

Harper's CRIME LAWS

by SHAWN BAYES



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In the aftermath of several sensational shootings, thoughtful Canadians are discussing what meaningful steps can be taken to deal with crime. The Conservative federal government delivered its response over the past year in a series of get-tough-on-crime laws. Three of the most contentious include Bill C-9, restricting the use of conditional sentencing; Bill C-10, expanding the use of mandatory minimum sentences; and Bill C-27, a “three-strikes-and-you’re-in-jail-for-life” law.

The government claims the laws will stop coddling criminals and make our streets safer. In fact, the changes will have dramatically negative effects.

Canada will build more prisons, spend billions more on incarceration and put many more people behind bars for longer times. One Parliamentary report estimates 5,500 additional prisoners per year, swelling already tense, over-crowded prisons. Results are predictable: more double-bunking of prisoners, fewer treatment programs, increased danger for staff and prisoners, higher suicide rates.

Under these laws, the courts will no longer consider many crimes in their context. Currently when sentencing, judges must consider an individual’s character and risk of re-offending along with the seriousness and context of the crime. That constitutes the basis of appropriate sentencing; it’s considered a cornerstone of Canadian law. The new approach would effectively eliminate individualized sentencing for hundreds, if not thousands, of offenders every year.

Tallying the Social Costs

Take Patricia, a poor, seventeen-year-old single mother with serious emotional problems. Charged with welfare fraud, she would now go to prison — her children ending up in foster care. Patricia is not a fictional person. Neither are the others described

here. After years of childhood sexual abuse, 24-year-old Maggie landed in an abusive relationship. Caught waiting in a car while her boyfriend made a drug drop, she was charged as an accomplice. The man who controlled the drug ring wasn’t arrested.

Norma, penniless, was trying to get off the streets. She stole a credit card and could now face ten years in prison. Then there’s Albert, a 22-year-old unemployed Aboriginal man struggling with the effects of childhood sexual abuse and addictions. Physically threatened, he made threats and waved the hunting rifle he carries in his truck. Rifles in truck cabs are not uncommon in rural communities. Charged with assault, Albert would now face a mandatory minimum five years in prison, without access to the culturally appropriate community sentence previously available.

This on-the-ground reality check helps explain the tidal wave of opposition the new laws have provoked — from academics and community groups to criminologists, judges and lawyers.

Since most violent offences occur impulsively, often combined with drug or alcohol use, it’s unlikely the new three-strikes law will deter violent criminals, says Louise Botham, president of the Ontario Criminal Lawyers’ Association. At any rate, she adds, we don’t need this bill; legislation already exists to designate dangerous offenders. Particularly alarming is that the bill shifts the onus from the prosecution to the charged individual, who must now prove he or she will not offend in the future. Imagine how difficult that could be.

Bill C-10, designed to increase the number of crimes receiving mandatory minimum prison sentences, also evoked heavy criticism. Organizations ranging from the Canadian Criminal Justice Association to the Canadian HIV/AIDS Legal Network point out that almost every study con-

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ducted reports that harsher, longer periods of incarceration don't deter crime: They don't deter gun crime or drug crime or even drug use. A 2002 federal government review reported that longer sentences caused a three-per-cent increase in offences or recidivism.

Mandatory minimum sentences in Australia have had a particularly devastating impact on Aboriginals in that country. In fact, negative experience is impelling jurisdictions from Britain to Australia to reassess and retreat from longer, mandatory minimum sentences.

Equally alarming are the restrictions on conditional sentencing contained in Bill C-9. Ten years ago, Canada had one of the highest per-capita imprisonment rates in the developed world and a higher crime rate than today. Partly to address that grim reality, in 1996 Parliament adopted conditional sentencing. Where appropriate, offenders serve supervised time in the community, not in prison. As the name implies, these sentences entail conditions like house arrest, community service, mandatory substance abuse treatment, or counseling.

Over 50,000 conditional sentences later, experience shows they have clearly reduced the number of incarcerations. Are they effective in preventing crime? A December, 2006 Statistics Canada study reports that adult offenders who spent their sentence under supervision in the community were far less likely to become re-involved with correctional authorities within one year of their release than their imprisoned counterparts. Conditional sentences have also been widely used to help offenders begin to tackle issues, like addictions, underlying many crimes.

While opposition political parties have succeeded in narrowing the focus of Bill C-9, it still restricts conditional sentences. A wiser course, one recommended by the Canadian Criminal Justice Association, would be to extend their use.

Conditional sentences were essential in allowing Patricia, Maggie, Norma and Albert to transform their lives. How will harsher sanctions help them and thousands more like them? Jail time hardens and scars human beings. It results in poverty, erosion of health and loss of children, employment,

autonomy and self-esteem — outcomes that increase the likelihood of recidivism.

The government's get-tough approach isn't aimed at big-ticket crooks, like large-scale drug dealers, corporations who exploit employees or the environment, or others who sustain a system of criminalized racism, poverty, homelessness and addiction. And it doesn't address the root causes of a good deal of the crime it does target: adverse social, economic, or family conditions.

Tough on Crime, Tough on Taxpayers

The devastating personal cost of these laws will be matched only by their staggering price tag. Estimates put additional prison spending at \$5 to \$11.5 billion over ten years. And unless our taxes go up, that money will, no doubt, be bled from the very social programs that could help. It's also worth noting that, while it costs over \$51,000 per year to incarcerate a provincial prisoner, the costs of alternative justice like community supervision are a fraction of that, ranging from \$2,000 to \$9,000 per year.

There is another way.

A 2006 study of eighteen countries in the Organization for Economic Co-operation and Development found that the countries that spent the most on welfare had the lowest rates of imprisonment. Another study reported that the Scandinavian countries have among the lowest crime levels in Western Europe and low rates of reported personal insecurity. The Scandinavian countries also impose fines in a high proportion of criminal cases, and have relatively low rates of police to citizens, small prison populations and short periods of incarceration.

Changing course is not a financial question; the funds are already in our system. If we redirected even part of the billions earmarked for prisons to health, education, housing, welfare, employment programs, addictions and sexual-abuse treatment — and to agencies like the Elizabeth Fry and John Howard societies, which assist offenders to re-enter society as law-abiding citizens — the results would be enormously healing for individuals and communities.

We face a clear choice: on the one hand, a reactive, punitive response already demonstrated to fail, which won't make our streets safer or rehabilitate offenders; and, on the other, a more humane, healthy and effective response — one that provides an alternative vision of society to the brave new world the government is steering us toward. ■

Contributors

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JONATHAN B. CANCHELA is an activist, freelance writer and community organizer. He is currently a member of SIKLAB-Ontario, a Filipino migrant workers' organization in Toronto.

JOHN CLARKE became involved in anti-poverty struggles in the early 1980s, when he was laid off from his unionized job at the Westinghouse

Plant in London, Ontario. He helped form the London Union of Unemployed Workers in 1983, and, in 1990, moved to Toronto to become an organizer with the newly formed Ontario Coalition Against Poverty. He has worked with OCAP ever since.

Until his retirement, **GEORGE CROWELL** was a professor in social ethics at the Religious Studies Department, University of Windsor.



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