crafted to meet those concerns.⁽⁴⁵⁾ The sentences proposed under the bill were also apparently less severe than initially planned, in an effort to gain the support of opposition parties.⁽⁴⁶⁾

(42) *An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act, S.C. 2005, c. 25.*

(43) Justice Canada, “Speech for the Honourable Vic Toews, Minister of Justice and Attorney General of Canada,” presented to the Canadian Professional Police Association, Ottawa, 3 April 2006, http://news.gc.ca/web/view/en/index.jsp?articleid=204839&categoryid=9&do_as=true&view_as=search&df_as=1&mf_as=4&yf_as=2006&dt_as=10&mt_as=4&yt_as=2006&categoryid=9&do_as=true&view_as=content&df_as=1&mf_as=4&yf_as=2006&dt_as=10&mt_as=4&yt_as=2006&.

(44) Janice Tibbetts, “Tories deliver on mandatory sentences: Two bills get tough on gun-related and drug crimes,” *National Post* [Toronto], 4 May 2006, p. A8.

(45) Campbell Clark, “Crackdown takes aims at guns, sentencing Tories want mandatory minimum sentences imposed and house arrest eliminated in certain cases,” *The Globe and Mail* [Toronto], 5 May 2006, p. A1.

(46) *Ibid.*

The Canadian Civil Liberties Association has criticized mandatory minimum penalties for failing to give judges flexibility to examine the details of a specific case. It believes that minimum sentences should be presumptive, not mandatory, given that there are sometimes exceptional cases that are not anticipated.⁽⁴⁷⁾ By contrast, tougher sentencing measures have been welcomed by police groups, such as the Canadian Professional Police Association.⁽⁴⁸⁾

Commentators have cited various studies showing that mandatory minimum sentences are ineffective in reducing crime rates or recidivism, and that it is the certainty, rather than severity, of punishment that deters offenders.⁽⁴⁹⁾ The former Minister of Justice responded by referring to jurisdictions in the United States, where minimum sentences have arguably produced a significant drop in crime.⁽⁵⁰⁾ Still, others have argued that the United States has a much higher overall crime rate than Canada, despite its tougher sentencing strategies.⁽⁵¹⁾

Critics have questioned the effectiveness of mandatory minimum sentences in reducing crime, pointing out that people commit crimes for reasons that go beyond punishment, and that economic and social issues such as poverty are a contributing factor.⁽⁵²⁾ There is particular worry that tougher penalties will disproportionately affect Aboriginal offenders, and preclude the alternatives to jail that are sometimes preferred by traditional restorative justice.⁽⁵³⁾

Others are concerned about the costs associated with larger prison populations, and the risk of overcrowding, given that higher minimum sentences and fewer conditional sentences are predicted to put an additional 300-400 offenders in federal penitentiaries, and up to

(47) Canadian Civil Liberties Association, Letter to the Honourable Vic Toews, Minister of Justice, 9 February 2006; see also Julius Strauss, "Group blasts Tory plan to tighten sentencing," *The Globe and Mail* [Toronto], p. A5.

(48) CBC News, "Harper's get-tough speech draws warm reception from police association," on-line, last updated 3 April 2006.

(49) Jeffrey Simpson, "The real crime's the Tories' take on sentencing," *The Globe and Mail* [Toronto], 5 May 2006, p. A25.

(50) CBC News, "Tories introduce new anti-crime bills," on-line, last updated 4 May 2006; Isabelle Rodrigue, "Ottawa serre la vis aux criminels, peut-être trop dit l'opposition," *Le Droit* [Ottawa], 5 May 2006, p. 20.

(51) Brigitte Breton, "Sécurité fictive," *Le Soleil* [Québec], 6 May 2006, p. 32.

(52) CBC News, "Anti-crime bills FAQ," on-line, last updated 4 May 2006, citing Kelly Hannah-Moffat, professor specializing in criminology, University of Toronto.

(53) Bill Curry, "Saskatchewan warns of risk to justice system: More natives will be jailed, minister fears," *The Globe and Mail* [Toronto], 5 May 2006, p. A6, citing Frank Quennell, Minister of Justice, Saskatchewan.

3,800 or 4,000 in provincial institutions.⁽⁵⁴⁾ It apparently costs about \$82,000 per year to house an offender in a federal institution, and in anticipation of a greater number of inmates, the Minister of Public Safety indicated that the government has set aside between \$220 and \$245 million for new prison cells over five years.⁽⁵⁵⁾

Public and political support for more severe sentences for gun-related crime gained momentum following a large number of firearm homicides in Toronto in 2005, and particularly the shooting of a 15-year-old girl in December of that year. Not everyone, however, believes that increasing mandatory minimum sentences is the answer. Some say that criminals are unlikely to be deterred, as they are already aware of existing minimum sentences but simply believe that they will not be caught.⁽⁵⁶⁾ Somewhat contradictorily, others say that tougher penalties are ineffective precisely because most criminals are *not* likely to become aware of changes in the law.⁽⁵⁷⁾

It has been stated that judges are already imposing harsh sentences for serious firearm offences.⁽⁵⁸⁾ In other words, Bill C-10 might hurt a system that already works well in practice. There are concerns, for instance, that mandatory sentences will result in more not guilty pleas, clogging the court system and increasing trial costs.⁽⁵⁹⁾ As another possibility, it has been found that Crown prosecutors are likely to withdraw charges where defendants face mandatory sentences because they are unlikely to obtain a conviction.⁽⁶⁰⁾

(54) Kathleen Harris, "Tories get tough on gun crimes: Proposed laws first part of sweeping overhaul of justice system," *Toronto Sun*, 5 May 2006, p. 7; H el ene Buzzetti, "Ottawa sera moins tol erant envers les criminels : Des peines plus s ev eres pour les crimes violents, les condamnations avec sursis seront plus rares," *Le Devoir* [Montr eal], 5 May 2006, p. A2.

(55) Janice Tibbetts, "Tories get ready for flood to prison: Proposed plan to increase jail terms means more prisoners must be housed," *Times Colonist* [Victoria], 5 May 2006, p. A3.

(56) Gail J. Cohen, "Mandatory minimums not the solution," *Law Times* [Aurora, Ontario], 9 January 2006, p. 2.

(57) Dan Gardner, "You can send criminals a message, but they won't hear it," *Ottawa Citizen*, 26 April 2006, citing G. Kleck *et al.*, "The Missing Link in General Deterrence Research," *Criminology*, Vol. 43, No. 3, 2005, pp. 623-660.

(58) Kirsten McMahon, "Judges already tough on gun crime: Harsher approach won't solve social problems, say lawyers," *Law Times* [Aurora, Ontario], 16 January 2006, p. 1.

(59) Kelly Cryderman, "Tougher sentences could clog courts: judge," *Edmonton Journal*, 5 May 2006, p. A6, citing Chief Justice Allan Wachowich, Court of Queen's Bench, Alberta.

(60) Editorial, "Conservatives' efforts to combat crime take a giant step backwards," *Vancouver Sun*, 5 May 2006, p. A12.

Rather than amending the *Criminal Code*, some argue that effort is better spent on other initiatives to fight crime, such as hiring more police and prosecutors, and tightening border security.⁽⁶¹⁾ Other suggested strategies include increased engagement with affected communities that are the source of both gangs and their victims, social programs to respond to youth at risk for violence, codifying powers (that respect the Charter) to stop and search individuals, and better cooperation from all levels of government.⁽⁶²⁾

Some who support mandatory minimum sentences have raised questions about whether they would be adhered to, given that sentences may be imposed and served concurrently with other sentences, and offenders may be released on parole or statutory release prior to completion of their sentence.⁽⁶³⁾ It is also possible for offenders to receive double credit for time served before conviction. It has been further pointed out that the imposition of minimum sentences only for offences involving firearms (and prohibited or restricted weapons) overlooks the need to deter crime involving ordinary knives, which is a greater problem in some cities.⁽⁶⁴⁾

(61) Cohen (2006).

(62) Kent W. Roach, "Responding to Gun Violence," *Criminal Law Quarterly*, Vol. 51, No. 2, February 2006, pp. 129-132.

(63) "Sound-Off: Proposed New Crime Bill," CFRA-AM, Ottawa, 5 May 2006 (transcript courtesy of Bowdens, Ottawa).

(64) Les MacPherson, "Tory crime bill prefers stabbings to shootings," *The StarPhoenix* [Saskatoon], 6 May 2006, p. A3.