

**RESPONSE TO
CORRECTIONS
AND CONDITIONAL RELEASE ACT
AMENDMENTS**

**JOHN HOWARD SOCIETY OF ALBERTA
1994**

SUMMARY OF RECOMMENDATIONS

- 1) The proposed change which would facilitate the denial of statutory release to sex offenders which target children should not be implemented. Rather, mental health laws should be used more effectively for dealing with dangerous offenders.
- 2) Special classes of victims should not be established.
- 3) Child sex offenders must have equal access to appropriate community supervision programs as an alternative to being denied statutory release.
- 4) Resources should be equally allocated to all sex offender treatment programs.
- 5) The proposed changes to sentence calculation should be implemented.
- 6) Deductions from prescribed sources for an inmate's room and board should not be made if such deductions would cause hardship to the offender's family or would jeopardize the ability of the offender to establish him or herself upon release.
- 7) The proposed mechanism for National Parole Board member discipline should be implemented. However, safeguards against the use of individual NPB members as scapegoats must be developed.

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INTRODUCTION

The Corrections and Conditional Release Act was passed on May 14, 1992 and was proclaimed on November 1, 1992. While the Act is quite new, it has recently become the subject of considerable public scrutiny. Bill C-45, an Act to amend the Corrections and Conditional Release Act, the Criminal Code and related Acts attempts to respond to growing public fear that significantly dangerous offenders are being released from prison on a regular basis. More specifically, Bill C-45 addresses the recommendation of the recent Stephenson Inquest that laws should be drafted to detain beyond warrant expiry inmates who have committed sexual offences against children. In essence, the Bill attempts to quell public fear by “getting tough” on crime. The John Howard Society of Alberta offers the following response to the proposed changes to the Corrections and Conditional Release Act. Future directions for the government of Canada are explored.

RESPONSE TO PROPOSED AMENDMENTS

Denial of Statutory Release

Bill C-45 proposes to facilitate the detention of child sex offenders for their full sentence by removing the requirement that “serious harm” be established. Currently, offenders may only be denied statutory release if it can be established that the offender has committed an offence which caused “serious harm” to the victim, will likely re-offend before the expiration of his or her sentence and the crime committed would cause “serious harm” to the victim. In practice, it has proven difficult to establish “serious harm” to child victims given that children often do not begin to experience problems until several years after an assault has occurred. The proposed changes to the Corrections and Conditional Release Act would require that it only be shown that the offender committed a sex offence involving a child and is likely to commit another sex offence involving a child. Essentially, these amendments would make it easier to deny statutory release to inmates who have committed sexual offences against children.

While the John Howard Society of Alberta agrees with this proposed change in theory, in practice it raises some substantial issues. Denying an inmate statutory release contradicts the philosophy of parole. Parole aims to gradually reintegrate offenders into the community. If an offender is incarcerated until the expiration of his or her sentence, then the offender will be released into the community with no supervision whatsoever. The John Howard Society of Alberta stresses the importance of supervision while an offender is making the difficult transition into the community. Further, if an inmate will re-offend upon release, keeping the offender incarcerated for his or her full sentence is only a short term solution. If an offender is such a risk to the community, he or she should be held in a mental institution under the mental health laws. There is the potential for mental health laws to be used more effectively for dealing with these offenders.

RECOMMENDATION: **The proposed change which would facilitate the denial of statutory release to sex offenders which target children should not be**

implemented. Rather, mental health laws should be used more effectively for dealing with dangerous offenders.

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

RECOMMENDATION: Special classes of victims should not be established.

Factors to Consider in Determining Whether a Child Sex Offender is Likely to Re-offend Prior to Sentence Expiration

Bill C-45 proposes a number of factors which are to be taken into consideration in determining whether an offender is likely to commit a sex offence involving a child prior to his or her sentence expiry date. The factors are numerous and broad; in essence, it need only be shown that a previous sexual offence against a child has been committed by the offender. This will be interpreted as indicating a sexual interest in children which, in all likelihood, will be manifested in a sexual offence against a child while the offender is on parole or statutory release. The offender will then be denied statutory release.

Bill C-45 proposes one alternative to denying a sex offender who targets children statutory release. The offender may be placed in a supervision program which provides adequate protection for the community. However, the John Howard Society of Alberta is concerned that regional disparities in the availability of supervision programs would lead to the differential treatment of child sex offenders across the country. Such disparity would be unacceptable; the opportunity to be released into a supervision program should be equally available to all child sex offenders as an alternative to being denied statutory release.

RECOMMENDATION: Child sex offenders must have equal access to appropriate community supervision programs as an alternative to being denied statutory release.

Improved Treatment Programs for Child Sex Offenders

In the highlights to Bill C-45, the government states a commitment to enhance the resources allocated to treatment programs for sex offenders who target children. Once again, the John Howard Society of Alberta is concerned about the implication that certain sex offences are more deserving of concern than others. It is inappropriate for the government to prioritize the treatment of some sex offenders over others. Every citizen deserves protection from assault.

RECOMMENDATION: Resources should be equally allocated to all sex offender treatment programs.

Sentence Calculation for Subsequent Convictions

Recently, existing legislation on sentence calculation has been criticized because it allows offenders who commit an offence during a conditional release to be eligible for parole on the eligibility dates of the existing sentence, without regard to the additional sentence for the new offence. In order to clarify and correct this loophole, the proposed amendments in Bill C-45 include provisions which clearly define sentence calculation on new offences. They eliminate the possibility of offenders being released from prison shortly after receiving new sentences. The John Howard Society of Alberta supports these proposed changes to sentence calculation.

RECOMMENDATION: The proposed changes to sentence calculation should be implemented.

Expanded Sources of Deduction for Inmate's Room and Board

The John Howard Society of Alberta agrees that offenders should be responsible for a share of the costs of incarceration in order to promote a sense of social responsibility. However, this principle must be exercised with caution. The welfare of the families of offenders and the ability of offenders to establish themselves upon release must not be jeopardized in the process. An offender's reintegration into the community is a difficult process under the most ideal circumstances; the stress an offender may experience if his or her family has been struggling financially or if the offender does not have sufficient means to establish him or herself upon release would make the transition into the community extremely difficult. Therefore, the John Howard Society of Alberta conditionally supports the proposed expansion of the sources from which deductions can be made as long as they do not cause hardship to be suffered by the offender or his or her family. This condition should be one which the Commissioner includes amongst the circumstances under which payment will not be required pursuant to the proposed paragraph 96(z.2.1) of the Corrections and Conditional Release Act.

RECOMMENDATION: Deductions from prescribed sources for an inmate's room and board should not be made if such deductions would cause hardship to the

offender's family or would jeopardize the ability of the offender to establish him or herself upon release.

Mechanism for National Parole Board Member Discipline

The John Howard Society of Alberta agrees that members of the National Parole Board should be accountable and that a formal mechanism for discipline should be in place in the event that disciplinary action is necessary. However, the John Howard Society of Alberta is concerned that the proposed changes may facilitate the use of individual members of the NPB as scapegoats for high profile crimes committed by offenders on parole. For example, if a National Parole Board member "has failed in the due execution of the member's office" (Section 155(2.2.c)), a formal inquiry may be conducted. Despite the stated intentions of this proposed amendment to the Corrections and Conditional Release Act, the liberal wording of this reason for an inquiry could conceivably lead to a National Parole Board member being blamed for the unfortunate outcome of an otherwise sound parole decision to release an offender into the community.

RECOMMENDATION: The proposed mechanism for National Parole Board member discipline should be implemented. However, safeguards against the use of individual NPB members as scapegoats must be developed.

DISCUSSION

The John Howard Society of Alberta supports many of the proposed changes to the Corrections and Conditional Release Act outlined in Bill C-45. For example, we support the proposed changes which clarify sentence calculation for sentenced offenders who receive an additional sentence. We also conditionally support the proposed mechanism for National Parole Board member discipline.

However, the John Howard Society of Alberta has a number of concerns with the Bill. First, Bill C-45 proposes to remove the requirement that "serious harm" be established in the case of child victims of sexual offences in order to detain an offender until sentence expiration. However, "serious harm" would still need to be established in cases involving adult victims. The John Howard Society of Alberta feels that this change would establish classes of victims whereby some victims are deemed more worthy of protection than others. Similarly, the commitment of the government of Canada to increase the resources allocated to treatment programs for sex offenders who target children is inappropriate because resources should be equally allocated to all sex offender treatment programs to ensure that all citizens are granted the same protection from harm.

In conclusion, the John Howard Society of Alberta is disappointed with the response of the government to legitimate community concerns. The public wishes to be ensured protection from violent, dangerous offenders. Bill C-45 does not offer such protection. Rather, Bill C-45 introduces "get tough" responses to crime which merely delay the release of potentially dangerous offenders into the community by denying such offenders statutory release. These offenders are later released into

the community upon sentence expiry without any supervision whatsoever. The Bill does not propose solutions which will lead to the long-term protection of society. The John Howard Society of Alberta feels that it would be more beneficial for the government of Canada to draw upon the potential of mental health laws for effectively dealing with dangerous offenders.