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## Senator Kim Pate – Remarks on Bill S-208 (Judicial Independence – MMPs) Second Reading – February 6, 2026

Honourable Senators, today I once again rise to underscore the myriad injustices associated with mandatory minimum penalties.

I start by recalling Jamie. Until the systemic discrimination fuelled by our myth-based adherence to mandatory minimums is addressed, I will continue to speak about the injustices experienced by Jamie Gladue, and far too many others.

We should all remind Canada about what actually happened to Jamie. Her name, as in “Gladue factors”, is held up by Canada as a promise of greater justice and equality and a commitment to finding alternatives to the ongoing mass incarceration of Indigenous Peoples. This promise is enshrined in section 718.2(e) of the Criminal Code, most commonly referred to as Gladue factors. In practice, however, Indigenous Peoples are frequently denied access to these promised benefits, in large part because of mandatory minimum penalties.

Most lawyers and law students in Canada will tell you that the 1999 Supreme Court of Canada case of *R v. Gladue* involves the sentencing of a woman who stabbed her common-law partner in a jealous rage because he was “having an affair”.

Law students, lawyers and judges know the facts as they were entered on the record in the *Gladue* case, which involved the sentencing of Jamie Gladue after she pleaded guilty to manslaughter in 1996. Too many do not know the reality that Jamie was a pregnant teenager in an abusive relationship with a man who tried to isolate her from family and friends. Ruben Beaver beat her, then broke into her father’s home and raped her sister. Jamie stabbed him when he attempted to regain entry to the unit where her sister was. Jamie was charged with murder. After evidence of the abuse was revealed, she was offered a sentence deal if she agreed to plead guilty to manslaughter.

You might well ask how such an injustice could occur...How did the police, the court, her own lawyer, and the many intervening lawyers and organizations miss this? Why was Jamie characterized as a woman who murdered in a jealous rage instead of teenager trying to defend herself and her sister? How did no one question whether she was guilty at all, given that she appeared to be acting in self-defence?

The answers lie in the misogyny and racism deeply embedded in our criminal legal system, magnified by the jet fuel that mandatory minimum penalties provide to pre-existing injustices.

A murder conviction results in a mandatory life sentence.

If an Indigenous woman charged with murder of an abusive partner goes to trial, sets out her defence, and is not believed—in other words, if a legal system that has repeatedly failed to protect her from sexist, racist and colonial violence once again refuses to take her victimization seriously—she will be imprisoned with a mandatory parole ineligibility period that can last decades. Whether she is in a cell or eventually released on mandatory, life-long parole under strict surveillance in the community, she will never be free again if she is convicted of murder.

The risk of a mandatory life sentence too often induces even those who may have legal defences to take an offer to plead to a lesser charge in exchange for a shorter sentence. That is precisely what happened to Jamie.

Case law has made Jamie's name synonymous with section 718.2(e) of the *Criminal Code* and the principle that judges must consider Indigenous history and alternatives to prison during sentencing. Yet Jamie herself never benefitted from these measures; the Court said her offence was too violent to qualify for the very principles her name now represents. Worse still, the systemic injustices she experienced persist.

Far too many – especially Indigenous women – continue to experience what can fairly be called wrongful convictions (often on the basis of wrongful guilty pleas) because they pleaded guilty to other offences to avoid mandatory sentences.

Bill S-208 would allow judges to depart from mandatory minimums where imposing one would result in an injustice.

It would not take away mandatory life sentences—or any other mandatory minimum penalties—but it would give a window of hope to women and girls like Jamie Gladue. The bill would implement Truth and Reconciliation Commission Call to Action 32. It would allow judges to do their duty to craft fair sentences and consider alternatives to prison in particular for Indigenous Peoples under section 718.2(e). It would weaken the coercive power of mandatory minimums when plea deals are negotiated and thereby reduce the risk of wrongful guilty pleas.

Given the current government's interest in responding to court decisions striking down many mandatory minimum sentences, Bill S-208 provides a perfect opportunity to address the injustices by providing a kind of safety valve for the courts.

Without Bill S-208, on a near daily basis, we will continue to see more injustices like the one experienced by Jamie, in Canada's courts, prisons—and communities.

We will continue to fill prisons with people who are poor, homeless, living with mental health and addiction issues, and survivors of past trauma, especially violence against women and children, and survivors of child welfare systems and residential schools. We will continue to create a false sense of security, touting mandatory minimums as “tough on crime” when they not

only fail to make communities safer, but they also actually escalate and power charge the injustices of the criminal legal system. We will continue to squander billions of dollars by pouring tax revenue into trials and prisons necessitated by these false and dangerous promises.

9 in 10 Canadians are rightly sceptical of mandatory minimum penalties.<sup>1</sup> Yet politicians continue to offer these same failed approaches despite irrefutable evidence – much of which is funded and/or developed by the government itself—of their cost, ineffectiveness, and cruelty.

Colleagues, we will soon be called on to debate government legislation framed as protecting victims like Jamie, addressing violence against women, and responding to court delays. But these proposed provisions will in effect further entrench mandatory minimum penalties in a way that undermines each and every one of the government’s stated goals.

At a time when the federal government is slashing budgets and slow to invest adequately in essential health, social and income supports, it is time to question the way that “tough on crime” approaches like mandatory minimums funnel seemingly endless amounts of taxpayer money into the prison system. It is time to insist instead on investing in our communities in ways that benefit all of us. Canada must get out of its dangerous, discriminatory, and self-defeating mandatory minimum mess.

This is why I have brought forward this bill for a fifth time.

## **Updates on Mandatory Minimum Penalty Legislation and Policy**

The last version of this legislation, Bill S-213, was at Legal Committee awaiting study when Parliament prorogued last year. I am humbled to follow Senator Jaffer as its sponsor.

Senator Jaffer’s work on this bill—like her time in the Senate and now her (so-called) retirement—has been defined by her tenacious commitment to upholding justice, especially for those experiencing sexism, racism, and other inequalities.

### ***Bill C-5***

Since this bill was last introduced by Senator Jaffer, the government tried to undo and remedy a handful of the dozens of mandatory minimum penalties introduced over the previous two decades, most notably those attached to drug convictions.

With Bill C-5 in 2022, the government acknowledged that mandatory minimum penalties contribute to mass incarceration and systemic injustice for Black and Indigenous Peoples. Why

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<sup>1</sup> National Justice Survey 2017: Issues in Canada’s Criminal Justice System Executive Summary Prepared for: The Department of Justice [http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/justice\\_canada/2018/012-17-e/summary.pdf](http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/justice_canada/2018/012-17-e/summary.pdf) p.8

then, other than for political optics, did the government leave most of these penalties on the books?

Since the passage of Bill C-5, mass incarceration linked to racism and colonialism has only increased. Indigenous women now represent more than 50% of women in federal prisons. They were already 36% in 2015, when the Truth and Reconciliation Commission called on government to immediately decarcerate and stem the tidal wave of incarceration by removing **all**, not only some, mandatory minimums.

### *TRC, MMIWG, and Other Commitments and Calls*

Through Call to Action 30, Canada committed to eliminating the overrepresentation of Indigenous Peoples in federal prisons by last year. Canada has missed that deadline and failed to honour this commitment to Indigenous Peoples.

We have heard countless ominous reminders that Canada must urgently address mandatory minimum penalties—from our own Legal Committee,<sup>2</sup> but also from courts, commissions, and legal experts, and through legislative efforts by former Minister of Justice Irwin Cotler in 2015,<sup>3</sup> Green Party leader Elizabeth May in 2016,<sup>4</sup> and former NDP MP Sheri Benson in 2018.<sup>5</sup>

Canada must not abandon its commitments to the Truth and Reconciliation Commission in 2015,<sup>6</sup> the National Inquiry into Missing and Murdered Indigenous Women and Girls in 2019,<sup>7</sup> the Parliamentary Black Caucus in 2020,<sup>8</sup> as well as the calls of the 2023 Report of the External Group for Canada’s Black Justice Strategy<sup>9</sup> and participants in 2023 consultations on Canada’s

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<sup>2</sup> See e.g., LCJC, 42:1, Report 32 (Bill C-75), observation #4:

<https://sencanada.ca/en/committees/LCJC/Report/75873/42-1>

<sup>3</sup> Bill C-669: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Bill=C669&Mode=1&Parl=41&Ses=2&Language=E>

<sup>4</sup> Bill C-269: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=8175262>

<sup>5</sup> Bill C-407: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=9895902>

<sup>6</sup> Truth and Reconciliation Commission of Canada, *Calls to Action*,

[http://trc.ca/assets/pdf/Calls\\_to\\_Action\\_English2.pdf](http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf): “32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.”

<sup>7</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Calls for Justice*, [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls\\_for\\_Justice.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf): “5.14: We call upon federal, provincial and territorial governments to thoroughly evaluate the impact of mandatory minimum sentences as it relates to the sentencing and over-incarceration of Indigenous women, girls, and 2SLGBTQIA people and to take appropriate action to address their over-incarceration.”

<sup>8</sup> Statement by the Parliamentary Black Caucus, <http://s3.documentcloud.org/documents/6949654/BPC-Statement-Bilingual.pdf>: “Eliminate mandatory minimum sentencing measures.”

<sup>9</sup> Akwasi Owusu-Bempah & Zilla Jones, A Roadmap for Transformative Change: Canada’s Black Justice Strategy: [https://www.justice.gc.ca/eng/cj-jp/cbjs-scnj/transformative-transformateur/pdf/CS-24-110-CBJS-GV-DA\\_06-25-24-EN.pdf](https://www.justice.gc.ca/eng/cj-jp/cbjs-scnj/transformative-transformateur/pdf/CS-24-110-CBJS-GV-DA_06-25-24-EN.pdf): Priority 61: “Remove all mandatory minimum penalties in the Criminal Code.”

Indigenous Justice Strategy.<sup>10</sup> It must honour its commitments to address all, not only some, mandatory minimum penalties.

### *Bill C-16*

Faced with these forsaken commitments, with growing numbers of court cases ruling mandatory minimums cruel and unconstitutional, and with ever-increasing mass incarceration of Black and Indigenous Peoples, the government has instead proposed to continue Canada's three decades plus of rejecting evidence-based, outcome-oriented, and cost-effective justice and public safety policy. It is instead doubling down on mandatory minimum penalties.

The government's Bill C-16 and the legislation before us today both propose responses to courts and notably the Supreme Court of Canada. The Court has issued at least five decisions in the last decade striking down various mandatory minimum penalties as unconstitutional and calling on Parliament safeguard the rights of Canadians by building "a safety valve that would allow judges to exempt [from the application of minimum penalties] outliers for whom the mandatory minimum will constitute cruel and unusual punishment."<sup>11</sup>

This is where the similarities between Bill S-208 and the government's proposal bear scrutinizing. Make no mistake. The government's proposed legislation allows Canada to continue to not only use mandatory minimum penalties, but to expand that use.

It will offer the thinnest and flimsiest of excuses for mandatory minimums while thousands—especially Black and Indigenous Peoples and women—continue to receive unfair and unconstitutional sentences instead of the increased equality, justice, public safety, and effective use of our collective resources that all of us deserve.

I want to focus today on how mandatory minimum penalties undercut three goals the government has promised its criminal law legislation will advance: namely, protection of victims, responses to violence against women, and remedies for court delays—and how Bill S-208 can contribute to a more effective response.

First, however, let's discuss an outcome that Bill C-16 has tellingly not promised: that of upholding fair and just approaches to sentences—especially via more effective implementation of the so-called Gladue factors outlined in s. 718.2(e) of the Criminal Code—as well as meaningfully minimizing risks of Charter violations rather than merely creating barriers to Charter scrutiny.

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<sup>10</sup> Indigenous Justice Strategy: What We Learned; Wave 2 Justice Canada-Led Engagement, <https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/ijr-sja/rep-rap/wave2-phase2/index.html> (see especially the feedback from the British Columbia session, as well as the Indigenous Courtworkers Working Group).

<sup>11</sup> *R v Lloyd*, 2016 SCC 13 at 36.

## Legal and Constitutional Requirements

Canadian law requires that penalties must be carefully and individually designed to be proportionate in the context of the person before the court, their history, circumstances, and actions. Judges who determine sentences make decisions that are informed and carefully structured by Canada’s sentencing rules.

They are required to provide reasons to the public explaining the process they have followed and how it respects these rules.

Section 718.1 of the *Criminal Code* requires that “[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility” of the person being sentenced.

Section 718.2(e) of the *Criminal Code*, specifically requires judges to consider “all available sanctions, other than imprisonment” at sentencing, and to direct particular attention to the circumstances of Indigenous Peoples, which “... may specifically make imprisonment a less appropriate or less useful sanction.”<sup>12</sup>

In ruling a mandatory minimum penalty unconstitutional in 2015, the Supreme Court reminded us that sentencing must be a “highly individualized exercise.”<sup>13</sup>

Mandatory minimum penalties are by definition the opposite: they impose a universal standard, set in advance by legislators, requiring prison time, and offering zero flexibility. According to the Canada Sentencing Commission, in 1987, —when Canada had only a fraction of the mandatory minimums on the books that it does today—9 in 10 judges reported that mandatory minimums interfered with their ability to impose fair sentences.<sup>14</sup>

Where sentences become so unfair that they are grossly disproportionate, mandatory minimums violate Charter protections against cruel and unusual punishment. As a result, about 1 in 3 of approximately 60 mandatory minimum penalties currently in the *Criminal Code* have been fully or partially struck down by courts, and do not apply in at least some provinces and territories.<sup>15</sup>

The government’s proposed legislation, Bill C-16, will bring a number of these previously struck down mandatory minimum penalties back to life, alongside a broader focus on “Charter proofing” their constitutionality.

Bill C-16 proposes to give courts narrow leeway to not impose mandatory minimum penalties—only where the sentence would violate the Charter as cruel and unusual punishment, only where another prison sentence is applied, and only where the sentence is not a life sentence. Bill C-16

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<sup>12</sup> R v Gladue at para 68.

<sup>13</sup> R v Nur, 2015 SCC 15 at paras 42, 43.

<sup>14</sup> Report of the Canadian Sentencing Commission, <http://johnhoward.ca/wp-content/uploads/2016/12/1987-KE-9355-A73-C33-1987-J.R.-Omer-Archambault.pdf> at 178, 180.

<sup>15</sup> Numbers generated through manual counts of case data provided by <https://mms.watch/>; current to March 13, 2025.

does not attempt to ensure that sentences are fair, only that they are not so overwhelmingly unfair that courts would invalidate them.

In contrast to Bill C-16 and in line with Truth and Reconciliation Call to Action 32, Bill S-208 would ensure action with respect to all mandatory minimum penalties. As our former colleague and former judge, the Honourable Murray Sinclair-iban, commented about previous government inaction:

“Indigenous women ... are a significant proportion of the women serving life sentences for responding to violence with their own lethal force — too often as a result of their efforts to defend themselves or others in their care. The government has provided no data to justify its piecemeal approach to the repeal of mandatory minimum sentences, nor have they explained why they have rejected TRC Call to Action 32. ... We need to move away from a simplistic, punitive, one-size-fits-all response, and we need to trust and allow our judges to do the job they have been appointed to do.”

Bill S-208 also reflects the emphasis in Call to Action 32 on ensuring judges are not confined to ordering prison sentences but rather can provide non-carceral options in place of mandatory minimums. This position aligns with courts’ obligations under s. 718.2(e) to consider alternatives to prison during sentencing, particularly for Indigenous Peoples. It echoes Supreme Court decisions that have highlighted the unconstitutionality of mandatory minimum prison terms in particular where community-based sentences would have been appropriate but were not available.<sup>16</sup>

Bill S-208 is vital to the implementation of TRC Call to Action 32. It will ensure that Canada remains focused on doing justice, rather than preserving mandatory minimum penalties at all costs and despite the injustices they create. It would allow courts to do the work of acknowledging and addressing, instead of expanding and perpetuating, the effects of systemic racism.

## Court Delays

Unjust mandatory minimum penalties also have direct implications for access to justice, contrary to government commitments to reduce court delays.

Requiring individuals to advance Charter challenges to mandatory minimum penalties—or to make individual Charter-like arguments under Bill C-16—will increase resource and time burdens on courts, cost Canada and individuals millions of dollars in legal fees, and needlessly subject people to unjust sentences, and consequent devastating human, social and financial burdens and costs for Canada and Canadians.

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<sup>16</sup> Lisa Kerr et al, A New Justification for Section 12 Hypotheticals and Two Rules for Constructing Them: “[Martin J.] distinguishes Nur, Smith and Lloyd on the basis that the provisions considered in those cases required custody where a far lighter penalty, including probation, could be appropriate.<sup>50</sup> In other words, the most vulnerable mandatories attach to offence provisions that are drafted broadly enough to capture situations that call for a sentence falling short of imprisonment. This is because of the profound qualitative difference between a community-based penalty and imprisonment.”

In too many cases, those who are poor, marginalized and facing a potentially unjust or unconstitutional mandatory minimum simply will not have the means to fight for their rights. It is also they who already experience the greatest injustices who will be more likely to be jailed while awaiting trial, have minimal financial resources to challenge proceedings and will thereby be incentivized to enter guilty pleas regardless of defences that may be available to them.

For those with sufficient resources, mandatory minimum penalties will continue to incentivize lengthy litigation. The prospect of a harsh mandatory sentence means that individuals with resources have no incentive to plead guilty and nothing to lose from drawing out legal proceedings.

The Senate Legal Committee court delay study clearly identified the strain that mandatory minimums place on scarce judicial resources.<sup>17</sup> Bill C-16's narrow and inflexible safety valve will not change this calculus. This is a devastatingly inappropriate use of precious court resources, especially when people can spend years in overflowing jails waiting for a trial, when some cases are dismissed due to delays without ever being resolved, and when calls for more punitive bail laws threaten to heap fuel on this fire.

## Violence Against Women

The government has committed to addressing violence against women and intimate partner violence, yet inaction with respect to mandatory life sentences in particular will mean continued criminalization of survivors of abuse like Jamie Gladue.

The Self-Defence Review undertaken by Justice Lynn Ratushny for the Department of Justice in the 1990s highlights the systemic nature of these miscarriages of justice. Justice Ratushny reviewed the cases of 98 women convicted of using lethal force to protect themselves or their children from abusers. She identified a tendency to charge high and then use the mandatory life sentence and parole ineligibility period for murder to engineer guilty pleas.

As a result, far too many women pleaded guilty to lesser charges—such as manslaughter—despite having a potentially valid claim of self-defence.<sup>18</sup>

From experience, women doubt that a criminal legal system that has ignored and minimized the violence they have experienced, effectively offering them no alternative but to protect themselves, will suddenly believe them and do them justice.

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<sup>17</sup> Standing Senate Committee on Legal and Constitutional Affairs, *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada*.

<sup>18</sup> Justice Lynn Ratushny, *Self defence review: final report* at 23-24.

Many women with self-defence claims do not go to trial. This is especially true for the women who are mothers. Too often, the only people who witnessed the abuse they suffered were their children and they prioritize protecting their kids from the trauma of having to testify in court. They are easy targets for a system that exploits their fear of being locked away for the entirety of their children's lives.

In our recent debates on Bill C-40, legislation to create an independent commission to review miscarriages of justice, we examined how the pressure to falsely plead guilty to a lesser charge and avoid a mandatory minimum has led to countless wrongful convictions, particularly for Indigenous women like Jamie Gladue.

Bill C-40 was limited to responding to miscarriages of justice—too often only after the harm and trauma of years or decades spent in prison.

The bill before us today is an opportunity to stop countless travesties before they happen.

## Protecting Victims

The government has introduced its proposed approach to mandatory minimum penalties in Bill C-16, the *Protecting Victims Act*. The legislation is misnamed: mandatory minimum penalties fail to serve the interests of victims.

A representative of the victims' advocate group, Mothers Against Drunk Drivers Canada testified to the Senate Legal Committee that: "As a mom, as a stepmom, as a victim, I can't support [mandatory minimum sentencing]. There's no evidence ... that this will actually make a difference. We know once we bury our children or bury a loved one, it is too late. We need to focus on deterring it before it happens."<sup>19</sup>

The Federal Victims Ombud emphasizes the context of colonialism, racism, and inadequate and unequal access to health, social and economic supports that too often underlie both victimization and criminalization.

Responding to the repeal of mandatory minimum penalties attached to drug convictions, the Ombud recognized that repealing mandatory minimums "will help reduce the over-incarceration of Indigenous Peoples and Black Canadians disproportionately affected by mandatory minimums. ... I recognize that many drug possession charges emerge from contexts of trauma, victimization, and inequality. I believe the prioritization of treatment options over punishment aligns with a trauma-informed approach."<sup>20</sup>

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<sup>19</sup> Standing Committee on Justice and Human Rights, 42nd Parl, 1st Sess, No 65 (September 25, 2017) at 9, <http://www.ourcommons.ca/Content/Committee/421/JUST/Evidence/EV9108281/JUSTEV65-E.PDF>.

<sup>20</sup> Ombudsperson's Statement on Bill C-5: <https://www.canada.ca/en/office-federal-ombudsperson-victims-crime/recommendations-recommandations/2022-23/20230317.html>

In my years of working with those convicted in relation to homicides, it is the rare person who would not give up her life if it would bring back the person who died – shockingly, even when the person who died was a callous, unrepentant abuser. So socialized are we to value life and care for others...

No sentence can undo the past, so we try our best to remedy such wrongs by providing other ways for people to pay their debts and provide future positive contributions to society.

From my years of working victims and survivors, I know that the foremost concern of most people when it comes to accountability is to ensure that what they lived through never happens to anyone else.

At least 50 years of research and evidence<sup>21</sup> indicate that crime prevention depends not on the length of sentences, but on certainty of being held accountable and on access to non-criminal-law interventions.<sup>22</sup>

In plain language, this boils down to two key points. First, most people do not take actions for which they could be criminalized thinking that they will be caught, let alone knowing or calculating what a mandatory minimum penalty of one year versus five years might mean for the sentence they might face.

Second, what prevents and reduces crime is having access to community supports and means of meeting one's essential needs. For example, through decreased financial stress and instability alone, a basic income pilot in Manitoba led to 350 fewer violent crimes and 1,400 fewer total crimes per 100,000 people—a 17.5% reduction.<sup>23</sup>

By contrast, as the Supreme Court bluntly reminds us: “Empirical evidence suggests that mandatory minimum sentences do not, in fact, deter crimes.”<sup>24</sup>

Harsh sentencing laws, and especially mandatory minimum penalties, scoop up and fill jails with those who are easiest to catch: people who are young, racialized, poor, and exploited.

So-called tough-on-crime policies are always worst for those most vulnerable, but all of us feel their impacts.

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<sup>21</sup> See Anthony Doob and Cheryl Webster, “Sentencing Severity and Crime: Accepting the Null Hypothesis” (2003) 30 *Crime and Justice* 143; Webster, Cheryl Marie and Anthony N. Doob (2012) Searching for Sasquatch: Deterrence of Crime Through Sentence Severity. *Oxford Handbook on Sentencing and Corrections*. Edited by Joan Petersilia and Kevin Reitz. New York: Oxford University Press (pages 173-195); Anthony N. Doob, Cheryl Marie Webster, Rosemary Gartner (2014), Issues related to Harsh Sentences and Mandatory Minimum Sentences: General Deterrence and Incapacitation (Research Summaries Compiled from Criminological Highlights), online: <http://criminology.utoronto.ca/wp-content/uploads/2013/09/DWG-GeneralDeterrenceHighlights14Feb2013.pdf>.

<sup>22</sup> Steven N Durlauf & Daniel S Nagin, “Imprisonment and crime: Can both be reduced?” (2011) *Criminology and Public Policy*, <https://doi.org/10.1111/j.1745-9133.2010.00680.x>.

<sup>23</sup> Beyond the Basics: Supporting Victims and Preventing Crimes: [https://senpate.sencanada.ca/media/oq0lpwh0/beyond-the-basics\\_victims\\_e\\_2025-01-22.pdf](https://senpate.sencanada.ca/media/oq0lpwh0/beyond-the-basics_victims_e_2025-01-22.pdf)

<sup>24</sup> *R v Nur*, 2015 SCC 15 at para 114 (McLachlin CJ): <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15272/index.do>

The cost to taxpayers of administering a harsher than necessary sentence because of a mandatory minimum penalty is significant. For a woman in federal prison, the Parliamentary Budget Officer estimated in 2018 that each additional year of her prison sentence can cost between \$343,000 and \$600,000.<sup>25</sup> By contrast, the cost of supporting a woman for a year while she serves a sentence in the community was \$18,000,<sup>26</sup> Such a sentence also significantly increases her chances of integrating successfully into that community and avoiding future criminalization.<sup>27</sup>

Policies based on mandatory minimum penalties draw resources and focus away from measures that promote public safety, such as investing in the housing, healthcare, social and economic supports needed to build up safer and healthier communities.

When we hear someone advocating mandatory minimums that will cost billions of dollars, we need to ask how and why they want us further to deplete social, economic and health supports to pay for them.

We must ask ourselves if paying hundreds of thousands of dollars per person per year for the label of being “tough on crime” is worth it, when we know that mandatory minimums have not and will not produce the safer society they promise.

## Conclusion

There is nothing inevitable or necessary about mandatory minimum penalties. The Canadian criminal legal system was built without them. It was only at the turn of the twenty-first century that numbers began to climb from about ten mandatory minimums in 1995<sup>28</sup> to 72 mandatory minimums by 2015,<sup>29</sup> obliterating long-standing principles of fairness and proportionality in sentencing and multiplying the overrepresentation of Indigenous Peoples in federal prisons.

Most other democracies with mandatory minimums incorporate some form of exception that extends even to life sentences,<sup>30</sup> demonstrating that Canada’s criminal legal system can do the same without compromising public safety.

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<sup>25</sup> Parliamentary Budget Office, *The Funding Requirement and Impact of the “Truth in Sentencing Act” on the Correctional System in Canada*, (Ottawa, 2010), at 94; Parliamentary Budget Office, *Update on Costs of Incarceration*, (Ottawa, 2018).

<sup>26</sup> Parliamentary Budget Office, *Update on Costs of Incarceration*, (Ottawa, 2018) at 4.

<sup>27</sup> 2017 Fall Reports of the Auditor General of Canada to the Parliament of Canada Report 5—Preparing Women Offenders for Release—Correctional Service Canada, 5.111, 5.112 [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201711\\_05\\_e\\_42670.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_05_e_42670.html)

<sup>28</sup> Nicole Crutcher, "The Legislative History of Mandatory Minimum Penalties of Imprisonment in Canada," 39 *Osgoode Hall LJ* (2001) at 273.

<sup>29</sup> Department of Justice, *Research at a Glance: Mandatory Minimums* (March 2018) at 1 (currently 72 MMPs in total).

<sup>30</sup> European Commission, *Study on Minimum Sanctions in the EU Member States* (Brussels, 2015), at 42 (11 countries out of 28 EU member states have a life sentence), online: <https://publications.europa.eu/en/publication-detail/-/publication/1226bed2-be78-11e5-9e54-01aa75ed71a1/language-en>; Inês Horta Pinto, *Punishment in Portuguese Criminal Law: A Penal System without Life Imprisonment*, in Dirk van Zyl Smit and Catherine Appleton, *Life Imprisonment and Human Rights* (Oxford: Hart, 2016); *S v Dodo*, 2001 ZACC 16 at para 40; *Criminal Law Amendment Act*, 105 of 1997, s 51(3)(a).

Every passing day without action to implement Truth and Reconciliation Commission Call to Action 32 through Bill S-208 leaves in place a broken system that violates rights to proportionate sentences and increases risks of cruel and unusual punishment; perpetuates court delays and skyrocketing legal costs; disproportionately punishes Indigenous Peoples, women, and those with mental health issues; contributes to wrongful convictions and miscarriages of justice; and, ultimately, undermines public safety.

Consistently, the more people know about mandatory minimums, the less people support them.

Research demonstrates that those initially in favour of mandatory minimum penalties often reconsider their views once presented with real-life case details.<sup>31</sup> Many come to see mandatory life sentences as unjust and unfit in light of the full circumstances of an individual case and the detrimental impact that mandatory minimums have not just for individuals sentenced to them but for communities more broadly.

At a time when Canada is inundated with fake news and jet-fuel-style calls for kneejerk responses, we, in this Chamber, have a particular duty to soberly consider and challenge the impact of harsher sentences on minorities. We must withstand political pressures and face the facts. We must question and act against the ongoing and increasing mass incarceration of Black and Indigenous Peoples, and the ineffective and colossal waste of tax dollars and other public resources produced by mandatory sentences.

Canadians deserve more than the most costly and ineffective responses to crime -- prisons crammed to overflowing with those most marginalized. Canadians deserve fairer and more equal communities where all of us can thrive.

I look forward to working together to send this bill back to committee and to deliver long-overdue legislative action on mandatory minimum penalties.

Miigwetch, merci, thank you.

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<sup>31</sup> Barry Mitchell & Julian Roberts, "Sentencing for Murder: Exploring Public Knowledge and Public Opinion in England and Wales" (2012) 52 *British Journal of Criminology* 141 at 151-52.