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# Standing Committee on Justice and Human Rights

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Chair: Mr. Randeep Sarai





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• (1325)

[English]

**The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)):** I call this meeting to order.

Welcome to meeting number 19 of the House of Commons Standing Committee on Justice and Human Rights. Pursuant to the order of reference of Thursday, March 31, the committee is meeting to study Bill C-5, an act to amend the Criminal Code and the Controlled Drugs and Substances Act.

Today's meeting is taking place in a hybrid format pursuant to the House order of November 25, 2021. Members are attending in person in the room and remotely using the Zoom application. The proceedings will be made available via the House of Commons website.

As a reminder, for interpretation, for those of you who are on the monitors on Zoom, there's a globe icon at the bottom of your screen. You can switch to the language of your choice. Make sure that your headset is House of Commons compliant, with a microphone. That would be helpful.

We want to welcome our witnesses. Again we have Andrew Di Manno and Matthew Taylor from the criminal law policy section, who will assist us in any questions as we go through clause by clause.

(On clause 10)

**The Chair:** I believe we were at Green Party amendment 17. I believe we had done with debate and were going to vote on that clause, so I will read it out.

Shall PV-17—

**Hon. Rob Moore (Fundy Royal, CPC):** On a point of order, Mr. Chair, I thought that Mr. Brock was still.... He had an intervention. I don't remember all of it, but I thought he was still speaking and I thought we still had debate before Green amendment 17.

**The Chair:** My recollection may be bad.

Mr. Brock, I assumed that you had concluded at the time.

**Mr. Larry Brock (Brantford—Brant, CPC):** Thank you, Mr. Chair.

I certainly had not concluded. I had approximately another dozen points I want to make, in addition to reviewing some pertinent case law on the particular issue.

I think I left off where I was going to discuss the distinctions of various jurists that I've had the pleasure of appearing before in the province of Ontario, the differences by which they approach gun crime and how they approach conditional sentences, but given the exhaustive discussion that I had on Tuesday, I think it's probably prudent that we move ahead.

I have nothing further to add, Mr. Chair. Thank you.

**The Chair:** Thank you, Mr. Brock.

I just want to remind you that if PV-17 is adopted, Bloc-1 and Conservative amendment 7 cannot be moved, as they amend the same line.

We'll have a recorded vote, Mr. Clerk.

Do I have a point of order from you, Mr. Morrison? I see that your hand is up.

**Mr. Rob Morrison (Kootenay—Columbia, CPC):** I wasn't sure if we were quite ready to move on. I want to speak just briefly to this clause, to all three clauses.

I just want to get in a bit of a point that hasn't been brought up yet. I'm sure the Bloc is well aware of what I'm going to be talking about. It was in Hochelaga-Maisonneuve, where an 11-year-old boy was gunned down while playing with another 11-year-old on a playground at a church, when there was a gang war in Montreal.

That sort of changed how policing responded to gangs, violence and shootings. They reached the point where they had had enough. Now, we are talking here, in this clause, about drive-by shootings, which is exactly what happened there to that family and to that victim. It was horrific. Every day in Parliament we're talking—and it is not just the Conservatives but also the Bloc—about the increase in violence in Montreal and especially in drive-by shootings. Now here we are discussing conditional sentences, almost, for this offence.

Of all the offences with guns, drive-by shooting has to be the most serious. It is with intent. It is not just somebody taking their shotgun out and firing off a few shots. This is intended to kill someone. Unfortunately, these gangsters are not the best shots. They end up killing civilians and innocent children.

I do not want to go on. We talked quite a bit about this at our last meeting. We have to focus more on crime prevention. For people who commit these crimes, there has to be a deterrent. It does not matter who it is. If it is a Canadian, there has to be a deterrent to this. We need to start really going back into the root of the problem, which is crime prevention and not having youth getting involved in gangs and organized crime and gun violence and the illegal drug trade. That is where I believe we need to focus.

I just wanted to get that point out before we moved onto another clause.

Thank you, Chair.

● (1330)

**The Chair:** Thank you, Mr. Morrison.

I see that Mr. Brock's hand is up.

**Mr. Larry Brock:** Thank you, Chair.

Just following up on Mr. Morrison's comments—and I think I reiterated this several times in my interventions on Tuesday—this particular point and this particular section of the code are probably the most topical right now in our country. They have been topical for the last 10 years. It's what strikes at the heart of community concerns and safety. I just worry about the message that this particular Parliament is sending to like-minded individuals who would be so cavalier with the lives of innocent victims as they carry out their vendettas in a gang-by-gang type of warfare. As I reiterated many times on Tuesday, they are very poor shooters. They shoot at random, quite often from moving vehicles, and innocent victims are impacted.

To my colleague Mr. Morrison's point, we need to send an appropriate deterrent message to the Department of Justice officials. I am sure if I were to pose the question directly to them, they would agree with me that the primary sentencing features and focus of this type of offence are denunciation, deterrence and removal from society. We already have a problem in terms of that messaging with mandatory minimum penalties already on the books. It's abundantly clear that these like-minded violent recidivist criminals have absolutely no regard for criminal law and the penalties that flow from it. Now, once it is heavily advertised that this is the new law, that Bill C-5 would actually make it easy for them to prey on each other and to impact communities, we are definitely going to see a spike in crime.

I certainly want to go on record, as a former Crown attorney who fought daily to ensure that my community was as safe as possible, who fought daily to hold these recidivist criminals to account for their behaviour, that I certainly do not want my DNA on any part of Bill C-5 that supports this amendment. I will be voting against it.

**The Chair:** Thank you, Mr. Brock.

I guess we'll go to a vote on this now.

Go ahead, Mr. Moore.

**Hon. Rob Moore:** Thank you.

I want to make one quick point, because you mentioned, Mr. Chair, that should Green 17 pass, then BQ-1 would not be dealt with or CPC-7.

I want to quickly remind... I even heard this idea today in question period. I believe it was the parliamentary secretary, who did a great job of standing up and responding, but the only problem is that I want to make sure we have the facts. Because we should all be well informed on this legislation, as well as on the amendments, I don't want any member of the justice committee to be under any illusion as to the origins of this particular provision.

Paragraph 244(2)(b) and its mandatory minimum penalty of four years, originally, for discharging a firearm with intent, was introduced into our Criminal Code in 1995 under a Liberal government. I don't know how many of you on the Liberal side know her, but Marlene Jennings, I believe, used to be the parliamentary secretary for justice. When I was on the justice committee she was on there as well, both in government and I believe in opposition. Marlene is from the Montreal area and a long-time Liberal, and I just want to quote her. She said:

It was a Liberal government that brought in mandatory minimum sentencing for firearm related crimes. There is a whole category of them where currently it is a minimum of one year.

I'm not going to list off all those offences because we've already dealt with a bunch of them in our clause-by-clause and eliminated the one-year minimum, but she went on to say:

There is [a] second category of designated offences where currently it is four years. In committee, and again at report stage in the House, the Liberal members attempted to increase the one year to two years and the four years to five years.

This was May 17—so just about this time—in 2007.

For those of you who know Marlene, number one, you know that she is certainly not a racist—because that term has been tossed around in the context of Bill C-5—and you also know that she knows what she's talking about. She was a long-time Liberal member of Parliament.

Before we vote on Green-17 and deal through that vote with possibly BQ-1 as well as CPC-7, and then go on to clause 10, I want it to be abundantly clear that the mandatory minimum we are dealing with in this section has its origins with a Liberal government.

With that, I've finished with my comments, Mr. Chair.

● (1335)

**The Chair:** Thank you, Mr. Moore.

Seeing no hands up and nothing from the room, we will have a recorded vote.

(Amendment negated: nays 11; yeas 0 [*See Minutes of Proceedings*])

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** Mr. Chair, I want to seek unanimous consent on a matter.

I would like to ask for unanimous consent to dispose of all the Green Party amendments from 18 through to 43 without consideration by committee.

**The Chair:** Does anybody oppose that of the sitting members...?

**Some hon. members:** No.

**The Chair:** Okay. We'll take the vote, but the clerk and the analysts are just going to quickly look to make sure there is no effect on the subsequent votes in some of those cases, if we can just hold for a minute or so.

Thank you.

I've been advised by the analysts that it's fine. Those are all considered, I guess, deemed zero to 11 as voted on. I will move forward. Next, we have Bloc amendment 1—

• (1340)

**Hon. Rob Moore:** I have a point of order, Mr. Chair.

I thought the parliamentary secretary asked for unanimous consent to deal with all of the Green amendments at once, and I denied consent, so what...? Are we voting on something right now?

**The Chair:** No—

**Hon. Rob Moore:** Are we moving on to BQ-1?

**The Chair:** You have my apologies. My understanding was that there was silence and you just said that.... I might have misunderstood it, so I guess you're saying that we do not have unanimous consent and you want to vote on them one by one.

**Hon. Rob Moore:** I do. I think we can deal with the vote on them quickly when they come up because some of them are so profoundly ignorant. I don't think we should just lump them together and do away with them, because some of them would have an extremely profound impact on the safety of young Canadians particularly.

When you look at the number of clauses where the Green Party is seeking to eliminate the mandatory minimum penalty, since they took the time to put these into our committee, I would like to take the time to vote against them and be on record as saying that we need to do everything we can as parliamentarians to protect young people.

I don't know if you heard it, but I had unmuted and said “no” when you asked for unanimous consent.

**The Chair:** I take that as a no. There's no unanimous consent.

We'll go to Bloc amendment 1.

**Mr. Mike Morrice (Kitchener Centre, GP):** I have a point of order.

Just to be clear for the committee, the vote that you had moved towards would have already been recorded under the UC that was proposed by the parliamentary secretary.

From a Green Party point of view, we think we've been clear already, at our last meeting, with respect to the rationale behind judicial discretion, and as I've stated already, that mandatory minimum penalties do not deter crime. On this unanimous consent motion, these points have already been made, in our view, and we would be very supportive of this committee moving them in one group, as has been recommended by the parliamentary secretary.

**The Chair:** Thank you.

Unfortunately, we'll have to go line by line as we do not have unanimous consent.

We'll move on. We'll go to Bloc amendment 1. That's on page 25 of the package.

Again, if Bloc amendment 1 is adopted, Conservative amendment 7 cannot be moved, as they amend the same line.

Would Mr. Fortin want to say anything on this or are we good to vote?

[*Translation*]

**Mr. Rhéal Fortin (Rivière-du-Nord, BQ):** Mr. Chair, this amendment is in line with what we have proposed to members of the committee and to the House on a number of occasions.

In general, we agree that the courts should have all the flexibility they need to determine appropriate sentences, while taking into account the maximum sentences contained in the act. We agree with eliminating mandatory minimum sentences, but we think that would be inappropriate in some cases. I think it was Mr. Moore or Mr. Morrison who talked about the rise in violent gun crime that we've seen over the last year or two, particularly in Montreal, but also elsewhere in Canada. We believe that mandatory minimum sentences should be maintained for these serious crimes.

That being said, I would like to remind you that a witness we heard from at a previous meeting, Professor Desrosiers, from Laval University, in Quebec City, made a proposal to us. She said that an acceptable compromise would be for the court to waive the mandatory minimum in exceptional circumstances. In fact, Minister Lametti told our committee that, in certain circumstances, it seemed inappropriate to impose a minimum sentence. He gave the example of someone who used a firearm to shoot at a cement wall to impress his buddies. If that person clearly deserves to be punished, sending him to prison would not necessarily be appropriate. The courts should therefore be given the opportunity to waive mandatory minimum sentences in exceptional circumstances.

We are proposing this amendment, which maintains the mandatory minimum sentence. This still sends a message to the public that the offence will be dealt with severely, but gives the court the opportunity to override the mandatory minimum sentence in exceptional circumstances. Before waiving the mandatory minimum sentence, judges will have to explain why the circumstances of the case before them are exceptional.

We think that would help prevent things from going off the rails. Some crimes should not be given a prison sentence, but because of the mandatory minimum sentences, a sentence is given anyway. This would avoid sending a message to the public that Parliament is being flippant in dealing with crimes as serious as the one referred to in BQ-1.

That is the reason for our amendment, which I think is a very honourable compromise. It maintains mandatory minimum sentences, but it gives judges the opportunity to waive them.

Thank you.

● (1345)

[*English*]

**The Chair:** Thank you, Monsieur Fortin.

I think Mr. Moore has his hand up.

**Hon. Rob Moore:** Thank you. I have a quick question for our witnesses.

As I recall, the mandatory minimum penalty for this offence was four years. It was raised to five years for a first offence. The amendment that the government is proposing would eliminate the mandatory minimum entirely, so I do see some merit in Mr. Fortin's amendment.

Can you clarify for the committee that this would be reducing the minimum from five years to four years, but still maintaining a mandatory minimum, in fact the mandatory minimum that existed previously?

**Mr. Andrew Di Manno (Counsel, Criminal Law Policy Section, Department of Justice):** As I understand the amendment, it would provide an escape clause for the four-year mandatory minimum penalty, but not with respect to the five- and seven-year mandatory minimum penalty that exists where a prohibited and restricted firearm is used in a first offence or where it's linked to organized crime.

**Hon. Rob Moore:** Thank you.

**The Chair:** Thank you, Mr. Moore.

Seeing no other hands, I'm going to double-check with Mr. Garrison if he's able to hear what I'm saying, because I'm going to be calling a vote. If he can nod.... I still can't hear you, Mr. Garrison.

Would we be able to patch him in by phone at least?

**Ms. Lena Metlege Diab (Halifax West, Lib.):** He's indicating that he can hear you, but unfortunately, we can't hear him.

**The Chair:** I'll go to the vote, and we'll see thumbs up or thumbs down with him. We'll go—

**Mr. Larry Brock:** Mr. Chair, my hand is up.

**The Chair:** Go ahead, Mr. Brock.

**Mr. Larry Brock:** Thank you.

While I appreciate the spirit in which the amendment has been brought forward, and I congratulate my colleague Monsieur Fortin for addressing the issue that's pertinent to our discussion—that is the overincarceration issue—I want to highlight to the committee that our Conservative amendment number 11 also speaks to the spirit of this particular amendment.

The only concern that I have, and why I cannot support it, is that, in criminal law, and particularly in my previous career, I demanded clarity with respect to the law. I guess an argument could be made that much of the litigation that flows from criminal law is the result of confusing terminology and different interpretations.

Wherever possible, I look for clarity. I look for definitions of clauses. The reason I cannot support Monsieur Fortin in this particular amendment is that I don't know what he means by “exceptional

circumstances”. I don't know if that is what was contemplated by Monsieur Fortin. I think the spirit behind it captures what we're trying to do, but Bill C-5 is premised, again—at least with some of the narrative of the government—on reducing litigation. In my view, this creates more confusion. That's why I cannot support it.

Thank you.

● (1350)

**The Chair:** Thank you, Mr. Brock.

We'll go to Monsieur Fortin.

[*Translation*]

**Mr. Rhéal Fortin:** Thank you, Mr. Chair.

I'd like to thank Mr. Brock for his comment. Perhaps he will allow me to round out my explanation on the issue of exceptional circumstances. I asked myself the same question, because I too like to see legislation that is clear and not confusing. I spoke with other legal experts before proposing the amendment as worded.

The problem is that it is virtually impossible to predict all the exceptional circumstances that may occur. By definition, if circumstances are exceptional, it's because they are uncommon and can't be defined in advance.

However, we still want to trust the courts. I'm sure Mr. Brock would agree with me that judges are usually able to make wise and informed decisions, and determine what is exceptional and what is not.

Again, I trust the courts on this issue, and I also trust our appellate courts to overturn and amend decisions that would be frankly unsound on the issue of waiver.

Defining too much in advance under what circumstances a waiver would be permitted would lead us down a blind alley, because we are absolutely unable to imagine all the circumstances that might arise. Other countries have already adopted the same wording to define what is meant by “exceptional circumstances”. We would have to go back to Professor Julie Desrosiers's testimony on this, but I think she mentioned New Zealand or Australia, I'm not sure. I know that two or three countries have adopted the same wording and that it works quite well.

I think we can let the court decide, as long as the judge has to explain what an exceptional circumstance is. If the judge doesn't justify it, then obviously their judgment will be appealed. The judge cannot waive the mandatory minimum sentence without first announcing the presence of exceptional circumstances. The judge will have to explain why the circumstances are exceptional. If the judge is mistaken, the Court of Appeal can correct the decision.

Thank you, Mr. Chair.

[*English*]

**The Chair:** I don't see Mr. Garrison on the screen. Okay, he is back.

We'll have a recorded vote, please, on Bloc amendment 1.

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

• (1355)

**The Chair:** Next, we'll go to Conservative amendment 7.

Mr. Moore, did you want to speak to this?

**Hon. Rob Moore:** Just quickly, our amendment number 7 maintains a minimum sentence for discharging a firearm with intent in order to send a message that we don't tolerate drive-by shootings and that we don't want to have a revolving-door recidivism, where the same individuals are committing serious crimes, getting out and recommitting. It would maintain a mandatory minimum of two years where the government is seeking to make the minimum zero years of incarceration for discharging a firearm with criminal intent.

Thank you, Chair.

**The Chair:** Thank you, Mr. Moore.

Shall Conservative amendment 7 carry?

(Amendment negated: nays 7; yeas 4 [*See Minutes of Proceedings*])

(Clause 10 agreed to: yeas 6; nays 5)

(On clause 11)

**The Chair:** Next, we have clause 11. Our first amendment is Green Party amendment 18, on page 27 of the package. Again, if Green Party amendment 18 is adopted, Bloc amendment 2 and Conservative amendment 8 cannot be moved, as they amend the same line.

Hearing no questions on this, and as the Green Party member has already I think mentioned what he had to say, shall Green Party amendment 18 carry?

(Amendment negated: nays 11; yeas 0 [*See Minutes of Proceedings*])

**The Chair:** We are going over to Bloc amendment 2. I'll remind members again that if Bloc amendment 2 is adopted then Conservative amendment 8 cannot be moved, as they amend the same line.

Monsieur Fortin, would you like to say anything on this?

[*Translation*]

**Mr. Rhéal Fortin:** I could talk about that, but it would be akin to filibustering, because I would be repeating much of what I said to you a few moments ago about BQ-1.

Again, we are simply proposing a compromise to maintain mandatory minimum sentences while allowing judges to waive them in exceptional circumstances. This is the offence of discharging a firearm recklessly.

• (1400)

[*English*]

**The Chair:** Thank you, Monsieur Fortin.

Shall Bloc amendment 2 carry?

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

**The Chair:** Next is Conservative amendment 8 on page 29 of our package.

Mr. Moore, would you like to say anything on this?

**Hon. Rob Moore:** For the same reasons as stated earlier, this is an attempt to maintain a mandatory penalty for this offence. The government's proposal is to eliminate it entirely. Our proposal would maintain a two-year mandatory minimum.

**The Chair:** Thank you, Mr. Moore.

Shall Conservative amendment 8 carry?

(Amendment negated: nays 7; yeas 4 [*See Minutes of Proceedings*])

(Clause 11 agreed to: yeas 6; nays 5)

**The Chair:** Next, I've made rulings for Green Party amendments 19 to 29. They've all been deemed out of scope as they breach the parent act rule. They amend other codes of the act, so they are deemed inadmissible.

(On clause 12)

**The Chair:** We have Green Party amendment 30. If it is adopted, Bloc amendment 3 and Conservative amendment 9 cannot be moved, as they amend the same line.

Shall Green amendment 30 carry?

(Amendment negated: nays 11; yeas 0 [*See Minutes of Proceedings*])

• (1405)

**The Chair:** Next we have Bloc amendment 3.

Again, if BQ-3 is adopted, Conservative amendment 9 cannot be moved as they amend the same line.

Mr. Fortin, are you okay with me proceeding, or would you like to say something?

[*Translation*]

**Mr. Rhéal Fortin:** The reasoning is the same as for the two previous amendments, BQ-1 and BQ-2. The idea is to maintain the mandatory minimum sentence to indicate the seriousness of the offence, while allowing judges to waive it in exceptional circumstances.

This is what I think is most appropriate, especially since we're talking about robbery with a firearm. I find it peculiar that we would decide to abolish the mandatory minimum in such circumstances. It's a pretty startling message that we would be sending to gangs and the general public. The RCMP expects us to get tough on these crimes and stop these shootings, not to lessen the seriousness of them or to allow the courts to waive heavy sentences in such cases.

We believe that the minimum sentence should be maintained, while allowing a judge to waive it in exceptional circumstances, which the judge would then have to explain.

Thank you, Mr. Chair.

[*English*]

**The Chair:** Thank you, Monsieur Fortin.

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

**The Chair:** I'm just going to suspend for five minutes for Mr. Garrison. He's been advised by IT to reboot his system, so we'll take a short suspension and resume at 2:13.

• (1405) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1410)

**The Chair:** We're resuming the meeting. I think we are now at Conservative amendment 9 on page 43 of the package.

Mr. Moore, would you like to say anything on this or shall we vote?

**Hon. Rob Moore:** Thanks, Mr. Chair.

For the same reason.... This is one that is, again, ripped from the headlines. It's robbery with a firearm. This would maintain a mandatory minimum. The mandatory minimum of four years is going to be eliminated entirely. In an effort to reach across the aisle and in the spirit of compromise—and as always, protecting our communities—this would maintain a three-year mandatory minimum for robbery with a firearm.

I think it sends the appropriate message. I hope that all members will support this very reasonable amendment.

(Amendment negated: nays 7; yeas 4 [*See Minutes of Proceedings*])

(Clause 12 agreed to: yeas 6; nays 5)

(On clause 13)

**The Chair:** We have a Green Party amendment 31 on page 44 of the package. Again, if Green Party amendment 31 is adopted, Bloc amendment 4 and Conservative amendment 10 cannot be moved as they amend the same line.

(Amendment negated: nays 11; yeas 0 [*See Minutes of Proceedings*])

**The Chair:** Next, we go to Bloc amendment 4 on page 45 of the package.

Again, if Bloc amendment 4 is adopted, Conservative amendment 10 cannot be moved as they amend the same line.

Monsieur Fortin.

• (1415)

[*Translation*]

**Mr. Rhéal Fortin:** Thank you, Mr. Chair.

It's the same as the previous amendments. This time it's extortion with a firearm. Mandatory minimum sentences should not be abolished for these very serious crimes. This would again send a startling message to the public, who are concerned about the rise in violent gun crime. It would be like telling them that these crimes aren't that serious because we are abolishing minimum sentences. I don't want to be sensationalist, but it would be almost disastrous for social peace.

I think we need to maintain the mandatory minimum for these serious crimes. This would achieve the objective that government members have set for themselves, which is to allow the courts to waive minimum sentences in exceptional circumstances. It would add the possibility for the court to waive the minimum sentence as long as it can be established that there are exceptional circumstances justifying that decision. Otherwise, the mandatory minimum would remain.

[*English*]

**The Chair:** Thank you, Monsieur Fortin.

Shall Bloc amendment 4 carry?

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

**The Chair:** Next, we have Conservative amendment 10, on page 46 of the package.

Does Mr. Moore or somebody want to speak on that?

• (1420)

**Hon. Rob Moore:** Go ahead, Mr. Chair.

**The Chair:** Shall Conservative amendment 10 carry?

(Amendment negated: nays 7; yeas 4 [*See Minutes of Proceedings*])

**The Chair:** Shall clause 13 carry?

We have five yeas and six nays. Clause 13 does not carry.

**Mr. Gary Anandasangaree:** I'd like to challenge the ruling of the chair, please.

**The Chair:** Unfortunately, Mr. Anandasangaree, it's not the chair's decision. It's a vote and to have a revote—

**Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP):** Mr Chair, I have been suffering from continuous technical problems. Were you calling a vote on clause 13 as a whole?

**The Chair:** I am calling a vote on clause 13 as a whole.

**Mr. Randall Garrison:** I'm sorry. My vote is incorrect. I'm voting in favour of clause 13, but I am still having continuous technical problems here.

**The Chair:** Okay, so let's redo the vote. Is that okay? I'll do a recount on that vote.

Yes, go ahead, Mr. Fortin.

[*Translation*]

**Mr. Rhéal Fortin:** A point of order, Mr. Chair.

I think that in order to redo a vote that has already taken place, unless I'm mistaken, unanimous consent of the members is required.

If there is no unanimous consent of the members to redo the vote, we move on to the next motion, because the vote has taken place and is on the record.

[*English*]

**The Chair:** Mr. Anandasangaree.

**Mr. Gary Anandasangaree:** Mr. Chair, I think it's clear that Mr. Garrison has been having some technical difficulties throughout the afternoon. I know that we just recessed several minutes ago, and given the hybrid format, I think it would be appropriate to give Mr. Garrison the opportunity to clarify.

**The Chair:** Monsieur Fortin, I'm going to make a ruling that we vote again, because Mr. Garrison was having technical difficulties. We had just suspended before. It is the will of the committee if it wants to challenge me on that, but my decision stands that we'll redo the vote.

[*Translation*]

**Mr. Rhéal Fortin:** I respect your decision, Mr. Chair. However, with all due respect for this decision, it wasn't a technical issue that led Mr. Garrison to change his vote. He had voted and simply changed his mind. We saw and heard him vote.

Nevertheless, I respect your decision, Mr. Chair.

[*English*]

**The Chair:** Mr. Garrison.

• (1425)

**Mr. Randall Garrison:** The technical problems made it impossible for me to hear clearly which section you were calling, and I made a mistake in thinking what you were calling.

I've been on the phone with IT. We've rebooted things, and we've done everything we can. I apologize for the inconvenience to the committee. I'm not changing my vote. I voted incorrectly, because I could not hear correctly what you called.

**The Chair:** Thank you, Mr. Garrison.

We will redo the vote. Shall clause 13 carry?

(Clause 13 agreed to: yeas 6; nays 5)

**The Chair:** Next, we have PV-32 to PV-37.

They all seek to repeal of parent provisions. It is therefore the opinion that, since they invoke on the parent act, they are inadmissible, so I'll be ruling PV-32 to PV-37 inadmissible.

Next, have Bloc amendment 5, which is on page 53, and I'm also making a ruling on that.

Would a member of the Bloc like to move Bloc amendment 5?

Go ahead, Monsieur Fortin.

[*Translation*]

**Mr. Rhéal Fortin:** Mr. Chair, the purpose of this proposed amendment is similar to that of the previous proposed amendments.

We believe that mandatory minimum sentences are detrimental to the justice system because they prevent the court from considering the particular circumstances that would allow them to be waived. However, we think they are useful for sending a clear message to criminals and people who commit these types of offences, particularly firearms offences.

We therefore propose this amendment, which has been suggested to apply the same reasoning to all minimum sentences. This amendment aims to maintain minimum sentences, except in exceptional circumstances. The president of the court or the judge presiding over the hearing will have to explain why the circumstances of the case they are dealing with are exceptional. Otherwise, the judge must maintain the minimum sentence provided for by the legislator in the Criminal Code. This seems to us to be an appropriate solution, which offers a perfectly acceptable compromise between the vision of those who wish to maintain the hard line on mandatory minimum sentences and the vision of those who wish to soften them.

Thank you, Mr. Chair.

[*English*]

**The Chair:** Thank you, Monsieur Fortin.

Bill C-5 amends the Criminal Code by repealing certain mandatory minimum penalties. The amendment, BQ-5, seeks to add a new section in the Criminal Code that would allow the court to waive any minimum punishment of imprisonment under exceptional circumstances.

As *House of Commons Procedure and Practice*, third edition, states on page 770:

An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, allowing the court to waive any minimum penalties in the Criminal Code goes beyond the scope of the bill. Therefore, I rule the amendment inadmissible.

[*Translation*]

**Mr. Rhéal Fortin:** Mr. Chair, with all due respect, I appeal your decision and I would ask the members of the committee to reconsider.

Again, I don't believe that this amendment is out of order.

Mr. Chair, would you allow me to make my case on this decision?

• (1430)

[*English*]

**The Chair:** Are you asking to challenge the chair's decision?

[*Translation*]

**Mr. Rhéal Fortin:** Yes, Mr. Chair.

[*English*]

**The Chair:** Okay. That's a recorded vote.

(Ruling of the chair sustained: yeas 10; nays 1)

**The Chair:** We'll go to Green Party amendment 38 on page 54 of your package.

Similarly, I am going to make a ruling that this is out of scope. In the opinion of the chair, it's amending the principles of sentencing in the Criminal Code and goes beyond the scope of the bill. Therefore, I rule the amendment inadmissible.

On Conservative amendment 11 on page 55 of the package, I am going to also rule that it's beyond the scope. It amends....

I'm sorry. I would ask that a member of the Conservative Party move this motion.

**Mr. Larry Brock:** I am prepared to move the amendment.

**The Chair:** Thank you.

Bill C-5 amends the Criminal Code by repealing certain mandatory minimum penalties. Conservative amendment 11 seeks to amend paragraph 718.2(e) of the Criminal Code, which deals with principles of sentencing.

As the *House of Commons Procedure and Practice*, third edition, states on page 770:

An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, amendment of the principles of sentencing in the Criminal Code goes beyond the scope of the bill. Therefore, I rule the amendment inadmissible.

**Mr. Larry Brock:** Mr. Chair, I wish to appeal your ruling, with argument.

**The Chair:** There is no argument when you appeal the chair's decision. It just goes to a vote.

(Ruling of the chair sustained: yeas 6; nays 5)

**The Chair:** Next, we have Green Party amendment 39 on page 56 of the package. Similarly, I have ruled this out of scope. Therefore, I rule this amendment out of order.

Next we have Liberal amendment 1. Does anybody move Liberal amendment 1?

Since nobody moved it, I guess I don't have to rule on it.

• (1435)

[*Translation*]

**Mr. Rhéal Fortin:** Mr. Chair, is this a Liberal motion?

[*English*]

**The Chair:** Mr. Fortin, because it's from a member who's not a sitting member of this committee. It has to be moved in order to do it. It came from MP Erskine-Smith.

[*Translation*]

**Mr. Rhéal Fortin:** I think I misunderstood, Mr. Chair.

You're telling me that the Liberals aren't supporting their own motion.

Is that correct?

[*English*]

**The Chair:** Mr. Fortin, it means that nobody in the room—a member of this committee—is moving that forward.

[*Translation*]

**Mr. Rhéal Fortin:** So I'm going to move this motion, Mr. Chair.

[*English*]

**The Chair:** Okay, Mr. Fortin.

If you move Liberal amendment 1, I will deem it out of scope. It's in the opinion of the chair that allowing the court to impose a lesser punishment than any minimum punishment in the Criminal Code goes beyond the scope of the bill. Therefore, I rule the amendment inadmissible.

Next we have Green Party amendment 40 on page 58.

**Mr. Randall Garrison:** I have a point of order, Mr. Chair. This question of members of other parties who aren't members of the committee submitting amendments should probably be dealt with.

My understanding of the motion that was passed in all committees is that independents are allowed to submit motions to committees, and they will be deemed moved. I did not believe that members of other parties—just any member of Parliament—could submit amendments to the committee.

I'd just like to know if that's not a correct interpretation of the the rules of this committee.

**The Chair:** I believe that, if it's an independent, it's deemed moved. If it is not an independent, then someone has to move it. In this case, nobody from the Liberal Party moved it, but a member from the Bloc, who is on this committee, did move it forward.

**Mr. Randall Garrison:** I understand the difference between deemed moved and moved. My question is whether our rules actually allow the submission by members of other parties who are not members of the committee. I believed that was not the case.

**The Chair:** My interpretation from our clerk is that any member of Parliament can submit, but it would have to be moved by a member of this committee. If he or she subbed in, then they're deemed a member at that time.

Thank you, Mr. Garrison.

We're going on to Green Party amendment 40. The chair rules that this is out of scope. In the opinion of the chair, prohibition orders are a type of order not contemplated by Bill C-5 and are, therefore, beyond the scope of the bill. Accordingly, I rule the amendment inadmissible.

(On clause 14)

We have Green Party amendment 41. I believe Mr. Morrice would like to.... No? Okay.

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

(Clause 14 agreed to: yeas 6; nays 5)

(Clause 15 agreed to: yeas 6; nays 5)

(On clause 16)

• (1440)

**The Chair:** For clause 16, we have amendment CPC-12.

Mr. Moore, would you like to say anything on it?

**Hon. Rob Moore:** Thank you, Mr. Chair.

In many of our ridings, and indeed across Canada, there is a serious crisis when it comes to drugs. Much has been said about Bill C-5, about so-called simple possession. Again, in the same vein as the mandatory minimums, simple possession of drugs is not what is contemplated in this piece of legislation. In fact, it deals with importing, exporting, trafficking and the production of schedule I and schedule II drugs, which include heroin, cocaine, methamphetamine, etc.

These are, first, serious drugs, and second, serious crimes. They have absolutely nothing to do with simple possession. Bill C-5 eliminates the mandatory minimum penalty for trafficking, importing, exporting and distribution. Our amendment, CPC-12, maintains a six-month mandatory minimum penalty for importing and exporting illegal substances. As has been the case with many of the Conservative amendments, there is an attempt to bridge the divide between us and the government, which is seeking to eliminate many mandatory minimum penalties. We feel there is a place for them when we are talking about taking drugs off our streets and going after the people who are causing this scourge in our society.

This would maintain a six-month mandatory minimum for importing and exporting illegal substances.

**The Chair:** Thank you.

Mr. Morrison, go ahead.

**Mr. Rob Morrison:** I would like to follow-up a bit on Mr. Moore's comments. We're talking in Parliament every day, and we're not only talking about gun offences. The other thing we are talking about is the opioid and drug crisis in Canada. At the same time, we are now talking about taking away mandatory minimum penalties for drug traffickers.

That flies in the face of our trying to get a handle on what the problem really is, which is prevention and people not using drugs. Giving people drugs is not helping people to recover from using drugs. It certainly doesn't stop them from starting. In this case, here is a prime example of a legislative change that is flying in face of a serious problem with opioids and drugs in Canada.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Morrison.

Mr. Cooper, go ahead.

**Mr. Michael Cooper (St. Albert—Edmonton, CPC):** To pick up on where Mr. Morrison left off, I can't think of a more ill-timed effort to repeal mandatory jail time for what are serious drug trafficking offences with respect to schedule I and schedule II drugs, at a time when we have an opioid crisis.

**The Chair:** Your microphone, Mr. Cooper....

• (1445)

**Mr. Michael Cooper:** I will restart then. Thank you, Mr. Chair.

I can't think of a worse time for this to be put forward, which is to repeal mandatory jail time for serious drug trafficking offences involving schedule I and schedule II drugs. As Mr. Moore noted, those include fentanyl and crystal meth at a time when we have an opioid crisis. About 20 Canadians a day lose their lives due to an opioid overdose. This bill rewards those who push this poison on our streets.

This government talks a lot about helping those who are marginalized and vulnerable. It claimed that is a big part of what this bill is about. In fact, this provision would do the opposite and should be defeated.

**The Chair:** Thank you, Mr. Cooper.

I think Mr. Brock has his hand up.

**Mr. Larry Brock:** I do. Thank you, Mr. Chair.

Continuing the discussion from my colleagues, I think the introduction of this aspect to Bill C-5 just smacks of the Liberal hypocrisy when it comes to the substantive issue. The substantive issue and the elephant in the room, as my colleague Mr. Cooper has addressed, is the opioid crisis.

I just did a quick Google search of the Liberal platform in the last general election, as follows:

The opioid overdose epidemic has worsened during the COVID-19 pandemic. Tragically, in 2020, there were 6,214 opioid overdose deaths in Canada.

To save lives, we need a whole-of-society approach to the opioid epidemic that addresses the main causes and supports...who use drugs with the respect and dignity they deserve.

That particular framework is not unlike the framework of the Conservative policy in the last election. Punish the trafficker, not the addicted. To that, I think, we are consistent. Although that language isn't as clear as I just addressed, when the policy of the Liberal Party of Canada says to address the main causes, the addicted rely upon the traffickers. They rely upon the mules who are transporting the drugs across our porous borders.

What kind of horrible message is the federal government sending to Canadians? The number one priority of a federal government is to protect Canadians, not to continue to cause death. In my view, the Liberal government has blood on its hands. Quite frankly, they are talking a good game when it comes to the opioid crisis. There's very little mention of that in the current budget. They're not doing enough. Let's face facts here. How do traffickers conduct their business? They conduct it from the comfort of their own homes. This federal government with Bill C-5 is now giving licence to the traffickers to serve the sentence in the very same place in which they do business.

We've heard from several witnesses at this committee that conditional sentences do not work, notwithstanding the Liberal government narrative that it assists in their rehabilitation. Traffickers need to be punished. Importers, exporters and distributors of drugs need to be punished. They need to be removed from society, not be given a legal licence to ply their trade where they're conducting their trade before their arrest.

Thank you, Mr. Chair.

• (1450)

**The Chair:** Thank you, Mr. Brock.

Shall Conservative amendment 12 carry? We'll have a recorded vote.

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

(Clause 16 agreed to: yeas 6; nays 5)

(On clause 17)

**The Chair:** On clause 17, we have CPC-13 on page 61 of the package.

Mr. Moore, do you want to say anything on it?

**Hon. Rob Moore:** Thank you, Mr. Chair.

Because we're on a new clause, I'll say that this is production of a substance. Those substances include crystal meth, or methamphetamine. Schedule I and schedule II include cocaine and heroin. I haven't heard any of this in the discussion led by the government.

In the House of Commons and in their press conferences, you will hear them say that this is about simple possession. That conjures up an image of somebody walking down the street with a joint. It does not conjure up an image of a trafficker outside of a school, someone with a facility that produces crystal meth or someone importing drugs across our border into Canada to devastate lives.

I think Mr. Brock mentioned that he did a Google search. Every day in our local newspapers wherever you live.... I live in a suburban area. Whether you're rural, suburban or urban, this is happening all over Canada. I think it sends a terrible message that this Parliament, certainly without the support of the Conservative Party, would say for production of a schedule I or schedule II drug for importing, exporting and possession for the purposes of exporting, trafficking.... People know what that means.

I think Canadians, when this comes out, and it will.... Everyone is busy in their day-to-day lives. They're very aware of the opioid crisis and other crises involving drugs in our community. I think the more Canadians see of this, the more upsetting it's going to be, because these are the people who are preying on children, all of our children. These are the people who are causing death, destruction, suicide and bankruptcy. We see it all over this country. If this passes, we're saying that, if you produce methamphetamine, if you produce crystal meth, you won't necessarily receive any time if you're convicted of that offence.

That's what we're saying here. I know most of you are probably aware of that, but I think it needs to be said. I think it needs to be

very clear, before we cast our vote, that we're saying to our constituents that we think someone who is producing crystal meth, someone who takes that crystal meth and sells it outside of a school to children, we're saying as a Parliament that the person will not necessarily serve any jail time. There will be no mandatory minimum penalty, a mandatory minimum penalty that has existed for years within our Controlled Drugs and Substances Act.

We're all aware of it. I think this is very timely in the same way that gun crime is in the news every day. It's in the news because we're dealing with it. The opioid crisis is front and centre. It's an absolute crisis causing devastation.

I don't think it's overstating it to say that this is going to cause incredible damage. When we send the message that we're going soft on traffickers, importers, exporters and producers of crystal meth, methamphetamine, cocaine, heroin, etc....

I will be strongly voting against this clause.

• (1455)

**The Chair:** Thank you, Mr. Moore.

Shall Conservative amendment 13 carry?

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

**The Chair:** Shall clause 17 carry?

**Mr. Gary Anandasangaree:** This is the entire clause 17. Is that correct?

**Hon. Rob Moore:** On a point of order, I'm just wondering if the parliamentary secretary is going to make that clarification before every clause we vote on. We're all experienced parliamentarians here. When you say we're voting on clause 17, it means we're voting on clause 17. Then when you say we're voting on clause 18, it means we're voting on clause 18. I don't think we need that clarification before every vote.

**The Chair:** Thank you, Mr. Moore.

(Clause 17 agreed to: yeas 6; nays 5)

(On clause 18)

**The Chair:** We have Green Party amendment 42. I'm going to have to rule this inadmissible, as section 9 of the Controlled Drugs and Substances Act is not being amended by Bill C-5. It is therefore the opinion of the chair that the amendment is inadmissible.

(Clause 18 agreed to: yeas 6; nays 5)

(Clause 19 agreed to: yeas 6; nays 5)

(On clause 20)

• (1500)

**The Chair:** We have Green Party amendment 43. As a note, if Green Party amendment 43 is adopted, NDP amendment 1 cannot be moved, as proposed paragraph 10.1(c.1) in both amendments is identical.

**Mr. Mike Morrice:** Mr. Chair, could I speak briefly?

**The Chair:** Yes, absolutely.

**Mr. Mike Morrice:** I will be very brief with the committee's time.

This is a critical section of the bill. We are proposing an amendment that is similar to NDP-1 with respect to broadening the language and ensuring that the opioid crisis is treated as a public health crisis and not a criminal one. Additionally, it recognizes in the diversion measures the fact that Black, indigenous and other racialized communities have been disproportionately affected by the criminal sanctions imposed in respect of the possession of drugs.

**The Chair:** Shall Green Party amendment 43 carry?

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

**The Chair:** Next we have NDP amendment 1.

Mr. Garrison.

**Mr. Randall Garrison:** Mr. Chair, as you noted, the first part of the Green amendment is identical to my amendment, since we used the same drafters. The difference between the two is that the Green Party amendment that we previously defeated included some other things that I think arguably, fairly enough, may not belong in the principles. I understand that people voted against it for that reason.

What the Green Party and I agree on, which I think all experts agree on, is that some people who are involved in what we call the trafficking of drugs are doing so only because of their own addiction, only to support their own habit or only to obtain a safe supply of drugs for themselves. What I'm proposing here is that we add that narrow principle to the other principles in the bill to guide judges so that we make sure penalties aren't falling on people who are addicted drug users and are doing so only because of their own drug use habit.

I would ask members to consider supporting this amendment, which is more narrow than the Green amendment.

• (1505)

**Mr. Gary Anandasangaree:** Mr. Chair, I want to express that we support it in principle, but we feel that it is overly broad and could include high-level traffickers as well. We will not be supporting this amendment.

**The Chair:** Shall NDP amendment 1 carry?

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

**The Chair:** Next we have Conservative amendment 14, on page 65 of the package.

Mr. Moore.

**Hon. Rob Moore:** Mr. Chair, this was recommended to me by one of the provincial attorneys general. Their concern is under "Warnings and referrals". It would remove the word "consent" to not allow individuals to refuse to go for a referral for addictions treatment, but it would allow them to refuse once they have the referral.

This is to make sure that individuals who are referred to addictions treatment and then consent to addictions treatment would be able to get the help they need.

**The Chair:** Thank you, Mr. Moore.

Go ahead, Mr. Garrison.

**Mr. Randall Garrison:** Thank you, Mr. Chair.

I understand the sentiment behind this amendment, but I think, in practice, we have long waiting lists for referrals of people who actually do want to get into treatment. It doesn't make much sense to hold up one of those spaces on the waiting lists, which exist almost everywhere, for someone who most surely will refuse if they weren't going to give consent. I think in the real world, this actually just pushes people back from treatment who are ready and willing and able to get it. We should in fact just recognize that people who won't consent to this will not consent to the treatment as well.

I think it's an impractical amendment in the real world of short-ages of treatment spaces for those with addiction problems.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Garrison.

Shall Conservative amendment 14 carry?

(Amendment negated: nays 7; yeas 4 [*See Minutes of Proceedings*])

**The Chair:** Next we have NDP-2. This was given yesterday. I think all of you should have received it. It's on page 66 of the package.

I will ask Mr. Garrison to say a few words.

**Mr. Randall Garrison:** Thank you, Mr. Chair.

There is actually no change to the amendments I submitted. It had been my intention to submit these two amendments separately, but I guess I didn't give clear instructions to the drafters, because the two things that were in the original NDP-2 as submitted are quite different things.

The one we're voting on now asks that we amend clause 20 by deleting lines 26 to 28, as follows:

Subsequent charges not invalidated

(2) The failure of a peace officer to consider the options set out in subsection (1) does not invalidate any subsequent charges laid against the individual for the offence.

In reading that, I think I understand where it came from, but in fact it undoes the whole purpose of this bill, in my view. In other words, it says that we want you, as police, to consider diversion, but if you don't, that's okay; go ahead anyway, just like you always did—the charges can proceed.

To me, including this clause in the bill actually undoes everything else that we're laying out in the bill. That's why I'm proposing that we simply delete the proposed subsection that says subsequent charges are not invalidated if you didn't consider diversion, because in fact we're trying to make sure that diversion is considered.

Thank you, Mr. Chair.

• (1510)

**The Chair:** Thank you, Mr. Garrison.

Go ahead, Mr. Anandasangaree.

**Mr. Gary Anandasangaree:** Thank you, Mr. Chair.

I just want a little bit of clarification. Right now in NDP-2 we have (a) and (b)—

**The Chair:** That's not the new version.

**Mr. Gary Anandasangaree:** Got it. Sorry.

**The Chair:** Mr. Cooper, do you have the one that was given yesterday? We can give that to you.

Shall NDP amendment 2 carry? It will be a recorded vote.

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

**The Chair:** Next we have NDP amendment 2.1. It was also given yesterday. It's on page 66.1 of the package.

If anyone needs a copy, Mr. Clerk will hand it out.

I want to remind members that if NDP-2.1 is adopted, then Green Party amendment 44 and Liberal Party amendment 2 cannot be moved, as they amend the same line.

Go ahead, Mr. Garrison, if you'd like to say something.

**Mr. Randall Garrison:** Thank you, Mr. Chair.

Once again, this is simply a division of the original NDP-2 into two separate parts so that (a) was in the one we just previously defeated, and (b) is in this one.

The concern that we've heard quite often in this committee and that I've heard quite often in both my previous times on the public safety committee is that, in our criminal justice system, discretion is important. We have discretion for prosecutors and for police that already exists, but we don't have any way to monitor how that discretion is used. If one of the major purposes of Bill C-5 is to make sure that we're combatting racial injustice and the disproportionate incarceration of indigenous people, Black Canadians, other racialized people and, in fact, poorer Canadians as well, then we need some mechanism to find out how that discretion is being used.

The bill as it stands doesn't require keeping records, so my amendment says that records shall be kept so that we can use them for research purposes and for accountability purposes in seeing how

the discretionary power that police will have, which will be greatly increased here, is used and make sure that the discretion doesn't always go simply to the most privileged in our society.

At the same time, there is always concern that, if we're trying to divert people and we're creating a record, this will somehow be used against people in the future, so my amendment in the second part says that it does not, in fact, include any information that would identify individuals to whom the warnings or referrals relate, unless that information is necessary for public safety.

In other words, my intent there is, yes, you can use it in the case in which they were being diverted because you need that for public safety to carry out the conditions, but, no, you can't use it in future legal proceedings. That's why there are two pieces to this, requiring police to keep records and then allowing that those records can be used for research and accountability but not in future court proceedings.

Thank you, Mr. Chair.

• (1515)

**The Chair:** Thank you, Mr. Garrison.

I have Mr. Anandasangaree and then Mr. Brock.

**Mr. Gary Anandasangaree:** Thank you, Mr. Chair.

I would like to confirm that we support the amendment in principle, but we believe that the language could be strengthened with some important safeguards that speak to what Mr. Garrison intends to do here.

I don't know if you want me to read this out or if you'd rather I table it for circulation to members, but the amendment is quite extensive, and I believe it is something that does cover the intent but definitely puts safeguards into place so that information cannot be abused or used in an improper way.

**The Chair:** Are you proposing an amendment to Mr. Garrison's amendment?

**Mr. Gary Anandasangaree:** Yes, I am.

**The Chair:** Okay, you can circulate the hard copy. Do you have it electronically or in printed format?

**Mr. Gary Anandasangaree:** Yes, I think Mr. Clerk will be sending it to everyone. It's coming here right now.

**The Chair:** In the meantime, should I go to Mr. Brock? He had his hand up, but I guess it's gone.

The clerk will be emailing it out to everyone who is on virtually. Hard copies will be coming to your P9s.

Hopefully, everyone was able to have a quick read of it. We will vote on the subamendment first and the same applies. If the subamendment is—

• (1520)

[*Translation*]

**Mr. Rhéal Fortin:** A point of order, Mr. Chair.

[*English*]

**The Chair:** Go ahead, Monsieur Fortin.

[*Translation*]

**Mr. Rhéal Fortin:** I just received it and would like a few minutes to read it. Earlier today, I received NDP-2.1, which is simple and has only two paragraphs. Now, there are two pages of text, and I haven't had time to read them. I'd need about 10 minutes to read them, Mr. Chair.

[*English*]

**The Chair:** Monsieur Fortin, we'll suspend. Is five minutes enough, or do you need 10 minutes?

[*Translation*]

**Mr. Rhéal Fortin:** I would need 10 minutes, Mr. Chair. There are still two pages of text.

Thank you.

[*English*]

**The Chair:** We'll suspend for 10 minutes, and we'll return at 3:35.

**Ms. Lena Metlege Diab:** Mr. Chair, I'm just pointing out that there's a typo on the last page regarding the word "individual". I'm sure that's not a big deal, but....

**The Chair:** Thank you, Ms. Diab.

We'll suspend for 10 minutes.

• (1520)

(Pause)

• (1555)

**The Chair:** I'll now resume the meeting.

We are going to be voting on the Liberal subamendment to NDP amendment 2.1.

**Hon. Rob Moore:** Mr. Chair, on a point of order, it's a Friday heading into the long weekend. This meeting is scheduled to go from one to three, your time. It's currently four o'clock, so we're an hour over. There was no motion to extend the meeting. I think we've all been operating in good faith, but now we're seeing amendments.

I remember the clerk asking for amendments, through you, Chair. You asked for amendments last week, which the Conservative Party provided. Now we're seeing amendments that have just been recently tabled and we're continuing to see amendments.

If I thought there was a chance it would pass, I would move a motion to adjourn, but I suspect that the NDP would support the Liberals in keeping this meeting going into the evening, as they did

last time. I'm just a little concerned as to how many more amendments we are going to see.

To do this job properly, as I think Mr. Fortin had said, we need to see and study these amendments. Unless it's an emergency, we don't drop amendments as we're dealing with the clause. That's just asking for delays. This meeting has already been delayed for over an hour.

I fear that we're going to have more unnecessary delays if we continue to table-drop technical amendments that have an impact but that have not in any way, shape or form been explained to us. I would ask for an explanation of these amendments and subamendments and then an undertaking for, in the future, when we have government legislation....

Remember, this is government legislation and now we're talking about government amendments. We need to get them in on time.

**Mr. Gary Anandasangaree:** Thank you, Mr. Chair. I want to thank Mr. Moore as well.

These amendments were put forward by the different parties, including amendments that were put forward by the Conservative Party. As a government, we reviewed them extensively. I think that, from the outset, we've said that we would engage and make sure we accommodate and strengthen the bill as much as possible within the framework of the committee process.

On the subamendments that we've provided, I do want to speak to the one with respect to Mr. Garrison. It stems from the amendment that was already tabled by Mr. Garrison. We feel that the wording we provided strengthens the amendment and the bill overall.

As with Mr. Moore, I know there's an amendment there that we want to work with him on supporting as well. It does work on all three opposition parties that are represented here. We're working in good faith to really strengthen the bill and have it move forward.

Having said that, if Mr. Moore wants additional information on the amendment provided, I can speak to it. I do think that, at the outset, we support in principle the intention brought forward by Mr. Garrison in his amendment NDP-2.1. We have just added language that I believe provides some safeguards on the record-keeping to provide some transparency and ensure that the information that is gathered is not used in a way that is adverse for the individuals. I think it's paramount that we are driven by data.

To your point, Mr. Moore, on the Conservative amendment that will be forthcoming on review, I believe data is so critical to the kind of review that's likely to take place.

It's in that spirit that we brought this forward. I believe that we forwarded the other ones, which I'll speak to separately, with the intention of strengthening the bill.

• (1600)

**The Chair:** Thank you, Mr. Anandasangaree.

We'll go to Mr. Fortin and then Mr. Garrison.

[*Translation*]

**Mr. Rhéal Fortin:** Thank you, Mr. Chair.

I agree with what Mr. Moore said. Yes, we did receive NDP-2.1 a few moments ago, and right after that we received an amendment to it. In fact, it is a well-drafted amendment to the amendment. We can see that it wasn't drafted on a corner of the table. So it's probably been available since this morning, or even for a few days. I'm a little surprised to receive it at the last minute. It's really not easy to work like this. I find it regrettable.

If we want to work properly, with all due respect for democracy and the intelligence of the people sitting at this table, we would have to postpone this until after break week. That being said, I also understand that this will not be accepted. Mr. Garrison is obviously going to oppose it, along with the Liberals, and this meeting is going to drag on for an unknown amount of time. I don't like this situation. I want to work seriously, and I see that it's rather difficult to do so under the conditions imposed by the Liberal Party and the NDP—perhaps I should say “the New Democratic Liberal Party”, I don't know.

Having said that, Mr. Chair, if we are to continue the meeting, I will have questions for the two witnesses who are here today so that they can enlighten me on some aspects of the motion.

[*English*]

**The Chair:** Thank you, Monsieur Fortin.

Go ahead, Mr. Garrison.

**Mr. Randall Garrison:** Thank you very much, Mr. Chair.

I do want to point out that the subject matter of 2.1 was in the original package of amendments. Amendments 2 and 2.1 were simply separated to allow us to vote separately on the two parts. This subject matter has always been in the package of amendments.

Having said that, like everyone, I have had a chance to look at the wording of the subamendment. I've been a member of Parliament for quite a while. It's quite normal for subamendments to come up in the discussions of bills without much notice, especially if we're trying to work collaboratively to improve bills. I had a look at the proposed Liberal changes. I think they respect the principle of what I was trying to accomplish. I just didn't have a staff of lawyers on my team to do the drafting who are obviously available to some of the other members.

I'm very much in support of the subamendments. I think they still do the same thing that we were trying to do, and that is make sure that we can have accountability on the use of discretion without endangering those who get diversions and who might have that used against them in future legal proceedings. I think the wording that the government has worked out accomplishes that much more eloquently and much more carefully than my original wording did, so I'm in support of the subamendment.

Thank you.

**The Chair:** Thank you, Mr. Garrison.

Just to reiterate, I think all the amendments were.... I want to thank all the parties for giving them well in advance. We have a pretty robust package here of amendments in good order.

Mr. Garrison amended his amendments, breaking them into two parts.

Mr. Fortin, the clerk has assured me that they were circulated to all members of the committee yesterday. The NDP-2 and NDP-2.1 amendments were circulated yesterday. The Liberal subamendment to 2.1 was done just now, which you did receive.

As Mr. Garrison also stated, it does happen in committees that in the process there are amendments that can come from the floor. They were presented and, at your request, we also suspended so that we could look at them. I think they're all in order.

Just to let Mr. Moore know on his point of order, I don't foresee any others—at least that are given to me ahead—so this would be the last one that I know of, unless something else comes up that I'm not aware of. I cannot answer to that. It's the will of the committee to bring anything up, but as far as I know, I think these were the only two that were brought in and they were circulated yesterday.

I have Mr. Anandasangaree.

• (1605)

**Mr. Gary Anandasangaree:** Mr. Chair, if I may just confirm, there are a couple more that we've already sent to the opposition parties.

**The Chair:** There you go. There are two more subamendments that have been circulated to you, so I'll let you look at them.

Mr. Brock, is this another point of order?

**Mr. Larry Brock:** It is, Mr. Chair.

Can you provide some explanation for why there was no motion to extend?

**The Chair:** It seemed to be the will of the committee to keep going. There are only motions to adjourn. There are no motions to—

**Mr. Larry Brock:** That's completely incorrect, Mr. Chair, with all due respect.

I think you owe it to every committee member to respect our outside commitments. This meeting was scheduled for two hours. There was no discussion this past Tuesday that we would extend indefinitely, and I think procedure must be maintained. There is a procedure for a motion to extend, and I'm rather disappointed that you, as chair, did not raise that at three o'clock.

Thank you.

**The Chair:** Thank you, Mr. Brock, but unless you have a motion to adjourn, I will continue to proceed.

Next we had Mr. Fortin, who wanted to have a question to the witnesses before we cast our votes.

[*Translation*]

**Mr. Rhéal Fortin:** Thank you, Mr. Chair.

I would actually like to ask the witnesses a question.

My question is about NDP-2.1, which is about a subamendment proposed by the Liberal Party.

I will wait for the two witnesses to read the text of the subamendment before asking my question.

Can anyone tell me if they've read it?

**Mr. Andrew Di Manno:** We've read it.

**Mr. Rhéal Fortin:** Thank you.

What I understand from this text is that the diversion measures that would be taken for an offender would be recorded on the relevant police force register. However, the offender's name would be known only to the judge presiding over the trial of the offence in question.

If, later on and on different dates, the individual reoffends by committing the same type of offence, this can never be presented to the court, whether or not the individual has complied with the conditions proposed as part of the diversion measures.

For example, we couldn't tell the judge that we tried to use diversion measures three or four times, but that the person didn't comply with the conditions imposed. Diversion measures are not judicial proceedings.

Perhaps the person was complying with the conditions imposed, but still reoffended. You couldn't tell the judge that this is the fifth offence of the same type, for example.

If the measures applied were diversion measures, you couldn't tell the judge that the individual is a repeat offender, even though diversion measures have been used three, five, 10 or 20 times.

Have I understood correctly?

[*English*]

**Mr. Andrew Di Manno:** As I understand the amendment, it only relates to records that are kept in relation to warnings and not offences. Where the police officer issues a warning or makes a referral to a treatment program, the uses that would be permitted would be limited to proceedings with respect to the offence to which the record relates.

If, for instance, a police officer makes a warning or a referral in one case and that person doesn't successfully complete that treatment program, that warning or referral would not be able to be used in an additional case afterwards, only with respect to the offence to which the warning relates.

• (1610)

[*Translation*]

**Mr. Rhéal Fortin:** So you could never tell the court that the individual has reoffended five or 10 times.

[*English*]

**Mr. Andrew Di Manno:** I'll just clarify.

[*Translation*]

When you say reoffend, do you mean when a person is again subject to a warning or referral?

**Mr. Rhéal Fortin:** I'm referring to the same offence. I understand the individual would not have been convicted of the other offences, as they would have been subject to diversion measures. We agree on that point.

I want to make sure that I understand the motion. Proposed subsection 10.4(2) would involve the judge or the court being made aware of a warning or referral only for purposes related to the prosecution of the specific offence.

As I understand it, let's say an offence was committed on January 1, 2019. That's the only one that can be mentioned, regardless of the rate of recidivism or compliance with conditions of police orders. The judge will not be advised that, for instance, they tried everything, that the individual was ordered to get therapy, but that they failed to do so and reoffended, that is to say they committed the same crime again.

I understand the individual was not convicted for the other offences, but if it's for the same offences, that is, repeat offences, the judge cannot be made aware of it.

Have I understood that correctly?

[*English*]

**Mr. Andrew Di Manno:** To the extent that the person was warned and later on needed to be warned again or referred again, proposed paragraph 10.4(2)(a) would limit the record of that warning to the initial proceedings where the person was warned. There are other paragraphs that would permit the use of those records, for instance, proposed paragraph 10.4(2)(b). The record could be released to a police officer for any purpose related to the administration of the case, but again, it would be limited to that to which the record relates.

If you go a little bit further, under proposed subparagraph 10.4(2)(c)(ii), the record could be used for instance in a presentencing report, but again, it would be limited in respect of the offence to which the record relates.

[*Translation*]

**Mr. Rhéal Fortin:** Thank you.

[*English*]

**The Chair:** Thank you, Monsieur Fortin.

Shall the Liberal subamendment to NDP amendment 2.1 carry?

(Subamendment agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

**The Chair:** Before we vote, I just want to remind you that, if NDP 2.1 as amended is adopted, Green Party amendment 44 and Liberal Party amendment 2 cannot be moved as they amend the same line.

(Amendment as amended agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

**The Chair:** We now go to NDP amendment 3.

Mr. Garrison, would you like to say anything on this?

• (1615)

**Mr. Randall Garrison:** Yes, thank you, Mr. Chair.

Bill C-5 addresses the problem of over-incarceration of indigenous people, Black Canadians and other racialized Canadians in some modest steps, I would say. Over-incarceration carries with it another obstacle for those who have been incarcerated to reconnect with their community, their family, employment and housing. That's because, once you've been incarcerated, of course you come out with a criminal record.

Criminal records quite often have large effects on child custody cases and access to social housing—access to any housing, as landlords quite often insist on criminal record checks. Perhaps most importantly, criminal records can make it very difficult to get re-employed. All those things make it hard for those who have already been incarcerated to reform and get back in contact with their community.

What this amendment essentially proposes is an automatic removal of all criminal records for personal possession of drugs that have taken place in the past. This would take place within two years. The second thing it does is ensure that future records for convictions for personal possession that result in a record would be removed two years after the completion of the sentence.

It does so without requiring an application process. We all know that application processes for pardons or suspension of records, as they're called, are quite often very difficult to get and quite often very expensive. Even more importantly, lots of times people don't even know that they need to have a criminal record removed. Landlords certainly don't phone people back and say, "Oh, by the way, you didn't get the place because you have a criminal record." Employers quite rarely say, "Well, I chose someone else because you have a criminal record", so people may not even be aware of the ways in which they're being disadvantaged by criminal records.

Remember, this is only for personal possession of drugs, not for trafficking or involving violence. This would remove those records.

There are other things I personally would rather see. We know that Bill C-216, a private member's bill calling for the decriminalization of all personal possession of drugs, had its second hour of debate in the House today. We don't know the fate of that bill. We will be voting on that as a House, as a whole, when we come back.

What we have today is an opportunity to do something more than just reduce the mandatory minimum penalties, and that is to contribute to the reintegration and rehabilitation of people who have been imprisoned for personal possession, by making sure that those criminal records don't affect their families, housing or employment. I'm urging members to support this amendment, which takes this bill a little bit farther in attempting to repair the damage from the over-incarceration that indigenous people, Black Canadians, other racialized Canadians and many poor Canadians have already suffered as a result of incarceration for personal possession of drugs.

The bill reduces mandatory minimums. This would take away some of the stigma that goes along with that by removing those criminal records.

Thank you.

**The Chair:** Thank you, Mr. Garrison.

Go ahead, Mr. Fortin.

[*Translation*]

**Mr. Rhéal Fortin:** Thank you, Mr. Chair.

I understand the intent behind Mr. Garrison's motion, and on several fronts, I agree with him. However, I take issue with rewriting history. We're talking about convictions that occurred before the legislation came into effect. I don't see how we can pretend they never happened. We may wish they hadn't, but they did.

Back in the day, people were hanged for murder. That's not the case anymore. When hanging was abolished, there was no attempt to resurrect the people who had been hanged. They had been hanged. It's sad, but true. It's kind of the same here. Again, I am uncomfortable with the idea of erasing or hiding prior convictions. In fact, I wonder if that would even be possible.

• (1620)

[*English*]

**The Chair:** Thank you, Monsieur Fortin.

We'll go to Mr. Anandasangaree.

**Mr. Gary Anandasangaree:** Thank you, Mr. Chair.

I want to propose a subamendment. I think that's been shared with the members.

I echo fully what Mr. Garrison has indicated with respect to simple possession. I know we want to support Canadians who may have been impacted by charges or convictions of that sort. I think it's important to allow for pathways in order for people, many of whom are young, to be able to continue their lives without a serious interruption, whether it be with respect to jobs, engagement within the community or any other place where a criminal record check is required.

We've just changed the language slightly. It does not in any way change the intent or substance of the amendment that's been put forward by Mr. Garrison.

We hope members can support this. It's a small step, and I believe it's a modest step toward supporting those who have had primarily addictions and possession charges in their lives.

**The Chair:** Thank you.

We have a Liberal subamendment to NDP amendment 3. It has been circulated.

(Subamendment agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

(Amendment as amended agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

**The Chair:** Next we have Bloc amendment 6. It's on page 70 in our package.

Monsieur Fortin, would you like to say a few things?

[*Translation*]

**Mr. Rhéal Fortin:** Thank you, Mr. Chair.

In testimony before the committee, one of our witnesses, Dr. Robert, told us about a problem situation for those working with people who have drug addictions. These workers often end up having small amounts of drugs in their possession, not for the purposes of using or trafficking them themselves, but simply because, in the course of their duties, they need to handle them.

Dr. Robert referred to individuals who want to stop using but are unable to do so while in the possession of, say, a bag of cocaine. They sometimes ask their social workers to take the drugs away to help them stop doing them. In these situations, the workers take the substances and hand them over to the relevant doctor, dispensary or their supervisor, so they may be disposed of according to the law.

In these cases, workers might be reluctant to get involved for fear of being accused of drug possession themselves. The Bloc Québécois motion seeks to avoid this situation with an “exception for service providers, whereby no social worker, medical professional or other service provider in the community who, in the course of their duties, possesses a substance included in Schedule I, II or III” commits an offence.

Of course, we're not talking about workers having these drugs on them on weekends while, say, catching a show, but rather of their being in possession of drugs as part of their duties.

The service provider's actions would not amount to an offence under subsection 4(1). I consider this to be a useful and critical provision for individuals working with those who have substance use problems.

• (1625)

[*English*]

**The Chair:** Thank you, Monsieur Fortin.

We have Mr. Anandasangaree, and then Mr. Brock.

**Mr. Gary Anandasangaree:** Thank you, Mr. Chair.

I think we are in agreement with the spirit of this amendment, although this does fall under the defence of innocent possession, so we don't believe it's necessary per se to have it in the legislation, but we are, in principle, supportive.

However, I do have language that would strengthen the intention put forward by Mr. Fortin. That was circulated earlier, and I move the subamendment to amend the amendment put forward by Mr. Fortin in BQ-6.

**The Chair:** Okay. I believe everyone has that.

Mr. Brock, do you want to comment before this or do you want to do it after, because there's a subamendment now?

**Mr. Larry Brock:** The subamendment is not going to change my position on it. To a certain degree, I echo my friend's previous comments with respect to whether this amendment is necessary.

We have concepts in criminal law called *actus reus* and *mens rea*. *Mens rea* is the criminal intent to commit the offence of possession. With the objective sought by the Bloc with this particular amendment, and a further subamendment by the Liberal Party... In my view, we already have a built-in safety valve in the Criminal Code and, in my opinion, a built-in defence. I don't think it's necessary. I don't think we need to rewrite a century's worth of jurisprudence. Those are my thoughts.

Thank you.

**The Chair:** Thank you, Mr. Brock.

We will now move to vote on the Liberal subamendment to the Bloc amendment 6.

(Subamendment agreed to: yeas 11; nays 0 [*See Minutes of Proceedings*])

(Amendment as amended agreed to: yeas 11; nays 0 [*See Minutes of Proceedings*])

(Clause 20 as amended agreed to: yeas 7; nay 4)

**The Chair:** Next is the new clause 21, proposed by the Green Party amendment 45. I'm going to rule this inadmissible.

Next, we have Liberal amendment 3, which has not been moved. If nobody moves it, I'll go on to the next one.

• (1630)

**Mr. Yasir Naqvi (Ottawa Centre, Lib.):** I move the Liberal amendment, Mr. Chair.

**The Chair:** Okay, Liberal amendment 3 is moved; however, I'm going to deem it inadmissible as it goes beyond the scope of the bill.

Therefore, the amendment is inadmissible.

[*Translation*]

**Mr. Rhéal Fortin:** Mr. Chair, on a point of order.

My apologies for being distracted, I was reading too many documents at once.

You said that amendment PV-45 was out of order.

What about amendment LIB-3? We didn't vote on that. Was it also out of order?

[*English*]

**The Chair:** That's correct. It was also out of order. It was beyond the scope.

[*Translation*]

**M. Rhéal Fortin:** All right.

Thank you, Mr. Chair.

[*English*]

**The Chair:** Next we have Conservative amendment 15 on page 73 of the package.

Mr. Moore, would you like to say anything on this?

**Hon. Rob Moore:** On amendment 15, this would require—and this exists in a lot of Criminal Code legislation—a review of the legislation on the third anniversary of the day on which it comes into force. This would allow us as parliamentarians to have an understanding of the impact on our communities of the passage of Bill C-5, should it pass.

**The Chair:** Thank you, Mr. Moore.

Mr. Anandasangaree, go ahead.

**Mr. Gary Anandasangaree:** Mr. Moore, I think that's something we would support. We would look for a review on the fourth year.

**The Chair:** Mr. Anandasangaree, are you proposing a subamendment to that?

**Mr. Gary Anandasangaree:** I move to delete the word “third” and to put “fourth”.

**The Chair:** Mr. Fortin, do you want to speak to this now, or do you want to speak to it after?

[*Translation*]

**Mr. Rhéal Fortin:** I would have suggested the “fifth” anniversary, but I'm willing to agree to the “fourth”, Mr. Chair.

[*English*]

**The Chair:** Thank you, Monsieur Fortin.

We shall vote on the Liberal subamendment to Conservative amendment 15—

**Hon. Rob Moore:** Mr. Chair, I'm getting a major echo back. I don't know if the rest of you are.

I could accept the subamendment as a friendly amendment.

**The Chair:** Thank you, Mr. Moore.

You're probably getting an echo because somebody's mike might have been left on and therefore echoing back. Are you still hearing the echo?

**Hon. Rob Moore:** No, it's good now.

**The Chair:** Thank you.

We are going to vote on the Liberal amendment to Conservative amendment 15. We'll have a recorded vote.

(Subamendment agreed to: yeas 10; nays 1)

(Amendment as amended agreed to: yeas 11; nays 0 [*See Minutes of Proceedings*])

• (1635)

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**An hon. member:** On division.

**The Chair:** Shall the bill as amended carry?

(Bill C-5 as amended agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

**The Chair:** Shall the chair report the bill as amended to the House?

**Some hon. members:** Agreed.

**An hon. member:** On division.

**The Chair:** Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

**Some hon. members:** Agreed.

**An hon. member:** On division.

**The Chair:** Thank you very much to all the committee members.

I want to especially thank the witnesses, who have been very patient and stayed with us all this time. I want to thank all the staff in the room and those staff who have already changed and have gone. Thank you to the clerk's office, the legislative clerks and everyone supporting them behind the scenes.

All the staff on both sides, I want to thank you all once again for making this meeting very efficient.

The meeting is adjourned.







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