May 24, 2024

Cost Estimate for Bill S-230 (Changes to the correctional system)

OFFICE OF THE PARLIAMENTARY BUDGET OFFICER
BUREAU DU DIRECTEUR PARLEMENTAIRE DU BUDGET

The Parliamentary Budget Officer (PBO) supports Parliament by providing economic and financial analysis for the purposes of raising the quality of parliamentary debate and promoting greater budget transparency and accountability.

This report was prepared in response to a request from the Standing Senate Committee on Legal and Constitutional Affairs to estimate the cost of Bill S-230.

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Highlights

The direct cost of new activities required by Bill S-230 is estimated to be $6.8 million annually. This consists primarily of costs associated with participation in new legal processes.

Bill S-230 does not require a direct expansion of psychiatric care or alternative custody arrangements for members of marginalized communities.

Summary

The direct cost of new activities required by Bill S-230 is estimated to be $6.8 million annually. However, the bill is also intended to enable policy changes which would require additional resources, including expanding the use of psychiatric care which could potentially cost up to $2 billion annually, depending on the way in which these changes are interpreted and implemented.

Table EX1
Costs by Clause

Clause	Legal Effect	Direct Cost of Bill ($M)	Cost of Policy ($M)
2	Expanding definition of Structured Intervention Units (SIUs)	$0	NA
3	Mental health assessment must be conducted by qualified professionals	$0	NA
4	Must authorize transfer of patients with disabling mental health issues to hospitals	$0	$0-2000
5	Requiring judicial authorization for SIU stays beyond 48 hours	$5.5	NA
7-10	Authorizing custody agreements with non-indigenous entities	$0	Unknown
11	Allowing applications for reductions in sentences on the basis of unfairness in the administration of that sentence	$1.3	NA
Total		$6.8	$0-2000

Source:
Office of the Parliamentary Budget Officer.

Introduction

This report was prepared in response to a request from the Standing Senate Committee on Legal and Constitutional Affairs to estimate the cost of Bill S-230.

Consistent with international best practices, where a bill would require an agency to perform some activity and performing that activity would require certain resources, the PBO provides an estimate of the cost of the resources needed to comply with the new requirement.[1] We refer to this as the direct cost of the bill. However, this does not mean that the bill authorizes any additional spending. Rather the direct cost of the bill represents an opportunity cost – the resources which would be needed to comply with the new obligations, and which may no longer be available for other responsibilities. Parliament may or may not choose to grant additional future funding to cover these costs, with implications for the resources available to the Correctional Service of Canada (CSC) for its other responsibilities.

Based on our interpretation of Bill S-230, the direct costs of Bill S-230 consist primarily of costs associated with new legal processes. These costs include requiring a court order to confine incarcerated persons to a Structured Intervention Unit for more than 48 hours and responding to applications for reductions in sentences for unfairness in the administration of that sentence.

Costs can also arise indirectly where a bill is intended to enable policy changes which would require additional resources. Those policy changes may or may not be implemented at some future date. We refer to this as the costs of the policy proposal.

Testimonies before the committee focused on the cost of transferring incarcerated persons with disabling mental health issues to contracted psychiatric hospitals and the cost of alternative custody arrangements for members of marginalized communities. However, based on our interpretation of Bill S-230 outlined below, CSC is not required to allocate any additional resources for these activities. Any increase in spending would be a discretionary policy change not required by the Bill.

We cannot provide an estimate of the cost of the policy changes Bill S-230 is intended to enable due to a lack of sufficient detail or context to determine the policy changes being proposed – especially with respect to the share of persons eligible for psychiatric care and alternative custody arrangements, and who should receive such care/arrangements. As a result, this report focuses on the direct costs of Bill S-230.

Clause by Clause Analysis

Clause 2: Expanded Definition of Structured Intervention Units

Currently, the term Structured Intervention Unit (SIU) refers only to areas designated as such. This clause of the Bill would expand the definition of SIUs to include "any area of a penitentiary where a person is separated from the mainstream population and is required to spend less time outside their cell or engaging in activities than is a person in the mainstream population."

This definition can be broken down into three requirements, which must all be met for the definition to apply:

1. The definition applies only to areas of a penitentiary;
2. The definition applies only to persons separated from the mainstream population; and,
3. The definition applies only if the person is required to spend less time out of their cell or engaging in activities than a person in the mainstream population.

Because the clause refers to "areas of a penitentiary", we assume that the definition would not apply to periods of time when restrictions are imposed on part or all the mainstream population, such as during lockdowns. We also assume that this component would exclude restrictions tied to an incarcerated persons' status, such as restrictions flowing from an incarcerated persons' affiliation with a security threat group like a gang, so long as those restrictions are not linked with a specific area of a penitentiary.

The clause also requires that persons be separated from the mainstream population, which means that the clause cannot refer to part of the mainstream population. The term "mainstream population" is not defined but we assume that individuals designated medium or maximum security are still considered to be part of the mainstream population at their institution and are not considered to be in a Structured Intervention Unit, even if they are subject to greater restrictions than a typical person incarcerated in minimum security. We assume that this term would also exclude other areas where incarcerated persons are separated and subject to restrictions to some extent, but are still considered part of the mainstream population of their institution, such as:

- Regional Treatment Centers (psychiatric hospitals for incarcerated persons);
- Secure Units (for women classified as maximum security);
- Structured Living Environments (intermediate mental health care for women);
- Enhanced Support Houses (providing women with additional staffing and access to interventions).[2]

Nevertheless, this change could extend the requirements for Structured Intervention Units to a variety of types of cells, including voluntary limited association ranges, therapeutic ranges, medical observation units, dry cells, and restricted movement cells.

The PBO requested that CSC estimate its capacity and occupancy for each of these types of cells, as well as the additional activities that would be required to meet SIU standards, but CSC did not provide this type of information.[3] Overall, CSC asserts that "extending the same or similar degree of monitoring, documentation, interventions, and oversight/case review found in SIUs to these additional areas, including daily visits from healthcare professional and regular visits from the institutional head, as well as ensuring the at these interventions meet the unique needs of CSC's diverse inmate population, would necessitate significant resources to establish and maintain."[4]

Table 1
Types of Units Potentially within the Scope of Proposed Definition

Unit type	Population Served
Voluntary limited association ranges	Men in maximum security who do not want to integrate in mainstream populations.[5]
Therapeutic ranges	Men in maximum security who do not meet the admission criteria of Treatment Centres, or whose behavioural or security requirements cannot be safely met in a psychiatric hospital setting.[6]
Medical observation units	While typically used for suicide watch, these cells can be used whenever there is a known immediate risk of serious bodily injury or death, such as in cases of communicable diseases, acute mental health problems, or interrupted overdoses.[7]
Dry cells	Incarcerated persons suspected of having ingested contraband or carrying contraband in a body cavity.[8]
Restricted Movement Cells	Temporary detention for incarcerated persons being transferred to an SIU from an institution with no SIU.[9]

Source:
Office of the Parliamentary Budget Officer.

For each type of unit, CSC would have to choose between:

1. Treating the unit as a Structured Intervention Unit, meeting the associated requirements for admission, review, and time out of cell/engaging in activities;
2. Eliminating use of the unit type, potentially by placing incarcerated persons in Structured Intervention Units instead; or,
3. Excluding the unit from the new definition of Structured Intervention units by ensuring that persons are either not separated from the mainstream population or are not required to spend less time outside their cell or engaging in activities than a person in the mainstream population.

CSC has previously expressed the view that the routine on the Voluntary Limited Association Ranges (VLAR) mirrors the "routine of the mainstream population and there are no restrictions related to conditions of confinement."[10] In contrast, the Office of the Correctional Investigators (OCI) reports that "prisoners are often always restricted to their range and conditions of confinement were far more restrictive than SIUs." However, because VLARs are within maximum security men's institutions, the applicable

mainstream comparator group is men in maximum security, who are already subject to greater restrictions. We assume that VLARs will be excluded from the new definition of structured intervention units, or that CSC will implement modest operational changes to ensure VLARs are excluded.

Similarly, CSC views therapeutic ranges as a specialized treatment environment without any requirement to spend less time out of cell or engaged in activities. However, the OCI reports that "Both inmates and staff at all three [visited] institutions reported that individuals were spending up to 23 hours a day in their cells on the Therapeutic Ranges."[11] However, the level of support provided in therapeutic ranges should generally exceed SIU standards. We assume that therapeutic ranges will be subject to the new definition of structured intervention units, but little operational change will be required to meet SIU standards.

Incarcerated persons in medical observation units face restrictions on the time they spend outside their cell and engaging in activities. Given the criteria for admission to medical observation, these persons would generally meet the criteria for admission to a SIU, on the grounds of a risk to the safety of the incarcerated person, the safety of others or the security of the penitentiary. However, we assume the number of persons under medical observation is quite small and most SIU requirements, including regular visits by healthcare professionals, would already be met, especially in Regional Treatment Centres were most medical observation units are located.

Dry cells are for short-term placements of incarcerated persons suspected of having ingested contraband or carrying contraband in a body cavity. These persons would generally meet the criteria for admission to a SIU, since disposal of the contraband would interfere with the associated investigation. Due to the short-term nature of these placements, we assume that few incarcerated persons are in dry cells at a given point in time. As a result, we assume that either SIUs will be asked to serve those cells as well, or some SIU cells will be converted to function as dry cells. As a result, we assume no significant additional resources will be required.

Restricted Movement cells are supposed to be used only temporarily for incarcerated persons being transferred to a SIU, and persons in those cells are supposed to receive the same rights as a person in a SIU.[12] As a result, we assume that restricted movement cells will be considered Structure Intervention Units under the new definition, but no additional resources will be required to meet SIU standards.

In short, the revised definition of SIU would likely not necessitate significant additional resources. Most of the areas that might potentially be affected are either excluded as

part of the mainstream population or excluded because residents are not subject to additional restrictions on their time out of cell or engaging in activities. For therapeutic ranges, medical observation, dry cells, and restricted movement cells, the incremental costs to meet SIU requirements are not expected to require significant resources.

Clause 3: Mental Health Assessments

The CSC is required to conduct mental health assessments for incarcerated persons entering a facility or transferred to a SIU, and those assessments must be conducted by the "portion of the Service that administers health care."[13] CSC interprets this to mean that all incarcerated persons entering a facility or transferred to a Structured Intervention Unit must receive a mental health assessment by a psychiatrist, a psychologist, a psychiatric nurse or a primary care physician who has had psychiatric training.[14]

The bill would impose an additional requirement that mental health assessments must be performed by a medical professional engaged by the CSC who is qualified to do so, or else the Commissioner must authorize the transfer of the patient to a hospital or mental health facility for the purposes of such an assessment. However, because all mental health assessments are already performed by qualified medical professionals this does not appear to impose any additional operational burden.

The CSC indicated that all new admissions are referred for a mental health assessment, and 97% of admissions in the last six months had at least initiated the process by completing a health assessment with a nurse on their first day; however, the CSC did not know the share of incarcerated persons who had received a mental health assessment.[15]

The CSC noted the mental health assessments may not occur immediately because the incarcerated person is not available, such as when they are attending a trial on other chargers. However, Bill S-230 does not require that mental health assessments occur within 30 days of admission, only that a referral be made within that timeline and that CSC staff be available for such an assessment. The CSC indicated that it has the capacity to have a medical professional conduct mental health assessments within a reasonable period of time in all facilities at all times.[16] As a result, very few, if any incarcerated persons would need to be transferred to hospitals or mental health facilities for their initial mental health assessment.

Clause 4: Transfers to Hospitals

Caring for psychiatric patients in hospitals and mental health facilities is significantly more expensive than average costs for the general population in custody.[17] The cost of health care for people in custody, including psychiatric care, is borne by the CSC whether the care is delivered by the CSC, for example a Regional Treatment Center, or by a provincial hospital under contracts with CSC. As a result, a proposed measure which significantly increased the population in psychiatric care would significantly increase costs for the CSC.

Clause 4 of the bill would require the Commissioner of Corrections to authorize the transfer of all persons in federal custody who have disabling mental health issues to a hospital or mental health facility.

> *Transfers to hospital*
>
> *29.02 If a mental health assessment or an assessment by a registered health care professional concludes that a person who is sentenced, transferred, or committed to a penitentiary has disabling mental health issues, the Commissioner must authorize that person's transfer to a hospital, including any mental health facility, in accordance with an agreement entered into under paragraph 16(1)(a) and any applicable regulations.*

In the bill, "disabling mental health issues" is not defined. As far as we can ascertain, the term is novel and does not align with terms used in other contexts, such as provincial criteria for voluntary or involuntary admission to mental health facilities, clinical definitions like serious mental illness, or definitions of disability in the context of pension benefits and social assistance for individuals with disabilities. Although section 37.11 of the *Corrections and Conditional Release Act* identifies some non-exhaustive grounds for concluding that confinement to a structured intervention unit is having detrimental impacts on a person's health, the definition of "disabling mental health issues" is not linked with these grounds.

The term could be interpreted to include a majority of persons in custody, as prior research has found that 73% of males admitted to federal custody meet the criteria for a current mental disorder. Of those, most have moderate to severe impairment of functions.[18] Rates for mental disorders among female incarcerated persons are even higher.[19] These figures relate to mental health status at time of admission and are not necessarily representative of the general population in custody. However, assuming 75%

of incarcerated persons have mental health issues, and 50% of those have disabling mental health issues, this would suggest that about 5,000 incarcerated persons (38% of the 13,000 total population in custody) would be eligible for psychiatric care.

The term could also be interpreted to align with CSC's assessment of level of mental health need. Of the 13,054 persons in federal custody as of April 9th, 2023, 865 were assessed to have considerable or higher need, and 1,759 were assessed to have some need. If the term is interpreted to refer to incarcerated persons with some mental health need (other than low need), the term would include approximately 2,624 incarcerated persons at a given point in time, or about 20% of all incarcerated persons.

Table 2

Number of incarcerated persons by Level of Mental Health Need

Level of Mental Health Need	Number of incarcerated persons	Percent (%) of In Custody Population
No - Low Need	10,430	79.9%
Some Need	1,759	13.5%
Considerable Need or Higher	865	6.6%
Total	13,054	100.0%

Source:
Office of the Parliamentary Budget Officer.

Based on CSC response to PBO Information Request IR0764.

This provision would apply to all persons in federal penitentiaries at all times, including individuals already in the CSC-operated psychiatric hospitals known as regional treatment centres. Also, individuals would have to remain in psychiatric care so long as they continue to have disabling mental health issues.

In 2022-23 CSC had psychiatric care capacity of 654 persons in its Regional Treatment Centers with an occupancy of 495 residents, with 2022-23 average health care costs of $97,989 per occupant, and 2022-23 total costs of $257,911 per occupant.[20]

Table 3
CSC Regional Treatment Center Capacity, Occupancy and Health Care Expenditures in 2022-23

Regional Treatment Centre	Capacity	Occupancy	Health Care Expenditure
Atlantic Region – Shepody Healing Centre	38	29	$3,547,642
Quebec Region – Mental Health Centre	119	85	$7,374,548
Ontario Region – Treatment Centre	125	108	$11,995,221
Prairies Region – Psychiatric Centre	204	136	$16,019,460
Pacific Region – Health Centre	168	137	$9,567,798
Total	654	495	$48,504,668

Source:
Office of the Parliamentary Budget Officer.

Based on CSC response to PBO Information Request IR0764.

However, clause 4 indicates that CSC must authorize the transfer of incarcerated persons specifically to "a hospital, including any mental health facility, in accordance with an agreement entered into under paragraph 16(1)(a) and any applicable regulations." Paragraph 16(1)(a) refers specifically to exchange of service agreements entered with a province. The CSC has signed 3 agreements under s 16(1)(a) providing for a total capacity of 21 beds, plus up to 500 additional bed days on an as-needed basis.

The CSC considers its funding agreements with psychiatric hospitals to be confidential and prohibited the PBO from disclosing those values either directly or indirectly by disclosing the CSC's estimated marginal cost for a large expansion of psychiatric care capacity.[21] However, adjusting our prior estimate for inflation we estimate the daily cost of psychiatric care at around $1,040 per day in 2023, or approximately $380,000/year.[22] This reflects only the incremental cost of in-patient hospital services. Assuming that CSC could procure sufficient additional capacity, transferring 2,624 to 5,000 incarcerated persons to psychiatric care would cost approximately $1-2 billion annually.

However, the bill only requires the Commissioner of Corrections to *authorize* the transfer of individuals with disabling mental health issues; it does not require facilities to *accept* those individuals or require the Correctional Services of Canada to contract for sufficient capacity to serve all individuals with disabling mental health issues. In essence, the bill may shift discretion to those contracted facilities to determine who they wish to prioritize and admit for care, within the very limited capacity funded by their contracts with the CSC. As a result, this clause can reasonably be interpreted as not giving rise to any direct financial cost.

The above analysis assumes that the CSC has no obligation to contract for sufficient capacity to serve all individuals with disabling mental health issues. This assumption is significant for two reasons: first, if CSC was obliged to contract for sufficient capacity as a result of this clause, it would incur significant expenses and second, if CSC is obliged to provide contracted psychiatric care irrespective of this clause, the cost of that care would be offsetting an unrealized future legal obligation.[23]

Clause 5: Judicial authorization for confinement beyond 48 hours

Clause 5 of the bill requires the authorization of a Superior Court to continue confinement in a Structured Intervention Unit beyond 48 hours.

In 2022-23, there were a total of 2,056 transfers to a Structured Intervention Unit (SIU). Of these, 1,860 (90%) resulted in a stay lasting more than 48 hours.[24]

This clause will give rise to administrative costs associated with applications to continue incarcerated persons' confinement beyond 48 hours.

We estimate the CSC's cost per application to be about $3,000, consisting of approximately $1,000 each for case preparation by the CSC, representation by the Department of Justice, and escorting incarcerated persons to attend the hearing.[25]

In total, we estimate that requiring the authorization of a Superior Court to continue confinement in a Structured Intervention Unit beyond 48 hours would necessitate 1,860 applications to Superior Court per year, with an average for of $3,000, for a total cost of $5.5 million annually. [26]

These reviews will result in some individuals being released earlier, whether as a result of a Superior Court decision or because CSC does not seek such an authorization or obtain

a decision by the deadline. This should somewhat reduce the population in Structured Intervention Units beyond the 48-hour limit. However, CSC has previously advised the PBO that its costs for Structured Intervention Units are fixed and do not vary with the number of persons in custody so, despite high average costs, it is unlikely that there would be corresponding cost-savings from reducing occupancy in Structured Intervention Units.

Clauses 7 to 10: Agreements with Non-Indigenous Entities for the Provision of Correctional Services

Clauses 7 through 10 of Bill S-230 authorize the Minister to enter into agreements with non-indigenous entities for the provision of correctional services to marginalized groups. The Commissioner is specifically obligated to take reasonable steps to identify potential non-indigenous entities, and to seek to transfer persons to contracted entities.

A large share of persons in custody are members of marginalized groups. To start, almost half of persons in custody are not white.[27] Among those who are white, many more would qualify on other grounds like age, sex, sexual orientation, or disability.

CSC's costs under these agreements could be higher or lower than the costs for care and custody of those same persons in the general prison population. For its agreements providing for custody for indigenous persons, CSC has a contracted capacity for 205 persons, with average occupancy of 92 and $13 million in total annual expenditures (including both CSC salaries and funding provided), giving an average cost of $64,322 per bed and $143,327 per occupant. However, arrangements with new providers could differ significantly.

Ultimately, CSC retains discretion regarding whether to enter into agreements with any particular entity, what it will pay, and what security it will require. Entering into agreements would be a distinct policy decision not mandated by the bill. While these clauses would authorize payments to a new type of entity, the clauses don't directly require any additional funding or create an individual entitlement to be transferred.[28]

CSC would face some administrative burden associated with its obligation to take reasonable steps to identify potential non-indigenous entities who could provide

correctional services to marginalized groups, but these costs would be minor in the absence of any actual agreement and transfer of persons.

Clause 11: Reductions in sentences for unfairness in the administration of that sentence

Clause 11 would allow persons sentenced to federal custody to apply for a reduction in their sentence based on unfairness in the administration of their sentence.

There is no clear basis upon which to estimate the volume of applications which could be brought. Incarcerated persons could potentially have a large number of complaints. CSC reports receiving 20,000 grievances in 2022-23.[29] The Office of the Correctional Investigator (OCI) reported receiving 4,897 complaints.[30] However, a court application would entail significantly greater legal costs and potential benefits for the complainant.

There is no clear analogue upon which to estimate application volumes. While the idea has been raised by academics, we aren't aware of any jurisdiction where incarcerated persons are able to seek a reduction in their sentence based on unfairness in the administration of their sentence.[31]

Perhaps the best potential analogue is applications for financial damages brought by incarcerated persons in relation to unfairness in the administration of their sentence. Based on a review of Canlii, there have been relatively few cases where incarcerated persons have been awarded damages against the Correctional Service of Canada, but this includes the Brazeau, Reddock and Gallone class actions where the affected class includes thousands of people over a period of several decades. However, unlike in a class proceedings seeking financial damages, incarcerated persons would not be able to access legal services through contingency arrangements linked with the value of damages awarded. Also, the two remedies would likely be exclusive, with incarcerated persons receiving either damages or a reduction in sentences. Many incarcerated persons will not have the legal resources to pursue applications without assistance from prison law clinics or non-profits.

Of the costs associated with these potential applications, the greatest potential cost is the costs of legal representations. In 2022-23, the CSC had a notional cost of $1.76 million for 9,505 practitioner hours across 100 legal files, representing an average cost

of $17,602 per file. However, these are not necessarily representative of the cost of opposing applications for reductions of sentences. The average costs per criminal case are much lower for both the government and defendants, especially for the large share of cases which settle.[32]

CSC would also face costs associated with preparing evidence for use by legal representatives and escorting incarcerated persons to participate in oral hearings.

As a rough order of magnitude estimate, if incarcerated persons bring 1,000 applications per year, with 80% being settled at a cost of $1,000 per case, and 20% requiring a hearing at an average cost of $5,000 per case, with $3,000 of that being legal costs borne by the provinces in 80% of cases, the total federal cost would be about $1.3 million.

These new processes would also place an additional burden on the courts, especially provincial Superior Courts, but those costs fall under provincial jurisdiction.

Notes

[1] Congressional Budget Office, Frequently Asked Questions About CBO Cost Estimates.

[2] Correctional Service Canada (CSC), Commissioner's Directive 578: Intensive Intervention Strategy in Women Offender Institutions/Units.

[3] CSC response to PBO Information Request IR0764.

[4] CSC response to PBO Information Request IR0764.

[5] Office of the Correctional Investigator (OCI), 2021-2022 Annual Report of the Office of the Correctional Investigator.

[6] OCI, 2018-19 Annual Report of the Office of the Correctional Investigator.

[7] CSC, Commissioner's directive 800-3: Consent to health service assessment, treatment and release of information.

[8] CSC, Interim Policy Bulletin 684 under Commissioner's Directive (CD) 566-7 - Searching of Offenders.

[9] CSC, Fact sheets for employees: Structured Intervention Units.

[10] CSC, Response to the 49th annual report of the Correctional Investigator 2021-2022.

[11] OCI, Office of the Correctional Investigator Annual Report 2019-2020.

[12] CSC, Fact sheets for employees: Structured Intervention Units.

[13] Corrections and Conditional Release Act (S.C. 1992, c. 20), s 15.1(2.01) and s 37.1(2)(a).

[14] CSC response to PBO Information Request IR0764.

[15] CSC response to PBO Information Request IR0764.

[16] CSC response to PBO Information Request IR0764.

[17] PBO, Cost Estimate for Implementing Structured Intervention Units as set out in Bill C-83 and Related Proposals (2019).

[18] Beaudette JN, Stewart LA. National Prevalence of Mental Disorders among Incoming Canadian Male Offenders. *The Canadian Journal of Psychiatry*. 2016;61(10):624-632.

[19] Public Safety Canada, Structured Intervention Unit Implementation Advisory Panel 2021-22 Annual Report.

[20] CSC response to PBO Information Request IR0764.

[21] CSC response to PBO Information Request IR0764.

[22] PBO, Cost Estimate for Implementing Structured Intervention Units as set out in Bill C-83 and Related Proposals (2019).

[23] Courts have traditionally treated government funding decisions as beyond the scope of judicial review. See Robert E. Charney and Daniel Guttman, Is Money No Object: Can the Government Rely on Financial Considerations Under Charter Section 1.

Nevertheless, all persons in federal custody have rights under the *Corrections and Conditional Release Act*, *Canadian Charter of Rights and Freedoms,* and *Canadian Human Rights Act*, including protections against discrimination and cruel and unusual punishment. The placement of incarcerated persons with mental illness in administrative segregation has resulted in awards of damages. See Gallone c. Procureur général du Canada, 2020 QCCS 3992.

[24] CSC response to PBO Information Request IR0764.

[25] CSC's case preparation work was estimated by analogy to the work required to complete a structure intervention unit senior deputy commissioner review/decision. For each review/decision, CSC takes an average of 18.75 hours, with a weighted average hourly rate for the three positions involved of $53.65/hour for a total cost of $1,006. See CSC response to PBO Information Request IR0764.

The cost of representation by the Department of Justice was estimated by analogy to Legal Aid Ontario's current tariff for a bail review including preparation and attendance at the Superior Court of Justice, which is approximately $1,000. See Legal Aid Ontario, Tariff Reform 2024

Based on surveys of lawyers, the average cost of a bail hearing is $2,000, but that estimate is biased by extraordinary costs at large national firms and the Department of

Justice should be able to achieve significant economies of scale. See Canadian Lawyer Magazine, 2021 Legal Fees Survey Results.

We presume that incarcerated persons would be entitled to respond to CSC's applications for confinement beyond 48 hours, and that most incarcerated persons would need to rely on legal aid for their legal representation. However, legal aid is a provincial responsibility and while provinces receive funding for from the federal government to cover a share of the cost of legal aid for criminal matters, federal funding is fundamentally discretionary. See Department of Justice, Legal Aid Eligibility and Coverage in Canada.

Finally, assuming that the Superior Courts choose to hold oral hearings, and that incarcerated persons are entitled to attend those hearings, CSC will incur additional costs associated with escorting those incarcerated persons. CSC estimates these costs to be $685 to $1,200 depending on whether the cost is overtime or regular time. This reflects the cost of 2 correctional offers for an estimated 8-hour shift. This estimate does not include administrative tasks, stays in temporary detention, or transportation costs. Based on the number of stays in SIUs exceeding 48 hours, up to 1,860 individuals would be entitled to attend hearings each year, although some might opt to appear virtually or decline to appear. See CSC response to PBO Information Request IR0764.

The above activities would take more working hours than are available in a 48-hour period, but we assume that the Superior Courts will adopt a process that allows for an timely interim decision followed by a more detailed review. Costs could increase if the Superior Courts exercise significant ongoing review.

[26] This assumes that CSC can accurately predict the 90% of cases in which it will want to extend a stay beyond 48 hours; otherwise, 2,056 applications would be needed.

[27] Public Safety Canada, 2021 Corrections and Conditional Release Statistical Overview.

[28] Under the *Corrections and Conditional Release Act*, *Canadian Charter of Rights and Freedoms,* and *Canadian Human Rights Act*, the CSC has an obligation develop policies, programs and practices which avoid discrimination, including being responsive to the special needs of various groups. See Corrections and Conditional Release Act (S.C. 1992, c. 20).

It could be argued that these principles require alternative custody arrangements to be implemented to respond to the special needs of various groups. However, the existence

and practical scope of such obligation would be highly speculative and cannot be included in this estimate.

[29] CSC response to PBO Information Request IR0764.

[30] Office of the Correctional Investigator, 2022-23 Annual Report.

[31] Johnston, E. Lea. (2015). Modifying unjust sentences. Georgia Law Review, 49(2), 433-502.

[32] Department of Justice, Costs of Crime in Canada, 2014; Canadian Lawyer Magazine, 2021 Legal Fees Survey Results.

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