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STRATEGIES FOR MANAGING HIGH-RISK OFFENDERS

Report of the
Federal/Provincial/Territorial
Task Force on High-Risk Violent Offenders
Presented to FPT Ministers responsible for Justice
January 1995

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STRATEGIES FOR MANAGING HIGH-RISK OFFENDERS

BACKGROUND

The Task Force was established by the Federal/Provincial/Territorial Deputy Ministers responsible for Justice (also including Corrections and Solicitor General) in February, 1993. The Task Force was recommended in response to growing public concern about "high risk offenders" and in recognition that they are not a homogeneous group. As many in this group suffer from psychotic disorders, sexual disorders and personality disorders, dealing with them does not fall exclusively within any one jurisdiction but rather has implications for justice, corrections and mental health at both the federal and provincial levels.

While the mandate of the Task Force changed somewhat over time, its initial focus included assessing:

- the existing Dangerous Offender provisions in Part XXIV of the *Criminal Code*, and policies and practices respecting the *Criminal Code* provisions for dangerous mentally disordered accused;
- the adequacy of provincial mental health legislation to deal with persons who are both mentally disordered and dangerous, particularly those who are not expected to respond quickly to treatment
- possible use of "long term supervision" as a sentencing option, and of provisions allowing psychiatric assessments in bail and sentencing decisions.

The Task Force is co-chaired by the federal Ministry of the Solicitor General and the Department of Justice. Its membership includes representatives from every province and territory, including Departments of Justice or Attorney General, Solicitor General, Corrections, Health and Social Services. A complete list of members is found in Annex 1.

The Task Force first reported to Federal/Provincial/Territorial Ministers March 22-23, 1994. Ministers came to the following conclusions:

- ✓ Ministers decided not to proceed with amendments either to the *Criminal Code* respecting the dangerous offender proposals, or with publicly tabled proposals to adopt post sentence detention. Ministers agreed with the

Task Force recommendation that such legislation carried significant Charter risk and would probably be unworkable, ineffective and extremely expensive;

- ✓ There was consensus on the need for enhanced measures to improve the identification and effective prosecution of the most dangerous offenders;
- ✓ Ministers supported the creation of a system to identify and track high-risk violent offenders from as early as possible in their contact with the criminal justice system and throughout their involvement with the law. They agreed that officials will develop the operational details of such a system;
- ✓ They agreed that the Federal/Provincial/Territorial Task Force explore ways to ensure that high-risk offenders will not pose a threat to society after the expiry of their criminal sentences;
- ✓ Ministers agreed that immediate action should be taken to amend the *Corrections and Conditional Release Act* along the lines proposed by the Solicitor General of Canada;
- ✓ They agreed that Ministers responsible for Justice meet with Ministers responsible for Health to explore joint proposals for improving linkages between criminal justice and mental health.

Since the meeting of Ministers in March, 1994, the work of the Task Force has proceeded based on the decisions of Ministers. A sub-committee on mental health was struck and a report on mental health legislation was commissioned, as was a paper on prediction of dangerousness and the supervision of dangerous persons. Working papers (listed in Annex III) on long term supervision, and flagging were developed and distributed. A system for long term tracking of potentially dangerous offenders was developed in consultation with the R.C.M.P. The Solicitor General of Canada tabled a legislative package respecting amendments to the *Corrections and Conditional Release Act*, as Bill C-45.

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INTRODUCTION

The membership of the Task Force represents a wide variety of professions, backgrounds and organizational affiliations. To help integrate our various interests and perspectives a set of agreed upon principles was developed to describe and communicate the environment within which we believe that solutions can be found. The following principles have guided the Task Force in developing its recommendations:

1. The criminal justice system bears primary responsibility for public safety related to crime. The mental health system plays a complementary role by providing assessment, treatment and custody wherever appropriate;

2. Criminal/corrections and mental health systems must work together consistently and in a complementary manner to prevent crime, provide public safety and to provide for the care and custody of mentally disordered persons;

3. In addressing the problem of high-risk violent offenders, it is essential to identify the presence of mental disorder, clinical problem areas, risk factors, and the potential for treatment in order for the role of each system to be properly determined;

4. Assessment processes are key to the appropriate disposition of cases;

5. When making sentencing and release policies and decisions, the Criminal Justice System must consider the sentencing objectives of the court, which may include punishment and deterrence. Dangerous mentally disordered persons must be detained/supervised/monitored for as long as they are considered dangerous or potentially dangerous;

6. Criminal and civil responses to prevent and control dangerous behaviour must be proportionate to the severity of the behaviour and/or the likely risk of future harm;

7. Individuals must not be punished on account of their mental disorder; they may, however, have their liberty reduced as a result of their behaviour;

8. Due process protection and evidentiary requirements must be in place for all high risk offenders and mentally disordered persons;

9. Mentally ill people should be accommodated in settings equipped and able to respond to their needs and choices. Dangerous mentally disordered individuals should be accommodated in settings equipped and able to respond to their level of risk and their treatment needs. Needs may change over time and systems should be flexible in response to these changes;

10. Where possible, eventual safe community reintegration should be the goal of intervention;

11. Solutions to identified gaps between the criminal justice systems and mental health systems must be adapted to provincial, regional and local circumstances;

12. Where possible, competent and voluntary choices about treatment must prevail, together with respect for the least restrictive treatment decisions appropriate in the circumstances.

In developing its report the Task Force identified its "target" as comprised of three groups of persons. The first includes those with a risk of violence on account of a treatable mental disorder. The second group contains those who present a risk of violence because of an untreatable mental disorder. The final group presents a risk of violence that may be separate from or in addition to the risk posed as a result of a mental disorder. In developing options to deal with the highest risk offenders, the Task Force has recognized that targeted interventions may be possible at every stage of the criminal justice process:

a. at the "front end" (prior to, or at the prosecution/sentencing stage),
b. during incarceration and
c. towards the end of sentence.

With this perspective of the "system", the Task Force recognizes that effective strategies may equally involve the mental health and criminal justice systems in ensuring that high-risk individuals are identified, assessed, treated and controlled effectively. Federal, provincial and territorial Ministers responsible for justice matters have already agreed that health and justice sectors must be better coordinated. Public protection is not well served if the division between federal and provincial jurisdiction and between health and justice systems, becomes an obstacle to strategic interventions.

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The Task Force notes that while there is a perception in some quarters that the criminal justice system is doing little to address the problem of high risk offenders, criminal justice at all levels is already making significant effort to deal with the target groups. Specifically, the *Criminal Code* contains a Dangerous Offender procedure that applies at the sentencing stage. Further, the Correctional Service of Canada, working with the psychiatric/psychological community, has steadily improved its ability to identify high-risk inmates early in their period of incarceration.

"This process should be viewed as a continuum of care, treatment, control, with the timely involvement of criminal justice and mental health institutions."

The Task Force has focussed on how all levels could more effectively work together to derive effective solutions. The options and recommendations that follow represent an effort to improve responses at each stage of the combined federal and provincial involvement with high-risk individuals. This process should be viewed as a continuum of care, treatment, control, with the timely involvement of criminal justice and mental health institutions.

At the Prosecution Stage

Dangerous Offender Procedure

The mandate of the Task Force explicitly required an examination of the current Dangerous Offender provisions in Part XXIV of the *Criminal Code*. It is particularly noteworthy that Washington State, while it has post-sentence detention legislation, a model often referred to as a desirable direction for Canada, does not have Dangerous Offender legislation. The Dangerous Offender provision is one of the few procedures currently in Canadian law that allows the imposition of indefinite sentences. It clearly defines a "serious personal injury offence" and provides the court with procedures to evaluate patterns of offending. It goes further in allowing dangerous offender designations in the area of sex offending on the basis of a single offence where there has been a demonstrated failure to control sexual impulses, where there is a likelihood of causing injury, pain or other evil to other persons in the future, or because of the brutality of the offence. The Supreme Court of Canada has upheld the validity of the law in *R. v. Lyons*[1], emphasizing the clarity of the definitions, the validity of the assessments, and the desirability of regular reviews and the provision of an opportunity for eventual release.

More effective application of the dangerous offender status at the "front end" of the criminal justice process will permit interception of at least some of the cases of high-risk offenders.

More effective application of the dangerous offender status at the "front end" of the criminal justice process will permit interception of at least some of the cases of high-risk offenders. It can be done now, within existing, judicially tested legislation. Research considered by the Task Force shows that the indicators of high risk are generally static, and can be known at the time of prosecution and sentencing. This simple expedient can deal with many of the risks and will reduce the number of persons who will be perceived as risks at the expiry of a determinate sentence.

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[1] (1987) 61 CR (3d) 1 (S.C.C.), at p. 31.

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1.	RECOMMENDATION:	**Consistent with decisions already taken by Ministers responsible for Justice, the Task Force supports the consistent use of Dangerous Offender applications in all appropriate cases to target the highest-risk offenders.**

Federal, provincial and territorial Attorneys General have already agreed that the Dangerous Offender provisions can be effective. There is considerable variation in their use across the country. Half of all applications are made in Ontario; British Columbia accounts for another 25 per cent. During the same period, Québec has had only one offender declared to be a Dangerous Offender, this occurring in 1994. The Task Force suggests that the variable use of these provisions is not a question of inconsistency but rather of different strategies.

It should be emphasized that the use of the Dangerous Offender provisions does not appear to be either a sufficient, or necessary approach. During the past several years, Québec has developed an efficient medical/legal system to deal with the problem of clientele coming from the judicial system, including dangerous offenders. They consider that their system functions well and that patients suffering from mental illness, independent of where they find themselves, receive adequate psychiatric treatment. Consistently, the crime rates published for Canadian provinces[2] suggests that overall crime, and more importantly for the purposes of this discussion, violent crime, is lower in Québec than in all provinces to their west. The following description has been furnished to the Task Force and is repeated here to demonstrate a functioning alternative.

> *There are several hospital centres that receive this clientele coming from the courts for the purpose of evaluation, detention or treatment. These centres also work as consultants to penitentiaries and hospitals and work in collaboration with provincial jails.*
>
> *When offenders are released from incarceration, they are often referred, within the context of parole, to one of these hospitals on an out-patient basis, always*

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[2] Statistics Canada, *Canadian Crime Statistics, 1993* Vol 14, No.14 ISSN 0715-271X, P.6

with the possibility of admission using the Mental Health Act. Very violent individuals can be admitted, provided that they present a treatable pathology.

At all times, the courts have understood the special requirements of individuals suffering from psychopathy and have accordingly awarded extended periods of incarceration. It is this offender-base that one finds in federal maximum security institutions.

It must be understood that the dangerous offender group is comprised of individuals with very diversified underlying pathologies. Also found in this group are psychopaths who can be extremely dangerous. These cases are rare and are generally found within an institution where the emphasis is on security. These persons in particular, must not be placed in hospital centres.

For other cases, there are programs either internal or external, in association with the probation service, the parole service or other community organizations. These programs deal with the full range of psychiatric pathologies including cases where this pathology involves violence or sexual abnormalities.

In conclusion, there exists, in Québec, a system that functions well and has proven itself, but which could become rapidly disorganized if it is required to admit individuals for whom there is not effective treatment.

CROWN FILES PROJECT

Ministers responsible for Justice have agreed that one of the enhanced measures that could be taken at the front end of the system would be better identification of the most dangerous offenders. It was agreed that jurisdictions would carefully scrutinize cases to ensure appropriate use of the existing Dangerous Offender provisions.

Part of the reason for the inconsistent use to date of the Dangerous Offender provisions across Canada may stem from the lack of shared knowledge of demonstrated indicators as to what type of cases will meet the dangerous offender

> . . .such knowledge could be used by prosecutors to better inform decisions as to appropriate cases for dangerous offender applications

criteria and result in a successful application. The dissemination of such knowledge could be used by prosecutors to better inform decisions as to appropriate cases for dangerous offender applications. Questions such as the following need to be addressed:

- ✓ What are the characteristics of the offenders and the offence that led the Crown to make a dangerous offender application?
- ✓ At what point in the prosecution process is the decision made for application?
- ✓ Is there a particular set of information that comes to the Crown which is critical to the decision to prosecute an offender as a dangerous offender?

A research proposal has been developed by Solicitor General Canada which explores these questions using sets of Crown files. Analysis of the data from the file reviews will examine differences in the characteristics among categories, and allow the researchers to comment on what variables are important and should be in files for successful dangerous offender prosecutions.

A literature review will be conducted to construct a list of factors identified by research as predictive of violent behaviour. This list will be used to determine if these violent predictors are found in the three sets of Crown files, and if they have any influence on the outcome of the file. This task will address the following questions:

- ✓ Is information that predicts violent offending available in Crown files? If not, why not, and what can be done to ensure that the information is available?
- ✓ Do prosecutors attend to this information? Do they recognize the importance of these factors?

A follow-up will be conducted of those offenders from the two sets of Crown files referred to above. Offenders from this group who have been released into the community will have had opportunities to recidivate. The recidivism information will provide an evaluation of the original judgment of the Crown as to potential violent behaviour.

2.	RECOMMENDATION:	**That the Crown files research project be carried out, funded by the federal Department of Justice and the Ministry of the Solicitor General and with the cooperation of provincial Attorneys General.**

FLAGGING SYSTEM

As part of "front end" improvements, Ministers also agreed that a nation-wide flagging system should be implemented to track high risk offenders. The rationale for such a system is straightforward: with jurisdictions prosecuting a large number of offenders and with easy mobility of persons across a large country, prosecutors should have available a system which would alert them to (a) the need to review a particular case for a possible dangerous offender application in light of previous concerns by those dealing with the offender, and (b) the existence of relevant information held elsewhere.

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As the goal of the system is to track potential candidates for dangerous offender applications, criteria for use of such a system should be related to the Dangerous Offender provisions of the Code. The dangerous offender criteria are of two types: fixed (conviction for a serious personal injury offence), and discretionary (assessments of various types, for example, the brutality of the offence, the damage caused, the likelihood of future harm). A pattern of such behaviour is an important element and the information may not be easily available to a Crown prosecutor when deciding how to proceed in a particular case. However, the information may be available in another jurisdiction. The flagging system will identify the existence of the information and the fact that another jurisdiction has had significant concerns about the offender in question.

There are a number of situations which might be appropriate for inclusion on a flagging system. Some examples are:

- ✓ Previous unsuccessful application
  Flagging such a case would alert subsequent Crowns to previous concerns, so that an appropriate assessment can be made as to whether the instant offence would support an application.

- ✓ Plea/sentence negotiations.
  The criteria may have been considered by the Crown to have been present for such a case, but for various reasons either the charge was negotiated to a non-serious personal injury offence conviction, or a definite sentence was jointly recommended to, and was accepted by, the court.

- ✓ No serious personal injury offence.
  Some cases may have involved conviction for an offence which does not meet the dangerous offender criterion of serious personal injury offence, but significant concerns exist as a result of other observations about the circumstances of the crime (for example, a pattern of break and enters with sexual components).

The results of the Crown Files project, discussed above, will be quite useful in identifying which cases should be flagged as possible dangerous offender cases in the future.

3.	RECOMMENDATION:	**Criteria for inclusion on the flagging system should be based on the Dangerous Offender provisions in the Code. The flagging system should include individuals whose personal and offence characteristics (except for "persistent pattern") meet the criteria set out in s. 752 and s. 753 (a) and (b) of the Code, as well as those who do not meet the legislative requirements in the instant case, but who could be considered appropriate for a dangerous offender application in the future. Should recommendations about *Long Term Offenders* be approved (see recommendation 8 at Page 21, 41) criteria relating to this category of offender should be included in the national flagging system.**

In considering what mechanism should be used for a flagging system, it was clear that the existing resources of the Canadian Police Information Centre (CPIC) were ideally suited to this purpose. As CPIC operates across Canada, and also interfaces with other computerized information retrieval systems in use in individual jurisdictions, it is the most appropriate vehicle for a national flagging system.

Use of the CPIC system must be done in accordance with established policies and practices. While police (and through them, Crowns) will have normal access to the Criminal Records File of CPIC (fingerprint-based criminal histories), the flagging system per se could use the Special Interest Police File of the Investigative Data Bank of CPIC. In this regard, it should be noted that the flagging system will not contain extensive case information. Its function is to operate truly as a flag, and would normally contain only a brief reference to the offender as a possible dangerous offender candidate, and a notation as to who to contact for further information.

Although the question of how the flagging system will operate in each jurisdiction is a matter for that jurisdiction, it is clear that an effective tracking system (a) will require a high degree of police and Crown cooperation, and (b) should operate in a consistent manner across the country. In order to ensure that the flagging system reaches its potential as an effective tool to assist Crowns in bringing dangerous offender applications in all appropriate cases, jurisdictions must develop policies and procedures on how the system is to work. Without this, there is a risk that the system will be established but not used in the most effective way.

4	RECOMMENDATION:	**CPIC should be used as the basis for a national flagging system for potential dangerous offenders, and its use consistent with current CPIC policies and practices. The information will be entered and retrieved by police from the Special Interest Police File of the Investigative Data Bank.**
5	RECOMMENDATION:	**Each province or territory should develop policies to ensure effective use of the flagging system, addressing, at a minimum:**

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- ✓ uniform minimum criteria for identifying potential dangerous offender cases
- ✓ Crown agents who will be responsible for reviewing the files of charged or convicted persons to apply the criteria to determine suitable candidates for flagging
- ✓ procedures to determine the kind of information to be entered and to designate responsibility centres to inform police about information to be updated
- ✓ policies regarding access to the data bank to provide information flow from police to Crowns concerning charged individuals
- ✓ audit and privacy controls.

In developing policies and procedures, jurisdictions may wish to consider options based on the existing "Career Criminal and Dangerous Offender Program" tracking program operated by the British Columbia Ministry of the Attorney General.

CHANGES TO DANGEROUS OFFENDER PROVISIONS

At their meeting in March, 1994, Ministers agreed not to amend Part XXIV of the Criminal Code, but rather to make better use of it. The Task Force reiterates its position that a major departure from the Dangerous Offender structure along the lines, for example, of the draft federal legislation developed in 1993, would run afoul of the Supreme Court of Canada's judgement in *R. v. Lyons*. The Court stressed the importance of a well tailored measure that will target specific high-risk offenders with a form of punishment that flows from the commission of a specific crime. A measure that would allow a Dangerous Offender application later in sentence, without clear evidence of a new offence could conflict with the Charter protections against double punishment and arbitrary detention.

The Task Force does recommend a few changes to the Dangerous Offender rules in the area of assessment, as described below. These changes should strengthen, rather than weaken, the current system.

The Task Force is also concerned that the offenders currently liable for prosecution under the Dangerous Offender provisions of the *Criminal Code* do not represent the full range of offenders about whom we should be concerned. The sections that follow are intended to present the case for better assessment of high risk offenders, and for the provision of an alternate mechanism to address those offenders who represent a considerable risk to the community but who may not be subject to the current Dangerous Offender regime.

Role of Psychiatrists

One of the major issues in any discussion of high risk offenders is the ability to predict such behaviour. The ability of psychiatry to predict violence has been challenged for many years. The literature is replete with claims and counterclaims. The Task Force was made aware of recent Canadian work that argues essentially that successful prediction of violent recidivism has been underestimated in the past and that methodological improvements have permitted the development of actuarial instruments to predict violence.

While any adjudication of such a scientific issue is clearly beyond the terms of reference of the Task Force, we believe that it is crucial to ensure that the most complete and comprehensive information is made available to the court when it has to make a judgement. Overall assessment and screening of offenders needs to be addressed through more effective, multi-disciplinary approaches to making risk assessment and risk management information available. Such information must be available to courts and to mental health and correctional personnel involved with delivering services to the offender and to the community. More effective use of mental health professionals can, in the view of the Task Force, facilitate the management of offenders in institutions, and in the community.

Assessment should be seen as an ongoing process, not merely a process conducted around the time of a key decision, such as a dangerous offender application. While the objective of assessment is to enable the courts and the correctional system to draw the appropriate links between mental disorders and the offence itself and to identify the offenders at highest risk for long term violence, thorough assessment is useful to all later decision making. Better information will improve the basic decision process at all points in the criminal justice system. The sentencing of the competent, the hospitalization of the mentally disordered, and the treatment and management of the risks presented by both groups can be facilitated through early and complete

assessment. The Task Force is convinced that opportunities exist for assessment processes to be refined to take into account various factors: the importance of both past and recent behaviour, family history and other predictive factors, treatability, the likelihood of re-offending, the presence of mental disorder and its link to the offence. To define the criminal and health system's ability to assess risk, the federal and provincial governments should undertake collaborative research into risk prediction methods and tools, including consideration of establishing a centre of excellence in the science of risk prediction.

> Better information will improve the basic decision process at all points in the criminal justice system

Nothing is said in Part XXIV about the nature of the examination of the accused. The wording of s. 753, in effect, requires the court to make some assessment of risk of future violence, yet the correlates of violent recidivism are not listed. Even though there is current disagreement in the correctional, criminological and psychiatric communities about use of "actuarial" versus "clinical" assessments of potential dangerousness, all would agree that such empirically-based variables as criminal history, family and educational background, alcohol and drug use are relevant predictors. The Task Force notes that assessment tools have improved our ability to identify and assess risk factors. Such empirically-based variables should be built into the assessment process and supplemented by clinical evaluation in the form of expert testimony.

Section 755 of the *Criminal Code* requires the evidence of two psychiatrists, as well as inviting some adversarial presentation of evidence. This procedure can be expensive and even unnecessary in some instances. Specifically, the section requires that there be a psychiatrist appointed for the defence, even where such evidence may not be called by the defence since they may view it as not being in the interests of their client. Prosecutors on the Task Force made a strong argument not to mandate psychiatric evidence, but to make it optional, available where the court requests it.

> . . .a multifaceted approach to assessment, one that requires evidence based on assessment of the risk posed by the individual, together with the potential for managing such risk, provided by a multi-disciplinary team will provide better information to the court

As well, concern was expressed about the discretion available to the court to impose a penitentiary term for a

determinate period rather than simply indeterminate incarceration following the finding. While such adjudications are rare, prosecutors on the Task Force were of the view that it made little sense to follow the procedures in Part XXIV, have the offender declared a Dangerous Offender, and then obtain a definite sentence comparable to what could have been obtained without the procedure. As will be seen in the discussion of the High Risk offender, we will be recommending that another option be substituted for the possibility of a definite sentence as described in the current Dangerous Offender provision.

6	RECOMMENDATION:	**Section 755 of the *Criminal Code* should be amended to eliminate the requirement that two psychiatrists, one for the prosecution and one for the defence, must present evidence. Nothing in these amendments should limit the right of the offender to call independent psychiatric or clinical evidence if desired.**

Assessment of Risk

One of the principles indicated at the outset is that "assessment processes are the key to the disposition of cases". Information was gathered concerning a system in the Netherlands that provides for a lengthy, neutral evaluation which is provided to the court. In that system, if a judge suspects that the accused suffers from a mental disorder, an assessment by one or more mental health experts can be requested. The assessment is likely to be conducted at a psychiatric hospital within the prison system. It has the legal status of a remand centre and includes social workers, psychologists, sociotherapists and psychiatrists. The forensic expert or team is independent and does not act on behalf of either the prosecution or the defence. The assessment is residential and may last 7 weeks. The forensic diagnosis is based on the category of mental disorder, the social history of the offender, behaviour and the circumstances of the event. The diagnosis does not comment on the guilt or innocence of the accused, but rather upon the degree of responsibility, the prognosis regarding dangerousness and criminality and any necessary mental health intervention.

Although the assessment is done to assist the court in determining the relevance of mental disorder and the degree of guilt, the system in the Netherlands shows how a

neutral and thorough assessment can greatly aid decision-making about future risk. The "state of the art" for predicting violent recidivism is not sufficiently precise to permit codification of any list of factors contributing to dangerousness. There seems to be reasonable evidence, however, to suggest that a multifaceted approach to assessment, one that requires evidence based on assessment of the risk posed by the individual, together with the potential for managing such risk, provided by a multi-disciplinary team will provide better information to the prosecution and the court.

The Task Force advocates a realignment of the manner in which assessment of high risk is considered within the system. We believe that where the prosecution is concerned about the dangerousness of an offender, there should be access to a neutral assessment. We were impressed by arguments to the effect that the psychiatric evidence currently heard by the court as a result of the operation of section 755 of the *Criminal Code* often results in "set pieces" where the expert for the prosecution provides clinical evidence to support the prosecution and the expert for the defence simply offers an alternate clinical opinion. The net result is that too often a multifaceted approach to assessment, provided by a multi-disciplinary team, an approach that requires evidence based on assessment of the risk posed by the individual, together with the potential for managing such risk, is not made available to the court. We believe that criteria are available that will selectively target those offenders who have demonstrated their capacity to commit violent or sexual crimes in the future. The Task Force believes that centres for the conduct of such assessments should be established either by provinces alone, or through inter-jurisdictional arrangements with other provinces or with the federal government. Given the cost implications of this process, such evidence should be presented only after it is determined that it is necessary in the interests of justice. The assessment report, presented to the court, should be available to defence counsel and be used by Crown prosecutors in determining whether to process the offender for sentencing as a "normal" criminal, as a Dangerous Offender, or as a Long Term Offender.

Long Term Supervision

In respect of high risk offenders, the Task Force was impressed with arguments to the effect that special attention needs to be paid to some categories of offenders, notably paedophiles, who may not be susceptible to indeterminate incarceration as dangerous offenders but who are, nonetheless, capable of great harm to numerous victims as a result of their chronic behaviour.

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Interest has been expressed in the creation of a long term supervision scheme which would be limited in its application to certain categories of offenders, as an alternative to indeterminate incarceration. Currently in Canada community supervision generally is imposed by means of probation or it may be the eventual result of a custodial sentence and the grant of parole or the operation of Statutory Release.

The current probation scheme would not be generally adequate for the purpose of long term supervision because:

> . . .special attention needs to be paid to some categories of offenders, notably paedophiles, who may not be susceptible to indeterminate incarceration as dangerous offenders but who are, nonetheless, capable of great harm to numerous victims as a result of their chronic behaviour

- ✓ the maximum duration of a probation order, three years, is not sufficient for those offenders who can be managed in the community but who require an extended period of supervision and treatment to be stabilized

- ✓ probation cannot be attached to sentences of two years or more, leaving lacunae in two ways:

  - ⇨ more serious offenders, i.e. those who receive penitentiary length sentences, cannot receive the support of extended community supervision other than through parole as a result of the imposition of a long custodial sentence

  - ⇨ on dangerous offender applications, the court currently has only the alternative of indefinite detention at one extreme, and a definite sentence at the other.

"Long term supervision" (LTS) should have as its objective the enhanced safety of the public through targeting those offenders who could be effectively controlled in the community, based on the best scientific and clinical expertise available. Such control may be the most effective approach in helping to reduce violent criminal acts, fostering and maintaining pro-social behaviour, and reducing the adverse impact of incarceration. Supervision under such a scheme should be designed to avoid long term

or indefinite incarceration: the focus should be, instead, to exert all possible effort, short of incarceration, to stabilizing the offender in the community, with particular attention to any precursors to re-offending that may be identified. LTS is based on the assumption that there are identifiable classes of offenders for whom the risk of re-offending may be managed in the community with appropriate, focused supervision and intervention, including treatment.

A sentencing option providing for long term supervision would be aimed at cases where an established offence cycle with observable cues is present, and where a long term relapse prevention approach may be indicated. The success of an LTS scheme based on the relapse prevention model rests on several key factors.

> "Long term supervision" (LTS) should have as its objective the enhanced safety of the public

a. The measure should be focused on particular classes of offender. The inclination to make long-term supervision widely available should be resisted as costly, unwarranted in most cases, and as contributing to "net widening". The target group, and thus the expectations of the scheme, should be well defined;

b. The criteria should selectively target those offenders who have a high likelihood of committing further violent or sexual crimes but who would not likely be found to be a Dangerous Offender;

c. There should be a mechanism for varying or lifting LTS orders, given that while LTS may have been appropriate at the time of sentencing, once a custodial sentence has been served there may be a need for modification of the order based on intervening events;

d. There should be a speedy and flexible mechanism for enforcing the orders which does not result in lengthy re-incarceration in the absence of the commission of a new crime. As stated above, the order should not become a mechanism for long term incarceration in the absence of re-offending.

After the offender has been convicted, but before sentence, there should be the option of an assessment such as that described above. Where the Crown is satisfied on the basis of the information in the assessment that the offender poses a high risk, he/she

may apply to the court to have the offender declared a *Long Term Offender*. If, on the basis of the evidence presented, the court is satisfied that the offender meets the criteria specified, the offender could be sentenced to a definite period of incarceration, for two years or up to the maximum specified for the offence in the Code, but would also be subject to Long Term Supervision upon release in the community for a period of up to 10 years. This supervision in the community, after the expiration of the warrant of incarceration, would be subject to enforcement via existing probation procedures leading to the laying of a new charge with liability for up to 18 months incarceration (if C-41 passes). Either the offender or the Crown could apply to the court to have the terms of the order modified or lifted. The court should be able to modify the period of supervision, if required. The Correctional Service of Canada would be responsible for supervision. The National Parole Board would be able to vary conditions.

If the Crown, after the receipt of the assessment, has greater concerns, an application under Part XXIV to have the offender declared a Dangerous Offender may be made. The court, after hearing the evidence, may declare the offender to be a Dangerous Offender and impose an indeterminate sentence, or declare the offender to be a *Long Term Offender* and impose a defined sentence and long term supervision.

If, after receipt of the assessment report, the Crown does not feel that the evidence supports either application, the cases may be processed as any other similar case for sentencing.

These proposals would target persons who commit serious personal injury offences."Serious personal injury offence" would be defined as in the current section 752, a) and b), as:

> an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving (i) the use or attempted use of violence against another person, or (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person, and for which the offender may be sentenced to imprisonment for ten years or more, or
>
> an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a

weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault)

As part of a Dangerous Offender application the court would be able to find that the offender was a *Long Term Offender*, but no application for *Long Term Offender* could be "raised" to a Dangerous Offender application.

7	RECOMMENDATION:	The Task Force recommends that the court, may order, upon application of either party, an assessment of an offender convicted of a serious personal injury offence to participate in an assessment at a provincially identified centre to determine the risk of violent re-offending and the likelihood of successful management of that risk in the community. The assessment report should be used by Crowns in determining whether to bring an application for either a Dangerous offender of Long Term Offender designation;
8	RECOMMENDATION:	The Task Force recommends the creation of a new sentencing option of a long term supervision order for Long Term Offenders as described in the report.
9	RECOMMENDATION:	The Task Force recommends that section 753 of the *Criminal Code* be amended to provide that if the court declares an offender to be a Dangerous Offender, it shall impose a sentence of incarceration for an indeterminate period. If the court chooses not to declare the offender to be a Dangerous Offender it may declare the offender to be a *Long Term Offender* and subject the offender to federal incarceration plus long term supervision.

MENTAL DISORDER AMENDMENTS

Three aspects of Bill C-30, the 1992 legislation respecting mental disorder, remain unproclaimed. These are section 672.64 respecting capping, section 672.65 respecting dangerous mentally disordered accused, and section 736.1 respecting assessment reports and a hospital order.

The juries that perfomed inquests into the deaths of Christopher Stephenson and Dennis Kerr have recommended that the capping provisions not be proclaimed until such time as there is an appropriate mechanism for dealing with the long-term custody of dangerous person who may be subject to a cap. The essence of the concern is that the cap could result in the ultimate release of dangerous persons into the community. In addition, the definitions found in section 672.64 describe the cap as life only for offences including high treason, certain offences under the *National Defence Act* and any other offence where the minimum punishment is imprisonment for life. Offences such as attempted murder would not attract the "Cap" of life. Some argue that the fact that an individual may be convicted of attempted murder and receive less than a life sentence is due more to the skill of the victim's physician than the nature of the offender and that the cap should be for life in such cases. There is sufficient concern around the issue that the Task Force is led to the conclusion that the definition of the cap is inadequate.

The definitions in sections 672.65(3) are based on similar descriptions found in Part XXIV of the *Criminal Code* respecting dangerous offenders. Several argue that while these criteria are appropriate for assessing the behaviour of persons not found to be mentally disordered, they are inappropriate for mentally disordered offenders given the nature of the mental disorder from which the offender is suffering. It is argued that more psychiatrically relevant criteria need to be developed in order to properly categorize an offender as a dangerous mentally disordered accused.

Finally, there has been resistance to proclamation of the hospital order provisions in section 736.1 on the grounds that the hospital order may require mental hospitals to house criminals who are essentially untreatable and disruptive to other patients. The costs of such beds are also raised.

In respect of the unproclaimed sections of the mental disorder provisions, there appears to be an impasse which can only be broken by addressing the concerns of provinces and of mental health professionals in respect of the costs issues, and the questions of

definitions respecting both the cap and the definition of the dangerous mentally disordered accused. Further, addressing these concerns is consistent with the overall approach of the Task Force which is to encourage early assessment of offenders against appropriate criteria.

Overall, some argue that the current system of Lieutenant Governor's Warrants works and that changes brought to provincial mental health acts since the *Swain*[3] case ensure that these systems are Charter proof. In view of the concerns raised by the Ontario Coroner's office and by several provinces administering the *Criminal Code* provisions, the Task Force is convinced that these three important parts of the control mechanism for potentially dangerous persons currently in the Code need to be re-assessed.

10	RECOMMENDATION:	**The Task Force recommends that the Minister of Justice review unproclaimed sections and prepare recommendations, including appropriate amendments, in consultation with provinces and territories**

[3] (1991) 5 CR (4th) 253 (S.C.C.)

During Incarceration

IDENTIFICATION, ASSESSMENT, PLANNING

The Task Force has premised its work on the belief that health and correctional systems should strive for greater integration and coordination and that, particularly with respect to mentally disordered offenders, the early involvement of provincial and territorial mental health systems in identification and assessment of high-risk inmates will pay off as these individuals reach the end of their carceral sentence. Such early attention to high-risk inmates will help in predicting risk as well as in planning for mental health services.

The Task Force was reminded on several occasions that the processes which lead to an offender being in either the mental health system or the correctional system may not be related to the mental health of the offender. An example may be where a sexual deviance is raised by the offender himself who seeks treatment as opposed to another person, behaving in exactly the same manner whose behaviour is brought to the attention of the police. The assessment and screening of offenders needs to be addressed within the context of the Task Force's overall view that more effective, multi-disciplinary inter-jurisdictional approaches to making risk assessment and risk management information and options available earlier in the various processes must be pursued.

The Task Force is aware of Canadian research and practices suggesting that more effective use of mental health professionals can facilitate the management of offenders. In institutions, there is potential for exchange of offenders between correctional systems and mental health systems in accordance with individual needs. Successful prosecution of dangerous offenders under Part XXIV of the *Criminal Code*, and the more effective control of such offenders in the community on release either from correctional institutions by way of parole or mandatory supervision or from mental hospitals as a result of dispositions made under section 672.54 of the *Criminal Code* would likewise be enhanced through better collaboration.

The capacity of the Correctional Service of Canada to identify and treat inmates with mental problems has greatly increased in recent years. CSC statistics show that a significant number of federal inmates suffer from psychoses and a large number can be characterized as having anti-social personality disorders. A comprehensive assessment, undertaken at the commencement of sentence, identifies criminogenic factors so as to

inform treatment and programming on an individual basis. This intake assessment method serves several purposes: information gathering; identification of immediate needs; orienting offenders to the penitentiary environment; assessing the inmate's behaviour; identifying treatment needs and targets; and, arriving at the appropriate penitentiary placement.

Provincial mental health systems may or may not be involved in the early assessment and treatment of high risk offenders during incarceration. In many cases, CSC performs these functions well without assistance. Provincial involvement should be case specific where provincial mental health interventions are seen as necessary in responding to specific needs of the individual and where services could not reasonably be made available through CSC. The Task Force believes that there is potential for Provinces and CSC to work together to build on this process.

> . . .the ability to assess mental disorders in inmates and risk factors is improving

As already noted in this report, the ability to assess mental disorders in inmates and the related risk factors is improving. As the Joint Action Committee on Corrections and Mental Health, a committee of the Correctional Service of Canada, has stated in its working document "Framework for Criminal Justice and Mental Health"[4]:

> *While the tools for assessing risk may differ, decisions with respect to risk are being made in both the mental health and correctional systems.... Research has demonstrated that it is possible to predict the likelihood of delinquent behaviour in young people and the likelihood of recidivism for offenders. The predictive accuracy of assessments is enhanced when information is gathered on a larger number of risk factors.*
>
> *Traditional risk assessment tools focus on historical factors (i.e. criminal offence, number of previous convictions, etc.). While valid for assessing risk, such factors are static in nature and cannot be responsive to differential treatment and management. For this reason, research turned to the development of assessment tools made up of need factors that are both*

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[4] Page 45

empirically related and responsive to intervention. The rationale for this approach is that as need areas are addressed, the relative risk presented by the offender will be reduced. The combination of risk needs assessment can improve the predictive value of the risk assessment tool.

Research has shown that there are criminal history factors that relate to outcome on conditional release. There is also a consistent relationship between the type and number of needs of offenders and their likelihood of re-offending. the combined assessment of level of risk and level of needs allows for cases to be differentiated and managed accordingly.

The Task Force strongly feels that the relationship of provincially run health systems and federally run penitentiaries should be strengthened. While other recommendations in this report address jurisdictional issues and legislative approaches to federal-provincial cooperation, we believe that protocols governing services are a key component. Such protocols could, for example, ensure that provincial services (assessment, treatment, etc.) are brought to bear at the appropriate stage and that planning for further treatment and for release of offenders with mental disorders is joint planning.

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11	RECOMMENDATION:	**Mental Health, the Correctional Service of Canada and the National Parole Board should examine the concept of new protocols with provincial Health Departments to govern assessments, information sharing, services and detention of offenders.**

TRANSFERS BETWEEN CORRECTIONS AND MENTAL HEALTH SYSTEMS

The Task Force, and the Mental Health Subcommittee, have heard the strong concern of provinces and psychiatrists about the appropriateness of hospital settings for detaining high-risk mentally disordered offenders. Nevertheless, as has been noted

throughout this report, mental health, correctional and prosecutorial systems are already interactive. The *Criminal Code*, for example, provides in Part XX.1 for the setting up of Review Boards and the diversion of mentally disordered persons to provincially operated mental health facilities. At the level of services, there are many cooperative arrangements between Correctional Services Canada and provincial hospitals. Several CSC facilities are scheduled as provincial health facilities. As much as both systems might wish it not to be so, the "failures" of one system tend to end up in the other.

In each jurisdiction, one or more joint case coordination teams should be created comprised of representatives from federal and provincial corrections and provincial mental health systems. These teams would periodically review all LTO cases, and others on referral from corrections and mental health services. The purpose of the teams would be to creatively combine and focus resources services and knowledge from all these systems on offenders and/or patients who are actually or potentially clients of both corrections and mental health.

12	RECOMMENDATION:	**Correctional Service of Canada/Health system mechanisms should be formed to oversee the planning of services and custody for high-risk inmates and to determine appropriate placements.**

End of Sentence or Disposition

This report has emphasized the benefits of early targeting of high-risk offenders and dangerous mentally disordered persons as part of a systematic approach to managing the problem. Much of the public attention has been focused on criminal offenders or mentally disordered persons who are, or have become dangerous to the public when their release date arrives. In the case of mentally disordered offenders this may occur as a result of a decision by a Review Board established under the *Criminal Code*, or at the time of a release into the community in connection with the treatment program. In the case of criminals, this occurs at the Warrant Expiry Date, or the date that the court order for their incarceration expires.

Need for Police Awareness of Review Board Decisions

The Mental Disorder provisions of the *Criminal Code* require that each province and territory establish a review board. The authority of the Review Board extends to persons found not criminally responsible on account of mental disorder or found unfit to stand trial. When an individual is permitted back into the community - often a gradual process - conditions are frequently specified which can be enforced by the police. In some instances, however, there is no systematic mechanism for informing the police when these conditions are ordered, and when they are varied or terminated. Police need to be made aware of any enforceable release conditions specified by the Review Board.

The problem arises with mental health clients in instances where police become involved with such an individual but are unaware of Review Board conditions under which that person has been release into the community. In some instances, there may be resistance to informing police of release conditions due to a misperception that sensitive medical information is being requested by the police. This is not the case. Police only require reliable information about "street enforceable" conditions which they may apply or transmit to other relevant officials (e.g. health professionals at a hospital who may receive the person). The Task Force considers this to be an essential measure which should be effected throughout each jurisdiction in order to help enforce breaches of Review Board conditions, thus contributing to public safety. The Canadian Police Information Centre (CPIC) police data system is an available and cost effective mechanism that could be used for this purpose.

STRATEGIES FOR MANAGING HIGH-RISK OFFENDERS

13	RECOMMENDATION:	The Task Force recommends that where a person is released into the community by a Review Board under enforceable conditions, those conditions should be placed on CPIC. Governing policy should be developed in each jurisdiction including mechanisms for ensuring that the information is accurate, timely, and removed when no longer valid.

TRANSFER OF SEX OFFENDERS AT WARRANT EXPIRY TO MENTAL HEALTH FACILITIES

Creating Opportunity: The Liberal Plan for Canada (also known as the Red Book) proposes that "sex offenders who are not rehabilitated at the end of their sentences could be transferred by court order to secure mental health facilities for further detention". Since that time the Task Force has considered at some length the application of mental health legislation and the issue of dangerousness. An extensive report was prepared for the Task Force leading to a number of conclusions:

- ✓ Provincial legislation defines mental disorder inconsistently in respect of dangerousness;
- ✓ Even where involuntary committal under provincial mental health legislation is used, the periods of detention tend to be short;
- ✓ There seem to be jurisdictional disputes between provincial and federal representatives of corrections and mental health respecting responsibility for housing dangerous persons;
- ✓ The willingness of mental health professionals and some provincial mental health legislation to effect civil committal of dangerous persons seems uncertain at best, particularly in circumstances where offenders have definite sentences but the conditions leading to concerns about dangerousness have not abated.

STRATEGIES FOR MANAGING HIGH-RISK OFFENDERS

The Task Force is convinced that the assessments afforded by hospital orders and the potential for indeterminate detention afforded by the Dangerous Mentally Disordered Accused provisions offer potential for a more "seamless" range of protection from dangerous persons. The use of civil commitment, equally, suggests a tool which can augment the ability of the criminal justice system and the mental health systems to collaborate in the effective treatment of dangerous persons with a view to the overall protection of society.

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The Task Force recognizes, based on the review of mental health legislation prepared for it, that the approach to mental health legislation in Canada is far from uniform. The criteria for involuntary admission vary widely and can lead to confusion among physicians, mental health professionals, police officers, correctional personnel and others in respect of their assessment of any behaviour which may be an appropriate subject for involuntary detention. There is different rigor to the tests described in respect of mental disorder. The description of the role of such detention ranges from hospitalization for the "safety of the subject or others", to hospitalization because the person is "suffering from a mental disorder of a nature or degree so as to require hospitalization in the interest of the person's own safety or the safety of others" and further still to whether the person's behaviour "presents a substantial risk of imminent physical or psychological harm to the person or to others...". It must also be recognized that not all mental health professionals are equally experienced in dealing with mentally disordered individuals who present a long term risk of violence. The numbers of forensic psychiatrists or psychologists among psychiatrists and psychologists practising in Canada are relatively small.

To underline the confusion, some mental health professionals have suggested strongly that using mental health legislation to deal with high risk offenders is a "distortion" of the purpose of such provincial legislation. It is noted that mental illness *per se* does not denote dangerousness. Further, it is argued that some offenders are not amenable to treatment, the essential objective of some provincial mental health legislation, and that they are disruptive to the populations of mentally disordered persons who are usually are found in mental health institutions. Finally, it is argued that such institutions are not adequately secure for the custody of high risk offenders.

STRATEGIES FOR MANAGING HIGH-RISK OFFENDERS

> . . .mental illness *per se* does not denote dangerousness

In the last five years, there have been several instances of civil commitment under the *Ontario Mental Health Act* with respect to federally held inmates who were approaching the end of their sentences. These inmates suffered from a range of mental illnesses, which included psychopathic (anti-social personality disorder) characteristics in most cases, but were also frequently combined with psychosis. All were considered dangerous. The objective of these civil committals was to ensure a continuity of custody, with a potential for concerted treatment, so that high-risk offenders were not released precipitously into the community.

In two cases, *R. v. Stock* (June 30, 1994) and *R. v. Starnaman* (September 9, 1994), the committals were upheld, on appeal from the Board of Review, by the Ontario Court (General Division). The court found that these inmates were both mentally disordered and dangerous within the *Ontario Mental Health Act* definitions. The *Starnaman* decision is now under appeal. These cases may result in a ruling by the criminal justice system on these definitional issues but, as the lower court decisions illustrate, the courts will be grappling with many of the same legal, policy and practical issues that confront government policy makers, as described below.

Discussion of civil commitment raises a number of concerns about the role of the mental health system in controlling dangerous individuals. In addition to those already mentioned, these include:

- ✓ Mental health hospitals are often poorly suited to secure detention of dangerous offenders;
- ✓ Many sex offenders with mental health problems fall into the category of "psychopath" or "anti-social personality disorder" which, in the view of many in the psychiatric profession, are not mental disorders.
- ✓ Civil commitment and the care that flows from it are premised on treatment of the illness. Treatment alone may not be sufficient to reduce the risk of violence to a level acceptable for safe community release. Psychopaths are not easily treatable.

- ✓ The purpose of civil commitment is generally for short term crisis intervention with a view to re-integrating the patient in to the community as quickly as possible;

- ✓ Custody and treatment of dangerous mentally disordered persons is extremely costly.

- ✓ The long-term detention of these individuals is problematic, given the frequent reviews built into provincial systems;

The Task Force does not recommend the implementation of the Red Book proposal with respect to competent offenders *not suffering from a mental disorder.* Concerning mentally disordered and dangerous inmates, the Task Force recommends adopting elements of the Red Book proposal and its variations, as set out below.

The Task Force supports the use of civil committal under provincial mental health legislation before conditional release dates or warrant expiry for inmates who suffer from psychosis or other distinct mental disorders covered by provincial statute. Correctional Service of Canada research suggests that a significant number of inmates suffer from such disorders. We understand the undesirability of there being wholesale transfers of primarily criminal offenders into mental health facilities and the reverse. As we have stated on several occasions throughout this report, we believe that inter-system measures of cooperation can lead to better treatment, control, and overall public safety without endangering the rights of the individuals involved. While CSC has authority to move inmates to federal psychiatric facilities, there may be appropriate cases where formal committal will make provincial facilities available. Invoking such processes can also assist in anticipating the post-sentence role for provincial mental health systems.

We recognize that civil commitment is an important element in an arsenal of techniques that should be available within a new cooperative relationship between the federal correctional system and provincial mental health systems. This relationship should be formalized by agreements to provide for transfer of federal offenders to provincial mental

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health facilities at an agreed-upon time where there is evidence of a mental disorder and potential-dangerousness. The initial psychiatric assessments would be done by CSC, followed by one from a provincially designated psychiatrist. A joint, federal-provincial committee would review likely cases for transfer. The civil commitment review process in provincial law would apply before warrant expiry to determine whether the inmate should be placed in a provincial facility or be returned to penitentiary. The committee could be linked to other recommendations contained in this report that propose earlier joint identification, monitoring and service delivery decisions of high-risk offenders. The agreements could also contain provisions on delivery of outpatient services to offenders on parole, or follow-up with offenders by parole authorities, acting as agents of the mental health system, after the offender's release from hospital.

14	RECOMMENDATION:	**The Task Force recommends that civil committal be used in appropriate cases of mentally disordered, dangerous offenders and that joint committees be established to assess cases of high-risk offenders who are approaching the end of sentence.**
15	RECOMMENDATION:	**CSC and provincial mental health authorities should develop protocols for the joint application of civil committal proceedings, including determination of the use of CSC facilities for detaining and treating these inmates.**

ASSERTIVE CASE MANAGEMENT

There are working examples of the kind of collaboration and cooperation we believe can be expanded. The move to de-institutionalize has resulted in substantial numbers of multi-problem psychiatric patients coming into conflict with the law. Traditional office based services have not been very effective in maintaining these individuals in the community, since these services are not equipped to deal with the special needs of mentally disordered offenders.

The Task Force was impressed with a program in British Columbia called Assertive Case Management. This program is designed to assist incarcerated, multi-problem

offenders who have psychiatric, behavioural and/or psychosocial problems to successfully reintegrate themselves into the community. The goal is to reduce the number of readmissions to the mental health and criminal justice systems factors considered in determining whether the offender is an appropriate candidate include:

- history of criminal justice involvement;
- history of mental health involvement;
- history of mental health hospitalizations;
- severe non-adaptive social and behavioral patterns;
- multiple psychiatric diagnoses (Axis 1 and/or Axis 2)
- identified as a difficult, chronic, multi-system user;
- willingness to participate.

Referrals may be made by correctional or hospital staff. On the day of the offender's release, the worker personally picks up the client at the correctional centre/hospital. Clients are assisted in accessing existing services, resources and community support networks and in financial management, housing, medication, attendance at therapy, and other life skills. Using a team approach and sharing caseloads, workers make frequent contact with clients, daily if necessary. Such care may continue over several years.

While the above model is applied in British Columbia to provincial corrections, it could be adapted to federal offenders as well. Both prior to, and at the expiry of an offender's sentence, criminal justice and health systems should explore crime prevention strategies, including, where practical, consideration of relapse prevention programs and/or assertive case management programs for offenders who would otherwise be considered high-risk to the end of their sentences. The target group could be expanded to include those found not criminally responsible on account of mental disorder and those found unfit to stand trial.

Amendments to Provincial Mental Health Legislation

The use of provincial mental health legislation to deal with the group we are concerned about has been questioned as noted above. The Task Force considered the possibility to amendments to such legislation to facilitate the detention of high-risk mentally disordered individuals. Such amendments could serve to clarify the behaviour giving rise to civil commitment, particularly the place of past behaviour in the assessment.

Another type of amendment considered was to facilitate the community treatment of patients released under provincial mental health legislation.

Such amendments are not recommended by the Task Force. After review, we concluded that the mental health legislation in most provinces was sufficiently broad to permit the necessary interpretations already. Further, such amendments are not consistent with the overall approach advocated by the Task Force, a rational division of service delivery and preferred placement settings, based on the notion that treatability and level of risk must be assessed early, and that cooperation by both systems is the most effective way to ensure that appropriate delivery of services and social control for persons in the target group. On a practical level, the Task Force is very uncertain that any effective mechanism exists, or could be created to bring about the appropriate amendment to provincial mental health statutes, even if we were convinced that such was desirable.

. . .a rational division of service delivery and preferred placement settings, based on the notion that treatability and level of risk must be assessed early, and that cooperation by both systems is the most effective way to ensure that appropriate delivery of services. . .

COSTS

As these "legislative" and "operational" strategies are developed further, the cost of these new measures must be analyzed in more detail. Deputy Ministers responsible for Justice have already agreed that the High-Risk Offender initiative should be the subject of an intensive costing study that will assess the impact of measures approved by the Deputy Ministers' forum.

New criminal justice measures that attempt to identify and detain more high-risk offenders evidently will "widen the net" somewhat and increase the correctional population, particularly in the federal correctional system. Provinces have already agreed to carefully scrutinize cases for possible Dangerous Offender applications. This, and other "front end" legislative measures such as the creation of a "long-term offender" category for sentencing, are intended to capture more of the high-risk offender group. At the same time, there are factors that should limit the impact on correctional, as well as mental health systems. There are limited numbers of high-risk offenders who require indeterminate or very long-term incarceration. The "long-term offender" concept includes the possibility of an extended supervisory period, which should prove less costly than incarceration, although this new mechanism would have to be costed. Such measures as a flagging system to monitor possible Dangerous Offender applications can be established with minimal cost.

The target population of high-risk offenders includes offenders already incarcerated. The Task Force proposes a number of operational improvements in the area of assessment, joint case management and cooperative use of facilities that are not expected to be costly. Cooperation between Correctional Service Canada, the National Parole Board and provincial health and corrections agencies may result in more efficient use of resources by producing earlier risk prediction and the assessment of the later role of mental health systems in treatment and care of mentally disordered offenders.

Special attention must be paid to the impact of our recommendations on health systems. The Task Force is aware of provincial and territorial concerns about the flow of high-risk offenders to provincial mental health control. The Task Force has recommended limited use of the civil committal provisions in mental health legislation and suggests that discussion should occur between systems to determine how assessment, detention and other costs to provinces and territories can be minimized. In general, there must be follow-through studies involving Departments of Health.

CONCLUSION

Although this Task Force was mandated to look at some particular solutions (long-term probation, use of dangerous offender applications) and some systemic issues (the adequacy of mental health legislation), we recognized that we had been directed in a broader sense to seek solutions to the problem of high-risk offenders that could prove effective. This report, therefore, is set out against a model of the criminal justice system as a whole, and offers targeted interventions at each stage of the criminal justice process, including flagging and tracking of offenders in anticipation of a dangerous offender application.

There is no single strategy that will indefinitely confine all offenders who pose a risk to the community. Offender characteristics vary, as does the nature and level of risk. The mentally disordered must be approached differently that the criminally responsible. Yet there can be an effective combining of policing, prosecution, sentencing, custody, supervision and rehabilitation strategies that will control the high-risk group.

Our recommendations, therefore, reflect the coordinated effort required among various systems: first, agencies within the criminal justice system, but also between justice and health systems. The coordination must also occur across the jurisdictional boundaries of governments.

There is no single strategy that will indefinitely confine all offenders who pose a risk to the community

The proposals offered here include legislative and operational changes. Recognizing the complexity of the problem and the solutions, the Task Force anticipates considerable follow-through work on operational issues and recommends that Ministers discuss the mechanisms for further study and implementation. In many instances, Health Departments should be directly involved.

The Task Force recommends that Ministers responsible for Justice regularly assess progress in implementing the recommendations that they approve.

The Task Force has started with the premise that "front end" solutions are key to early targeting of high-risk offenders and, accordingly, considers recommendations dealing with dangerous offender applications and the creation of new sentencing options for

Long-Term Offenders to be priorities. At the same time, many of the case management and long-term supervision strategies presented here are important to the extended state control of high-risk individuals and should receive early attention.

16	RECOMMENDATION:	**Ministers should review the approved recommendations of the Task Force annually over the next three years to ensure continued progress in the implementation of the recommendations.**

SUMMARY OF RECOMMENDATIONS

1. RECOMMENDATION: Consistent with decisions already taken by Ministers responsible for Justice, the Task Force supports the consistent use of Dangerous Offender applications in all appropriate cases to target the highest-risk offenders.

2. RECOMMENDATION: That the Crown files research project be carried out, funded by the federal Department of Justice and the Ministry of the Solicitor General and with the cooperation of provincial Attorneys General.

3. RECOMMENDATION: Criteria for inclusion on the flagging system should be based on the Dangerous Offender provisions in the Code. The flagging system should include individuals whose personal and offence characteristics (except for "persistent pattern") meet the criteria set out in s. 752 and s. 753 (a) and (b) of the Code, as well as those who do not meet the legislative requirements in the instant case, but who could be considered appropriate for a dangerous offender application in the future. Should recommendations about *Long Term Offenders* be approved (see recommendation 8 at Page 21, 41) criteria relating to this category of offender should be included in the national flagging system.

4 RECOMMENDATION: CPIC should be used as the basis for a national flagging system for potential dangerous offenders, and its use consistent with current CPIC policies and practices. The information will be entered and retrieved by police from the Special Interest Police File of the Investigative Data Bank.

5 RECOMMENDATION: Each province or territory should develop policies to ensure effective use of the flagging system, addressing, at a minimum:

- ✓ uniform minimum criteria for identifying potential dangerous offender cases
- ✓ Crown agents who will be responsible for reviewing the files of charged or convicted persons to apply the criteria to determine suitable candidates for flagging
- ✓ procedures to determine the kind of information is to be entered and to designate responsibility centres to inform police about information to be updated
- ✓ policies regarding access to the data bank to provide information flow from police to Crowns concerning charged individuals
- ✓ audit and privacy controls.

6 RECOMMENDATION: Section 755 of the *Criminal Code* should be amended to eliminate the requirement that two psychiatrists, one for the prosecution and one for the defence, must present evidence. Nothing in these amendments should limit the right of the offender to call independent psychiatric or clinical evidence if desired.

7 RECOMMENDATION: The Task Force recommends that the court, may order, upon application of either party, an assessment of an offender convicted of a serious personal injury offence to participate in an assessment at a provincially identified centre to determine the risk of violent re-offending and the likelihood of successful management of that risk in the community. The assessment report should be used by Crowns in determining whether to bring an application for either a Dangerous offender of Long Term Offender designation;

8 RECOMMENDATION: The Task Force recommends the creation of a new sentencing option of a long term supervision order for Long Term Offenders as described in the report.

9 RECOMMENDATION: The Task Force recommends that section 753 of the *Criminal Code* be amended to provide that if the court declares an offender to be a Dangerous Offender, it shall impose a sentence of incarceration for an indeterminate period. If the court chooses not to declare the offender to be a Dangerous Offender it may declare the offender to be a *Long Term Offender* and subject the offender to federal incarceration plus long term supervision.

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STRATEGIES FOR MANAGING HIGH-RISK OFFENDERS

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ANNEX 1 Task Force Members

FEDERAL/PROVINCIAL/TERRITORIAL TASK FORCE ON HIGH-RISK VIOLENT OFFENDERS

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Annex 2 - Administrative and Legislative Strategy

DANGEROUS/HIGH RISK OFFENDERS - ADMINISTRATIVE AND LEGISLATIVE STRATEGY			
INITIATIVE	OBJECTIVE	DESCRIPTION	COMMENT
National Flagging System	To track potential candidates for dangerous offender applications.	A National Flagging System will allow prosecutors to identify and track individual offenders across the country. The system will identify those individuals whose behaviour as a result of criminal offending, has raised concern about future high risk. It will be a central record to provide contact points for prosecutors.	Particularly aimed at mobile offenders, or for use where case volume is such that knowledge of individual offenders is impractical.
Better Assessment	To permit better multi-disciplinary evaluation of Risk and the management of risk.	After conviction and before sentencing the court may order a multi-disciplinary assessment of the risk posed by the offender and the potential for management of that risk. Prosecutors may use such information to inform decisions respecting DO or LTO applications.	Research results suggest that better prediction of dangerousness can be obtained by broadening the base of techniques, and making this information available earlier in the process.

STRATEGIES FOR MANAGING HIGH-RISK OFFENDERS

DANGEROUS/HIGH RISK OFFENDERS - ADMINISTRATIVE AND LEGISLATIVE STRATEGY			
INITIATIVE	OBJECTIVE	DESCRIPTION	COMMENT
Effective, Consistent Prosecution of Dangerous Offenders.	To encourage effective, consistent use of existing CCC procedures.	Development at the provincial level of procedures to be used in consideration, development and processing of an application for Dangerous Offender. These procedures are available now, can be effective, and are under the full discretion of Attorneys General.	More effective identification at the "front end" minimizes problems at the "back end"
New Sentencing Option	To permit effective control of persons who commit criminal offences but who may not be Dangerous Offenders	As a result of the assessment above, the Crown may choose to make a Long Term Offender application. A finding would permit the court to impose a definite sentence with long term supervision in the community, up to 10 years.	Consistent with research to the effect that long term supervision is the best risk management strategy for some categories of offender, notably paedophiles
Combined/Joint Case Management Team	To facilitate better coordination between health and criminal justice throughout the sentence	Joint participation of health and corrections professional in case management teams with federal inmates will encourage continuity of treatment and control into the community and appropriate follow-up. This will reflect the strengths of the respective systems and the expected future levels of involvement.	Creates fluid, adaptable and more appropriate management of these individuals. Makes more explicit the shared responsibility that exists now.

STRATEGIES FOR MANAGING HIGH-RISK OFFENDERS

DANGEROUS/HIGH RISK OFFENDERS - ADMINISTRATIVE AND LEGISLATIVE STRATEGY			
INITIATIVE	OBJECTIVE	DESCRIPTION	COMMENT
Transfers between Systems	To permit cost effective and case specific transfer of cases between mental health and criminal justice systems	Not all forms of treatment or custody are available in all health or all custody facilities at the times appropriate for the case. Mechanisms between CSC and Health should oversee the planning of services and custody of high risk inmates and determine appropriate placement. New protocols between CSC and provincial Health Departments should govern assessments, information sharing, services and detention of offenders.	Inmates and patients should be housed in facilities where the most appropriate services are available, without undue restriction imposed by the simple jurisdictional boundary.
Enforceable Conditions of Review Board decisions on CPIC	To make information about potentially dangerous persons available to the police	Review Boards established under the mental disorder provisions of the *Criminal Code* consider the cases of persons found not criminally responsible on account of mental disorder and determine the conditions of release into the community. Police are not always aware of enforceable conditions that may be imposed on such persons. CPIC would provide the mechanism.	This will expand the network of information available to effect public protection.

STRATEGIES FOR MANAGING HIGH-RISK OFFENDERS

DANGEROUS/HIGH RISK OFFENDERS - ADMINISTRATIVE AND LEGISLATIVE STRATEGY			
INITIATIVE	OBJECTIVE	DESCRIPTION	COMMENT
Civil Commitment	To permit the hospitalization of mentally ill offenders who reach the end of their sentences.	All provinces have Mental Health Acts that permit involuntary hospitalization of mentally ill persons. This is an important and available tool to deal with those offenders who have a mental illness and who are a threat to other persons.	This approach has been used effectively in Ontario and has been the subject of judicial review. It provides an additional tool to bring about public protection.

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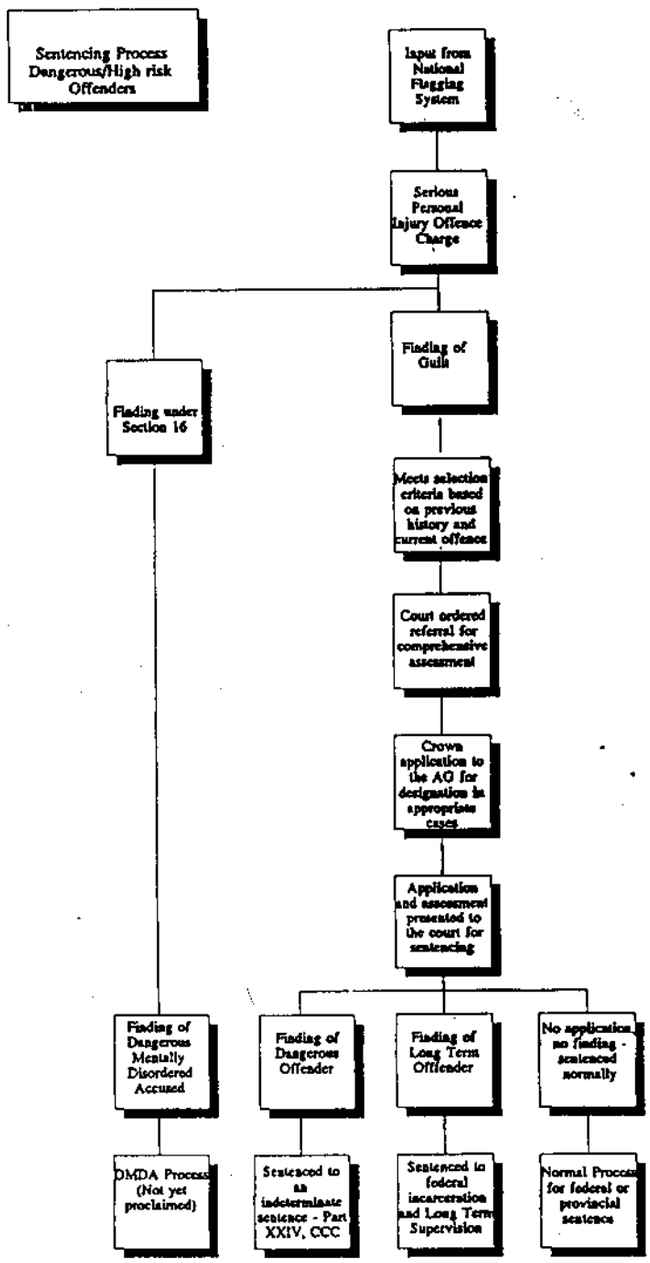
STRATEGIES FOR MANAGING HIGH-RISK OFFENDERS



Annex 3 - List of Documents

- Review of Mental Health Legislation - Mark Schiffer
- The Development of Empirically-based Preventive Measures in Canada: - An Impossible Tas - Ivan Zinger and J. Stephen Wormith
- Long Term Supervision - Discussion Paper
- Report of the Mental Health Sub-Committee