

Technical Report

Analysis of Federal Bill C-10, *Safe Streets and Communities Act:* Impacts on the NWT Department of Justice

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Executive Summary

On March 13, 2012, Bill C-10, the *Safe Streets and Communities Act*, received Royal Assent. Some provisions of the bill came into force on assent while other provisions (including most amendments to the *Criminal Code* and all amendments to the *Youth Criminal Justice Act*) will come into force on a date to be set. Based on discussions of federal, provincial and territorial officials, it is expected that the coming into force date will be sometime in late October or early November, 2012.

The NWT Department of Justice has been considering the impacts of Bill C-10 on the administration of justice in the NWT, including potential costs. The focus of this work has been on those provisions that are expected to have a direct impact on the NWT. This includes Parts 2 and 4 which include amendments to the *Criminal Code*, *Controlled Drugs and Substances Act* and the *Youth Criminal Justice Act*. The main impacts are expected to be in increases in the number of offenders sentenced to custody and the length of sentences.

Impact on Adult Corrections

Conditional Sentences

- **Bill C-10 Change** – Restricts the use of conditional sentence orders (CSOs) for many offences.
- **Data** – The analysis is based on data from the Courts operational system. The history of conditional sentences relating to affected offences for the period 2004 to 2011 was examined. Both number and length of sentence were included in this analysis.
- **Assumptions** – It was assumed that if a CSO was no longer available as a sentencing option for an offence, the offender would receive an equivalent sentence in custody. A one-third remission was also included in our calculations of bed-days.¹
- **Findings** – It is estimated that the restrictions on the use of CSOs will result in approximately 2,895 additional bed-days in the first full year of operation of Bill C-10 provisions. If the average number of CSOs/year affected by Bill C-10 involves 18 offenders, each of those 18 offenders would now receive a sentence of 160 days in custody. This is equivalent to eight additional offenders/per year serving a sentence of 365 days.

Mandatory Minimums

- **Bill C-10 Change** – Creates a number of new mandatory minimum sentences relating to sexual offences against children and for drug offences.
- **Data** – Data from NWT Corrections Service Corrections Offender Management System (COMS) was examined for the period 2004 to 2011.
- **Assumptions/data limitations**
 - Sexual offences – As data was not available on victims and their age, it was assumed that 30% of the cases involved victims under the age of 16.
 - Drug offences – As data was not available on the types of drugs trafficked, it was assumed (based on police reported data from the Uniform Crime Reporting Survey) that the majority of incidents were related to the trafficking of marijuana.

¹ “Bed-days” is a term to express offender days in custody.

- **Findings**

Sexual Offences

- In total, an additional 890 bed-days would be required under Bill C-10 for Sexual Interference offences between 2004 and 2011, or approximately 111 additional bed-days/year.
- If 30% of the sexual assaults in the NWT between 2004 and 2011 were committed against minors, it is estimated that approximately 3877 additional bed-days would be required under the implementation of C-10. This translates to an additional 272 bed-days/year for sexual assault offences in the NWT.

Trafficking Offences

- Using administrative data, corrections has estimated 600 additional bed-days attributed to trafficking offences per year upon implementation of Bill C-10.

Total Additional Bed-days – Mandatory Minimums

- Total bed-days for all offences examined amounts to 983 bed-days/year.

Conclusions for Adult Offenders

The total number of additional bed-days expected as a result of Bill C-10 is 3,878 bed-days/year (ie., 2,895 + 983). Based on a 365-day year, this is equivalent to approximately 11 additional offenders/year in the first year after implementation. The costs associated with holding these additional offenders are estimated to be approximately \$53,500/year.

Based on overall capacity of territorial correctional facilities and recent offender counts that have exceeded that capacity, Bill C-10 impacts may force the NWT to consider ways to reduce the number of offenders in custody. In a fairly short time, based on our current offender count and capacity for adult offenders, the NWT may also have to add correctional facility capacity by renovating the South Mackenzie Correctional Centre or adding a “pod” onto the North Slave Correctional Centre. Capital costs for a new “pod” would be approximately \$32,000,000 not including furniture and equipment. The costs to renovate the South Mackenzie facility have not been calculated. Either facility option would result in the need for additional staff: the number and costs have not yet been estimated.

Impact on Youth Corrections

At this time, the capacity of the North Slave Young Offender Facility is 25 youth offenders, and the custody count in March 2012 was approximately eight offenders (seven male and one female).

It is not possible to accurately predict impacts of Bill C-10 changes to the principles of the *Youth Criminal Justice Act*; however, we expect that more youth will be held in pre-trial detention and more youth will be sentenced to custody for longer periods of time. Under the *Young Offenders Act* (prior to the introduction of the *Youth Criminal Justice Act*), the custodial count in the NWT ranged from 43 to 80 young offenders. After the introduction of the *Youth Criminal Justice Act*, young offender counts decreased and steps were taken to adjust custodial capacity through closure of facilities and alternate homes.

Alternate homes could be re-established to take open custody youth. This would allow more secure custody youth to be held at the Young Offender Facility. However, it is anticipated that increases in our male youth population will mean that girls can no longer be held at the facility. Construction of the women and girl’s facility in Fort Smith would be required sooner. Alternatively, NWT female young

offenders would need to be sent to another jurisdiction to serve their custodial sentence, but this is not viewed as the preferred solution for the care and custody of young offenders.

Impact on Other Justice Sectors

It is expected more accused adults and youth will elect to go to court to fight their charges, and (if convicted) more will want to appeal their sentences. This is expected to result in more court sittings and increased court travel as well as increased support for victims of crime.

Most accused offenders in the NWT are eligible for legal aid. Accordingly, changes in Bill C-10 are expected to result in increased demand on the legal aid program. As well, it is anticipated that legal aid will bear the costs related to increased numbers of appeals, both in terms of obtaining opinions as to the merits of appeals and the costs of launching the appeals.

Changes to the *Criminal Code* and the *Controlled Drugs and Substances Act* will require training for the police and create additional time and costs associated with escort of prisoners and providing additional relief for to smaller communities. New policing positions may be required as a result of pressures on the RCMP.

Conclusions

The impact of Bill C-10 on the NWT justice system has both operational and administrative implications. In the short term, the NWT has the capacity to adapt to the additional workload and the burden of increased offenders. In the long term, however, this analysis found the capacity of NWT adult correctional facilities to be compromised by compounded increases over time. It is expected that this will result in the need for additional resources including capital expenditures in the future.

Introduction

On September 20, 2011 the Federal Government of Canada introduced Bill C-10, *Safe Streets and Communities Act*. This omnibus crime bill includes nine bills that were formerly before Parliament but were not passed (see attached Appendix A for more details on Bill C-10).

Bill C-10 received assent on March 13, 2012. Some provisions of the bill came into force on assent while other provisions (including amendments to the *Criminal Code* and the *Youth Criminal Justice Act*) will come into force on a date to be set. Some provinces and territories have asked the federal government to give jurisdictions at least six months before these provisions come into force. If the federal government agrees, this could mean that these provisions come into force in October or early November 2012. The provinces, territories and federal government are currently discussing timelines. The NWT Department of Justice ("The Department") is developing a plan for the implementation of Bill C-10 that mainly focuses on changes to the *Youth Criminal Justice Act*.

The Department has been considering the impacts of Bill C-10 on the administration of justice in the NWT, including potential costs. The focus of this work has been on Parts 2 and 4 of the bill that are expected to have a direct impact on the NWT. This includes amendments to the following Acts:

- *Criminal Code* – to protect children and youth from sexual predators and to restrict the use of conditional sentences;
- *Controlled Drugs and Substances Act* – to increase penalties for organized drug crime; and
- *Youth Criminal Justice Act* – to add "specific deterrence and denunciation" to the principles of sentencing, expand the definition of "violent offence" to include behaviour that endangers the life or safety of others, and allow custody to be imposed on youth who have a pattern of findings of guilt.

Other amendments such as those to the *Criminal Records Act* and the *Corrections and Conditional Release Act* are expected to impact on offenders and victims in the NWT but not on territorial operations. For instance, changes to pardons could mean that some offenders unable to get a pardon may not be able to secure work because of their criminal record. Although this and other issues could raise concerns for the NWT, the impact analysis does not focus on these amendments.

Finally, there are some provisions of Bill C-10 that relate specifically to federal areas of responsibility, and for this reason these provisions are not expected to have a direct impact on the NWT. This is true of provisions that amend the *International Transfer of Offenders Act*, enact new legislation relating to victims of terrorism, or reform the *Immigration and Refugee Protection Act*.

Impact on Adult Corrections

The greatest impacts of Bill C-10 were expected to result from restrictions on conditional sentences and new mandatory minimum sentences. It was predicted that these changes would result in higher adult custodial numbers and resulting resourcing/capital challenges. The following summary presents the analyses of the impacts of these changes on the NWT justice system based on courts and corrections data.

Conditional Sentence Orders

A conditional sentence order (CSO) is a jail sentence that is served in the community instead of in jail. Judges order a conditional sentence only if they are satisfied that the offender won't be a danger to the community and doesn't have a history of failing to obey court orders. Currently a judge can't give a CSO if: (a) the sentence is longer than two years; (b) the offence has a mandatory minimum sentence; or (c) the *Criminal Code* lists the crime as a violent offence.

A CSO usually has strict conditions, including a curfew. As part of a conditional sentence, offenders may be ordered to appear before the court or their supervisor, or abstain from alcohol or from possessing or carrying a weapon. They may also be ordered to provide for the care and support of dependents, participate in community service and/or attend treatment programs. If the offender disobeys the conditions, a judge can send them to jail for the rest of the time left on their sentence.

Table 1: Conditional Sentence Order Implementation Summary

Currently	Post Bill C-10 Implementation
<p>A CSO cannot be imposed for the following categories (or types) of indictable offences that are punishable by a maximum of 10 years imprisonment or more:</p> <ul style="list-style-type: none"> • a serious personal injury offence (as defined in section 752) • a terrorism offence • a criminal organization offence • the sentence is longer than 2 years • the offence has a mandatory minimum sentence • the <i>Criminal Code</i> lists the crime as a violent offence 	<p>The following are no longer eligible for a CSO:</p> <ul style="list-style-type: none"> • All offences with a maximum sentence of 14 years or life including: manslaughter, aggravated assault, arson and fraud over \$5,000. • Offences prosecuted by indictment and a maximum sentence of imprisonment of 10 years that: <ul style="list-style-type: none"> ○ result in bodily harm ○ involve the import/export, trafficking and production of drugs ○ involve the use of weapons • The following offences with a maximum penalty of 10 years when prosecuted by indictment: <ul style="list-style-type: none"> ○ prison breach ○ motor vehicle theft ○ criminal harassment ○ sexual assault ○ kidnapping, forcible confinement ○ trafficking in persons – material benefit ○ abduction of a person under 14 (stranger) ○ theft over \$5,000 ○ breaking and entering with intent ○ being unlawfully in a dwelling-house ○ arson for fraudulent purpose

Data – The analysis of the impacts of Bill C-10 relating to conditional sentence restrictions is based on data from the courts operational system. The history of CSOs for the period 2004-2011 was examined. Offences which would no longer be eligible for a CSO were identified, and both number and length of sentence were included in the analysis of these CSOs.

Assumptions – It was assumed that if a CSO was no longer available as a sentencing option for an offence, the offender would receive an equivalent sentence in custody. A remission of one-third was also included in the calculations of bed-days.

Table 2: NWT Conditional Sentence Orders 2004-2011

Year	2004	2005	2006	2007	2008	2009	2010	2011	Ave. Number of CSOs ²
Total number of NWT CSOs	50	43	41	58	56	65	58	58	53.6=54
Number of offences which received a CSO ³ but would be ineligible under C-10 implementation	20	14	13	27	20	8	19	21	17.75=18

Table 3: Estimated Bed-Days for Conditional Sentences Ineligible under Bill C-10 Implementation

A Sentence Length (days)	B Median Sentence Length (days)	C Average Number of Ineligible CSOs Year between 2004-2011	D Number of Bed-Days (BxC)	E Number of Bed-Days Adjusted for Remission Reduction of 1/3
2-119	61	3.61	220.21	146.81
120-209	165	5.13	846.45	564.30
210-394	302	6.65	2,008.3	1,338.87
395-730	513	2.47	1267.11	844.74
Total		17.86=18	4,342.07	2,894.71

Conclusions – Bill C-10 Impact on Conditional Sentence Orders

Based on available information it is estimated that the restrictions on the use of CSOs will result in approximately **2,895 additional bed-days in the first full year** after the implementation of Bill C-10. If the average number of ineligible CSOs per year is 18, each of those 18 additional offenders would receive a sentence of 160 days in custody. This is equivalent to 8 additional offenders per year in custody for a period of one year.

² Calculated averages for ineligible CSOs may differ slightly between Table 2 and Table 3 due to rounding.

³ Eligible CSOs are those between 2 days and 730 days (ie., two years or under).

Mandatory Minimum Sentences – Calculation of Impacts

Bill C-10 amends both the *Criminal Code* and the *Controlled Drug and Substances Act* to impose new mandatory minimum sentences for certain offences.

Data – Data from the Department’s Corrections Offender Management System was examined for the period 2004 to 2011. This data provided information on custodial sentences for offences that would be subject to new mandatory minimum sentences under the amendments proposed in Bill C-10. For some offences, there had been very few sentences and the impact of the new mandatory minimum sentences would be minimal. Based on the data for the study period, the offences that may result in meaningful impacts were:

1. Sexual Interference (*Criminal Code* s.151)
2. Sexual Assault (*Criminal Code* s.271)
3. Trafficking (*Controlled Drug and Substances Act* s.5)

Table 4: Mandatory Minimum Penalty Implementation Summary

Legislation / Offence	Pre Bill C-10 Implementation		Post Bill C-10 Implementation	
	Summary Conviction	Indictable Offence	Summary Conviction	Indictable Offence
<i>Criminal Code</i>				
• Sexual Interference	Min: 14 days Max: 18 months	Min: 45 days Max: 10 years	Min: 90 days Max: 18 months	Min: 1 year Max: 10 years
• Sexual Assault if victim is <u>under</u> 16 years of age	Min: n/a Max: 18 months	Min: n/a Max: 10 years	Min: 90 days Max: 18 months	Min: 1 year Max: 10 years
• Sexual Assault of Victim is <u>over</u> 16 years of age	Min: n/a Max: 18 months	Min: n/a Max: 10 years	Status Quo	Status Quo
<i>Controlled Drug and Substances Act</i>				
• Trafficking marijuana	N/A	<3 kg Max: 5 year less one day	N/A	<3 kg Status Quo
		>3 kg Max: Life		>3 kg Min: 1 or 2 years where certain aggravating factors apply <u>and</u> Max: Life
• Trafficking cocaine	N/A	Max: Life	N/A	Min: 1 or 2 years where certain aggravating factors apply <u>and</u> Max: Life

1. Sexual Interference

Sexual interference is if one person touches, for a sexual purpose, any part of the body of someone under the age of 16 years.

Assumptions – It was assumed that the incidence of women committing crimes of sexual interference is negligible and therefore has been excluded from analysis. Also, as data was not available on victims and their age, it was assumed that 30% of the cases involved victims under the age of 16.

Table 5: NWT Sexual Interference Charges for the Period 2004-2011

	# Summary Convictions	# Indictable Offences
Total number of Sexual Interference charges in the NWT between 2004 and 2011	14	18
Total number of Sexual Interference charges in the NWT between 2004-2011 that were <u>below</u> the mandatory minimum sentence under Bill C-10	4	9

Table 6: Sexual Interference Sentence Disparity Before and After Bill C-10 Implementation

Length ⁴ of Sentence (days) of Sexual Interference Charges below Proposed C-10 Mandatory Minimums between 2004-2011	Number Additional Bed-Days Required in Sentence to meet C-10 Mandatory Minimums of 90 or 365 Days	Number of Additional Bed-Days Adjusted for Remission Reduction of 1/3
Summary Convictions (4)		
1	89	59.33
30	60	40.00
60	30	20.00
60	30	20.00
Total	209	139.33=139
Indictable Offences (9)		
183	182	121.33
273	92	61.33
183	182	121.33
304	61	40.67
151	214	142.67
183	182	121.33
243	122	81.33
273	92	61.33
183	182	121.33
Total	1,309	751.33=751

⁴ The length of sentence does not take into account any previous time served in remand, and assumes that the remission rate has not been adjusted for.

Conclusions – Bill C-10 Impact on Sexual Interference Offences

Between 2004 and 2011, 71% of the Sexual Interference offences charged as a summary conviction offence were above the mandatory minimum sentences set out in Bill C-10. Of those which were below, the new mandatory minimum sentences are estimated to result in approximately 139 additional bed-days. During the same time period, 50% of the Sexual Interference offences dealt with through an indictment were above the mandatory minimum sentences prescribed by Bill C-10. Of those which were below, the new mandatory minimum sentences would require an additional 751 bed-days. In total, as a result of the new mandatory minimum sentences in C-10, 890 additional bed-days would be added to sentences for Sexual Interference between 2004 and 2011. This is approximately **111 additional bed-days per year**.

2. Sexual Assault

Sexual assault is assault of a sexual nature where the sexual integrity of the victim is violated. It is difficult to predict the prevalence of sexual abuse when the victim is a minor (under the age of 16 years) because this type of sexual assault is often under-reported. Also, when administrative data is entered in the Corrections Offender Management System database, sexual assault data is not differentiated by victim age/type. To address this data gap, the table below estimates the number of Sexual Assault Summary Convictions and Indictable Offences which would be affected under Bill C-10 implementation if 30% of the cases involved minors below the age of 16 years.

Assumptions – It is assumed that 30% of the sexual assaults in the NWT between 2004 and 2011 were committed against a minor. The incidence of women committing crimes of sexual assault is negligible and therefore has been excluded from analysis.

Table 7: Average Sentence Duration of Sexual Assault Charges between 2004-2011

A Sentence Length (days) below the Mandatory Minimums under Bill C-10	B Median Sentence Length (days)	C Total Number of Sexual Assault Charges/Year between 2004-2011	D Number of Bed-Days (BxC)	E Number of Bed-Days Adjusted for Remission Reduction of 1/3
Summary Convictions and Unknown Trial				
1-14	7.5	7	52.5	35.00
14-89	51.5	20	1030	686.67
Total	-	27	1,082.5	721.67
Indictable Offences				
90-140	115	2	230	153.33
141-191	166	16	2,656	1,770.67
192-242	217	6	1,302	868.00

A Sentence Length (days) below the Mandatory Minimums under Bill C-10	B Median Sentence Length (days)	C Total Number of Sexual Assault Charges/Year between 2004-2011	D Number of Bed-Days (BxC)	E Number of Bed-Days Adjusted for Remission Reduction of 1/3
243-293	268	15	4,020	2,680.00
294-344	319	5	1,595	1,063.33
Total	-	44	9,803	6,535.33

Table 8: Additional Bed-Days for Sexual Assault from 2004-2011 if 30% of Victims are under 16 Years

Sentence	Number of Bed-Days Adjusted for Remission Reduction of 1/3	Number of Bed-Days if 30% of Victims are <16 years
Summary Convictions and Unknown Trial	721.67	216.50
Indictable Offences	6,535.33	1,960.60
Total	7,257.00	2,177.10

Conclusions – Bill C-10 Impact on Sexual Assaults

Knowing the proportion of sexual assaults committed against minors is difficult given reporting gaps and available data. If 30% of the sexual assaults in the NWT between 2004 and 2011 were committed against minors, it is estimated that offender sentences would increase by approximately 2,177 bed-days as a result of mandatory minimum sentencing changes under Bill C-10. This translates to an **additional 272 bed-days per year** that would be served by offenders in the NWT who are convicted of sexual assault.

3. Trafficking

Trafficking in drugs is to sell, administer, give, transfer, transport or deliver any of the substances listed on one of schedules 1 to 4 of the *Controlled Drugs and Substances Act*. In the NWT, the most prevalent trafficking offences are marijuana trafficking, followed by cocaine trafficking. Trafficking in these drugs is not punishable by summary conviction.

Assumptions – It is assumed that 60% of the NWT trafficking offences would have an applicable MMS. It is assumed that, based on administrative corrections data, 600 bed-days would result.

Table 9: Number of NWT Trafficking Sentences

	Summary Convictions	Indictable Offences
Total number of trafficking sentences in the NWT between 2004 and 2011	N/A	66
Total number of trafficking sentences in the NWT between 2004-2011 that were below the 365-day mandatory minimums under Bill C-10	N/A	41

Table 10: Average Sentence Duration of NWT Trafficking charges during 2004-2011

Length ⁵ of Sentence (days) for Trafficking Offences that were below the Mandatory Minimums set out in C-10 in the period 2004-2011	Number of Additional Bed-days Required if C-10 Mandatory Minimum of 365 days applies	Number of Additional Bed-days Adjusted for Remission Reduction of 1/3	Number of Additional Bed-days if C-10 Mandatory Minimum of 730 days applies	Number of Additional Bed-days Adjusted for Remission (Reduction of 1/3)
Indictable Offences (41)				
8838 days total	6,127 days ⁶	4,084.7 days	21,092 days ⁷	14,061 days
Per Year				
100%		511		1,758
30%		153		527
60%		306		1,055
90%		460		1,582

Conclusions – Bill C-10 Impact on Trafficking Offences

Due to a lack of detailed data it is difficult to know which of the historical trafficking offences for the period 2004-2011 had aggravating factors which would now result in a mandatory minimum sentence. Assuming that 60% of the historical cases examined would now have a mandatory minimum sentence of one to two years, this would result in a range of 306 to 1,055 additional bed-days per year. Based on this range, the Department used **600 additional bed-days per year** for the purposes of this analysis.

⁵ The length of sentence does not take into account any previous time served in remand, and assumes that all offenders will receive remission of 1/3 of their custodial sentence.

⁶ 14,965 bed days (total number of bed days if all 41 offenders received a mandatory sentence of 1 year) – 8,838 bed days (actual sentence length for 41 offenders convicted of trafficking) = **6,127 additional bed days for the period 2004-2011**.

⁷ 29,930 (total number of bed days if all 41 offenders received a mandatory sentence of 2 years) – 8,838 bed days (actual sentence length for 41 offenders convicted of trafficking) = **21,092 additional bed days for the period 2004-2011**.

Analysis of Total Additional Bed-Days from Bill C-10

The total number of additional bed-days expected under Bill C-10 implementation is 3,878 days per year (see table below). Based on a 365 day year, this amounts to 11 additional offenders in custody⁸ starting in the first year after the implementation of Bill C-10.

Table 11: Total Number of Additional Bed-days per Year Expected under Bill C-10 Implementation

Type of Sentence	Additional Bed-days/Year Expected Under Bill C-10
Conditional Sentence Orders	2,895
Mandatory Minimum Sentences- Sexual Interference	111
Mandatory Minimum Sentences- Sexual Assault	272
Mandatory Minimum Sentences-Trafficking	600
TOTAL	3,878

Costs for Additional Bed-days (Within Capacity)

The costs associated with holding 11 additional adult offenders as a result of Bill C-10 is expected to be minimal. The projected costs were estimated by examining the expenditures for the 2011-12 year and determining the actual cost of holding additional offenders up to capacity levels. Most costs attributed to operating and staffing facilities would be expended if additional offenders are incarcerated or not; however, some costs would increase as a result of more offenders in custody. These additional costs would include some administration costs, food, transportation, and hot water for showers and laundry. Additional costs were calculated for each facility by bed-day. The overall total cost for the 11 additional offenders is expected to be **\$53,493.80 per year** (see below table).

Table 12: Total Expected Cost of Additional Bed-days under Bill C-10 implementation

Facility	Total Additional Bed-days	Cost per Bed-day (facility per diem)	Total Cost
North Slave Correctional Centre	2,464	\$12.57	\$30,972.48
South Mackenzie Correctional Centre	942	\$14.49	\$13,649.58
Ft Smith Correctional Complex – Female	186	\$18.79	\$3,494.94
Ft Smith Correctional Complex – Male	286	\$18.80	\$5,376.80
TOTAL NWT Cost for C-10 Implementation			\$53,493.80

NWT Facility Capacity

Facility capacity is a potentially limiting factor when anticipating an increase in offenders in custody. The NWT currently has 4 facilities which house adult inmates.

⁸ Actual numerical value is 10.62 offenders this has been rounded up to 11 offenders.

Table 13: Capacity of NWT Corrections Facilities

	North Slave Correctional Centre	South Mackenzie Correctional Centre	Fort Smith Correctional Complex Female Unit	Fort Smith Correctional Complex Male Unit
				
Location	Yellowknife	Hay River	Fort Smith	Fort Smith
Official Capacity (total of 245 inmates)	148	56	20	21
Official Capacity (total of 89,425 bed-days)	54,020 days	20,440 days	7,300 days	7,665 days
% of Total Offender Count	66%	24%	5%	7%

Analysis of Facility Distribution

As per Table 11, 3,878 additional bed-days are expected each year as a result of the implementation of Bill C-10. The following table estimates the distribution of bed-days by NWT facility.

Table 14: Distribution of Additional Bed-days Estimated from Bill C-10 by NWT Facility

Facility	Conditional Sentences	Sexual Interference ⁹	Sexual Assault Charges Where Victims are Minors ¹⁰	Trafficking	Total
North Slave Correctional Centre	1,824	76	186	378	2,464
South Mackenzie Correction Centre	703	27	66	146	942
Ft Smith Correctional Complex – Female	154	0	0	32	186
Ft Smith Correctional Complex – Male	214	8	20	44	286
Total Number Additional Bed-days	2,895	111	272	600	3,878

⁹ No females were convicted of sexual interference. The 5% allotted bed-days to Ft Smith female facility have been added to the North Slave facility.

¹⁰ No females were convicted of sexual assault where the victim was predicted to be a minor. The 5% allotted bed-days to Ft Smith female facility have been added to the North Slave facility.

Figure 1 shows the composition and trend of adult offender counts for NWT, Federal and Nunavut offenders in NWT correctional facilities. Figure 2 shows that actual admissions to custody have been increasing in the NWT since 2004-05, peaking in 2010-11 at 253 admissions slightly over the capacity of 245. Based on current admissions, if an additional 11 offenders were admitted to custody in the first year after the implementation of Bill C-10, and admissions continue to grow by 5%, we would quickly exceed capacity. Although admissions above capacity can be managed in the short term, if this trend continued steps would need to be taken to manage custody including capital construction.

Figure 1: Trends of Overall Adult Offender Numbers for NWT Corrections Facilities

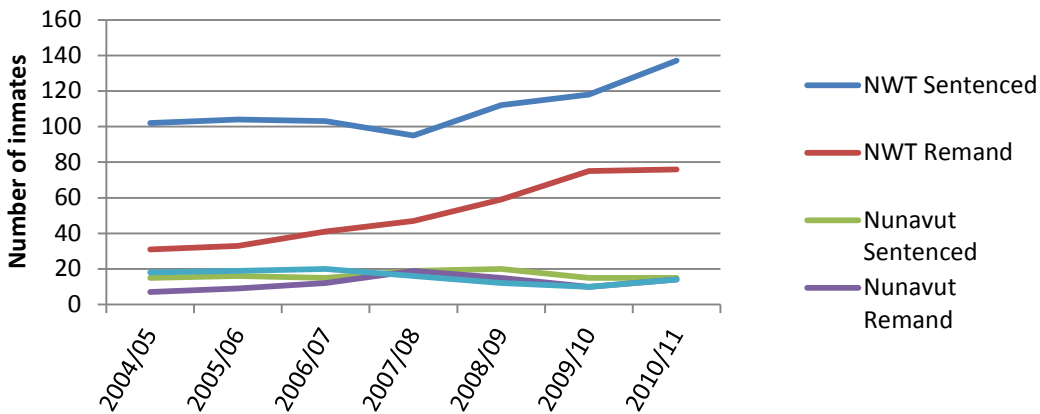
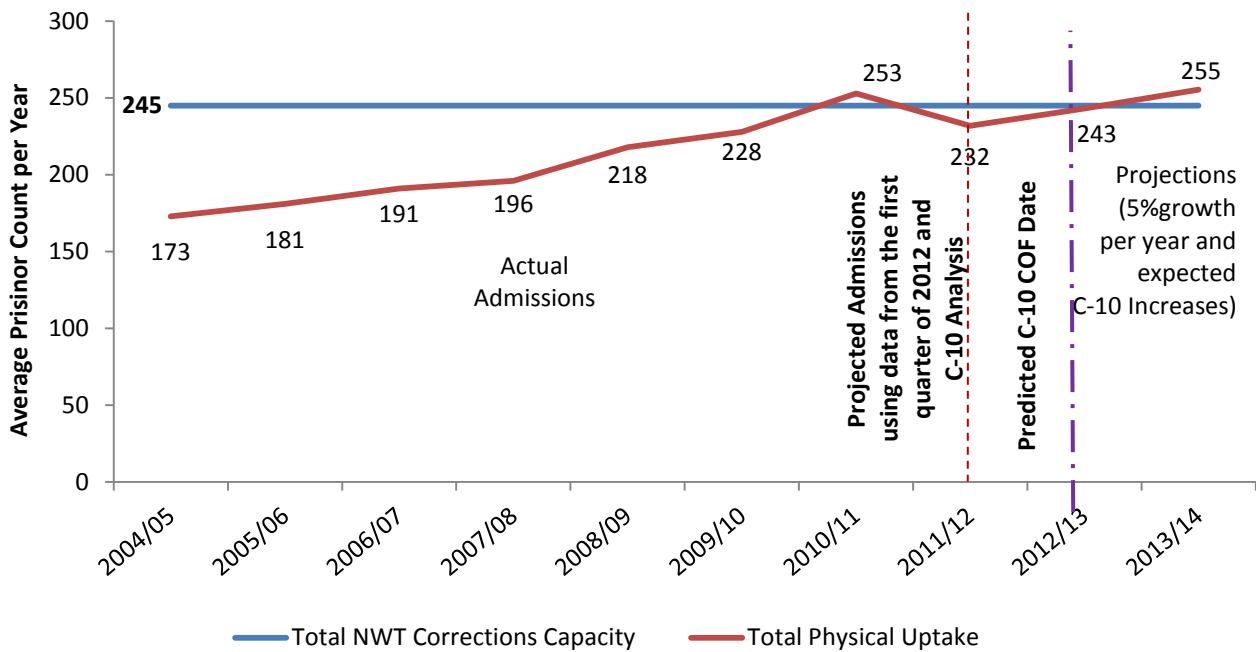


Figure 2: Actual and Projected Adult Offender Counts for NWT Corrections Facilities



Strategies to Address Capacity Issues in Adult Correctional Facilities

The following strategies can be used either alone or in combination to address capacity issues at the adult correctional facilities in the NWT. Renovation/construction is only pursued if other strategies are no longer sufficient to manage capacity.

Strategy 1 – Increased use of Wilderness Camps and Temporary Release

Corrections staff regularly assess low-risk offenders to determine if they could participate in a wilderness camp program or be moved back into their community on a temporary release (following appropriate protocols and legislative requirements). As this option is currently being optimized, there may not be the opportunity for additional mitigation through the use of wilderness camp placements or temporary absences.

Advantages

- May result in increased capacity in NWT facilities.
- Temporary release would not require further capital expenditures.

Disadvantages

- Costs to place offenders in wilderness camps are greater than the costs associated with a custodial placement. More financial resources would be needed to establish camps and place offenders.
- Offenders need to choose to go to a wilderness camp. Placements may not be possible if offenders do not want to participate in this program.
- Offenders on temporary release in their community would require supervision. This would place additional pressures on the probation service.

Strategy 2 – Decline Admissions from Federal and Nunavut Inmates into NWT Prisons

The number of federal and Nunavut offenders in NWT facilities can be reduced if there are capacity issues at our facilities. If capacity issues continue, the NWT could refuse to accept some or all of these offenders.

Advantages

- Increases capacity in NWT facilities.
- No capital expenditures involved.

Disadvantages

- Decreases revenue from per diems from these inmates: \$325/day per federal offender (average across facilities) and \$266.74/day per Nunavut offender. Federal and Nunavut offenders held in NWT facilities during 2010-11, resulted in approximately \$4.5 million revenue to the GNWT.
- Would require amending the agreement with the Nunavut government.

Strategy 3 – Managing Capacity

The Department has experienced high offender counts (mainly at the North Slave Correctional Centre) in the past and these have been accommodated in the short term. Longer term solutions need to be found

to manage sustained capacity issues. Typically when inmate numbers fluctuate over maximum capacity, the following options are available:

- General population pods are used to house the vast majority of inmates;
- Phase unit and maximum security cells are used to house inmates;
- The intake and medical holding cells are used as required;
- Early Release Applications are considered where case planning indicates that these are appropriate;
- The South Mackenzie Correctional Centre can create additional bed space at their facility to assist with high inmate counts at the North Slave Correctional Centre;
- Transfers to the South Mackenzie Correctional Centre and the Fort Smith Correctional Complex Male Unit are considered depending on the suitability of inmates for such transfers;
- Transfers to the South Mackenzie Correctional Centre usually occur bi-weekly, but can occur weekly due to higher counts; and
- Inmates can also be sent to the Fort Smith Correctional Complex Male Unit from the South Mackenzie facility creating additional bed space.

Advantages

- Increases capacity in NWT facilities.

Disadvantages

- Unsustainable solution over time.
- May result in the need for more staff/more resources to operate the facility.
- Limits services and programs if dedicated space is used for housing inmates.

Strategy 4 – Send Territorial Offenders to Southern Facilities

Currently, some offenders serving territorial sentences are sent to southern facilities because they have special needs that can't be met in the NWT or because their risk cannot be managed here. If capacity issues continue, the Department could consider sending more offenders to the south, but this is an expensive option. For example, the daily per diem rate at the Regional Psychiatric Centre in Saskatchewan is \$554.18/day and the Edmonton Institution is \$453.86/day. Sending one inmate to a southern institution for one year could range from \$165,658 to \$202,275 per year. This option may also have limitations as there would need to be agreement from the other jurisdictions to take NWT offenders. This approach may not be possible if other jurisdictions are also experiencing pressures from Bill C-10: they may not be able or willing to assist in taking NWT offenders.

Advantages

- Increases capacity in NWT facilities.

Disadvantages

- Medium to high expenditures in the long term.
- Unsustainable solution over time.
- Culturally unacceptable for Aboriginal inmates.
- Limits contact with family and community support.

Strategy 5 – Capital Investments

If other strategies are not sufficient to manage capacity, the Department could consider adding a pod to the North Slave Correctional Centre or renovating the South Mackenzie Correctional Facility. The North Slave facility was designed so that it could accommodate an additional pod, in recognition that offender numbers may rise and further capacity would be required.

Advantages

- Increases capacity to address both Bill C-10 increases as well as other capacity issues.

Disadvantages

- Time required to plan and construct or renovate a facility.
- Need for significant resources for capital improvements. Preliminary costs of adding a pod at the North Slave facility would be approximately \$32,000,000 (due to the unique building standards required for a secure facility). The costs to renovate the South Mackenzie facility have not been calculated. Either facility option would result in the need for additional staff; however, the number and costs have not yet been estimated.

Impact on Youth Corrections

The *Youth Criminal Justice Act* came into force on April 1, 2003. This legislation replaced the *Young Offenders Act*, and was developed to address concerns about the high number of youth in custody. According to research at the time, a small number of minor offences accounted for a large proportion of cases in youth court and an equally large portion of custodial sentences.¹¹ Over the past seven years, it is clear that this Act has succeeded in reducing incarceration of youth. Since the Act came into force, custody rates in Canada and the NWT have dropped dramatically. In particular, the incarceration rate for the NWT has dropped by about 68%.¹²

Bill C-10 amends the *Youth Criminal Justice Act* to add "specific deterrence and denunciation" to the principles of sentencing. The bill also expands the definition of "violent offence" to include behaviour that endangers the life or safety of others and allows custody to be imposed on youth who have a pattern of findings of guilt.

As a result of these changes, the NWT Department of Justice anticipates that more youth will be held in pre-trial detention, more youth will be sentenced to custody for longer periods of time, and more youth will receive a probation sentence in addition to custody. If youth custody and probation increases as anticipated, there will also be impacts on community corrections staff, including more time in court, more pre-sentence reports required, longer period supervising offenders in the community, and more time spent reporting on breaches.

Young Offender Facility Capacity

Unlike the impacts on adult offenders, it is very difficult to calculate the number of additional youth bed-days that can be expected as a result of changes to the *Youth Criminal Justice Act*. The changes to the Act are expected to "push" young offender counts higher, but not as high as those experienced under the previous *Young Offenders Act*.

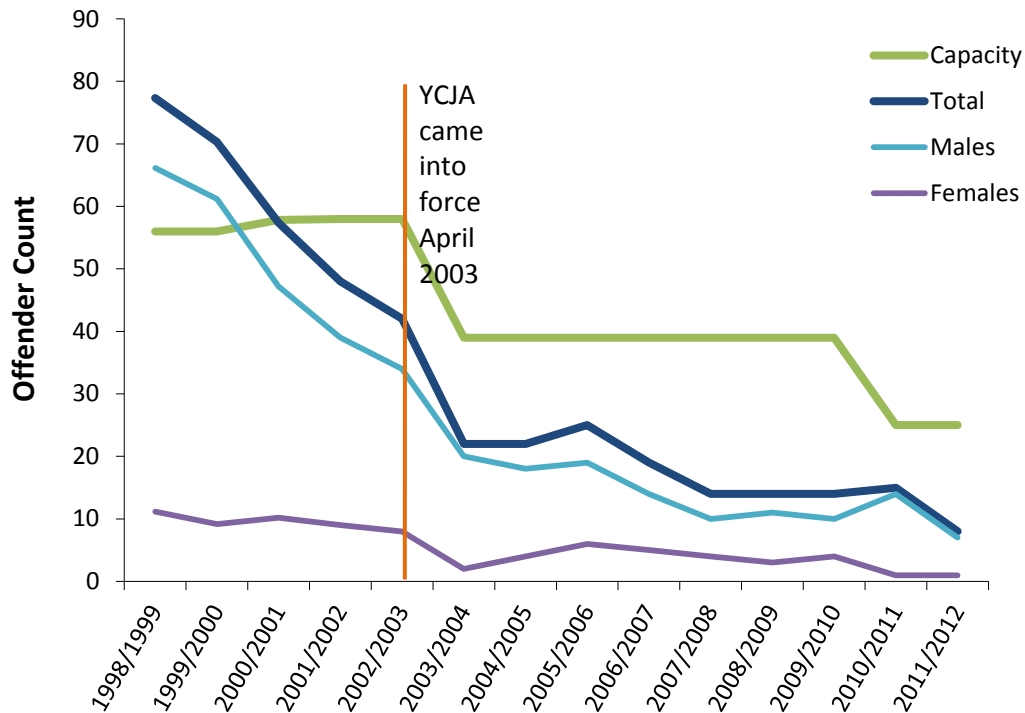
Since the introduction of the *Youth Criminal Justice Act*, young offender numbers have dropped significantly in the NWT. NWT youth counts ranged from 80 to 43 prior to the introduction of Act, and after the Act came into force in 2003, the counts dropped to an average of about 22 youth (average count) in 2003-04, and 8 youth at the end of 2011-12 (representing 7 males and 1 female). During this period, young offenders sentenced to custody were managed in the community through contracts for alternate homes and in correctional facilities. It was necessary to closing alternate homes and some facilities to manage the decreases in the number of young offenders in custody.

NWT young offender counts are currently within the capacity of the NWT's only youth facility – the North Slave Young Offender Facility in Yellowknife. This facility holds 25 youth, with 15 in secure custody and 10 in open custody. Female offenders are currently held with male young offenders at the facility. This is a temporary measure pending approval and construction of a new girls and women facility in Fort Smith. It is important to note that the temporary measure is possible because of the very low number of males and females; however, if either the male or female population increases, this arrangement would be unsustainable.

¹¹ *The Use of Custody under the Youth Criminal Justice Act*. Department of Justice: <http://www.justice.gc.ca/eng/pi/yj-jj/research/doob-sprott/s1.html>

¹² Statistics Canada. Youth Correctional Services. <http://ccjcsjcsj.statcan.gc.ca/>

Figure 3: Young Offender Custodial Trends 1998-99 to 2011-12



Strategies to Address Capacity Issues in Youth Correctional Facilities

If the number of young offenders starts to increase as a result of changes to the *Youth Criminal Justice Act*, there are several strategies the Department could use in the short and longer term to manage youth sentenced to custody.

Strategy 1 – Re-establish Alternate Homes to Accommodate Open Custody Youth and Re-profile the North Slave Young Offender Facility as a Secure-only Facility.

Alternative homes were used prior to the introduction of the *Youth Criminal Justice Act* to manage youth who were sentenced to an open custody sentence. An alternative home is a private home in the community where the owners of the home were contracted with the Department to take youth into their care. The premise behind the alternative home is that the young offender serves their sentence in the community. Only youth who are sentenced to open custody can live at an alternative home. The young offender is placed on a Reintegration Leave and may stay at the home for the duration of his/her sentence.

Advantages

- Increased capacity (10 beds) at the North Slave facility for secure custody placements.

Disadvantages

- Increased staff time and financial resources would be required to re-establish contracts in the community for alternate homes. There would also be the costs associated with the ongoing operation of the homes. These costs would be in addition to current facility costs.
- Re-profiling the North Slave facility as a secure facility would require that female young offenders could no longer be held in that facility with male young offenders. This has been a temporary measure pending the construction of a women and girl's facility in Fort Smith. The current estimated cost based on a schematic design is approximately \$35,000,000.

Strategy 2 – Send Territorial Offenders to Southern Facilities

If numbers of young offenders increase to the point where capacity issues arise, the Department could consider sending young offenders to the south but this is an expensive option. Based on estimates for adult offenders, the cost to send one inmate to a southern institution for a full year could range from between \$165,658 to \$202,275 per year.¹³ This option may also have limitations as there would need to be agreement from the other jurisdictions to take NWT offenders. This approach may not be possible if other jurisdictions are also experiencing pressures from Bill C-10: as with adult offenders, other jurisdictions may not be able or willing to assist in taking NWT young offenders.

Advantages

- Increases capacity and could be cheaper than constructing a new facility.

Disadvantages

- Medium to high expenditures in the long term.
- Unsustainable solution over time.
- Culturally unacceptable for Aboriginal inmates.
- Limits contact with family and community support.
- Placement of young offenders in provincial facilities could expose northern youth to gangs and other southern crime influences.

Strategy 3 – Capital Investments

If other strategies are not sufficient to manage capacity, the Department could consider adding onto the North Slave Young Offender Facility.

Advantages

- Increases capacity in NWT facilities.

Disadvantages

- Time required to plan and construct or renovate a facility.
- Need for significant resources for capital improvements and additional staff. No estimates have been prepared on the costs to add additional space onto the North Slave facility or the staffing and operational costs for such an addition.

¹³ Rates for young offenders were requested from provinces but no information was provided.

Impacts on Other Justice Sectors

Courts/ Legal Aid/ Victim Services

Courts – With new mandatory minimums and higher penalties, it is expected more accused (adult and youth) will elect to go to court to fight their charges, and if convicted more will want to appeal their sentences. This is expected to result in more court sittings and increased court travel.

Changes to the principles of the *Youth Criminal Justice Act* may make diversion less available for youth. As a result, more youth may end up in the formal justice system. Aside from it being a less effective outcome for youth than community sanctions, it is expected that this will also have an impact on the workload of the courts.

Legal Aid – Most accused offenders in the NWT are eligible for legal aid. Accordingly, changes in Bill C-10 are expected to result in increased demand on the legal aid program. As well, it is anticipated that legal aid will bear the costs related to increased numbers of appeals, both in terms of obtaining opinions as to the merits of appeals and the costs of launching the appeals. There may also be impacts as a result of charter challenges associated with these amendments.

Increased demand may result in deterioration of existing services unless further resources are committed to this program. Staff lawyers cost on average about \$150,000/year.

Victims Services – With more accused electing to go to court, there will be the need for victim witnesses to attend court and for more support for the victims of crime.

Police Services

Changes to the *Criminal Code* and the *Controlled Drugs and Substances Act* will require training for the police, and create additional time and costs associated with escort of prisoners and providing additional relief for to smaller communities. New policing positions may be required as a result of pressures on the RCMP. A new RCMP position costs the NWT on average about \$170,000 per year.

Conclusions

The impact of Bill C-10 on the NWT justice system has both operational and administrative implications. In the short term, the NWT has the capacity to adapt to the additional workload and the burden of increased offenders. In the long term, however, this analysis found the capacity of NWT adult correctional facilities to be compromised by compounded increases over time. It is expected that this will result in the need for additional resources including capital expenditures in the future.

Impact on Adult Corrections

- Restrictions on the use of CSOs and new mandatory minimum sentences in Bill C-10 are expected to result in an additional 3,878 bed-days in the first full year after the bill comes into force. This is equivalent to approximately 11 additional offenders per year serving a sentence of 365 days. Costs to accommodate 11 additional offenders per year are expected to be about \$53,494 per year. This is based on actual costs like transportation, food and hot water for showers and washing.
- Although this impact in itself is not huge, based on overall capacity of territorial correctional facilities and recent high offender counts, the NWT will have to implement strategies to reduce the number of offenders in custody and/or manage a custodial population that exceeds capacity. This situation is not sustainable for the longer term.
- In a fairly short time, based on facility capacity and current offender counts, the NWT may also have to consider adding correctional facility capacity (space) by renovating the South Mackenzie Correctional Centre or adding a “pod” onto the North Slave Correctional Centre. Capital costs for a new “pod” at the North Slave adult facility would be approximately \$32,000,000. The costs to renovate the South Mackenzie facility have not been calculated. Both facility options would result in the need for additional staff, but staff number and related costs have not yet been estimated.

Impact on Youth Corrections

- It is not possible to accurately predict impacts of Bill C-10 changes to the principles of the *Youth Criminal Justice Act*; however, it is expected more youth will be held in pre-trial detention and more youth will be sentenced to custody for longer periods of time.
- The capacity of the North Slave Young Offender Facility is current 25 young offenders. The number of male and female young offenders in custody has been dropping, especially since the introduction of the *Youth Criminal Justice Act* in 2003. At the end of 2011-12, there were 8 young offenders in custody (7 boys and 1 girl).
- It is anticipated that expected increases in our male youth population will mean that girls can no longer be held at the North Slave facility. Construction of the proposed women and girl’s facility in Fort Smith would be required. This facility is estimated to cost \$35,000,000.

Impact on Other Justice Sectors

- It is expected more accused (adult and youth) will elect to go to court to fight their charges, and if convicted more will want to appeal their sentences. This is expected to result in more court sittings and increased court travel as well as increased support for victims of crime.
- Most accused offenders in the NWT are eligible for legal aid. Bill C-10 changes are expected to result in increased demand on the legal aid program. On appeals, legal aid will experience increased costs of both obtaining opinions as to the merits of the appeals and the costs of launching appeals.

- Changes to the *Criminal Code* and the *Controlled Drugs and Substances Act* will require training for the police, and create additional time and costs associated with escort of prisoners and providing additional relief for to smaller communities. New policing positions may be required as a result of pressures on the RCMP.

APPENDIX A

Summary of Bill C-10 Provisions

1. Amendments to the *Criminal Code* for sexual offences against children:

- Adds two new offences: (1) making sexually explicit material available to a child (s. 171.1); and (2) making an agreement or an arrangement to commit a sexual offence against a child (s. 172.2)
- Establishes or increases mandatory minimums
- Increases maximum sentences for some offences
- Judges to restrict offender access to children or the internet if suspected or convicted of offences

2. Amendments to the *Criminal Code* that would restrict the use of conditional sentences:

The following is a list of offences for which conditional sentences would not be available:

- All offences for which the law prescribes a maximum sentence of 14 years or life, including manslaughter, aggravated assault, arson and fraud over \$5,000
- Offences prosecuted by indictment and for which the law prescribes a maximum sentence of imprisonment of 10 years that result in bodily harm, involve the import/export, trafficking and production of drugs, or involve the use of weapons
- The following offences for which the law prescribes a maximum penalty of 10 years when prosecuted by indictment: prison breach, motor vehicle theft, criminal harassment, sexual assault, kidnapping, forcible confinement, trafficking in persons – material benefit, abduction of a person under 14 (stranger), theft over \$5,000, breaking and entering with intent, being unlawfully in a dwelling-house, arson for fraudulent purpose

3. Amendments to the *Controlled Drugs and Substances Act* that would increase penalties for organized drug crime:

- Increases mandatory minimum sentences
- Increases maximum sentences for drug offences
- Additional aggravating / health and safety factors
- Higher penalties for date-rape drugs/amphetamines
- Exemptions for drug treatment court

4. Amends the *Youth Criminal Justice Act*:

- Changes the main principle to “protection of society”
- Introduces pre-trial detention for repeat young offenders
- Increases sentences for young offenders by:
 - adding “specific deterrence and denunciation” to the principles of sentencing
 - expanding the definition of “violent offence” to include behaviour that endangers the life or safety of others

- allowing custodial sentences if pattern of findings of guilt or extrajudicial sanctions
- Requires Crown to consider seeking adult sentences (murder, attempted murder, manslaughter and aggravated sexual assault)
- Requires courts to consider lifting the publication ban on the names of young offenders convicted of “violent offences” with youth sentences
- Requires police to keep records when informal measures are used to identify re-offending
- Requires all offenders under 18 to serve custody in a youth facility

5. **Amendments to the *Criminal Records Act* that would eliminate pardons for serious crimes:**

- Replaces the term “pardon” with the term “record suspension” – this causes the judicial record of conviction to be kept separate from other criminal records, which may be ordered to be provided to the Commissioner of the RCMP, and removes disqualification or obligation on the offender except for mandatory or discretionary prohibition orders
- Requires the Parole Board of Canada to submit an annual report that includes statistics on the number of applications for record suspensions and the number of those ordered
- Extends the ineligibility periods for applications for a record suspension from three to five years for summary conviction offences, and from five to ten years for indictable offences
- Makes certain people ineligible to apply for a record suspension, including those convicted of a sexual offence in relation to a minor, or those convicted of more than three offences – each of which was prosecuted by indictment or is a service offence that is subject to a maximum punishment of imprisonment for life, and for each of which the person was sentenced to imprisonment for two years or more

6. **Amendments to the *International Transfer of Offenders Act*:**

- Identifies additional key factors in deciding whether an offender would be granted a transfer back to Canada, including:
 - Endangering public safety
 - Continuing to engage in criminal activities following his or her transfer
 - Endangering the safety of any child, particularly in cases of offenders convicted of sexual abuse

7. **Amendments to the *Corrections and Conditional Release Act* to increase offender accountability and support victims of crime:**

- Allows victim statement in conditional release board hearings, and allows more information about the behaviour and handling of offenders to be provided to victims by the Commissioner of Corrections, upon request
- Adds small changes to restitution and segregation as a disciplinary sanction
- Adds a requirement in law to complete a correctional plan for each offender that sets out behavioural expectations, objectives for program participation, and meeting court-ordered obligations such as victim restitution or child support

- Authorizes police to arrest an offender who appears to be breaking their release conditions, without the need for a warrant

8. **Enactment of the *Justice for Victims of Terrorism Act* and amendments to the *State Immunity Act*:**

- Establishes the purpose of the act so as to deter terrorism by allowing the filing of lawsuits that may impair the functioning of a terrorist group
- Permits victims to seek redress for loss and damage that occurred as a result of a terrorist act

9. **Reforms to the *Immigration and Refugee Protection Act*:**

- Establishes that an immigration officer must refuse a work permit if, in the officer's opinion, public policy considerations in instructions from the Minister (published in the Canada Gazette) justify the refusal – the instructions shall aim to protect foreign nationals from humiliating and degrading treatment, including sexual exploitation
- Mandates that any decision by an immigration officer to refuse a work permit on policy considerations would require 'concurrence' by a second officer