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#### 1. Tackling Violent Crime Act

[An Act to Amend the Criminal Code and to make consequential amendments to other Acts \(Tackling Violent Crime Act\) S.C.](#) 2008, c.6, received Royal Assent on February 28, 2008. The provisions of the Act, other than ss. 61-63 (which are coordinating amendments), come into force on a date to be fixed by order of the Governor in Council. For complete details on the content of the Act, take a look at the [Legislative Summary](#) available on the Parliament of Canada [website](#).

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#### 2. Momentary Lapse of Attention Insufficient

The court in [R. v. Beatty](#), 2008 SCC 5 unanimously granted the appeal from conviction, restoring the lower court acquittals, but provided three separate sets of reasons for doing so. The majority of 5 held that the trial judge's finding that the accused suffered from a momentary lapse of attention was not sufficient to establish the *mens rea* required for a conviction under [s. 249](#) of the *Criminal Code* and that the test to be considered is "...whether Mr. Beatty's manner of driving, viewed on an objective basis, constitutes a marked departure from the norm."

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#### 3. Mandatory Minimum is Not Cruel and Unusual Punishment

In [R. v. Ferguson](#), 2008 SCC 6 the court confirmed that on the facts of the case, imposition of the mandatory minimum sentence of four years did not constitute cruel and unusual punishment and went on to state that in any event, a constitutional exemption (relied upon here by the trial judge in imposing a sentence of 2 years less a day) was not the appropriate remedy for a breach of s. 12 of the *Charter*.

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#### 4. Section 43 Won't Protect Angry and Frustrated Parent

In [R. v. Sinclair](#), 2008 MBCA 15 (CanLII) the court considered whether, *inter alia*, [s. 43](#) of the *Criminal Code* "...is available to an accused who in frustration attempted to correct his four-year-old daughter's misbehaviour by the use of force resulting in an unintended injury that eventually caused her death." The court confirmed that where there is use of force by a parent arising out of anger or frustration, that parent cannot rely on the protections offered by s. 43.

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#### 5. Reduced Expectations of Liberty and Privacy

The Supreme Court of Canada, on February 14, 2008 refused leave to appeal from the decision of the Manitoba Court of Appeal in [R. v. Vandenbosch \(K.A.\)](#), 2007 MBCA 113 (CanLII). In that decision the court considered whether the accused, a visitor to Stony Mountain Penitentiary, had been detained such that her rights under ss. 9 and 10 of the *Charter* were engaged. The court dismissed the appeal from conviction and found that:

When the detention factors are examined in the case at hand, such as the precise language used when requesting the accused to follow the corrections officers, that she was escorted to the interview room, that the interview room was locked, and that the questions were pointed, it would appear that, had the accused not been in a prison setting, constitutional detention principles may have been engaged.

The accused, however, was not in the same situation as a pedestrian on the street stopped by police. She voluntarily chose to place herself in the prison environment where there is a reduced expectation of liberty and privacy.

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