



Canadian Association of Chiefs of Police

Supporting police professionals through innovative and inclusive police leadership
to advance the safety and security of all Canadians.

Presentation to the Standing Senate Committee on Legal and Constitutional Affairs

Bill C-5: An Act to amend the *Criminal Code* and the *Controlled Drugs and Substances Act*

Remarks by:

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(Co-chair of the CACP Drug Advisory Committee)

and

Inspector Michael Rowe

(Member of the CACP Law Amendments Committee)

Representing:

Canadian Association of Chiefs of Police

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Good afternoon and thank you for the opportunity to address this committee on behalf of the Canadian Association of Chiefs of Police.

The CACP applauds the government's efforts to modernize Canadian legislation to help address the disproportionate representation of Indigenous and racialized communities in Canada's justice system.

As stated in our [July 2020 report](#), we support the decriminalization of simple possession of illicit drugs as an effective way to reduce the public health and public safety harms associated with substance use.

While there is support to divert substance users away from the criminal justice system, police across the country have maintained the pursuit of individuals associated to organized crime and criminal networks making large profits trafficking and producing dangerous illicit substances.

Currently, under the *Controlled Drugs and Substances Act*, mandatory minimum sentences apply only to serious drug trafficking, production, and import/export offences where public safety is at risk.

The use of mandatory minimum sentences is considered when there are aggravating health and safety factors such as offences involving the use of a weapon or threat of violence; and production operations that constitute a potential security, health, or safety hazard to persons under the age of 18.

We believe the use of aggravating factors applied to mandatory minimum sentences allows police and the court system to focus on those driven by monetary gain and putting communities in harms way, rather than those who commit drug offences to support their drug use.

Therefore, diversion is an important theme of our submission today.

Diversion means ensuring that the unique circumstances of a specific offence and offender are considered by a judge when determining an "appropriate" sentence.

It means distinguishing between vulnerable people committing minor offences who need to be oriented to pathways of care from criminals committing serious offences.

Diversion also provides opportunities to reduce recidivism and ancillary crimes.

It is important to note that for diversion at the police or court level to be successful, there must be an investment in community capacity and resources to support the availability and integration of health and social programs.

The basic principles of this modernized approach of aggravating factor guidelines that have been adopted for serious drug-related offences could conceivably be applied to other crimes such as those involving firearms.

To speak more about this, I now invite my colleague Michael Rowe to address the committee.

Good afternoon.

The police in Canada support the primary objectives of mandatory minimum penalties to ensure consistency in sentencing, to protect the public, and to discourage others from engaging in similar conduct.

For police officers, victims of crime, members of the public and even the offenders themselves, the circumstances which result in a criminal charge under firearms offences often result in a real threat to physical safety, exposure to stress and trauma which has a lasting impact on mental health, and the erosion of public safety.

In my experience as a police officer, the following firearms offences for which the mandatory minimum penalties are recommended to be repealed, hold significant value when addressing public safety and gang-related violence. They are:

- Using a firearm or imitation firearm in the commission of an offence,
- Possession of a prohibited or restricted firearm with ammunition, and
- Discharging a firearm with intent or recklessly.

The mandatory minimum penalties assigned to these sections of the *Criminal Code* create a meaningful legal condemnation of the decision to unlawfully pick up a firearm and reflect the important distinction between offences involving firearms and those that do not.

Rather than repealing mandatory minimum penalties for serious offences which have a direct impact on public safety, Parliament could provide the judiciary with additional powers via a clause or “safety valve”, something other countries with mandatory minimum penalties have, but that is currently absent in Canada.

This remedy would allow for the objectives of mandatory minimum penalties to be met, especially for firearms offences that present a real threat to public safety.

It would also establish judicial discretion to individually assess each offence and offender to determine if the mandatory minimum penalties are appropriate.

And finally, this approach would reduce the need to rely on a “reasonable hypothetical” to test the impact of mandatory minimum penalties on outlying cases. “Imagined offenders” or “reasonable hypothetical” arguments often reduce the significance of firearms offences to regulatory infractions.

This can be very frustrating for police officers who see the very real impact that the unlawful possession of loaded handguns, the use of firearms and imitation firearms to commit other crimes and the discharging of live ammunition has on the perception of safety within communities across Canada.

In conclusion, the CACP recommends proceeding with the decriminalization for possession of illicit drugs. We also support maintaining mandatory minimum sentences for serious crimes that warrant them, but to add a “safety valve” that provides sentencing judges with an opportunity to consider the individual circumstances of the offence and the offender to determine if the mandatory minimum penalty is appropriate or if an individual could be diverted away from the justice system, toward an alternative pathway.

Thank you.