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—
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Mr. Art Hanger

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• (1530)

[English]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I call to order the meeting of the Standing Committee on Justice and Human Rights.

Today we have witnesses appearing before us from the Canadian Centre for Justice Statistics, principally the director, Ms. Lynn Barr-Telford.

You will be making a presentation, and you're assisted by Craig Grimes and Michael Martin.

Thank you for appearing before us. Would you please begin your presentation, Ms. Barr?

Mrs. Lynn Barr-Telford (Director, Statistics Canada, Canadian Centre for Justice Statistics): Thank you, Mr. Chairman, for the opportunity to speak to the committee about conditional sentencing in Canada.

After briefly presenting some data to set the context, we will look at conditional sentencing from two vantage points: the courts and corrections. Our analysis was restricted to provincial-territorial corrections, given that conditional sentencing applies only to sentences of less than two years and that supervision is a provincial-territorial responsibility. Throughout the presentation, I will draw the committee's attention to any issues of data coverage and to circumstances where particular jurisdictions may have been excluded from coverage.

Referring to the second slide in your package, we see trends in police-reported crime rates since 1977. The key trends of note are that the overall police-reported crime rate, shown in red, increased throughout the 1970s and 1980s—and also throughout the 1960s, although this is not shown on your graphic—then it peaked in the early 1990s and declined throughout the rest of the 1990s. It has been relatively more stable since 1999.

This trend is mirrored in the police-reported property crime rate, where a 6% drop between 2004 and 2005 put it at its lowest level in more than 30 years.

The violent-crime rate is shown in yellow. It increased fairly steadily for 30 years, also peaked in the early 1990s, and while generally declining since the mid-1990s, it has been relatively stable. Between 2004 and 2005, we did see increases in serious violent crimes, such as homicide, attempted murder, serious assaults, and robbery.

Moving to slide three, this next slide also provides some context, showing trends in the sentenced correctional population under supervision. It shows average daily counts. Please note that there are jurisdictions excluded from coverage, and they are noted in the note on the slide.

The key points in the graphic are the green line is the conditional sentence population, the blue line is the provincial-territorial sentence custody population, and the pink is the population on probation.

So on any given day in 2003-2004, the average population on a conditional sentence was 13,285. The conditional sentence population has almost doubled since 1997-98—up 95% since that first full year of coverage. The average supervised population on conditional sentencing, as you can see from that green line, has increased each year since its inception.

Referring to the pink line, we can compare this to trends in probation, which have been relatively stable, fluctuating up and down. As well, the provincial-territorial sentenced custody population was down 31% over this same time period.

So with these trends, what we have seen is a shift in the relative distribution of the sentenced population over time. Conditional sentences represented 11% of the supervised sentenced population in 2003-2004, up from 6% in 1997-98, while sentenced custody was down to 8% from 10%, and probation was down to 81% from 84%.

Slide four gives you a closer look at those trends in the provincial-territorial sentenced custody population and the trends in the conditional sentence population. We've adjusted the scale so you can see the trends more clearly on this particular graphic. You can see the upward trend in the conditional sentence population and the downward trend in the provincial-territorial sentenced custody population.

Slide five shows that the decline we've seen in the sentenced custody population has coincided with an increase in the non-sentenced custody remand population. What this has resulted in is a negligible change in the overall provincial-territorial custody population. So in 1994, adults in non-sentence custody represented just over one-quarter of all those in custody; ten years later, it was close to half.

●(1535)

Slide six is our final slide of context, and it presents Canada's incarceration rates in an international context. As you can see, when compared to the incarceration rates internationally, Canada's rate is higher than those of many European countries but lower than in England, Wales, and New Zealand, and substantially less than the rate in the United States.

On slide seven, now that we've set the context, we'll turn our attention to our sentencing data. These data come from our courts program, and we can look at conditional sentencing by offence type. Let's start, though, with a few baseline statistics.

With our courts data, we can talk about cases and we can talk about persons. For the next several slides, we talk about cases and the most serious offence within the case. In 2003-04 there were 13,267 cases that upon conviction resulted in a conditional sentence. And 2003-04 is our most recent year of available data. These over 13,000 cases accounted for 6% of all conviction cases for the jurisdictions of coverage. Now, when we speak of persons, we have just under 10,000 whose last convictions in 2003-04 were conditional sentences.

For all of our court slides, we cover about 70% of the national adult criminal court workload. We do not have conditional sentence data for Quebec, and we do not have data for Manitoba, the Northwest Territories, or Nunavut.

We can look at conditional sentencing by offence type in two different ways. On slide seven, for example, we can ask for which offence types was a conditional sentence awarded most frequently upon conviction. We can also ask, of the total conditional sentences imposed, what the composition was by type of event.

We can see from this slide that conditional sentences are not imposed with the same frequency for all offences. Offences in this particular chart represent those that are most often subject to a conditional sentence on conviction. Approximately one-third of drug trafficking offences and other sexual offences received a conditional sentence on conviction, and one in five sexual assaults received a conditional sentence.

In addition to the two sexual offences, there are four other crimes against the person offences in this chart. There are other crimes against the person—robbery, major assault, and criminal harassment. Between 8% and 13%, depending on the offence type, received a conditional sentence upon conviction in 2003-04.

Some of these offences are of lower volume, so while they may have been more likely to be subject to a conditional sentence on conviction, they do not necessarily make up the highest number of offence types within the conditional sentencing population.

In fact, if you turn to slide eight, what you'll see here is that ten offence groups represented the vast majority of the 13,267 cases, where a conditional sentence was imposed on conviction in 2003-04. Almost one in five, 18%, or just over 2,400 cases of conditional sentences imposed were for drug trafficking convictions under the Controlled Drugs and Substances Act. There are two crimes against the person in this list of ten. In total, major assault and common

assault represented 17% of all conditional sentences imposed in 2003-04.

Moving to slide nine, let's now shift our attention. Let's look at what our courts data can tell us about the factors a court may consider when arriving at a sentence. There are many factors that the court considers, and these can include the seriousness or gravity of the offence, the degree of responsibility of the offender, and the nature of the incident for which the accused is convicted.

Our courts data allow us to look at three possible mitigating factors that may be associated with the imposition of conditional sentences: the type of criminal procedure, the prior conviction history of the accused, and the final plea entered by the accused. While not a definitive measure of the gravity of the offence, one way we can proxy the seriousness of an offence is to look at the type of criminal procedure that was followed—that is, was it summary or indictment?

●(1540)

From chart nine, we can see that slightly less than half, 47%, of the convicted cases with a conditional sentence were proceeded by way of indictment. Slightly more than half, conversely, were proceeded by summary conviction. If you look at the list of offences, with the exception of drug trafficking, break and enter, and fraud, the vast majority of many conditional sentence were not indictable.

For the two violent offence types in this list, that's major assault and common assault, at least two-thirds of all conditional sentences imposed were for summary conviction violations. Overall the total number of indictable offences is being driven by drug trafficking, which represents 18% of all conditional sentences, of which 90% were proceeded by way of indictment.

As mentioned, there are a number of mitigating factors that the court considers when imposing a sentence, as outlined in the Criminal Code, section 718. Prior conviction history of the accused is another possible factor that we're able to look at with our data. For this slide and the next two, our population is a person or the accused. This is a person who received a conditional sentence during their last appearance in criminal court in 2003-04. Here we're talking just under 10,000 people.

Approximately half of all conditional sentences were imposed on offenders with no prior conviction history. The percentage with no prior conviction history, as you can see, varied by offence type. Of note is the proportion of first-time offenders among the conditional sentence population when we look at certain offence types. Approximately 50% of persons sentenced to a conditional sentence for drug trafficking, fraud, impaired driving, theft, and major assault did not have a prior conviction, and 64% of those convicted for sexual assault did not have a prior conviction.

If you look at slide 11, the type of final plea is another mitigating factor listed for consideration when imposing a sentence. The final plea entered by the accused is the third and final factor that we're able to look at with our courts data. Again, our population here is the person or the accused, but in this particular slide we're focusing only on those offenders who were convicted of an indictable offence and sentenced to a conditional sentence in 2003-04.

You will recall from an earlier slide that just under half of conditional sentences that were imposed were preceded by way of indictment. Here we have just under 4,500 accused as our population of interest. For this population, just under 4,500, the chart presents the prior conviction history and the type of final plea entered. Overall, six in ten had no prior conviction history, and almost 90% entered a guilty plea. The data in the chart seemed to be suggesting that both the prior conviction history and the type of plea may be factors considered at sentencing. The vast majority, 95% of those with a conditional sentence for an indictable offence, had either no prior conviction history or a plea of guilty as a possible mitigating factor.

It's important to note as well that there may have been other mitigating factors considered, but we have only information on the three factors I have spoken of in our data set. For the 242 persons, the 5% on the chart, who were convicted of an indictable offence without being a first-time offender or entering a guilty plea, there may be other mitigating factors being considered. Unfortunately, we're not able to discern that.

Slide 12 we included for illustrative purposes. Criminal Code offences that were listed in the Bill C-9 legislative summary document have been applied to our 2003-04 data. The purpose was to identify the number of persons who were given a conditional sentence for an offence type that was included in that Bill C-9 summary document. It's important to note that the list of offences that were subject to the Bill C-9 legislation were as specified in that legislative document.

Chart 12 indicates that almost one in three persons, 29%, just over 2,800 people, sentenced to a conditional sentence in 2003-04 were convicted of a Criminal Code offence that was listed in the Bill C-9 legislative summary document. For some further information we have also listed it by offence type in the chart.

• (1545)

Although it's not in the chart, if we add drug offences to the Criminal Code Bill C-9 offences, we see that half—that is, 4,865—of all persons sentenced to a conditional sentence in 2003-04 were convicted of a Bill C-9-listed offence or a drug offence.

We looked at the plea and the prior conviction history previously for our data; we can do the same analysis for this particular subpopulation. Once we took into account the prior conviction history and the guilty pleas, there were 310 people of the 4,865 who did not enter a guilty plea or who had a prior conviction history, and of these 310, the recorded procedure was summary for 110 persons, so we can't speak to any of the other mitigating factors that may have been considered for the remaining 200 people, for whom the procedure was either by indictment or unknown.

Slide 13 is our final chart from our courts data, and it presents information on the length of supervision time ordered for the 13,267 conditional sentencing cases. As you can see from the chart, conditional sentences are under supervision longer.

When ordering a term of prison or a conditional sentence, the court may also impose a term of probation to be completed following the completion of the more serious sanction. Thus, a convicted person could be under sentence supervision for a maximum of the combined total of these sanctions.

After we eliminated federal prison sentences—which are not subject to conditional sentencing—cases that were sentenced to a conditional sentence in 2003-04 were, on average, in sentence supervision for approximately twice as long as cases sentenced to prison. The total average ordered supervision for cases sentenced to a conditional sentence was 453 days, compared to 223 days for cases sentenced to prison.

We can see from the chart that a term of probation was ordered for a slightly larger proportion of those sentenced to a conditional sentence than of those sentenced to prison. When you combine sentences, you greatly increase the average time the convicted person will spend in supervision. The average ordered supervision time for an offender sentenced to a conditional sentence and probation was 700 days; this was 36% longer than for an offender sentenced to prison and probation. The shortest average ordered supervision time was for an offender sentenced to prison without probation; it was an average of 47 days.

The last three slides in our presentation, beginning with slide 14, make use of data from our new integrated correctional services survey. This is a microdata survey that follows individuals under the supervision of the correctional system. As of 2003-04, the survey had been implemented in four jurisdictions: Newfoundland and Labrador, Nova Scotia, New Brunswick, and Saskatchewan. Each of the next three slides lists the jurisdictions covered in the title; we cannot generalize beyond these jurisdictions.

Slide 14 presents the optional conditions attached to probation sentence and conditional sentence. When we look at the optional conditions most frequently attached to probation-only community involvements and those attached to conditional sentences, we do see some differences. Over 60% of conditional sentences had a reside or house arrest condition attached, and about one-third had a curfew attached. These were not on the list of the most frequently attached conditions for probation only.

Slide 15 also draws from our corrections data and is for two jurisdictions. It refers to offenders who completed a conditional sentence involvement in 2003-04. There were 4,300 of these cases. We can see that just over one-third of the persons in these cases were admitted to custody at some time as a result of a breach of condition while serving a sentence. This breach was severe enough to reach a threshold that resulted in an admission to custody. This is not an indication of the total number of breaches, however. The proportion admitted to custody on a breach, as you can see, varied by offence type—drug offences in this particular list are at the lowest, and you can see that robbery is at the highest.

● (1550)

Slide 16 is our final slide today. It also uses our correctional data and it looks at the proportion of those who left correctional supervision in 2003-04 and subsequently returned to corrections within a twelve-month period. Here we're looking at re-involvement after a sentence has been served, and as we can see for the jurisdictions listed, the proportion of probationers who returned to corrections within the twelve months was a little lower than for those serving a conditional sentence, but the proportions are quite similar. The blue line in this graphic represents conditional sentence. The pink line represents probation. And the two intersecting blue lines are for sentence custody.

The proportion who returned to corrections after finishing a sentence custody was much higher, around 30%. It's important to note with these data that we weren't able to take into account any prior conviction history when we conducted the analysis.

Mr. Chairman, that concludes my presentation. My colleagues and I welcome any questions from the committee.

Thank you very much.

The Chair: Thank you very much for your presentation, and certainly we'll be getting our first round, seven minutes, from the Liberal side.

Mr. Brian Murphy, you're first on the list.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chairman.

I want to thank the panel of witnesses for their able presentation. I have a number of questions and a number of comments. If I could ask a quick question first, have these statistics and this study been produced or compiled and presented anywhere else other than here today?

Mrs. Lynn Barr-Telford: The data upon which this analysis is based are publicly available, but we have put the data together for today's presentation in a particular way.

Mr. Brian Murphy: To be more to the point and not to make you feel this is a cross-examination, has this very study, with these very pointed questions or conclusions or parameters, been put to the Department of Justice, particularly the Minister of Justice and his deputies, for their review prior to them tabling this bill?

Mrs. Lynn Barr-Telford: I am making this particular presentation for the first time today. I can't speak to the different types of analyses that have been conducted elsewhere.

Mr. Brian Murphy: Who else besides you would do these types of statistics? Does the justice department have its own statistics department?

Mr. Craig Grimes (Project Manager, Courts Program, Statistics Canada, Canadian Centre for Justice Statistics): Justice Canada has access to many of these tabulations and from time to time requests aggregate data sets for policy development. They may have put together some data related to conditional sentencing, but I haven't seen any analysis of those data.

Mr. Brian Murphy: So we don't really know what the minister and his advisers saw, but we know they didn't see this exact presentation done by you.

Mr. Craig Grimes: That's right.

Mr. Brian Murphy: That's fair. Okay. Because my comment on this, and I will continue with some questioning, is that it's quite elucidative. It tells us that a number of factors we've been arguing about here about the effectiveness of conditional sentencing are true.

You've concluded that offenders with no prior history and offenders who plead guilty make up by far the biggest part of those who got conditional sentences. Is that right?

Mr. Craig Grimes: That's correct.

Mr. Brian Murphy: The question I have—and I think I know the answer—for those of us around the table, and there seem to be a few, who have some experience in the criminal justice system, there's no way of accounting statistically for the interplay between a prosecutor and a defence attorney on discretion on the part of the prosecutor to make a recommendation to secure a conviction. Aside from going out and asking every prosecutor and defence attorney on every case, there's no way of compiling statistics as to how much that plays in these stats—or is there?

Mrs. Lynn Barr-Telford: What we can speak to with our data set are those factors we've presented here today, the three mitigating factors we have been able to look at to date. That's what our data set includes.

Mr. Brian Murphy: Right. So I guess there's no way of figuring out what a prosecutor, in offering something to a defence lawyer, might put on the table in order to secure a conviction. But we do know that no prior history of people pleading guilty as a matter of remorse under section 718 seemed to make up the bulk of these things.

The other thing, which I could finish on, that seems to be very clear from your statistics—you correct me if I'm wrong, because I want to make sure I'm getting through to the other side over there, to make sure my friend from Albert County, right across the river, is listening—is that the offenders who were given conditional sentences were under supervision or conditions, or however you want to put it, for longer periods of time on average than those who were given what the proponents of this bill might consider harsher sentences, i.e., probation and conditional sentence together or prison.

The term of the overseers of the population—the time they had to enforce conditions, many of which are built around rehabilitation, such as house arrest and community involvement and counselling and treatment and so on—was longer than if you were just to take the same offence and throw someone in prison.

I see your stats being something like—I know you're using terms like “high average”, and that threw me off a bit—453 days for a conditional sentence on average compared with prison of 47 days, which is a difference of about ten times.

Tell me how I've skewed that to my own benefit here.

• (1555)

Mrs. Lynn Barr-Telford: I'll refer you to the chart 13 that we prepared in the presentation.

This particular chart provides information on the length of supervision time that was attached to conditional sentences. Within the chart you can see a breakdown. You can see the average number of days attached when a conditional sentence was imposed on its own and also when it was imposed in combination with probation, and similarly, for a prison sentence and a prison sentence with probation.

What this chart doesn't have for you that I provided when I was giving an overview is that the total average days overall for conditional sentences was 453; it compared with 223 for prison. The 47 days refers to the supervision time for prison alone, on that graphic.

I'll also refer you to the optional conditions graphic we prepared in the package. For the jurisdictions where we had available information, you can see that there was a difference in the conditions that were attached.

I'll ask my colleagues if they would like to add anything to that.

Mr. Craig Grimes: I'll just repeat that when we put together the prison sentence population for this data set, we excluded all those that had a sentence length that indicated a federal sentence, so any of those that got two years or more were excluded from that population.

What this data set can't speak to is aggregate sentencing. So if anybody received two or three one-year terms on different counts and these were to be served consecutively, we couldn't factor those individuals out.

Mr. Brian Murphy: On slide 14, there's a kind of funny question that I don't think you canvassed in your presentation. Why are the stats just from Nova Scotia and New Brunswick? And on slide 15, why are they just from New Brunswick and Saskatchewan?

Mr. Michael Martin (Chief, Correctional Services Program, Statistics Canada, Canadian Centre for Justice Statistics): Right now, with respect to that survey, those jurisdictions are the only ones that are covered under these particular items.

The survey is being implemented; it doesn't have full national coverage. What we've looked at is those jurisdictions that to date have provided data and for which we can answer those questions.

The Chair: Thank you, Mr. Murphy.

Mr. Ménard.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): I'm trying to understand just who exactly received a conditional sentence of imprisonment. At the time the bill was tabled, one third of those sent to prison were jailed for unpaid fines. That's why judges had the option of handing down a conditional sentence.

If I understand correctly the statistics you've given us, according to slide 8, the individuals involved received sentences of less than two years and are serving their time in provincial penitentiaries. They are the ones eligible for conditional sentencing.

For example, does slide 8 show that 18 per cent of offenders who received a conditional sentence in 2003-2004, or who were ordered to serve their sentence in the community, had committed a drug-related offence? It isn't clear to me if their offence was simple possession of cannabis, trafficking or some similar crime, but the chart reflects the offence type considered.

Is my understanding correct?

• (1600)

[English]

Mrs. Lynn Barr-Telford: We have two slides that I'll refer you to, and we can look at conditional sentencing in two different ways.

Slide eight takes the conditional sentence population for 2003-04 and looks at its composition vis-à-vis an offence type. So of all the conditional sentences, over 13,000 conditional sentences, what proportion were for drug-trafficking offences? It's 18%. That's what the chart says. So 18% of the conditional sentences imposed upon conviction were for drug-trafficking offences, 11% for fraud, 10% for theft, and so forth. That's the data.

[Translation]

Mr. Réal Ménard: I see.

In essence, if we want the bill to be adopted, we must be convinced that the court did not properly use this tool, that is the conditional sentence of imprisonment. That's what I'm interested in finding out.

One of the many sentencing options available to judges is the conditional sentence. However, this type of sentence should not be imposed for certain types of offences. For example, it should not be ordered for offences of a sexual or violent nature, or for serious sexual offences.

Can you tell me how often, out of a total of 13,277 cases involving sexual offences, judges ordered a conditional sentence? In fact, slide 8 provides a compelling reason not to vote for this bill, because in my view, this sentencing option has been properly used. This sentence has been imposed in cases of drug trafficking, fraud and theft, but not for sexual offences.

[English]

Mrs. Lynn Barr-Telford: I'm going to refer you to slide seven, because the second way we can look at the offence type is to say, of a particular type of offence, what proportion—

[Translation]

Mr. Réal Ménard: According to slide 7, at least one in five cases...

Please continue.

[English]

Mrs. Lynn Barr-Telford: Yes, we're talking about slide seven.

What this chart shows is, for drug-trafficking offences, in what proportion of those offences in 2003-04 a conditional sentence was imposed upon conviction. One-third of the drug-trafficking offences in 2003-04, upon conviction, were awarded a conditional sentence.

For sexual assaults, you can see that 22% of the sexual assaults in 2003-04, upon conviction, resulted in a conditional sentence.

[Translation]

Mr. Réal Ménard: I'm sorry, but what exactly is meant by "other sexual offences"? We read here that 67 per cent of offences involve drug trafficking or other sexual offences.

[English]

Mrs. Lynn Barr-Telford: The other sexual offences category includes such offences as sexual interference, sexual exploitation, invitation to sexual touching, and similar types of offences. That's what that includes as a group.

[Translation]

Mr. Réal Ménard: So you're saying then that in 32 per cent of cases, other types of sexual offences are involved.

•(1605)

[English]

Mrs. Lynn Barr-Telford: What we're saying is that 32% of sexual assault offences, upon conviction, resulted in conditional sentences. Sorry, other sexual offences—yes, you're right.

[Translation]

Mr. Réal Ménard: I don't understand. According to the chart, 179 cases equal 32 per cent, and 2,049 cases equal 35 per cent.

[English]

Mrs. Lynn Barr-Telford: Let me try to be clearer on this. If we look at other sexual offences as an offence type and we ask what proportion of other sexual offences would have been awarded a conditional sentence upon conviction, that was 32%.

The total number of cases that were awarded a conditional sentence was 179. We have a total count of the total other sexual offences as well. As a percentage of the total we would be looking at 179 over 13,267. In this case you're looking at just over one-third of the other sexual offences resulting in a conditional sentence upon conviction in 2003-2004. That's how to read this chart.

Is that helpful?

[Translation]

Mr. Réal Ménard: I see. That helps us considerably to put these figures into perspective.

The Minister said he was not in a position to answer the question about those offenders who received a conditional sentence in 2003 and 2004. With all due respect, I have to say that he has answered

very few questions. We're talking about a very small percentage of cases. The Minister talked about 5% of the sentences handed down, while you say that 6% of offenders who receive a conditional sentence are repeat offenders. That's an even smaller percentage.

How many repeat offenders received a conditional sentence upon conviction?

[English]

Mrs. Lynn Barr-Telford: I'll ask my colleague.

Craig, do we have information available on that?

Mr. Craig Grimes: We know that approximately half had no prior conviction. Of the total of approximately 10,000 persons convicted in 2003-2004, looking at their last conviction in that year, roughly half had a prior conviction. Half had no prior conviction and half had prior conviction.

[Translation]

Mr. Réal Ménard: One last...

[English]

The Chair: Thank you, Mr. Ménard.

Ms. Wasylcyia-Leis, please.

Ms. Judy Wasylcyia-Leis (Winnipeg North, NDP): Thank you, Mr. Chair.

Thank you very much to the presenters.

I'm taking Joe Comartin's place. I won't be the expert he is, but I know that he was anxious to get this kind of statistical information before the committee.

I don't know if you can answer this, but based on your statistical studies, could you say approximately how many offenders now receiving conditional sentences would likely be sentenced to custody under Bill C-9 or Bill C-10?

Mrs. Lynn Barr-Telford: We can't provide a definitive answer to that question. There are many assumptions one would have to make around how the proceedings would take place. We can't provide a definitive answer to that.

Ms. Judy Wasylcyia-Leis: Others who have made assumptions in this area have said it could be roughly one-third affected. I don't know if you can give any validity to that, or if it's in the ballpark, but it would seem to me that we've got to somehow get a handle on the number, based on the statistical information available, because that will tell us a lot in terms of how our system can handle the change and what it will mean.

Based on the one-third assumption, I'm trying to figure out what it means for our system. On Tuesday, when asked about the potential cost to the system, the minister said their estimates indicated that there could be additional jail sentences amounting to 442 prison-years, which equates to an annual national expenditure of approximately \$21.7 million. Yet if you take the rounded figure of one-third and look at the fact that it costs about \$52,000 a year to house an inmate, it looks like the costs would actually be more like \$250 million.

There's a huge discrepancy, based on generally accepted information, about what the impact would be and the costs versus what the minister has told us. Have you any idea how the minister could end up with the figure of \$21.7 million and what could explain the discrepancy of about \$230 million?

•(1610)

Mrs. Lynn Barr-Telford: What I can do is refer you to a few things you'll find in your presentation package.

If you look at chart 12, the heading on chart 12—I'm making the assumption that they're not all numbered there—almost one-third of conditional sentences imposed for a Bill C-9 listed offence.... What we were able to do for illustrative purposes was apply the Criminal Code offences listed at the end of Bill C-9 to our 2003-04 conditional sentence data. And when we did that—and we didn't take into account the type of procedure that was followed—we found that one-third, almost one in three of that conditional sentence population, just over 2,800 people, were sentenced to a conditional sentence in 2003-04 that was for a Bill C-9 legislated offence.

It's not in your chart, but I spoke of it a little bit during the presentation that we also added drug offences to those Criminal Code Bill C-9 offences. When we did that we saw that 4,865 persons—about half of all the persons with a conditional sentence in 2003-04—would have been convicted of either one of the Bill C-9-listed offences in the summary document, or of a drug offence.

In terms of your question around cost information, I don't have with me a cost analysis. What I can tell you is that in 2003-04 approximately \$1.2 billion was spent on provincial-territorial custody and community supervision. If you look at community operating expenditures, it cost about \$5 per community supervision offender per day. And if you look at custody operating expenditures, it cost about \$142 per inmate, per day. That's the information I'm able to provide to you here.

Ms. Judy Wasylycia-Leis: That's helpful. I think that gives us some more information. We can go away and try to do some calculations and understand the impact.

I found it fascinating, looking at the last chart of your presentation—and I didn't know this—that you have the least recidivism rate among those with conditional sentences and those on probation only, and that conditional sentences that combine with probation and sentence custody alone dramatically increases the probability of recidivism.

So in fact what we could be doing with this bill would not only dramatically increase the costs to the provincial treasuries, but increase the incidence of crime generally, because in fact they're more likely to repeat an offence. Can I take that from chart 12?

Mrs. Lynn Barr-Telford: I certainly can't speak to the eventual impact of the bill, but what I can speak to is the data that you see in the final slide. These data for the four jurisdictions that are presented here do speak to re-involvement after a sentence has been served, but in doing the analysis, we were not able to take into account any prior conviction history. What you do see is that the proportion who returned to the correctional system within that 12-month period was lower among those with conditional sentences and those with probation than it was among those who had a custody sentence.

What we cannot say from the data is what the underlying factors causing this are. We are not able to speak to that.

•(1615)

Ms. Judy Wasylycia-Leis: You've also pointed out that those on conditional sentences, interestingly, end up with a much longer period of supervision than those in all the other categories. I think one could draw the conclusion that in fact we're putting in place some extra precautions, like going the route of conditional sentencing, that we just haven't talked about or been aware of. I know you can't answer that.

My last question is that we've had a lot of concerns—

The Chair: Make it quick, please.

Ms. Judy Wasylycia-Leis: —raised by the aboriginal community. The AFN has pointed out that in fact conditional sentencing was actually introduced so that we wouldn't have this over-representation of first nations people in the criminal justice system. I don't know if you have a breakdown based on your statistics, but could you give us any enlightenment on the impact on aboriginal people in the whole criminal justice system?

Mrs. Lynn Barr-Telford: Before letting Mr. Martin reply to that, I can say that we can provide a little information from the correctional services data that we have, but we're not able to conduct that analysis within our courts data program.

Mr. Michael Martin: I'd like to respond very quickly here.

Let's look at the proportion of aboriginal offenders who have various kinds of sentences and who are being supervised in the correctional system. As they currently stand within sentence custody, approximately 21% of people admitted to sentence custody are aboriginal. In comparison, the proportion in remand is approximately 18%, in probation is 16%, and in conditional sentences is 19%. Those numbers are for the 2003-2004 year. That gives you an idea of the profile.

Ms. Judy Wasylycia-Leis: Thank you.

[Translation]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Could you repeat the figures for me?

[English]

Mr. Michael Martin: Aboriginals represent 21% of admissions in provincial and territorial sentence custody; 18% in remand; 16% on probation; and 19% of conditional sentences.

The Chair: Thank you, Ms. Wasylycia-Leis.

Mr. Harvey, go ahead, please.

[Translation]

Mr. Luc Harvey (Louis-Hébert, CPC): Getting back to the chart on page 16, the sentence ordered by the judge, whether a conditional sentence, a suspended sentence, or probation, or a term of imprisonment, is a function of the gravity of the offence.

I don't think it's right to say that a person who receives probation is less likely to re-offend than a person who committed a more serious crime. Did this factor into the calculation on page 16?

[English]

Mrs. Lynn Barr-Telford: If I understood the question you posed, within this graphic that you see on page 16, we were not able to take into account any prior conviction history within these populations. These were those who left correctional supervision in 2003-2004 after having served the type of sentence that you see in the graphic. It does not take into account any prior history.

Mr. Michael Martin: I would like to add on this one that in this particular case, we're looking at differential return profiles, essentially, or outcome profiles of people who were released from the various statuses. It does not control for offence history, and it could very well be that the results you see here are really a reflection of those decisions at the court level, that they got probation because they were of lower risk.

We have looked at data on various risk profiles that are completed when people enter the corrections system, and we do know that the probation population, the conditional sentence population, has lower risk profiles than the custody population. The interaction between the two can't be clearly identified here, but those are other factors that could be operating in terms of the results that you see here.

•(1620)

[Translation]

Mr. Luc Harvey: Basically, the table could have been entitled "Risk of recidivism based on the gravity of the offence".

[English]

Mr. Michael Martin: I wouldn't have titled it that, because we don't know that for certain; those weren't looked at specifically. It's just looking strictly at the result outcomes based on the kinds of sentences they had when they were released from the corrections system.

[Translation]

Mr. Luc Harvey: I'd like Daniel to have whatever time I have left.

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): I have a two-part question for you.

Firstly, you said that you had no data available on Quebec, my home province, where I will have to defend the bill.

Secondly, I'm not familiar with the judicial systems in all of the other provinces. Do they also operate diversion programs similar to the one in place in Quebec? Are you familiar with this concept? When a person commits a first offence, instead of having to go to court, he is considered for a diversion program.

Is diversion a concept that has been embraced in these other four provinces? Right away that would alter the statistics.

Furthermore, did you take into account the fact that in Quebec, hit and run offences now come under a different jurisdiction? At present, such offences are dealt with under the Highway Safety Code, whereas in the past, they would have been deemed Criminal Code violations. Therefore, there has been a change in perception, in so far as criminal offences are concerned.

I'm hoping your statistics will enlighten me. After all, that's why you're here today. I'm wondering if you took all of these variables into account when you came up with your figures?

[English]

Mr. Craig Grimes: On your first point, about the statistics for Quebec, we do collect criminal court data for Quebec, but unfortunately at this time they are unable to provide us with conditional sentencing data. It's one of two limitations in the data sent from Quebec. The other is that we don't have any data for municipal courts in Quebec. We have a wealth of sentencing data for Quebec, but unfortunately not conditional sentencing data.

On the first part of your second point about decriminalization, I'm not sure whether that term is used elsewhere. I know that in New Brunswick and British Columbia they have pre-charge screening of offenders before a charge is laid. So the profiles of the court workload in those two provinces and in Quebec are slightly different from those in the rest of the country.

On your third point, on transfers and the assessment of offenders, I'm not really sure how I can answer that question with these data. What I can tell you about the seriousness of the offence is that the data we present for criminal court workload is reflective of the most serious offence against an offender. The seriousness is determined in two ways. For the court data that's presented, the seriousness is first determined by the type of decision, and convictions are always more serious than other decisions. Then if there's a tie, if there are multiple convictions within the same case, a seriousness index is used.

The seriousness index is developed based upon all of the sentence information that exists within the data set, and we look at the average sentences that offence received previously. Offences that have typically gotten a longer sentence or are more frequently sentenced to custody are ranked higher in that order.

•(1625)

The Chair: Thank you, Mr. Petit.

I have one question that has come to my mind through the discussion here so far. In the information gathered on conditional sentences, has any data been collected or is there any parameter regarding age of the offender when this information was gathered? If there was, my understanding is there was no consideration given to prior conviction history. Only the sentencing of the court is a parameter that governs the information here.

Mr. Craig Grimes: The age of the offender is something we could look at. We didn't for this presentation. It is something that is collected within the data set, but it wasn't one of the items we analyzed for this. We could certainly put together something for the committee that identifies the age of the offender.

The Chair: And the prior...?

Mr. Craig Grimes: Yes.

The Chair: Thank you.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you for coming

Slide 16, on the surface, is quite a condemnation of this bill, because every one of the people we're talking about is going to get out in the public again, unless they die in prison. People have constantly said that what they want is safety. It's the most important thing they want from the criminal justice system. This suggests that people who have been given a conditional sentence are going to be a lot less likely to offend and people are going to be a lot safer with conditional sentence than prison sentence.

Mrs. Lynn Barr-Telford: There are several factors that we were not able to take into account when conducting the analysis. Prior conviction history, as I mentioned, is one that we are not able to take into account.

In interpreting the results of this graphic, one has to be cautious in the fact of keeping in mind the type of offence. We don't control for type of offence, as Michael has already said. So we have to keep in mind those factors that we weren't able to control for while we conducted the analysis.

What we do show within this analysis is the proportion who were reinvolved within the correctional service within a particular period of time. Whether or not the factors that result in a return to the correctional service or a non-return have to do with the prior history, with the nature of the offence, or with the circumstances surrounding it is very difficult for us to tell with these particular data.

Mr. Michael Martin: I would just add that, on the offence, you will note, for example, in the previous slide, slide 15, where we look at incarceration as a result of a breach of conditional sentence, we do break it down by offence; and again, it's using the most serious offence concepts, which Craig mentioned, with respect to the courts' data.

When we look at reinvolved, that is something that was not done here in terms of breaking it down by what kinds of offences their previous involvement was for. It is something that, again, we could do.

Hon. Larry Bagnell: Well, what would be good—and I don't want you to answer this—is to take people in identical situations, ones who were incarcerated and ones who weren't, and see the results, because I know these people weren't.

But I have another question, on slide 13. Once again, given that for a thousand years our system hasn't really worked—people keep reoffending and reoffending—you want to find new ways of treating them and doing things so that maybe they won't reoffend so much.

If I read this chart right—and tell me if I'm reading it right—it suggests that with a conditional sentence with probation, we'll be working with that person to improve them for 700 days on average, whereas if they're in prison alone, we'll only be working with them for 47 days. Is that true? Am I reading the chart right?

That is a phenomenal difference of work on a prisoner to make him better, more safe, more rehabilitated than we've ever had in history.

• (1630)

Mr. Craig Grimes: The other thing I can mention about the prison sentences is that this doesn't take into consideration time in custody, pre-trial custody. So the prison sentence is the prison sentence ordered at the time of a guilty finding.

Hon. Larry Bagnell: I'm sure they're not going to be in pre-trial more than they are in post-trial, in general. It's not going to be anywhere near 700 days.

Mr. Craig Grimes: I can't currently speak to that with these data.

Hon. Larry Bagnell: Probably less than 47 days. It's still a tiny figure. There's more and more evidence against this bill. It's incredible.

I'm curious, on page 6, with respect to the incarceration rates—first of all, I'm astonished that the United States is five times more than anyone else—what I'd like to know is whether crime is running rampant in the Scandinavian countries.

Most crime is recidivism in our society. Almost all crimes are done by people who are reoffending. If very few people are in jail in these countries, are their crime rates significantly higher than in the United States or the countries that put people in jail longer?

Mrs. Lynn Barr-Telford: We haven't specifically looked at the crime rates internationally in that context.

Mr. Michael Martin: One of the issues one runs into all the time when we look at crime rates is essentially comparability. There are issues obviously with comparability with incarceration rates as well because of differing systems. At the CCJS there was a study done specifically looking at comparability of types of crime and trying to make the crime comparison between the United States and Canada. We don't have those with us here, but there was a study done that did focus on identifying the kinds of things that are comparable and what aren't comparable.

That certainly is an issue here when you're looking at trying to make international comparisons in any domain. This is exemplary, based on what we do know in terms of how countries incarcerate and what the various levels are. In terms of the crime rates themselves, that's something we haven't done.

Hon. Larry Bagnell: That would be interesting for the committee to get from someone.

On chart 12—I think Judy asked this question, but I just want to ask it in a different way because you said you couldn't answer it for her. If you assumed that everyone who had a conditional sentence in 2003-04 would go to jail once Bill C-9 is passed, how many people in total, if you added all this up, in Canada would go to jail that wouldn't have? Assuming everything was the same and assuming that everyone who had a conditional sentence—and you say here roughly a third—went to jail, what would that number be with the numbers you're using? I just can't add them all up.

Mrs. Lynn Barr-Telford: There are a few points in response to your question.

That's a very difficult definitive number to be able to provide. In our analysis to date within slide 12 that you referred to, what we did was take the Bill C-9 Criminal Code listed offences that were at the end of the legislative summary document and we applied them regardless of the type of procedure that was followed to our 2003-04 data. With that application we found that about a third of those who had been awarded a conditional sentence would have been convicted of one of those Bill C-9 offences. Then, in the analysis, again not taking into account the way of procedure, we added to those drug offences—drug trafficking and drug possession offences—to come up with the number of 4,865 persons who would have been either a Bill C-9 listed offence as per the document or a drug offence.

It's important to note, and I mentioned during the presentation, for that 4,865 population we then conducted the analysis we had done throughout the presentation. We looked at guilty pleas and prior conviction history, for example. Once we took into account the prior conviction history and the guilty pleas, we were left with 310 people who did not enter a guilty plea and who had a prior conviction history. Of that 310 we were able to look at the way of procedure, and 110 of those individuals had proceeded by way of summary conviction. We were left with 200 people for whom we really can't speak to any other mitigating factors that may have been in place. We simply don't have any other data. That's the analysis that we have conducted in terms of your question.

• (1635)

Hon. Larry Bagnell: I just want to get the numbers, that's all.

The Chair: Okay, get them on.

Hon. Larry Bagnell: So there were roughly 4,000 people that would have fit under Bill C-9 that had conditional sentences. Is that right? From how many provinces was that?

Mrs. Lynn Barr-Telford: These are our courts data, so there are some exclusions. We cover about 70% of the national criminal court workload, so we have about 70% coverage.

It's really important to make the point here that the 4,800, let's say, individuals are those who would have been convicted of one of the offences that was listed in the legislative document as being a Bill C-9 offence. To that we added just over 1,900 drug trafficking offences and some drug possession offences, of which we know that the drug trafficking—about 90% from our data—are indictable offences. From that, then, we did the analysis on the guilty pleas. But we did not at the outset take into account the procedure that was followed, whether it was indictable or summary. We did that after we were breaking down that 300 population, after we had done the subsequent analysis. So that's the way our analysis proceeded in this particular case.

The Chair: Thank you, Mr. Bagnell.

I have one question that comes to light. Where the sentences were conditional, how many breaches relating to those sentences were there?

Mrs. Lynn Barr-Telford: We can't answer that particular question with our data set.

Our information on breaches is what you've seen from slide 15. For those jurisdictions, New Brunswick and Saskatchewan, where we have the data, we're able to look at the breaches that resulted in

an admission to custody. What we cannot do with our data at this point in time is speak to the overall number of breaches—for example, any that did not result in a custody admission.

The Chair: Thank you.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Can you single out the data that applies solely to Aboriginals? I would imagine you could for those residing in the Northwest Territories, Nunavut and the Yukon. Statistics are also available for Quebec. Aboriginals can be found just about everywhere. We can't forget the Huron village in Mr. Petit's riding.

[*English*]

Mrs. Lynn Barr-Telford: In our court's data program, we do not have an aboriginal identifier, so we are unable to conduct the court's analysis for aboriginal and non-aboriginal populations.

Michael has presented some data from the correctional services program, and he can perhaps speak to the availability of data in that program.

Mr. Michael Martin: The last slides that you saw on correctional services, where we looked at whether they returned to custody on a breach or become re-involved, can be done by aboriginal. It's only the corrections data that allows us to do the aboriginal breakdowns.

[*Translation*]

Mr. Marc Lemay: Would you be able to get these figures for us?

[*English*]

Mr. Michael Martin: Yes.

[*Translation*]

Mr. Marc Lemay: I understand.

I'd also like to know if you have any statistics on index crime in Canada since 1977? Does Statistics Canada compile figures of this nature? I'd like an answer. I'm sure you can guess what my next question will be.

[*English*]

Mrs. Lynn Barr-Telford: We have been collecting data on police-reported crimes since the early sixties.

• (1640)

[*Translation*]

Mr. Marc Lemay: Based on available statistics from 1977 to 1996 relating to the offences listed in Bill C-9, do you have any data to share with us on incarceration and probation? There was not such thing as a conditional sentence of imprisonment at the time. Could you possibly get these figures to us quickly?

[*English*]

Mr. Craig Grimes: There are a couple of problems involved in putting those data together.

First, for the vast majority of the country, there's no court data going back prior to roughly 1994-95. I wouldn't be able to put together any data related to the conviction history of those individuals, or whether or not there was a conviction.

On the police-reported crime, there is a difficulty in putting the statistics together in relation to the legislative summary of Bill C-9. The legislative summary lists the offences by statute section, subsection, and paragraph. Police-reported crime is reported based upon a UCR-2 violation code. There may not be a one-to-one match with those offence categories.

So if we put together an offence history going back to 1977, there may be many more offences in that category than you'd want to see, and for that legislative summary.

[Translation]

Mr. Marc Lemay: How far back can you go prior to the introduction of this measure in 1996?

[English]

Mr. Craig Grimes: For court data it's 1994-95. There is some data prior to that, but then we're talking about a very small part of the country. We have roughly 80% going back to 1994-95.

[Translation]

Mr. Marc Lemay: Can you get these figures for us?

[English]

Mr. Craig Grimes: For those offences in the legislative summary?

[Translation]

Mr. Marc Lemay: Yes.

[English]

Mr. Craig Grimes: Yes, where there is a match; when there's a new offence and we have a new section, subsection, and paragraph, it will start at the time when we start receiving data.

I'll put together what I can for you and provide it to the committee.

[Translation]

Mr. Marc Lemay: According to your statistics, the majority of conditional sentences of imprisonment were ordered for property crimes, not crimes against a person.

[English]

Mrs. Lynn Barr-Telford: From our data we have a total count of the conditional sentences in 2003-04 that were crimes-against-person convictions. We can give you the number; just over 3,600 of the conditional sentences were awarded for crimes against persons. That is over a total of 13,267, so it's just more than a quarter.

Mr. Craig Grimes: If we break down the categories, we have 27% for crimes against the person; 32% for crimes against property; 10% for administration of justice offences; 4% for other Criminal Code offences; 7% for Criminal Code traffic; and 19% for other federal statutes, which would include the drug offences.

The Chair: Okay, Mr. Lemay?

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair, and thank you to the witnesses for your presentation today.

There are always a couple of dangers when we look at these types of illustrations. I find them very useful, but on the other hand they're very sterile, and numbers don't tell the story, perhaps, of what we hear as members of Parliament in our constituencies, representing our constituents. This doesn't tell the story of the sense of injustice that someone feels about some of these crimes. You've enumerated sexual offences, sexual assault, serious property crimes, and major assault. When someone who commits that type of offence against someone else is given what people refer to as house arrest, there's a sense among the Canadian population that in that sense justice isn't being served.

One of the conclusions that I see members opposite reaching somehow from this data—and I don't know how anyone could ever reach that conclusion—is that giving people conditional sentences somehow makes them less likely to reoffend than would be the case if they were incarcerated. I don't think members opposite are comparing apples and oranges. For some of these offences, perhaps a judge will look at the most egregious offence on a scale of severity and maybe give the worst offenders some jail time, whereas on the other side of the spectrum, an individual may receive a conditional sentence.

In my view, maybe a conditional sentence is never appropriate for certain crimes, but to somehow look at a graph and reach the conclusion that a person is less likely to reoffend if the person receives a conditional sentence—you can't draw that conclusion, I don't believe, from the information you've provided, because no two situations are the same and they're not even looking at the same groups of people and the same types of offenders.

Could you comment on that briefly?

• (1645)

Mrs. Lynn Barr-Telford: First of all, I'd like to be very clear in what we're presenting in chart 16, the last chart of the presentation. It looks at reinvolved with the corrections system after a sentence has been served, and it looks at reinvolved within a period of twelve months. That's what the slide speaks to. It does not speak to reoffending; it speaks to reinvolved within the corrections system.

I wanted to clarify exactly what that is. It speaks to that within a period of twelve months after having served the sentence.

Mr. Rob Moore: Thank you for that.

Also, the chart you presented showing the increase in conditional sentencing from 6% in 1997-98, when the data became available—because conditional sentencing was introduced in 1996—is interesting.

At the time, Canadians were told that this is not for the most serious offence—and I'm speaking politically now. They were told this is for less severe offences; this is for situations where it's more appropriate for someone not to receive jail time. But what we saw in those years, from 1997 until now—and I can bring the cases out, but I won't because we've all heard them and don't have to go over them again—there have been very serious situations in which serious crimes were committed against an individual and a conditional sentence was imposed. I'm sure that all my colleagues around the table have heard of those situations and how they impact the victim's sense of justice.

In my view, a high number of these offenders involved in a serious property crime or a sexual assault, for example, are receiving conditional sentences. Perhaps they're going to serve those sentences in the community where they committed the offences.

On that subject, I took note of what my colleague from Moncton—Riverview—Dieppe mentioned, that there is this supervision under conditional sentencing. What we hear from provincial attorneys general and the police is that the resources aren't there to properly monitor offenders who are on a conditional sentence order. Oftentimes it's just by chance that they happen to be caught breaking the terms of their conditional sentence.

The chair had mentioned this, but that's why I think it would be interesting to get some statistics on the breaking of conditional sentence terms. It's fine to have these terms imposed, but if an offender's not living by the terms—and you did enumerate some of them for New Brunswick: counselling, abstaining from drugs and alcohol, residing in the house.... Sixty percent reside in the house. Who's enforcing that? If no one's enforcing it, then how do we know that the offender is residing in his house? In cases where someone's been selling drugs from their house or has a grow operation in their house.... I note that a number of the situations where a conditional sentence is granted deal with drug trafficking and other drug offences, which are often committed from someone's house. So I would be interested to see some of those statistics, if they're available.

Could you explain the graph on page 12 a little further? I see the percentage of cases with a conditional sentence. For example, at the very top, you have 89% for "sexual assault". Could you explain that a bit?

• (1650)

Mrs. Lynn Barr-Telford: Certainly; I can explain that chart.

As a reminder about what we've done in chart 12, we've taken the Criminal Code offences that were listed at the end of the Bill C-9 legislative summary and applied them to our 2003-2004 data. We've done this overall and you can see it by offence type. So if you look at the 89% for sexual assaults, for example, this means that 89% of those sentenced to a conditional sentence for sexual assault were convicted of a Bill C-9 listed offence, which was included at the end of the legislative summary document. This was the 246 cases.

Mr. Rob Moore: Okay. So under that heading, you're grouping those and breaking out who would be captured, perhaps, by Bill C-9. It starts with the very serious offence of sexual assault, down to theft.

If I have a little time left, Mr. Chair....

The Chair: Actually, you don't, Mr. Moore. You're a bit over.

I have one question for clarification, since the request has been made to provide additional information in the area of any breach in conditional sentences. I know that your chart on slide 15 indicates conditional sentences breached, resulting in an admission to custody. To my understanding, there are many times when there may be breaches but no custody. If we could get that data, it would be interesting as well.

Mrs. Lynn Barr-Telford: We don't collect those data within our data. We can't speak to overall breaches. We can only speak to those breaches that result in an admission to custody.

Mr. Michael Martin: Maybe I'll clarify a bit what we were able to generate today. From currently available analytical data, this is what we were able to do. I would probably want to draw attention to a future report, which is going to be coming out, in which we begin to look at that specific issue. Those data are not released yet, but there will be a report coming out—right now, it's tentatively for December—that will include specifically Alberta, because in Alberta we were able to get data that links a conditional sentence to an actual specific breach of conditional sentence. Those aren't ready yet.

The Chair: Thank you, Mr. Martin.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

The challenge of squeezing good public policy out of this data is more difficult than I thought. But let me ask a couple of questions about the data.

I'll go back to this reinvolvement chart, slide 16. While it shows that those who were assigned conditional sentences have a lower reinvolvement rate, it's not necessarily because they were given conditional sentences that they have a lower reinvolvement rate, is that correct? It may simply be because judges are making good decisions and are picking people who are less likely to have a reinvolvement. They simply are assigning conditional sentences to individuals who appear to be a good bet.

Would I be interpreting this chart correctly in that way?

• (1655)

Mrs. Lynn Barr-Telford: When you look at these data, as you say, there are many factors that could be going on behind the data. You could have prior history information that's going on behind the data that we did not take account of. You could have risk assessment going on within the data that we cannot take account of. You can also have supervisory conditions and programs going on behind the data that we're not able to take account of. There are multiple factors that could explain what you're seeing in the graphic.

Mr. Derek Lee: So am I wrong to draw the conclusion, could I be right, or is it just a big blur?

If you don't have any clarity in your answer, that's okay; it's quite all right. You're looking at a million statistics; I was just looking for a bit of clarity for my proposal.

Mrs. Lynn Barr-Telford: What I am saying is that you cannot necessarily draw the conclusion that this is only due to a conditional sentence. There are other factors that may be at play here.

Mr. Derek Lee: Yes, that was my question: there could be other factors, including smart judges. Okay.

By the way, I'm also shocked at the U.S. incarceration rates. They're right off the end of the chart.

One of the two things I noticed, and correct me if I'm wrong, is that the conditional sentencing regime appears to have induced a whole lot of guilty pleas. I don't know whether that data is there or not, but the fact that there was conditional sentencing available seems to have induced people to plead guilty. I may have misdrawn this conclusion. That's the first question.

The second one is that a conditional sentence regime appears to have allowed the assignment of more robust sentence conditions—bells and whistles such as restraint of contact, counselling, abstention from alcohol or drugs, curfew, community service. The conditional sentencing regime seems to have allowed more robust, more creative conditions.

Would I be wrong in reaching either of those two conclusions?

Mr. Craig Grimes: On the guilty pleas, generally within the data set 90% of all convictions have a guilty plea, not just those with a conditional sentence.

Mr. Derek Lee: That's interesting.

Mr. Craig Grimes: On the second point, assignment of conditions, I can't speak to that from the courts' perspective. I don't know whether Mr. Martin could—

Mr. Derek Lee: I'm looking at the chart on page 14. If you look at all of those—the percentage of cases where there's residential, abstentions, counselling, curfew, and all of that stuff—you get much higher percentages, it appears, of an assignment of conditions. Whether or not they're complied with is a whole other story.

Isn't that what the chart shows?

Mr. Michael Martin: Yes, we have reside/house arrest conditions and curfew conditions on conditional sentences that are effectively almost non-existent on probation, or they're very low-frequency. Those are key differences in the kinds of conditions that get imposed. Obviously, more cases that are associated with conditional sentencing have counselling as well. So those are clearly some of the differences we have.

Mr. Derek Lee: Who actually presides over and administers conditional sentences? It's not Corrections Canada is it? Is there a whole area of activity out there where nobody's in charge? After the judge gives a conditional sentence, who administers the sentence?

Mr. Michael Martin: When a person is given a conditional sentence it's the responsibility of a provincial-territorial jurisdiction probation service to look after the conditions. They frequently monitor it as part of the broader probation caseload.

• (1700)

Mr. Derek Lee: So even though it's not probation, they do it. You may not get the data, but if you're looking at the public policy here, are we likely to get good feedback from those provincial or federal

probation mechanisms on how the conditional sentence regimes are working?

I know we can go to Corrections Canada now and get a pretty good workup of what their offenders are doing or not doing—coming back. But with conditional sentencing, it's as if the offenders have all slipped off into the ether, and we might or might not have some reports from probation officers.

Am I right in perceiving that we don't have a lot of focus on the administration of the conditional sentence?

Mr. Michael Martin: On the practical effect, we've seen some of that in the return to custody with a breach. We see 30% in these jurisdictions being admitted to custody on breaches. As far as a conditional sentence is concerned, there's very clear direction that a direct return to custody, pending a decision by the court, is an outcome of a breach.

We have an upcoming report that will look more specifically at breaches. For Alberta, we should have some data that specifically looks at what kinds of conditions are being breached.

Finally, in terms of the administration, we released a report about three years ago—the last time I was before this committee—on conditional sentencing, in which we canvassed jurisdictions on specifically what their policies were on supervision of conditional sentences. That is publicly available data on how they view conditional sentencing from a supervision policy perspective.

The Chair: Thank you, Mr. Lee.

Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): Thank you.

Now that we've got all the lawyer questions out of the way, I'm going to be easy on you guys. I want to follow up a little more on Mr. Moore's statements.

On the constituencies and the people of Canada who expect to get their money's worth when they pay for a justice system, I think there's a lot of concern out there. That's why we have so many people joining various victims' groups. That's why we have to table so many petitions calling for harsher penalties and correcting these situations that have come up. But there are a couple of things in your charts that I'd just like to get straight in my own mind.

With reference to the chart on page 7, I want to give you a case here. James Peart was convicted of ten counts of indecently assaulting boys as young as eight over two decades, and he was given a conditional sentence of twenty months. Would that be under “other sexual offences” or “sexual assault”?

Mr. Craig Grimes: Indecent assault. That would have been an old Criminal Code offence that was probably prior to the new Criminal Code statute, RSC 1985, which came into force on December 12, 1988.

Mr. Myron Thompson: No, this was in 2002.

Mr. Craig Grimes: Right, but it's based upon when the offence occurred.

Mr. Myron Thompson: If his case had been a conditional sentence in 2003—I mean, it didn't happen then, but if that case had been at the same time that you did this chart, I want to know where he would fit. Would it be “other sexual offences” or “sexual assault”?

Mr. Craig Grimes: Right on. I'm trying to link up the charge of the offence. If I had the Criminal Code charge, I'd be able to put those two together for you, but I don't know. What I can do is I can look up indecent assault and find out where it fits within those two and I can get back to the committee.

Mr. Myron Thompson: Okay.

You would have to do that if you were going to do this chart. Right? You'd have to see where it fits. Who determines whether it's “other sexual offences” or whether it's “sexual assault”? Who actually decides that when these stats are put together?

Mr. Craig Grimes: The way these data have been organized, it's based upon the UCR-2, which are the police scoring procedures. All of the statute sections, subsections, and paragraphs for chargeable sections are put into offence categories. So I can't find out that answer. I just don't have it with me.

• (1705)

Mr. Myron Thompson: Quickly, on another conviction, Frederick Cole, 58, who was convicted of raping a young girl, was given a two-year sentence. Raping a young girl, I would assume from this chart, if that happened in this year, would be a “sexual assault”, not....

Mr. Craig Grimes: It would be a “sexual assault”. Rape was repealed as an offence, and it's now called sexual assault. If it was a rape offence, that would definitely be one of those old sexual offences.

Mr. Myron Thompson: So those “sexual assault” categories here, the 307 cases of conditional sentencing, are very serious sexual assaults. Right?

Mr. Craig Grimes: Not all of them proceeded by way of indictment, so it's really difficult for me to determine the seriousness of the offence.

Mr. Myron Thompson: Okay, I understand what you're saying, but if you look at the “other sexual offences”, there are 179 cases, and 307 cases of “sexual assault”. If you add those together, that's 486 cases of conditional sentencing with “other sexual offences” and “sexual assault”. Then I go to chart 12 and I see one-third of the conditional sentencing with regard to Bill C-9 in the same year, 2003-04 are “sexual assault”, 246 cases. Yet in chart 7 we're talking about 486 cases that received.... You have to explain to me exactly why there is that difference.

Mr. Craig Grimes: On chart 12, it's a person-based analysis. What that is, is the last case for each of those persons in 2003-04, whereas in chart 7 it looks at all cases, and each person may have multiple cases before the court. That's what's in those....

Mr. Myron Thompson: That doesn't really make a lot of sense to the common Joe who wants to know why we are doing what we're doing and that it's because of.... I'd like to really clearly make them understand what we're talking about here in terms of sexual offences. I'm doing that mainly because I think there's another stat that I would like to see included in this, whether my colleagues agree or not. I

would like to know how many sexual offences and sexual assault offences are committed against children and how many of those people received conditional sentencing, as opposed to sexual assaults against adults and conditional sentencing.

Mr. Craig Grimes: There are very few offences in the Criminal Code that specify young victims, so for sexual assault it could be any person who is assaulted. With the court data that I have available to me, it's not possible to determine the characteristics of the victim, unfortunately.

Mr. Myron Thompson: And unfortunately for our justice system, the reports that keep coming out and the examples we keep getting—there are many examples—always seem to show that a big percentage of the cases are committed against an infant daughter or against a two-year-old son or against a five-year-old child in the backyard in the city of Calgary.

All of these cases that I have a record of received conditional sentencing. I think it's important to know why it is that there seems to be—and I could be wrong, but I'd like to know—an over-abundance of conditional sentencing and probation with crimes against children, when it doesn't appear to be that way with adults. Is it possible to determine that type of stat?

Mr. Craig Grimes: I can't answer that question from these data, unfortunately.

Mr. Myron Thompson: Well, the one thing that we can answer is that I think it's pretty ridiculous to see a guy go to jail for five years for poaching an elk and see a man get a two-year sentence for killing an infant baby. That's what troubles me. I don't know if Bill C-9 is going to correct these kinds of things, but that's what's being seen out there in the public.

I'd really like to see a little clearer stats. I'm starting to get a feeling that I understand a lot of it, but to be honest with you, I don't really understand most of it. It will probably take me a long time. But I'd like to get some real down-to-earth stats about what is actually going on in this country in regard to the treatment of victims. I get tired of hearing about what we're going to do to protect the criminal. To hell with the criminal. It's time to start looking at what kinds of stats we can get that will benefit the victims.

• (1710)

The Chair: Thank you, Mr. Thompson.

Mr. Murphy.

Mr. Brian Murphy: I cannot compete with the vigour and passion of that presentation, but throwing the criminal away for 47 days gets him back in the community, and that's what we're all about here. We're trying to prevent something happening again to a victim. That's what it's all about.

Mr. Myron Thompson: We're not doing a very good job.

Mr. Brian Murphy: Well, we're all trying—in the system.

I'll ask you some specific questions about your presentation, not getting off on tangents about money and victims. The \$250 million it might cost to build these prisons is \$250 million that might improve the infrastructure of universities in Mr. Moore's region and mine, and reduce tuition fees—something important for the community.

Let's talk about page 6 now, getting back to the slides. I'd be interested to know—and I don't want to generate a lot of work—if you have some facts on the countries that look like they'd be doing better in terms of lower incarceration rates—that being only one aspect of how a community deals with its problems. The other stats, of course, that are important to citizens are on the rate of crime in general. I'd love to know for all of these countries what the rate of crime is. Maybe that's hard or easy to get—again, I don't want to put you to too much work—but it would seem to me that would be important.

I've never been to Norway, Denmark, Finland, and Sweden. They told me that by coming to Parliament I'd travel the world. I've just travelled between here and Moncton. But the other aspect is, do these countries have regimes of conditional sentencing and probation and that sort of thing? If there's generally available information, point us in the right direction and we'll find it through our research bureau or otherwise.

That, to me, would complete a picture that page 6 doesn't complete. Incarceration isn't everything. The whole context is important, I think, if I could just make that point.

Slide 16—just cleaning up here—speaks for itself, but there was some testimony, Ms. Barr-Telford, that you wanted to be clear that the individuals in this chart did not reoffend, they got reinvolved with the corrections system. I'm a bit like Mr. Thompson here. I'm not really sure I understood that at all. I pretended to; I nodded. But I didn't understand what that meant at all. What's the difference? Don't you have to offend to be involved, or do you just have to breach to be involved?

Mrs. Lynn Barr-Telford: One can certainly make the link that you need to offend to be involved, but you can also offend and not be involved. That's the difference. For example, one can commit an offence and not end up in the corrections service. That's the difference in these data.

Mr. Brian Murphy: But when you say “offend” in that context, is it someone who has offended who has been charged?

Mrs. Lynn Barr-Telford: Within this graphic that we're displaying, these are folks who have been returned to the correctional system within 12 months.

Mr. Brian Murphy: But they haven't necessarily reoffended?

Mrs. Lynn Barr-Telford: What I was trying to say is that we can only in this chart speak to those who end up back in the corrections services. We can't speak to any offences that may have been committed that don't end up back in the corrections services system. That's what we cannot speak to in this graphic.

Mr. Brian Murphy: And page 15, that's the one that says one-third of conditional sentences were breached, resulting in admission to custody, for those two provinces. What does the term “breached” mean? We have a slide showing what some of the conditions are. I guess, as Mr. Moore says, if you don't stay at home and nobody notices, you're not going to breach, but I guess it means breaching one of the conditions and being caught doing that, right?

Mrs. Lynn Barr-Telford: It means breaching a condition and it also means that the breach was serious enough to result in an admission to custody.

Mr. Brian Murphy: Presumably that's because the probation officer noticed someone didn't meet their curfew, or...likely curfew wouldn't do it, but being drunk in a public place, short of being charged with public disturbance, might be something that ends up being a breach. Is that it—it's discretionary?

• (1715)

Mr. Michael Martin: These are discretionary, but let's imagine... It could be anything that reflects the conditions. There are the optional conditions, but there are also what we call standard conditions, such as keeping the peace and being on good behaviour. Essentially the person did not comply with the condition, and the probation officers decided to take action against that individual.

It could be, for example, that he did not attend counselling as he was supposed to. He missed an appointment. Maybe it was just one; it could have been a series of them. It's difficult to say, but at some point a discretionary decision was made that the person wilfully chose not to comply with the condition. Then a warrant is issued for his arrest, usually, and he is returned to custody.

The Chair: Thank you, Mr. Murphy.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Thank you.

I have a question for either Ms. Barr-Telford or Mr. Grimes. Your statistics do not take into account what lawyers refer to as plea bargaining where Crown attorneys manage to have notices of a previous conviction excluded. In many cases, notices of previous convictions should be a factor, but the system is skewed because people are unaware that they have been excluded. The information is on record, but the Crown attorney has it excluded in order to negotiate a lighter sentence with the defence lawyers. That information should be disclosed, because reviewing case files one at a time is an arduous job.

I would now like to talk about aggravated assault. Quebec's Attorney General has instructed that a term of imprisonment automatically be ordered in cases involving spousal assault. There is something odd about your statistics. They always include terms of imprisonment in cases of spousal violence, whereas a suspended sentence could have been an option.

Your statistics detract from the real goal. I'm not saying that for cases of aggravated assault, we should do away with...The statistics for Quebec show that in cases of spousal assault, most men are sentenced to a term of imprisonment. If Bill C-9 were different, men and women would be equal in the eyes of the law. Currently, that is not the case.

I would now like to discuss what happens when parole conditions are violated. You know how it works. A person receives two years' probation. For part of that time, he is under 24-hour supervision, for another part, under supervision during specific hours of the day, and so on. Probation officers are required to work with a land line telephone. With today's methods of communication, a probation officer can call a parolee at 3 a.m., but that person may have arranged to have his calls forwarded to another telephone at another location where he is dealing drugs. It's impossible to keep the parolee under surveillance.

Therefore, to all intents and purposes, probation because like a Club Med vacation where the parolee is free to skirt the rules. The technology exists to allow a probation officer to contact a parolee 24 hours day, but the officer has no way of knowing if the parolee is at home, unless he personally stops by to check on him. Parole officers don't have the time for that, especially not at 3 a.m. Therefore, we have parolees who are violating their parole conditions. Different scenarios are possible, and your statistics do not reflect this reality.

Mr. Marc Lemay: There are no statistics on plea bargaining.

Mr. Daniel Petit: Come on! We both know it happens.

[English]

Mrs. Lynn Barr-Telford: In our court data, and Mr. Grimes can certainly add to this, we do not collect any information regarding the nature of the undertakings within the procedures. We gather information on the sentences and the natures of the offences and so forth, so to my knowledge we can't speak to the first of the questions you posed. You can correct me, Craig, if you like.

Second, I believe you were asking us about prison sentences in combination with conditional sentences. Michael can certainly speak to that, in terms of our corrections data.

• (1720)

Mr. Michael Martin: From a sentencing point of view, prison can't be combined with conditional sentencing. However, people on conditional sentence may have had a prior prison sentence, or they may have a subsequent prison sentence.

We can look at those combinations, but in terms of.... I'm not sure if I'm answering the question entirely correctly, but as far as prison and conditional sentence go together, there are situations where it can happen—where a person on a conditional sentence reoffends, is returned to prison, and then is released from prison before their conditional sentence has actually expired, and then they resume supervision. Those types of things can actually take place.

I don't know if that is entirely clear.

The Chair: Thank you.

Mr. Lee.

Mr. Derek Lee: Thank you.

I've got a couple of questions to see if you might be able to generate data.

One of the problems with conditional sentencing, politically, is that from time to time it looks like a problem. Mr. Moore referred to a scenario: it looks as if the justice system hasn't been tough enough on a particular accused or a person convicted.

If I were to give you a particular offence—let's say an aggravated sexual assault—would you be able to generate data that showed how many times a conditional sentence was given for an aggravated sexual assault, if we were to break it down like that?

I realize the sentencing stuff gets difficult and in the sexual assault field it's really problematic now, since the 1980 reforms to separate the more serious from the less serious, realizing of course that it's all serious.

So you could do that, could you? If I gave you an offence you could tell me how many conditional sentences—

Mr. Craig Grimes: I can break down the data by statute, section, subsection, and paragraph. So where it's complete, at the very least at the section level and depending on the offence at the subsection and paragraph level, it can tell you how many cases there were, how many convictions, and the types of sanctions.

Mr. Derek Lee: We may do that; I don't know. It might be an interesting approach to try to address the more serious crimes where, for reasons we're not exactly sure, a conditional sentence was imposed, and the press likes the story and we get some of the facts but not all the facts. So I may look at that later.

Secondly, when the justice minister was here he hazarded a guess at a figure of additional cost that might be there for the provinces for incarceration if we were to move to the regime under Bill C-9. I forgot the number, but it was 20-something million bucks. Would you be able to give us a prison-day incarceration volume that might be there if we went to Bill C-9?

I see the difficulty, because not every case where there's an application of Bill C-9 is actually going to get an incarceration sentence; a judge may move to probation as an alternative sentence, or suspend the sentence rather than giving a conditional.

If I, as a lay person, were to say maybe half the cases now getting conditional sentences in Bill C-9 were to involve incarceration, I could then do a workup mathematically of what it would cost, knowing that it's about \$200 a day per inmate. But we'd need some data to show us.

Your charts here come close to that, showing the number of cases that would be affected by Bill C-9, using the current data. So is that data...? Maybe the chart now is good enough. Is it?

Mr. Michael Martin: Just to clarify a point, we can tell you the average daily cost in the provincial-territorial system, which is right now about \$145, if I remember correctly.

• (1725)

Mr. Derek Lee: That's before GST and PST, right?

I'm sorry, I shouldn't interrupt.

Mr. Michael Martin: And that doesn't include capital costs; that's just the operational costs.

The one thing to bear in mind, though, is the difficulty in projecting what kind of prison sentence they might actually get. As you saw in the slide about the length of conditional sentences versus average prison time, there's a very large discrepancy there. We know how long they're getting in conditional sentences, but if we project and say, "What would that sentence be?", this is where we get into a difficult place, because you would need to know that in order to calculate how many days these people are actually spending inside.

So you would have to hazard a guess, knowing circumstances, priors, and everything like that, on what they actually would be getting for a prison sentence. Once you know that, you're a little closer.

Mr. Derek Lee: Then you don't have a reliable way of generating for us data that would be fair. I mean, you could hazard a guess, but it would be just a guess. It wouldn't be statistically well-founded.

Mrs. Lynn Barr-Telford: As Michael has said, to produce such an estimate would require making several assumptions in the data.

Mr. Derek Lee: Well, we're going to have to do that.

Thank you, Mr. Chairman.

The Chair: Committee members, I would ask that you stay put at the end of this debate, which is now concluding, so that we can look after some committee business.

In this case, Mr. Thompson, that includes you.

I would like to thank the members of the Canadian Centre for Justice Statistics. I think there were some tough questions asked, and I know you presented your case well. We look forward to any additional information you may supply to us as a committee.

[Proceedings continue in camera]

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