



# Criminal Law Amendments Impact Analysis: An Atlantic Canada Perspective

Atlantic Heads of Corrections  
Impact Analysis Working Group

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## EXECUTIVE SUMMARY

A range of criminal law amendments have been passed over the last decade to amend the *Criminal Code of Canada*, the *Youth Criminal Justice Act*, the *Controlled Drugs and Substances Act* and the *Corrections and Conditional Release Act*. These amendments represent significant criminal law reform, and have contributed to the growth in the prison population in Atlantic Canada.

At the direction of the Atlantic Heads of Corrections (AHOC), a working group with representatives from Newfoundland and Labrador, New Brunswick, Nova Scotia, Prince Edward Island and Correctional Service Canada was tasked to undertake an analysis of the impacts of recent criminal law amendments for provincial corrections in Atlantic Canada.

This analysis revealed that amendments contained in the *Safe Streets and Communities Act* and the *Truth in Sentencing Act* will have the largest impact on Provincial prison populations in Atlantic Canada in the next two years.

This analysis examined the potential for an increase in Provincial custody bed days in the Atlantic Region due to legislative amendment and the growth that can be expected in the prison population based on the ten year trend, which is the natural growth that would be expected to occur without criminal law reform. Forecasts for increased bed days related to legislative change were calculated to provide a range of potential impacts, from a low impact scenario to a high impact scenario. Forecasts for natural growth were derived by calculating the average growth in the prison population in each jurisdiction from 2001- 2011. This figure represents stable growth. In order to provide a range of potential impact two more growth scenarios were investigated: 1) an increase of 2% in the stable growth which is the High estimate, and 2) a 2% decrease in stable growth, which is the Low estimate.

It is forecast that criminal law reform coupled with natural growth will result in between 103,022 and 251,063 (see Table 4) additional bed days in Atlantic Canada by 2013-2014. This represents between 282 and 688 additional offenders on average per day in Atlantic correctional facilities (see Table 1).

Jurisdiction	Estimated Impact of Changes to Legislation Plus Natural Growth (Number of Beds Required) <sup>1</sup>					
	Low			High		
	Natural Growth	Legislation Impact	Total Beds	Natural Growth	Legislation Impact	Total Beds
<b>New Brunswick</b>	36	55	<b>91</b>	93	132	<b>225</b>
<b>Newfoundland and Labrador</b>	1	53	<b>54</b>	43	112	<b>155</b>
<b>Nova Scotia</b>	30	56	<b>86</b>	82	151	<b>233</b>
<b>Prince Edward Island</b>	37	13	<b>50</b>	54	22	<b>76</b>
<b>Atlantic Region Total</b>	104	177	<b>282</b>	272	417	<b>689</b>

**Table 1: Estimated Increase in Beds Required by 2013-14 by Jurisdiction**

While the forecast provides information about the number of additional offenders on average per day that will be in custody in Atlantic Canada the numbers do not account for fluctuations in demand or the challenges of managing diverse populations especially when facilities are at or over capacity. On many days the demand for beds will be significantly higher than the average. On most days the appropriate placement of offenders will be compromised by capacity issues. Safe and quality corrections can only be achieved if there is sufficient capacity to manage periods of peak demand.

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<sup>1</sup> Totals may not equal the sum of rows or columns due to rounding.

## OVERVIEW OF CRIMINAL LAW AMENDMENTS

A range of criminal law amendments have been introduced since 2006. The Working Group reviewed all recent changes to federal legislation to determine whether these amendments have the potential to impact custody demand in the Atlantic Provinces. This section provides descriptions of those amendments that have already or will impact Provincial Corrections in Atlantic Canada.

### *Bill C-9 An Act to Amend the Criminal Code (conditional sentence of imprisonment)*

This Act received Royal Assent on May 31, 2007. It came into force on December 1, 2007. The Bill amended section 742.1 of the Criminal Code so as to eliminate the availability of conditional sentences for indictable offences, punishable by 10 years or more, that qualify as either serious personal injury offences (e.g., sexual assault, aggravated sexual assault or sexual assault with a weapon), terrorism offences, or criminal organization offences. The bill had an impact in cases involving over 160 offences under the Criminal Code.

### *Bill C-2 Tackling Violent Crime Act*

This Act was given Royal Assent on February 28, 2008. Provisions regarding age of consent and firearms came into force May 1, 2008. Provisions regarding dangerous offenders and impaired driving came into effect July 2, 2008. Bill C-2 was composed of five key elements: minimum penalties for offences involving firearms, reverse onus on bail for firearm offences, dangerous offenders, age of protection, and drug impaired driving. A description of these changes is provided below.

#### *Minimum Penalties for Offences Involving Firearms*

The primary objectives were to increase mandatory minimum terms of imprisonment for individuals who commit serious or repeat firearm offences, create the new offences of breaking and entering to steal a firearm, and robbery to steal a firearm.

#### *Reverse Onus on Bail for Firearms Offences*

The purpose of this amendment was to restrict, during criminal proceedings, the judicial interim release of a person charged with certain offences involving firearms or other regulated weapons. To this end, the Bill made two amendments to the Criminal Code:

- i. It reversed the onus in bail hearings for certain offences involving firearms or other regulated weapons. The accused is now required to demonstrate that he or she should be released pending trial.
- ii. It introduced two additional factors that the judge must take into account in deciding whether an accused should be released or detained pending trial. The

factors concern the use of a firearm and the potential for a minimum punishment of imprisonment for a term of three years or more.

#### *Dangerous Offenders*

These amendments addressed, in two ways, the problem of offenders who commit one or more violent or sexual offences. First, it tightened the rules that apply to dangerous offenders in the case of repeat offenders. Second, it extended the recognizance to keep the peace and clarifies the terms of recognizance in order to prevent repeat offences. More specifically, it made the following amendments to the Criminal Code:

- i. An offender convicted of a third violent or sexual offence (“primary designated offence”), for which it would be appropriate to impose a sentence of two years or more, is presumed to be a dangerous offender, and will therefore be incarcerated for as long as the offender presents an unacceptable risk to society.
- ii. A recognizance to keep the peace may be ordered for a period that does not exceed two years in the case of a defendant who has previously been convicted of a violent or sexual offence.
- iii. The conditions of a recognizance to keep the peace in relation to a violent or sexual offence may include participation in a treatment program, wearing an electronic monitoring device or requiring the defendant to observe a curfew.

#### *Age of Protection:*

These amendments raised the age at which a person can consent to non-exploitative sexual activity, from 14 to 16 years. Examples of exploitative sexual activity are prostitution, pornography, or where there is a relationship of trust, authority, dependency or any other situation that is otherwise exploitative of a young person.

#### *Drug Impaired Driving:*

Under these amendments, the police have better tools to detect and investigate drug- and alcohol-impaired driving, and penalties for impaired driving have increased. Persons suspected of being impaired by a drug would be required to submit to roadside sobriety tests and, if they fail, to provide a blood or urine sample to confirm whether or not they have consumed a drug. These amendments included provisions that:

- i. authorize peace officers trained as Drug Recognition Experts to conduct roadside sobriety tests and to take samples of bodily fluids to determine whether a person is impaired by a drug or a combination of alcohol and a drug

- ii. make it an offence to refuse or fail to comply with police demands for physical sobriety tests or bodily fluid samples
- iii. allow only scientifically valid defenses to be used as evidence to avoid conviction for driving with a blood-alcohol concentration over 80, thereby reducing the number of individuals who can avoid conviction on technicalities
- iv. increase the penalties for impaired driving, e.g. a minimum of 120 days in jail for a third impaired-driving offence

*Bill C-25, An Act to amend the Criminal Code (limiting credit for time spent in pre-sentencing custody)*

This Act received Royal Assent on October 22, 2009. The bill amends the *Criminal Code* to limit the credit a judge may allow for any time spent in pre-sentence custody (remand) in order to reduce the punishment to be imposed at sentencing, commonly called “credit for time served”.

*Bill C-10, Safe Streets and Communities Act*

On September 20, 2011 the Federal government introduced Bill C-10 (*Safe Streets and Communities Act*). This Bill received Royal Assent on March 13, 2012. The *Act* includes nine formerly introduced *Criminal Code*, *Controlled Drugs and Substances Act*, and *Youth Criminal Justice Act* amendments that died on the order paper when Parliament dissolved in March 2011.

This comprehensive piece of legislation includes:

1. *Bill C-16 (Ending House Arrest for Property and Other Serious Crimes by Serious and Violent Offenders Act)* further restricts the application of house arrest for individuals charged with property and other serious crimes.
2. *Bill S-10 (Penalties for Organized Drug Crime Act)* provides mandatory minimum penalties for serious drug offences.
3. *Bill C-54 (Protecting Children from Sexual Predators Act)* increases penalties for sexual offences against children and creates two new offences.
4. *Bill C-4 (Sébastien's Law - Protecting the Public from Violent Young Offenders)* amends the sentencing and general principles of the *Youth Criminal Justice Act*, as well as, its provisions relating to judicial interim release, adult and youth sentences, publication bans, and placement in youth custody facilities. It also requires police forces to keep records of extrajudicial measures used.
5. *Bill C-39 (Ending Early Release for Criminals and Increasing Offender Accountability Act)* amends the *Corrections and Conditional Release Act (CCRA)*. These changes will provide better support for victims of crime and increased offender accountability.



6. *Bill C-56 (Preventing the Trafficking, Abuse and Exploitation of Vulnerable Immigrants Act)* - reforms to the Immigration and Refugee Protection Act so that immigration officers can refuse work permits to vulnerable foreign applicants when it is determined that they are at risk of humiliating/degrading treatment or sexual exploitation.
7. *Bill C-23B (Eliminating Pardons for Serious Crimes Act)* amends the Criminal Records Act to prevent the most serious criminals from seeking a pardon;
8. *Bill C-5 (Keeping Canadians Safe Act)* amends the International Transfer of Offenders Act to include a number of additional key factors in deciding whether an offender would be granted a transfer back to Canada.
9. *Bill S-7 (Justice for Victims of Terrorism Act)* enacts the Justice for Victims of Terrorism Act and includes proposed reforms to the State Immunity Act. These amendments are intended to support victims of terrorism, resulting in accountability for supporters of terrorism.

*Bill C-14 An Act to Amend the Criminal Code (organized crime and protection of justice participants)*

One of the main purposes of Bill C-14, An Act to Amend the Criminal Code (organized crime and protection of justice participants), which received Royal Assent on June 23, 2009, is to facilitate the battle against organized crime. This Bill amends the criminal code in three ways:

- i. It makes murders connected with organized crime activity (“for the benefit of, at the direction of or in association with a criminal organization”) automatically first-degree murders, irrespective of whether they are planned and deliberate.
- ii. It creates three new offences:
  - a. intentionally discharging a firearm while being reckless about endangering the life or safety of another person;
  - b. assaulting with a weapon or causing bodily harm to a peace officer;
  - c. or aggravated assault of a peace officer.
- iii. It extends the maximum duration of a recognizance to two years for a person who has been previously convicted of a criminal organization offence, a terrorism offence or an offence of intimidating a justice system participant (Parliament of Canada, 2012).

## **BACKGROUND**

In 2008, at the direction of the Atlantic Premiers and under the umbrella of the Atlantic Heads of Corrections (AHOC), a working group with representatives from New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island was tasked to undertake an analysis of the projected impacts of criminal law amendments for Corrections in Atlantic Canada. The 2008 analysis determined that criminal law amendments would result in an estimated annual increase of 29,017 sentenced bed days in correctional facilities in Atlantic Canada (AHOC Impact Analysis Working Group, 2008).

In January 2011, at the direction of the Atlantic Heads of Corrections (AHOC), the working group with representatives from New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island was reconvened. The reconvened committee was expanded to include the Correctional Service of Canada. Its mandate was to undertake further analysis of the projected impacts of criminal law amendments for Corrections in Atlantic Canada. This initiative will help to inform jurisdictional strategic planning by providing reliable estimates on the impacts of criminal law reform on Corrections in this Region.

The task of the Working Group was to complete an analysis of the impacts of criminal law reform on Corrections in Atlantic Canada. To meet this objective the Working Group:

- identified the assumptions that form the foundation of the analysis.
- achieved consensus on methodology for a retrospective analysis of criminal law amendments implemented since 2006.
- achieved consensus on methodology for a prospective analysis of criminal law amendments passed since 2006.
- determined time-lines for analysis, reporting back and submission of the discussion paper.
- conducted data collection and completed analysis in each jurisdiction.
- reported back to working group on findings.
- drafted and submitted this Discussion Paper to the Atlantic Heads of Corrections.

## **METHODOLOGY**

### **Retrospective Analysis Methodology**

A retrospective analysis was completed to examine the impact of criminal law amendments that have been proclaimed since 2006. Amendments contained in four pieces of legislation were investigated: Bill C-2, *Tackling Violent Crime Act* (2007); Bill C-9, *An Act to Amend the*

*Criminal Code* (conditional sentences) (2007); Bill C-14, *An Act to Amend the Criminal Code (organized crime and protection of justice participants)* (2009) and, Bill C-25, *Truth in Sentencing Act* (2010).

At the outset of this discussion and in the 2008 analysis, it was expected that changes to impaired driving penalties and the reduced availability of conditional sentence orders as a sentencing option would increase custody bed days in Atlantic Canada. It was also anticipated that the limits on credit for time served on remand would increase the actual days served in sentenced custody for offenders remanded prior to sentencing. Changes to minimum mandatory penalties for a range of firearms offences were expected to have little or no impact in Atlantic Canada and were not examined in the 2008 analysis.

In the retrospective analysis, three trends were examined: actual count data from 2001 to 2010, projected counts based on a ten-year growth rate, and estimates from the 2008 analysis. These three trends were examined to determine the difference between how many people were actually in institutions compared to how many we would have expected based on 2008 estimates. These, in turn, were compared to the “natural” growth in the prison population. The use of a 10-year growth rate is intended to account for annual fluctuation in demand, however it is critical to note that safe and quality corrections requires capacity to deal effectively with peak demand, that is, where admissions are higher than average. (See Data Collection Key, Appendix A). The main purpose of the retrospective analysis is to glean lessons learned, as well as, inform and increase the reliability of the prospective analysis.

To understand the impact of Bill C-2, which increased minimum mandatory penalties for repeat impaired drivers and introduced minimum penalties for offences involving firearms, the number of admissions and length of sentence were investigated for 2007 – 2011.

Bill C-9, *An Act to Amend the Criminal Code (Conditional Sentence of Imprisonment)* passed in 2007. To calculate the effect on bed days of these amendments actual data, for 2007 to 2011, was examined to determine the admissions and length of sentence for offences where a CSO was previously, but is no longer, a sentencing option. The increase in bed days over the last four years, associated with this Bill, is used to forecast potential increases in the prospective analysis.

An examination of admissions and length of sentence was undertaken to determine if new firearm offences to protect justice system participants, pursuant to Bill C-14, have had an impact on Corrections in Atlantic Canada.

The impact of Bill C-25 *Truth in Sentencing Act* on the length of remand is unknown. There is speculation that time spent on remand will be reduced as offenders will no longer receive as great a benefit for time spent on remand. However, the introduction of new or increased minimum mandatory penalties for a range of offences may increase the number of individuals who proceed to trial; thereby increasing both remand admissions and the length of remand. As

part of the retrospective analysis we have assumed that the judiciary will be consistent when imposing the length of sentence, despite changes to the credit for time served, therefore the main impact of legislative change may be on sentenced custody (see Figure 1).

<b>Before Truth in Sentencing</b>		<b>After Truth in Sentencing</b>	
Judges Sentence (before credit)	90 days	Judges Sentence (before credit)	90 days
Time Served on Remand	30 days	Time Served on Remand	30 days
Credit for Time Served (2 for 1)	-60 days	Credit for Time Served (2 for 1)	-30 days
Sentence from Court	30 days	Sentence from Court	60 days
Less Remission (1/3)	-10 days	Less Remission (1/3)	-20 days
<b>Actual Days in Custody</b>	<b>20 days</b>	<b>Actual Days in Custody</b>	<b>40 days</b>

**Figure 1: Illustration of Impact of Truth in Sentencing Legislation**

### **Lessons Learned from the Retrospective Analysis**

In completing the retrospective analysis there was an opportunity to incorporate lessons learned into the methodology for the prospective analysis. Accordingly, the Impact Analysis Working Group notes the following lessons learned:

- a. Using a single year as a baseline to estimate the impact of future changes is limiting.
- b. Historical trends (5-10 years) should be taken into account when estimating future correctional facilities numbers.
- c. Many factors can influence the number of adults in correctional facilities including changing demographics, the type, frequency and severity of crimes committed, sentences delivered, legislative reform and law enforcement practices.
- d. The use of averages does not account for the demands of peak days or periods, e.g., weekends.
- e. In the 2008 impact analysis of amendments to the Criminal Code, which limited the availability of conditional sentence orders for some offences, no distinction was made between convictions for summary versus indictable offences. In fact, conditional sentence orders are still a sentencing option for offenders who commit excluded offences if the matter proceeds by way of summary conviction.

- f. The ongoing monitoring of trends is beneficial in strategic planning.

### **Prospective Analysis Methodology**

A prospective analysis was employed to investigate the potential impacts on Atlantic corrections as a result of Bill C-10. The central variables for examining the impact of criminal law amendments were the number of admissions and average length of sentence. Five to ten years of data were gathered to examine historical trends. Historical data was used to inform changes in sentencing practices for applicable offences affected by legislative change and to predict potential growth in the coming years. The goal of the prospective analysis is to determine how many offenders will be in custody in Atlantic Canada and for how long.

#### *Ending House Arrest for Property and Other Serious Crimes (Conditional Sentence Exclusions)*

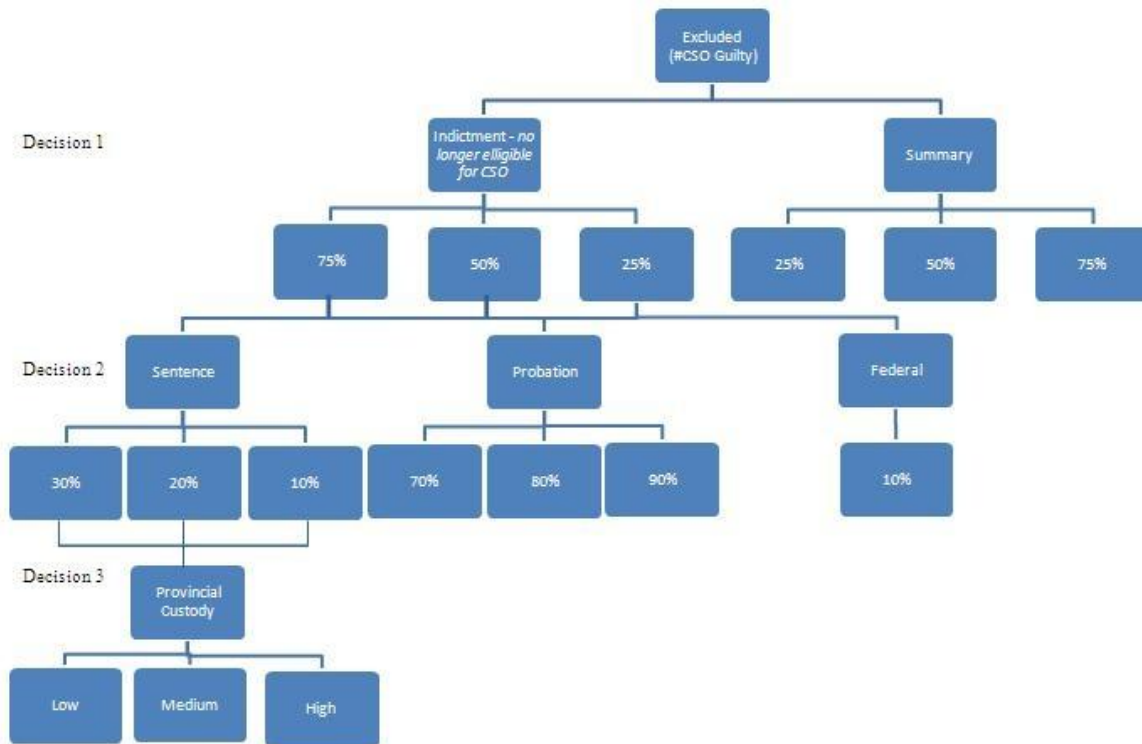
The analysis of the impact of Bill C-10 amendments that limit eligibility for conditional sentences (CSOs) utilized annual admission and sentence length data for the period from 2006-07 to 2010-11. Specifically, the number of admissions to conditional sentences and to provincial sentenced custody for offences no longer eligible to receive conditional sentences, as well, the average length of CSOs and provincial custody sentences for these admissions were examined over the previous five year period. Five year averages were used to project the anticipated impact of these amendments on custody bed days (the number of days a correctional facility will house offenders).

The following factors were considered in this analysis:

- a. Other sentencing options (e.g., probation) will still exist for many of the offences now excluded from receiving a CSO. Therefore, not all offenders who are ineligible to receive a CSO will receive a custody sentence.
- b. The new exclusions apply to indictable offences only; therefore, offenders dealt with by way of summary conviction for excluded offences will still be eligible for a CSO.
- c. Based on historical data, provincial custody sentences for excluded offences are, on average, much shorter in duration than CSOs for these offences. Therefore, one would expect that offenders who receive a provincial custody sentence for an excluded offence would be sentenced to less time than they would have with a CSO.

To account for these variables, ranges were employed in the analysis with respect to first the percentage of cases which proceed by way of indictment (75%, 50%, 25%), second, the

percentage of offenders who will receive a provincial custody sentence for excluded offences (30%, 20%, 10%) and third, the average provincial custody sentence length that will be given (based on the 5 year average length of CSOs and provincial custody sentences and the midpoint between these). The following decision tree is used to illustrate the range of impact on custody bed days (see Figure 2).



**Figure 2: CSO Decision Tree**

*Increased penalties for serious drug crime*

In assessing the impact of amendments that increase penalties for serious drug crimes, data was collected on the number of admissions to provincial sentenced custody and the average provincial custody sentence length over a five year period (2006-07 to 2010-11). In addition, as these amendments involve minimum mandatory sentences, which will result in offenders no longer being eligible for a community sentence, the number of sentences involving probation and fines only were captured<sup>2</sup>.

<sup>2</sup>As CDSA offences were included in the analysis of ending house arrest for property and other serious crimes to avoid double counting conditional sentences were not included in the analysis for increased penalties for serious drug crime.

There are two types of new minimum mandatory sentences for the drug offences of possession, trafficking and production. The first is related to the commission of the offence specifically and the second on the presence of aggravating factors during the commission of the offence (e.g., proximity to a school). As such, there were two components to the analysis.

The first applied the new minimum mandatory sentences to average historical admissions figures under Sections 5, 6 and 7 (including provincial custody, probation and fines) and compared the resulting bed days to the historical bed days for these offences to determine the increase that would be observed as a result of the new minimums.

The second component of the analysis proved more challenging due to the lack of available data on aggravating factors (see Appendix B). Collecting this data would require a manual review of Crown files on convictions for Sections 5, 6 and 7 of the CDSA across Atlantic Canada. Due to access and resource challenges, impacts have been estimated based on benchmark percentages derived from a 2007 manual file review of CDSA cases in Prince Edward Island. The review suggested that for convictions under Sections 5, 6, and 7 of the CDSA, 2% of the time aggravating factors from List A were present, 24% of the time aggravating factors from List B were present, and 2% of the time aggravating factors from the Health and Safety list were present. These figures were applied to Atlantic jurisdiction's historical admissions and sentence length data to estimate the impact of these amendments on Corrections.

This analysis allowed for both increases in provincial custody bed days and decreases in bed days, as a number of penalties increased the minimum mandatory beyond a provincial sentence to a federal sentence.

### *Better Protecting Children and Youth from Sexual Predators*

To assess the impact of C-10 amendments related to sexual predators, data was collected on the number of admissions to provincial sentenced custody and the average provincial custody sentence length for the impacted offences over a 5 year period (2006-07 to 2010-11). In addition, as these amendments involve minimum mandatory sentences which will result in offenders no longer being eligible to receive a community sentence, the number of sentences involving CSOs, probation and/or fines (but no custody term) was captured.

The analysis is complicated by the fact that the minimum mandatory sentences vary by type of offence and by whether offences proceed by way of indictment or summary conviction. A conservative approach was taken in the analysis in that it was assumed that offenders would receive the new minimum sentence for each offence. In addition, for hybrid offences which may

proceed by way of summary conviction or indictment, scenarios were developed in which 75%, 50% and 25% of offences proceed by way of indictment.

For a number of offences, the minimum mandatory applies only if the victim is under the age of 16 years old. For these offences, it was assumed that 41% of victims were under the age of 16. This assumption is based on national data from Statistics Canada's Uniform Crime Reporting Survey (UCR) (2010), indicating that 41% of victims of sexual assault are under the age of 16.

Using this approach, the impact of increasing minimum mandatory penalties was calculated by applying new minimums to historical admissions data and calculating the difference between historical bed days, and projected bed days with the new minimum mandatory sentences. The analysis also allowed for reductions in provincial custody bed days where the new minimum mandatory sentences would result in federal custody.

## **ASSUMPTIONS AND LIMITATIONS**

A number of assumptions were made during the course of this analysis:

1. Projections for increased bed days are adjusted for earned remission (1/3).
2. Projections on the proposed amendments to the CDSA, introducing minimum mandatory sentences for serious drug offences, are based on the assumption that aggravating circumstances are present a percentage of the time.
3. Offenders who would have received a conditional sentence order in the past but are no longer eligible for a CSO for the same offence, will not receive an equivalent period of custody.
4. Not all offenders who would have received a conditional sentence order in the past but are no longer eligible for a CSO will receive a custody sentence.
5. Projections are based on sentenced and remand counts of offenders and exclude offenders on other custody statuses.

Over the course of this work, a number of limitations were identified:

1. Individual jurisdictions have differing practices or policies in a variety of areas which make direct comparisons challenging, and in some cases impractical, for example first time impaired drivers in NL, NB and NS typically receive a fine; while offenders in PEI routinely receive a short period of custody for a first impaired offence.
2. Conviction data is captured using different methods. For example, NB, NS and NL, capture by most serious offence (MSO), while PE, which does not have an automated offender management system, must rely on manual data capture and extraction which is recorded by offence and/or offender.



3. The reliance on MSO data to analyze historical trends and predict future impacts may result in an underestimate as cases that are not captured as MSO are not counted in the data collection.
4. Without historical data to use as a baseline, it is difficult to project the impact of new offences, such as new sex offences.
5. The information required to complete projections on the proposed amendments to the CDSA is only available by manual file review.
6. As a result of data availability issues and difficulties associated with extracting the data consistently, PE, NS, NL, and NB have been unable to complete analysis on the amendments regarding the Reverse Onus on Bail for Firearms Offences.

## **AMENDMENTS EXAMINED**

To begin this process fifteen Bills passed since 2006 amending the *Criminal Code of Canada*, the *Youth Criminal Justice Act*, the *Controlled Drugs and Substances Act* and the *Corrections and Conditional Release Act* were identified and examined. A review of each amendment was completed to categorize the type of impact and/or the feasibility of accurately predicting impact. Each amendment was assigned to one of the following four categories: 1) unable to measure (e.g., new offence), 2) federal impact only, 3) global impact, or, 4) included for comment only.

Those amendments expected to have significant and measurable global impact for corrections in the Region were investigated. This included portions of provisions contained in five pieces of legislation: Bill C-25 *Truth in Sentencing Act*, Bill C-9 *An Act to Amend the Criminal Code* (conditional sentence of imprisonment); Bill C-2 *Tackling Violent Crime*; Bill C-14 *An Act to Amend the Criminal Code (organized crime and protection of justice system participants)* and Bill C-10 *Safe Streets and Communities Act*.

Provisions of the *Safe Streets and Communities Act* considered in this analysis are related to ending house arrest for property and other serious crimes by serious and violent offenders, penalties for organized drug crime and protecting children from sexual predators. These criminal law amendments were examined because they are expected to have a measurable impact on Corrections in Atlantic Canada. Other provisions of C-10, for example those relating to terrorism, are not expected to have a measureable and significant impact on Corrections in Atlantic Canada and therefore are not included.

## **FINDINGS BY JURISDICTION**

### ***NEW BRUNSWICK***

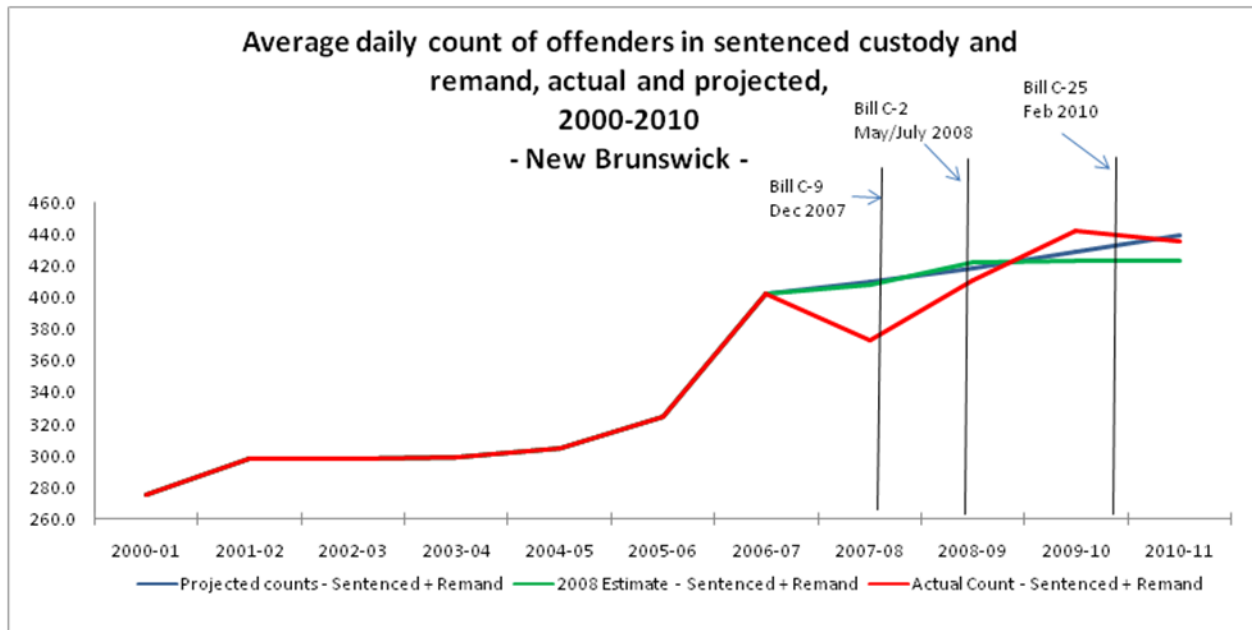
#### ***Current Situation (NB)***

In the five years between 2006-07 and 2010-11, the provincial average daily count increased by 22% and peaked in 2009-10 at 26% over capacity. Furthermore, the highest daily count in 2009-10 reached 506 – a staggering 39% over capacity.

In recognition of the overcrowding situation in adult correctional institutions and in an effort to modernize the provincial custody system, New Brunswick Corrections reached a point where it was necessary to strategically realign the way it administers its custodial population. In 2011, the provincial correctional system underwent an institutional realignment in which the Bathurst Detention Centre was closed and the Dalhousie Detention Centre was replaced by Dalhousie Regional Correctional Centre. Moreover, in mid-January 2012, all women serving a provincial custody sentence were relocated to the New Brunswick Women's Correctional Centre (NBWCC) in Miramichi. In May/June 2012, the Southeast Regional Correctional Centre (SRCC) will begin offender placement and facility operation. SRCC will replace the existing Moncton Detention Centre and will further increase capacity. As a result, bed capacity in New Brunswick will increase to 546 from 364.

#### ***Trends (NB)***

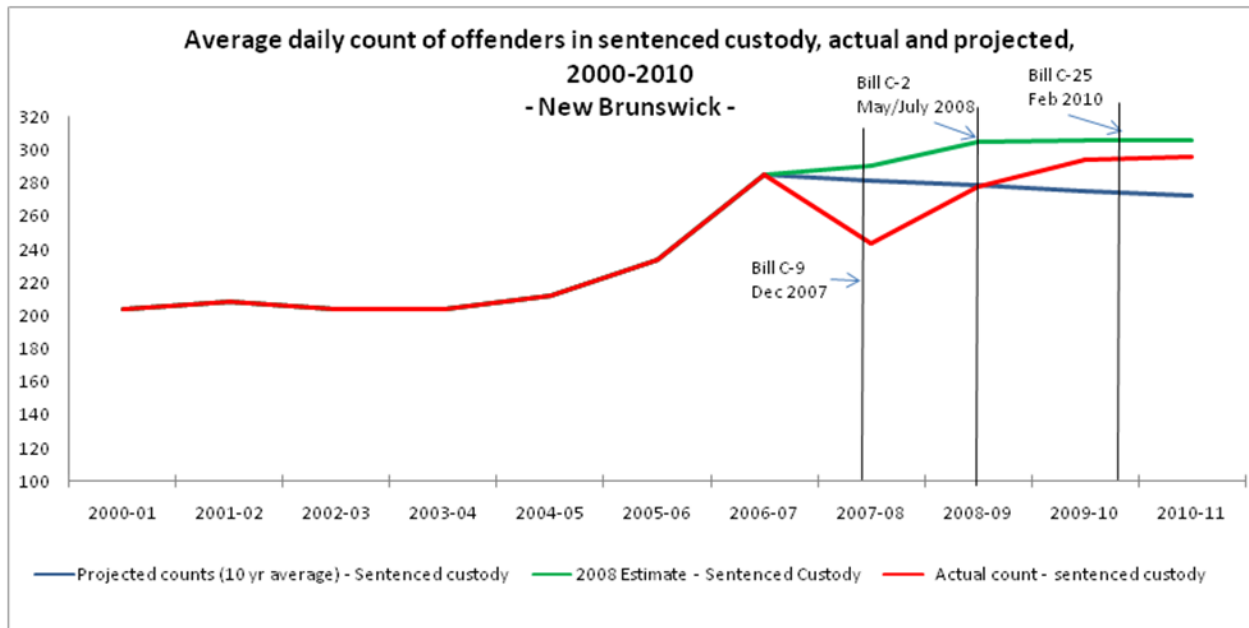
Between 2006-07 and 2010-11, the average daily count for remand increased by 19% and sentenced custody was up 29%. In regards to bed days, total bed days increased 25% in the same five years examined (see Figure 3). There was a 19% increase in remand bed days and a 29% increase in sentenced bed days. However, between 2009-10 and 2010-11 there was a 6% decrease in the provincial average daily count. Despite the recent decrease, the average daily count in 2010-11 remained over capacity by 16%.



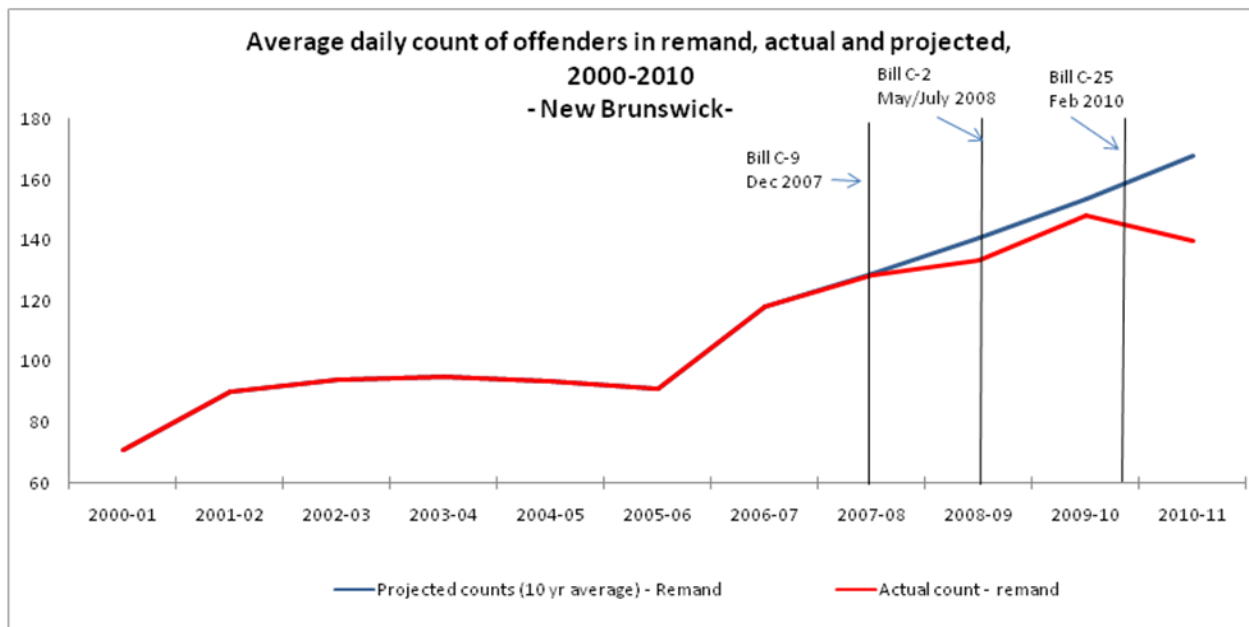
**Figure 3: Average Daily Count of Offenders in Sentenced Custody and Remand, 2000-2010, NB**

Over the past five years there have been fluctuations in the total custodial admissions in New Brunswick. From 2006-07 to 2009-10, the average number of offenders in sentenced and remand custody (combined) was lower than both the estimates from the 2008 analysis and the projected counts based on historical growth rate. However, in 2009-10 the custody population in New Brunswick exceeded both the 2008 estimates and the historical growth rate. In 2010-11, the gap was narrowed slightly when the actual count fell below the projected counts yet still above the 2008 estimate.

Until 2008-09, the average daily count for sentenced custody fell below the projected counts based on the historical growth rate and the 2008 analysis estimates. In 2008-09 the sentenced custody increased and exceeded the projected counts but still fell short of the 2008 estimates (see Figure 4). Although the remand custody has steadily increased from 2006-07 until 2009-10, it still fell below the projected counts based on historical growth rate (see Figure 3).



**Figure 4: Average Daily Count of Offenders in Sentenced Custody, 2000-2010, NB**

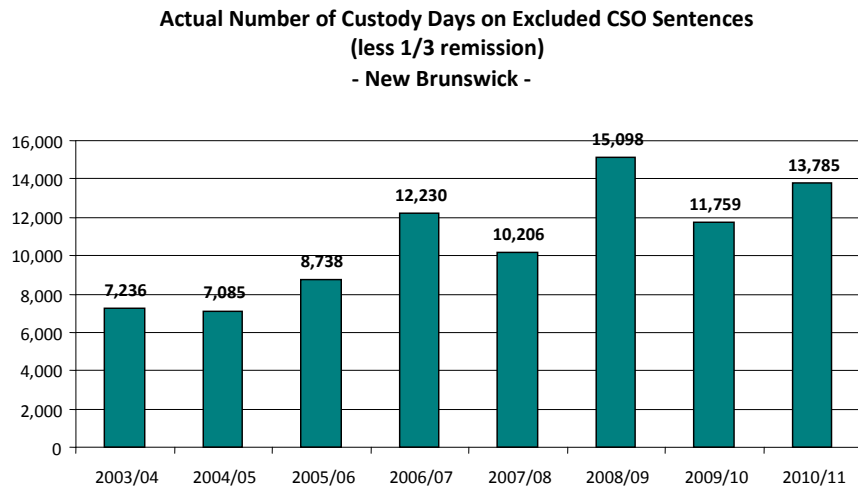


**Figure 5: Average Daily Count of Offenders in Remand, 2000-2010, NB**

## *Legislative Reform Impact (NB)*

### **Retrospective Analysis (NB)**

In 2008, it was projected that Bill C-9 would result in an additional 6,466 bed days annually for New Brunswick. Since 2006-07 there has been an increase of 1,555 bed days which is considerably less than predicted. However, over the past three years, the average increase in bed days for those excluded offences was 3,341 (see Figure 6). The last three years may better represent the impact as the amendments came into force in December 2007. Based on these findings, Bill C-9 has had just over half of the anticipated impact that was projected in 2007.



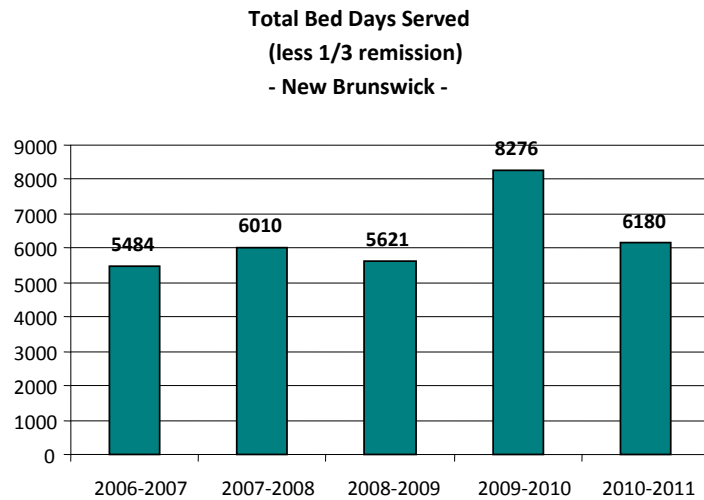
**Figure 6: Actual Number of Custody Days on Excluded CSO Sentences**

One possible explanation for why New Brunswick has experienced just over half of the anticipated impact of Bill C-9 may be due to the fact that in the 2008 analysis one of the assumptions made was that all restricted offences would no longer be eligible for conditional sentence. However, hybrid offences that proceed by way of summary conviction remain eligible for a conditional sentence. This explains why there are still a number of conditional sentence admissions in 2010-11 for those excluded offences.

The second piece that formed part of the 2008 analysis was Bill C-2 *Tackling Violent Crime Act*; specifically, the impaired driving amendments. New Brunswick has seen a 6.3% average growth rate over the last four years in bed days served for impaired driving. Taking into account that the amendments came into force in July 2008, New Brunswick also considered the past two years and discovered that there has been an average of 7,228 bed days served for impaired

driving offences. This is an increase of 1,607 bed days from 2008-09. In 2008, New Brunswick predicted an impact of 1,161 bed days – which is 446 bed days less than the actual impact. In other words, the projected impact in 2008 was underestimated compared to the actual impact experienced since Bill C-2 came into force.

When comparing 2008-09 to 2010-11, there has been a 10% increase in the number of bed days served and an 8% increase in the average length of time served (51 days in 2008-09 to 55 days in 2010-11) for impaired driving offences (see Figure 7).



**Figure 7: Total Bed Days Served for Impaired Driving Offences, NB**

Bill C-2 also introduced minimum penalties for firearm offences. Due to the fact there are very few admissions for offences involving firearms these amendments have not had a significant impact on Corrections in New Brunswick.

Bill C-25 *Truth in Sentencing* came into force in February 2010. When comparing 2009-10 to 2010-11, there was a 6% increase in remand admissions. Although remand admissions were up, the amount of time served was reduced by 7%. Moreover, in 2010-11 there was a 3% drop in sentenced custody admissions from 2009-10 and in 2010-11 clients were also spending less time in sentenced custody than the previous year.

A range of impact for Bill C-25 was identified using five years of data (from 2005-06 to 2009-10). The range considers a high, mid-range and low impact. The high end range assumes that all admissions will receive one for one credit for time served. In this case, the projected impact would be a 19% increase in bed days served (which equals 29,971 additional bed days) for New Brunswick. However, compared to actual bed days in 2010-11, this projection appears to be quite high as there was actually a drop in sentenced custody admissions. Therefore a range

was established which considers that only a proportion of offenders will get one for one credit. The mid-range assumes that 66% of admissions will receive one for one credit for time served. This would result in a 13% increase or an additional 19,781 bed days. Finally, the low range assumes that only 33% of admissions will receive one for one credit for time served. In this case, the increase would be 6% or 9,890 additional bed days (27 additional offenders).

### **Prospective Analysis (NB)**

Bill C-10 (*Safer Streets and Communities Act*) received Royal Assent in March 2012. The amendments contained in this Bill that are expected to impact New Brunswick Corrections include mandatory minimums regarding sex offences against children, CDSA mandatory minimums, and further restrictions on the use of conditional sentences.

The impact of these changes are anticipated to range between 10,203 bed days on the low end (approximately 28 additional offenders) to a high of 18,154 bed days (approximately 50 additional offenders).

#### ***Additional Impact Variables (NB)***

According to population projections from New Brunswick's Department of Finance, the general population in New Brunswick is expected to increase just over 1% between 2010 and 2015. That is approximately 10,263 persons. Of particular interest, in terms of criminal justice, are the crime-prone cohorts. The youth age group of 12-17 years inclusive will see a decline of 10% or 5,425 youth. On gender breakdown, there will be a 12% decrease (2,935 fewer) in female youth and a 9% decrease (2,490 fewer) in male youth.

On the adult side, the crime-prone age groupings are broken down into 2 categories, 18-24 and 25-34 years of age. The 18-24 age group is projected to see an decrease of 4% (2,760 persons). On a gender basis, it is projected there will be 6% fewer males (2103) and a 2% decrease (658) in females in this same age category. As for 25-34 year olds, there is expected to be an overall increase of 2% or 2,074 persons. On a gender breakdown, males are projected to increase by 3% (1,435) and females by 1% (639).

Like other Canadian jurisdictions, crime rates in New Brunswick peaked in the early 1990s. In 1993, the New Brunswick crime rate reached 7,381 (per 100,000). The latest crime rate in 2010 was 5,496 or an overall decrease of 26%. However, these crime rates do not tell the whole story. In the past 3 years, crime rates have been on the decline in New Brunswick. However, the same cannot be said for incarceration rates. In 1980-81, New Brunswick's adult incarceration rate peaked at 100 (per 100,000) and since that period it has fluctuated from a low of 48 (2000-

01) to a high of 89 (1982-83). In 2009-10 the incarceration rate was 75, the highest it has been since 1994-95. Like crime rates, incarceration rates increase and decrease for a variety of reasons.

When greater use was made of community correctional programming, incarceration rates remained at their lowest level for an 8 year period (1997-98 to 2005-06). Since then, the incarceration rate has steadily increased. When you overlay New Brunswick crime rates with incarceration rates and look at the past 10 years, crime rates, for the most part, have declined while incarceration rates have steadily increased.

### ***New Brunswick Summary***

Over the past five years, New Brunswick's custodial population has increased significantly. Meanwhile, crime rates are the lowest they have been since 1978. Projections based on this analysis suggest that incarceration rates will continue to increase in the coming years. According to this analysis, the *Truth in Sentencing Act* could result in 27 to 82 additional offenders while the *Safe Streets and Communities Act* could result in 28 to 50 additional offenders annually.

There are many factors that influence how and why crime rates increase and/or decrease, including changing demographics, legislative reform, law enforcement policies and practices and crime control policies, just to name a few. There are also the broader social and economic influences, such as employment rates, substance abuse, and mental health issues. Due to the fact that the custody population fluctuates on an ongoing basis it is important to identify the inherent fluctuations when examining the impact of legislative reform.

Over the past 10 years, the number of bed days served in New Brunswick has increased an average of 4% annually. Based on a stable growth rate assumption, it is anticipated that bed days would reach 180,621 in 2013-14. It is also important to take into account a possible decrease or increase in the custodial population. Assuming a decrease or increase in natural growth of 2% annually, New Brunswick could expect the range to be somewhere between 171,941 to 192,826 bed days by 2013-14. This translates to somewhere between 471 to 528 offenders based on historical growth or decline. When the growth or decline rate is combined with the potential impacts of legislative reform it could result in three possible scenarios for New Brunswick:

1. If New Brunswick's custodial population experiences stable growth (annual growth rate = 4%), then by 2013-14 we could expect anywhere from 550 to 627 offenders in custody.
2. If New Brunswick's custodial population decreases by 2% (annual growth rate = 2%), then by 2013-14 we could expect anywhere from 526 to 603 offenders in custody.
3. If New Brunswick's custodial population increases by 2% (annual growth rate = 6%), then by 2013-14 we could expect anywhere from 583 to 660 offenders in custody.



## ***NEWFOUNDLAND AND LABRADOR***

### ***Current Situation (NL)***

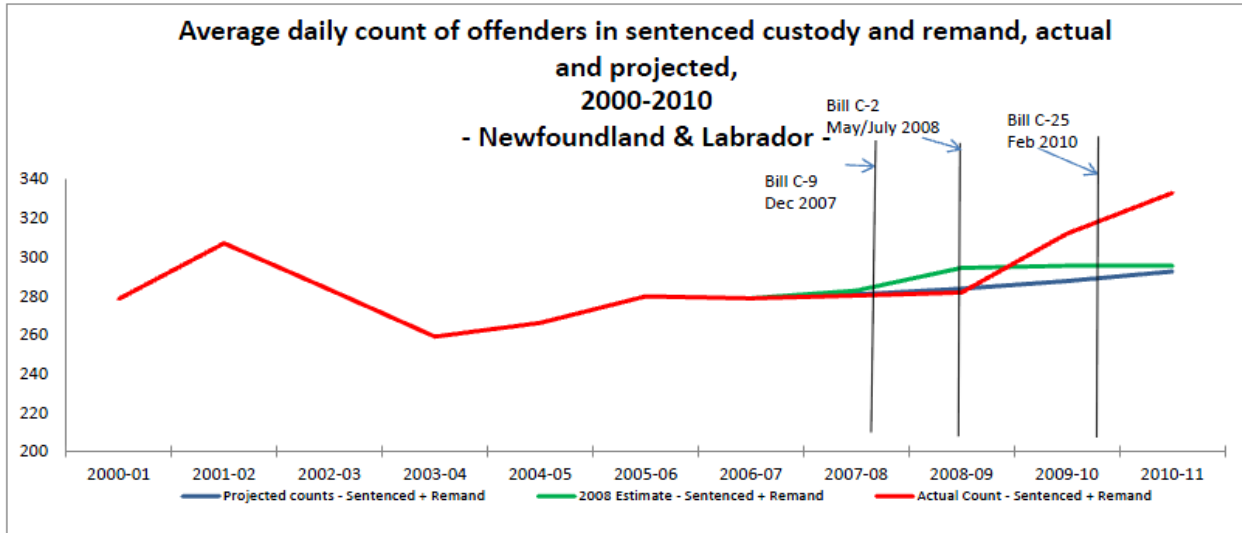
In Newfoundland and Labrador between 2005-06 and 2010-11 provincial institutions have been operating near and occasionally above capacity. Annual total bed days have increased from 106,226 in 2005-06 to a current high of 121,586 in 2010-11, representing an average annual increase of 3%. The projected increase for 2013-14 is 129,564 given natural growth.

In 2010 the province re-opened the 3rd floor of its West Coast Correctional Center adding an extra 22 beds. As a result the provincial capacity, including capacity for federally sentenced inmates under the Exchange of Service Agreement, increased to 418 beds. The average daily count was 383 in 2010 indicating that institutions are operating at or near capacity on a daily basis. The exclusion of the average annual federal inmate count (50) highlights a current daily average of 333 offenders.

With the rising trend in incarceration rates and the limited number of beds, finding space for inmates, programming and other services will become a challenge. For the purpose of this analysis, to isolate the impact of provincially sentenced inmates, federal inmates have been excluded unless specified.

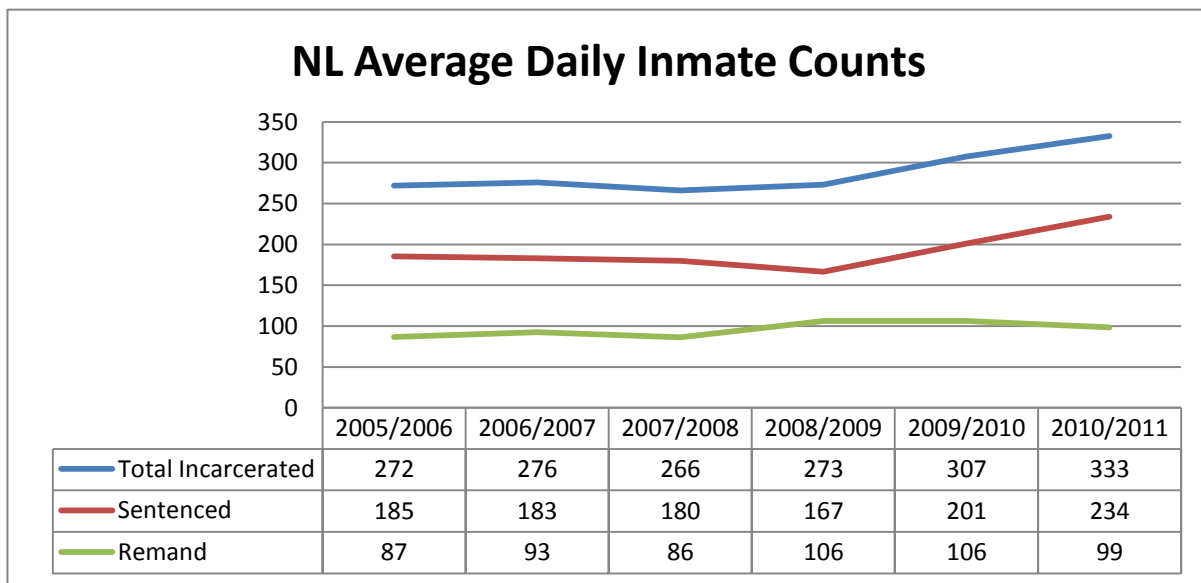
### ***Trends (NL)***

In the six years between 2005-06 and 2010-11 the average daily count of provincially incarcerated inmates increased 22% (see Figure 8). Sentenced and remanded inmates increased by 26% and 14% respectively. In the same time period total and sentenced bed days increased 14% while remand bed days increased 15%.



**Figure 8: Average Daily Count of Offenders in Sentenced Custody and Remand, 2000-2010, NL**

The average daily inmate counts are taken from the midnight counts performed every evening in each institution in Newfoundland and Labrador. This number is then averaged over an annual period in order to obtain trend information.



**Figure 9: NL Average Daily Inmate Counts**

Figure 9 highlights the increasing trend in total inmate counts. The years 2005-06 to 2008-09 (inclusive) tracked at a relatively stable rate for total inmate counts, with yearly offsetting increases and decreases experienced in both sentenced and remanded. In 2008-09 NL

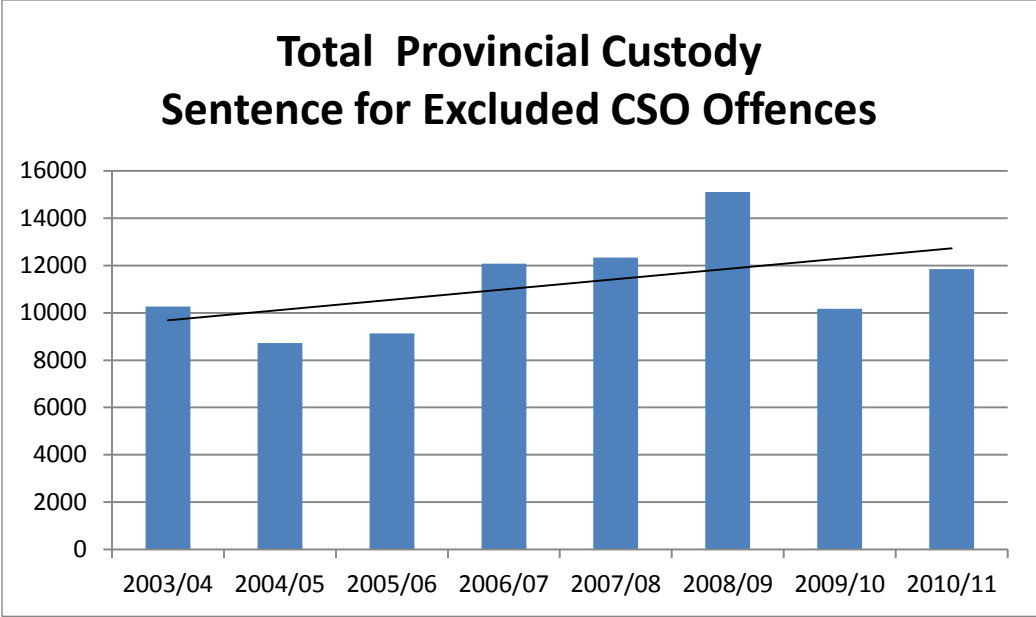
experienced an increase in total inmate count as a result of sentenced inmates, which rose 12%. The rise in sentenced inmates continued through 2010-11 resulting in total inmate count rising by another 8% to its current daily average of 333.

### ***Legislative Reform Impact (NL)***

#### **Retrospective Analysis (NL)**

In the 2008 Working Group analysis, it was projected that the proposed amendments to legislation would result in an additional 6,648 bed days annually in Newfoundland and Labrador. These impacts were expected in the changes to Bill C-9 (4,420), Bill C-2 (1,712) and Bill C-26 (516). In understanding actual bed days compared to the projected, we need to look at the specific proposed legislation from the 2008 report. Below is an explanation of variations to the previous predictions.

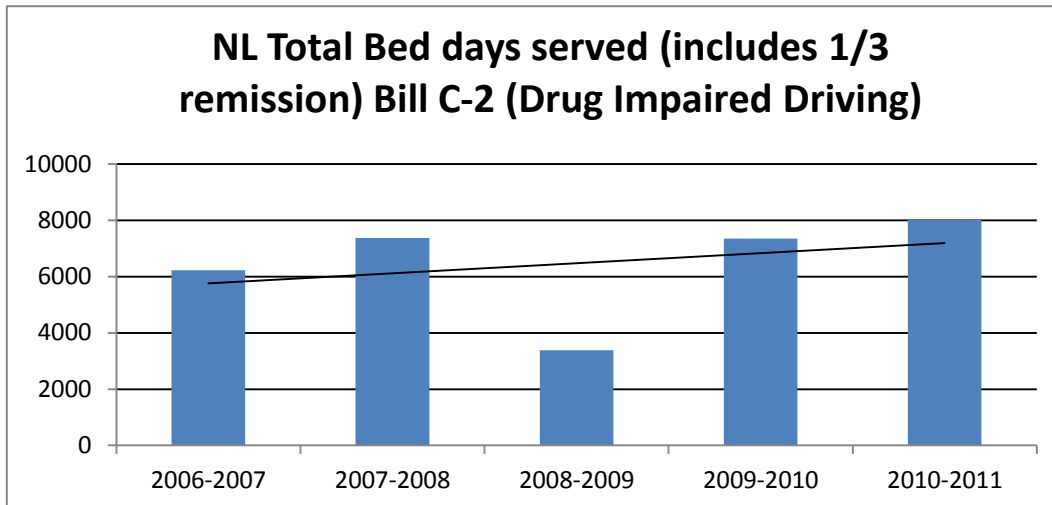
The actual number of conditional sentences never fully amounted to the projected analysis of an additional 4,420 bed days for CSO's. Historical data reflects that 2008-09 and 2009-10 were anomalies on the highest and lowest range of actuals, but overall, the trend for additional CSO's had remained steady, at approximately 12,000 annual bed days (see Figure 10). One of the assumptions made in the projected analysis was that all restricted offences would be excluded for CSO's; however, hybrid offences that proceeded by way of summary conviction are still eligible for conditional sentences. This helps explain why Newfoundland and Labrador's original projection was an over estimate.



**Figure 10: Total Provincial Custody Sentence for Excluded CSO Offences, NL**

The number for the actual annual bed days served for the now excluded CSO offences is volatile. The change in year over year bed days may be due to anomalies in the number of admissions on these offences or to the average sentence length on the offences. In analyzing the data, an average doesn't illustrate the volatility in the annual bed days for these offences.

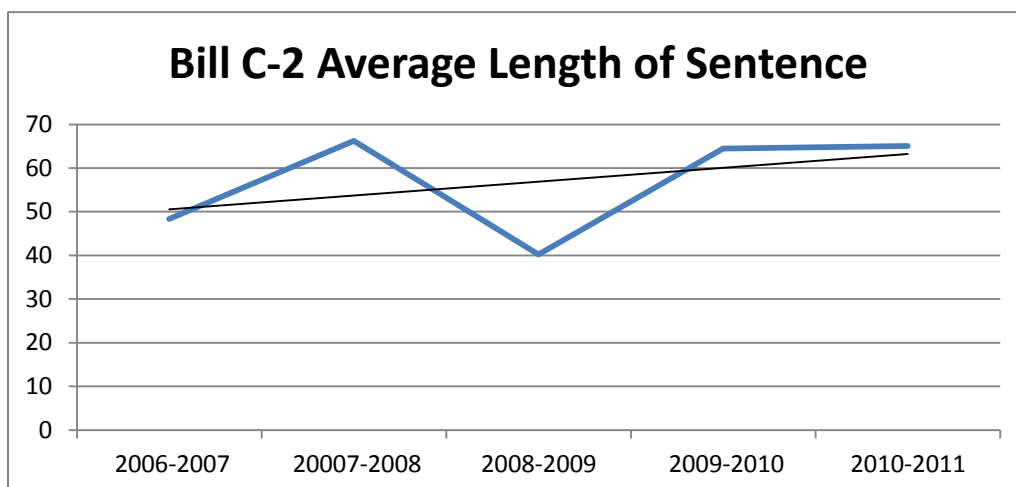
The impact of Bill C-2 was estimated in the 2008 analysis as it relates to the impact of amendments on repeat offences for impaired driving offences. Overall, Newfoundland and Labrador has experienced an increasing trend in bed days served by repeat offenders for impaired driving offences with the exception of 2008-09 (see Figure 11).



**Figure 11: NL Total Bed Days Served for Impaired Driving**

There has been a 29% increase in bed days for impaired driving offences from 2006-07 to 2010-11. In 2008-09 the number of custody days is approximately half of the other years and no explanation can be given for the significant drop in bed days in this year. As shown in Figure 11, the horizontal line trending across the graph depicts an upward inclination in overall impaired driving bed days annually verifying the 29% increase. While there was a significant drop in the number of bed days served in 2008-09 NL is still reporting an upward trend for these offences.

The average length of sentence appears to be trending upwards with the exception of the anomaly year, 2008-09 ( see Figure 12).



**Figure 12: Bill C-2 Average Length of Sentence, NL**

Bill C-2 also introduced minimum penalties for firearms offences. The effect of admissions for firearms offences is minimal resulting in little or no change on the offender population and bed day count.

Bill C-25 (*Truth in Sentencing*) came into force in February 2010. It is likely to take a minimum of three years to see the full effect of this legislation and it is expected that there will be a significant impact. A range of impact for Bill C-25 was identified using five years of data (from 2005-06 to 2009-10). The range considers a high, medium and low impact. The high end assumes that 100% of admissions will receive one-for-one credit for time served. In this case, the projected impact would be a 33.8% increase in bed days served (18,797 additional bed days or 51 offenders) for Newfoundland and Labrador. The mid-range assumes that 66% of admissions will receive credit for time served. This would result in a 22% increase which is an additional 12,406 bed days or 34 inmates. Finally, the low range assumes that only 33% of admissions will receive one-for-one credit for time served. In this case, the increase would be 11% or 6,203 additional bed days or 17 additional offenders. Figure 13 illustrates that Newfoundland and Labrador is experiencing an increasing trend with respect to the overall custody bed days. This is driven by an increase in remand bed days and is happening despite a decreasing trend in sentenced bed days. In 2009-10 there was an increase in sentenced bed days but a decrease in remand bed days. The decrease in remand may be related to Bill C-25: *Truth in Sentencing Act* coming into force. It remains to be seen how these amendments will impact both remand and sentenced custody bed days over the long term.

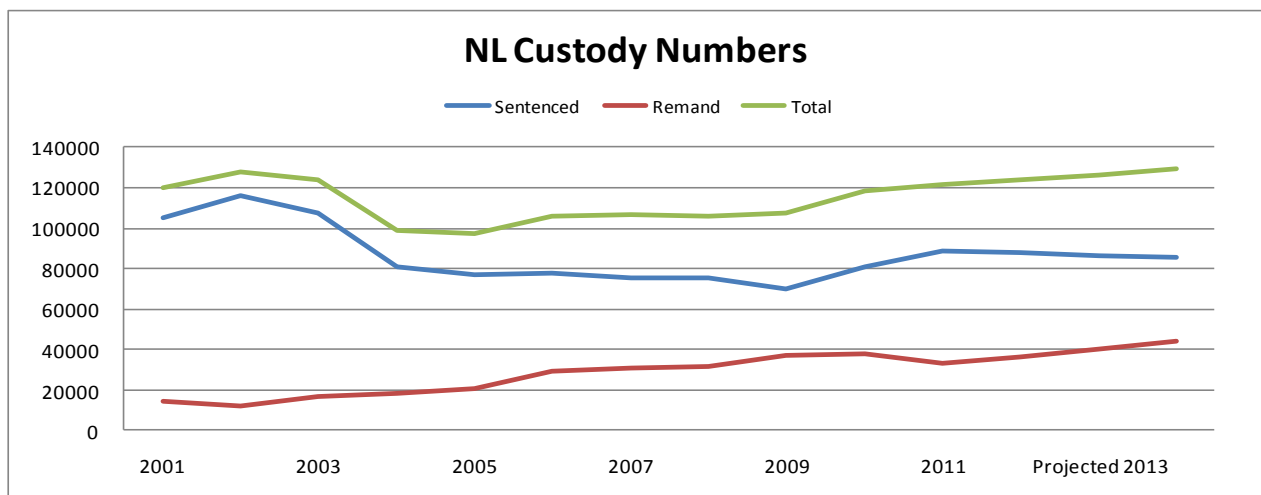


Figure 13: NL Custody Bed Days

## **Prospective Analysis (NL)**

Bill C-10 is a comprehensive Bill with a range of criminal law amendments. The sections of the legislation that have the potential to have the greatest impact on bed days in NL are the changes to the *Controlled Drug and Substances Act*, the exclusions to CSO sentences and the amendments related to sexual predators. Therefore these sections will be the focus of the Prospective Analysis.

Under Bill C-10, amendments have been made to further restrict CSO eligibility. The impact is expected to be between 835 to 6,322 additional bed days or 2 to 17 offenders per year.

The projected impact from *Controlled Drug and Substances Act* cases which previously served custody sentences is approximately 1,858 bed days per year. The projected impact from cases which previously served Probation sentences but now will serve custody time due to minimum mandatory sentences is approximately 7,900 bed days per year. This equates to a total of 9,758 bed days per year or 27 additional offenders.

The amendments which introduced minimum mandatory sentences for the protection of children from sexual predators will also create two new offences: 1) certain sex offenders will now receive custodial sentences instead of community sentences, and; 2) Longer custody terms due to the new minimums. The impact of the two new offences is difficult to predict without historical data to use as a baseline. The introduction of minimum mandatory sentences to protect children from sexual predators is expected to increase the number of custody bed days from between 2,654 to 5,854 days or about 7 to 16 offenders.

The total impact of Bill C-10 is expected to result in an increase in bed days and inmates. The increase in bed days is expected to range from 13,247 to 21,934 which equates to 36 to 60 inmates annually.

### ***Additional Impact Variables (NL)***

Although Atlantic Canada's crime rate has decreased, Newfoundland and Labrador is experiencing increases in both crime and incarceration; however, the Province still maintains one of the lowest crime rates in the country. The increases may be due to many reasons, including but not limited to legislative reform, law enforcement practices, and demographic changes. When examining trends and developing projections of custodial population it is important to

consider these influences in order to better understand current population, judicial conditions and predict future fluctuations.

Overall, Newfoundland and Labrador's general population is expected to increase 2.1% between 2010 and 2015. In real numbers that is 10,812 persons. The young offender age group of 15-19 inclusive is expected to see a 7.6% decrease. The 20-24 age group is projected to see a decrease of 4,625 persons or 14.6%. In terms of the final crime-prone age category of 25-34, there is anticipated to be an overall increase of 3.4% or 2,023 persons.

The latest crime and incarceration rates in 2010 increased by 3.2% and 0.01%, respectively, over the previous year. In other words, the incarceration rate in Newfoundland and Labrador equates to 0.8% of the population. In the past six years, crime and incarceration rates have generally been increasing in Newfoundland and Labrador.

### ***Newfoundland and Labrador Summary***

In recent years, Newfoundland and Labrador's general population and crime rates have been increasing proportionally, therefore, one could expect that the offender population and bed days served would also increase. According to projections, Bill C-10 and Bill C-25 will impact the inmate population in addition to the already growing offender population trend. The projected impact of legislative change for Newfoundland and Labrador is estimated to be between 19,444 to 40,712 more bed days or 53 to 112 offenders annually. Forecasts related to natural growth indicate the additional bed days required to meet demand by 2014 are between 533 and 15,720 days. This projection is based on the ten year trend (2001-2011) in which the first two years were anomalies with lower than normal occupancy. As a result, growth in the prison population in Newfoundland and Labrador is expected to be higher than projected.

Historical prison population growth/decline coupled with legislative reform, could result in three potential scenarios for Newfoundland and Labrador:

1. If Newfoundland and Labrador's prison population experiences stable growth (annual growth rate = 0.5%), then by 2013-14 we could expect anywhere from 408 to 467 offenders in custody.
2. If Newfoundland and Labrador's prison population decreases by 2% (annual growth rate= -1.5%), then by 2013-14 we could expect anywhere from 388 to 446 offenders in custody.
3. If Newfoundland and Labrador's prison population increases by an additional 2% (annual



growth rate = 2.5%), then by 2013-14 we could expect anywhere from 429 to 488 offenders in custody.

## ***NOVA SCOTIA***

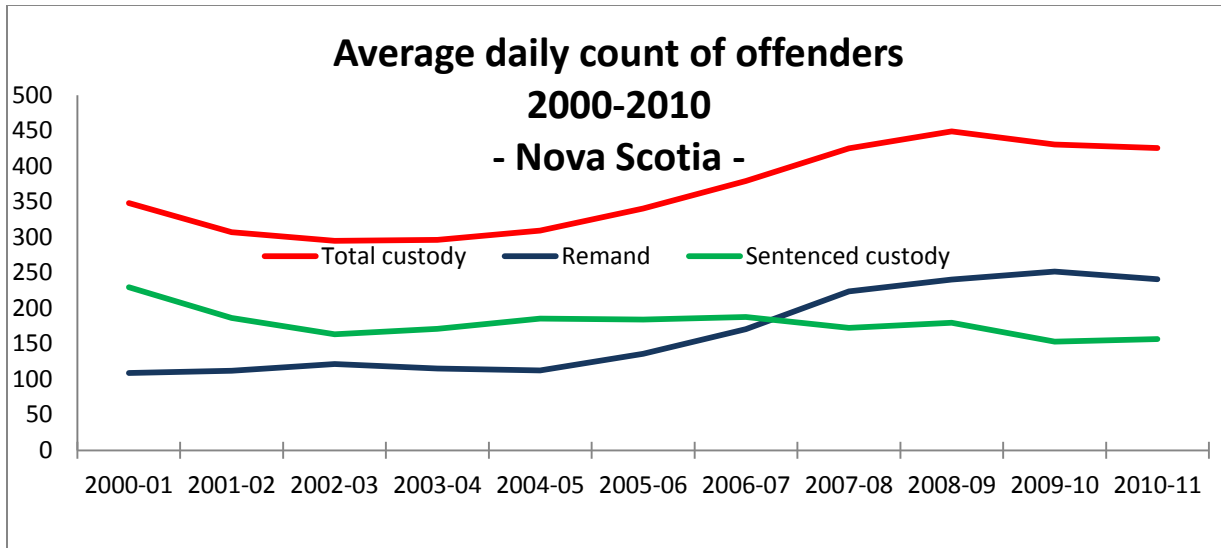
### ***Current Situation (NS)***

Between 2006-07 and 2011-12, the average daily count of offenders in Nova Scotia grew by approximately 124 (from 379 to 503 offenders). The continuation of high custody numbers required NS Correctional Services to respond by increasing capacity. In 2010-11, adult provincial correctional facilities increased their capacity from 452 to 550 persons. This increase was accomplished by adding beds for male offenders to 98 cells originally intended as single cells (double bunking). The addition of 98 beds is directly linked to the increasing average daily count of male offenders, particularly in the Halifax Regional Municipality. In 2011-12, a four-bed female unit was opened at the Cape Breton Correctional Facility and is for women with short-term remands and intermittent sentences. Total institutional capacity in Nova Scotia is currently 554 beds.

In April 2012 a tender was issued for a new 200-bed adult offender correctional facility in Pictou County. This addition will allow for the closure of two outdated facilities and provide a net increase of 154 beds. Nova Scotia Correctional Services believes that this bed increase will improve the ability to better manage offender populations and allow for improved programming opportunities for the offender population. Once construction of the new facility is complete, Nova Scotia will have capacity for 708 offenders.

### ***Trends (NS)***

The average daily count of offenders in custody in Nova Scotia began rising in 2003-04 and peaked in 2008-09 at 449 people (Figure 14).



**Figure 14: Average Count of Offenders 2000-2010 NS**

Over the past five years (between 2006-07 and 2010-11), the average daily count of offenders in NS has increased 12%. This increase was driven by a 41% increase in the average daily count of offenders on remand. At the same time, the average daily count of offenders in sentenced custody declined 17%, which can be primarily attributed to shorter sentences, with the average sentence length decreasing by 8%.

The change observed in average daily counts may also be expressed in terms of bed days. Total annual bed days increased 12% between 2006-07 and 2010-11. There was a 41% increase in remand bed days (up 25,659) and a 17% decrease in sentenced custody bed days (down 11,461) over this time period.

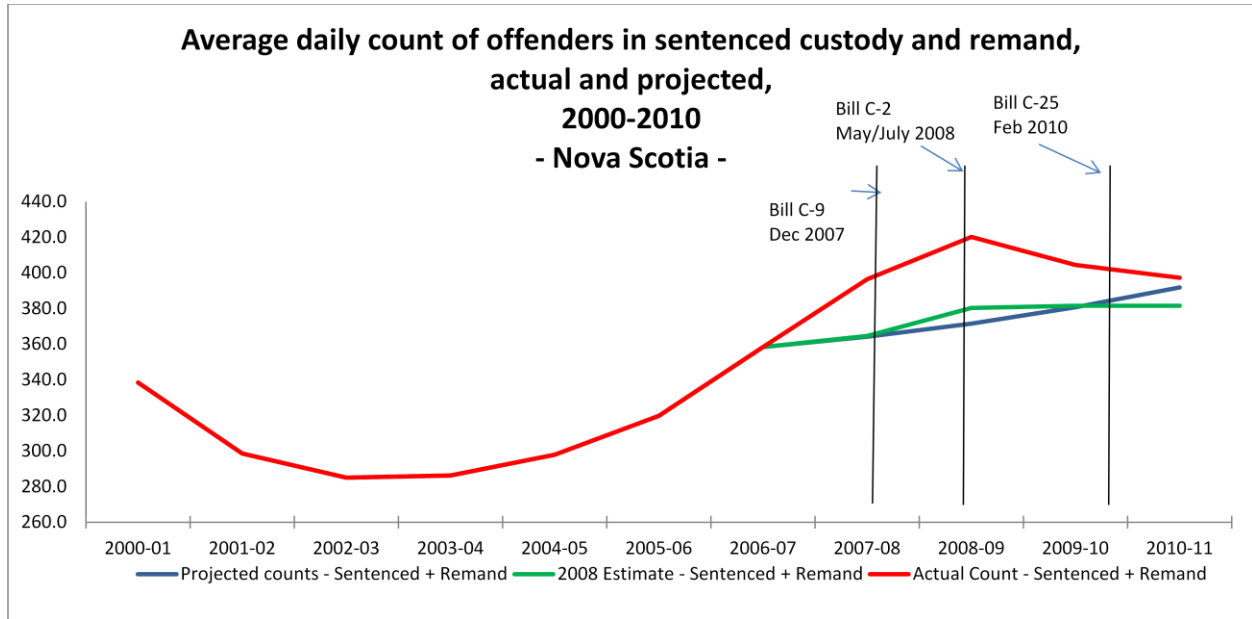
As a result of the overall increase in the number of offenders in custody, Nova Scotia has experienced a 10% increase in its incarceration rate over the 5 year period

### ***Legislative Reform Impact (NS)***

#### **Retrospective Analysis (NS)**

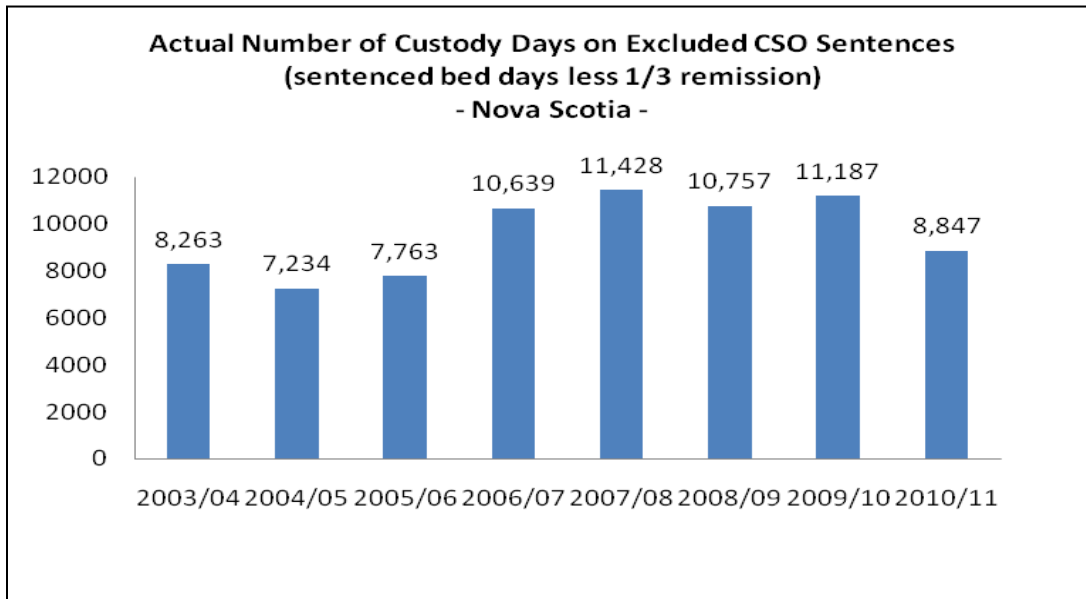
For the past four years in Nova Scotia, the average number of offenders in sentenced custody and remand (combined) on any given day has been higher than the estimates from the 2008 analysis (Figure 15). This gap narrowed in 2009-10 and 2010-11. The higher than predicted custody numbers can be attributed to an increase in the number of offenders in remand. On average, there were 70 more offenders in remand in Nova Scotia in 2010-11 (241) than in 2006-

07 (171), and 132 more than in 2000-01 (109).



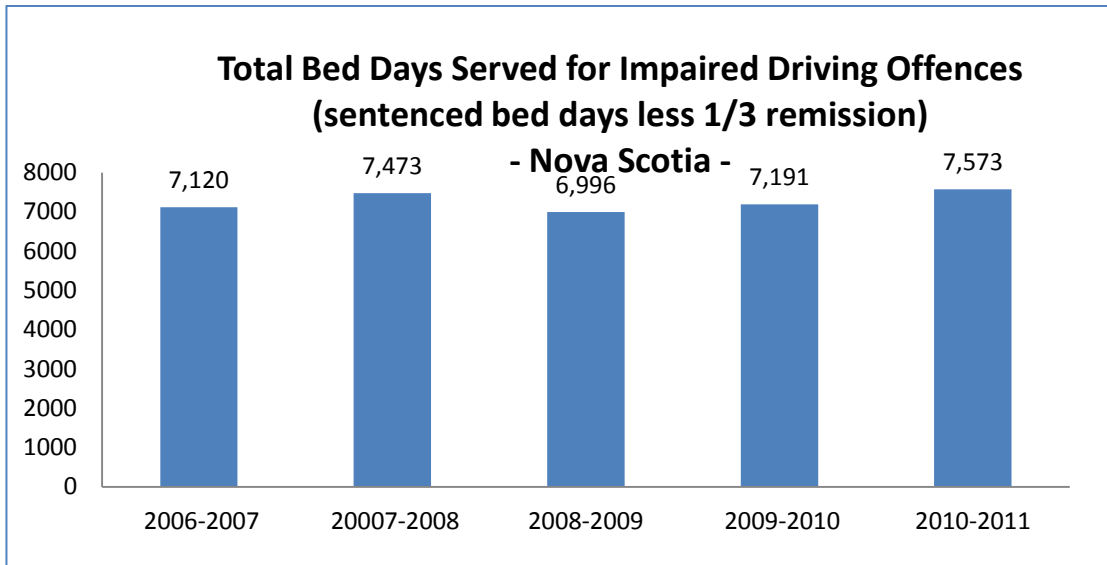
**Figure 15: Average Daily Count of Offenders in Sentenced Custody and Remand, 2000-2010, NS**

In the 2008 analysis, it was projected that Bill C-9 would result in an additional 6,732 bed days annually for Nova Scotia; as a result of offenders no longer being eligible to receive conditional sentences for excluded offences. However, the analysis indicates that there has actually been a decrease of 1,792 bed days for these excluded offences, in comparison to 2006-07 (Figure 16). This discrepancy is due in part to the fact that the 2008 analysis assumed that none of the offences included in Bill C-9 would be eligible to receive a conditional sentence (i.e., all would be excluded). However, a number of these offences are hybrid offences which are only excluded from receiving conditional sentences if they proceed by way of indictment. In other words, those that proceed by way of summary conviction remain eligible to receive conditional sentences. This is evident by the fact that a number of conditional sentences were still granted in Nova Scotia in 2010-11 for excluded offences. The 2008 analysis also assumed that the number of convictions for excluded offences would remain stable. However, in Nova Scotia, there was a decrease in the number of convictions for these offences over the five year period.



**Figure 16: Actual Number of Custody Days on Excluded CSO Sentences, NS**

The second piece that formed part of the 2008 analysis was Bill C-2 *Tackling Violent Crime Act*; specifically the drug impaired driving amendments. In 2008, NS predicted there would be a 1,688 increase in the number of bed days served as a result of drug impaired driving amendments. Since 2008-09, there has actually been an increase of 577 bed days served (Figure 17) and an increase of 13 days in the average length of sentence (from 54 days to 67 days). This discrepancy between what was predicted and what actually occurred is in large part due to a decrease in the number of convictions for impaired driving over this time period. Had the number of admissions remained at 2008-09 levels, the increased sentence length experienced would have resulted in an increase of 1,625 bed days, which is similar to what was predicted in 2008.



**Figure 17: Total Bed Days for Impaired Driving Offences, NS**

The *Tackling Violent Crime Act* also introduced minimum penalties for offences involving firearms. Overall, it does not appear that these changes have had a significant impact on provincial NS correctional facilities as there have been very few admissions for these offence types.

### **Prospective Analysis (NS)**

There are two *Acts* which make up the prospective analysis: the *Truth in Sentencing Act*, Bill C-25, proclaimed in February 2010 and the *Safe Streets and Communities Act*, Bill C-10, which received Royal Assent March 13, 2012.

*Truth in Sentencing Act*: Between 2009-10 and 2010-11, there was a 2% increase in the average daily count of offenders in sentenced custody and a 4% reduction in the average daily count of offenders in remand. Based on 5 years of data (from 2005-06 to 2009-10) it is estimated that the *Truth in Sentencing Act* could result in a net increase of approximately 32,322 bed days per year (additional 89 people). However, this assumes that everyone gets one-for-one credit for time served and that sentencing decisions remain the same. Based on actual bed days, this projection appears to be quite high as only 4 more people were in sentenced custody in 2010-11 as compared to the prior year. As such, it is reasonable to assume that not everyone will get one-for-one credit for time served and that a proportion will get more credit for time served. Accounting for this, we could see anywhere from an additional 10,666 bed days (29 people) to a mid-range of 21,333 bed days (additional 58 people) to a high range of 32,322 bed days per year

(additional 89 people) as a result of the *Truth in Sentencing Act*.

*Safe Streets and Communities Act*: There are three main areas of this Bill which will likely impact adult corrections. These include changes to the *CDSA*; changes to conditional sentence of imprisonment and increasing minimum mandatory's designed to protect children from sexual predators. According to the analysis, the cumulative impact of all changes associated with the *Safe Streets and Communities Act* could increase the prison population anywhere from 9,940 bed days (additional 27 people) to a high of 22,904 bed days (additional 63 people). This is largely because a number of offenders, who are currently serving time in the community, will no longer be eligible for a community sentence.

### ***Additional Impact Variables (NS)***

In addition to legislative reform a range of factors affect the number of bed days utilized in provincial institutions; these may include crime rates, an ageing population, enforcement practices, and judicial decision making.

Between 2006 and 2011, the population of Nova Scotia grew by just over 6,500 people, or nearly 1%. Over the next five years, Nova Scotia is projected to lose nearly 4,000 residents, and to continue to experience a shifting population profile, reflective of a general aging of the population. Between 2006 and 2011, the number of Nova Scotians 35 years of age and older increased by 3.4%, while the number in each of the other age cohorts decreased to varying degrees. Notably, the number under 15 years decreased by 6.6%, while the number of people in the crime-prone cohort of 15-24 years fell by 2.4%. Over the next five years, the percentage of Nova Scotians less than 25 years of age is expected to continue to decline, while the number aged 25 years and older is expected to increase. In particular, the number of people in the crime-prone cohort is expected to fall by 13.9%. This shift in the age profile of the population, combined with relatively slow overall population growth between 2006 and 2016 will result in a slight shift in the projected proportion of the population comprised by each age cohort. For example, whereas 13.3% of the population in 2006 was in the crime-prone cohort between 15 and 24 years of age, just 11.2% are projected to be in this cohort in 2016.

Between 2006 and 2010, the overall crime rate in Nova Scotia declined 14%, from 8,081 to 6,980 incidents per 100,000 residents. The rate of violent crime decreased 17% during this time, while the property crime rate decreased 16%, and other crime increased by 6%.

Overall crime severity<sup>3</sup> in Nova Scotia remained stable in 2010. Crime severity has gone down 22% since peaking in 2004. The severity of violent crime decreased by 6% in 2010,

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<sup>3</sup> Crime Severity is the relative seriousness of one crime in comparison to other crimes.

following a slight increase between 2008 and 2009. The severity of non-violent crime in the province increased 2% in 2010 after five consecutive years of decline.

While overall crime and crime severity in Nova Scotia declined between 2006 and 2010, the adult charge rate increased 6%. Specifically, the charge rate for violent and property offences declined while the charge rate for other crime increased by 42%. Interestingly, this growth was driven primarily by an increase in charges related to the administration of justice, most notably *failure to comply with an order* and *fail to appear*.

Higher charge rates may partially account for the 10% increase in incarceration rates which Nova Scotia experienced between 2006-07 and 2010-11. Of course, there are many factors that influence how and why crime rates and incarceration rates increase and/or decrease including changing demographics, legislative reform, law enforcement policies and practices and crime control policies. There are also broader social and economic influences such as employment rates, substance abuse and mental health issues.

### ***Nova Scotia Summary***

The custody population fluctuates on an ongoing basis due to a number of variables in the system. It is important to identify the inherent fluctuations before examining the impact of legislative reform. Over the past 10 years, the number of bed days served in Nova Scotia, has increased, on average, 2% per year. If the growth rate were to remain stable at 2%, it is anticipated that bed days would reach 165,206 in 2013-14. It is also important to take into account a possible increase or decrease in the growth rate. Assuming an increase or decrease of 2% in the annual growth rate, Nova Scotia could expect the range to be somewhere between 155,925 to 174,848 bed days by 2013-14.

The analysis indicates that the *Truth in Sentencing Act* could result in somewhere between 29 and 89 additional people in provincial custody. This could be further compounded by the *Safe Streets and Communities Act* which could result in somewhere between 27 and 63 additional people in provincial custody<sup>4</sup>.

Historical prison population growth/decline coupled with legislative reform, could result in

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<sup>4</sup> The number of people in the high impact scenario (89 + 63 = 152 people) does not equal the number of beds in the high impact scenario found in Table 1 (151 beds) due to rounding.

three potential scenarios for Nova Scotia:

1. If Nova Scotia's prison population experiences stable growth (annual growth rate = 1.9%), then by 2013-14 we could expect anywhere from 509 to 604 offenders in custody.

2. If Nova Scotia's prison population decreases by 2% (annual growth rate = -0.1%), then by 2013-14 we could expect anywhere from 484 to 578 offenders in custody.

3. If Nova Scotia's prison population increases by an additional 2% (annual growth rate = 3.9%), then by 2013-14 we could expect anywhere from 535 to 630 offenders in custody.

With the new facility, Nova Scotia will have the capacity for 708 offenders, however it is critical to note that safe and quality corrections requires capacity to deal effectively with peak demand and the criminogenic needs of the offender population. These components, peak demand and criminogenic needs, have not been built into this model.

## ***PRINCE EDWARD ISLAND***

### ***Current Situation (PEI)***

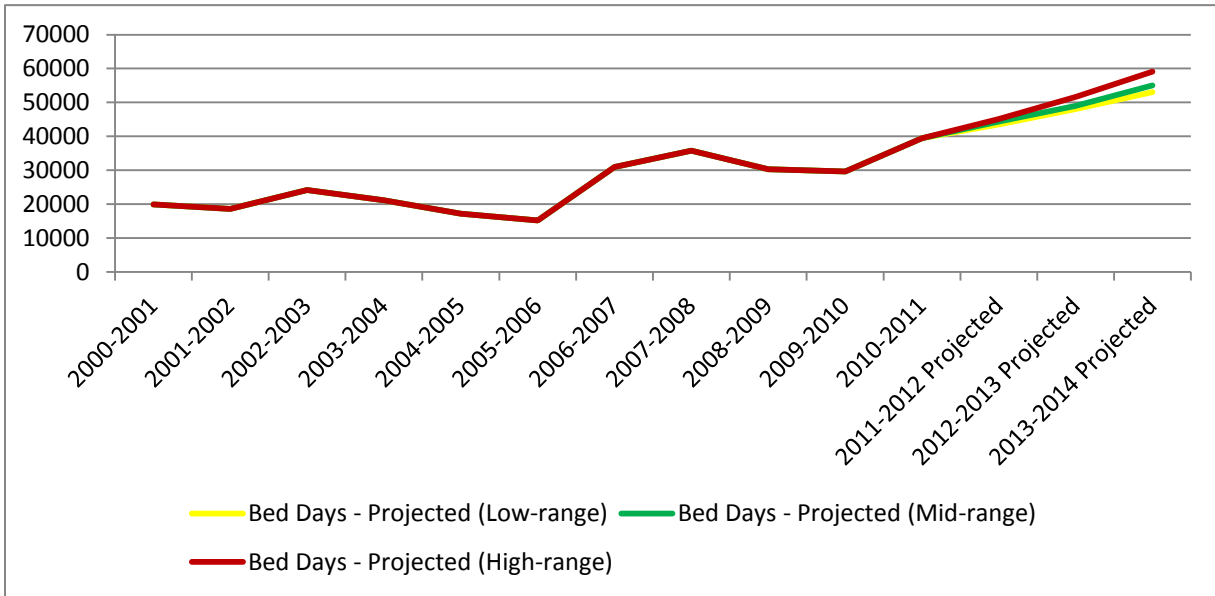
In the last four years Prince Edward Island has seen an increasing number of bed days for sentenced offenders while remand counts have remained relatively static. Prince Edward Island is a small jurisdiction with limited capacity to deal with peak demands. With the pressure of increased demand and as average daily counts approach capacity levels there is heightened concern about our ability to safely manage the diverse offender population. For example, in 2010, bed days for women offenders increased by 112%. Our current rated capacity for women offenders is four and women offender counts peaked at 21 during the period of this analysis

In 2010, the Provincial Correctional Centre increased capacity by 48 beds to house offenders on intermittent (weekend) sentences. This served to somewhat mitigate overcapacity on weekends but has not addressed overall capacity or infrastructure challenges. The infrastructure is such that offender placement based on risk and classification is seriously compromised at peak demand.

Increases in minimum mandatory sentences, restrictions on the use of conditional sentences and limitations on credit for time served on remand have all contributed to the substantial growth of the prison population in Prince Edward Island over the last decade (see Figure 18). The average growth in the Prince Edward Island prison population (sentenced and remand) from



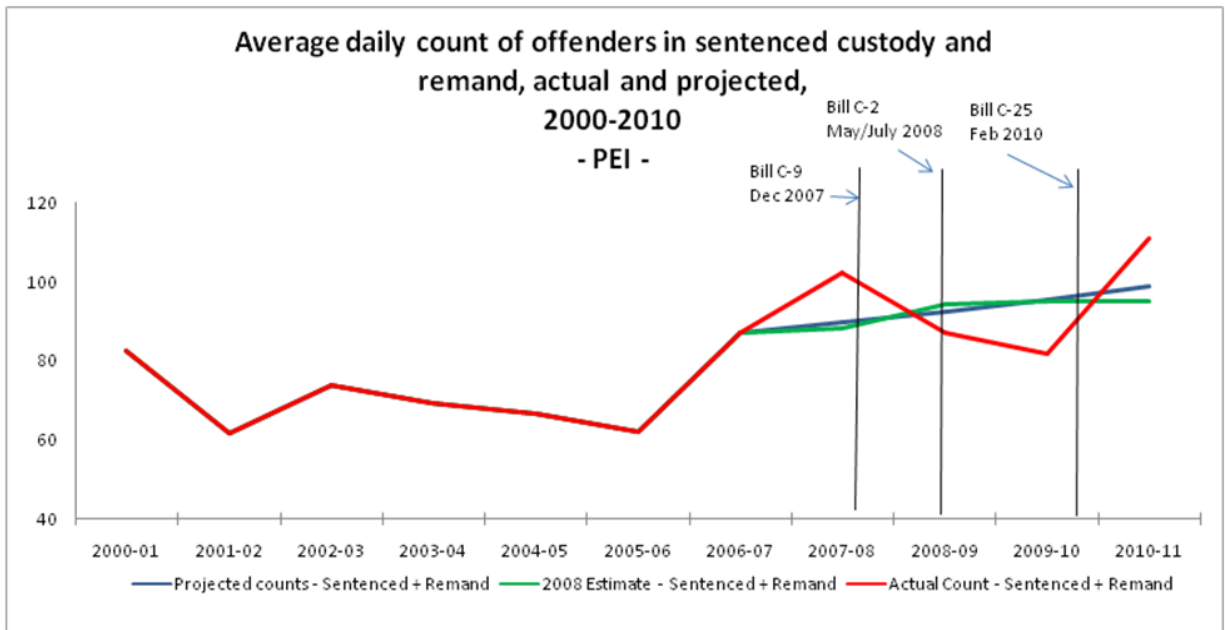
2001 to 2011 was 11.5%. This decade was marked by significant fluctuations in the number of custody bed days utilized in the province. The greatest annual increase was 112.1% in 2006-07 and the largest decline was in 2004-05 at -20.0%.



**Figure 18: PEI Sentenced and Remand Bed Days, 2000-2014**

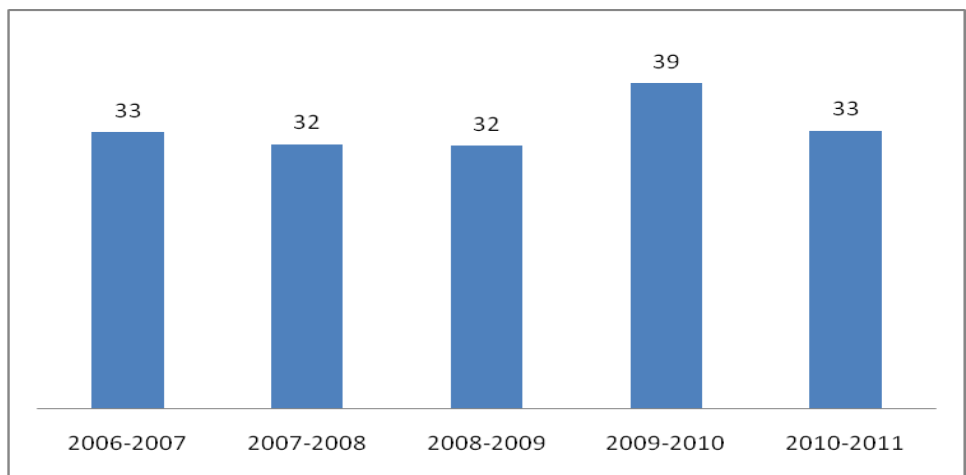
***Trends (PEI)***

In 2010-11 Prince Edward Island had the highest overall count in 10 years. Since 2007, the average number of offenders in sentenced custody and remand (combined) on any given day has been higher than both the estimates from the 2008 analysis and projected counts based on the historical growth rate (see Figure 19).

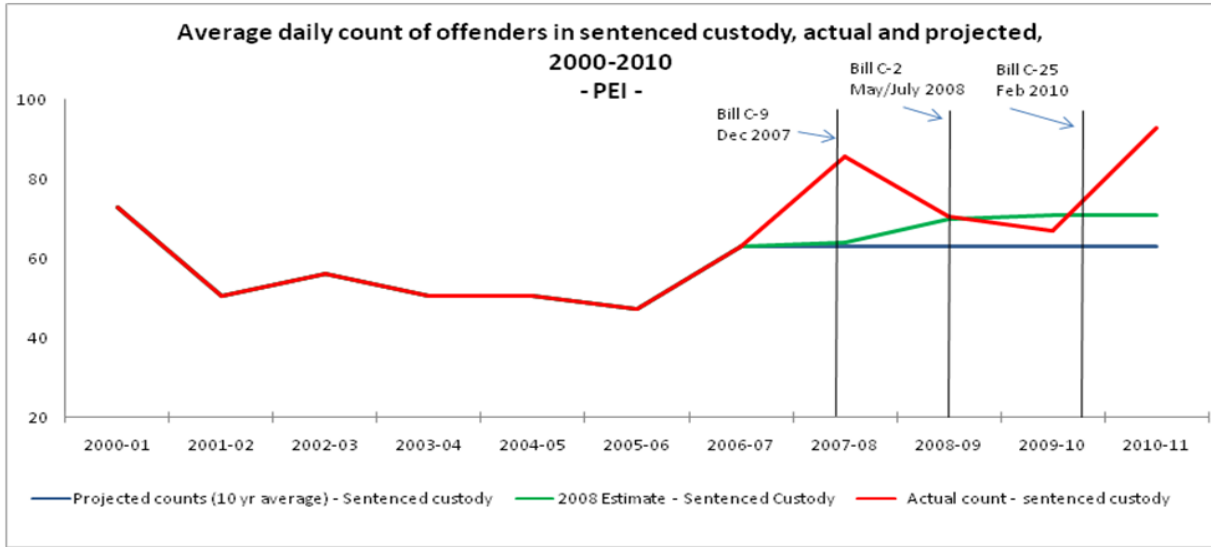


**Figure 19: Average Daily Count of Offenders in Sentenced Custody, 2000-2010, PEI**

The higher than predicted custody numbers can be attributed primarily to an increase in the number of sentenced offenders (see Figure 21) as the overall average length of sentence has remained relatively stable since 2006 (see Figure 20).

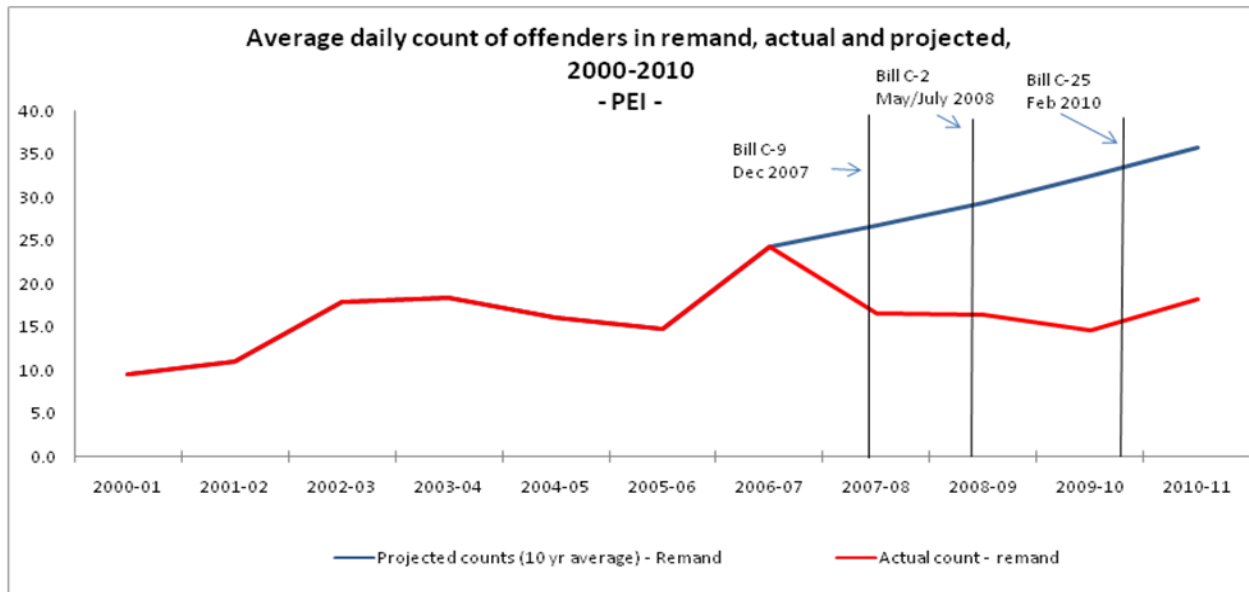


**Figure 20: Average Length of Sentence, 2006-2011, PEI**



**Figure 21: Average Daily Count of Offenders in Sentenced Custody, 2000-2010, PEI**

Remand custody in Prince Edward Island has not continued at the growth rate experienced before 2006-07. Prince Edward Island has actually seen a drop in what was projected based on the ten year average (see Figure 22).



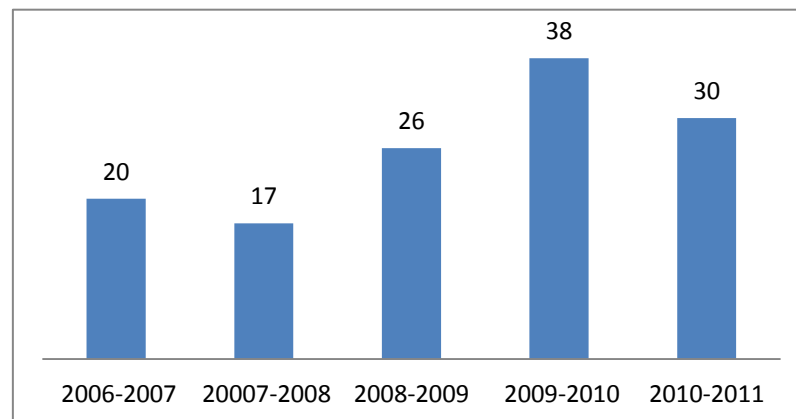
**Figure 22: Average Count of Offenders in Remand Custody, 2000-2010, PEI**

## *Legislative Reform Impact (PEI)*

### **Retrospective Analysis (PEI)**

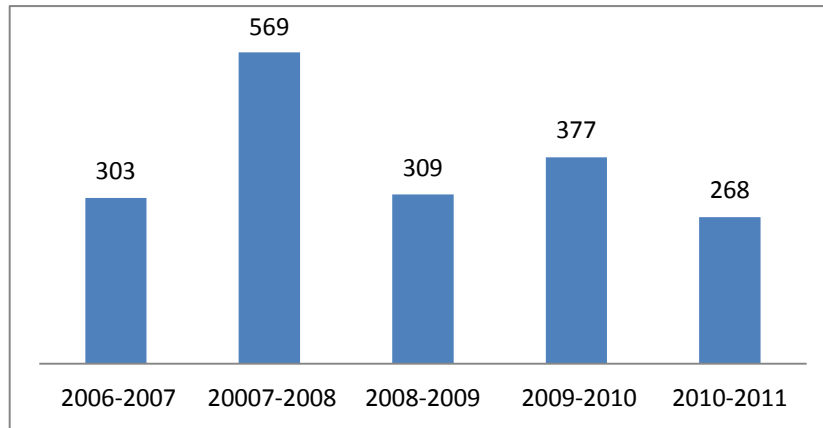
The retrospective analysis of Prince Edward Island data revealed that 2008 estimates for increases to custody days have been realized. Amendments related to impaired driving, CSO sentences and limits on credit for time served on remand have all contributed to the growth in the prison population in Prince Edward Island.

Amendments to the Criminal Code in 2008 regarding impaired driving contributed to an increase in the length of sentence from 13 days in 2006-07 to 30 days in 2010-11 (see Figure 23), the average growth rate for length of sentence over the four years since 2006-07 is 15.6 %. An 8.8% increase in the number of admissions under Criminal Code Sections 253 and 254 also helps to explain the overall increase in bed days to 2011 (see Figure 24).



**Figure 23: PEI Length of Sentence for Impaired Driving**

Admissions to custody for impaired driving offences in PEI are high relative to other Atlantic Provinces. This may be attributed to a higher incidence rate per capita and the use of custody sentences of one to three days for first time offenders. In calculating the average length of sentence, the high number of admissions coupled with short sentences for first offenders, lowers the overall average length of sentence and does not truly reflect the length of sentence for repeat offenders. It does however still illustrate the trend to longer sentences.



**Figure 24: PEI Admissions for Impaired Driving**

The amendments to the Criminal Code in 2009 under Bill C-14, which introduced new firearm offences to protect justice system participants, have had no apparent impact in Prince Edward Island.

In December 2007 amendments to the Criminal Code restricted the use of CSOs for over 160 offences. In 2008, it was projected that Bill C-9 would result in an additional 1,377 bed days annually for Prince Edward Island, as a result of offenders being no longer eligible to receive conditional sentences for excluded offences. However, the current analysis indicates that there has actually been a greater increase in bed days than forecast to 2,643 days for these excluded offences, in comparison to 2007-08. These changes have resulted in a corresponding reduction in the number of CSO sentences from 33 in 2007-08 to 14 in 2010-11. In interpreting these numbers it is important to remember that prior to 2007 some of these cases would have received a custody sentence even if they were CSO eligible.

It is expected the *Truth in Sentencing Act* will increase the length of time offenders will serve in sentenced custody. The impact on length of remand is unpredictable given these amendments, the introduction of minimum mandatory sentences for other offences and variable court wait times. If offenders receive credit for time served at one-for-one and custody sentences of an equivalent length are imposed despite the changes to remand credit, we could see as many as 3,655 custody bed days on an annual basis. If this approach is taken only two thirds of the time we would see an additional 2,412 bed days and if one-for-one credit is given one third of the time, 1,206 additional days. The full effect of this increase is expected to be seen in 2011-12 as

the amendments only came into force in February 2010. This is not a cumulative increase but adds to the total number of bed days on an annual basis.

Amendments to the Criminal Code on firearm offences which came into force in 2008 have had no effect in Prince Edward Island. For the four offences that saw increased minimum mandatory sentences, Prince Edward Island has had no admissions to custody in the seven years examined.

### **Prospective Analysis (PEI)**

The prospective analysis suggests that the amendments contained in Bill C-10 *Safe Streets and Communities Act* will contribute to continued growth in the prison population in Prince Edward Island.

Under Bill C-10, amendments have been made to further restrict CSO eligibility. It is expected that this round of amendments will increase bed days for excluded offences by 6 to 406 additional bed days per year.

In Prince Edward Island the rate of admissions for CDSA offences has been relatively stable over the past five years. Amendments to the CDSA under Bill C-10 are expected to increase custody bed days in Prince Edward Island as some offenders who previously received a community based disposition for offences under Sections 6 and 7 CDSA will now receive a mandatory custody term. Application of the new minimums to the average number of admissions and length of sentence, suggests Prince Edward Island will see an increase under the CDSA of 3,526 bed days. This total results from increases related to new admissions, 1,714 bed days and longer sentences, 1,812. These increases are the result of both the minimum sentences for simple convictions under the CDSA and the presence of aggravating factors during the commission of the offence. This is a conservative estimate based on a point in time manual file review.

The introduction of minimum mandatory sentences designed to protect children from sexual predators and the creation of two new offences is also expected to increase custody bed days in the Prince Edward Island. While the number of offenders admitted to custody has been stable over the past seven years, these changes mean certain sex offenders who, in the past, would have received a community-based sentence will now receive a custodial sentence and other sex offenders will receive a longer custody term given the new minimum penalties. The impact of

the two new offences is difficult to predict without historical data to use as a baseline but the introduction of minimum mandatory sentences is forecast to increase the number of custody bed days from between 77 to 372 days.

### ***Additional Impact Variables (PEI)***

There are many factors that influence how and why crime rates and incarceration rates increase and/or decrease including changing demographics, law enforcement policies and practices and crime control policies. There are also broader social and economic influences such as employment rates, substance abuse and mental health issues. Legislative reform is one element in a range of events that impacts Corrections in Prince Edward Island.

A look at demographics in Prince Edward Island suggests the Island has an aging population which should translate into a decrease in the offender population. The median age on Prince Edward Island on July 1, 2011 was 42.2. The median age in 2001 was 37.6 and 32.8 in 1991. The under 45 population has declined by 0.8 per cent since 2006, while the population aged 45 and over has increased by 14.7 per cent (PEI Department of Finance and Municipal Affairs, 2011).

The crime rate in Prince Edward Island declined 7.2% between 2000 to 2010. During the same period the severity of crime in the Province decreased by 16% (Statistics Canada, 2010). While, incarceration increased rates have increased 97% in the last decade.

### ***Prince Edward Island Summary***

In summary, criminal law reform is a contributing factor to the growing prison population in Prince Edward Island. A stable growth rate plus increases in the number of custody beds related to legislative reform means Prince Edward Island can expect to see between 4,815 and 7,960 additional bed days by 2014 in Prince Edward Island. This is the equivalent of 14 to 23 additional offenders. The low end of the range is a conservative estimate and we can expect to see this increase at a minimum.

Historical prison population growth coupled with legislative reform could result in three potential scenarios for Prince Edward Island:

1. If Prince Edward Island's prison population experiences stable growth (annual growth rate = 12.9%), then by 2013-14 we could expect anywhere from 167 to 175 offenders in custody.
2. If Prince Edward Island's prison population decreases by 2% (annual growth rate = 10.9%), then by 2013-14 we could expect anywhere from 159 to 167 offenders in custody.
3. If Prince Edward Island's prison population increases by 2% (annual growth rate = 14.9%), then by 2013-14 we could expect anywhere from 175 to 184 offenders in custody.

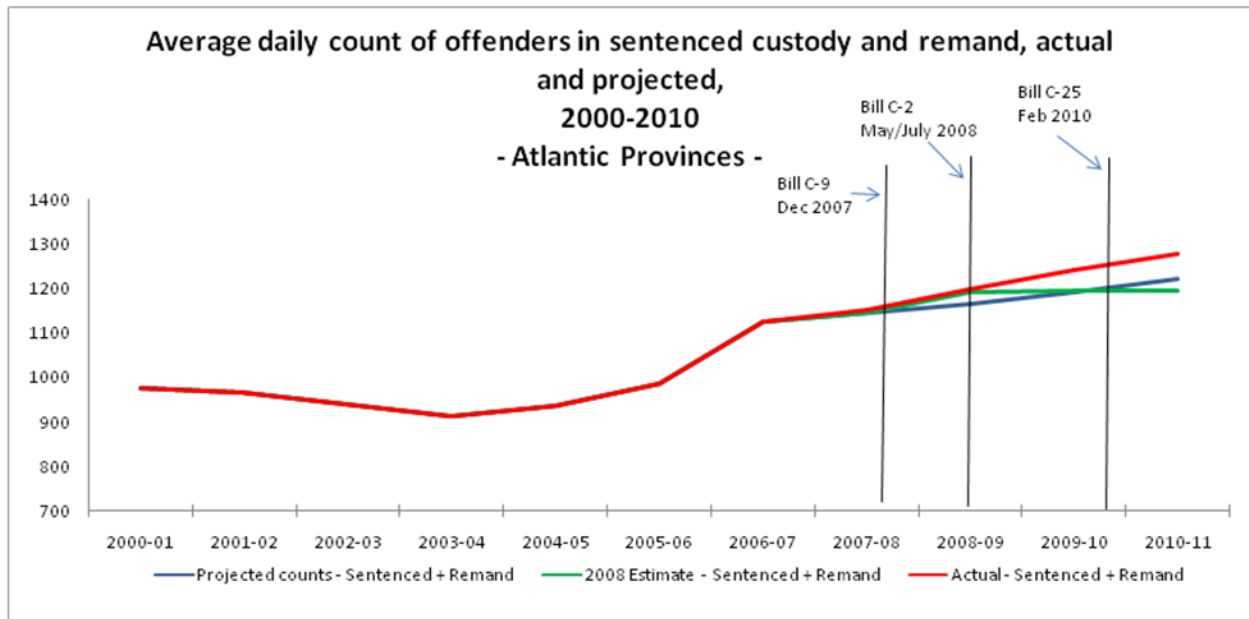
Prince Edward Island does not currently have the capacity to manage any of the ranges predicted in the scenarios derived from the impact analysis.

## **REGIONAL SUMMARY**

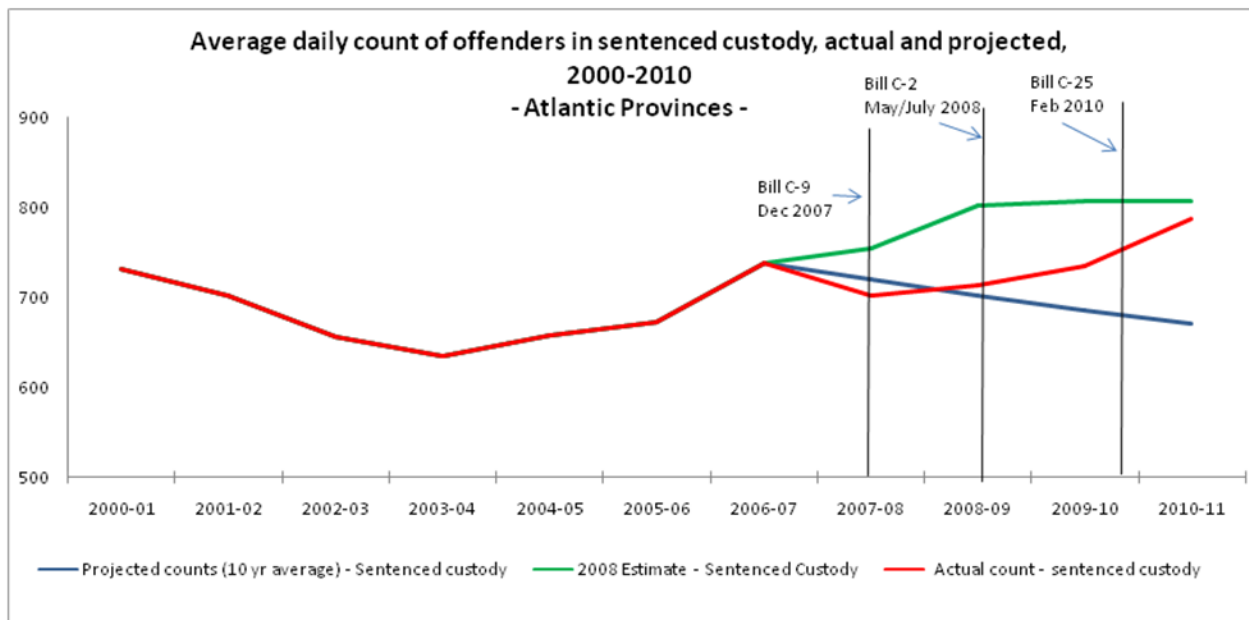
Crime is down in Atlantic Canada and across the country (Statistics Canada, 2010). A number of factors have contributed to this reduction: changing demographics mean the number of men of the age category most likely to be involved in criminal activities is declining; enforcement has increased; and more effective interventions aimed at crime prevention and rehabilitation. As a consequence of criminal law reform which increases minimum mandatory penalties and creates new offences, and despite the falling crime rate in this Region, the number of custody bed days continues to rise.

The retrospective analysis confirmed there has been an increase in custody bed days in Atlantic Canada (see Figure 25). It appears from the analysis that amendments related to conditional sentences, credit for time served and impaired driving have had the most impact to date on Corrections in the Region. There has been only a handful of custody sentences recorded for firearms offences across the Region in the past seven years. This may mean these offences have not been captured in data collection as the most serious offence or that these offences are simply not common in the Atlantic Provinces.



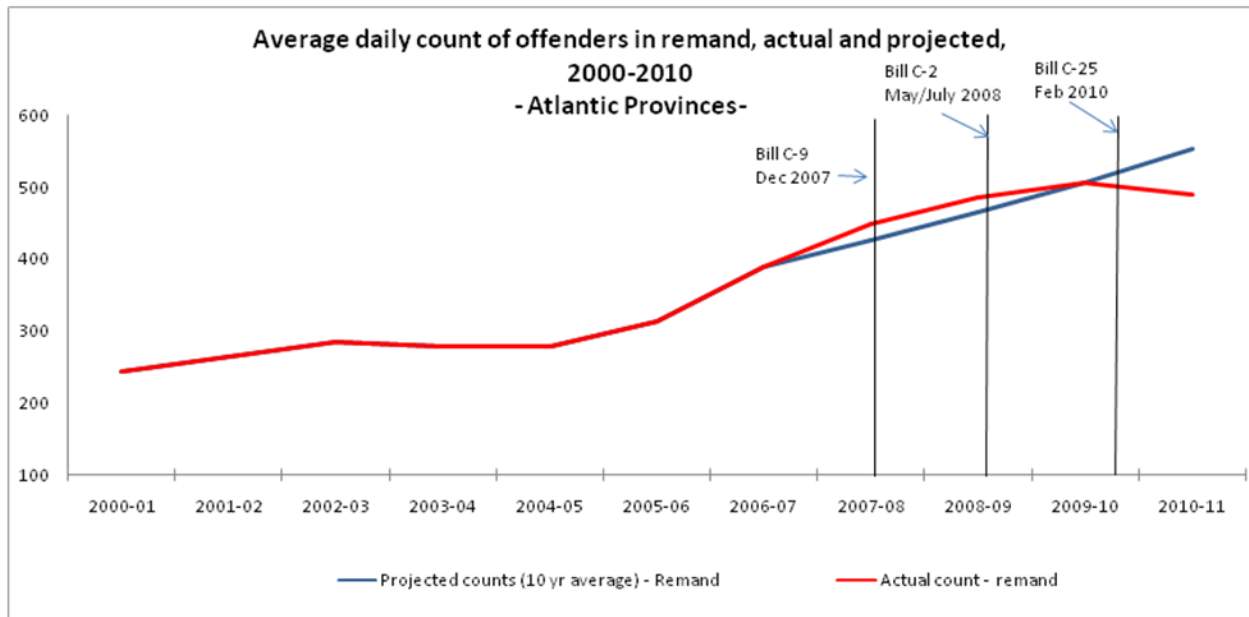


**Figure 25: Average Daily Count of Offenders in Sentenced Custody and Remand, 2000-2010, Atlantic Provinces**



**Figure 26: Average Daily Count of Offenders in Sentenced Custody, 2000-2010, Atlantic Provinces**

In NB, NL and Prince Edward Island the increase in custody bed days was due primarily to growth in the sentenced custody numbers while in NS a larger remand population accounts for the increase in total bed days (see Figure 26).



**Figure 27: Average Daily Count of Offenders in Remand Custody, 2000-2010, Atlantic Provinces**

In terms of the findings on the prospective analysis, the majority of impact regionally will result from the introduction of minimum mandatory sentences for drug offences and sex offences, along with further restrictions on the use of conditional sentence orders.

## CONCLUSION

The purpose of this analysis was to determine the impact of criminal law reform on Corrections in Atlantic Canada. The Retrospective Analysis revealed that legislative amendments that have come into force in recent years have contributed to growth in the prison population in the Region. The Prospective Analysis focused on new amendments which have been passed but whose full impact has not yet been realized; specifically Bill C-25 *Truth in Sentencing* and Bill C-10 *Safe Streets and Communities Act* (see Table 2).

Bill	Amendments	Jurisdiction								Atlantic Summary	
		NB		NL		NS		PE			
		Impact Range		Impact Range		Impact Range		Impact Range		Low	High
		Low	High	Low	High	Low	High	Low	High		
<b>Bill C-10 Safer Streets and Communities Act</b>	Minimum Mandatory Sentences for Drug Offences	8065		9758		7569		3526		28918	
	Minimum Mandatory Sentences for Sexual Predators	1814 - 3927		2654 - 5854		1860 - 4620		77 - 372		6405 - 14773	
	Restrictions on Use of Conditional Sentences	324 - 6162		835 - 6322		511 - 10715		6 - 406		1676 - 23605	
<b>Bill C-25 Truth in Sentencing Act</b>	Limits on Credit for Time Served	9890 - 29971		6197 - 18778		10666 - 32322		1206 - 3656		27959 - 84727	
<b>Total Range by Jurisdiction</b>		20093 - 48125		19444 - 40712		20606 - 55226		4815 - 7960		64958 - 152023	
<b>Range Reported in Additional Bed Requirements</b>		55 - 132		53 - 112		56 - 151		13 - 22		178 - 417	

**Table 2: Atlantic Summary of Legislative Impacts**

Projections for natural growth in the Region based on a ten year trend (2001 -2011) suggest prison populations in the Region could grow by as much as 99,040 bed days or 104 to 271 additional offenders (see Table 3 ).

Jurisdiction	2010-11 Bed Days	Projected Total Bed Days Required for Natural Growth		Projected Additional Bed Days Required for Natural Growth <sup>5</sup>	
		Low	High	Low	High
<b>New Brunswick</b>	158925	171941	192826	13016	33901
<b>Newfoundland</b>	121586	122119	137306	533	15720
<b>Nova Scotia</b>	145015	155925	174848	10911	29833
<b>Prince Edward Island</b>	39481	53085	59067	13604	19586
<b>Atlantic Region (Total)</b>	465007	503070	564047	38064	99040
<b>Additional Regional Beds Required to Meet Natural Growth</b>				104	271

**Table 3: Atlantic Summary on Bed Requirements for Natural Growth**

In addition to the natural growth in the prison population, it is forecast that criminal law reform will result in between 64,958 and 152,023 additional bed days in Atlantic Canada by 2013-2014 (see Table 2) which equates to between 178 to 417 additional offenders on average per day. The combined projected increases could be between 282 and 688 more offenders per day in Provincial custody in Atlantic Canada by 2014 (See Table 4).

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<sup>5</sup> Totals presented in the table may not equal the sum of figures due to rounding.

Jurisdiction	Estimated Impact of Changes to Legislation Plus Natural Growth (Number of Additional Bed Days and Bed Required) <sup>5</sup>					
	Low			High		
	Natural Growth	Legislative Impact	Total	Natural Growth	Legislative Impact	Total
<b>New Brunswick</b>	13016	20093	33109	33901	48125	82026
<b>Newfoundland</b>	533	19444	19977	15720	40712	56432
<b>Nova Scotia</b>	10911	20606	31517	29833	55226	85059
<b>Prince Edward Island</b>	13604	4815	18419	19586	7960	27546
<b>Atlantic Region (Total)</b>	38064	64958	103022	99040	152023	251063
<b>Atlantic Additional Bed Requirements</b>	104	178	282	271	417	688

**Table 4: Summary of Additional Bed Requirements (Legislative Impacts Plus Natural Growth)**

In determining the actual cost of adding custody beds across Atlantic Canada consideration must be given to requirements for expansion of infrastructure, food and laundry services, mechanical systems, the feasibility of additions to existing facilities; whether a new facility is required, and whether existing facilities are currently operating at or over capacity.

## **Appendix A**

### **Retrospective Analysis**

#### **Data Collection Key**

1. **Actual Count: Sentenced + Remand:** The average daily count of offenders that were physically within the facility in either sentenced custody or remand as reported to CCJS. The 2010-11 average daily count data was obtained from the jurisdictions as it is not yet published by CCJS
2. **Projected Counts (10 year average): Sentenced + Remand:** This measure is intended to estimate the change in correctional facilities population size (sentenced custody and remand) based on historical change and in the absence of new legislation. The year-over-year change was calculated for each year (e.g., percentage change from 1995-96 to 1996-97, etc) over a 10 year period and the average of these year-over-year changes was calculated. Projected counts were then calculated for 2007-08 to 2010-11 using the 10 year average growth rate for each of the four years.
3. **2008 Estimate: Sentenced Custody + Remand:** The average daily count of offenders that would be expected to be within correctional facilities (sentenced custody and remand) based on the increase in bed days estimated in 2008. Figures have been prorated to reflect the actual time that the legislation came into force.
4. **Actual Count: Sentenced Custody:** The average daily count of sentenced offenders that were physically within the facility as reported to CCJS<sup>1</sup>.
5. **Projected Counts (10 year average) Sentenced Custody:** This measure is intended to estimate the change in correctional facilities population size for sentenced custody based on historical change and in the absence of new legislation. The year-over-year change was calculated for each year (e.g., percentage change from 1995-96 to 1996-97, etc) over a 10 year period and the average of these year-over-year changes was calculated. Projected counts were then calculated for 2007-08 to 2010-11 using the 10 year average growth rate for each of the four years.
6. **2008 Estimate Sentenced Custody:** The average daily count of offenders that would be expected to be in sentenced custody within correctional facilities based on the increase in bed days estimated in 2008. Figures have been prorated to reflect the actual time that the legislation came into force.
7. **Actual Count Remand:** The average daily count of remanded offenders that were physically within the facility as reported to CCJS<sup>1</sup>.

8. Projected Counts (10 year average) Remand: This measure is intended to estimate the change in correctional facilities remand population size based on historical change and in the absence of new legislation. The year-over-year change was calculated for each year (e.g., percentage change from 1995-96 to 1996-97, etc) over a 10 year period and the average of these year-over-year changes was calculated. Projected counts were then calculated for 2007-08 to 2010-11 using the 10 year average growth rate for each of the four years.

## Appendix B

### Proposed New Mandatory Minimum Penalties for Serious Drug Offences Schedule 1 drugs (cocaine, heroin, methamphetamine, etc.)

OFFENCE	MANDATORY MINIMUM PENALTY				NOTES
		w/ Aggravating Factor List A <sup>1</sup>	w/ Aggravating Factor List B <sup>2</sup>	w/ Health and Safety Factors <sup>3</sup>	
<b>Production</b>	2 YEARS	n/a	n/a	3 YEARS	
<b>Trafficking</b>		1 YEAR	2 YEARS	n/a	
<b>Possession for the Purpose of Trafficking</b>		1 YEAR	2 YEARS	n/a	
<b>Importing Exporting</b>	1 YEAR	n/a	n/a	n/a	<i>Offence is committed for the purpose of trafficking</i>
	2 YEARS <i>(if more than 1 kg of Schedule 1 substances)</i>				
<b>Possession For the Purpose of Exporting</b>	1 YEAR	n/a	n/a	n/a	<i>Offence is committed for the purpose of trafficking</i>
	2 YEARS <i>(if more than 1 kg of Schedule 1 substances)</i>				

### Proposed New Mandatory Minimum Penalties for Serious Drug Offences Schedule II drugs (cannabis and marijuana)

OFFENCE	MANDATORY MINIMUM PENALTY				NOTES
		w/ Aggravating Factor List A <sup>1</sup>	w/ Aggravating Factor List B <sup>2</sup>	w/ Health and Safety Factors <sup>3</sup>	
<b>Trafficking</b>		1 YEAR	2 YEARS	n/a	<i>Offence would have to involve more than 3 kg of cannabis marijuana or cannabis resin</i>
<b>Possession for the Purpose of Trafficking</b>		1 YEAR	2 YEARS	n/a	<i>Offence would have to involve more than 3 kg of cannabis marijuana or cannabis resin</i>
<b>Importing Exporting</b>	1 YEAR	n/a	n/a	n/a	<i>Offence is committed for the purpose of trafficking</i>
<b>Possession for the Purpose of Exporting</b>	1 YEAR	n/a	n/a	n/a	<i>Offence is committed for the purpose of trafficking</i>
<b>Production 6 - 200 plants</b>	6 MOS	n/a	n/a	9 MOS	<i>Offence is committed for the purpose of trafficking. Maximum sentence will be increased to 14 years imprisonment</i>



<b>Production 201 – 500 plants</b>	1 YEAR	n/a	n/a	18 MOS	<i>Maximum sentence will be increased to 14 years imprisonment</i>
<b>Production more than 500 plants</b>	2 YEARS	n/a	n/a	3 YEARS	<i>Maximum penalty will be increased to 14 years imprisonment</i>
<b>Production oil or resin</b>	1 YEAR	n/a	n/a	18 MOS	<i>Offence is committed for the purpose of trafficking</i>

### **<sup>1</sup> Aggravating Factors List A**

The aggravating factors include offences committed:

- for the benefit of organized crime;
- involving use or threat of violence;
- involved use or threat of use of weapons;
- by someone who was previously convicted of a designated drug offence or had served a term of imprisonment for a designated substance offence in the previous 10 years; and,
- through the abuse of authority or position or by abusing access to restricted area to commit the offence of importation/exportation and possession to export.

### **<sup>2</sup> Aggravating Factors List B**

The aggravating factors include offences committed:

- in a prison;
- in or near a school, in or near an area normally frequented by youth or in the presence of youth;
- in concert with a youth; and
- in relation to a youth (e.g. selling to a youth).

### **<sup>3</sup> Health and Safety Factors**

- the accused used real property that belongs to a third party to commit the offence;
- the production constituted a potential security, health or safety hazard to children who were in the location where the offence was committed or in the immediate area;
- the production constituted a potential public safety hazard in a residential area; and
- the accused placed or set a trap.

SOURCE: Department of Justice Canada (September 2011)

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