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Chair

Mr. Dave MacKenzie

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•(0845)

[*English*]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): Seeing quorum, I note the clock is at 8:45. We'll begin meeting number four of the Standing Committee on Justice and Human Rights.

We are meeting today pursuant to the order of reference of Wednesday, September 28, 2011, to discuss Bill C-10, an act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act, and other acts.

Appearing today is the Honourable Rob Nicholson, Minister of Justice, and the Honourable Vic Toews, Minister of Public Safety, along with their officials.

Ministers, the agreed process today is that each of you will be given five minutes for an opening address. Then we'll go to questions from the panel.

The Honourable Rob Nicholson (Minister of Justice): Thank you very much. I'm pleased to be here with Catherine Kane, from the Department of Justice, who I think you know very well from all the different pieces of legislation we've had.

[*Translation*]

I'm pleased to address the members of the committee, as they begin their review of Bill C-10, Safe Streets and Communities Act.

[*English*]

The Safe Streets and Communities Act fulfills our government's commitment to quickly reintroduce legislation to combat crime and stand up for victims and law-abiding Canadians. As you know, Canadians gave us a strong mandate to bring forward measures that will better protect society and ensure criminals are held accountable for their actions.

Bill C-10 combines nine bills that were not passed in the previous Parliament. All of them have been debated in the House of Commons and/or the Senate.

I am pleased today to be joined by my colleague, the Honourable Vic Toews, the Minister of Safety, to outline the important measures contained in this bill. I will speak to parts 2 and 4 of the bill. Minister Toews will speak to parts 1 and 3 of the bill.

As I previously stated, while the text of Bill C-10 is certainly longer than most, the fact remains that these reforms have been

debated, studied, and in some cases passed by at least one chamber. I encourage all members of the committee to consult the parliamentary record that exists for all of the previous bills.

I'll take a few moments to highlight a number of the measures.

Part 2 of the Safe Streets and Communities Act includes former Bill S-10, the Penalties for Organized Drug Crime Act. As you may know, it proposes to amend the Controlled Drugs and Substances Act to impose mandatory penalties for the offences of production, trafficking, possession for the purpose of trafficking, importing and exporting, or possession for the purpose of exporting a schedule I drug, such as heroin, cocaine, and methamphetamine, and schedule II drugs such as marijuana.

As you may be aware, this is the fourth time the bill has been introduced. They've been passed by both chambers, but obviously never by both in the same session. This bill is in exactly the same form it was in at the dissolution of the last Parliament.

Part 2 also includes reforms previously proposed by the former Bill C-16, the Ending House Arrest for Property and Other Serious Crimes by Serious and Violent Offenders Act. The reforms would explicitly state that a conditional sentence is never available for offences punishable by a maximum of 14 years or life; offences prosecuted by indictment and punishable by a maximum penalty of 10 years that result in bodily harm, involve the import and/or export, trafficking, and production of drugs, or involve the use of a weapon; or the listed property and violent offences punishable by 10 years and prosecuted by indictment, such as criminal harassment, trafficking in persons, and theft over \$5,000.

This is the third time these reforms have been introduced by our government. On each prior occasion, they received second reading approval in principle and scope.

I note there have been a few technical changes made to the list of excluded offences punishable by a maximum of 10 years. These include changes to include the recently enacted new offence of motor vehicle theft and to coordinate the proposed imposition of a mandatory sentence of imprisonment in section 172.1, the luring of a child, with the conditional sentences amendments.

The last component of part 2 is on the reforms previously proposed by Bill C-54, Protecting Children from Sexual Predators Act. These reforms seek to consistently and adequately condemn all forms of child sexual abuse through the imposition of new and higher mandatory penalties. They also seek to prevent the commission of sexual offences against children through the creation of two new offences. We also seek to require the courts to consider imposing conditions to prevent suspected or convicted child sex offenders from engaging in conduct that could facilitate or further a sexual offence against a child.

Bill C-54 had been passed by the House of Commons with all-party support. It was at debate on third reading in the Senate when the opposition parties unfortunately decided to force an election. I was very disappointed that this important bill then died on the order paper.

We've made some changes since that time, as you will see, to increase maximum penalties with a corresponding increase in mandatory minimum sentences to better reflect the nature of the offences, including making or distributing child pornography or a parent or guardian procuring his or her child for unlawful sexual activity.

● (0850)

These changes are consistent with the government's objectives for the former Bill C-54. As well, the two new sexual offences proposed by this part would be added to schedule 1 of the Criminal Records Act to ensure that persons convicted of either offence are subject to the same period of ineligibility for a record suspension, currently referred to as a pardon, as they are for other child sexual offences.

Finally, part IV of the bill proposes to amend the Youth Criminal Justice Act to strengthen the way the system deals with violent and repeat young offenders.

These measures include highlighting protection of the public as a principle, making it easier to detain youth charged with serious offences pending trial, ensuring that prosecutors consider seeking adult sentences for the most serious offences, requiring police to keep records of extra judicial measures, and requiring courts to lift the publication ban on the names of young offenders convicted of violent offences when a youth sentence is given. These reforms were previously proposed in Bill C-4, Sebastien's Law.

The former Bill C-4 was extensively studied by the House of Commons standing committee through 16 meetings at the dissolution of the previous Parliament. The bill includes changes to address concerns that have been highlighted by the provinces regarding pretrial adult sentencing and deferred custody provisions in the bill. For example, changes to the pretrial detention provisions respond to the provinces' request for more flexibility to detain youth who are spiralling out of control and pose a risk to the public—by committing a serious offence if released—even if they have not been charged initially with a serious offence. The test for pretrial detention would now be self-contained in the act, without requiring reference to the Criminal Code, which is currently the case.

Other technical changes include removing the proposed test for adult sentences and deferred custody and supervision orders and returning to the current law's approach. For example, the former bill

referred to the standard of “beyond a reasonable doubt”, which some provinces found more difficult to meet. That has been removed. The bill continues the current approach of leaving it up to the courts to determine the appropriate standard of proof.

Under Bill C-10, deferred custody and supervision orders will not be available if the youth has been found guilty of an offence involving or attempting to cause serious bodily harm.

In closing, most of Bill C-10's reforms have been debated and studied, and some have even passed. The few new elements I've outlined are consistent with the objectives of the former bills, as originally introduced, or make some needed technical changes. I urge the committee to work with the government to support the timely enactment of the Safe Streets and Communities Act.

We are taking action to protect families, stand up for victims, and hold individuals accountable. Canadians can count on our government's commitment to fulfill its promise to pass this comprehensive bill within the first 100 sitting days of this Parliament.

Thank you very much.

I would ask Minister Toews now to deliver his remarks.

● (0855)

The Honourable Vic Toews (Minister of Public Safety): Thank you, Minister Nicholson.

Mr. Chairman, honourable members of the committee, I would like to thank you for the invitation to be here and for the opportunity to speak with you on Bill C-10, the Safe Streets and Communities Act.

With me is Mary Campbell of the department.

Today I would like to focus my opening remarks on components of the legislation that pertain to the public safety portfolio. These provisions will eliminate pardons for serious crimes, increase offender accountability, support victims of crime, provide justice for victims of terrorism, and ensure that public safety is the paramount consideration when considering offenders' requests for an international transfer.

Last year our government passed legislation to initiate reforms to the pardons system, and Bill C-10 contains further measures to eliminate pardons for serious crimes, including sexual offences against minors.

Bill C-10 will also replace the word "pardon" with the more appropriate term "record suspension". It further stipulates that an individual convicted of more than three indictable offences who has received a sentence of two or more years for each will be ineligible for a "record suspension."

These reforms to the pardons system will also apply to the equivalent service offences under the National Defence Act.

Bill C-10 would also enshrine in law a victim's right to attend and make statements at parole hearings. In addition, it would enable victims to request additional information about the offender, including the reason for the offender's transfer or temporary absence and the offender's participation in program activities.

This bill proposes that when offenders withdraw 14 days or less before the date of a hearing, the Parole Board may proceed as scheduled. Victims would also have the right to ask why the offender has waived a parole hearing. These measures would go a long way to preserving the peace of mind of victims.

Bill C-10 would also modernize the system of discipline in federal penitentiaries. It will address disrespectful, intimidating, or assaultive behaviour, including the throwing of bodily substances. It would also restrict visits for inmates who have been segregated for serious disciplinary offences.

Our frontline officers have asked for these measures, and we are proud to deliver them.

This government is committed to transforming our corrections system to ensure that it actually corrects. We have already taken major steps to address the recommendations contained in "A Roadmap to Strengthening Public Safety". The bill before the House continues this vital work.

Canadians deserve to feel safe in their homes. Victims deserve to be treated with more respect, corrections officers need the tools to do their jobs, and offenders must be prepared to take more responsibility for their conduct and pay the price if they break the rules. Bill C-10 will do all that.

Bill C-10 will do a lot for victims, including victims of terrorist attacks. Specifically, Bill C-10 will allow victims of terrorism to sue, in a Canadian court, perpetrators of terrorist acts and their supporters if the victims can demonstrate a real and substantial connection between their actions and Canada. In addition, an action could be brought against individuals, entities, or listed states that have provided support to a listed entity.

These provisions have been made retroactive to January 1, 1985, in order to allow victims of terrorism to seek redress for loss and damage that occurred as a result of a terrorist act committed anywhere in the world on or after that date.

Finally, Bill C-10, by amending the International Transfer of Offenders Act, will further strengthen our efforts to build safer streets and communities for all Canadians.

These amendments would ensure in law a number of additional key factors that may be taken into account in decisions respecting whether or not an offender serving a sentence overseas, or south of the line, should be granted a transfer back to Canada. This would

include consideration of the safety of any person in Canada who is a victim or a member of the offender's family.

Another consideration would be whether, following the transfer, the offender would continue to engage in criminal activities or endanger the safety of a child, particularly in cases of offenders who have been convicted of sexual abuse.

● (0900)

Our government believes that protection of society must be the paramount concern of our justice system, and with the Safe Streets and Communities Act we are ensuring that law-abiding citizens and families are protected, criminals are held accountable, victims are heard and respected, and we have a corrections system that actually corrects.

As you know, Canadians gave our government a strong mandate to keep our streets and communities safe. With the Safe Streets and Communities Act, that is exactly what we are continuing to do.

I would be happy to answer any questions you may wish to direct to me.

Thank you.

The Chair: Thank you to both the ministers.

Now we begin the rounds of questions. They are five-minutes rounds, and five minutes includes the question and the answer. I will cut it off in mid-word if necessary, to be fair to everybody.

First is Mr. Goguen, from the Conservatives.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

My question will be to Minister Nicholson.

The Chair: I'm sorry, it is my mistake.

Mr. Comartin, from the NDP, is first.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I have to say, Mr. Chair, that I know your government wants to rush this thing through, but we do have to follow the rules, and my side gets to go first.

Thank you to both ministers for being here.

I'd like to start, Mr. Nicholson, with you if I could. You have a study that you referred to constantly, on costs of crime in this country. My first question is whether that was commissioned by your department.

Hon. Rob Nicholson: I believe it was. The Department of Justice put that out, if you're referring to the one that indicates the cost of crime is approximately \$99 billion. It's a 2008 Department of Justice document indicating that most of the costs are borne by victims.

Mr. Joe Comartin: That was commissioned back in 2008?

Hon. Rob Nicholson: Yes, it was.

Mr. Joe Comartin: Who was the author of this?

Hon. Rob Nicholson: It was done internally by the Department of Justice.

Mr. Joe Comartin: So the author is a member of the Department of Justice staff?

Hon. Rob Nicholson: The Department of Justice.

Mr. Joe Comartin: Did you at the same time commission a study on the costs of any of these bills, as they were then individual bills, and in particular the drug bill?

Hon. Rob Nicholson: Again, we consult on a regular basis with our colleagues. The Department of Justice, as you know, works with our provincial counterparts, and we have had discussions, of course, with the Department of Public Safety, because ultimately if individuals are being detained because they are drug dealers, this can increase the costs to the correctional system.

Mr. Joe Comartin: Do you have any figures as to how much, under just the drug bill, the increased incarceration is going to cost the federal treasury?

Hon. Rob Nicholson: By all means. About \$68 million over the next five years would be the cost of that particular section of the bill.

Mr. Joe Comartin: Is there an actual study, a written analysis for that figure?

Hon. Rob Nicholson: It was disclosed as part of the Brison motion earlier in the spring, and again, this results from our consultations within the department and the public safety department.

Mr. Joe Comartin: Has there been any similar analysis done as to the cost, again just for the drug part of this bill, to the provincial and territorial governments?

Hon. Rob Nicholson: None has been undertaken by the Department of Justice. But I've had discussions over the years, of course, so they're well aware of all the provisions of this, and again, I very much appreciate the support we have received from my provincial counterparts, moving forward on this.

• (0905)

Mr. Joe Comartin: But the question, Mr. Nicholson, was has an actual analysis been done of what it is going to cost the provinces and territories?

Hon. Rob Nicholson: The analysis we have is of what it's going to cost the federal government. The federal government prosecutes, for the most part, the offences contained therein, and if you're detained, as you know, for two years or more you're detained within federal facilities. But we don't have a breakdown of what the possible costs are for each province or territory.

Mr. Joe Comartin: Has an analysis been made of the proportion of people newly convicted under the drug part of this bill who would go into provincial institutions as opposed to federal institutions?

Hon. Rob Nicholson: No. You can see the mandatory minimums will push more people into the federal system. So you're right, it will be a reduction in that sense, that the people who get increased penalties are more likely to end up in federal institutions. So you're quite correct, it might ease some of the pressure on provincial facilities.

Mr. Joe Comartin: I don't want to leave the impression that I'm agreeing with that comment, Mr. Minister.

Hon. Rob Nicholson: Oh, I'm sorry, I thought that was the direction you were going.

Mr. Joe Comartin: My analysis is just the opposite—

Hon. Rob Nicholson: Oh, I see. That's fair enough.

Mr. Joe Comartin: —that we're going to see a huge increase in the number of prisoners at the provincial institutions, because of the two years less....

Hon. Rob Nicholson: We'll have to take some comfort; we're getting the right ones in there, Mr. Comartin.

Mr. Joe Comartin: Again I'll disagree with you on that.

Just one more question with regard to provincial costs. Are you aware of any of the provinces having done an analysis, again just on the drug part of the bill, as to how much it's going to cost them individually?

Hon. Rob Nicholson: I don't know of any specifically. I noticed just recently the Saskatchewan Minister of Corrections indicating it's very difficult to try to predict increased costs and determine what people's behaviour would be. Again, they can speak for themselves, but it's very difficult.

Mr. Joe Comartin: If a provincial government were going to do that analysis and required information and data from you or Minister Toews's department, would you be willing to give them that information?

Hon. Rob Nicholson: We try to help them in every possible way, Mr. Comartin. As I say with the drug bill, this is the fourth time we've introduced it, and quite frankly I've had discussions with my provincial counterparts going back now almost five years. So they're well aware of the implications, and again I'm very grateful for all the support they have given over the years.

The Chair: Time is up, Mr. Comartin.

Now, Mr. Goguen.

Mr. Robert Goguen: Thank you, Mr. Chair.

A question to Minister Nicholson, and where he's concise in his answers, I'll probably pass the baton to my friend, Mr. Seeback.

Hon. Rob Nicholson: I'm concise in my answers?

Mr. Robert Goguen: I said you're usually concise.

Hon. Rob Nicholson: I just wanted a clarification.

Mr. Robert Goguen: Minister, the opposition parties and the media have stated that this government is going after individuals who are growing six plants in their homes for personal use. Is this the intent of Bill C-10? Is this bill imposing mandatory minimum penalties on the individual who is using drugs recreationally, or the addict who can't wean himself off drugs?

Hon. Rob Nicholson: No. I appreciate our critics want to spin this to give that impression, and you'll hear this from people who don't want us to go after people who are in the business of trafficking, but the bill is very clear, that if you are in the grow-op business and you have between six and 199 plants, you will come within the provisions of this if you are in the business of trafficking. Again, our critics, for whatever reason—I suppose they can explain that themselves—generally forget to mention that, but that is an essential element of the offence.

Again, the whole problem with grow-ops—I hear about this everywhere I go in the country, from law enforcement agencies, from firefighters—is it is a growing health and safety problem, and again I've indicated to them that we are doing our very best to move forward in this direction, to send out the right message that this kind of activity for the purposes of trafficking is not tolerable.

That being said, for the individual who has either unfortunately become addicted or is experimenting, through the national anti-drug strategy we try to get the message out, encourage people not to get involved with this kind of activity, and certainly we want to help those individuals who have unfortunately become addicted.

That being said, this bill is very specific. It goes after those individuals who are in the business of selling and distributing and producing drugs. It takes aim at organized crime because law enforcement agencies tell me these are the people bringing drugs into this country, it's not some individual acting on his own. They tell me it's organized crime that moves drugs in and out of Canada, so this bill is very specific and it targets those individuals.

• (0910)

Mr. Robert Goguen: Thank you, Minister.

I'll pass the baton, with your permission, to Mr. Seeback, to share my time.

The Chair: Mr. Seeback, a little over two minutes.

Mr. Kyle Seeback (Brampton West, CPC): Great. Thank you.

Minister Nicholson, one of the things I've noticed when I meet and talk with my constituents is that they seem frustrated with the system. They've been frustrated that violent offenders are receiving sentences like house arrest. I'm wondering if you could perhaps expand upon what you said earlier, how this is going to help restore faith in the justice system, and ensure that violent criminal offenders are not receiving conditional sentences and are back in our communities.

Hon. Rob Nicholson: At this point in time we have a fairly long history concerning the use of conditional sentences, very often referred to as house arrests. In fact, my colleague introduced the first bill on behalf of this government to limit house arrest. I always remember the quip he made, in which he said “if somebody sets fire to your house, he shouldn't be qualified to go home to his house after he has been convicted”.

In any case, as you can see by the bill before you, the bill is very specific that with the most serious offences within the Criminal Code, you will not be eligible to go home afterward. There are and will continue to be serious consequences.

Again, I think this helps people's confidence in the criminal justice system. We all have a stake in seeing that people have confidence in our justice system, and also in our political system. I believe this is a step in the right direction. The changes that clarify the provisions with respect to conditional sentencing are contained in this bill and are an important component of what we are proposing.

The Chair: You have ten seconds.

Mr. Kyle Seeback: Thank you very much.

The Chair: Mr. Cotler.

The Honourable Irwin Cotler (Mount Royal, Lib.): Thank you, Mr. Chairman.

I want to welcome our witnesses this morning. Both of you have mentioned that Canadians have given us a strong mandate for safe streets and communities. That is correct. But Canadians give every government a strong mandate for safe streets and communities. Indeed, governments have an obligation to protect their citizens, so the question really then becomes how do governments go about doing that?

Even before this legislation was tabled, we had a serious problem with prison overcrowding. Indeed, in some provinces it had reached 200%. Recently the United States Supreme Court said that a threshold of 137% and above that, in prison overcrowding, would lead to cruel and unusual punishment. How do you address this question? Because if we had a serious problem before this legislation, that problem may be exacerbated by the legislation. How will the provinces, on whom this will be off-loaded, be able to deal with this?

Hon. Vic Toews: Perhaps I can try to answer part of that question.

Of course the American system is very different. The federal system in the United States doesn't even have a parole system. There is no mechanism to relieve any pressure through that, so the courts had to make a very arbitrary decision in that respect. I believe in the federal system in the United States you serve 85% of your sentence and you get 15% off for good behaviour, but there is no parole system.

The idea that somehow—and I can speak from the federal point of view—the legislation that we brought forward is causing overcrowding is mistaken. At the beginning of 2010 we had approximately 14,000 prisoners in the federal system, with a capacity of 15,000. Officials advised me there would be an increase of prisoners to 16,200 by September of this year. In fact the number is 14,800. They underestimated the number of prisoners coming into the system, or remaining in the system, by about two thirds.

At the same time, we authorized the construction of 2,500 new units in existing prisons to accommodate any additional prisoners that might come. To date, those have not been constructed and it has not been necessary to utilize them, although I can say that prison officials have to be creative in terms of moving individuals, because of the pressures of gangs and the like. So the 2,500 units that we have authorized that are coming online in the next couple of years will be necessary to ease some of those pressures and also to create flexibility in terms of some of the gang problems we have inside prisons.

•(0915)

Hon. Irwin Cotler: Mr. Chairman, for reasons of time I'm going to turn to another issue. Since I am in dialogue with Mr. Toews, I'll put this question directly to him.

You've referenced an important piece of legislation that has not been taken particular note of in this bill, and I'm referring here to the amendments proposed respecting the State Immunity Act, which will give Canadians a civil remedy against their foreign terrorist perpetrators.

The legislation that you have proposed provides for a listing mechanism. The government—the Governor in Council—lists the countries against whom such a civil remedy can be invoked. As you know, there have been private members' bills that have offered other approaches as alternatives to a listing mechanism, for some of the reasons I think you know. In particular, a witness who the government called upon in earlier debates on this matter, Victor Comras, from the United States, supported the principle of a civil remedy, as I do, and said with respect to the listing mechanism, and I believe I am quoting him directly, "Don't go there. We made a mistake."

I am asking whether you are you prepared to consider other alternatives, or could you give me the justification in that context for the listing mechanism?

Hon. Vic Toews: Mr. Cotler, I do respect your opinion very much. As a result of our conversation, I spoke with officials and asked if it was justified that we look at some alterations here. The officials basically stated that they believed this was the best way to proceed.

I would encourage you to interview those officials to have that discussion. I don't know if there's any flexibility. We've discussed both sides of that issue. I think we both want exactly the same thing: justice for victims of terrorism. Certainly I know that I'm willing to consider arguments, but officials advise us that this is the best route at this point.

The Chair: Ms. Findlay.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you, Mr. Chair.

My question is for Minister Nicholson.

I believe that all honourable members here wish to do everything possible to protect our children from harm. As a parent, it's certainly a great fear of mine any time that I hear that a child has been hurt or could be.

Children are particularly vulnerable to sexual abuse and exploitation and are in fact, as I understand it, the majority of victims of all police-reported victims of sexual assault in Canada. Children represent 59% of all police-reported sexual assault victims, which I believe is about 13,700 children under the age of 18 in 2008 alone. My source for that is StatCan's Centre for Justice Statistics' uniform crime reporting survey.

Minister, is there a risk that implementing mandatory minimum penalties might result in more plea bargaining?

Hon. Rob Nicholson: One of the things you will notice is that the bill is comprehensive in the sense that it covers a wide range of

sexual assaults or offences against children. It's designed, among other reasons, to make sure that an individual who is in the business of molesting children or abusing children does not escape the penalties that are within the Criminal Code.

In addition, it goes beyond the existing offences because we know that we have to continuously analyze what takes place in this type of activity. This is why we have included two new offences. While it is an offence for an individual to lure a child over the Internet to set that child up to be sexually exploited, it currently is not an offence in the Criminal Code for two adults to discuss among themselves how to do that. That is one of the changes that we have made.

The other change we have made, and again this is in response to problems we have heard about, is to make it an offence for somebody to give sexually explicit material to a child for the purpose of grooming that child, in essence setting that child up to be sexually molested because the child thinks that this is somehow normal behaviour.

Again, part of the challenge that we always have in the Criminal Code is to make sure it continues to respond to what takes place out there. As you know, this is an increasing problem. I hear in my conversations with attorneys general outside Canada about the increase in this kind of activity on computers, so our job as legislators is to try to make sure that our legislation is up to date and covers as much of this activity as we can possibly get within the Criminal Code. You will see it's very wide-ranging and comprehensive.

My colleague has a comment.

•(0920)

Hon. Vic Toews: With respect to the issue of plea bargaining, plea bargaining often has a bad reputation. Plea bargaining is absolutely essential for the operation of the justice system, and I say that as a former crown attorney. It's the abuse of plea bargaining that we have to be mindful of.

A principled crown attorney will make an agreement if he believes that the public interest and the interests of justice can be served through another arrangement. That's essentially what a plea bargain or a plea arrangement is.

Mandatory minimum sentences certainly encourage people to look at their alternatives. What they also do is that if a person goes to trial and receives the mandatory minimum, that individual is no longer back on the street as quickly and then committing more offences.

Some say it may delay the process because of additional trials, but in the long run these types of mandatory minimums, properly focused on appropriate offences such as these, will in fact lessen the burden on the justice system.

The Chair: You have thirty seconds for a short question and a short answer.

Ms. Kerry-Lynne D. Findlay: We hear a lot from the opposition about the statistics on crime going down. Is that true when it comes to sexual offences against children?

Hon. Rob Nicholson: No. You might have missed that in the discussion, but the child pornography and other offences against children are actually increasing. I hear in discussions with my counterparts outside of Canada that this is increasingly becoming a problem.

A problem is a problem, and it's not just a question of statistics. We want to deal with this. It's the same thing with drug crimes: drug crimes are up in Canada.

But, again, I always say we're not governing on the basis of statistics. I'm not bringing these forward because of the latest statistics. We're bringing these forward because I believe they're the right thing to do.

To better protect children within the criminal law of this country, we should be making these changes and we should be bringing in the two new offences I just outlined for you. It's important to do that.

But you are quite right, the incidence of these types of crimes is going up.

The Chair: Thank you.

Mr. Stewart.

Mr. Kennedy Stewart (Burnaby—Douglas, NDP): Thank you, Mr. Chair.

I welcome the witnesses. You'll have to excuse me if I jump right to questions. My time is short.

I am mostly interested in questions regarding the Controlled Drugs and Substances Act. My first question, for Mr. Nicholson, would be regarding the "six months for six plants" aspect of this bill. In terms of the size of the marijuana plants, it says that it's six plants; it doesn't seem to be defined. Would seedlings be considered here?

Hon. Rob Nicholson: Again, we rely on police, and it's a question of fact in each case. Since you raised the six plants, the individual has to be in the business of trafficking—the business of buying and selling these. As you know, when these matters go before court, it's a question of fact in each case.

● (0925)

Mr. Kennedy Stewart: Of course the police would need some guidance on this. Will there be any guidance provided?

Hon. Rob Nicholson: They get guidance from provincial attorneys general, crown attorneys. They're the experts, quite frankly.

I've been very impressed in my meetings with them over the years. They tell me what a serious problem this is in terms of health and safety and how many times this provides the currency for harder drugs.

It is a big problem, and we're addressing it in this particular piece of legislation.

Mr. Kennedy Stewart: But it is possible that someone could go to jail for six months for having six seedlings in a window box?

Hon. Rob Nicholson: He has to be in the business of trafficking in drugs. I've introduced this four times, and I appreciate that my critics don't want to talk about that because that hurts the case against getting rid of the whole bill. But that is an essential part of that, and that has to be proven in every case.

Mr. Kennedy Stewart: Well, I'm happy to talk about trafficking. I was just wondering how exactly you determine if someone is—

Hon. Rob Nicholson: If you're happy to talk about trafficking, we're on the same page. That's what we're talking about in this bill. This is good news.

Mr. Kennedy Stewart: I would like to know how exactly you determine whether someone is trafficking in six seedlings.

Hon. Rob Nicholson: Law enforcement agencies can tell you the things they look for. I mean, it's becoming quite sophisticated. I've been across the country and I've had these conversations with them. They tell me they see the changes within the business. They tell me, for instance, the grow-op business has moved outside the cities and into the country, where they feel they may be under less scrutiny.

There have been developments in that. When you talk with law enforcement agencies, I think you'll be very impressed by how sophisticated and how expert they are becoming.

Hon. Vic Toews: I can offer a very practical suggestion. If you want to learn a little bit about the law of trafficking, sit in on a provincial court or superior court trial. They'll explain the law quite thoroughly and the types of considerations that police make in determining it. These are very well-established principles. We are not changing those principles in any way.

Mr. Kennedy Stewart: My second question will be regarding the Supreme Court's recent striking down of an attempt to shut InSite, which is a safe injection site in the downtown east side of Vancouver. With so many costs being imposed on the provinces, because most of these offences with mandatory minimums will result in people going to provincial jails, I'm wondering if the government has explored the possibility of a charter challenge or a court challenge from the provinces in light of this off-loading of expenses.

Hon. Rob Nicholson: The provinces are very well aware of what we are doing—as I said, it was at least four years ago that I introduced this bill before Parliament—and they have underlined to me what a problem drug trafficking is within the provinces. So they're well aware of the components of this bill. As I say, this bill is identical to the one that died on the order paper with these particular provisions.

Again, I appreciate the support of our provincial colleagues. Dealing with my provincial counterparts over the years has been very helpful, for instance, in getting rid of the two-for-one credit. They were unanimous on a couple of occasions, telling me they want us to move forward, because they said that would free up provincial resources, that provincial courts were getting clogged by people who were continuously getting adjournments because they were racking up two-for-one credits. Again, we work with them, and they're well aware of this, and I've been very appreciative over the years of their support for our efforts to crack down on drug traffickers and other criminals.

Mr. Kennedy Stewart: It's good we're talking about resources here, since the estimates are not available to us. I've heard that as much as \$20 billion is going to be downloaded in costs to provinces. Are you not worried about them challenging that as unconstitutional?

Hon. Rob Nicholson: I'd like to see that study. Could you table that one?

Mr. Kennedy Stewart: I would hope you would have studies that you could show us.

Hon. Rob Nicholson: I don't have that one. That's for sure. We look at the costs, and as I say, when I was here in the spring we gave details, and I had one question with respect to the drug offences. Our estimate is that this will cost about \$67.7 million over five years. Again, these costs are reasonable, but if you've heard of or seen studies indicating that these things are costing \$20 billion or \$100 billion or whatever you have, I'd be happy to see them.

• (0930)

Mr. Kennedy Stewart: I'd be happy to trade studies with you.

The Chair: Time is up.

Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you, Mr. Chair.

Thank you to both of the ministers. You're both very articulate in explaining the provisions of these acts, and I want to thank you for that.

I had the privilege of serving on this committee in the last Parliament. I stand to be corrected, but if memory serves me, I think our committee spent something in the range of 18 meetings simply studying what was then Bill C-4 regarding young offenders. We heard from quite a number of witnesses over a great many hours of testimony. I was sometimes amazed at the things that witnesses who came in believed about this bill. For example, they seemed to think that we were taking out of the Youth Criminal Justice Act provisions regarding rehabilitation and reintegration and addressing circumstances underlying behaviour. Yet if you look at what we were doing and are still doing, I think all of those things are retained.

My question is for Minister Nicholson. Some of the criticisms were that the bill was focused more on punishing all young offenders rather than rehabilitating them. But my understanding is that Bill C-4 was responding and targeting and focusing on the 5% or so of young offenders who were violent and repeat young offenders and who really posed a threat to public safety. It was those people, that very small number of young and violent offenders, who were being targeted and focused on by Bill C-4, and the balance, the rehabilitation and so on, remained.

Minister Nicholson, does the new Bill C-10 maintain this same approach with respect to young offenders?

Hon. Rob Nicholson: Thank you very much, Mr. Woodworth. You are very kind in saying that we were articulate, but I don't know that we could be any more articulate than you just were about the provisions of this bill. This was very impressive.

Again, you're very familiar with the sections we are proposing to change. You're quite correct. The bill focuses on a relatively small

number of young people who are a danger to the public, but a danger to themselves as well. We have seen over the years reports that focus on individuals who need help, need some type of intervention. So the bill is very specific.

Again, we want to increase people's confidence in the youth criminal justice system. We want to make sure that those individuals who, as I say, are a danger to the public and a danger to themselves get the kind of treatment they need in order to protect themselves and the public. The bill is very targeted, very specific.

We have listened to what our provincial counterparts have said about clarifying certain areas. I hope that in your study of this over the next few days, you will have an opportunity to hear that.

We're not doing some of the things that people have accused us of in the past. We're making sure that there are provisions such as that young people are not detained in or sentenced to the same facilities as adults. This came up two elections ago, I think it was, from a party that is no longer here. That being said, we put in some clarification.

And these are very reasonable proposals. Thank you for the excellent job you did of articulating the principles behind them.

Mr. Stephen Woodworth: Thank you, Minister.

I want to say that in fact that canard about jailing young people with adults is still out there. I still read it, and I don't know who is promoting it. But I'm very glad that you've made the point that—

Hon. Rob Nicholson: You can be assured that the Minister of Public Safety and I are not doing that.

Mr. Stephen Woodworth: I understand.

Hon. Rob Nicholson: We're only saying what's in the bill.

Mr. Stephen Woodworth: Thank you very much.

Minister, I just want to say quickly that we had a witness last time, a young man who actually spent significant time in jail. He came to our committee and confirmed exactly what you said about the benefit to him of having that sentence: it really set his life on the right track. So thank you very much for that.

Hon. Rob Nicholson: It's my pleasure.

The Chair: Thank you, Mr. Woodworth.

Ms. Borg.

• (0935)

Ms. Charmaine Borg (Terrebonne—Blainville, NDP): My first question is directed to Minister Toews. I have many examples of criminals who have committed three minor crimes in a row and have been sentenced to two years of time, but who have actually been able to reform themselves. One particular example is of a young gentleman who had been brought into a life of crime at the age of 11 by his mother. He has now reformed his life and is trying to become a carpenter. But he cannot, because he cannot get what used to be a pardon and what will be a record suspension.

I wonder whether the minister has considered the social and economic costs of the problem for these reformed criminals of not being able to get employment.

Hon. Vic Toews: This would be news to me: that someone who has been convicted of four indictable offences and who has received a penitentiary term—a penitentiary term—for each of those four indictable offences has somehow reformed himself and can't get a pardon. I think most Canadians would say that once an individual has been convicted of more than three indictable offences for which he or she has been sentenced to a penitentiary term, that the individual should then be provided with a record suspension.... There comes a point in time when society simply says “No, that's quite enough.”

Now, you might be mistaking what happens sometimes with a break and enter, for example. Even under this bill, let's say a young person—and this is probably the situation in the case you're referring to—has committed, let's say, 20 break and entries and has received three months consecutive on each, and then they do the rounding down or whatever they do for proportionality and the individual has received three years. None of those offences would count towards the disqualification, none of them.

I'd like to see the particular case you're referring to. I would find it surprising that those are “minor offences”, when a person has been convicted of four offences for which he has received a penitentiary term for each offence.

[*Translation*]

Ms. Charmaine Borg: I will be happy to give them to you.

You said that it wasn't possible for a person to mend their ways after committing three successive offences. I'm thinking mainly about youths. Let's say that a 20-year-old serves three two-year penitentiary sentences. When that person is released, he will be 26 and will have an entire life to change his ways, to leave the world of crime.

Are you going to consider that we may be forcing them to live in a criminal life?

[*English*]

Hon. Vic Toews: As I say, I'd like to see the examples you're referring to, because when an individual has been convicted of more than three indictable offences for which he has received a penitentiary term in respect of each, that the individual should be deserving of a record suspension.... I simply believe that there comes a point in time when society must be protected against that kind of individual. I believe we've drawn a very clear line, and I think it's a fair one. Canadians would agree with the position we've taken.

[*Translation*]

Ms. Charmaine Borg: My next question is about the international transfer of prisoners. Does the minister know about a letter sent by the American president in January 2010? Has he seen it? Could the members of the committee get a copy of the letter?

[*English*]

Hon. Vic Toews: You want to know whether a letter has been sent, to who and where?

Ms. Charmaine Borg: I'll just say it in English. Are you aware of a letter that has been sent from the American President to Canada criticizing the number of people who have been refused a transfer to Canada?

Hon. Vic Toews: I haven't seen a letter from the President in that respect, but I can advise you that this was an issue I raised with Secretary Napolitano of the Department of Homeland Security when I met with her and explained to her that in Canada people were receiving parole after one-sixth of the time. Organized crime criminals, drug traffickers, receive substantive sentences in the state of Florida in the federal penitentiary there, a 20-year sentence, and of course the lawyer wants them transferred here to Canada because they'd become eligible for parole after one-sixth of the time. In the United States they serve 85% of their time in that federal penitentiary.

In my opinion, if these individuals have shown no inclination to reform themselves, usually because they specifically refuse to cooperate with law enforcement authorities in indicating who their co-conspirators are in terms of these types of matters, we consider them a risk to public safety and we choose not to bring them back.

The Secretary of Homeland Security was actually quite surprised at how lenient our laws are in respect of parole, and in comparison offered that in the United States they don't get parole in the federal system. You serve 85%, and if you behave yourself, you get 15% off of that.

● (0940)

The Chair: Thank you, Minister.

Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair, and thank you to both ministers and your officials for your attendance here this morning.

Minister Toews, sticking with the issue of the International Transfer of Offenders Act, I recall in the last Parliament when this bill was before the committee there was some criticism regarding the discretion that you as minister would have in making decisions regarding the transfer of Canadians, repatriating Canadian prisoners back to Canada. Parenthetically, I find this ironic, because individuals have criticized other parts of this bill because allegedly judges are losing their discretion with respect to minimum mandatory sentences. But they seem critical of vesting more discretion in the minister with respect to applications for the international transfer of prisoners. I was hoping you could elucidate for this committee how that discretion will be used to protect Canadians.

Hon. Vic Toews: Just on the issue of transferring prisoners, I note the comments of the opposition in the House, saying how lenient the American system has become; that everyone now has done away with mandatory minimums in the United States and that it has become a virtual panacea to become a prisoner in the United States. This is always a surprise to me, given that every Canadian in an American prison wants to come home to a Canadian prison, and the reasons for that are very obvious.

It's unfortunate that the opposition continues to mislead Canadians about how the sentencing laws and the lack of parole, for example, in the United States, or the mandates that they serve, the sentencing guidelines—all of those kinds of things.... We have a system that has been consistently focused on the interests of the criminal as opposed to those of the victims. What this law does in fact is create a number of criteria.

The first criterion is that of public safety: is the transfer of that individual from the United States back to Canada in the interest of public safety? As the minister, that is what I need to consider.

I have to say that the federal courts have given the Minister of Public Safety wide discretion in making that determination. A number of cases have been delivered by the Federal Court in the last while. In some, they have asked the minister to reconsider. I have reconsidered those, and ultimately the courts have upheld the decision I've made in those cases on a reconsideration.

What this in fact does is give legal definition to the types of criteria we have been applying. In terms of the rule of law, these criteria are very important both from an offender's point of view and from a decision maker's point of view. One of the things I like to stress is that if you want to cooperate with law enforcement officials, this will be a clearly recognized criterion that you can point to, saying "Look, I identified who the ring leaders in this drug crime are", or who the ring leaders are in this child pornography crime, "and I have demonstrated my willingness to be rehabilitated."

A Canadian incarcerated in a foreign prison shouldn't just be able to say "I demand to come back, and I'm not cooperating with law enforcement officials, and it's none of your business whether or not I'm considering being rehabilitated."

This gives clear definition. It corresponds to the rule of law, which I think is very important.

● (0945)

Mr. Brent Rathgeber: Thank you, Minister Toews.

Following up on a question from Mr. Stewart, I think one of the most under-reported parts of the amendments to the Controlled Drugs and Substances Act is with respect to the drug courts. Can you clarify for me how an individual who has an addiction, if he or she deals with that addiction, will be handled by the drug courts under the amendments in this legislation?

Hon. Rob Nicholson: There are provisions, as you've just enumerated, that would allow—in cooperation, of course, with the provinces and rehabilitation services—for an individual who has unfortunately become addicted and wants to do something about that to be enrolled in treatment so that they could then avoid a criminal offence.

As I indicated, the bill, in terms of the increased penalties, deals with drug traffickers. At the same time, we as a government continue to support the concept of drug courts, which give that individual who has unfortunately become addicted—not part of violence or organized crime, that's not what we're talking about, but the unfortunate individual who has become addicted—some hope to get off drugs and become involved with a treatment program. It's one provision that certainly has my support and one I'm very enthusiastic about.

Mr. Chairman, I appreciate that we've run out of time, but inasmuch as a couple of questions were raised with respect to our costs, I wonder whether we could leave some analysis with you in both official languages. I appreciate that much of it is just a repeat of what we said in the spring. Nonetheless, since the issue was raised, if we could leave this with you, I'd appreciate it.

The Chair: Thank you very much.

I want to thank the ministers and their officials for being here today. I think we're just about right on time.

We need to adjourn for a few minutes.

[Proceedings continue in camera]

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