Dear [Redacted]

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (Our File #: JUS/29/2012)

On September 13, 2012 the Department of Justice received your request for access to the following records/information:

1. The number of inmates currently being housed in provincial jails and remand centres, broken down by the number who are:
   (a) single binned,
   (b) double binned,
   (c) triple binned, and
   (d) housed alternatively (e.g. gymnasium, etc. Please specify how they are housed).

2. The latest projected/estimated numbers on the increase in remand and provincial prison inmates as a result of federal criminal justice legislation introduced since January 2009. I am particularly interested in any projections made between Jan 2011 and present and referring to Bill C-10.

3. The latest projected/estimated cost, to the province, of federal criminal justice legislation introduced from January 1 2009 to present (including a breakdown by legislative change if available). I am particularly interested in any projections made between Jan 2011 and present and referring to Bill C-10.

4. The most recent proposals/plans and/or studies available regarding provincial prison and remand centre expansions, renovations and/or construction.

5. All studies, assessments, memos, briefing notes and directives regarding federal criminal justice legislation and its impact on the province, prepared between January 1 2009 and present.”

I am pleased to advise that we are providing access to Part 1 of your request in full (Appendix A). Parts 2-5 of your request have been granted in part (Appendix B). The information contained within the records has been redacted in part in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act (the Act):

18(2) The head of a public body shall refuse to disclose to an applicant a Cabinet record, including
   (a) an official Cabinet record;
   (c) a supporting Cabinet record;
20(1) The head of a public body may refuse to disclose to an applicant information that would reveal
(a) advice, proposals, recommendations, analyses or policy options developed by or for
a public body or a minister;
(b) the contents of a formal research report or audit report that in the opinion of the
head of the public body is incomplete unless no progress has been made on it for
more than 3 years;
(c) consultations or deliberations involving officers or employees of a public body, a
minister or the staff of a minister;

23(1) The head of a public body may refuse to disclose information to an applicant if the
disclosure could reasonably be expected to
(a) harm the conduct by the government of the province of relations between that
government and the following or their agencies:
(i) the government of Canada or a province,
(ii) the council of a local government body,
(iii) the government of a foreign state,
(iv) an international organization of states, or
(v) the Nunatsiavut Government; or
(b) reveal information received in confidence from a government, council or organization listed in
paragraph (a) or their agencies.

24(1) The head of a public body may refuse to disclose to an applicant information which
could reasonably be expected to disclose
(c) plans that relate to the management of personnel of or the administration of a public
body and that have not yet been implemented or made public;
(d) information, the disclosure of which could reasonably be expected to result in the
premature disclosure of a proposal or project or in significant loss or gain to a third
party;

Eight documents were withheld in their entirety. Please see the table below for details
concerning these documents:

<table>
<thead>
<tr>
<th>#</th>
<th>Description of Document</th>
<th>Number of pages</th>
<th>Sections being used to withhold document</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Infrastructure Review (November 2010)</td>
<td>88</td>
<td>s.18(2)(c); s.20(1)(a); s.24(1)(c)(d)</td>
</tr>
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<td>2</td>
<td>Information Note (May 12, 2011)</td>
<td>10</td>
<td>s.18(2)(c); s.20(1)(a); s.24(1)(c)(d)</td>
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<td>3</td>
<td>Information Note (June 9, 2011)</td>
<td>8</td>
<td>s.18(2)(c); s.20(1)(a); s.24(1)(c)(d)</td>
</tr>
<tr>
<td>4</td>
<td>Decision Note (August 23, 2011)</td>
<td>18</td>
<td>s.18(2)(c); s.20(1)(a)(c); s.24(1)(c)(d)</td>
</tr>
<tr>
<td>5</td>
<td>Information Note (November 18, 2011)</td>
<td>3</td>
<td>s.18(2)(c); s.20(1)(a); s.24(1)(c)(d)</td>
</tr>
<tr>
<td>6</td>
<td>Presentation (December 2011)</td>
<td>8</td>
<td>s.18(2)(a); s.20(1)(a);</td>
</tr>
</tbody>
</table>
Section 43 of the Act provides that you may ask the Information and Privacy Commissioner to review this refusal of access or you may appeal the refusal to the Supreme Court Trial Division. A request to the Commissioner shall be made in writing within 60 days of the date of this letter or within a longer period that may be allowed by the Information and Privacy Commissioner.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
34 Pippy Place
P. O. Box 13004, Stn. A
St. John’s, NL A1B 3V8

Telephone: (709) 729-6309
Facsimile: (709) 729-6500

In the event that you choose to appeal to the Supreme Court, you must do so within 30 days of the date of this letter. Section 60 of the Act sets out the process to be followed when filing such an appeal.

If you have any further questions, please contact the ATIPP Coordinator, Neil Croke, at 709-729-7906, or nercok@gov.nl.ca.

Sincerely,

[Signature]

Heather Jacobs
Assistant Deputy Minister
Below is a ‘snapshot in time’ (November 8, 2012) of a breakdown of the number of inmates being housed in provincial jails and remand centres, broken down by the number who are:

**Housed in Her Majesty’s Penitentiary (HMP):**
(a) single bunked – 115 inmates in single bunk cells (one inmate in each cell)
(b) double bunked- 24 cells with 2 bunks had one inmate and 6 cells with 2 bunks had 2 inmates in each
(c) triple bunked - no cells were triple bunked
(d) housed alternatively (ie gymnasium, etc. Please specify how they are housed). – 1 inmate was in a segregation cell

Total inmates: 151

**Housed in the Newfoundland and Labrador Correctional Centre for Women (NLCCW):**
(a) single bunked – There are no single bunk cells in this facility
(b) double bunked- 8 cells with 2 bunks had one inmate and 4 cells with 2 bunks had 2 inmates in each
(c) triple bunked - no cells were triple bunked
(d) housed alternatively (ie gymnasium, etc. Please specify how they are housed). – No inmates were housed alternatively

Total inmates: 16

**Housed in Bishop Falls Correctional Centre (BFCC):**
(a) single bunked – There are no single bunk cells in this facility
(b) double bunked- 8 cells with 2 bunks had 1 inmate in each cell and 5 cells with 2 bunks had 2 inmates in each cell
(c) triple bunked - no cells were triple bunked
(d) housed alternatively (ie gymnasium, etc. Please specify how they are housed). – No inmates were housed alternatively

Total inmates: 18

**Housed in West Coast Correctional Centre (WCCC):**
(a) single bunked – There are no single bunk cells in this facility
(b) double bunked- 24 cells with 2 bunks had 1 inmate in each cell
(c) triple bunked - 1 cell with 3 bunks had 3 inmates
(d) housed alternatively (ie gymnasium, etc. Please specify how they are housed). – 3 dormitory areas with 4 bunks had 4 inmates in each

Total inmates: 39

**Housed in Labrador Correctional Centre (LCC):**
(a) single bunked – 23 inmates in single bunk cells (one inmate in each cell)
(b) double bunked- 5 cells with 2 bunks had 1 inmate and 10 cells with 2 bunks had 2 inmates in each
(c) triple bunked - no cells were triple bunked
(d) housed alternatively (ie gymnasium, etc. Please specify how they are housed). – No inmates were housed alternatively

Total inmates: 48
Housed in Corner Brook Lockup (CBLU):
(a) single bunked – No inmates were single bunked
(b) double bunked- 5 cells with 2 bunks had 1 inmate in each cell
(c) triple bunked - no cells were triple bunked
(d) housed alternatively (ie gymnasium, etc. Please specify how they are housed). – No inmates were housed alternatively

Total inmates: 5

Housed St. John’s Lockup (SJLU):
(a) single bunked – No inmates were single bunked
(b) double bunked- 7 cells with 2 bunks had 1 inmate in each cell
(c) triple bunked - no cells were triple bunked
(d) housed alternatively (ie gymnasium, etc. Please specify how they are housed). – No inmates were housed alternatively

Total inmates: 7
GENERAL BRIEFING NOTE
Department of Justice

Title: Proposed Criminal Code amendments regarding pre-trial credit for remanded inmates

Issue: Newfoundland and Labrador position regarding proposed changes

Background:
- November 2005 – Federal Provincial Territorial (F/P/T) Ministers Responsible for Justice asked officials to review the issue of credit for time served.

- Concerns expressed regarding the current 2 for 1 credit included: the impact of credit for time served on the growing remand population, the potential inefficiencies created resulting from unnecessary adjournments or delays in guilty pleas or trial due to inappropriate consideration of credit for time served impact, and the potential negative impact on public confidence when sentences given for serious crimes are seen as too lenient because sentence length was significantly reduced by time served in remand.

- Justification given for the 2 of 1 credit was that it was needed to ensure that time served was taken into account at the time of sentencing, not that it would significantly affect sentence length, but because it would standardize a practice that was not uniform or universally recognized. It would demonstrate fairness to the accused.

- The issue of fairness is related to the fact that time served pending trial does not attract remission and is therefore equivalent to a longer term of post-sentenced custody.

- The Supreme Court of Canada has commented on pre-sentence credit recognizing the general rule of thumb was a credit of 2 to 1 to “reflect not only the harshness of the detention due to the absence of programs...but reflects also the fact that none of the remission mechanisms contained in the Corrections and Conditional Release Act apply to that period of detention.” [R. v. Wust(2001) SCR 455]

- October 2006 – F/P/T Ministers Responsible for Justice reviewed a discussion paper tabled by The Sentencing Working Group on Pre-Sentence Credit for Time Served for the Ministers Responsible for Justice to review.

- October 2006 - F/P/T Ministers Responsible for Justice reached general agreement to move to a credit of 1 up to 1.5, except for accused denied bail because of past criminal record or breach of release undertaking where the maximum would be up to 1.

- November 2007 - F/P/T Ministers Responsible for Justice reaffirmed their expectation and agreement on the need to amend the Criminal Code to deal with Credit time served and commented publicly as the press release from that meeting states:
Ministers discussed the credit being given for the pre-trial custody in sentencing. Ministers reconfirmed their October 2006 agreement that credit for pre-sentencing custody should be limited to a maximum ratio of 1.5 to 1. When the accused has been detailed due to his/her criminal record or for having violated bail conditions the maximum ratio would be 1 to 1. Provincial and territorial ministers unanimously encouraged the federal ministers to proceed with these Criminal Code amendments as a priority. The federal minister confirmed his commitment to addressing this matter.

Status

- The proposed Criminal Code sections to be amended are section 515 (which will require the court to provide detention reasons) and section 719(3) which states:

719(3): **Determination of sentence** – In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence

- Courts have been using their discretion to credit individuals with a 2:1 ratio for time served in remand. Thus, 1 year in remand credits 2 years of the sentenced custody.
- Perception is that convicted individuals are choosing remand rather than bail to shorten the length of their sentence at the end of the day.
- Increases in remand are mainly due to increased duration and complexity in court cases.
- The CCC does not require 2:1 ratio, in fact it is judicial discretion
- The proposed amendments (Bill C-25)(see attached) to the Criminal Code aim to achieve the following:
  - Make it the general rule that the amount of credit for time served be capped at a 1-to-1 ratio, i.e., give only one day of credit for each day an individual has spent in custody prior to sentencing;
  - Permit a credit to be given at a ratio of up to 1.5 to 1 only where the circumstances justify it;
  - Require courts to explain the circumstances that justified a higher ratio;
  - Limit the pre-sentencing credit ratio to a maximum ratio of 1 to 1 for individuals detained because of their criminal record or because they violated bail, with no enhanced credit being granted under any circumstances

- Bill C-25 was given first reading in the House of Commons on March 27, 2009. A review of Hansard dated March 27, 2009 indicates that the proposed amendments were not debated in the House of Commons as of that date.

**Recommended Newfoundland and Labrador Position**

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- s.20(1)(a)
- Current NL remand count is 291 (in custody)  (102 remands) = 35%
- HMP      181 (in custody)    (76 remands) = 42%
- NLCCW    14 (in custody)     (3 remands) = 21%
- WCCC     44 (in custody)     (6 remands) = 14%
- LCC      52 (in custody)     (17 remands) = 33%

Prepared by:  Dean Gambin
              Director
              Corrections and Community Services

Date:       March 30, 2009
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Current Status:
- Legislation came into force February 22, 2010
- NL set up an implementation committee (Crown, Adult Custody, and Courts).
- Transition appears to have been smooth
- Those charged or remanded prior to February 22, 2010 would be grandfathered in under previous legislation.
- Many variables involved and we are early on in the transitional period. We will need to continue to assess how it will all play out.

Prepared by: Dean Gambin
Director
Corrections and Community Services

Date: June 23, 2010
Corrections (Roundtable Discussion) PEI

Cumulative Impacts of Federal Legislation Initiatives

Background
- In 2008, upon direction from the Atlantic Premiers and under the umbrella of the Atlantic Heads of Corrections, a working group with representation from NB, PEI, NS, and NL was tasked to undertake an analysis of cost impacts regarding proposed federal legislation.
- Overall, the results indicated that there would be an estimated annual increase of 29,017 sentenced inmate bed days, and a total estimate operational cost impact of $4,343,849.
- NL estimated increase in bed days 6,648, and estimated operational cost impact of $1,329,600.
- Capital costs for additional beds in Atlantic Region 15-20 million.
- December 2008 – Atlantic Council of Premiers reviewed report and wrote Prime Minister Harper in January 2009 requesting funding for operational and capital cost increases associated with legislative change. (See letter attached).
- There has been no indication of support from the federal government.

Challenges
- With legislative change there is the possibility that we will see more inmates in jail, more/longer trials, and fewer pleas with mandatory minimum jail sentences.
- The costs of such change are real.
- Overcrowding issues could become a further issue.

Possible Future Options
-
Respectfully submitted,

Dean Gambin
Director
Correction and Community Services
January 9, 2009

The Right Honourable Stephen Harper, P.C., M.P.,
Prime Minister
80 Wellington Street
Ottawa, ON  K1A 0A6
VIA FAX:  613-995-0101

Dear Prime Minister Harper,

Non-Responsive
Atlantic provinces are feeling the impact of recent and pending changes to federal criminal legislation which are resulting in substantial cost increases to provincial justice systems. We are seeking a commitment from the federal government to provide all operational and capital cost increases associated with implementing these changes.
Yours truly,

Honourable Shawn Graham  
Premier of New Brunswick

Honourable Rodney MacDonald  
Premier of Nova Scotia

Honourable Danny Williams  
Premier of Newfoundland and Labrador

Honourable Robert Ghiz  
Premier of Prince Edward Island
GENERAL BRIEFING NOTE
Department of Justice

Title: Proposed Criminal Code amendments regarding pre-trial credit for remanded inmates

Issue: Newfoundland and Labrador position regarding proposed changes

Background:
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- The Supreme Court of Canada has commented on pre-sentence credit recognizing the general rule of thumb was a credit of 2 to 1 to “reflect not only the harshness of the detention due to the absence of programs...but reflects also the fact that none of the remission mechanisms contained in the Corrections and Conditional Release Act apply to that period of detention.” [R. v. Wust[2001]1 SCR 455]

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- Increases in remand are mainly due to increased duration and complexity in court cases.
- The CCC does not require 2:1 ratio, in fact it is judicial discretion.
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**Recommended Newfoundland and Labrador Position**

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Populations snapshot as of 2:30pm March 21, 2011
Current count is: 288 (in custody)  (60 remands) = 21%
HMP 162 (in custody)  (36 remands) = 22%
NLCCW 15 (in custody)  (2 remands) = 13%
WCCC 45 (in custody)  (3 remands) = 6%
LCC 44 (in custody)  (19 remands) = 43%
BFCC 22 (in custody)  (0 remands) = 0%

Current Status:
- Legislation came into force February 22, 2010
- NL set up an implementation committee (Crown, Adult Custody, and Courts).
- Transition appears to have been smooth
- Those charged or remanded prior to February 22, 2010 would be grandfathered in under previous legislation.
- Many variables involved and we are early on in the transitional period. We will need to continue to assess how it will all play out.

Prepared by:  Dean Gambin
Director
Corrections and Community Services

Date: March 21, 2011
AHOC Impact Analysis Working Group Update
Criminal Law Amendments Impact Analysis
March 9, 2012, 2012

At the direction of the Atlantic Heads of Corrections (AHOC), a working group with representatives from New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island has been tasked to undertake an analysis of the projected cost impacts of criminal law amendments for Corrections in Atlantic Canada.

Working group members:
- NB - [Redacted] and [Redacted]
- NS - [Redacted] and [Redacted]
- NL - Kelly Ryan, Dan Chafe and Graham Rogerson
- CSC - [Redacted] and [Redacted]
- PEI - [Redacted] and [Redacted] (Chair)

Working group activities:
- Face to face meetings held in Moncton, NB on March 11, 2011 and September 20, 2011.
- Teleconferences have been held every two to three weeks since February 2011.
- Following an initial review of recent and proposed criminal law amendments the Working Group has determined that the amendments will have range of impacts: little or no effect, impact on CSC but not the provincial jurisdictions, or significant impacts for the Atlantic Provinces.
- Information has been gathered for the Retrospective analysis which examines the impact of amendments that have come into force over the past 5 years.
- Methodology is finalized for the prospective analysis which will investigate the potential impacts of currently proposed or recently passed amendments to criminal law in Canada.
- Methodology is intended to be realistic, conservative, and not exaggerated. A very practical analysis.
- Data collection for prospective analysis is on-going.
- Target date for final report mid - April.
Title: Impacts of Bill C-10 for NL.

Issue: Provide information regarding impacts of Bill C-10 on NL and the Atlantic Heads of Corrections (AHOC) Impact Analysis

Background:
- In 2007, the Council of Atlantic Premiers (CAP) directed their Ministers of Justice to prepare an analysis of the financial impact on Atlantic Provinces of the legislative changes up to that point in time. Since then, the federal government has continued to advance their 'tough on crime' agenda. However, funding to accommodate the subsequent increased costs has not been forthcoming.

- In 2011, an Atlantic Heads of Corrections (AHOC) Working Group; with representatives from all Atlantic Provinces and Correctional Service Canada was tasked to analyze the impacts of legislative amendments for Corrections in Atlantic Canada.


- The methodology is intended to be realistic, conservative, and not exaggerated; a very practical analysis.

- The report examined the potential for an increase in Provincial custody beds in the region due to C-10, C-25 and the natural growth that would be expected to occur with or without criminal law reform.

- It is forecasted that these variables will result in 282 to 698 additional beds required in Atlantic Canada by 2013-14.

- In NL, this results in a potential range of 54 to 155 additional beds. At an estimated cost of $280 per bed a day, the potential impact for NL represents between $5.5M to $15.9M.

- The impacts of C-10 specifically represent 36 to 60 additional beds or between $3.7M to $6.1M of the total amount.

- Forecasts for increased bed days related to legislative change were calculated to provide a range of potential impacts, from the minimum impact expected to the largest potential impact. Forecasts for natural growth were derived by calculating the average growth in the prison population in each jurisdiction from 2001-2011.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Total Estimated Impact of Changes to Legislation (C-25 &amp; C10) Plus Natural Growth (Number of Beds Required)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Low</td>
</tr>
<tr>
<td></td>
<td>Natural Growth</td>
</tr>
<tr>
<td>Newfoundland and Labrador</td>
<td>1</td>
</tr>
</tbody>
</table>

- While the forecast provides information about the number of additional offenders on average per day it does not account for fluctuations in demand or the challenges of managing diverse populations especially when facilities are at or over capacity. Safe and quality corrections can only be achieved if there is sufficient capacity to manage periods of peak demand.

- In Newfoundland and Labrador between 2005-06 and 2010-11 provincial institutions have been operating near and above capacity.

- The provincial capacity, including capacity for federally sentenced inmates is 418 beds with an average daily count of 383 in 2010-11.

- In the six years between 2005-06 and 2010-11 the average daily count of provincially incarcerated inmates increased 22%. The number of sentenced and remanded inmates increased by 26% and 14% respectively. In the same time period, the length of time individuals were incarcerated increased 14% and the length of remand sentences increased 15%.

- The sections of Bill C-10 that have the potential to have the greatest impact on bed days in NL are the changes to the Controlled Drug and Substances Act, the exclusions to Conditional Sentence Order (CSO) sentences and the amendments related to sexual predators as follows:
  - Amendments to further restrict CSO eligibility is expected to be between 835 to 6,322 additional bed days or 2 to 17 offenders per year.
  - The projected impact from Controlled Drug and Substances Act cases is approximately a total of 9,758 bed days per year or 27 additional offenders.
  - The introduction of minimum mandatory sentences to protect children from sexual predators is expected to increase the number of custody bed days from between 2,654 to 5,854 days (includes remission) or about 7 to 16 offenders.

Prepared by: D. Gambin
September 16, 2012
September 21, 2012
Atlantic Justice Ministers

An Atlantic Canada Perspective: Impact Analysis: Criminal Law Amendments
Impact Analysis Background

- Tasked to undertake an analysis of amendments to recent criminal law
- Establishes Impact Analysis Working Group
- Includes representatives from NB, NL, NS, PE
- Atlantic Heads of Corrections (AHOC) and CSC
sentencing custody

Code (limiting credit for time spent in pre-
Bill C-25 An Act to amend the Criminal

Drug Impaired Driving

Offences

Reverse O Nano Ball for Firearms

Involving Firearms

Minimum Penalties for Offences

Bill C-2 Tackling Violent Crime Act

(conditional sentence of imprisonment)

Bill C-9 An Act to amend the Criminal Code

Overview of Criminal Law Amendments
Overview of Criminal Law Amendments

- Offences against children and creates two new sex offences
- Increases penalties for sexual offences
- Introduces mandatory minimum penalties for serious drug offences
- Introduces crimes charged with property and other serious conditional sentences for individuals
- Further restricts the application of Bill C-70 Safe Streets and Communities Act
Current Situation

- Newfoundland & Labrador
  - Population and crime rates increasing
  - At capacity

- New Brunswick
  - Overcrowding
  - New construction
Current Situation

- Capital Plan
- Overcrowding
- Prince Edward Island
- New Construction
- Overcrowding
- Nova Scotia
Prospective

Retrospective

Components:
The Atlantic Impact Analysis included two

Impact Analysis Methodology
Impact of Bill C-10 and Bill C-25 - New Brunswick

New Brunswick
Labrador

Impact of Bill C-25 and Bill C-25 – Newfoundland &

Newfoundland & Labrador
Impact of Changes to Legislation - Low Impact

Low Impact Estimate
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Total Beds</th>
<th>Natural Growth</th>
<th>Legislation Impact</th>
<th>Additional Bed Required</th>
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<tbody>
<tr>
<td>Atlantic Region Total</td>
<td>689</td>
<td>77</td>
<td>117</td>
<td>104</td>
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<td>Prince Edward Island</td>
<td>76</td>
<td>13</td>
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<tr>
<td>Nova Scotia</td>
<td>233</td>
<td>65</td>
<td>56</td>
<td>30</td>
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<tr>
<td>Labrador and Newfoundland</td>
<td>155</td>
<td>54</td>
<td>43</td>
<td>1</td>
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<tr>
<td>New Brunswick</td>
<td>225</td>
<td>53</td>
<td>36</td>
<td></td>
</tr>
</tbody>
</table>

Number of additional bed required.
Priority

Early intervention activities should be a

Investment in crime prevention and

Considered

Alternatives to custody should be

Manage more offenders in custody

Strategies must be developed to satisfy

Where facilities are at or over capacity

Evaluate the reliability of estimates.

It would be prudent to monitor these
Title: Bill C-30

Issue: To provide preliminary information about Bill C-30 Protecting Children from Internet Predators Act.

Background and Current Status:

- On February 14, 2012, the Honourable Vic Toews, Minister of Public Safety, and the Honourable Rob Nicholson, Minister of Justice and Attorney General of Canada, introduced the Protecting Children from Internet Predators Act, in the House of Commons.

- Bill C-30 will require telecommunications service providers (TSP) to:
  a. implement and maintain technical capability to enable lawfully authorized interceptions; and
  b. provide basic subscriber information to police, CSIS and Competition Bureau officials upon request (without a warrant). This information is limited to subscriber name, address, telephone number, e-mail address, the Internet protocol address, and the name of the service provider.

- Access to the actual content of communications, or tracking of an individual or a telecommunications device, will continue to require judicial authorization, except in exigent or exceptional circumstances, as per current legislation governing interception.

- The following safeguards are contained in the Bill for basic subscriber data:
  a. The policing agency must keep a record of accessing the information;
  b. The information can only be used for a duty or function related to a police service; and
  c. There are internal audit requirements.

- The proposed legislation also allows for police preservation demands and judicial preservation orders. The purpose of these provisions is to allow the safeguard of computer data for a limited period of time so that a warrant or production order can be obtained prior to the computer data being deleted.

- A preservation demand is valid for 21 days (domestic investigations) or 90 days (international investigations). If the police do not return with the proper authorization (i.e., preservation order, production order or warrant) the third party is required to destroy the computer data that was preserved as soon as feasible unless retaining the information is part of the company’s normal business practice.

- Ultimately, in order to receive the contents of what is being preserved under a preservation order or demand, a judicially authorized production order or warrant is required.

- The legislation also:
  a. provides a single court application process for obtaining judicial authorization for multiple investigative tools related to a single investigation involving the interception of private communications;
- modernizes the number recorder warrants provision that allows a law enforcement agency to obtain "incoming and outgoing" numbers only from a telephone under surveillance. The warrants provision is expanded to include all forms of telecommunication; and allows the police to trace and identify the originating service provider involved in the transmission of a specified communication.

- This legislation is supported by the Association of Chiefs of Police.

- There has been significant criticism of this Bill from civil libertarians particularly as it relates to the provision of subscriber information without a warrant. There is also concern with the potential impact on TSPs.

**Next Steps:**

- Further analysis of this Bill will be undertaken.

Prepared: Stephen Ring

Approved by: Paul Noble
Assistant Deputy Minister
Public Safety and Enforcement

Approved by: Donald H. Burrag, QC
Deputy Minister and
Deputy Attorney General

Approved by: Minister of Justice
and Attorney General

February 23, 2012
Information Note
Department of Justice

Title: Safe Streets and Communities Act

Issue: To provide information on the federal Safe Streets and Communities Act.

Background and Current Status:

- On September 20, 2011, federal justice minister Rob Nicholson tabled C-10, the government's new crime bill.
- Formerly known as The Safe Streets and Communities Act, the bill comprises nine smaller bills that were previously introduced by the Conservative government during its minority rule, but were never passed.
- The Conservatives' election platform promised to pass this bill within 100 sitting days of Parliament, beginning on June 6.
- C-10 contains the following bills:

1. The Protecting Children from Sexual Predators Act (formerly Bill C-54)
   - this Act would:
     - establish new mandatory minimum penalties for existing offences related to child exploitation;
     - increase maximum prison sentences for four of these offences (to reflect their "particularly heinous nature"); and
     - create two new offences: 1) to ban anyone from providing sexually explicit material to a child for the purpose of committing a sexual offence against that child, and 2) to ban anyone from using any means of telecommunications (e.g. the internet) to make arrangements with another person to commit a sexual offence against a child.

2. The Increasing Penalties for Organized Drug Crime Act (formerly Bill S-10)
   - this Act would:
     - amend the Controlled Drugs and Substances Act to establish mandatory minimum penalties for offences involving drugs listed in Schedule I, such as heroin, cocaine and methamphetamine, and in Schedule II, such as marijuana. (see the attached annexes);
- increase the maximum penalty for the manufacture of drugs in Schedule 11 of the Controlled Drugs and Substances Act (like marijuana) from seven to 14 years; and

- Move date-rape drugs and amphetamines to Schedule I, thus resulting in higher maximum penalties.

3. Protecting the Public from Violent Young Offenders Act (formerly Bill C-4) this Act would:

- highlight the protection of society as a fundamental principle of the Youth Criminal Justice Act;

- modify pre-trial detention rules to help ensure that, when necessary, violent and repeat young offenders are kept off the streets while awaiting trial. There is judicial discretion given to incarcerate pre-trial. A young person can be held in pre-trial custody if charged with a serious violent offence or an offence, other than a serious offence, if there is a history that indicates a pattern of outstanding charges or findings of guilt. This is a significant change from Bill C-4 which was limited to serious offences and the current YCJA which states that pre-trial detention is presumed unnecessary unless the young person could be committed to custody if found guilty of the offence to which they are charged.

- strengthen sentencing provisions and reduce barriers to custody, where appropriate, for violent and repeat young offenders;

- add "specific deterrence and denunciation" to the principles of sentencing to discourage a particular offender from committing further offences;

- expand the definition of "violent offence" to include behaviour that endangers the life or safety of others;
- ensure adult sentences are considered for youth who commit serious violent offences (murder, attempted murder, manslaughter and aggravated sexual assault);
- require the courts to consider lifting the publication ban on the names of young offenders convicted of "violent offences," when youth sentences are given;
- require police to keep records when informal measures are used in order to make it easier to identify patterns of re-offending; and
- ensure that all youth under 18 who are given a custodial sentence will serve it in a youth facility.
4. The Ending House Arrest for Property and Other Serious Crimes by Serious and Violent Offenders Act (formerly C-16) this Act would:

- propose amendments that would further restrict the use of conditional sentences (i.e. "house arrest") for offences;  

\[1\] The current law provides that a conditional sentence may be imposed only if:

- the offence does not carry a mandatory minimum prison sentence;
- the court imposes a sentence of imprisonment of less than two years;
- the court is satisfied that serving the sentence in the community will not endanger the safety of the community; and
- the court is satisfied that the sentence would be consistent with the fundamental purpose and principles of sentencing.
the list of additional offences for which conditional sentences would not be available are as follows:

1) All offences for which the law prescribes a maximum sentence of 14 years or life including: manslaughter, aggravated assault, arson and fraud over $5,000.

2) Offences prosecuted by indictment and for which the law prescribes a maximum sentence of imprisonment of 10 years that:
   - result in bodily harm;
   - involve the import/export, trafficking and production of drugs; or
   - involve the use of weapons.

3) The following offences for which the law prescribes a maximum penalty of 10 years when prosecuted by indictment:
   - prison breach
   - motor vehicle theft
   - criminal harassment
   - sexual assault
   - kidnapping, forcible confinement
   - trafficking in persons – material benefit
   - abduction of a person under 14 (i.e., by a stranger)
   - theft over $5,000
   - breaking and entering with intent
   - being unlawfully in a dwelling-house
   - arson for fraudulent purpose

In addition, conditional sentences cannot be imposed for the indictable offences that are punishable by a maximum of 10 years imprisonment or more:

- a serious personal injury offence (as defined in section 752);
- a terrorism offence; and
- a criminal organization offence.
5. **The Increasing Offender Accountability Act** (formerly Bill C-39) proposes amendments to the *Corrections and Conditional Release Act* that would:

- enshrine victim participation in conditional release board hearings, and keep victims better informed about the behaviour and handling of offenders;
- increase offender accountability by modernizing disciplinary sanctions and adding a requirement in law to complete a correctional plan for each offender that sets out behavioral expectations, objectives for program participation, and the meeting of court-ordered obligations such as victim restitution or child support;
- authorize police to arrest an offender who appears to be breaking their release conditions, without the need for a warrant; and
- emphasize the importance of considering the seriousness of an offence in Parole Board of Canada decision-making.

6. **The Eliminating Pardons for Serious Crimes Act** (formerly Bill C-23B) this Act would:

- replace the term “pardon” with the term “record suspension”;
- require the Parole Board of Canada to submit an annual report that includes statistics on the number of applications for record suspensions and the number of those ordered;
- extend the ineligibility periods for applications for a record suspension from three to five years for summary conviction offences and from five to ten years for indictable offences; and
- make certain people ineligible to apply for a record suspension, including those convicted of a sexual offence in relation to a minor, or those convicted of more than three offences — each of which was prosecuted by indictment or is a serious offence that is subject to a maximum punishment
of imprisonment for life, and for each of which the person was sentenced to imprisonment for two years or more.

7. The International Transfer of Canadian Offenders Back to Canada Act (formerly Bill C-5) this Act would:

Propose amendments to the International Transfer of Offenders Act, that would enshrine in law a number of additional key factors in deciding whether an offender would be granted a transfer back to Canada. These factors would include whether an offender would upon return to Canada:

- endanger public safety;
- continue to engage in criminal activities following his or her transfer; and
- endanger the safety of any child, particularly in cases of offenders who have been convicted of sexual abuse.
8. The Supporting Victims of Terrorism Act (formerly Bill S-7) this Act would:

- Permit victims of terrorism to sue the perpetrators or supporters of terrorism, including foreign countries that the Canadian government has listed as having provided support to terrorism.

9. Protecting Vulnerable Foreign Nationals against Trafficking, Abuse and Exploitation Act (formerly Bill-C-56) this Act would:

- Make it possible to deny work permits to people who are vulnerable to abuse or exploitation, including exotic dancers, low-skilled labourers and victims of human trafficking.
- The Department of Human Resources Labour and Employment (HRLE) were consulted and expressed concern with the power that this bill gives the Minister of Citizenship, Immigration and Multiculturalism and how that power will be used.
- The Bill requires an officer to refuse authorization to work in Canada based upon public policy considerations. These public policy considerations are in the form of Ministerial instructions.
- The Bill states that the instructions are aimed to protect foreign nationals who are at risk of being subjected to humiliating or degrading treatment, including sexual exploitation.
- HRLE were concerned with who decides what constitutes humiliating or degrading treatment.
- HRLE were also concerned with the operationalization of the Bill regarding exotic dancers, low-skilled labourers, and potential victims of human trafficking.
Ongoing Initiative

- In 2007, at the direction of Atlantic Premiers, and under the umbrella of the Atlantic Heads of Corrections (AHOC), a working group with representatives from Newfoundland, Labrador, New Brunswick, Nova Scotia, and Prince Edward Island were tasked to undertake an analysis of the projected cost of criminal law amendments for Corrections in Atlantic Canada.

- The AHOC working group met in February 2008 to begin the Corrections component of a larger criminal justice costing exercise on proposed and recently proclaimed criminal law amendments.

- The AHOC working group completed its initial Report in June 2008 which projected 22 additional beds being required for Newfoundland and Labrador resulting from proposed and recently proclaimed criminal law amendments, at that time.

- The AHOC working group has reconvened to analyze the projections made in 2008 and will be analyzing the infrastructure requirements and other impacts for Corrections in Atlantic Canada of proposed federal legislation including the Safe Streets and Communities Act.

- Statistics from the Atlantic Heads of Corrections Working Group indicate that since the inception of Bill C-9 in 2007, Bill C-2 in 2008 and Bill C-25 in 2009, the average daily count of Sentenced and Remanded Inmates has increased from 280 in 2007/2008 to 333 in 2010/2011 in Newfoundland and Labrador. In 2008, the original AHOC group estimated that the Sentenced + Remand in 2010/2011 would be 296 inmates. The actual is 37 higher than the estimate.

- The next meeting of the AHOC working group is scheduled for October 6, 2011. Analysis by this working group is ongoing.

- Across Canada in 2010, the reported rate and severity of crime declined by 5% and 6% respectively from 2009, while an increase in both rate and severity was reported in Newfoundland and Labrador by 3% and 10% respectively. In most Census Metropolitan Areas (CMAs), overall rate and severity remained stable or fell. In St. John’s, the rate increased by 7% and severity increased by 12%. (Juristat Article: “Police-reported crime statistics in Canada, 2010”)

- The increases for Newfoundland and Labrador can be attributed mostly to a 37% increase in robberies. While break-ins and motor vehicle thefts decreased nationally, these crimes also increased by 17% and 30% in Newfoundland and Labrador.

- Consistent with the rest of Canada, serious assaults have decreased in the Province (5% nationally v.s. 7% provincially). Although homicide rates decreased by 10% nationally, this type of crime remained stable in the Province with 4 in 2010.
## ANNEX A

Proposed New Mandatory Minimum Penalties for Serious Drug Offences Schedule 1 drugs (cocaine, heroin, methamphetamine, etc.)

<table>
<thead>
<tr>
<th>OFFENCE</th>
<th>MANDATORY MINIMUM PENALTY</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>w/ Aggravating Factor List A¹</td>
<td>w/ Aggravating Factor List B²</td>
</tr>
<tr>
<td>Production</td>
<td>2 YEARS</td>
<td>n/a</td>
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<tr>
<td>Trafficking</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Possession for the Purpose of Trafficking</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 YEAR</td>
<td>2 YEARS</td>
</tr>
<tr>
<td>Importing Exporting (if more than 1 kg of Schedule 1 substances)</td>
<td>1 YEAR</td>
<td>2 YEARS</td>
</tr>
<tr>
<td>Possession For the Purpose of Exporting</td>
<td>1 YEAR</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>2 YEARS</td>
<td>n/a</td>
</tr>
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</table>
ANNEX B

Proposed New Mandatory Minimum Penalties for Serious Drug Offences Schedule II drugs (cannabis and marijuana)

<table>
<thead>
<tr>
<th>OFFENCE</th>
<th>MANDATORY MINIMUM PENALTY</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trafficking</td>
<td>1 YEAR</td>
<td>2 YEARS</td>
</tr>
<tr>
<td>Possession for the Purpose of Trafficking</td>
<td>1 YEAR</td>
<td>2 YEARS</td>
</tr>
<tr>
<td>Importing Exporting</td>
<td>1 YEAR</td>
<td>n/a</td>
</tr>
<tr>
<td>Possession for the Purpose of Exporting</td>
<td>1 YEAR</td>
<td>n/a</td>
</tr>
<tr>
<td>Production 6 - 200 plants</td>
<td>6 MOS</td>
<td>n/a</td>
</tr>
<tr>
<td>Production 201 - 500 plants</td>
<td>1 YEAR</td>
<td>n/a</td>
</tr>
<tr>
<td>Production more than 500 plants</td>
<td>2 YEARS</td>
<td>n/a</td>
</tr>
<tr>
<td>Production oil or resin</td>
<td>1 YEAR</td>
<td>n/a</td>
</tr>
</tbody>
</table>

Offence would have to involve more than 3 kg of cannabis marijuana or cannabis resin.

Offence would have to involve more than 3 kg of cannabis marijuana or cannabis resin.

Offence is committed for the purpose of trafficking.

Offence is committed for the purpose of trafficking.

Offence is committed for the purpose of trafficking. Maximum sentence will be increased to 14 years imprisonment.

Maximum sentence will be increased to 14 years imprisonment.

Maximum penalty will be increased to 14 years imprisonment.

Offence is committed for the purpose of trafficking.
1 Aggravating Factors List A

The aggravating factors include offences committed:

- for the benefit of organized crime;
- involving use or threat of violence;
- involved use or threat of use of weapons;
- by someone who was previously convicted of a designated drug offence or had served a term of imprisonment for a designated substance offence in the previous 10 years; and,
- through the abuse of authority or position or by abusing access to restricted area to commit the offence of importation/exportation and possession to export.

2 Aggravating Factors List B

The aggravating factors include offences committed:

- in a prison;
- in or near a school, in or near an area normally frequented by youth or in the presence of youth;
- in concert with a youth; and
- in relation to a youth (e.g. selling to a youth).

3 Health and Safety Factors

- the accused used real property that belongs to a third party to commit the offence;
- the production constituted a potential security, health or safety hazard to children who were in the location where the offence was committed or in the immediate area;
- the production constituted a potential public safety hazard in a residential area; and
- the accused placed or set a trap.