

Bill C-10

Offences involving firearms

Bill C-10 was passed by the House of Commons on May 29, 2007. The vote was 157 in favour of the bill and 117 against. Bill C-10 will now go to the Senate.

In its original form, Bill C-10 proposed primarily to introduce two new offences involving firearms and to increase the mandatory minimum terms for various offences already in the *Criminal Code*.

The most significant changes in Bill C-10 as it was first introduced are as follows:

- adding a new offence of “breaking and entering to steal a firearm” (replacing s. 98) with a mandatory minimum penalty of one year for a first offence, three years for a second offence, and five years for a third or subsequent offence.
- adding a new offence of “robbery to steal a firearm (new s. 98.1) with a mandatory minimum penalty of three years for a first offence, and five years for a second or subsequent offence.
- escalating the mandatory minimum penalties for several firearm related offences in the *Criminal Code* which already have a current minimum term of imprisonment of one year, such as possessing a prohibited or restricted firearm with ammunition (s. 95), possessing a firearm obtained through the commission of an offence (s. 96), trafficking in a firearm (s. 99), and importing or exporting a firearm without authorization (s. 103). Bill C-10 would increase the mandatory minimum penalties for these offences to three years for a first offence and five years for a second and subsequent offence; and
- escalating the mandatory minimum penalties for several firearm offences in the *Criminal Code* which already have a current minimum term of imprisonment of four years, such as the use of firearm in the commission of attempted murder (s. 239), aggravated sexual assault (s. 273), kidnapping (s. 279), and robbery (s. 344). Bill C-10 would increase the mandatory minimum penalties for these offences to five years for a first offence, seven years for a second offence, and 10 years for a third or subsequent offence.

When Bill C-10 was sent to the Standing Committee on Justice and Human Rights – that is, after the bill passed Second Reading in the House of Commons – it contained 28 amendments to the *Criminal Code*. The Standing Committee stripped the bill down to nine provisions. Most significantly, the Standing Committee deleted all of the new mandatory minimum penalties, leaving in place only the two new offences and a few other, less substantive provisions.

However, the text of the bill again changed when Bill C-10 went back to the House of Commons for the report stage. The Conservative government, seconded by the NDP, moved to reinstate almost all of the clauses which were removed by the Standing Committee. At a vote during the report stage held on May 7, 2007, Members of Parliament voted 160 to 102 in favour of returning the bill to much of its original state.

The version passed by the House of Commons on May 29, 2007 includes the two new offences found in the original version of the bill: breaking and entering to steal a firearm, and robbery to steal a firearm. However, unlike in the original version, these offences as passed by the House would not be subject to any mandatory minimum term of imprisonment.

The House of Commons re-instated the escalating minimum penalties for first and second offences as were found in the original version of Bill C-10. However, mandatory minimums terms for a third or subsequent offence were not put back into the bill.

That means, for offences noted above which currently have a mandatory minimum penalty of one year, the new mandatory minimums would be three years for the first offence and five years for the second and subsequent offences. Additionally, persons convicted of offences such as the use of a firearm in the commission of attempted murder, aggravated assault or kidnapping would be subject to a five year and seven year minimum term for first and second offences, respectively.

Bill C-10 also includes definitions of an “earlier offence”, which is referenced to determine whether a “subsequent offence” has been committed. What is significant is that an earlier offence does not have to be the same offence as the “subsequent offence” for the person to be subject to the next level of mandatory minimum penalty. That is, there are categories of earlier offences which will be considered in determining whether a “subsequent offence” has been committed.

Commentary

Critics of Bill C-10 say that it is a simplistic response to a complex reality. They also point out that it is palatable and politically expedient at this time to pass such a bill because of the public’s attention on several high-profile cases involving gun violence.

The Canadian Association of Elizabeth Fry Societies takes the position that mandatory minimum sentences do not deter crime or alleviate racial and gender disparities; rather, mandatory minimum sentences only contribute to exponential growth in prison populations.

The Canadian Criminal Justice Association also states that there is no empirical evidence that mandatory minimum sentences deter crime and, more specifically, that they deter gun crime. The CCJA says that, in fact, lengthier periods of incarceration may actually increase the likelihood of recidivism.

Moreover, mandatory minimum sentences take away the power and flexibility of judges to determine what sentence is appropriate in the specific circumstances of the case and of the individual convicted of the offence. Essentially, this allows the police and prosecutors to decide what penalties a person will face, as it is the police and the prosecutors who control with what offence the person will be charged.