



C-10: An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts
(Safe Streets & Communities Act)

**BRIEF TO THE
STANDING COMMITTEE ON JUSTICE and HUMAN RIGHTS**

**HOUSE OF COMMONS
41st Parliament, 1st Session**

On The Safe Streets & Communities Act

Bill C-10

**Presented by
St. Leonard's Society of Canada
Ottawa, Ontario**

Table of Contents

Background of St. Leonard’s Society of Canada.....	1
History & Summary of the Act	1
Introduction	2
Recommendations	2
Part One: Terrorism	3
Part Two: Changes to Sentencing: Mandatory Minimums & Conditional Sentences	3
Increasing Penalties for Serious Drug Crime	3
Part Three: Amendments to the Corrections and Conditional Release Act	3
Ending House Arrest for Property and Other Serious Crimes by Serious & Violent Offenders Act.....	3
Eliminating Pardons for Serious Crimes Act.....	3
Part Four: Amendments to the Youth Criminal Justice Act	4
Sébastien’s Law (Protecting the Public From Violent Young Offenders)	4
Part Five: Amendments to Transfer Laws	4
Adding Criteria for the International Transfer of Canadian Offenders Back to Canada	4
Increasing Penalties for Serious Drug Crime (Former Bill S-10)	5
Amendments to the Corrections & Conditional Release Act (Former Bill C-16)	7
Eliminating Pardons For Serious Crimes (Former Bill C-23B)	8
Sébastien’s Law (Former Bill C-4)	10
Adding Criteria for the Transfer of Offenders Back to Canada (Former Bill C-5)	12
Recommendations	12
Appendix	<i>i</i>
<i>Appendix 1.1: A Mental Health Perspective</i>	<i>ii</i>

Background of St. Leonard's Society of Canada:

St. Leonard's Society of Canada (SLSC) is pleased to have the opportunity to present this brief to the Standing Committee on Justice and Human Rights after having given consideration to Bill C-10, *The Safe Streets & Communities Act*.

SLSC is a membership-based, charitable organization dedicated to community safety since 1967.¹ The mission of SLSC is to promote a humane and informed justice policy and responsible leadership to foster safe communities. We endorse evidence-based approaches to criminal and social justice, conduct research and develop policy, support our member affiliates, and advance collaborative relationships and communication among individuals and organizations dedicated to social justice. Our membership of twelve direct service agencies across Canada provides residential and day programs to more than 15,000 youth and adults annually.

SLSC acknowledges the importance of the issues that are outlined within Bill C-10, and the concerns of the public for community safety. We support the government's intention to further improve the functioning of the criminal justice system. However, we have concerns regarding C-10 in its current form and its potential overall/long-term effects on public safety and crime prevention. We outline these concerns within this brief and look forward to your questions and comments.

While SLSC is supportive of the amount of funding available to be put forward into criminal justice matters, we do not believe that Bill C-10 makes the best use of the proposed funds. Current studies, including cost-benefit analyses, support investments in crime prevention for keeping the public safe. Additionally, treatment programs and community supervision of offenders have a higher success rate for reducing rates of recidivism, than do incarceration approaches which do not contribute to long term community safety.

We acknowledge the duty of the government to take crime seriously. Therefore we strongly recommend that each of the nine components of this Bill be given due consideration on their own. The current structure of Bill C-10 is overly ambitious in combining critical issues and each warrants its own timely and thoughtful deliberation. To package measures for terrorists, sex offenders, and youths into one bill significantly underestimates the complexities associated with criminal activity and its root causes, and risks overlooking major sociological and criminogenic factors that are pertinent to the treatment of each group.

History and Summary of the Act:

On September 20, 2011, the Minister of Justice introduced Bill C-10, which groups nine bills that had been separately dealt with in the 40th Parliament in the 3rd Session. C-10 consists of five main parts, the first dealing with terrorism, particularly to establish the rights of victims of terrorism, as well as the option to sue foreign states in Canada's domestic courts. The second part amends the Criminal Code regarding conditional sentencing, including mandatory minimums and penalties for sexual and drug

¹ Incorporation #12894 06600 RR0001. Online: www.stleonards.ca. SLSC is not a religious organization.

offences. The third part amends the *Corrections and Conditional Release Act (CCRA)* by tightening the rules surrounding conditional release, as well as the rules on the international transfer of offenders. This part also seeks to amend the term ‘pardon’ to replace it with ‘record suspension’ and extends the ineligibility period for applications for a record suspension and removes the option of a pardon for certain types of offenders. The fourth part amends the Youth Criminal Justice Act to include more punitive measures against youth; and, finally, the fifth part amends immigration laws to make it easier for the government to deny visas to those who may be victims of human trafficking.

SLSC has concerns regarding the following amendments in C-10:

- Increasing Penalties for Serious Drug Crime (former Bill S-10)
- Protecting Society from Violent and Repeat Young Offenders (a.k.a. Sebastien’s Law; former Bill C-4)
- Ending House Arrest for Property & Other Serious Crimes (former Bill C-16)
- Eliminating Pardons for Serious Crimes (former Bill C-23B)
- Adding Criteria for the International Transfer of Canadian Offenders Back to Canada (former Bill C-5)

SLSC is in favour of the following proposed amendment:

- Regarding the former Bill C-4 on youth justice, SLSC is in favour of the amendment that ensures all young offenders under the age of 18 who are given a custodial sentence will serve it in a youth facility.

In the sections that follow, we will address the proposed amendments in the order of the five main parts listed above.

Introduction

Based on our current system in Canada that does not jail people for the entirety of their lives, without parole, for the majority of Criminal Code violations, the best practice in dealing with offenders is crime prevention and reducing rates of recidivism. This conclusion comes from SLSC’s more than 40 years of experience in the field of criminal justice and community corrections. In order to avoid recidivism, prevention is the best approach to reducing further crime in Canada – not implementing unduly punitive measures that increase rates of crime. The focus should be on deploying effective reintegration tools, and SLSC’s experience has shown that reintegration models which highlight appropriate access to shelter and social supports provide an increased opportunity for individuals to contribute successfully to their communities and their families.

Crime prevention remains an urgent area of criminal justice that requires a greater degree of support from the government. It should be noted that prevention applies not only to those who are not in conflict with the law, but also to those who are at risk of re-offending due to the criminogenic factors associated with incarceration and contextual factors with individual histories. Maintaining a focus on crime prevention for those who are already in conflict with the law and allowing us to provide service as

we have been doing for years is a sound economic, social, and humane investment which has been voiced countless times by experts in the field of criminal justice. These concepts are well supported for achieving better public safety results in Canada, and have been successfully operating among other international peers such as Italy, Germany, the Netherlands, France, Sweden, Finland and Japan who are seeing better results with a focus on social democracy rather than on an overly punitive system that relies on individual self-governing practices.²

Recommendations:

Part One: Terrorism

SLSC has no comments on C-10's section on victims of terrorism.

Part Two: Changes to Sentencing: Mandatory Minimums & Conditional Sentences

Increasing Penalties for Serious Drug Crime (former Bill S-10)

The proposed amendments to increase mandatory minimums raise serious concerns. One of those concerns is prison overcrowding which will be made worse by the imposition of mandatory minimums, a problem that is already creating problems for the criminal justice system. SLSC is concerned about the removal of judicial discretion for the offences, the majority of which fall under drug legislation. Judicial discretion is an integral part of the justice system, and imposing mandatory sentences removes the option for judges to select the best means of sentencing for offenders thereby removing options that contribute to long term community safety. Experience in this field, supported by criminological literature, dictates that prevention is the best means of ensuring the best use of tax dollars. Mandatory minimums are simply neither a cost effective nor humane method for dealing with drug related crime.

Part Three: Amendments to the *Corrections and Conditional Release Act*

Ending House Arrest for Property & Other Serious Crimes (former Bill C-16)

Conditional sentencing is an alternative to incarceration to provide a more effective punishment. The proposed amendments will be costly to taxpayers, remove the essential components of our justice system surrounding judicial discretion, and are non-productive in achieving positive public safety results. The amendments also will contribute to overcrowding in prisons, and venture towards the violation of rights under the United Nations minimum rules for the treatment of prisoners.

Eliminating Pardons for Serious Crimes (former Bill C-23B)

SLSC has noted that the former Bill C-23B seems to have been the result of reaction to some rare and sensational instances. Should adjustments to the existing system be warranted, they ought to reflect the outcome of a thorough and disciplined review by people with expertise in the field.

² Cavadino, M. & Dignan, J. (2006) *Penal Systems: A Comparative Approach*. Sage Publications, London. p.17.

SLSC notes that semantics matter in our communities. The term “Record Suspension” implies that the individual carries forever the stigma of conviction, regardless of the fact that s/he has fulfilled all requirements under our laws. The consequences are serious in terms of living successfully within society, obtaining employment, housing and more. SLSC has found that once criminal sanctions are fulfilled, it is in society’s best interest to afford second chances and opportunities to live crime-free to individuals so that they can contribute to Canada, their communities and their families.

Part Four: Amendments to the *Youth Criminal Justice Act*

Protecting Society from Violent and Repeat Young Offenders (a.k.a. Sébastien’s Law; former Bill C-4)

The YCJA in its current form has been operating successfully since its implementation, and SLSC does not support the amendments of this Act under the current Bill C-10. Of particular urgency is the need for the Standing Committee to consider youth justice outside the spectrum of other issues. SLSC recommends that the former Bill C-4 be given its own consideration outside of Bill C-10 to maintain the integrity of the YCJA and the merit it offers to youth justice practices in Canada. It is violent and repeat young offenders who require the most intensive rehabilitative approaches, and programs that offer these services should be better supported so that they can achieve the best possible public safety results.

Part Five: Amendments to Transfer Laws

Adding Criteria for the International Transfer of Canadian Offenders Back to Canada (former Bill C-5)

SLSC has concerns regarding the amendments that restrict an offender from being granted a transfer back to Canada. In such circumstances where an offender is jailed outside of Canada, SLSC supports the rule of law that respects the mobility rights of Canadian citizens and suggests that offenders be allowed to serve their sentences in a Canadian institution under Canadian penal standards.

Increasing Penalties for Serious Drug Crime

Former Bill S-10

St. Leonard's Society of Canada (SLSC) would like to express our concern over the proposed amendments of the Controlled Drugs and Substances Act. SLSC understands the harmful implications of constant drug use, abuse and trafficking within the community. However, as an agency that directly serves clients troubled by this particular social harm, we are aware of the burden—not only for offenders, but also affected communities, the court and penal system—that this change will create. Based on our experience providing effective crime prevention and rehabilitation programs, we would like to address the potential ramifications that are likely to surface if action is not taken to alter some of the proposed measures in this section of Bill C-10.

The current proposal hopes to establish mandatory minimum penalties for serious drug offences when they are carried out for organized crime purposes or if they involve targeting youth. Moreover, these mandatory minimums target narcotics specifically listed in Schedules I and II which are classified as extremely harmful. However, the practice of incarcerating those who engage in illicit drug trade for longer periods runs counter-productive to the goal of minimizing drug use, abuse and trafficking. Canadian communities will be better served in the long term by reallocating resources towards treatment, education, and rehabilitation and focusing on prevention rather than incarceration, where root causes of the drug trade are not adequately addressed.

The effects of mandatory minimum sentences are numerous, including: the increase of the prison population; the removal of judicial discretion; failure to provide the deterrence intended; and a number of unexpected consequences upon the administration of justice and marginal populations.³ Prisons in Canada are already overcrowded causing concerns regarding the results that 'tough on crime' legislation provides. For example, a correctional officer with 19 years of experience at the Toronto West Detention Centre has been cited noting that overcrowding results in more violence, greater conflict and more problems managing inmates.⁴ Howard Sapers, Canada's Correctional Investigator, substantiates this claim as well by noting that mandatory minimums will result in even more overcrowding, less interaction between staff and inmates, and undermine the efforts of rehabilitation. Furthermore he states:

*The climate in prisons is increasingly harsh, tense and stressed...Current conditions inside our federal penitentiaries are...challenging the ability of our correctional authority to deliver a correctional service that is fair, safe and humane.*⁵

This drastic population increase has economic implications for Canadian taxpayers. The cost of building one minimum security cell is roughly \$260,000; it increases to \$400,000 for medium security cells and

³ Mallea, 2010:13; Jackson and Stewart, 2009

⁴ Mallea, 2010:30

⁵ Sapers, Howards. November 2010. Correctional Investigators Report 2009-10 Release Statement.

most significantly reveals that maximum security cells will cost tax payers \$600,000.⁶ Even more staggering is that the annual costs per inmate per cell amount for a provincial or territorial system is \$84,225 while for federal inmates amasses a \$147,467 price tag.⁷ It should be noted that these figures are not representative of the expenditure in its entirety, for example, programming, etc. but rather gives us an idea of the general cost to incarcerate offenders.

Moreover, the bulk of these increases to the prison population will originate from drug offences, due to their visibility to law enforcement. The production and sale of cannabis, for example, typically takes place in public spaces such as parks, schools, the street, night clubs and university dorm rooms. This is reflected from Statistics Canada's 2010 findings that possession of cannabis was reported at 56,870 while cannabis trafficking was at 18,256 cases.⁸ Imposing mandatory minimum sentences does not address the social and economic hardships that are often attributed to drug use resulting in the figures displayed above. A more proactive stance in the form of drug prevention should be advocated.

This stance begins with the discretion of our legal system particularly judicial discretion. Judges recognize that each case presents different challenges that require thoughtful consideration. According to the Canadian Bar Association (CBA) (2009) limiting discretion will have an adverse impact on the fair and effective administration of criminal justice across Canada. Moreover, the CBA (2010) believes judges have effective guidance from the *Controlled Drugs and Substances Act* and the *Criminal Code* to determine a fit sentence for the individual offender given the circumstances of the offence. This highlights the humanistic attributes of the Canadian judicial procedure where judges have the ability to separate the offender from their deviant behaviour facilitating the beginnings of accountability and re-integration.

The many barriers to obtaining treatment for addictions have been well recorded within literature. Drug treatment courts are described as very intrusive and humiliating particularly during the administration of the urine test where an official is present. Such a degrading practice is enough for an offender not to opt for this program despite the incentive of a suspended record. Perhaps looking into what other countries have done to reduce drug crime related crime is a viable option.

For example drug policies implemented in the Netherlands advocate fines, education, and the control of drugs through state intervention.⁹ Detention is only used in the production, sale and possession of hard drugs—cocaine, heroin and methamphetamines.¹⁰ As a result, drug use and drug related crime has decreased in the Netherlands since the 1970's. In stark contrast The United States experience with mandatory minimums has resulted in an incarceration rate of 756 per 100,000 and ranks number one in the world due to that statistic.¹¹ The majority of these convictions are for drug related offences,

⁶ Mallea, 2010

⁷ Mallea, 2010

⁸ www.statcan.gc.ca/daily-quotidien/110721b1-eng.htm

⁹ Van Ooyen-Houben, 2008; Garretsen, 2010

¹⁰ Van Ooyen-Houben, 2008; Garretsen, 2010

¹¹ Statistics Canada, 2010

primarily possession.¹² Bill C-10 seems to be in line with the latter example while ignoring the negative implications associated with mandatory minimums.

Amendments to the Corrections and Conditional Release Act

Former Bill C-16

Conditional Sentencing was enacted in the Canadian criminal justice system in 1996 with the passing of Bill C-41. This Bill aimed at diverting offenders out of prison to serve their sentence within the community under strict conditions. To be eligible for a conditional sentence the offender must not be a threat to society; the offence must not carry a minimum sentence; the sentence must be two years or less; and it must uphold the fundamental principles and goals of the justice system.

Currently under Bill C-10, there are plans to “expand and clarify” the list of offences that a judge can no longer apply a conditional sentence to. The expansion, as indicated in the Department of Justice Backgrounder,¹³ is said to include violent offences and would thus result in an influx of offenders into the prison system. SLSC stresses that these modifications to conditional sentencing will have negative effects upon the criminal justice system as a whole, Canadian communities, and offenders.

The government currently estimates the overall crime bill to cost 78.6 million dollars over 5 years, however, the former Bill C-16 alone has been projected to cost a considerable amount to taxpaying citizens. The cost of imprisoning a provincial prisoner is estimated at \$143 per day and upwards of 52,000 per year¹⁴. As mentioned in previous readings of the Bill, there would be approximately 15,000 new prisoners entering the system as a result.¹⁵ The cost would then be upwards of 780 million dollars to imprison these individuals for 1 year. This estimate far exceeds the forecasted government cost of the total crime bill.

As noted above, the amendments for conditional sentencing would lead to an influx of offenders into prison. Currently, the provincial and federal prison systems would be strained to absorb these large increases. Throughout provincial jails there is overcrowding with prisoners being double, and even tripled bunked. This practice is a direct violation of human and prisoner rights. As specified by the United Nations, there should not be more than two prisoners in a cell.¹⁶ This practice increases tension in the prison and creates an unsatisfactory environment for offenders to be housed.

¹² Western and Wildeman, 2009

¹³ Background provided by the Department of Justice Canada- Backgrounder: *Safe Streets and Communities Act: Ending House Arrest for Property and Other Serious Crimes*.

¹⁴ Cost of Imprisonment, www.prisonjustice.ca

¹⁵ Second Reading of Bill C-16: *Ending House Arrest for Property and Other Serious Crimes by Serious and Violent Offenders Act*.

¹⁶ United Nations High Commission for Human Rights- Standard Minimum Rules for the Treatment of Prisoners

The proposed amendments would also reduce sentencing options for judges. A reduction in judicial discretion means judges would not have the ability to make decisions on a case by case basis; therefore, an individual committing a more serious crime would receive a similar sentence as one who committed a less serious crime. This universal sentencing principle would not allow judges to consider mitigating factors such as first time offenders, or situational factors. The proposed amendments also undermine judges' capabilities when considering whether the individual is a threat to society, or not.

Conditional sentencing has allowed many offenders to stay within the community and maintain positive social relationships, to contribute economically, and to maintain familial ties and support. As shown in previous readings of this bill, conditional sentencing has been highly successful in diverting offenders out of the prison system and completing their sentence. Therefore, this section of Bill C-10 restricts the possibility of non-violent offenders receiving conditional sentences and would, as indicated above, consequently lead to negative outcomes.

SLSC does not support the proposed amendments in their current form, and urges the Standing Committee to consider the importance of conditional sentencing as it pertains to the success of the justice system, and good public safety results.

Eliminating Pardons for Serious Crimes

Former Bill C-23B

SLSC does not support the proposed amendments to the Criminal Records Act to replace the term "pardon" with "record suspension", or to extend the ineligibility periods for both summary and indictable offences. The term "record suspension" implies that the individual carries forever the stigma of conviction, regardless of the fact that s/he has fulfilled all requirements under our laws. The consequences are serious in terms of living successfully within society, obtaining employment, housing and more. There is substantial support for the value of the pardons system¹⁷, and some have noted that

It is plausible that public safety is actually enhanced by setting aside criminal convictions of Canadian offenders and giving these people the opportunity to make a smoother, albeit long-term, transition into law-abiding status. By granting offenders a pardon, they again have a vested interest in law-abiding behavior and have something to "lose": their restored status as a non-offender.¹⁸

While there is opportunity to draw from various experts regarding the value of pardons in their current form, SLSC would like to highlight an excerpt of an esteemed colleague, George Myette, Executive

¹⁷ See for example, Ruddell, R. & Winfree, L.T. (2006). Setting Aside Criminal Convictions in Canada: A Successful Approach to Offender Reintegration. *The Prison Journal*. No.86; Shadd, M. (2001) Making Good: How Ex-Convicts Reform and Rebuild Their Lives. Washington, D.C.: American Psychological Association.

¹⁸ Ruddell, R. & Winfree, L.T. (2006). Setting Aside Criminal Convictions in Canada: A Successful Approach to Offender Reintegration. *The Prison Journal*. No.86. p.464.

Director of The Seventh Step Society of Canada, who we believe exemplifies this value in his speech to the Standing Committee on Public Safety and National Security, November 24, 2010:

In 1969, as a 16-year-old, and in 1971, just before I turned 18, and as a 17-year-old, I was convicted of a total of three criminal offences--property offences. While serving the sentence for my final offence I realized this was not a path I wanted to follow for the rest of my life and I was able to make a successful transition back into society, eventually graduating from Mount Royal College, now Mount Royal University, in 1975. I then went on to assist in the initial development of the Alberta Seventh Step Society and the Seventh Step Society of Canada. I applied for and received a pardon in 1980, so I have been through that process, thus taking one more important step in my personal journey. I left the organization as paid staff and merged into the mainstream of the oil and gas business in 1982, and I've been a volunteer since then. In fact, as of this year I've been a correctional volunteer for 37 years, so it does cover a few cycles in the justice system. Since entering the oil and gas business, I've held various management positions, including the president and general manager of a service company I was a shareholder in. Currently, I'm a senior management consultant with a well-recognized engineering firm and I'm responsible for worldwide business development.

I can say, from personal experience that receiving a pardon was an important part of feeling that I had been accepted back into society and had regained a measure of credibility that I had lost when I was convicted of my offences. The current Minister of Public Safety had made a public statement last summer that it was not the responsibility of the state to forgive when it comes to criminal offences, but rather the responsibility of society to do so. I disagree with this statement, and I said so in an e-mail that I sent to the minister shortly after this statement was reported. I believe the state represents society and must take a responsible leadership role with regard to public safety. I believe the public looks to the state for the administration of justice, and that includes exoneration for positive deeds as well as punishment for negative ones. Society places its trust in the state for its safety and also trusts the state to advise us when we feel someone is no longer a threat.¹⁹

SLSC urges the Standing Committee to consider the positive implications associated with the term “pardon” and its meaning to those who set it as a motivating goal for success, rather than for the sake of semantics Canadian communities. Additionally, SLSC supports the current eligibility periods for both summary and indictable offences based on recent Parole Board of Canada²⁰ statistics that demonstrate:

- That of the indictable offences pardoned in the past 5 years, 86% were under the “General” category, which includes offences such as Fraud over \$5,000, Break and Enter, Keep common gaming house, Possession of a weapon, and;
- 9.5% were for "Serious offences" cases (treated by indictment), which includes offences such as Assault with a weapon, Robbery, Trafficking in a narcotic, Kidnapping, Drive while impaired causing bodily harm or death, and;
- Only 2.4% of pardons were for sexual offences.

¹⁹ Myette, George. 2010. House of Commons Committees. SECU (40-3). Evidence No.042.

²⁰ National Parole Board. 2010. Pardons Outcomes.

Given these rates, SLSC believes that the chances for successful reintegration are increased under the current timelines, and that an extension for eligibility is not required.

Sébastien's Law – Protecting the Public from Violent Young Offenders

Former Bill C-4

SLSC acknowledges that the YCJA has been the object of some concerns; however, our position is that these are largely the result of a misunderstanding or ignorance of the facts of youth crime in Canada. We understand the government's intention to further improve the functioning of youth justice; but, we have concerns regarding this section in its current form and its potential overall/long-term effects on public safety and youth in conflict with the law.

The YCJA has operated successfully since its enactment in 2003, and it has resulted in a substantial decrease in the youth incarceration rate, with no significant increase in youth crime. Despite this achievement, and in relation to the 42% decline in detention of youths after conviction, an increase in the youth crime rate has *not* followed as recorded by Statistics Canada in 2008²¹ and the youth crime rate has generally dropped since the YCJA came into force. As recognized by the Canadian Bar Association's National Criminal Justice Section, "the goals of the YCJA have largely been realized: there are fewer court cases and fewer youth in custody, without a concomitant increase in violent youth crime."²²

Please note that SLSC filed a Brief with the Standing Committee on Justice and Human Rights in September 2010. Please refer to that document for our full report for a more detailed response to Bill C-4, or contact SLSC for a copy.

SLSC is in favour of the following proposed amendments:

- Inclusion in Section 3 of "diminished moral blameworthiness or culpability" as a principle that guides the application of judicial measures for young persons; and
- Prohibition against the imprisonment of young persons in adult correctional facilities (former Clause 21).

SLSC believes that the YCJA embodies a successful approach to youth justice. It is our view that the proposed amendments (namely former clauses 4, 7, 8, 11, 18, 20, and 24) would create a retroactive path to the criticisms previously faced by the YOA and now overcome by the YCJA.

Summary of SLSC's Proposed Policy Considerations:

St. Leonard's Society of Canada endorses the current orientation of the *Youth Criminal Justice Act* regarding sentencing principles: sentences should contribute to the long-term protection of the public via just and meaningful consequences promoting rehabilitation and reintegration into society. The

²¹ Statistics Canada, Canadian Centre for Justice Statistics, *Uniform Crime Reporting Survey, 2008*.

²² Canadian Bar Association's National Criminal Justice Section (2010). *Bill C-4 – Youth Criminal Justice Act amendments*. P.2.

addition of deterrence and denunciation as principles of youth sentencing does not contribute to this purpose. Evidence has shown that deterrence has little, if any, effect on youth while denunciation serves no constructive goal. Both these principles promote punishment oriented corrections and overreliance on incarceration.

St. Leonard's Society of Canada supports current legislation and the interpretation of the Supreme Court of Canada (in *R. v. D.B.*) that youth should not automatically be tried as adults. It is an established principle of law that youth should be treated separately under the criminal justice system and any burden for an exception to this treatment should rest with the Crown.

St. Leonard's Society of Canada promotes the *Youth Criminal Justice Act's* goal to consider all options before reliance on incarceration. The implementation of automatic enhanced youth sentences contradicts this principle and diminishes judicial discretion.

St. Leonard's Society of Canada supports current youth legislation regarding the enforcement of publication bans. Measures exist within the current legislation for lifting the ban for the purpose of protection of the public, etc. The automatic lifting of the publication ban for punitive reasons contributes to stigmatization, a recognized problem in the youth justice system.

St. Leonard's Society of Canada endorses continued and improved investment in community options and programs with regard to youth justice solutions, as community engagement is an important element in youth corrections. The Society believes that alternative justice measures must be made available and properly funded as evidence has shown them to be effective treatments for youth crime which are likewise meaningful to offenders.

St. Leonard's Society of Canada supports provisions within the *Youth Criminal Justice Act* for the intensive treatment of high risk – high need young offenders. The Society believes that through addressing the roots of a young person's criminal behaviour we are preventing future violence and ensuring public safety. These roots encompass a broad array of issues including youth gangs, youth mental health, poverty, discrimination, etc.

St. Leonard's Society of Canada believes the *Youth Criminal Justice Act* is oriented appropriately with regard to its philosophical approach to youth justice; however, in achieving its mandate the Act requires proper funding and implementation.

St. Leonard's Society of Canada endorses the aim of youth legislation in Canada in fostering responsibility, ensuring accountability, considering alternatives to incarceration, and implementing meaningful consequences and rehabilitative and reintegrative measures to guide youth into adulthood.

Taking into consideration the goals of the YCJA, research on deviant youth, and statistical analysis of youth crime, the YCJA in its current state should be considered nothing short of an undisputed success. SLSC acknowledges the responsibility of Parliament to scrutinize and reshape policy in order to enact changes that are required to ensure the safety and security of Canadian citizens; however, Bill C-4 does little to consider the practicality of creating effective change for some of Canada's most vulnerable citizens: its youth.

Adding Criteria for the International Transfer of Offenders Back to Canada

Former Bill C-5

SLSC has concerns regarding the amendments that restrict an offender from being granted a transfer back to Canada. In such circumstances where an offender is jailed outside of Canada, SLSC supports the rule of law that respects the mobility rights of Canadian citizens and suggests that offenders be allowed to serve their sentences in a Canadian institution under Canadian penal standards.

Recommendations:

St. Leonard's Society of Canada endorses the current orientation of the *Youth Criminal Justice Act* regarding sentencing principles: sentences should contribute to the long-term protection of the public via just and meaningful consequences promoting rehabilitation and reintegration into society. The addition of deterrence and denunciation as principles of youth sentencing does not contribute to this purpose. Evidence has shown that deterrence has little, if any, effect on youth while denunciation serves no constructive goal. Both these principles promote punishment oriented corrections and overreliance on incarceration. For more information, please contact SLSC for our full brief to the Standing Committee on Bill C-4, dated September 8, 2010.

St Leonard's Society of Canada recommends that the Standing Committee:

1. Not support Bill C-10 in its current form, particularly regarding mandatory minimums and youth justice.
2. Not support the adoption of the term "record suspension"
3. Reconsider each of the nine bills within C-10 as separate, important issues that merit their own timely consideration based on all the evidence that is available on these matters.
4. Recommend the re-allocation of the proposed resources for Bill C-10 into crime prevention programs that have demonstrated effective practices and good public safety results in Canadian communities, and which are supported by expert studies in the field of criminal justice.
5. Recommend that the current structure for conditional sentences be preserved.

Appendix 1.1:

A Mental Health Perspective

(Excerpted from SLSC's Brief to the Standing Committee on Bill C-4, submitted September 8, 2010)

A Mental Health Perspective

In recent years, SLSC has had a particular interest in understanding the co-relation between mental health and conflict with the law. Over the past decade as we have witnessed an increase in the rates of mental health disorders among the residents of our affiliate Community-based Residential Facilities (halfway houses). For the purposes of this paper we will focus our recommendations for improving the mental health service sector to incorporate a greater percentage of its efforts towards youth in conflict with the law and community corrections clients. We urge the Standing Committee, however, also to consider the evidence put forth by those referenced throughout the summary above.

SLSC has produced a series of reports on mental health and corrections, beginning with *Towards an Integrated Network (2008)*, and our most recent publication *Community Connections: The Key to Community Corrections for Individuals with Mental Health Disorders (2010)*, sponsored by Public Safety Canada, the Law Foundation of Ontario, and Correctional Service of Canada. It is our understanding that the provision of care for community corrections clients with mental health disorders must encompass a network of service providers in the community that makes the health care needs of the client a top priority in order to help maintain and ensure the highest degree of public safety. This is particularly urgent with youth in conflict with the law who have mental health needs, and understanding the relationship between youth crime and mental health has never been more important in Canada as the adult prison system continues to house the largest psychiatric population in the country.

In 2002, approximately 10% of the general population (2.6 million individuals) in Canada reported symptoms consistent with mental health disorders.²³ Though many are able to cope with their illness and are not involved with the justice system, a proportion of these individuals are in conflict with the law. More significantly, within the prison population rates of mental health disorders hover around 12-15% though some experts place their estimations closer to 20% when taking underreporting/misdiagnosis into consideration. According to Public Safety Canada's statistics Committee, in 2008 11.1% of offenders incarcerated in Canadian prisons were identified with having a mental health disorder upon intake. When broken down by gender, 10.4% of men and 21.8% of women were identified as having mental health disorders upon intake.²⁴ The rates of mental health disorders among the adult prison population has risen over the past decade, making it especially significant to identify mental health issues among vulnerable youth who may be at risk of becoming involved with the justice system. This issue is of grave concern due to the reported 70% co-morbidity rate among incarcerated youth who have mental health and substance abuse problems. Additionally it has been found that more than 30% of youth with a major medical issue also have mental health issues.²⁵ It is

²³ Sinha, M. (2009). *An Investigation into the Feasibility of Collecting Data on the Involvement of Adults and Youth with Mental Health Issues in the Criminal Justice System*. Canadian Centre for Justice Statistics, Statistics Canada. P.12

²⁴ Public Safety Canada Portfolio Corrections Statistics Committee, (2009). *Corrections and Conditional Release Statistical Overview*. Retrieved August 16, 2010, from <http://www.publicsafety.gc.ca/res/cor/rep/2009-ccrso-eng.aspx>.

²⁵ See for example presentations by Dr. Simon Davidson (Executive Director of the Provincial Centre of Excellence for Child and Youth Mental Health/Chief of Psychiatry, Children's Hospital of Eastern Ontario (CHEO), Chair,

evident that there is a disconnect between good mental health results and good justice results; therefore, criminal justice involvement should not be increased to resolve mental health concerns. We need to look no farther for proof than the Correctional Investigator's report on Ashley Smith which clearly demonstrates that those youth who are most troubled face extraordinarily limited access to appropriate mental health resources, resulting in more incarceration and entrenchment within the criminal justice system - sometimes with deadly results. The tragic death of Reyal Jensen Jardine-Douglas, in Toronto on August 29, 2010 is yet another example of the terrible price our young people with mental health issues too often pay.

Various studies have explored the relationship between youth crime and mental health, and there is strong evidence supporting the need to reduce the criminalization of youth with mental health disorders in order to increase rehabilitation and reintegration, public safety, and the chance of creating greater cost effectiveness in the criminal justice system. Increasing rehabilitation and reintegration aspects of youth criminal justice is imperative given our understanding of youth offending today in comparison to that of adult offending. It is widely accepted that young people lack the emotional and mental maturity of adults, and studies on adolescent deviance uncover the significance of factors such as impulsivity, risk calculation, and peer influence. Other unmeasured criminogenic factors for young offenders such as individual, familial, or contextual confounds may drive the correlation between mental health and crime. As Cueller et al suggest, if having a mental health disorder contributes to criminal behaviour, then targeting the disorder through treatment may reduce the likelihood of recidivism.²⁶

In the past decade, evaluations of juvenile justice intervention in the US have found that for serious offenders more structural behavioural interventions such as interpersonal skills training and psychotherapy are more effective than vocational, deterrence, or alternative programs such as wilderness therapy.²⁷ Others have found that diversion in combination with skills training was more effective than diversion in combination with mentoring for a general delinquent population. In the case of mental health diversion, the programs can be tailored to specific problems or mental disorders that are thought to be associated with future justice system contact.²⁸ Evidence-based approaches such as these focus on client needs rather than the perceived needs of the public, and formulate the greatest chances of understanding and assisting young offenders who have mental health needs. This allows for a greater degree of sensitivity towards rehabilitating youth, as well as managing with greater efficiency the degree of risk that person poses to the community in the future. These studies demonstrate that there are avenues to success that are more effective if services are made available, while also

Division of Child and Adolescent Psychiatry, Department of Psychiatry, University of Ottawa.) including: "Child and Youth Mental Health; Toward Collaboration and Integration" at the AGM of the Child and Youth Wellness Centre of Leeds & Grenville, June 6, 2007 and "Leading the Way Out of the Shadows Together," Brantford, October 3, 2008 and "Child and Youth Mental Health Matters - the Initiatives of the Child and Youth Advisory Committee (CYAC) of the Mental Health Commission of Canada (MHCC)" Banff, Alberta, November 13, 2008.

²⁶ Cueller et al. (2006). *A Cure for Crime: Can Mental Health Treatment Diversion Reduce Crime among Youth?* Journal of Policy Analysis and Management 25(1), p.200.

²⁷ Lipsey, M.W. (1999). *Can intervention rehabilitate serious delinquents?* The Annals of the American Academy of Political and Social Science, 564, 142–166.

²⁸ Blechman, E.A. et al (2000). *Can mentoring or skill training reduce recidivism?* Observational study with propensity analysis. Prevention Science, 1(3), 139–155.

supporting studies that repeatedly demonstrate that young persons who commit serious crimes are less likely to respond to deterrence.

Shifting the principles of the YCJA towards more punitive measures for serious offenders is contradictory to verifiable, empirical research on juvenile delinquency. Punitive reforms bring about harsh sanctions with high economic costs and low effectiveness, leaving unsatisfactory results for public and political opinion.²⁹ Crafting public policy that is both sensible and effective must take into account the fact that adolescents differ from adults. Policy and practice should be guided by sound evidence, not based on reactions from a few sensationalized cases.³⁰ Bill C4, has emerged, in part, from the murder of Sebastien Lacasse as well as Justice Merlin Nunn's report.³¹ SLSC argues that Bill C4 has gone beyond the expectations of both the tragedy of the Lacasse case and Justice Nunn's report. In the case of Lacasse, the accused involved did plead guilty and received four year sentences for their crimes: the accused who delivered the fatal stab wounds also plead guilty to second degree murder and was sentenced to life in prison as an adult. SLSC does not believe that the current law functioned inadequately in this case, and additionally does not feel that this case should be exploited as such. SLSC notes that Justice Nunn has responded publicly to the proposed amendments, and been quoted as stating, "[t]hey have gone beyond what I did, and beyond the philosophy I accepted...I don't think it's wise."³² He later stated, "there's no evidence anywhere in North America that I know of that keeping people in custody longer, punishing them longer, has any fruitful effects for society....Custody should be the last ditch thing for a child."³³

SLSC recommends that the Standing Committee look at proven approaches to effective treatment for young offenders, in order to maximize investments and opportunities in the youth justice system. We support the ongoing efforts of, among others, the Mental Health Commission of Canada, and the Canadian Mental Health Associations, who are attempting to coordinate support for cross sectoral services that are inclusive of public health, child and family services, education, housing, and employment in response to understanding the social determinants of health.³⁴ SLSC believes that the financial costs incurred for extended legal fees and detention, as well as the cost towards long term public safety are not in the interest of the criminal justice system, the welfare of youth in conflict with the law, or the Canadian public. SLSC urges the Standing Committee to consider the cost benefits of reallocating such expenses towards programs offered within Canadian communities that are undertaking more successful and effective practices towards rehabilitation and counselling for Canadian youth.

²⁹ Steinberg, L. (2008). *Introducing the Issue*. The Future of Children, Volume 18, Number 2, Fall 2008. Princeton University. P.3

³⁰ *Ibid.* P.5

³¹ Nunn Commission of Inquiry. (2006). *Spiralling out of control: lessons learned from a boy in trouble: report of the Nunn Commission of Inquiry*. Nova Scotia.

³² Arenburg, P.B. September 9, 2008 article: "Former judge slams Tories' youth crime plan", *The Chronicle Herald*. Retrieved August 18, 2010, from http://thereissomethingyouneedtoknow.ca/stories/crime_safety/cs03.php.

³³ Bailey, S. September 30, 2008 article: "Judge shoots down Harper's crime plan", the *Canadian Press*. Retrieved August 18, 2010, from <http://news.therecord.com/article/421859>.

³⁴ For more information see: Canadian Mental Health Association, (2010). *The Windows of Opportunity for Mental Health Reform in Ontario*. Retrieved August 17, 2010, from http://www.ontario.cmha.ca/admin_ver2/maps/cmha-ontario_windows_of_opportunity_201003.pdf