



House of Commons
CANADA

Legislative Committee on Bill C-35

CC35 • NUMBER 003 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Wednesday, April 25, 2007

Chair

Mr. Bernard Patry

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Legislative Committee on Bill C-35

Wednesday, April 25, 2007

• (1535)

[Translation]

The Chair (Mr. Bernard Patry (Pierrefonds—Dollard, Lib.)):
Good afternoon, everyone.

Pursuant to the order of reference of Tuesday, March 27, 2007, we are going to be considering Bill C-35, An Act to amend the Criminal Code (reverse onus in bail hearings for firearm-related offences).

[English]

As witnesses this afternoon, from Statistics Canada's Canadian Centre for Justice Statistics, we have Mrs. Lynn Barr-Telford, the director; Mr. John Turner, the chief of the policing services program; and Mr. Craig Grimes, project manager for the courts program.

I understand you have one opening statement. Who's going to do it?

Go ahead please, Ms. Barr-Telford.

Mrs. Lynn Barr-Telford (Director, Canadian Centre for Justice Statistics, Statistics Canada): I'd like to thank the committee for the opportunity to appear today to present data for your consideration with respect to Bill C-35, reverse onus in bail hearings for firearm-related offences.

Let me begin by outlining where we can and cannot provide data relevant to this bill. We cannot provide data on the granting of bail—for example, how often bail was granted when an accused was charged with a firearm-related offence. We also cannot identify where an offence was committed by an accused on bail.

What we can provide is information on the number of police-reported incidents where the offence involved a firearm and to which this bill specifically applies.

We can present national data for three offence types under consideration: robbery, discharging a firearm with intent to cause bodily harm, and weapons trafficking. We can also present information on kidnapping, extortion, attempted murder, and sexual assault levels 2 and 3 from a subset of police services representing just over 60% of the national volume of crime. As well, we can provide data from our courts statistics program on the processing of cases involving firearm-related offences. Finally, we can look at the use of pretrial detention with our Correctional Service data. For any data, the limitations are noted in the footnotes on the slides.

If you turn to slide 2, for the three offence types with national coverage of police-reported incidents, we see that in 2005 there were just over 3,500 robberies with a firearm. Of these, 1,117 were cleared by the laying of a charge by police. There were 252 police reported

incidents of discharge of a firearm with intent, and 111 were cleared by way of charge. In addition, as a group, there were 147 weapons trafficking offences, which in our data set include Criminal Code sections 99, 100, 101, 103, and 104.

On slide 3, with respect to the other offences covered by Bill C-35, we have information on the number of incidents involving a firearm from a sample of police services representing 62% of the national caseload; thus this chart may underrepresent the total number of such incidents.

Kidnapping includes forceable confinement and hostage-taking. There were 258 such incidents reported in 2005, and 134 of these were cleared by way of charge. We also know that based on this sample of police services, with respect to Bill C-35 offences, robbery with a firearm makes up the large majority of such offences, about 80%. This is the largest offence by volume on the list.

Turning to slide 4, we also know that the rate of robbery with a firearm has been dropping over the past decade. It's down about 50%. In total, there were almost 29,000 robberies in 2005. The robbery rate was 3% higher than in 2004; however, this was about 15% lower than a decade ago and 25% lower than the 1991 peak.

Over half of the robberies reported to police in 2005 were committed without a weapon. Firearms were used in 12% of robberies in 2005, while just under one third involved another type of weapon.

If we turn to our courts data for 10 jurisdictions, where we can identify a firearm offence, we can look at the processing of offences identified in Bill C-35. For 2003-04, we found that 871 cases, representing 1,633 charges with an offence identified in Bill C-35, were disposed of in adult criminal courts. These 871 cases include cases where multiple charges have been laid, and at least one of these charges was for a C-35 offence. It may not, however, be classified as the most serious offence. So while it may be labelled on the graph as a drug-trafficking case, there is within this case a Bill C-35 charge.

Given what we saw on our police-reported data, it is not surprising to find that robbery accounts for over 40% of Bill C-35 cases disposed of in 2003-04. Weapons trafficking represented 15% of Bill C-35 cases. In approximately two-thirds of the cases—563 of the 871—a Bill C-35 charge was the most serious offence in the case.

If you turn to slide 6, also from our courts data, we see that the overall conviction rate for cases with a Bill C-35 charge is 40%. This is significantly lower than the 58% overall conviction rate for all federal statute offences in 2003-04 and lower than the overall conviction rate of 48% for crimes against the person offences. One possible reason for this, as we've seen in our data, is that an accused person is less likely to plead guilty to a more serious charge and/or one that carries a mandatory minimum sentence, which we know applies for a number of the Bill C-35 offences.

Once a Bill C-35 case is found guilty, 77% of these cases result in a term of imprisonment. The average length of custody for these cases was 1,101 days. This reflects the average sentence imposed on the most serious offence in the case. Overall, the average case processing time for cases with a Bill C-35 charge was 221 days, which is almost the same as the average for all federal statute offences in 2003-04.

If you turn to the next slide—

• (1540)

Mr. Derek Lee (Scarborough—Rouge River, Lib.): What slide is that, Mr. Chairman?

Mrs. Lynn Barr-Telford: It's slide 7.

Mr. Derek Lee: I must say that personally I'm losing a grip on some of this. I don't want to be critical, and it's good to have the data, which we can review later, but I lost you a few minutes ago.

Mrs. Lynn Barr-Telford: Would you like me to go back?

Mr. Derek Lee: No, and I don't know if other members feel the same way, but I think it's important that if you have a slide, you allow us a moment to understand the purpose of the slide. The data may be revealing. I know you've been through this maybe a hundred times and you prepared it, but just because you read the heading on the slide doesn't mean we, all around this table, immediately grasp it.

I'm sorry to interrupt. You can carry on, but I would invite you to check on the faces of the members around the table to make sure we're still with you.

An hon. member: Make it simple.

The Chair: We are now on slide 7.

Mrs. Lynn Barr-Telford: We are on slide 7. If we look at only those cases where we had a Bill C-35 charge as the most serious offence, we saw that the overall conviction rate was 31%. According to our courts data, we found that 84% of these convicted cases, where the Bill C-35 charge was the most serious offence, had a guilty plea. This was lower than the overall 90% of guilty pleas for convicted cases.

Mr. Derek Lee: Again, I'm sorry, you were referring to numbers that don't show on the face of the slide. It's impossible for me to extrapolate where you're heading if I look at a bunch of numbers and you mention another number that I can't see anywhere.

Mrs. Lynn Barr-Telford: What we will do for the committee is provide you with the complete set of speaking notes and so forth following the presentation. Once they're available in both official languages we'll provide them to you.

In this slide you can see, by offence type, the percent resulting in a conviction. Where the Bill C-35 offence was the most serious, the overall conviction rate was 31%. You see it listed by offence type within the slide, but the overall was 31%.

The Chair: If I understand the one you made on page 7, from 40%, 39%, 38%, to 10%, all of these together, 31% is what you mean.

Mrs. Lynn Barr-Telford: That's true, as an overall average.

The Chair: I just want to be sure that I also follow you.

Hon. Larry Bagnell (Yukon, Lib.): If something isn't covered on the slide, just say it isn't there.

Mrs. Lynn Barr-Telford: Okay, that's fair enough.

So not covered on the slide are the 84% of convicted cases where the charge was for a most serious offence having a guilty plea. It was lower than 90% of guilty pleas for overall convicted cases.

Also not on the slide—we know that for the offences that result in a conviction—the rate of imprisonment is 85%. The average prison sentence is 1,554 days.

[Translation]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Excuse me, Mr. Chair.

The Chair: Mr. Petit.

Mr. Daniel Petit: Is it possible to ask the witness to speak a little more slowly? The interpreter does not have the French text, and they are chasing around for translations.

Do you have the French text for the interpreter?

The Chair: No.

So we will just have to go a little more slowly because this is technical data.

[English]

The Chair: That's fine, Ms. Barr-Telford. You understand?

• (1545)

Mrs. Lynn Barr-Telford: Absolutely.

Let's repeat that for offences that resulted in a conviction, the rate of imprisonment was 85% and the average prison sentence was 1,554 days.

Also not included on the slide, but further information, the average case processing time for the cases where a Bill C-35 offence was the most serious offence was 227 days.

I'll ask the committee to turn to slide 8. This provides information on remand and other temporary detention coming from our Correctional Service program. We've seen a decline in the provincial-territorial sentence custody population, and it's coincided with an increase in the non-sentence custody remand population. This has dramatically shifted the composition of adults in custody in provincial-territorial jails.

In 1995-96, adults in non-sentence custody represented 28% of all those in provincial-territorial custody.

Hon. Larry Bagnell: This is covered on the slide?

Mrs. Lynn Barr-Telford: This is covered on the slide. This is your pink line.

Ten years later, in 2004-05, they represented more than half of all adults in custody, and this surpassed the proportion of offenders in sentence custody, shown in light blue, for the first time.

These percentage increases you see on the slide translate into an increase in the average number of adults on remand or other temporary detention from 5,485 to 9,916 adults between 1995-96 and 2004-05. Over that same time period, the average number of offenders in sentence custody decreased from 14,240 to 9,830 adults.

The Chair: Mr. Lee.

Mr. Derek Lee: Could I ask you, please, to define for me what "non-sentence custody" is?

Mrs. Lynn Barr-Telford: Non-sentence custody includes remand, pretrial detention, as well as other forms of temporary detention for other purposes, such as an immigration hearing and so forth. So these are individuals who are awaiting an appearance.

Mr. Derek Lee: You have data here from immigration holding tanks.

Mrs. Lynn Barr-Telford: Other temporary detention—

Mr. Derek Lee: Including immigration, yes.

Mrs. Lynn Barr-Telford: Other multiple things are included in that, but these are our remand and other temporary detention counts.

Mr. Derek Lee: Thank you.

[Translation]

The Chair: Mr. Petit, you can ask a question.

Mr. Daniel Petit: My question is about temporary detention. For a person who is detained before his trial, this period of detention counts double once the trial is over. Have you accounted for the fact that temporary detention counts double, meaning that the time spent in prison is reduced?

[English]

Mrs. Lynn Barr-Telford: The information that you have in the graph here shows you the proportion, and I've given you the count of individuals who are in non-sentenced custody as well. Our data in this particular case do not in any way refer to time served, for example, as you were speaking about.

The Chair: We're going to keep going. I don't know if you want to read your next slide, and it's going to be the last slide, and then we'll go to a Q and A after.

Mrs. Barr-Telford.

Mrs. Lynn Barr-Telford: The next slide that you see documents the length of time served in remand following release from the remand facility. The footnote to the slide notes excluded jurisdictions. We've seen an increase in the length of time spent in remanded custody over the past decade, and this is an important factor in the changing composition of the provincial-territorial custodial population.

Between 1995-96 and 2004-05, the proportion of adults who served less than a week in remand decreased from 66% to 53%. The proportion of adults who spent between 30 days and three months in remand during the past decade increased from 10% to 15%. The proportion who served more than three months in remand nearly doubled, going from 4% to 7%.

To summarize, we see that robbery with a firearm makes up the large majority of Bill C-35 offences, and the rate of robbery with a firearm is down about 50% over the past decade. There were 871 cases disposed of in adult court in 2003-04, with a Bill C-35 offence identified, and robbery accounted for over 40% of these cases. The overall conviction rate for cases with a Bill C-35 offence was 40%, and 31% where the Bill C-35 charge was the most serious offence. Adults in non-sentenced custody represented more than half of the adults in provincial-territorial custody in 2004-05.

Thank you.

• (1550)

The Chair: Thank you.

We're now going to start with questions and answers. It will be 10 minutes per party, and you can divide your time with your colleagues, if it's possible.

We'll start with Mr. Murphy, then Mr. Bagnell and Madam Jennings.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): I really just have a few rapid-fire questions on clarification.

You started out by saying you can't give us statistics on who's on bail. I understand that you can figure out who was convicted of robbery and so on, these offences. I understand that. The second last slide tells us that you can tell us how many people, or what people, are in certain types of custody, sentence custody or non-sentence custody. Why can't you tell us the purple line? In the French translation it's a different colour. I didn't know that colours translated differently. But I like the French translation because there's more red in it. I just thought I'd put that down.

Seriously, you can tell us how many people are on remand or other detention. I understand that it could be people on “24-hour sleeping it off” charges; people under section 4, at least in New Brunswick, mental instability and that sort of thing. But for the vast majority of that lower line of remand, does it not have to be people in remand awaiting trial who didn't get bail? There might be a bunch of people who haven't had their bail hearing yet. The law says you have to have your bail hearing pretty quickly, so most of these people have been denied bail—isn't that right?—if they asked for it, and everybody asks for it.

Mrs. Lynn Barr-Telford: On the statement you began with, we do not have data on bail, so we do not know how many individuals were awarded bail. What we do have are counts of those who are in remand or other temporary detentions, so those who are in custody and awaiting an appearance. That's what we have information on.

Mr. Brian Murphy: You don't take stats of who actually gets bail after a bail hearing.

Mrs. Lynn Barr-Telford: No, we don't.

Mr. Brian Murphy: I understand that.

And you have no specific record of the people who are remanded for those other reasons that we spoke of.

Mrs. Lynn Barr-Telford: Mr. Grimes will explain to you how we deal with this within our courts data.

Mr. Craig Grimes (Project Manager, Courts Program, Canadian Centre for Justice Statistics, Statistics Canada): The courts information we have is based on the docket system.

Mr. Brian Murphy: So what goes in.

Mr. Craig Grimes: Yes, what goes in. What's unknown to that system is whether or not the individual is in remand when they make their first appearance. So that causes a problem with our trying to get a number identifying the total number of individuals in remand or on bail.

We have information on appearance types, but it's the scheduled reason for appearances.

Mr. Brian Murphy: I think I get it. It's just left for us to surmise that most of those are people who've been denied, but there's no empirical evidence. You have to know how the system works. I understand that.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: So you can't tell us the percentage. We're doing a bill that will put more people in prison while they're awaiting trial. We can't tell how many people are in custody, what percentage of people are in custody now on Bill C-35 offences, if it's 10%, 20%, 30%, or 40%.

We can assume, I guess, from that chart at the end, where it's going up, that even without this bill we're keeping more and more of them in prison before trial. But you can't tell us specific numbers, whether we're keeping 10%, 20%, 30%, 40%, 50%, or 60% of persons who go, to see whether they'll get out before their trial or not.

• (1555)

Mrs. Lynn Barr-Telford: If I understand your question correctly, we can tell you, for any given year that we have in the data in chart

8, the daily count, the average count of those who are in the non-sentenced custody. We can provide you information on those counts. What we can't tell you is the number of individuals or the number who are in remand for an offence that is particular to a Bill C-35 offence.

Craig can talk a bit about some of the difficulties we have in the data in terms of identifying, by the section and subsection of the Criminal Code, these particular offences.

Hon. Larry Bagnell: Let's not get into that. I don't want the technical details. Could you just tell me approximately, if you could guess or extrapolate, how many of those people today, if they went to court on a Bill C-35 offence, would get bail and how many wouldn't, or how many get out and how many wouldn't? I'd like just a rough estimate from all the statistics you have.

Mr. Craig Grimes: Being a reverse onus offence under Bill C-35, we have 871 cases. Notwithstanding the possibility of having two cases for one individual, the number would be 871, less those who were able to prove that they should be allowed to have remand.

Hon. Larry Bagnell: Sorry. If 100 people went to court today on a Bill C-35 offence, without this bill, how many would stay in custody until the trial and how many would get out?

Mr. Craig Grimes: It's not possible to do that with the court data set, in and of itself.

We know that this is an issue, and what we're working towards for later this year is to have a project to link the courts and the corrections files so that we can add more information to the courts' records to determine who is actually in remand and when they went in remand. So that's a project for later this year.

Hon. Larry Bagnell: But I guess it's safe to assume that there are fewer people being let out before their trial, because the red line is going up.

Mr. Craig Grimes: We know remand is growing.

Hon. Larry Bagnell: On your firearm-related offences, do you happen to have the breakdown? You say robberies are going down; robberies with guns are going down. Is it the same for both long guns and handguns, or is there any difference? Are they both going down?

The Chair: Mr. Turner.

Mr. John Turner (Chief, Policing Services Program, Canadian Centre for Justice Statistics, Statistics Canada): We don't have the information here today to tell you that. We just have whether it's a firearm.

Hon. Larry Bagnell: Thank you.

I'd like to make one last comment.

The stuff you provide us on our bills is probably the top stuff we need, but it's not a qualification of intelligence to be a member of Parliament, and you have to make it simple so we understand.

An hon. member: Speak for yourself.

Hon. Larry Bagnell: It would be very helpful in future. You work with this all the time, so you assume it. But it's great stuff.

An hon. member: We just pretend we're smart.

The Chair: Thank you.

Ms. Jennings, please.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you.

Given the statements that you've just made, because of the way the court dockets are actually produced, you're unable to say what percentage of people, year by year, are brought up. You can tell us how many are brought up on Bill C-35 types of offences, but you're unable to tell us what percentage get bail before going to trial, or do not get bail but at some point before there's an actual judgment in their case are released into the community. Is that the reason, when one attempts to find scientific evidence, actual longitudinal studies about whether or not bail itself is effective, about whether or not it's an actual effective tool in the deterrence of crime, in effective justice, in effectively protecting communities, that we're unable to find any serious research, at least here in Canada, that has been done on that over the years? Is it because the statistics are not there? Statistics Canada doesn't have any. Is that it?

• (1600)

Mr. Craig Grimes: It's more than simply just the docket system. It's the docket system in addition to the way we collect and process the information.

Bail first came up as an issue for me, in my professional career, about 10 years ago. We've been working on trying to get a handle on how many people are granted bail and whether or not individuals commit offences while on bail for that period of time, if not longer.

The issue is, as I've indicated earlier, not knowing within that court system whether or not the individual is in custody when they first show up in court. There's also the possibility of getting information when they show up in court, whether or not they're released or remanded in custody. The data we currently have collects both the appearance type and the appearance result in the same field.

I can go into the details. Now that we have a micro-data correction survey and we have micro-data, which is detailed data from courts, we're going to link those two files so that we can, for the first time, answer some of these questions on individuals on bail and on whether or not they commit more offences.

Hon. Marlene Jennings: Right. The bottom line is this. While you can tell us how many people, year by year, are being charged with at least one offence that is listed in Bill C-35, you're unable to tell us what percentage, year by year, of these individuals get bail, win their bail, are able to convince a judge that they can remain in the wider community while awaiting trial and not be a danger to the community. You're unable to provide us with that information. As a result of that, it then means that while we can safely assume that a

minimum of 871 cases of Bill C-35 types of offences would exist as a result of Bill C-35, therefore, there would be a reverse onus on 871 individuals accused—because you're talking about cases in which there is at least one, so I'm assuming we're talking about approximately 800-and-something.

Let's just say “the accused”, because I see Ms. Barr-Telford shaking her head. So somebody might be up on several cases.

Is it time?

The Chair: No, that's fine. You can close. Go ahead.

Hon. Marlene Jennings: So you're unable to say whether or not the end result would be different. If we had the statistics, it might show that 75% of people who are being accused with Bill C-35 types of offences right now are being refused bail. Nobody can say. I can go out in the public and say that and nobody could contradict me. The only thing you could say is, “We don't have the statistics to show whether what she's saying is true or not”, and people could choose to believe me. Someone else could go out and say, “Every single person charged with a firearm-related offence that comes under Bill C-35 gets bail”, and we would not be in a position to contradict them, except to say, “Well, we haven't seen any hard facts to back it up”.

The Chair: Thank you, Ms. Jennings.

Hon. Marlene Jennings: I'm sorry for being so long-winded.

The Chair: That's okay.

We'll go to Monsieur Ménard, *s'il vous plaît*.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chair, I want to express my complete astonishment. This is the second time that, as parliamentarians, we have been asked to vote on bills without being given convincing and conclusive data. This is not the fault of the people before us, although they could have provided us with more details. I do not understand how the government can submit a bill to members of Parliament when we do not know the real extent of the bail granted by the courts. I have to say that it is beyond me how we can ask people to do thorough work when we do not even have statistics. This proves that Bill C-35 is all about ideology, and that it is not based on any statistical reality in the administration of justice. I am disappointed because I have a high opinion of you, but we cannot work like this.

Nevertheless, let us try to see what kind of information we need. I am going to provide Mr. Petit with all kinds of fond memories, since he has appeared before the courts often. Subsection 515(6) of the Criminal Code states that the burden of proof is reversed for seven offences, including indictable offences, terrorism and violations of conditions, and that the judge will not grant bail. Otherwise, the person is released.

So I thought we were talking about release on bail.

I want to come back to some specific questions on the figures that you have prepared. When the burden of proof is reversed and there are grounds to believe that evidence will be destroyed, that the person is a security threat, or that he will not appear at his trial—it is all in subsection 515(10) of the Criminal Code—he must not be granted bail. This is the bill we are discussing. The government says that we are going to reverse the onus for seven other offences. The seven offences that it wants to add to subsection 515(6) are robbery, discharge of a firearm, weapons trafficking, kidnapping, attempted murder, extortion and sexual assault.

On pages 2 and 3, you list the seven offences that will be added to subsection 515(6). I suppose that the figure 3,505 indicates the number of charges that have been laid by the police or the Crown. Of the 3,505 counts of robbery, 1,117 have been by indictment, and therefore not by summary procedure.

Is that what these figures mean?

● (1605)

Mr. Craig Grimes: Yes.

Mr. Réal Ménard: For us, whether the prosecution uses summary procedure or indictment does not affect bail, the right to be released, or not, before trial. What this confirms is that Canadian society is less violent and that fewer offences are committed with firearms. All the opposition parties said this when Bill C-10 was being studied. But the government did not listen to us. Not that it does not like us, but it was in ideology mode.

I trust that Mr. Petit will not say that on the radio. But if he does, I will defend myself.

The justice system tends to remand people more than in previous decades. In the statistics that you have provided, I find two are very relevant. In 1995-1996, 28% of adults were remanded in custody, while in 2004-2005, the figure was 50%. The only scientific conclusion that can be drawn is that courts dealing with the seven offences that you spoke to us about are more likely to keep people in custody than to release them.

Am I correct in my understanding?

[English]

The Chair: Madam Barr-Telford.

Mrs. Lynn Barr-Telford: We can't directly speak to what is happening with respect to those particular offences and the awarding of pretrial detention, for example, with this particular slide. We do see the increase, and we have seen an increase, in the number of adults being held in non-sentence custody, and we have seen a changing composition in the custodial population. That is what we have shown in slide 8. We have seen that.

What are some of the underlying factors that may be producing that? It's difficult for us to say that any one factor is producing that, but some of the factors that may be related to this shifting composition in custodial are these: a change in bail practices could be related; complexity of court cases, for example, taking longer and being more complex in nature, can also have an impact on the increased custodial population.

● (1610)

[Translation]

Mr. Réal Ménard: Let me stop you right there. There can be a number of reasons why bail is granted less frequently. Maybe we are talking about people charged under section 469 of the Criminal Code who are not eligible for bail, or because, under subsection 515(10), the judge is convinced that these people are going to destroy evidence, that they will not appear for their trial, or that they represent a security threat.

These three types of offences, for which remand is not possible, say nothing about firearms or offences committed with firearms. This is why the government's logic is extremely difficult to follow in this bill. On the one hand, you tell us that fewer and fewer crimes are committed with firearms, and for those that are, we do not know how a judge will rule on granting bail. But at the same time, we are being asked to extend reverse onus.

Do you realize our situation when it comes to thoroughness and the ability to do our jobs in a serious way?

I have no wish to embarrass you, and you know that my diplomacy skills are legendary. But the government's bill is not supported by any statistical reality. Show me one page of your presentation that could lead us to conclude that the government's case for extending reverse onus when firearms are involved is well-founded. Is there one statistic that could in any way give credibility to the government's bill?

[English]

The Chair: Mrs. Barr-Telford.

Mrs. Lynn Barr-Telford: What I can do from the point of view of Statistics Canada is provide you with information relevant for your consideration. I cannot speak beyond that point. I can tell you the number of incidents that occurred in 2005 for a Bill C-35-related offence. I can tell you the number of court cases that were disposed of in 2003-04 for a Bill C-35-related offence. I can tell you about conviction rates and I can tell you about remands. That's what I can tell you.

[Translation]

Mr. Réal Ménard: We need to know, when offences are committed with firearms, and the situation corresponds to what a judge can do under section 515 or subsection 506(10), if judges release people on bail or not.

Mr. Chair, this is the matter that we are being asked to vote on. We are being asked to add to the list of offences where the burden of proof lies with the accused by adding those committed with firearms.

All the other statistics are much less relevant. Before I can vote, I need to know if judges are or are not releasing people who commit offences with firearms, as is suggested on pages 1 and 2, and who are eligible for bail. Let us be clear on that. If we do not have those statistics, we will not be able to vote with due consideration. Regrettably, I must tell my ministerial colleagues that we cannot act out of pure ideology. I am not saying that a crime committed with a firearm is not a significant factor in our society, but I am surprised that we are unable to substantiate it. It is important.

[English]

Mr. Art Hanger (Calgary Northeast, CPC): He speaks like a lawyer.

Mr. Myron Thompson (Wild Rose, CPC): What's wrong with that?

Mr. Réal Ménard: Do I speak like a lawyer? You speak like a policeman.

[Translation]

The Chair: Have you finished, Mr. Ménard?

Mr. Réal Ménard: I have finished.

[English]

The Chair: Mrs. Barr-Telford, please.

Mrs. Lynn Barr-Telford: Just for clarification purposes, what you'll find on slides 2 and 3 are offences involving firearms that are covered under the Bill C-35 legislation—robbery with a firearm, discharge of a firearm with intent to cause bodily harm, and a series of weapons-trafficking offences covered under Bill C-35.

On page 2—that has national coverage—you can also see the number within those overall offences that were cleared by charge by the police.

In slide 3, this is a subset of police services, but these are offences involving firearms as listed in Bill C-35, for clarification purposes.

The Chair: Thank you.

Merci, Monsieur Ménard.

We'll go to Monsieur Comartin.

• (1615)

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you for being here.

Mr. Grimes, on the new information you're going to be gathering, you said, at the end of the year, will you have some results by the end of the year, or will you just start gathering them? When are we going to see the first results of that data you're collecting now?

Mr. Craig Grimes: I'm not sure when we're going to see results. We have a project to put together the two data files. Before we see results we've got to work out the methodology, the method for putting those files together, to ensure we've accurately identified individuals in one file and matched them with individuals in the other file.

Mr. Joe Comartin: So at least a year or maybe two before we see the first results?

Mrs. Lynn Barr-Telford: What we are proposing on this particular project is that right now it's scheduled to be a two-year project. The first year will be the feasibility and the methodological work to see whether or not we can continue into the second year to produce results from that study.

Mr. Joe Comartin: Are you only doing it as an experiment in certain parts of the country, or are you doing the whole country?

Mr. Craig Grimes: Every jurisdiction is providing both integrated criminal court data and integrated correction data. With the release of the new file for courts, we've separated the appearance type and appearance result. We hope we'll be able to speak more to the appearance results related to remand or release. We also have a field on that file for remand, identifying the reason for remand. The hope is that with the combination of those two things, we'll be able to speak to these issues in clear terms.

These are projects for collecting data that have been ongoing for two or three years. It's taken a number of years to set up the system to collect this information from all these jurisdictions.

Mr. Joe Comartin: In terms of the remand or the pre-sentence custody, you mentioned the immigration figures are in there. Do you have any sense of what proportion? I could imagine that could be a fairly significant proportion, or is that incorrect? Could 50% be immigration cases?

Mrs. Lynn Barr-Telford: Our non-sentence custody is made up of two components: the remand, which is a court-ordered detention awaiting a further court appearance, and the other is temporary detention. Those are the individuals who are not on remand, but they can be there for other reasons like immigration or parole suspension and so forth.

I do not have the breakdown of those figures with me. I would have to ask back at the office whether or not we can do so. We can certainly follow up with the committee on whether or not we can do that.

Mr. Joe Comartin: Mr. Chair, I would ask—

The Chair: I will ask Mrs. Barr-Telford if she can provide this to the committee as soon as possible. It is quite important.

Mr. Joe Comartin: On the same line of questioning, are individuals remanded or directed into psychiatric care in terms of their ability to stand trial in this category as well?

Mrs. Lynn Barr-Telford: Again, that is something I will follow up on.

Mr. Joe Comartin: With regard to that, if they are, would you advise on that? At the very least, can you give us some rough proportion of how many of them are in that category?

On slide 4, the "Robbery with other weapon", are we talking knives and clubs? Is there any substantial number on that?

The Chair: Mr. Turner.

Mr. John Turner: I don't have the numbers here, but I'm pretty sure most of them are knives or other cutting-type weapons. We have about four or five different breakdowns. I could get you that if that is important.

Mr. Joe Comartin: I guess overall we're seeing that that is one area where there has been an increase in the occurrence rate. It's a fairly substantial occurrence rate from 17% to 18% overall to about 33% to 35%.

• (1620)

Mr. John Turner: Approximately, yes.

Mr. Joe Comartin: Could you let the committee know how many are knives?

Mr. John Turner: Certainly.

The Chair: Mrs. Barr-Telford.

Mrs. Lynn Barr-Telford: As a follow-up to your earlier question, I can provide the further information that last year we had only about 350 individuals in temporary detention. We cannot provide you with a more detailed breakdown of that number.

This is in the "other temporary detention" classification.

Mr. Joe Comartin: I'm sorry, but could that be both psychiatric and immigration—or just psychiatric? Or you just don't know?

Mrs. Lynn Barr-Telford: We can't break it down any further.

Mr. Joe Comartin: Do any of the statistics you've given us today include charges arising for individuals currently in the military?

Mr. John Turner: The police statistics don't include those, as we don't have information from the military police.

Mr. Joe Comartin: Okay.

Mr. Craig Grimes: And for the courts, if it was a Criminal Code charge that had been heard in provincial or superior courts—

Mr. Joe Comartin: It could be overlooked.

Mr. Craig Grimes: It could.

Mr. Joe Comartin: In terms of the conviction rate, where you show multiple charges against an individual, do you track and thereby provide some explanation for the low conviction rate where, in a number of cases, because of plea bargaining or whatever, there would be withdrawal of charges?

Mr. Craig Grimes: We can't speak specifically to plea negotiation. We know whether or not there was a guilty plea, and in those cases the guilty plea is less frequent than we see within the data set as a whole. We expect to see somewhere around 90% guilty pleas.

The way the data are organized, if there is a conviction in the case, that offence becomes the most serious offence. So if the case is described as stayed or withdrawn, or as "other disposition", then all of the charges in the case would have a decision that didn't carry a conviction.

Mr. Joe Comartin: But you don't write that down separately?

Mr. Craig Grimes: It becomes a presentation issue, because I may have a case with four or five charges and I'm trying to present those in two dimensions.

We can describe the cases, as we've done in this deck, in terms of the most serious offence. One of the characteristics of the cases for this deck is a Bill C-35 offence, and we can describe whether or not the Bill C-35 offence also had a conviction. We can do those things, but it becomes a presentation issue in a deck like this.

Mr. Joe Comartin: In terms of the frustration Mr. Ménard was expressing, taking the conviction rate, is there any statistical analysis you can give us of the success in getting convictions, whether they be pleas or convictions after trial, and individuals being incarcerated in the pre-conviction period of time?

Mr. Craig Grimes: So whether or not the individual is in remand and then subsequently—?

Mr. Joe Comartin: Is he more likely to enter a guilty plea because he—and it's almost always a he—or she is in custody for an extended period of time? That's one part.

Can you draw—

Mr. Craig Grimes: That's—

Mr. Joe Comartin: It's not possible?

Mr. Craig Grimes: We can't, with that data set, identify whether or not the individual is in remand.

Mr. Joe Comartin: Yes.

Thank you, Mr. Chair.

The Chair: Thank you.

Now we'll go to Mr. Hanger, please.

Mr. Art Hanger: Thank you, Mr. Chairman.

I would like to thank the witnesses for their appearances here today.

In fact, contrary to what Mr. Ménard may feel about these stats, I see there are some data here that really reflect or support, I believe, what we're attempting to do with this bill. I appreciate the fact that some of the data are a little more precise than others, but at least they do tell a story.

Just for the benefit of the opposition, keep in mind why we're presenting this bill, and that is to deal with the worst of the worst gun crimes: the drive-by shootings, the robberies, the offences that involve a firearm and threaten the lives of other people. We can get as technical as we want, but that's the basis of this bill, and those offenders are what this bill is intended to target.

Going to your stats on page 3, you list total incidents, which are police reports of firearms use, and then you have those cleared by charge. In terms of the difference between the two, does one reflect the incident with the firearm and the other a court appearance or what happens in a court, if I might ask?

There is quite a difference there.

• (1625)

Mr. John Turner: Yes, the difference between the two figures is the ones that are not cleared by charge at all, which are not solved, and also the ones that are cleared by police other than by a charge, so say through informal process diversion or some other reason like that.

The first cut is that they have to find an accused person. So we don't see the ones who aren't cleared at all. It's either cleared by charge or cleared by means other than a charge.

Mr. Art Hanger: That's quite a high number, 2,000 or 3,000. What about drive-by shootings? What category would they fall in?

Mr. John Turner: Well, as there is no Criminal Code offence on drive-by shootings, we don't collect those specifically.

Mr. Art Hanger: Well, a drive-by shooting is somebody firing a gun at somebody else.

Mr. John Turner: That's correct.

Mr. Art Hanger: Is that reflected here in the data?

Mr. John Turner: That would be an offence that it would be up to the police officer to determine. We would collect that offence. It certainly is a Criminal Code incident.

As to what it would fall under, it could be attempted murder, or—

Mr. Art Hanger: If I may help you here, it might be discharging a firearm, section 252.

Mr. John Turner: It could also be attempted murder.

Mr. Art Hanger: It could be attempted murder.

Mr. John Turner: It could be a level 3 assault, potentially, too.

Mr. Art Hanger: Okay, so those are the issues we're experiencing on our streets in this country, I assume. Would you not say that's high in the minds of a lot of people, charges like discharging a firearm into a crowd, any attempted murder charges? Those are offences that this bill is intended to capture, offenders who commit these acts.

Mr. John Turner: Yes, those are certainly some of our serious violent crimes.

Mr. Art Hanger: All right. So that's the intent of the bill.

From what I can see here, then, even though the numbers may not be absolutely as large as one might think, it's still intended to keep the serious offenders in jail prior to their trial.

Mrs. Lynn Barr-Telford: What we've provided for you is essentially the volume, the number of incidents that are specific to the Bill C-35 legislation. From that you can get a sense of the volume of these types of offences that were taking place in 2005.

Mr. Art Hanger: Okay. So an offence is committed, an arrest is made, and the police officer brings that individual before a bail magistrate. The bail magistrate, when this bill is enacted, will then detain the individual for court, and that hearing will take place in court?

Mrs. Lynn Barr-Telford: The way in which the bill will be enacted and proceeded with is really not something we cover in particular data analysis. That's an analysis for how your legislation is crafted.

Mr. Art Hanger: I know that, but that's the process. The lawyers on one side can pick it up from there. But this is the action the police will take, and Mr. Grimes speaks of the court cases themselves. So the court data is going to be another issue.

Mrs. Lynn Barr-Telford: That's correct. This is police-reported data, and we provided courts data and then Correctional Service data.

Mr. Art Hanger: But I have to keep coming back to the same thing. Is it the bail magistrate who's going to decide on detention, or is it going to be the court?

Mrs. Lynn Barr-Telford: That's a question I can't answer.

•(1630)

Mr. Art Hanger: You don't know.

Mr. Turner? You don't know.

Okay, that's fine. They're not talking about the process itself; they're talking about the statistics they've collected.

That's the extent of my questions.

The Chair: Mr. Thompson.

Mr. Myron Thompson: I'll be fairly quick. I'll direct one question to the board, just to get it clear in my mind. I have to admit that when I look at these things, I don't really understand a lot of what they mean. Maybe I should apologize for that, but I'm not going to, because I looked at it and found it to be fairly confusing.

But there's one thing I do know, and I want to direct this to Mr. Ménard in relation to his comments. In my riding, a few years back when I was becoming an MP—this is under sexual assault—in a rural riding, a 27-year-old individual stopped at a home to get directions. The young lady who was the wife of the resident was there by herself and she gave him directions. About twenty minutes later he returned to the home with a gun, forced the woman to take her clothes off, and sexually assaulted her. He was arrested and was put in jail. About a week later he was out on bail. He returned to that home with a gun, shot the woman—miraculously, she survived—killed her husband, and then turned the gun on himself and killed himself.

At that point I said, there's one case of a guy who was let out on bail who should never have been out. Now we have two people dead and one seriously hurt, and that's all I need by way of stats. It creates an ideology in my mind such that when I get back to the House of Commons, I'm going to push all I can towards putting a stop to letting people out on bail who have committed a violent, serious offence—even without a gun.

I've had that in the private members' draw since 1994. I'm not lucky at lotteries. I haven't been drawn. But those are all the “statistics” I need.

But I will ask this question. Do you have no information on how many people were let out on bail and who committed a violent crime immediately following their bail?

Mrs. Lynn Barr-Telford: No, we can't provide you that information.

Mr. Myron Thompson: I rest my case. One is enough; in fact, it's too many.

The Chair: Mr. Lee, you may have four to five minutes.

Mr. Derek Lee: Thank you.

Do we know, Ms. Barr-Telford, what proportion—and I think the answer is no, but I'll ask it anyway—of current reverse onus offences result now in denial of pretrial release? Do we have any idea at all?

Mr. Craig Grimes: No, there's no information on that.

Mr. Derek Lee: Nobody can take a stab at it? Okay.

That's really unfortunate, because if we don't have any data on it—and it's not your fault, of course—in terms of public policy we're rather flying blind here. This legislation is a bit of a shot in the dark. I have intended to support the legislation, but I regret that we don't have the data, and I just put that on the record.

Secondly, there are two notable statistics in the deck you provided, from my point of view. They should be noted as benchmarks. One is that only 40% of the Bill C-35 charges result in convictions. That's a 40% conviction rate.

Would I be correct in saying that if we increased the pretrial incarceration rate above 40%, we would probably be keeping innocent people in jail pending their trials?

Maybe you can't answer that.

Mr. Craig Grimes: I can't answer that.

The Chair: Mr. Lee, I don't think he can answer that. They are here for statistics; they don't give their opinions. They're not judges.

Mr. Derek Lee: But I do have that right, do I not—that only 40% of the Bill C-35 offences result in convictions?

Mrs. Lynn Barr-Telford: Cases with at least one Bill C-35 charge had a 40% conviction rate. Where it was the most serious charge, it was a 31% conviction rate.

• (1635)

Mr. Derek Lee: Only 31%? Well, that's even lower. That means 60% of the cases result in not guilty or dismissals or something. Is that a fair assumption? Or at least they're not proceeded with.

Mrs. Lynn Barr-Telford: They're not convicted.

The Chair: Do you have a question, Mr. Lee?

An hon. member: We don't know that; they can't tell us.

Mr. Derek Lee: Well, it's the same as the last question, so I'm going to stick to this: once you go above the 30% threshold, you're potentially keeping innocent persons in jail.

The second thing is that your data shows that over the last fifteen years, the convictions for robbery with a firearm have dropped to less than half. Is that right?

Mrs. Lynn Barr-Telford: The data you're referring to in slide 4 show actually the rate of robbery with a firearm offences. It is police-reported data, thereby giving the incidents; it's not the conviction rate. I don't know that we have anything like that with us.

Mr. Craig Grimes: I don't have the conviction rate with me for robbery. The difficulty with robbery with a firearm is that the legislation only specifies robbery with a firearm going back to.

Mr. Derek Lee: I misspoke. I'm not really looking at the conviction rate; I'm looking at the volume of robbery charges and convictions, and they've dropped by more than half over the last fifteen years.

Mrs. Lynn Barr-Telford: The rate has dropped.

Mr. Derek Lee: The rate. Okay, thank you.

The Chair: Mr. Dykstra, then Mr. Patry, will have one question each. We want to finish about a quarter to five.

Mr. Rick Dykstra (St. Catharines, CPC): Just on a point of clarification. I thought we were meeting for an hour, but are we actually meeting for longer than an hour?

The Chair: I thought it was an hour and a half, and I'm going between an hour and an hour and a half because I thought an hour was—

Mr. Rick Dykstra: One of the questions I had—Well, first I need to get a bit of clarification, based on Mr. Lee's comments.

My understanding of reverse onus simply means that it's up to the individual who's been charged to prove that they should not be remanded in custody but should actually be released. The way I interpreted his comments was that everyone, under reverse onus, is going to remain in jail until their hearing. I don't know whether I'm correct on that, but anyway, I wanted to clarify that.

The question I have relates specifically to—Your one chart indicates that robberies with a firearm continue to decline, which I accept in terms of what your statistics say. What I have a question about is how this relates to “Individuals in non-sentenced custody account for a growing proportion of all adults in custody”.

If I understand your stats correctly, yes indeed, robberies with a firearm are declining, but in fact most of those who are in a non-sentenced custody situation—or at least, according to the changes up to 2005, most of them—are actually remanded or are on some other form of detention versus actually having to remain in custody.

Mrs. Lynn Barr-Telford: If I followed your question, yes, the slide that talks about the changing, shifting composition does show the increasing proportion of the custodial population that's now made up of remands, whereas the slide that deals with the incidence—the rate—of robberies with a firearm, simply shows the difference in the change over time in that rate.

Mr. Rick Dykstra: Just to clarify again, more people are actually out who are either remanded or in some other type of detention than back in 1995, when far more individuals actually stayed in custody prior to trial compared with today—or, I guess, 2005—and I suspect that the crossover in 2005 is just continuing to escalate.

Mrs. Lynn Barr-Telford: I can't speak to the crossover; I don't have any more recent data than that. But let me give you the precise number.

In 1995-96, there were 5,485 individuals who were in non-sentenced custody; and by 2004-05, that number was up to 9,916.

Mr. Rick Dykstra: It has almost doubled.

Mrs. Lynn Barr-Telford: It has certainly increased significantly and almost doubled. If you compare that to the “sentenced custody”, just to give you the context, you have 14,240; and then by 2004-05 you had 9,830. So the number of individuals in remand was 9,916 versus 9,830 in sentenced custody.

• (1640)

Mr. Rick Dykstra: Wow. Thank you.

[Translation]

The Chair: The last word goes to you, Mr. Petit.

Mr. Daniel Petit: I have a very brief question.

First of all, thank you for coming. Even if your statistics are difficult to understand, they give me a good picture. I am going to tell you how, as a lawyer, I would act in certain situations, and then you tell me how you see these same statistics.

Someone commits a robbery, a home invasion, and kills someone. So we have three criminal acts covered by Bill C-35. In addition, the person commits a sexual assault before killing the other person. Four criminal acts now. He is charged with murder. When all is said and done, the only charge laid is murder. The other three crimes go unnoticed because they are of less importance. As a lawyer, I know that this is how things happen.

The person is charged with murder. A murder charge is issued, but the other three crimes are ignored because the charge relates only to the most serious. When the person is convicted, found guilty, or when he pleads guilty, he is guilty of the most serious offence. So there are three other offences that should be considered, but are not. For example, a robbery is committed with a firearm, but there are other offences covered by Bill C-35 that also ought to be considered.

Let us consider another case where a person is charged with a serious crime committed with a firearm. You negotiate the charge right off the bat, for example right when the person asks for his lawyer to be present at the police station. The lawyer negotiates with the police because in certain cases it is the police who are laying the charges. For us in Quebec, it is the prosecutor. So you negotiate the type of offence that the person will be charged with. For example, to be sure that the person gets a decent shot, you ask that he be charged with the robbery without adding the aggravated sexual assault with the intent of causing bodily harm. You reduce the burden, and you are already negotiating downwards. The person appears in court and he does not even have to ask for bail. He will be taken care of because the charge has been reduced.

Does this reflect what happens? That is a lawyer's job, it is what they do, it is what I do, and what is done in other provinces. It proves one thing: your figures are good, but in reality you should be increasing them, not lowering them, because you have no way of determining the number of real offences committed.

[English]

The Chair: Mr. Grimes.

Mr. Craig Grimes: What we can speak to are the number of cases. There are 871 cases, representing 1,633 charges. We are able to look at all of the charges in the case, and in order to present all of that information, we present the most serious, and the most serious are defined first by the decision. So in your example we can't speak to plea negotiation, but we do know that generally within the data

set, 90% of convictions come with a guilty plea, and for these cases that contain one of the Bill C-35 offences, it's down to 84%. But some of those Bill C-35 offences also contain mandatory minimums.

[Translation]

The Chair: Thank you very much.

[English]

I just want to tell my colleagues that you all received from the clerk the status of all the witnesses you requested and whether they accepted or declined. I just want to let you know about this.

Is there anything else?

Hon. Larry Bagnell: On a point of order, I wonder, Mr. Turner, if you could get back to the committee with the question I asked about the breakdown of the armed robbery. You say they're decreasing, but I want to know if they're decreasing for both handguns and long guns.

The Chair: Thank you.

Madam Freeman.

[Translation]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): I would like to make a comment before we finish.

Thank you for coming. I have to say that this kind of presentation is not sufficiently clear for the work we have to do. The figures are not necessarily relevant. They are a little hard to understand, but, more than that, they are incomplete, and every time that we ask a question in order to shed light on the offences covered by Bill C-35, we do not get answers because you cannot give us the statistics.

The next time that people from Statistics Canada appear before us, I wonder if they can provide more complete data.

• (1645)

The Chair: Thank you, Ms. Freeman.

[English]

My comments concerning this are that I also have a problem in understanding all these issues because I'm not from Justice or a lawyer by profession. But maybe it will be good for this committee to pass a motion in the House of Commons to change the mandate of the statistics, that they could provide in the future more details about statistics co-working with the police departments all across the country. It could be good to have something like this. It will be great for all the members.

Merci beaucoup to all of you.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.