**Push for consecutive mandatory minimum sentences may run afoul of Criminal Code**

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The Conservative government has tossed another challenge at the country’s judges, upping the ante on mandatory minimum sentences with U.S.-style “stacking minimums” intended to keep people who commit sex crimes against children in jail longer.

“There is an outcry for this, from police, from prosecutors, and most notably from victims,” Justice Minister Peter MacKay said in an interview, speaking about the tougher sentencing measures for child sex crimes in a bill tabled in Parliament this week. The bill must be debated and voted on before it becomes law.

“We’ve been democratically elected to respond exactly to public outcries, especially in areas of the criminal justice system that require our attention.” He said sex offences against children have risen 3 per cent a year in each of the past two years.

In cases with multiple victims, judges would be required to order that the mandatory minimum sentences be served one after another, a practice known as “stacking.” The same would apply to those who break child pornography laws and commit other sexual offences against a child. In the United States, where this approach is common, some judges have said it produces disproportionate, decades-long sentences.

The Conservative government has been overhauling the justice system in the name of crime victims, focusing on longer prison terms and limits to judges’ discretion.

But the proposed rules could run into trouble. They might clash with the Criminal Code’s “totality principle,” which says an individual’s overall sentence should not be overly harsh, or crushing; or they might fall afoul of the Constitution’s ban on “cruel and unusual punishment.”

“The minimums, especially consecutive minimums, don’t leave room for considering the individual offender and the nature of the offence,” Toronto defence lawyer Clayton Ruby, author of *Sentencing*, a textbook in its eighth edition, said in an interview. “Government doesn’t trust the judges. They appoint them, but they don’t trust them. It’s all about control.”

The government has been embroiled in a series of conflicts with judges. Some judges have refused to make impoverished offenders pay a financial penalty that became mandatory in October. Some courts have ruled mandatory minimum sentences for gun possession convictions unconstitutional. The government went to the Supreme Court this winter to try to stop lower-court judges from routinely awarding what it sees as overly generous credit to offenders for time served in custody awaiting trial.

“What we’re really seeing is a classic push-and-shove between the roles of courts in protecting Canada’s constitutional values, and the legitimate role of legislators in setting public policy on matters like criminal justice,” said Wayne MacKay, a law professor at Dalhousie University in Halifax.

The proposed law would also create a database of high-risk sex offenders – those whose release from prison prompts a police warning – that the public can search online. It would also require spouses to testify in child pornography cases. It would oblige registered sex offenders to provide more detailed reports before they travel abroad, and allow sharing of information between police and border officials. The minimum sentence for child porn possession would go to one year from six months. The minimum for buying sex from a minor would go to one year from six months for a second or subsequent offence. Some maximum penalties would rise, too.

The totality principle has held sentences down in another area where the government has sought to stack mandatory sentences: the use of firearms. Brian Stauffer of British Columbia used imitation firearms in four robberies, each subject to mandatory minimums of three years, and committed seven robberies in all. A judge sentenced him to 30 years in prison. In 2007, the B.C. Court of Appeal knocked the term down to 18 years, citing the totality principle.

Sharon Rosenfeldt, whose son was murdered by serial killer Clifford Olson, and who is spokeswoman for the advocacy group Victims of Violence, said she does not understand the reasoning behind the totality principle. “That’s been the problem all along; that’s where these individuals who commit these crimes against children are allowed to do it over and over again.”

The Justice Minister said his department wrote the new law with constitutional rights in mind. “We’re very mindful of the necessity of having legislation comply with the Canadian Charter of Rights and Freedoms. We’ve had a number of successes and some setbacks. I’m conscious of that.”