Appendix II — Final Report

Canadians Against Violence Everywhere Advocating its Termination
CAVEAT*

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* Report prepared from *SafetyNet*, a National Conference on Crime Prevention, Public Safety and Justice Reform presented by CAVEAT.

I. HIGH RISK OFFENDERS

A. Summary

Every province in this country has a group of highly dangerous criminals who represent an extreme risk to public safety.

These sexually violent predators are being released into society to further victimize innocent women and children.

Many of these offenders are so dangerous that they should never be released from secure custody, yet current legislation allows the release of a growing number of these individuals.

The following recommendations are being made in response to growing public concern for protection against these predators :

> *It is recommended that legislation be enacted to enable the Crown Attorney, on the recommendation of Corrections Canada or the National Parole Board, to ask the courts to hear Dangerous Offender Applications under the* Criminal Code *prior to the Warrant Expiry Date of Sexually Violent Predators, resulting in indeterminate custody.*

Additional recommendations are being made in the following areas :

- Compulsory Dangerous Offender Applications made when criteria are met;
- Special training for Crown Attorneys in handling Dangerous Offender Applications;
- Notification of Dangerous Offender Applications before commencement of trial;
- Videotaping of child victims' evidence to prevent repeat court appearances;
- *Mental Health Act*[1] assessment, a minimum of 90 days prior to release date;
- Withdrawal of proposed capping legislation for mentally disordered offenders;
- Legislation for compulsory public notification on the release of Dangerous Offenders;
- Implementation of uniform Mental Health Legislation in all provinces across Canada;
- Improved sharing of information between all agencies dealing with Dangerous Offenders;

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1. *Mental Health Act*, R.S.O. 1990, c. M-7.

- Additional Government funding to enable the implementation of these recommendations.

II. RECOMMENDATIONS

A. Recommendation #1

Background :

Many high risk offenders are not subjected to the Dangerous Offender legislation for a variety of reasons. At the time of their trial the Crown Attorney may be confronted with a plea bargain offer from the accused's lawyer. Faced with a complainant reluctant to face a lengthy trial and an offer of a guilty plea and long period of incarcerations, the Crown may elect not to proceed with the Dangerous Offender Application.

The guilty plea and resulting sentence do not resolve the problem in the long term, and recent releases of many dangerous offenders are examples of how ineffective the system can be.

The Dangerous Offender Application is a complex and difficult process for Crown Prosecutors. Special training and experience in this area are needed to handle the cases against high risk offenders.

WHEREAS Crown Attorneys, under the current system, have the option whether or not to proceed with a Dangerous Offender Application at their discretion,

AND WHEREAS because of this, Dangerous Offender Applications are not brought uniformly due to the specific options taken within the judicial process such as plea bargaining, the time constraints of the Crown Attorney, etc.

AND WHEREAS the freedom of discretion given to the Crown Attorneys is recognized by this panel as a fault of the system,

AND WHEREAS this panel recognizes that policy changes must be made to existing legislation to provide for accountability to the Crown Attorneys,

IT IS RECOMMENDED THAT a Preamble to section 753 be added and as such should read, "Where the Crown has reasonable grounds to believe that the accused constitutes a Dangerous Offender and where the criteria for Dangerous Offenders may be met, the Crown Attorney shall apply to the Attorney General for permission to bring a Dangerous Offender Application under section 753 of the Criminal Code, and upon receipt of this permission shall bring the aforementioned Application",

AND IT IS FURTHER RECOMMENDED THAT it be written into the legislation that "if the Attorney General refuses said Application, he shall provide a comprehensive written report as to why the request was denied",

AND IT IS FURTHER RECOMMENDED THAT Crown Prosecutors with special Dangerous Offender training and/or experience be assigned to process these Dangerous Offender Applications.

B. Recommendation #2

Background :

The current procedure for Dangerous Offender Applications leads to further victimization of women and children in the case of repeat offenders. Victims who were brutalized many years ago may be required to testify during DO hearings and have to relive their trauma. This recommendation will allow videotaping of child victims' testimony and that the tapes could be used at any future Dangerous Offender hearings.

WHEREAS the current wording of section 753(b) of the *Criminal Code* leaves the courts with an option as to Dangerous Offender status even after the criteria for Dangerousness have been established,

AND WHEREAS this panel feels that the declaration of Dangerous Offender status and the subsequent indeterminate sentence should be mandatory if the criteria have been established.

AND WHEREAS the closing sentence of section 753(b) of the Criminal Code currently reads "the court **may** find the Offender to be a Dangerous Offender and **may** impose" an indeterminate sentence,

AND WHEREAS this panel recognizes that these changes can be made effective immediately simply by amending the wording in the existing legislation,

IT IS RECOMMENDED THAT the closing sentence of section 753 (b) of the Criminal Code be amended to read "the Court **shall** find the Offender to be a Dangerous Offender and **shall** impose an indeterminate sentence".

C. Recommendation #3

Background :

Many high risk predator-type offenders are not identified until after they are incarcerated in a Federal Institution. Upon completion of their sentence these predators are released into society to further victimize innocent citizens.

This intolerable situation can be addressed in the rare cases of offenders who are so dangerous they cannot be released. One option is to amend legislation to allow for Dangerous Offender Applications prior to release for those rare high risk predators. The

Mental Health legislation may also be applicable if authorities are required to make a mandatory referral for assessment under the *Mental Health Act.*[2]

These referrals and any subsequent committal under the *Mental Health Act*[3] will have significant economic consequences on the Ministry of Health, and appropriate federal funding is required.

IT IS RECOMMENDED THAT legislation be amended to allow for Dangerous Offender Applications prior to release for those rare high risk predators.

AND IT IS FURTHER RECOMMENDED THAT procedural amendments to be made to the Criminal Code to read "Official Court transcripts, child witness statements or videotape be maintained indefinitely for use in possible future Dangerous Offender Hearings" :

D. Recommendation #4

WHEREAS, currently, there is no system to prevent the release of a Sexually Violent Predator who is identified while he is in custody,

AND WHEREAS this panel believes that oftentimes much of the relevant information and analyses used to identify a Sexually Violent Predator is only obtained during the time in which the offender is in custody,

AND WHEREAS in some cases, a person serving a fixed term may have a change in circumstances, or new evidence could come forth identifying them as so dangerous to society that they may not be released on Warrant Expiry Date,

AND WHEREAS this panel recognizes that there should be legislation enacted to provide for such a system of identification and further detention,

IT IS RECOMMENDED THAT such proposed legislation be drafted to enable a Crown Attorney, on the recommendation of Corrections Canada or the National Parole Board, to ask the Courts to hear a Dangerous Offender Application, and that the Courts hear this Application prior to the end of the sentence of a Sexually Violent Predator, which may result in indeterminate continued custody under the provisions of the *Criminal Code*.

AND WHEREAS as an interim measure, during the development of the proceeding legislation there is a need for some policy,

IT IS FURTHER RECOMMENDED THAT in the interim, a minimum of 90 days prior to Warrant Expiry Date, Corrections Canada shall make a referral under the

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2. *Supra* note 1.

3. *Ibid.*

Mental Health Act[4] for an Assessment to determine whether or not that individual is certifiable in the interests of public safety,

AND IT IS FURTHER RECOMMENDED THAT the Federal Government make the necessary resources available to the appropriate Mental Health facility.

E. Recommendation #5

Background :

This legislation on ‘capping’ should not be proclaimed because of potential high risk to public safety. Dangerous mentally disordered subjects who have committed horrific crimes should not be transferred from *Criminal Code* jurisdiction into the Mental Health System; this may bring an inappropriate release.

WHEREAS this recommendation related to section 672.64 of the *Criminal Code* relating to capping, which has been table but not yet proclaimed,

AND WHEREAS currently the legislation provides that a person that has been found not criminally responsible on account of mental disorder only spends time in custody if required in the interests of public safety,

AND WHEREAS this provision means that certain mentally disordered offenders will be released to the jurisdiction of the *Mental Health Act*[5] and will be free of *Criminal Code* jurisdiction,

AND WHEREAS the Mental Health Act[6] is not equipped to detain these mentally disordered offenders under its provisions,

AND WHEREAS furthermore, each year under this section of the *Criminal Code,* these offenders are reviewed and are subject to the possibility of release if they are no longer found to be mentally disordered,

AND WHEREAS this panel recognized that the proposed capping legislation does not acknowledge the differences between the sane and insane offenders,

IT IS RECOMMENDED THAT section 672.64 of the *Criminal Code* not be proclaimed because of the aforementioned reasons.

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4. *Ibid.*

5. *Ibid.*

6. *Ibid.*

F. Recommendation #6

Background :

When high risk offenders are released into the community, Correction Canada currently notifies the Police in the jurisdiction where the offender is to live. The Police Chiefs are faced with Freedom of Information restrictions and extraordinary liability issued as a result. Legislation is needed to require the releasing agency to make the public notice regardless of the destination of the offender.

This requirement for public notification will ensure that the releasing agency takes appropriate action to ensure that the subject receives treatment and assessment well in advance of any release dates.

WHEREAS currently, legislative provisions restrict the release of information on Dangerous Offenders to the public,

AND WHEREAS this panel recognizes that for reasons of public safety, certain information must be released to the public and that certain agencies must be held accountable to the public for the release of this information,

AND WHEREAS the Preamble of the *Freedom of Information Act*[7] allows for the release of confidential information "for compelling public interest circumstances",

IT IS RECOMMENDED THAT legislation be enacted to provide that Correctional Services of Canada be responsible for the notification to the public of the release of a Dangerous Offender, and shall be accountable if it fails to provide proper notice.

G. Recommendation #7

Background :

The ability to monitor and track High Risk Offenders is hindered by the fact that every Province has different Mental Health Legislation.

WHEREAS currently each province in Canada has unique Mental Health legislation,

AND WHEREAS this panel recognizes that in order to facilitate the uniform application of procedures within the Criminal Justice system, all Mental Health legislation must also be uniform,

IT IS RECOMMENDED THAT a uniform Mental Health Act be established that applies to all provinces.

H. Recommendation #8

Background :

Confidentiality and Freedom of Information restrictions have made the sharing of information on High Risk Offenders difficult. It is unacceptable for the public to be put at risk by agencies' omissions or failure to disclose information. The current individual agency approach should become more fluid with a constant flow of information from the time of subject's arrest to eventual disposition.

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7. *Freedom of Information Act*, R.S.O. 1990, c. F-31.

WHEREAS currently, there is a need for improvement on the existing legislation or procedures to facilitate the sharing of information between agencies in the Criminal Justice System specifically in regards to Dangerous Offenders,

AND WHEREAS this panel recognizes that in order to maintain accurate records, procedures that foster teamwork must be enacted,

AND WHEREAS currently, each agency has its own discrete set of files, information from which is not easily accessible by the public or by other agencies,

AND WHEREAS this panel recognizes that information should be shared automatically, and not have to be requested by various related agencies,

IT IS RECOMMENDED THAT a dossier be created for each and every Dangerous Offender in custody that will accompany that individual from start to finish,

AND IT IS FURTHER RECOMMENDED THAT a central registry be established especially for Dangerous Offenders within C.P.I.C.,

AND IT IS FURTHER RECOMMENDED THAT legislation be enacted to provide that any agencies (Police, Crown, Corrections Canada, Mental Health facilities, National Parole Board, etc.) be able to access these files and note any changes in the status of the offender,

AND IT IS FURTHER RECOMMENDED THAT these records be maintained for completeness and accuracy by establishing legislation that would effectively make the agencies inputting the information accountable for their actions,

AND IT IS FURTHER RECOMMENDED THAT in case the offender wishes to access his/her own file, victim identifiers be removed for reasons of protecting these people.

I. Recommendation # 9

Background :

All agencies from the Police, Crown Attorneys, Corrections, to the Parole Services are underfunded. In many cases more can be done to protect the public but economic constraints mean citizens are in danger from High Risk Offenders. The results of current civil litigation by victims will highlight the false economics of a poorly funded justice system.

WHEREAS the whole of the justice system is under-resourced,

AND WHEREAS this panel recognizes that in order to facilitate the recommendations suggested by this panel, further resources will be required,

AND WHEREAS this panel agrees that public safety is a prime concern of the country as a whole and that only through the resolution of this issue will any economic renewal be facilitated,

IT IS RECOMMENDED THAT the government set aside more funding required to implement the recommendations set out by this panel.

III. PAROLE REFORM

A. Summary

When somebody has been charged with a brutal murder, why is there parole? Life should be life.[8]

The SafetyNet Parole Reform panel recognizes that it is desirable to maintain a conditional release system to aid in the attempted reintegration of inmates into society but at the same time ensure public safety by differentiating between that group and those violent and repeat offenders in their basic eligibility for conditional release. The Panel wishes to confirm that conditional release from custody should be a privilege and not a right.

The panelists recognize that there is a disproportionately small number of offenders committing a disproportionately high number of offenses. The panel feels it is important to confirm that the primary function of the justice system in all its parts is to protect the public. Rehabilitation is a valuable means to that end but it is not an end in itself.

We are also concerned with the growing perception that Canada has a legal system, not a justice system. We think we can do better.

For Corrections and Parole to maintain public confidence there must be a clear and unequivocal demonstration of competence, accountability in appointments, decision making and supervision of any offenders on conditional release. Both systems have a fundamental responsibility to ensure effective rights for victims of crime in their dealings with either process.

Accordingly, among the panel recommendations are the following :

1. The repeal of section 745 of the *Criminal Code*.

2. That a fundamental change be instituted to the process of decision making regarding corrections and parole. Examination of the process reveals a basic conflict of interest in case management, resulting in far too many instances of inaccurate and unreliable information being placed in the hands of the Parole Board. Accordingly, it is recommended that the gathering, analysis and presentation of information concerning potential conditional release and the supervision of offenders while on release be removed from the mandate of Corrections Services of Canada and be placed instead in an expanded and independent Parole Service.

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8. Sue Simmonds, mother of slain teenager Sian Simmonds, speaking at the SafetyNet forum *Victimization : Dealing with Corrections and Parole.*

3. The amendment of the *Corrections and Conditional Release Act*[9] to disentitle future conditional release for those offenders serving sentences for category one offenses (violence\weapons) who commit a further such offense while on conditional release.

4. The amendment of section 450 of the *Criminal Code* to authorize the arrest by a peace officer of parolees found in violation of their conditional release conditions.

5. The repeal of section 127 of the CCRA to eliminate statutory release and replace it with discretionary conditional release including conditions restricting residency, where appropriate.

6. The amendment of the CCRA to guarantee the right of victims of crime to receive information as to the application of an offender to any form of conditional release, the right to make an oral presentation or written submission at such a hearing, and the right to be informed of the result of any such decision, including any return to custody of the offender as a result of the commission of another offense or a violation of a term of release.

7. The amendment of the *Criminal Code* to mandate consecutive conditional release ineligibility periods for multiple convictions for murder.

8. The amendment of the *Criminal Code* to allow the imposition of consecutive conditional release ineligibility periods for offenses committed by offenders on conditional release as a part of a life sentence.

9. The amendment of the CCRA to end the current practise of sentence calculation, and thereby ensure a negative conditional release eligibility consequence for offenses committed while on previous conditional release, and specifically, to mandate that the commission of a category one offense (violence/weapons/drugs) while on conditional release for such an offense, require the completion of the original sentence in it's entirety before any future eligibility for future conditional release.

10. The amendment of the CCRA to allow discipline of Parole Board members short of termination to be carried out by the Chairman of the National Parole Board. A procedure akin to the federal Inquiries Act, allowing for private or public inquiries, would thereby be permissible.

11. The amendment of section 167 of the CCRA to authorize the Correctional Investigator to receive and investigate complaints from victims of crime or CSC/NPB staff with respect to any matter arising out of the operation of the CCRA.

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9. *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (hereinafter CCRA).

12. The amendment of the CCRA and Section 731.1 of the *Criminal Code* to mandate the presence of sentencing transcripts and offender criminal record, including any history of commission of offenses while on previous conditional release or bail, in any name or form, as a precondition for any hearing under the CCRA which may grant conditional release, in any form, to an offender. Further, section 731.1 should be amended so as to require such information-sharing with Provincial Correctional officials as well.

13. The amendment to the CCRA to mandate a maximum, renewable term of five years for any appointment as a full or part time Member of the National Parole Board.
14. The repeal of section 746 of the *Criminal Code* which mandates the inclusion of pre-trial custody in calculating parole eligibility.

B. Preamble to Repeal of Section 745

WHEREAS current section 745 fails to give adequate consideration of the principles of sentencing other than offender rehabilitation such as specific and general deterrence and denunciation and,

WHEREAS the current section 745 procedure potentially, and realistically, contradicts the original purposes of sentencing and,

WHEREAS current section 745 makes no reference to the protection of the public as a valid concern for a jury at a judicial review and,

WHEREAS current practice involves use or invocation of the *Privacy Act*[10] which has the effect of keeping information critical to public safety away from a jury and,

WHEREAS there is no clear code of procedure for the Crown in conducting judicial reviews which has resulted in great inconsistency across Canada including the nature of crown examination and cross-examination, access to Corrections information as of right to the Crown, and relevance of victim information and,

WHEREAS there is currently no mandatory victim notification of either judicial review application or hearing dates and,

WHEREAS there is currently no clear enunciation of the entitlement of victim evidence as of right at such a judicial review, and,

WHEREAS no rules of procedure or evidence exist with respect to the nature or quality of psychiatric/psychological evidence admissible at judicial review hearings, and,

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10. *Privacy Act*, R.S.C. 1985, c. P-21.

WHEREAS the Crown is currently disentitled to call *viva voce* evidence from Corrections or Parole officials with respect to quality of information gathering analysis and presentation within the parole and corrections process, or as to the quality or adequacy of supervision, and,

WHEREAS the Supreme Court of Canada has further confused these issues by recent decisions,

BE IT RESOLVED THAT : SECTION 745 OF THE *CRIMINAL CODE* OF CANADA BE REPEALED.