



**Opening Statement of Kevin Page, Parliamentary Budget Officer
Standing Committee on Public Safety and National Security
February 17, 2011**

Good morning, Mr. Chair, Vice-chairs, and members of the Committee. Thank you for inviting me and my colleagues to speak to you today about estimating the funding impacts on the federal correctional systems from changes to crime legislation, notably PBO work with respect to the *Truth in Sentencing Act* (TSA).

I will structure my opening remarks in four parts -- key messages; the PBO approach; a framework for analysis; and questions for the Minister of Public Safety that Committee members may wish to ask.

Key Messages

I have a few messages.

1. Significant amendments to the criminal code that impact Canada's correctional system, like TSA, carry significant fiscal costs.

PBO's estimate of the cost at the federal level is about one billion dollars a year over the next five years assuming status quo occupancy ratios – approximately \$620 million a year for additional operating and maintenance and capital expenditures and \$360 million per year (\$1.8 billion over five years) for new construction.

Reflecting the split in additional operating versus new construction costs, the estimated fiscal impacts could vary between \$3 to \$5 billion¹ over the next five years depending on occupancy ratios in penitentiaries. The higher the occupancy ratio (e.g. double and triple bunking), the more likely that the cost would fall to the lower-end of the range and be based more on operating expenses. A status quo assumption on density would drive additional capital costs moving the projection to the high end of the estimate (i.e. operating + new construction). Different occupancy ratios imply different service levels with respect to corrections, safety risks and costs.

There are however many factors, organizations and institutions, whose mandates and behaviour would impact the correctional system in Canada, a summary of which is provided in Annex I for Committee members.

2. Parliamentarians have not been provided with sufficient fiscal transparency to carry out their fiduciary responsibilities with respect to changes to crime legislation.

In the case of the TSA, parliamentarians were advised by the federal government during review of the draft legislation that estimated costs were a Cabinet confidence. Estimated costs were revealed by the federal

¹http://www2.parl.gc.ca/sites/pbo-dpb/documents/TISA_C-25.pdf

government only after the draft legislation became law and the estimate did not include disclosure with regards to methodology and key assumptions.

Parliamentarians do not know whether the fiscal planning framework fully reflects the cost pressures generated by changes in crime legislation. Neither Budget 2010 or the Fall Economic and Fiscal Update highlighted the fiscal impacts. The 2010-11 Report on Plans and Priorities of Correctional Services Canada indicated double digit growth in its reference level over the next three years and the additional requirements of 4 thousand more employees but only referenced the *Truth in Sentencing Act* as a risk of funding pressure to be managed.

3. Changes to the criminal code, like TSA, will have significant operational and cost impacts on correctional institutions and services in provincial and territorial jurisdictions. The federal government may wish to inform other jurisdiction on their estimated fiscal impacts.

The provinces and territories are large players relative to the federal government in the provision of correctional services. Average headcounts are almost twice as large. Annual inflows are about 10 times larger if one excludes remands.

Based on a status quo environment, PBO estimates that the provincial and territorial share of total funding requirements will rise to 56% in 2015-16 from 49% in 2009-10 reflecting shifting proportions of sentenced versus remand and capacity constraints.

PBO Approach

The PBO approach to estimating funding requirements and impacts is to build costing methodologies and models. In the case of the TSA, we examined changes to stays, flows, headcounts and costs (operations and maintenance, lifecycle capital costs, and new construction costs). Like the Department of Finance, PBO focuses on static costing – we extend current realities like occupancy ratios and do not examine potential behaviour type changes.

PBO uses peer review and assistance. In the case of the TSA, the panel consisted of nine experts from the corrections system, facility management and financial and statistical modeling.

For TSA, PBO built and utilized two models.

A simple financial model is used to respond to the question "... what if the Act was in place in 2007-08?" Using existing data, we know that about 8,600 inmates were admitted with an average stay of 560 days in custody. We estimate that TSA would add about 30% or 160 days to the average stay. This translates to an increase in 3,800 average headcounts (a number similar to the estimate provided by the Commissioner of Correctional Services Canada). Using public numbers to calculate operating and maintenance and capital per inmate and construction costs per cell we can quickly come to fiscal impacts of about one billion dollars per year (operating and construction) over the next five years assuming a continuation of existing occupancy rates.

PBO also built a three phase probabilistic simulation flow model to estimate the financial impact from increased sentence length and number of people incarcerated that detailed inmate profile and operational implications. This model highlighted similar financial implications as well as a requirement to build as many as 13 new buildings with traditional cell capacities.

Framework for Analysis

PBO has a small team. We need to pick our priorities carefully so that our work can be relevant and authoritative. PBO cannot be the first data point on costing on all new legislation from the federal government. In response from a request from a member of Parliament, PBO focussed on TSA because there was systemic risk (Parliament was not provided financial analysis) and material risk (significant changes to crime legislation can have significant fiscal impact). While the PBO is prepared to provide original methodologies and estimates, it is better placed given the size of the office to examine methodologies and to provide test of reasonableness and risk assessment around federal government estimates.

In analyzing the impact of new crime legislation, parliamentarians may find it helpful to utilize a simple framework for analysis.

One, parliamentarians may wish to know the estimated impact of any crime bill on the daily headcount in correctional facilities. This headcount is proportional to the inflow and outflow rates of inmates, in and out facilities, and the amount of time they spend within.

Two, parliamentarians may wish to know the estimated impact of any crime bill on ongoing per inmate costs. These costs vary by inmate status (i.e., incarcerated, day parole etc) and security classification (i.e., low, medium, high, women). Using public documents over preceding years, the average cost of an inmate is about \$160,000 per year but these costs vary significantly from about \$40,000 for an inmate on parole to about \$220,000 per year for men in maximum security.

Three, parliamentarians may wish to know the estimated impact of any crime bill on the increased requirement to build new cells. These costs vary by a number of factors – prevailing market construction costs, security type, land, site development, procurement costs etc. CSC Commissioner Don Head has indicated in Senate testimony that the cost of constructing new accommodations amounts to \$200,000, \$400,000, and \$600,000 per cell, by low, medium and maximum security type, respectively. A brief summary of some of the issues pertaining to facility management and capital costs is included in Annex II.

Fourth, parliamentarians may wish to know the impact of any crime bill on the affected population – remand versus sentenced, low versus high security profile, specific age groups, regional occupancy situation, federal versus provincial and territorial situation – and impact on administrative caseload – all of which can impact on financial cost and create risk relative to correctional objectives. We have attempted to provide this Committee with a high level framework to analyze the impacts of proposed and future crime legislations, as provided in Annex III.

Questions for the Minister of Public Safety

In closing, I wish to reiterate that for parliamentarians to carry out their fiduciary responsibilities with respect to the approval of financial authorities, it is essential that federal government provide adequate and timely financial information and analysis on the fiscal impacts of new legislation before this legislation becomes law.

The financial information and analysis should include the methodologies and key assumptions for estimation. When requested, PBO should be in a position to assess the costing methodologies and models and assumptions for reasonableness and risk for parliamentarians.

At the current time, the only detailed estimates on the TSA available for Parliament that are based on documented methodologies, models and assumptions come from the PBO, not the federal government. This analysis should not be a Cabinet confidence.

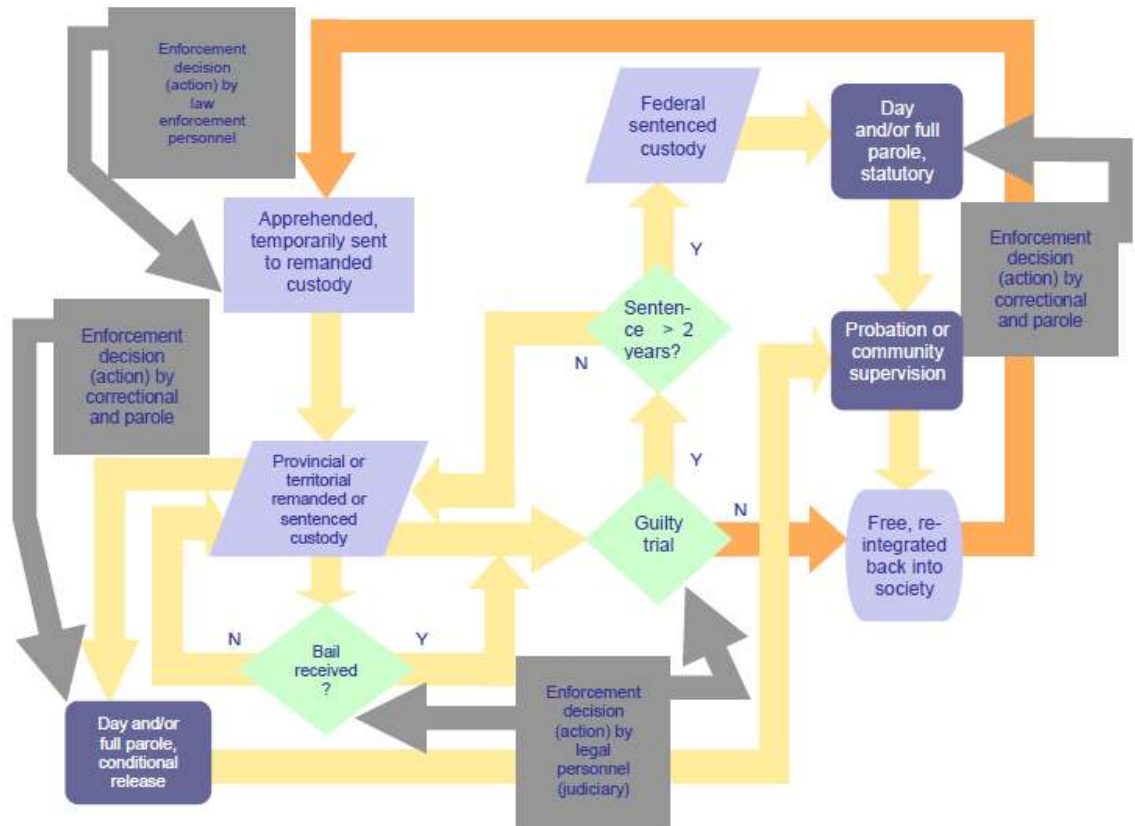
For all new crime legislation, parliamentarians may wish to ask the Minister of Public Safety what will be the impact on daily head counts, on ongoing per inmate costs, on requirements to build new cells and the impact on the affected population and, if required, provincial-territorial costs.

Thank-you for the opportunity to serve this Committee. We would be honoured to address your questions.

Annex I – Procedural Impact on Adult Correction Services in Canada

(Excerpt from the PBO's report *The Funding Requirement and Impact of the "Truth in Sentencing Act" on the Correctional System in Canada*²) The figure below describes the procedural flow of an individual through the correctional system. Note must be made of the fact that from apprehension to final release, the individual is exposed to multiple decision making bodies, each of which is likely to have an independent mandate, and funding source. Moreover, a single individual moving through the system is likely to trigger expenditure from multiple agencies and organizations, and eventually multiple fiscal impacts across Canada.

Procedural Impact on Adult Correctional Services in Canada



² http://www2.parl.gc.ca/sites/pbo-dpb/documents/TISA_C-25.pdf

Annex II - Correctional Institutions, Capital Budgeting and Facility Management

It can be useful to understand that once sentenced to federal incarceration, each offender appears as a financial liability on the books of the federal government in terms of ongoing capital and operating and maintenance expenditures. In particular, the capital expenditures merit special attention given the very unique nature of penitentiaries, their mode of operation (correctional facilities operate 24/7 just like hospitals and some airports, but with a level of security measures that is likely to be much more stringent than that of an airport).

Capital expenditures can be broadly broken down into two major categories: recapitalization (or lifecycle capital expenditures as CSC calls them), and replacement costs.

Recapitalization is inherently different from depreciation or from operating and maintenance expenditures. Depreciation is a non-cash expense used for accounting purposes. Operating and maintenance expenditures are expenditures such as utilities, water, sewage, etc., that are not capital expenditures. Re-capitalization is the actual physical rebuilding and reconditioning of capital asset **subsystems**, short of total capital asset replacement.

Traditionally, CSC has underfunded the recapitalization portion of its capital expenditures, as noted in the appendix by Deloitte & Touche in the Sampson panel report (2007). The same report indicates that a majority of CSC's infrastructure is significantly aged, built to suit the existing conditions. The Deloitte annex also identifies that, based on the key assumptions provided to it by CSC, a **capital investment of \$640 million in FY2007-08 dollars would be required to continue to operate the existing facilities alone (this was prior to the introduction of any crime bill)**.

Furthermore, as reported in the same study, CSC has historically invested only about 1% to 1.2% in recapitalization expenditures on its capital infrastructure, which is identified as "**woefully inadequate**". The recommended recapitalization rate is about 4% per year (i.e. as cited by Partnerships BC and BC Housing). The PBO's own analysis of recapitalization rates of 803 schools on First Nations reserves suggested a recapitalization rate of between 1.6% to 2.2%, which was itself identified to be quite inadequate for institutions such as K-12 schools. Penitentiaries have much more stringent building standards, are subject to significantly more wear and tear and require significantly higher levels of recapitalization expenditures.

Annex III - Impact of Crime Legislation on Penitentiaries

The expected impact of a bill on the correctional system directly leads to an impact on the headcounts in penitentiaries. This leads to multiple fiscal impacts and ongoing liabilities to federal government that need to be funded.

Briefly, the cost of keeping an inmate in custody consists of:

1. Operating and Maintenance expenditures, which consist of ³:
 - a. Employee salaries, and overtime;
 - b. Utilities, food, water, clothing, etc.;
 - c. Residential services, healthcare, PILT, travel, etc.; and,
 - d. Programming, rehabilitation and reintegration related expenditures.
2. Capital expenditures, which consist of:
 - a. Recapitalization expenditures; and,
 - b. Replacement expenditures

According to the PBO's own top-down analysis based on data retrieved from CSC's DPRs and RPPs over the preceding years, the total average cost of an inmate in federal corrections is about \$160,000 per year. When broken down into subcategories, they amount to about:

- \$340,000 per year for women inmates;
- \$220,000 per year for men (maximum security);
- \$141,000 per year for men (medium security);
- \$140,000 per year for men (minimum security);
- \$85,000 for an inmate in a community correctional centre; and,
- \$40,000 for an inmate on parole.

Thus, the addition of a single federally sentenced inmate to any of the security categories above gives rise to an increase in the funding requirement to CSC by a commensurate amount.

However, note must be made of the occupancy ratios at federal penitentiaries. Over the preceding decade (FY2000-01 to FY2010-11), CSC has maintained an occupancy ratio of about 90% (10 cells per 9 inmates), on average, in federal penitentiaries across Canada. However, in a status quo scenario, any increase in the number of inmates would require a proportional increase in the number of cells required to house them, triggering the need for construction of new facilities.

³It should be noted that Salaries and Overtime account for almost 70% of all O&M expenditures at the federal level (CSC, November 2009). Historically, there has been a strong co-relation between the total number of FTE at CSC and the total number of sentenced inmates physically in federal penitentiaries. Thus, any increase in the number of federally sentenced inmate headcounts would probably lead to a proportional increase in the number of FTEs required, which has a direct and significant impact on the O&M component of CSC's annual expenditures.

The CSC Commissioner Mr. Don Head identified to the Senate Standing Committee on Legal and Constitutional Affairs in testimony in October 2010 that the cost of constructing new accommodation amounts to \$200,000, \$400,000, and \$600,000 per cell, by low, medium and maximum security type, respectively. Moreover, according to the Deloitte annex to the Sampson panel report (2007), the new construction timeline is identified to be about 4.5 to 5.5 years once initiated and approved. Thus, there are inherent risks associated with the impact of crime legislations in the prison populations, notably in terms of the ability of the CSC to meet the growing requirement for real estate, to house, rehabilitate, and reintegrate the offender population.

Impact of new crime legislation can be analyzed in multiple ways according to affected population:

Legislation may have a symmetric or an asymmetric impact on the incarcerated population

- Legislation such as the *Truth in Sentencing Act* would seem to have a roughly symmetric and linear impact on the inmate population, since it is directly linked to the amount of time spent by inmates in remanded custody prior to entering sentenced custody, affecting all inmates universally. Although inmates spending less time in remand are likely to be less affected by the *Truth in Sentencing Act* than those who spend more time in remand, it is generally agreed that inmates who spend less time in remand also have less complicated case histories, or plead guilty faster, and are likely to have received shorter sentences. Inmates who have complex case histories and who are likely to receive larger sentences are the ones who will be affected the most. Consequently, the financial impact of the *Truth in Sentencing Act* would be expected to have the highest on the high security inmates than medium to low security inmates given the significant differences in the average annual cost per inmate for high security classification vs. low (\$220,000 for men-maximum vs. \$140,000 for men-low).

Legislation may have a targeted impact on inmates from particular security classifications

- Legislations such as C-39 (now split) would be expected to have a targeted impact on account of the abolition of the accelerated parole review (APR), which applied to first time convicts only, many of whom were likely to be in low security classification. Consequently, the abolition of the APR would be expected to have a larger financial impact on costs relating to low security inmates.
- However, other provisions of C-39 that appear to impact the wider parole system and also the manner in which statutory or early release has been handled to date, would have a broad impact on inmates across all security types.

Legislation may have a targeted impact on inmates with a particular security profile.

Legislation may have a targeted impact on specific age groups.

Legislation may have a general impact on the entire inmate population.

- General aging of the population leads to systematic change requirements in penitentiaries, such as access methods (ramps), healthcare costs, etc.
- As inmates receive longer sentences on account of the ongoing crime legislations, their average ages are increasing.