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Politicians can't resist being 'tough on crime'

Despite falling crime rate, Liberals and Tories have both embraced mandatory minimums

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"Canada was founded on the principles of peace, order and good government. This is the birthright of all Canadians; yet Canadians feel less safe today and rightly worry about the security of their neighbourhoods and the country. There is no greater responsibility for a government than to protect this right to safety and security."

Speech from the Throne, Oct. 16, 2007

Toronto's 2005 "year of the gun" – which saw a jump in gun-related killings, including several high-profile incidents in which innocents were shot – stirred outrage and prompted all levels of government to stand shoulder-to-shoulder.

Conservative Prime Minister Stephen Harper, Liberal Ontario Premier Dalton McGuinty and Toronto Mayor David Miller (a long-time member of the NDP) shared a stage in late 2006, brought together by guns, public fear, intense media coverage and a new crime bill.

"Between the three of us, we pretty much cover the political spectrum," said Harper. "But today we are partisans for the same cause; reclaiming safe streets and safe communities for all Canadians."

On the heels of the killings of 15-year-old Jane Creba while she shopped on Yonge St. and, in early 2006, of Chantel Dunn by gunmen apparently targeting her boyfriend, the minority government opened up the Criminal Code to address – in the words of Harper – "decades of neglect."

The Tackling Violent Crime Act took effect May 1, after Liberal Leader Stéphane Dion directed the Liberal-dominated Senate not to oppose it. Doing so would have sent voters back to the polls over a law touted as tough on those who use guns in crimes – a political risk he was unwilling to take.

Indeed, retributive laws often have broad appeal, with raw outrage trumping facts. The

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Prisoner

populations

Canada's incarceration rate is high relative to most Western European countries.

Liberals had introduced their own tougher gun laws and longer minimum sentences in 1996, two years after Georgina (Vivi) Leimonis was shot dead in a botched robbery at the Just Desserts café in Toronto.

But some fear the new law is stoking a law-and-order agenda that targets more than just gun criminals with mandatory and increased sentences, which research has shown do little or nothing to reduce crime.

"In terms of the three national parties, you don't have anybody who is putting forward a reasonable punishment policy," says University of Toronto criminologist Tony Doob. "The Conservatives just raised them in a minimal way. So, we have a long tradition of thoughtless policy, and across parties."

Despite repeated requests from the *Star*, neither Public Safety Minister Stockwell Day nor Justice Minister Rob Nicholson agreed to be interviewed on the subject of mandatory minimum sentences and the government's approach on crime and punishment. Instead, staff sent emails outlining the government's agenda, and in the case of Day, said he was too busy.

On Thursday, when Statistics Canada reported that the national crime rate had fallen to a 30-year low, Nicholson told Canadian Press: "We are not governing by statistics. We are governing by what we promised Canadians in the last election and what Canadians have told us."

The *Star* sought an interview with Liberal MP Irwin Cotler, a law professor, who was also unavailable.

But two years ago in the House of Commons, Cotler lauded the previous Liberal changes to the firearms laws while criticizing the Tories' mandatory minimum sentences, which were then just a proposal.

"What we now know ... is that mandatory minimums also have adverse and prejudicial fall-out for the criminal justice system. One might call it the law of unintended consequences, which includes that they increase the prison population, resulting in increased prison costs to the taxpayer, and opportunity costs, as less funds are available for law enforcement, community programs and crime prevention while not bringing about the desired objective of safe streets and safe communities."

The federal government now wants to bring in mandatory sentences aimed at mid- and high-level drug dealers, adding to the list of crimes for which judges no longer have sentencing discretion. (See accompanying fact box for details on the legislation, known as Bill C-26.)

But critics point out that low-level dealers who are often addicted to the drugs they are peddling will also be caught by these measures. The law would also automatically jail those caught growing even a single marijuana plant.

Those convicted of dealing will face minimum sentences of one to two years; previously there was no minimum. Jail sentences would be mandatory for second-time offenders, including low-level dealers caught twice within 10 years.

"The question, I guess, is whether we will be really willing to pay for additional imprisonment costs," says Doob.

Canada is starting down a road well-travelled by the United States, where it is becoming clear that mandatory sentences have been mostly ineffective and financially disastrous.

Michigan, for example, has 50,000 inmates and a state prison bill of \$2 billion – an

amount equal to Canada's entire prison spending. Ironically, two minimum sentencing measures aimed at guns and drugs, introduced in the '70s, led to more mandatory sentences for other crimes and an astronomical increases in incarceration rates in that state. The number of state prisons exploded from a handful to close to 50.

However, the crime rate there did not decrease.

Tougher sentencing laws and policy typically have a genesis in horrifying yet relatively rare crimes played large in the media. Creba's Boxing Day death is a case in point.

"We call it drive-by policy making," says Eric Cadora of the U.S.-based Justice Mapping Center, which uses incarceration cost maps to urge governments to reduce jail costs and reinvest locally. "Spectacular event gets blown up in media, and some politicians take that opportunity to be tough on crime without necessarily understanding the consequences or how policies relate to individuals."

One of the problems with mandatory minimums is that few criminals consider how much time they might do.

"I can tell you that in 12 years of direct daily contact with inmates, I never met one who indicated that he would not have committed a crime had the potential sentence been longer," Irving Kulik, the executive director of the Canadian Criminal Justice Association, told the federal standing committee on justice and human rights in late 2006.

John Muise, a former Toronto police officer who has worked extensively with victims of crime and is with the Canadian Centre for Abuse Awareness, thinks tougher, mandatory sentences do deter, but should be reserved for the worst crimes.

"I think when you identify blanket laws for certain offences, such as three felonies and you're gone, I think there's a significant diminishing return if you identify the wrong guy," Muise said in an interview. "There's absolutely no question that from a straight-up, how much does this cost, it's going to cost you a fortune to lock up the pizza thief."

Kulik, who worked for the Correctional Service of Canada for 35 years, also believes severe penalties for minor offenders are counter-productive. He cited for the justice committee a 2002 Canadian study led by University of New Brunswick professor emeritus Paul Gendreau.

Gendreau and colleagues reviewed 111 other studies that examined what happened to nearly a half-million offenders. They determined tougher sentences may actually further induct inmates into criminal life – as suggested by the prisons-as-schools-of-crime theory – and spark an increase in recidivism.

"Arguably, increases in recidivism of even a modest amount are fiscally irresponsible, especially given the high incarceration rates currently in vogue in North America," the report stated.

Another perverse side effect, said Kulik: Removing judicial discretion on sentences shifts discretion to police and Crown attorneys, meaning more plea bargaining for those who may not be guilty but are fearful of an automatic jail term and, conversely, more not-guilty pleas from people who are guilty.

With the Conservatives in power in 1993, a government standing committee on crime prevention reported that it was "convinced that threats to the safety and security of Canadians will not be abated by hiring more police officers and building more prisons.

"If locking up those who violate the law contributed to safer societies, then the United States should be the safest country in the world. In fact, the United States affords a glaring example of the limited impact that criminal justice responses may have on crime."

Marc Maur, executive director of The Sentencing Project, a U.S. group promoting reforms and alternatives to incarceration, says Canada is nowhere near where things are in the States.

But, he continues, once you introduce tougher sentences, "it opens everything up and suggests, `Well, if we could do it for gun crimes, we could do it for drug crimes and we could do it for other crimes.'" The notion that lawmakers know better than judges, he says, "flies in the face of what justice is all about."