

Criminal Section Resolutions 1998

1998 Halifax, NS

Criminal Section Resolutions

RESOLUTIONS

1 - ALBERTA

ITEM 1

Prohibited Weapons Regulations; ASP Batons and SAP Gloves

That SAP Gloves and ASP Batons be included in the prohibited weapons orders made pursuant to s 84 of the Criminal Code.

(Withdrawn)

ITEM 2

Inventory Search by Police - Study Project

That Justice Canada establish a subcommittee, with provincial representation, to study the issue of searches incidental to arrest, including the prevailing case law and the Charter implications of any warrant scheme, and to determine whether legislative amendments are required.

(Carried:20-1-6)

ITEM 3

Possession of Child Pornography

That the definition in s.163.1 of the Criminal Code be expanded to include data capable of displaying on command, visual representations of child pornography. The Crown would still be required to establish possession under subsection 4(3) to obtain a conviction.

(Carried:16-2-10)

ITEM 4

Adult Justice Committees

That the Criminal Code be amended to allow for adult justice committees.

(Carried:19-3-3)

2 -BRITISH COLUMBIA

ITEM 1

Order of Prohibition - Offender Prohibited from attending at Public Park, working with or volunteering with children under 14

1. That s.161 be redrafted so that it is not described as additional punishment but rather described simply as an order of prohibition much like a s.100 order under the Criminal Code or a probation order.

(Defeated: 2-18-10)

2. That s.161 be amended to refer to the relevant statutory provision which predated s.161, in a similar manner to the offence references in s.486(3).

(Carried: 10-1-18)

3. That s.161 be redrafted in such a way as it no longer requires a blanket prohibition for the period that it is in effect, rather some discretion is granted to the sentencing judge to make such an order subject to such terms as are deemed appropriate. The provisions could, for example, be drafted in such a way as to prohibit the offender from doing any of the activities specified in 161 unless supervised by another adult approved by the court.

(Carried: 9-0-17)

ITEM 2

Notice of Constitutional Challenges - Charter - Criminal Code

That the Federal Government enact legislation similar to the Constitutional Questions Act (B.C.). That if such legislation is enacted, the legislation should require notice for the exclusion of evidence under s.24(2) of the Charter.

(Withdrawn)

* Following discussion of the paper, regulating Charter applications, the following resolution was proposed:

That regulation of Charter applications be referred to a Working Group of the Criminal Law Section of the Uniform Law Conference to create model rules governing such applications and to make any other recommendations it deems appropriate, in consultation with the bar and the judiciary.

(Carried: 29-0-2)

ITEM 3

Possession of break-in Instrument

That section 351 be amended to change it from a purely indictable offence to a hybrid offence.

(Carried: 28-0-1)

ITEM 4

Conditional Sentence Order and Unrelated Probation Orders

That s.732.2 of the Criminal Code be amended to either allow for a previously imposed probation order to continue to operate simultaneously with the conditional sentence order, or alternatively, have the previously imposed probation order suspended except for any provisions relating to "no contact" conditions. Another option would be for the sentencing judge dealing with a subsequent conditional sentence order to have the authority to impose "no contact" conditions where such an order is pre-existing, even though the present matter before the courts does not relate to any situation requiring a "no contact" order.

(Withdrawn)

3 - MANITOBA

ITEM 1

Juries - Disclosure of Identities

That in appropriate cases, trial judges should have the authority to protect jurors by ordering that their names and addresses not be disclosed.

(Withdrawn)

ITEM 2

Provincial - Municipal Police - Extra - Jurisdictional Authority

1. That a joint Working Group of the Civil Section and Criminal Section of the Uniform Law Conference be established to consider the issues outlined in Manitoba's (original) resolution and that the Canadian Association of Chiefs of Police be invited to participate in the Working Group.

(Carried: 29-0-0)

2. (* Original)

That section 25 of the Criminal Code be amended to provide that provincially appointed peace officer status be maintained when a police officer leaves their host jurisdiction in furtherance of an officially sanctioned investigation or to provide assistance in the capacity of a peace officer, in another jurisdiction. This status should carry all the protection and authorization as permitted by the province of appointment including the right to carry a firearm. The jurisdictional authorization could be authorized for seven days initially and may be further extended by obtaining a letter from the Chief Constable of the host jurisdiction.

(Withdrawn)

ITEM 3

Rebuttable Presumption Relating to ATM Fraud

That sections 380 and 334 of the Criminal Code of Canada be amended to allow for a rebuttable presumption that the account holder has made the false deposit (i.e. fraud) and has made the withdrawal of funds (i.e. theft) where the personal identification number of the account holder has been used in respect of each of these transactions.

(Defeated: 3-16-8)

ITEM 4

Transfer Hearings Procedure

1. That there be a requirement in subsection 16(1.02) of the Young Offenders Act that any application by a youth to remain in the youth system be in writing, in a prescribed form to be filed with the court and served on the prosecution.

(Carried: 17-4-7)

2. That there be a time limit added to subsection 16(1.02) of the Young Offenders Act prescribing when a youth can apply to stay in the youth system. For example, 30 days from the date of the first appearance or such further time as the court may permit, considering the reasons for the delay in filing, any prejudice to the accused and the interests of justice.

(Carried 17-5-6)

3. That there be authority for the court to grant relief to the Crown in a case of a missed deadline to permit the crown to file a notice of opposition under subsection 16(1.03) of the Young Offenders Act. For example, the notice must be filed within 21 days or such further time as the court may permit, considering the reasons for the delay in filing, any prejudice to the accused and the interests of justice. Subsection 16(1.06) which permits an extension by consent should also remain.

(Carried: 21-0-7)

ITEM 5

Breach of Probation - Young Offenders Act

That section 26 of the Young Offenders Act be amended to conform with section 733.1 of the Criminal Code.

(Carried: 20-0-8)

ITEM 6

Affidavit Evidence to Prove Evidence of Damage to Property

That section 657.1 of the Criminal Code be amended to allow for evidence of damage to be proved by way of affidavit evidence.

(Carried: 22-0-4)

ITEM 7

Reporting and Monitoring Conditions for Defendants under Section 810.2 of the Criminal Code

That sub section 810.2(6) of the Criminal Code be amended to include the Federal Correctional Authority as one of the agencies to whom the defendant may be ordered to report.

(Carried: 25-0-6)

4-ONTARIO

ITEM 1

Applications for Recognizance(Judicial Restraint Order

That sub sections 810.01(2), 810.1(2) and 810.2(2) be amended to allow the parties to appear before any provincial court judge having jurisdiction within the territorial division to deal with the application.

(Carried: 27-0-2)

ITEM 2

Procuring

That section 212 be amended to expand the reference to illicit sexual intercourse to cover any illicit sexual activity.

(Carried: 15-1-10)

ITEM 3

Jurisdiction of the National Parole Board - Young Offenders

That the Corrections and Conditional Release Act be amended to make it clear that the jurisdiction of the National Parole includes young persons sentenced to penitentiary time even if they are serving the sentence in a provincial institution.

(Carried: 14-0-14)

ITEM 4

Release by Police Officer on an Undertaking with Conditions

1. That sections 499 and 503 be amended to allow a police officer to release an accused person on an undertaking with a condition that the person comply with the curfew.

(Carried: 16-3-9)

2. That section 499 and 503 be amended to allow a police officer to release an accused person on an undertaking with a condition that the person not contact a designated person or group of persons.

(Carried: 18-6-5)

ITEM 5

Accessories After the Fact

That the Criminal Code be amended to ensure criminal liability for a person who aids another, after the commission of an offence, knowing that the person being aided has committed some criminal offence.

(Carried: 17-6-8)

ITEM 6

Publication Bans in Extraordinary Remedy Applications

That Part 26 of the Criminal Code be amended to authorize publication bans where appropriate for extraordinary remedy applications.

(Carried: 24-0-3)

ITEM 7

Fitness to Stand Trial

That the Department of Justice refer to the Federal-Provincial-Territorial Working Group on Mental Disorder as a priority issue, the question of whether the definition of unfitness to stand trial in s.2 of the Criminal Code, as applied by the courts, is appropriate or needs to be modified.

(Carried: 31-0-0)

ITEM 8

Criminal Code Review Board Procedure

That Part XX.1 (more specifically ss 672.85(b) and 672.91) dealing with arrest and release, with or without a warrant, of a person under a disposition be referred to the Federal-Provincial-Territorial Working Group on Mental Disorder for recommendations to reform these provisions and to report back to the Criminal Section of the Uniform Law Conference.

(Carried: 29-0-1)

ITEM 9

Criminal Code Review Board Procedure

That Part XX.1 of the Criminal Code be amended to allow the Criminal Code Review board to order an assessment for the purposes of its disposition or review hearings.

(Carried: 19-0-10)

ONTARIO (Criminal Lawyers Association)

ITEM 1

Permitting Persons in Custody to be Detained in a Hospital Pending Trial After an Assessment

That the Criminal Code be amended to provide that the Court has jurisdiction to remand an accused who has undergone an assessment to a hospital pending trial when the assessment so recommends and in accordance with criteria approved by the Lieutenant Governor in Council of the Province.

(Carried: 30-0-0)

ITEM 2

Presentence Custody and Minimum Sentences

That section 719 of the Criminal Code be amended to read;

A sentence commences when it is imposed, except where a relevant enactment provides otherwise or in the case of an offence for which there is a minimum sentence of imprisonment in which case the sentence commences on the date the accused was taken into custody and continues while he or she remains incarcerated for the charge.

(Carried: 17-0-14)

ITEM 3

Floor Resolution

Presentence Custody and Minimum Sentences

That subsection 719 (3) of the Criminal Code be amended to make it clear that in cases where a minimum sentence is specified, the sentencing judge may make a deduction for pre-trial detention in cases where an offender is not serving any other custodial sentence.

(Defeated: 7-5-19)

5 - QUEBEC

ITEM 1

Definition of Enterprise Crime Offence "and" "Offence", Section 183 and 462.3

That the Criminal Code be amended:

1. To include the following offences in the definition of "offence" in section 183:

(a) the offence of making, or possessing devices intended for use to make, or falsify credit cards (s.342.01)

(b) the offences in relation to lotteries and games of chance (s.206).

2. To include the following offences in the definition of "enterprise crime offence" in section 462.3:

- (a) s.342 Theft, and unauthorized use of data relative to credit cards.
- (b) s.342.01 Making, or possessing devices intended for use to make, or falsify credit cards.
- (c) s.342.1 Unauthorized use of computer.
- (d) s.342.2 Possession of device to obtain computer service.

3. Amend the definition of "enterprise crime offence" in section 462.3, paragraph (vii.1) to simply read section 206.

(Carried: 26-0-4)

ITEM 2

Detection of Drug Induced Impairment

1. That section 256 of the Criminal Code be amended to allow the issuance of warrant or telewarrant for the purpose of detecting drugs where there are reasonable grounds to believe that the person committed an offence under section 253 under the influence of such a substance.

(Withdrawn)

2. That section 256 of the Criminal Code be amended to allow the issuance of a warrant or telewarrant for the purpose of detecting alcohol and drugs where the police officer has reasonable and probable grounds to suspect that the person is impaired by either alcohol or drugs, where the reasonable grounds in support of the application for a telewarrant are based on either of these substances (i.e. alcohol or drugs)

(Carried: 26-0-4)

3. That the Executive of the Uniform Law Conference of Canada write to the Chair of the House of Commons Standing Committee on Justice and Human Rights to draw the Committee's attention to the resolutions adopted by the Criminal Section to amend section 256 of the Criminal Code respecting warrants for alcohol and drug induced impairment and to invite the Committee to examine the phenomenon of driving under the influence of drugs and the ways in which the detection proof and deterrence of this crime could be enhanced, in the course of their forthcoming proceedings regarding impaired driving.

(Carried: 18-0-4)

ITEM 3

Blood Sample to Detect Serious Infectious Disease

That a section be added to the Criminal Code authorizing a judge to issue a warrant for the taking of a blood sample to determine the seriousness of the offence and(or prove the

commission of an offence where there are reasonable grounds to believe that the person named in the warrant:

(a) suffers from an infectious disease that could endanger the security or life of another person;

(b) that the person transmitted the infectious disease to another person, while committing an offence against the security of life of that other person; and

(c) that reasonable grounds exist to believe the person was aware of the infectious disease he/she is carrying.

(Carried: 11-3-16)

ITEM 4

Taking Hair Samples for the Purposes of comparison

To amend section 487.091 to include the taking of hair samples for comparative purposes.

(Carried: 11-6-6)

ITEM 5

Appearance of Person Arrested in a District other than the District in which the Warrant was Issued

That subsections 503(3) and (3.1) of the Criminal Code be amended to provide that when the prosecutor does not consent to the accused's release, the justice before whom a person arrested under a warrant issued in another district of the province is brought, has jurisdiction to hold the release hearing contemplated in section 515 and the power to adjourn that hearing pursuant to section 515 of the Code.

(Carried: 22-0-4)

ITEM 6

Territorial Jurisdiction

That section 504 of the Criminal Code be amended to give the justice jurisdiction over any offence committed in the province when the offence has some connection with an offence over which the justice has jurisdiction under this section.

(Carried: 17-0-3)

ITEM 7

Mandatory Provisional Release Conditions

1. That subsection 515(4) be amended to prescribe that any release order is deemed to include an order that the accused comply with the following compulsory conditions:

a) to keep the peace and be of good behaviour, and

b) appear before the court when required to do so by the court.

(Carried: 16-7-5)

2. That subsection 515(4) be amended to prescribe that any release order is deemed to include an order that the accused comply with the following compulsory conditions:

a) to keep the peace and be of good behaviour, and

b) appear before the court when required to do so by the court.

c) notify the court or the peace officer in advance of any change of name or address, and promptly notify them of any change of employment or occupation.

(Defeated: 2-12-15)

ITEM 8

Coming Into Force of the Optional Conditions of a Probation Order

That sub-paragraph 732.1(3)(a)(i) of the Criminal Code be amended to read as follows:

"within two working days, or such longer period as the court directs, after the coming into force of the probation order"

(Carried: 26-0-2)

ITEM 9

Commencement of Federal Statutes and Regulations

Recognizing that application of the Federal, Provincial and Territorial Provisions respecting the coming into force of legislation and regulations may cause difficulties in determining exactly when an amendment takes effect, as shown by the included resolution, the Legislation Section of the Uniform Law Conference should be asked to examine these provisions with a view to presenting recommendations to the 1999 Uniform Law Conference to resolve these difficulties and achieve uniformity.

(Carried: 29-0-0)

(As originally worded, the resolution referred to subsection 6(1) of the Interpretation Act which provides that an enactment ceases to have effect at the commencement of the day following the date scheduled for repeal, that is, 12 midnight (2400 hours), while an enactment comes into force on the expiration of the previous day. The same rules apply under subsection 6(2) to an enactment that comes into force on the day of Royal Assent. The practical result is that an enactment may be in force several hours before it has received Royal Assent. The resolution, as originally drafted, proposed an amendment to subsection 6(2) to provide that an enactment should come into force at midnight on the date of assent (2400 hours) or at midnight on the date of registration (for regulations).

ITEM 10

Notice of Production of Documents

That owing to the constitutional duty to disclose evidence, those provisions in federal enactments that require the prosecution to serve notice to the defence of the production of records should be repealed.

(Withdrawn)

ITEM 11

To Include an Offer to Purchase in the Definition of "Traffic"

That the definition of "traffic" in section 2 of the Controlled Drugs and Substances Act, S.C. 1996, c.19 be amended to include an offer to purchase and to specify in a schedule to the Act the quantity above which a person is considered to be trafficking.

(Defeated: 4-6-17)

6 - SASKATCHEWAN

ITEM 1

Support Persons for Witness

That subsections 486(1.1) and (1.2) be amended to permit witness with a mental or physical disability to have a support person present with them while testifying, upon application to the court.

(Carried 28-0-2)

ITEM 2

Contempt (Witnesses Who Fail to Attend or Remain in Court)

That section 708 of the Criminal Code be changed to a summary conviction offence which would carry the normal penalties set out in s.787 of the Criminal Code upon conviction.

(Carried: 17-4-9)

ITEM 3

Release By Police of Persons Arrested on Unendorsed Warrants (Enforcement if Breached)

That the Criminal Code provision concerning police release of arrested persons should be clarified so that it is clear when police are empowered to release people on warrants and to ensure that such release is enforceable through a charge under section 145 if the person fails to remain in court.

(Carried: 29-0-2)

7 - CANADA

ITEM 1

Increase of Attorney General of Canada's Jurisdiction to Prosecute Offences under Subsection 462.33(11) and 490.8(9) of the Criminal Code when the Restraint Order Relates to a Federal Matter

That the Criminal Code be amended to permit the Attorney General of Canada to prosecute offences under subsection 462.33(11) and subsection 490.8(9) in cases in which the restraint is allegedly committed is one obtained by the Attorney General of Canada.

(Carried: 15-3-9)

ITEM 2

Consent Surrenders of Property Seized Under Section 462.32 or Restrained Pursuant to Section 462.33 of the Criminal Code

That the Department of Justice undertake a review of the forfeiture of provisions in the Criminal Code, including sections 462.43 and 490(9), for the purpose of identifying possible amendments that would provide a mechanism for the forfeiture of property that has been voluntarily relinquished to the police.

(Carried: 29-0-0)

ITEM 3

Creation of A Warrant Scheme for Body Cavity Searches

That consideration be given to amending the Criminal Code to create a mechanism by which warrants may be obtained to permit a body cavity search with the aid of a physician on reasonable grounds that the person subject to the search has hidden, within a body cavity, evidence of a crime, illicit drugs or a weapon.

(Carried: 26-0-2)

ITEM 4

Pari-mutuel Betting via the Internet and Other Technologies

That delegates consider whether the Code should be amended to provide that bets made via the Internet and various other technologies to a race track or betting theatre are deemed to be made at the race track, thereby involving the exemption in section 204 for the offences set out in sections 201 and 202.

(Withdrawn)

ITEM 5

Increasing the Maximum Penalty for Driving while Disqualified, where the Crown Proceeds by Indictment.

That the maximum penalty for driving while disqualified, where the Crown proceeds by indictment, be increased to five years.

(Carried: 20-4-5)

ITEM 6

Tiered Penalties Based upon Blood Alcohol Concentration (BAC) levels for Drinking and Driving Crimes

1) That the Criminal Code be amended to lower the BAC level in paragraph 253(b) to .05, to provide for an offence of "driving with a BAC in excess of 50 mg"

(Defeated: 0-21-8)

2) That the Criminal Code be amended to introduce a system of tiered offences and penalties based on the offender's BAC level (of over 80 mg).

(Defeated: 0-14-16)