RESPONSE (1994)
TO
SENTENCING AMENDMENTS

JOHN HOWARD SOCIETY OF ALBERTA
1994

SUMMARY OF RECOMMENDATIONS

1) The principles and purpose of sentencing should clearly indicate that the maximum penalty for an offence should be used only in the most serious instances.

2) Principles regarding the use of incarceration should state that incarceration should only be used: 1) to protect the public from crimes of violence; 2) when any other sanction would not reflect the gravity of the offence or the repetitive nature of the criminal behaviour of the offender, or; 3) to penalize the offender for wilful non-compliance with the terms of a community-based sentence where no other sanction appears adequate to compel compliance (Canadian Sentencing Commission, 1987).

3) Alternative measures programs should be developed for adult offenders, provided that the programs are designed and implemented having regard to research outlining successful programs.

4) The proposed changes relating to rules of evidence and procedure for sentencing should be implemented.

5) The proposed optional conditions of probation such as community service hours and treatment should be implemented. Similarly, the provision to allow changes to probation orders to be exercised in judges' chambers should also be implemented. However, the proposed absolute ban on alcohol use while on probation should not be implemented; there should be some flexibility in determining whether a probationer should be subject to an alcohol ban. In addition, the proposed increase in the penalty for a breach of probation should not be implemented.

6) The proposed condition that a fine may only be imposed if the court is satisfied that the offender has the ability to pay or work off the fine in a fine option program should be implemented. The proposal to allow the court or a designate to change the terms of a fine order excluding the amount of the fine itself should also be implemented. Additionally, the proposed alternatives to incarceration for fine defaulters should be implemented. However, the proposed formula for calculating the amount of default time to be served in the event of non-payment of a fine should not be implemented unless the national average minimum wage is used in the calculation in place of the provincial minimum wage.

7) A restitution order should not be made unless the ability of the offender to pay the restitution has been established. Further, the elements to be included in a restitution order and the consequences of failing to comply with a restitution order should be outlined in the Criminal Code.

8) The proposed sanction of conditional sentence should not be implemented.

9) Any new intermediate sanctions being considered by the government should be framed within an articulated model or philosophy of justice; this model should be that of restorative justice.

10) Programs should be developed which facilitate greater community involvement in and understanding of the criminal justice process.

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INTRODUCTION

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 fundamental change to the criminal justice process. They called for widespread public education about how the criminal justice process works, 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.

The ten goals of reform detailed in Directions for Reform left the impression that the pending legislation would reflect broad-based, fundamental reform to the criminal justice process. Directions for Reform was an honest analysis of all of the areas of concern with the criminal justice process and it seemed to recognize how each of the problems and each of the solutions fit together. The reform was to be comprehensive and coordinated. Directions for Reform took a balanced approach to the task of reforming the criminal justice system; it recognized competing interests, it acknowledged the public's fear and their calls for reform and it recognized the degree of public misperception about the system. Finally, Directions for Reform clearly articulated concerns with the overuse of incarceration and the need to find community sanctions to deal with non-violent offenders.

Bill C-41, an Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof, attempts to respond to issues relating to sentencing in Canada. The Bill addresses sentencing issues with varying degrees of success. The John Howard Society of Alberta offers the following response to the proposed changes to sentencing. Future directions for the government of Canada are explored.

RESPONSE TO PROPOSED AMENDMENTS

Statement of Purpose and Principles

Section 718 of Bill C-41 proposes the creation of a new section of the Criminal Code dealing with the purpose and principles of sentencing. The following is the text of the new statement of purpose and principles:

> 718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (a) to denounce unlawful conduct;
>
> (b) to deter the offender and other persons from committing offences;
>
> (c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on the race, nationality, colour, religion, sex, age, mental or physical disability or sexual orientation of the victim, or

(ii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

A significant portion of this statement of purpose and principles is taken from the work of the Canadian Sentencing Commission. However, where the above statement differs from the draft proposed by the Sentencing Commission is of note. The Canadian Sentencing Commission proposed

two major principles of sentencing rather than one fundamental principle; the first principle proposed by the Sentencing Commission is the same as the principle found in Bill C-41. The second principle identified by the Canadian Sentencing Commission was as follows:

> Second, the emphasis being on the accountability of the offender rather than punishment, a sentence should be the least onerous sanction appropriate in the circumstances and the maximum penalty prescribed for an offence should be imposed only in the most serious cases. (Canadian Sentencing Commission, 1987, p. 22)

The differences between what the Sentencing Commission proposed and what is contained in Bill C-41 are subtle but significant. The removal of the phrase about accountability rather than punishment and the omission of the statement regarding the use of maximum penalties are key changes reflecting decreased emphasis on restricting incarceration.

RECOMMENDATION: The principles and purpose of sentencing should clearly indicate that the maximum penalty for an offence should be used only in the most serious instances.

The proposed principles of sentencing set out in Directions for Reform were also very different than those found in Bill C-41. Directions for Reform (1990, pp. 16-17) included the following additional principles:

> (b) a sentence should be the least onerous alternative appropriate in the circumstances;
>
> (d) the maximum punishment prescribed should be imposed only in the most serious cases of the commission of the offence;
>
> (f) a term of imprisonment should be imposed only;
>
> (i) to protect the public from crimes of violence;
>
> (ii) where any other sanction would not sufficiently reflect the gravity of the offence or the repetitive nature of the criminal conduct of an offender, or adequately protect the public or the integrity of the administration of justice;
>
> (iii) to penalize an offender for wilful non-compliance with the terms of any other sentence that has been imposed on the offender where no other sanction appears adequate to compel compliance.

While Bill C-41 does contain some of the content of the above proposals, the differences are significant. The above principles deal with limits on what is the appropriate sentence in a given case. They call for restraint in the use of incarceration and advance the notion that "getting tough" is not always the best choice in sentencing. In particular, the omission of the above principles limiting the use of incarceration clearly indicate the change in orientation and philosophy from Directions for Reform to Bill C-41.

The John Howard Society of Alberta is pleased to see the inclusion of a statement of purpose and principles of sentencing. However, the specific content of the proposed statement reflects the fundamental philosophy and intent of the Bill. We are disappointed that the language and structure of the proposed statement is so different from the proposals contained in Directions for Reform and that the emphasis is no longer focussed on restraint in the use of incarceration. Furthermore, we are concerned that the proposed statement will not provide an adequate framework for the proper use of the intermediate sanctions being proposed in this legislation. Without the clear statements about the use of incarceration as a last resort and the imposition of the least onerous sentence appropriate, intermediate sanctions are not likely to bring about a decrease in the use of incarceration.

RECOMMENDATION: **Principles regarding the use of incarceration should state that incarceration should only be used: 1) to protect the public from crimes of violence; 2) when any other sanction would not reflect the gravity of the offence or the repetitive nature of the criminal behaviour of the offender, or; 3) to penalize the offender for wilful non-compliance with the terms of a community-based sentence where no other sanction appears adequate to compel compliance (Canadian Sentencing Commission, 1987).**

Alternative Measures

Bill C-41 also proposes the establishment of the option of alternative measures for adult offenders. The alternative measures provisions proposed in Bill C-41 are the same as those contained in the Young Offenders Act: the alternative measures program must be authorized by the province; the use must be appropriate having regard to the needs of the offender and the interests of society and of the victim; the person must be informed of alternatives and fully and freely agree to participate; the person has been advised of his or her right to be represented by counsel; the person must accept responsibility for the offence, and; there must be enough evidence to proceed with a prosecution (s. 717).

The John Howard Society of Alberta is supportive of the proposals to allow for alternative measures for adult offenders, provided that the programs are designed and implemented having regard to research outlining successful programs. Alternative Measures programs allow for certain offenders to be diverted from the court process into a program that has the potential to be restorative in nature. These kinds of programs can be successful in getting offenders to take responsibility for their actions and involving the community in the program.

RECOMMENDATION: **Alternative measures programs should be developed for adult offenders, provided that the programs are designed and implemented having regard to research outlining successful programs.**

Rules of Evidence and Procedure for Sentencing

Bill C-41 also contains a number of provisions dealing with the sentencing process. In particular, Bill C-41 provides that an accused now has an absolute right to speak to sentence (s. 726); that the court will sentence an offender as soon as practicable after the offender has been found guilty (s. 720); that the clerk of the court will provide the offender or counsel for the offender with a copy of a pre-sentence report or a victim impact statement (s. 722.1); that the terms of any sentence imposed and the reasons for it shall be stated by the court and entered into the record of the proceedings (s. 726.2), and; that the court shall consider any statement that has been prepared by a victim (s. 722(1)). The Bill also proposes to alter the options and procedures for the production of a pre-sentence report (s. 721). Currently, the Criminal Code does not set out what the pre-sentence report should include. The following is the list of what Bill C-41 proposes that the pre-sentence report should include:

> (a) the offender's age, maturity, character, behaviour, attitude and willingness to make amends;
>
> (b) the history of previous dispositions under the *Young Offenders Act* and of previous findings of guilt under this Act and any other Act of Parliament;
>
> (c) the history of any alternative measures used to deal with the offender, and the offender's response to those measures; and
>
> (d) any matter required, by any regulation made under subsection (2), to be included in the report.

However, while the Bill sets out some minimum content for pre-sentence reports, it also allows provinces to make regulations regarding the types of offences for which a court may require a report, the form of the report and the content of the report (s. 721(2)). On the whole, it is an improvement to set out the information that should be contained in a pre-sentence report.

Bill C-41 also contains provisions relating to evidence and submissions. These provisions include the following: the court shall address submissions on facts (s. 723(1)) and submissions on evidence (s. 723(2)); the court can require the production of evidence that would assist the court in determining sentence (s. 723(3)), and; the court can compel the appearance of anyone who could assist the court in determining sentence (723(4)). In addition, the admissibility of hearsay evidence is clarified (723(5)), the method of dealing with disputed facts is addressed (proof can be on a "balance of probability" unless the fact would have the effect of increasing the gravity of the offence, in which

case the burden on the prosecutor is "beyond a reasonable doubt") (s. 724(3)) and there is clarification on how other offences are to be considered during sentencing (s. 725).

Some of these changes codify what had been existing practice. For instance, in most cases an offender is already given the opportunity to speak to sentence; Bill C-41 ensures that this opportunity is provided for in the Criminal Code. Other changes such as ensuring that the reasons for sentence are written into the record are intended to make the sentencing process more understandable to the public and to allow appellate courts to review cases more effectively. Finally, the changes are designed to ensure greater victim participation in the sentencing process by ensuring that victim impact statements are considered. Currently, courts may consider victim impact statements but are not required to do so.

The John Howard Society of Alberta supports these changes to sentencing procedure. We agree with attempts to make the sentencing process more open, accountable and accessible. The codification of intent to sentence an offender as soon as practicable, the requirement that reasons for sentence be entered into the record and the offender's right to speak to sentence are particularly noteworthy proposals.

RECOMMENDATION: The proposed changes relating to rules of evidence and procedure for sentencing should be implemented.

Restructuring Part XXIII of the Criminal Code

Prior to Bill C-41, there was no particular order to the range of sanctions available in the Criminal Code. The following is the range of sanctions contemplated by Bill C-41 in the order in which they appear: absolute and conditional discharge, probation, fines and forfeiture, restitution, conditional sentence of imprisonment, imprisonment. However, Bill C-41 does not propose changes to all of these sanctions. The following describes the changes which have been proposed to particular sanctions and the new sanction of conditional sentence of imprisonment.

Probation.

The Bill sets out the conditions under which a person can be released on probation (s. 732.1). Rather than list the possible conditions, only new conditions and the changes in existing conditions will be examined here. There have always been conditions that are mandatory for each probation order. In the Bill, however, these mandatory conditions are somewhat different. Previously, the condition to notify the court or probation officer of any change in name, address, employment or occupation was an optional condition; under the proposals, this condition would be mandatory.

There are also a few changes in the list of optional conditions. First, the clause which allowed for restitution or reparation to those harmed by the offence is no longer included in the list of possible conditions. This is due to the proposal in Bill C-41 to create a sentence of restitution. Second, the condition to "make reasonable efforts to find and maintain suitable employment" has been deleted

from the list of optional conditions, although it could still be given under the "comply with such other conditions as the court considers desirable" clause (s. 732.1(3)(h)). Third, if a condition is given to report to a supervisor, the offender is to do so within 2 working days or longer period as directed by the court; presently no time limit is set in the Criminal Code. The John Howard Society of Alberta supports the imposition of a time limit.

Other changes to the list of possible conditions include the addition of drugs to the condition directing the offender to abstain from the consumption of alcohol. This condition would now state that the offender must abstain from the use of alcohol or other intoxicating substances or the consumption of drugs except in accordance with a medical prescription. Another slight change to this condition is that it is now an absolute ban on substance use; the existing condition allows that the offender could be given terms under which alcohol use would be acceptable. We do not support this change as we feel that there should be flexibility in whether there needs to be an absolute ban on alcohol use.

The list of optional conditions contains a new condition which would allow for the imposition of community service hours. The hours would be limited to a maximum of 240 hours and must be completed within 12 months. We support the plan to make community service hours a condition of probation. This will make probation a more serious alternative to incarceration and will provide that community service orders are more closely supervised.

Finally, there is a new optional condition (s. 732.1(3)(g)) which reads:

> (g) if the offender agrees, and subject to the program director's acceptance of the offender, participate actively in a treatment program approved by the province;

The John Howard Society of Alberta supports this new optional condition, particularly since it is subject to the offender's consent.

Bill C-41 also contains the provision that changes to probation orders may be exercised in judges' chambers (s. 732.2(4)). Possible changes to the order include altering the optional conditions, relieving the offender of optional conditions or decreasing the period during which the order is in effect. We support this provision as it will result in reduced use of costly court time.

Amendments are also suggested for the penalties for failure to comply with a probation order. Currently, breach of probation can only be proceeded with by way of summary conviction, meaning that the maximum penalty is six months in jail and/or a $2000 fine. The proposed section in Bill C-41 reads:

> 733.1(1) An offender who is bound by a probation order and who, without reasonable excuse, fails or refuses to comply with that order is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding eighteen months, or to a fine not exceeding two thousand dollars, or both.

The John Howard Society of Alberta is concerned about this proposed amendment. The amendment provides for lengthier incarceration than is currently allowed for a conviction of failure to comply. It is not necessary to increase the maximum penalty for a breach from six months to eighteen months or two years of incarceration. Intermediate sanctions such as probation are meant to reduce the use of incarceration; increasing the length of incarceration possible for a breach of probation does nothing to further this aim. Incarceration should be reserved for offenders who are violent and a clear danger to society; offenders who are safe enough to be in the community on probation do not require incarceration of longer than 6 months for a breach. While there is a need to effectively deal with breaches of probation, incarceration for a period of up to two years appears to be an overreaction.

RECOMMENDATION: **The proposed optional conditions of probation such as community service hours and treatment should be implemented. Similarly, the provision to allow changes to probation orders to be exercised in judges' chambers should also be implemented. However, the proposed absolute ban on alcohol use while on probation should not be implemented; there should be some flexibility in determining whether a probationer should be subject to an alcohol ban. In addition, the proposed increase in the penalty for a breach of probation should not be implemented.**

Fines.

Bill C-41 also proposes several changes to the use of fines in Canada. The Bill contains the provision that the court may fine an offender only if the court is satisfied that the offender has the ability to pay the fine or work it off in a fine option program (s. 734(2)). We support the inclusion of this section for the intended purpose of reducing the number of offenders incarcerated due to inability to pay a fine. Bill C-41 includes a formula for the calculation of the default time to be served in the event of non-payment of a fine:

$$\frac{\text{the unpaid amount of the fine + the costs and charges of committing and conveying the defaulter to prison}}{\text{8 X provincial minimum hourly wage}}$$

While we support the move to make default time more standardized, we do have concerns about it being tied to the provincial minimum wage. Because the minimum wages vary significantly across the country, it will result in disparate default time for offenders to serve. We would suggest, instead, that the figure be set at a standard figure that is the average minimum wage across Canada.

Another provision in Bill C-41 concerns the ability to make changes to the terms of a fine order. Section 734.3 allows that the court which ordered the fine or a person designated by that court may, on application by or on behalf of the offender, change any term of the order except the amount of the fine. Again, we support this new provision because it will allow flexibility and save expensive court time.

The Bill proposes several alternatives should the offender default on payment of a fine. Section 734.5 states that the non-payment of a fine could result in the federal and provincial governments refusing to issue or renew licences, permits or other such instruments until the offender proves that the fine is paid. The John Howard Society of Alberta agrees with this proposal as it would provide added incentive to pay fines and would not be an added burden on the system to administer. Section 734.6 allows a civil judgement to be entered against an offender for non-payment of a fine or forfeiture in the amount of the fine or forfeiture and any costs incurred. Furthermore, the Bill states that the court shall not issue a warrant of committal in default of payment of a fine:

> (a) until the expiration of the time allowed for payment of the fine in full; and
>
> (b) unless the court is satisfied
>
> > (i) that the mechanisms provided by sections 734.5 and 734.6 are not appropriate in the circumstances, or
> >
> > (ii) that the offender has, without reasonable excuse, refused to pay the fine or discharge it under section 736.

The John Howard Society of Alberta supports the civil judgement option because it means there is a better chance of receiving payment and because it would avoid the use of incarceration for default. We are also pleased that the court is to consider these two options prior to issuing a warrant of committal. In addition, the Bill indicates that if an offender is incarcerated in default, he or she cannot also be subject to sections 734.5 and 734.6.

RECOMMENDATION: **The proposed condition that a fine may only be imposed if the court is satisfied that the offender has the ability to pay or work off the fine in a fine option program should be implemented. The proposal to allow the court or a designate to change the terms of a fine order excluding the amount of the fine itself should also be implemented. Additionally, the proposed alternatives to incarceration for fine**

defaulters should be implemented. However, the proposed formula for calculating the amount of default time to be served in the event of non-payment of a fine should not be implemented unless the national average minimum wage is used in the calculation in place of the provincial minimum wage.

Restitution.

Bill C-41 contains provisions related to restitution. Changes from the existing restitution provisions are: that the court would no longer be required to inquire as to the offender's financial situation and ability to pay; that the section dealing with restitution no longer mentions time to pay or payment by instalments; that the section dealing with restitution no longer details the mechanisms and consequences for failure to comply with a restitution order; that a province may make regulations "precluding the inclusion of provisions on enforcement of restitution orders" as an optional condition on a probation or conditional sentence order (s. 738(2)); that a court which finds it appropriate in the circumstances to make an order of restitution in conjunction with a fine or order of forfeiture must make the restitution order first then decide whether and to what extent the other sanctions are appropriate (s. 740); that restitution orders could be entered as judgements in the civil courts (s. 741); that victims would be notified of any restitution order imposed (s. 741.4), and; that any restitution ordered in criminal court would not prohibit a victim from suing for damages in civil court (s. 741.2).

The John Howard Society of Alberta supports the use of restitution as an intermediate sanction. Restitution involves the acceptance of the offender as a responsible person with the capacity to undertake constructive and socially approved acts and see his or her conduct as damage done to someone. However, we are disappointed with some of the details of the proposed restitution provisions. First, we feel that it is essential that the financial ability of the offender to pay the restitution order be established prior to the order being made. In order to avoid bringing the system into disrepute due to problems with unpaid restitution, restitution should not be ordered unless there is a demonstrated ability to pay and where there is an agreement between the victim and the offender as to the terms of the payment. The key factor is that each order is tailored to fit the circumstances of both the victim and the offender.

Second, we find it unacceptable that the restitution section does not list the requirements of what is to be included in the restitution order (e.g., amount of the restitution, the time to pay, the terms of the payment and the person to whom the restitution is to be paid) or the mechanisms for change to the terms of the order. A member of the public who is to be the recipient of payment from a restitution order would find little information in the proposed section to help him or her understand how restitution works or what the options are in the event of non-payment.

RECOMMENDATION: A restitution order should not be made unless the ability of the offender to pay the restitution has been established. Further, the

elements to be included in a restitution order and the consequences of failing to comply with a restitution order should be outlined in the Criminal Code.

Conditional sentence

Bill C-41 proposes a new sanction called a conditional sentence. The section dealing with the imposition of a conditional sentence reads:

> 742.1 Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court
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> (a) imposes a sentence of imprisonment of less than two years, and
>
> (b) is satisfied that serving the sentence in the community would not endanger the safety of the community,
>
> the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

Conditional sentences would have the following compulsory conditions: keep the peace and be of good behaviour; appear before the court when required to do so; report to a supervisor within two working days and thereafter as required; remain within the jurisdiction of the court, and; notify the court of changes in name, address, employment or occupation (s. 742.3(1)). Optional conditions include: abstaining from alcohol, intoxicating substances and drugs without prescription; abstaining from owning, possessing or carrying a weapon; providing for dependents; performing up to 240 hours of community service; attend a treatment program, and; comply with other conditions given by the court.

The Bill details the procedures for changes to the optional conditions on a conditional sentence (s. 742.4). Such changes can be requested by the supervisor, offender or prosecutor and there are different mechanisms outlined depending on who makes the request. The provisions of Part XVI of the Criminal Code dealing with the issuance of a summons or a warrant apply with respect to compelling the appearance of an offender accused of breaching the conditions of a conditional sentence (s. 742.6). Any allegation of a breach of a conditional sentence must be supported by a written report from the supervisor and a hearing must be held within 30 days of the issuance of a summons or a warrant. Section 742.6(9) dictates the powers of the court with respect to a breach:

> (9) Where the court is satisfied, on a balance of probabilities, that the offender has without reasonable excuse, the proof of which lies on the offender, breached a condition of the conditional sentence order, the court may

(a) take no action;

(b) change the optional conditions;

(c) suspend the conditional sentence order and direct

(i) that the offender serve in custody a portion of the unexpired sentence, and

(ii) that the conditional sentence order resume on the offender's release from custody, either with or without changes to the optional condition; or

(d) terminate the conditional sentence order and direct that the offender be committed to custody until the expiration of the sentence.

The John Howard Society of Alberta has serious concerns with the new sanction of conditional sentence. Our first concern has to do with the length of sentences for probation and conditional sentence. A sentence of probation can be for up to three years, while a conditional sentence could be for a maximum of two years. Therefore, under the new sentencing scheme, it is possible that a sentence of probation would be longer than a conditional sentence. It seems questionable that an offender sentenced to a "less severe" sentence of probation would get a longer sentence than an offender who is sentenced to a conditional sentence, which is supposed to be a more onerous disposition.

Conversely, there is the danger that the length of sentences may increase. If the length of the conditions on a suspended sentence can only last as long as the sentence which had been suspended, it stands to reason that the sentence may be longer to accommodate a reasonable period of conditions. If the offender would be sentenced to a month in jail, it would not be realistic to expect that a month of conditions would be a suitable alternative. This is particularly true given that the length of probation orders tends to be six months to one year; judges would not want someone who had been bound for incarceration having a shorter period of conditions than someone who was not bound for incarceration.

Our second concern with the proposed new conditional sentence is the possibility it presents for net widening. It is very likely that, in the absence of sentencing guidelines and a statement of purpose and principles that clearly limits the use of incarceration, conditional sentences will be imposed on offenders who would previously have been sentenced to probation. This possibility would be heightened if judges feel that the consequences for breach of a conditional sentence are easier to implement and more likely to lead to incarceration.

RECOMMENDATION: **The proposed sanction of conditional sentence should not be implemented.**

CONCLUSION

The John Howard Society of Alberta has serious concerns about the proposals. First, they are remarkably complicated and difficult to understand, even for an agency such as ours which has responded to many consultations. The expectation that the public will understand or remember the difference between a conditional sentence and probation as they are laid out in the Bill is unrealistic. For the Canadian public to regain their trust in the criminal justice process, they must be able to understand it. We do not see how these proposed changes to sentencing will "increase public accessibility to the law respecting sentencing," which was one of the goals articulated in Directions for Reform (Sentencing - p. 3). In addition to the workings of the law being understandable, it is imperative that the law be written in plain language that is accessible to all people of Canada.

The John Howard Society of Alberta recommends that any new intermediate sanctions being considered by the government be framed within an articulated model or philosophy of justice and that this model be that of restorative justice. In addition, we do not believe that these proposals are part of a comprehensive, rational sentencing system involving a wide range of community sanctions which would be appropriate in a variety of different circumstances. The proposals should contain a scale of punishments which increase in severity and in which it is clearly stated that community sanctions are exhausted before incarceration is used.

For this to happen, intermediate sanctions need to be framed within sentencing guidelines which dictate their appropriate use. Without these guidelines, research demonstrates that the full range of sanctions will not be used appropriately (Morris & Tonry, 1990). The need for a statement of purpose and principles is also important, but such a statement will only be effective if it states that incarceration should only be used: 1) to protect the public from crimes of violence; 2) when any other sanction would not reflect the gravity of the offence or the repetitive nature of the criminal behaviour of the offender, or; 3) to penalize the offender for wilful non-compliance with the terms of a community-based sentence where no other sanction appears adequate to compel compliance (Canadian Sentencing Commission, 1987). It is essential for there to be a framework in which the use of community sanctions is encouraged at every possible opportunity.

RECOMMENDATION: **Any new intermediate sanctions being considered by the government should be framed within an articulated model or philosophy of justice; this model should be that of restorative justice.**

It was stated in a Department of Justice document outlining the feedback received during the first intermediate sanctions consultation that it is important to find ways to encourage greater community involvement in sentencing, particularly with regard to Aboriginal offenders (Sentencing Team,

1992). Yet, the Bill does not mention several other independent sanctions which involve the community such as Victim Offender Reconciliation Programs. Nor do the proposals contain any mention of the establishment of community sentencing panels such as the Youth Justice Committees provided for under the Young Offenders Act (§ 69). The John Howard Society of Alberta strongly urges the development of programs such as these which facilitate greater community involvement and understanding of the criminal justice process.

RECOMMENDATION: Programs should be developed which facilitate greater community involvement in and understanding of the criminal justice process.

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