

Crystal meth minimums more important than maxes...by David Russell

by Stephen Elliott-Buckley - Monday, August 15, 2005

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On the plus side, the federal government appears to now recognize that met amphetamine is seriously bad stuff. Health Minister Ujjal Dosanjh, Justice Minister Irwin Cotler and Public Security Minister Anne McLellan announced increased maximum penalties for the production, trafficking, importing or exporting of the so-called "poor man's cocaine" to life in prison.

Big deal.

It may have sounded like an apt response to a growing crisis with a deadly narcotic (a Schedule I now, thank you). But the newest announced legislation, not yet enacted into law yet, by the way, and can't be before parliament resumes from its much longer-than-the-average-Canadian vacation, still suffers from that most Canadian of legislative hurdles: too much judicial discretion. In short, a maximum sentence is only effective as a deterrent if it is ever applied. In Canadian courts, maximum sentences are the exception rather than the rule.

Existing laws allowed for maximum sentences of seven to ten years for the distribution of this deadly street drug. But try to find even a small handful of cases where the maximum penalty was applied to producers or distributors, even for repeat offenders. Indeed, in a great number of convictions conditional sentences, mostly involving some form of house arrest, have been the norm.

Which is not to suggest the courts are not doing their job. They are, at least to a point. Sentencing principles in legislation, all legislation, requires courts to consider all options other than incarceration. It could be argued the courts too often fail to consider prison time as an appropriate response to the conviction but the reality is, our legislation lacks the teeth that would require judges to enact stiffer penalties.

Life in prison as a maximum penalty leaves a great deal of leeway for a judge: anywhere from no time to twenty-five years fits the bill. But if the political will could be mustered to write sentencing requirements at the lower end of penalties, judges would be required to follow penalty guidelines our elected legislators are entirely entitled to enact.

Opponents of minimum sentencing say the purpose of our correctional system - as implied by its title "Corrections Canada" - is rehabilitation; minimum sentencing, it is argued, is about punishment. But minimum sentences need not be draconian: no one is suggesting minimum sentences of life in prison.

But increasing the maximum potential sentence is an entirely ineffective tool if the judges can't - or won't - apply the penalty parliament has given them the right to employ.

The only way we're going to see an increased penalty for the most serious offenders is if parliament

requires the courts to use them rather than simply making it available as an option.