

Criminal Section Resolutions 1999

1999 Winnipeg, MB

Criminal Section Resolutions

RESOLUTIONS

1 - ALBERTA

ITEM 1

Judicial Interim Release - Serious Domestic Violence (as amended)

That the Department of Justice, in consultation with Provinces and Territories, through the Federal Provincial Territorial (F/P/T) Working Group on Victims of Crime, the F/P/T Working Group on Criminal Procedure and other appropriate fora, consider options to address the need to protect victims of serious domestic violence where judicial interim release of the accused is an issue [or is being determined] including but not limited to:

Amendment to Part XVI of the Criminal Code to create the right, in cases of serious domestic violence, to appeal a superior court bail review decision that reverses the decision of the lower court, to the Court of Appeal;

Amendment to Part XVI of the Criminal Code to allow the court that makes a release order in cases of serious domestic violence, to delay release for a specified period of time to allow for notification to the victim;

Amendment to s 515 (6) of the Criminal Code to provide that in cases of serious domestic violence, the justice shall order that the accused be detained in custody until dealt with according to law, unless the accused, having been given the opportunity to do so, shows cause why the detention is not justified.

Status report shall be provided to Criminal Section in 2000.

(Carried: 21-0-11)

ITEM 2

Varying Terms of A Recognizance

That s.810.2 of the Criminal Code be amended to allow a judge, other than the judge who made the original order, to vary the conditions of the recognizance whether or not the application is made in the original jurisdiction.

(Carried: 29-0-2)

2 - BRITISH COLUMBIA

ITEM 1

Release on undertaking with Firearm Prohibition Conditions

That subsections 499(2)(e) and 503(2.1)(e) be amended to contain language similar to that contained in subsection 515(4.1).

(Defeated: 8-11-13)

ITEM 2

Creation of a General Bench Warrant Provision

Part 1

That a new section [524.1] of the Criminal Code be enacted to provide:

"A justice or a court may issue a bench warrant for the arrest of an accused whenever an accused fails to appear in court as required by law."

(Carried: 23-1-6)

Part 2

That the repeal of section 597 and the implications of repeal be considered by the Department of Justice.

(Carried: 22-0-4)

ITEM 3

Consideration of "Dead Time" on Sentencing (as amended)

That subsection 719(3) of the Criminal Code be amended to provide that where the court takes into account any time spent in custody, it shall state on the record:

the original sentence to be imposed without taking into account any time spent in pre-trial custody,

the time spent in pre-trial custody,

the time credited toward the sentence, and

any reasons, if appropriate,

and those times shall be endorsed by the clerk of the court on the indictment.

(Carried: 34-0-0)

3 - MANITOBA

ITEM 1

Recognizance Where Fear of Sexual/Personal Injury Offence

That sections 810.1 and 810.2 of the Criminal Code be amended to increase the maximum length of these orders from 1 year to 2 years.

(Carried: 16-9-8)

ITEM 2

Driving Prohibitions

That subsection 259(1) of the Criminal Code be amended to provide that, upon being convicted of an offence under either sections 253, 254, 255(2) or 255(3), an accused may, in the discretion of the sentencing judge, be prohibited from operating any motor vehicle, in addition to the mandatory prohibition on the operation of the type of motor vehicle used in the commission of the offense.

(Carried: 22-1-11)

ITEM 3

Creation of an Offence for the Intentional Transmission of HIV

That consideration be given to amending the Criminal Code to create an offence for intentionally transmitting HIV and other serious contagious diseases.

(Withdrawn)

ITEM 4

Juries- Disclosure of Identity of Jurors

That the Criminal Code be amended to give the trial judge the authority to take appropriate measures to ensure the safety of jurors including, but not restricted to, ordering that their names and addresses not be disclosed.

(Carried: 28-0-4)

ITEM 5

30 and 90 Day Bail Reviews

That section 525 of the Criminal Code, which requires that an accused awaiting trial who has been denied bail be brought before the court for bail review at regular intervals, be repealed.

(Defeated: 3-18-13)

ITEM 6

Murder During an Armed Robbery

That subsection 231(5) of the Criminal Code be expanded to define a murder committed by means of a firearm during the course of an armed robbery as first degree murder irrespective of whether the murder was planned and deliberate.

(Carried: 21-1-12)

4 - NEW BRUNSWICK

ITEM 1

Repeal of s.139 of the Corrections and Conditional Release Act

That the Correctional Service Canada consider amending the Corrections and Conditional Release Act to ensure that time spent on parole should not be considered for a determination of parole eligibility where two or more sentences have been merged pursuant to section 139 of the C.C.R.A.

(Carried: 22-3-8)

ITEM 2

Refusal to Comply with An Impression Warrant

That section 487.091 of the Criminal Code be amended to provide that the court may, with appropriate safeguards for the accused, draw an inference adverse to the accused from evidence that the accused refused to acquiesce and passively permit a dental impression to be obtained under the authority of a section 487.091 warrant.

(Carried: 26-4-3)

ITEM 3

Use of Affidavit Evidence or Solemn Declaration to Prove Credit Card Fraud

That the Criminal Code be amended to provide that the Crown, in a prosecution under subsection 342(3) of the Criminal Code in relation to credit card data, may introduce appropriate and generally non-contentious evidentiary statements by way of affidavit or solemn declaration in a manner that parallels the provisions in section 657.1 of the Criminal Code.

(Carried: 26-0-1)

5 - ONTARIO

ITEM 1

Mandatory Minimum Punishment for offences committed with a Firearm

That subsection 85(1)(a) of the Criminal Code be amended to clarify that only the kidnapping offence contained in subsection 279(1.1) is excluded from the mandatory minimum one year sentence provision.

(Carried: 24-0-8)

ITEM 2

Electronic Technology in Criminal Procedure

That the federal government identify the application of modern technology to criminal procedure as a priority item and take steps to implement legislative reforms to bring this

about such as Part 2 and 3 of Bill C-54 and the electronic technology component of "Phase Three" of Criminal Procedure Reform.

(Carried: 31-0-1)

ITEM 3

Forfeiture of Weapons

That section 115 of the Criminal Code be amended to clarify its scope so that it does not automatically apply to persons not yet found guilty.

(Carried: 28-0-1)

ITEM 4

DNA Warrant For Criminal Harassment

That section 487.04 of the Criminal Code be amended to include the offence of Criminal Harassment as defined in Section 264.

(Carried: 22 -7-3)

ITEM 5

Suspension of Conditions in a Probation Order Pending Appeal

That the Criminal Code be amended to allow an Appeal Court to extend a term of probation, where a condition of probation has been suspended pending an offender's appeal and the appeal is subsequently dismissed, to require the offender to carry out the condition as originally required.

(Withdrawn)

[See Quebec's resolution (Item 5) on the same subject - carried.]

ITEM 6

Use of Certificate of Forensic Analyst to Prove Drug Possession

That section 729 of the Criminal Code be amended to include subsections 145(3) and 145(5.1), breaches of undertakings or recognizances.

(Carried: 26-0-6)

ITEM 7

Nondisclosure and Destruction of Young Offender Records

That subsection 45(1)(g) of the Young Offender Act, or the relevant section of any replacement statute, be amended so that the appropriate time period for determining when a previous record can be referred to terminates at the date of the commission of the offence and not at the point at which the offender is found guilty.

(Defeated: 4-15-14)

ITEM 8

Proceeds of Crime

That the Criminal Code be amended to provide for forfeiture of property where the owner has died and the prosecutor can prove beyond a reasonable doubt that the property was acquired in the deceased's lifetime through the commission of an enterprise crime offence, regardless of whether the deceased was charged with the offence before he or she died.

(Carried: 14-2-15)

ITEM 9

Proceeds of Crime - Interim Restraining Orders

That the Criminal Code be amended to provide for an interim restraining order that could be obtained from a justice of the peace, in exigent circumstances, to permit funds in an account to be temporary frozen, in order to allow the authorities to bring an application under section 462.33.

(Withdrawn)

ITEM 10

Warrantless Search of a Dwelling House in Exigent Circumstances

That section 117.04 of the Criminal Code be amended to ensure that there is authority for the warrantless search of a dwelling house in exigent circumstances involving a threat to the safety of persons.

(Carried: 20-3-10)

ONTARIO (Criminal Lawyers Association)

ITEM 1

Opening Statements By the Defence

That subsection 651(2) of the Criminal Code be amended to provide the trial judge with the discretion to allow the defence the option of making an opening statement after the conclusion of the prosecutors opening statement whether or not the defence intends to call evidence or of making an opening statement after the close of the prosecution case, provided the defence elects to call evidence.

(Carried: 31-0-0)

ITEM 2

Non-Publication of Information At Trial Where Jury Not Present

That subsection 648(1) of the Criminal Code be amended to extend the prohibition on publication of proceedings at trial in the absence of the jury until such time as the jury has rendered a verdict or indicated that it is unable to reach a verdict.

(Carried: 28-0-1)

ITEM 4

Order of Closing Addresses By Defence

That subsections 651(3) and 651(4) of the Criminal Code be amended to provide that the defence should have the option at the end of the criminal trial to elect whether to address the jury after the prosecutor has made the closing argument. Where there is more than one accused and they are unable to agree whether they will address the jury first or last then all the accused will address the jury last.

(Defeated: 9-12-10)

Floor Resolution

Order of Closing Addresses By Defence

(Proposed by Manitoba)

Recognizing that there is a strong consensus that the present rules respecting the order of addressing the jury in criminal cases are in need of reform, the Department of Justice, Canada should undertake a review of the options for reform and, in consultation with Provinces and Territories and the Canadian Counsel of Criminal Defence Lawyers, Criminal Lawyers Association of Ontario and other interested organizations, develop specific models that are viable in the context of Canadian law and practice including, if possible, a recommended model for the consideration of the Uniform Law Conference in 2000.

(Carried: 30-0-3)

6 - QUEBEC

ITEM 1

Definition of Motor Vehicle - Consistency in French and English Wording

That section 2 of the Criminal Code be amended in the french version to ensure its consistency with the english version by incorporating the expression "autre que la force musculaire".

(Carried: 32-0-0)

ITEM 2

Report of Seizure of Property

That Part XV of the Criminal Code be amended to provide that peace officers who conduct a search or seizure, provide a copy of that report to the person from whom the property was seized if the identity of the person is readily ascertainable.

(Carried: 22-4-7)

ITEM 3

Forfeiture After Sentencing

That Part XII.2 of the Criminal Code and Part II of the Controlled Drugs and Other Substances Act, sc 1996, c-19, be amended to expressly allow for forfeiture of property used in the commission of an offence, even after sentencing for an offence in which the property was used.

(Carried: 12-3-17)

ITEM 4

Undertakings Given To Police - Discrepancy In French and English Version of Form 11.1

That the french version of Form 11.1 of the Criminal Code be amended to delete the expression "que j'ai été inculpé d'avoir" and replace it with "qu'il est allégué que j'ai commis".

(Carried: 32-0-0)

ITEM 5

Conditional Sentence Orders - Suspension Pending Appeal

That the Criminal Code be amended to permit an appeal court judge to suspend:

a probation order, or

a conditional sentence order including the conditions imposed in that order,

and to require the person who was the subject of that order to enter into an undertaking with or without conditions, pending the appeal.

(Carried: 24-2-4)

ITEM 6

Jury anonymity

That the Criminal Code be amended to give a judge who presides at a jury trial the power to order that measures be taken to preserve the anonymity of the jury.

(Withdrawn)

[see Manitoba's resolution on the same issue - Carried]

ITEM 7

Prohibition on Communicating with a Victim (as amended)

Although recent amendments to the Criminal Code have provided authority for the court to prohibit an accused from communicating with a victim as a condition of judicial interim

release or where detained in custody and where sentenced to a term of imprisonment upon conviction, the Department of Justice should conduct a comprehensive review of relevant Code provisions and consider further amendments to ensure that non-communication orders are effective until the completion of any sentence imposed and that sanctions are available for noncompliance.

(Carried: 26-0-5)

ITEM 8

Release By Peace Officer of Person Arrested With a Warrant

That the Criminal Code be amended to allow release under section 499 of the Code of any person arrested with a warrant other than for an offence listed in section 469, unless a prohibition on release has been written on the warrant.

(Carried: 30-0-1)

ITEM 9

Arrest By Peace Officer - Summary Conviction Offences

That subsection 495(1)(a) of the Criminal Code be amended to apply to both summary and indictable offences and that, in consequence, subsection 495(1)(b) be repealed.

(Carried: 14-9-7)

ITEM 10

Retention of Bodily Samples (DNA Analysis) of Persons Found Not Criminally Responsible on Account of Mental Disorder

That subsection 487.09(1)(b) of the Criminal Code be amended to clarify that where a person is found not criminally responsible on account of mental order for an offence, the samples shall not be destroyed.

AND

That subsection 487.07(b) be amended to permit the results of the genetic analysis of samples obtained from persons found not criminally responsible on account of mental disorder to be forwarded to the Commissioner of the Royal Canadian Mounted Police to be placed in [the convicted offenders index of] the National DNA Bank.

(Carried: 24-1-7)

ITEM 11

Substances for DNA Analysis - Preference of Accused (amended)

That the federal Department of Justice evaluate the necessity of maintaining the preference given to a suspect under section 487.09 by taking into account scientific studies on the probative value of the different bodily substances to be obtained, the degree to which the

suspects rights are violated, the procedures used to obtain the substance(s) and the impact of this preference on the effective conduct of police investigations.

(Carried: 25-2-3)

ITEM 12

Forfeiture of Proceeds of Crime - Death or Absconding

That section 462.38 of the Criminal Code and section 17 of the Controlled Drugs and Substances Act be amended to allow for proceeds of crime to be forfeited where it is proved beyond a reasonable doubt that the person in possession of the property has died or absconded before proceedings have been instituted, and that the property is the proceeds of crime.

(Withdrawn)

[See the resolution proposed by Ontario (Item 8) on the same subject - carried.]

ITEM 13

Possession of Stolen Goods (amended)

Amend the Criminal Code by adding an offence punishing the possession of property, a thing or proceeds, knowing or believing that all or a part thereof was obtained or derived as a result of

the commission in Canada of an enterprise crime offence or a designated substance offence, or

an act or omission anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offence or a designated substance offence.

(Defeated: 6-0-25)

ITEM 14

Possession of Break-In Instruments

That the offence set out in section 351 of the Criminal Code be also punishable upon summary conviction [i.e. be reclassified as a hybrid offence].

(Withdrawn)

ITEM 15

Order In Council To Designate Criminal Organizations (amended)

That the federal Department of Justice examine the most appropriate way of designating organizations of which the courts must take judicial notice that they constitute a "criminal organization" within the meaning of section 2 of the Criminal Code because of the notoriety of their criminal activities. To this end, that consideration be given to giving the lieutenant-governor power to designate these organizations by order.

(Carried: 19-1-12)

ITEM 16

Warrant to Enter a Dwelling House: Arrest in Contravention of a Disposition Made Under Part XX.1 of the Criminal Code

That section 529.1 be amended to include section 672.91.

(Carried: 22-0-9)

(i.e. that appropriate amendments be made to provide that those found not criminally responsible on account of mental disorder and under a disposition may be arrested pursuant to s.529.1)

ITEM 17

Breach of Driving Prohibition Order

That the Criminal Code be amended to provide that a judge who makes an order prohibiting a person from driving for violation of subsection 259(4) have the authority to make the order consecutive to an order made previously.

(Carried: 19-0-10)

7 - SASKATCHEWAN

ITEM 1

Cross Examination of Sexual Assault Complainants Regarding Non-Consensual Sexual Activity - s.276

That section 276 of the Criminal Code be amended to clarify that it applies to any previous sexual incident including non-consensual sexual activity [or including sexual activity of a non-consensual nature]

(Carried: 23-4-6)

8 - CANADA

ITEM 1

Proof of Service of Documents By Peace Officers

Part 1

That the jurisdictions be canvassed by the F.P.T. Working Group on Criminal Procedure to assess which provisions of the Criminal Code are being relied upon for proof of service of a summons or a subpoena by a peace officer [i.e. subsections 4(6), 509(3), 701(3) and/or section 701.1 of the Criminal Code].

Part 2

That subsections 4(6), 509(3) and 701(3) of the Criminal Code be rationalized to permit peace officers to provide proof of service of a summons or a subpoena by a statement in writing certifying service of the summons or subpoena.

(Carried: 31-0-0)

ITEM 2

Defence Disclosure of Expert Evidence

That the Criminal Code be amended to impose a positive obligation on defence counsel to disclose, in advance of trial, the curriculum vitae, the anticipated evidence of any expert witness the defence intends to call and a copy of the report prepared by the witness. Where the defence fails to make the disclosure, the Criminal Code should provide that the trial judge may provide the Crown with an appropriate remedy that is required in the best interests of the administration of justice and does not prejudice the rights of the accused, including the granting of an adjournment or the recalling of witnesses. The Criminal Code should further provide that any material disclosed by the defence under this section cannot be introduced into evidence or used for any other purpose related to the trial by the Crown if the defence does not call the expert witness or tender the report of the expert witness at trial.

(Carried: 20-1-10)

ITEM 3

Corbett Applications - S. 12(1) CEA

That the Uniform Law Conference - Criminal Section establish a subcommittee to examine a range of issues arising from Corbett Applications (regarding limitations on cross examination of an accused about previous convictions); investigate the relevant law in other common law jurisdictions; develop guidelines on how to effectively balance the probative versus prejudicial value of the evidence in question; and, make appropriate recommendations.

(Carried: 27-0-5)

ITEM 4

Legislative Response to R.v. Campbell and Shirose

That the Criminal Code be amended to include a comprehensive, but carefully circumscribed, immunity provision for law enforcement officers or other persons acting under their direction, who engage in activities that would otherwise be illegal, in the course of a bona fide investigation.

(Not Discussed)

[A discussion paper on this issue was tabled and U.L.C. delegates were requested to submit their comments to the Department of Justice].

ITEM 5

Offences Committed on Board An Aircraft - Consent of A G to Prosecute Non-Canadian Citizens

That the Department of Justice consider an amendment to subsection 7(7) of the Criminal Code, or other appropriate amendments to address the issue of the offences for which the permission of the Attorney General of Canada should be required before proceedings are instituted.

(Carried: 30-0-3)

ITEM 6

Offences on Board An Aircraft - Summary Conviction Offence

That section 7 of the Criminal Code be amended to apply to both summary and indictable offences (to insure that summary offences committed on board an aircraft may result in charges).

(Carried: 33-0-0)

ITEM 7

Interfering With an Aircraft Crew Member

That the Department of Justice consider amendments to the Criminal Code to create a new hybrid offence of obstructing an aircraft crew member with the appropriate penalties upon conviction.

(Carried: 19-0-13)

ITEM 8

Detention of International Mail

Recognizing that the mails are being used to commit serious criminal offences and that there are statutory impediments to effective law enforcement, that the federal government review the federal legislation with a view to removing or minimizing those impediments.

(Carried: 28-0-2)

ITEM 9

False Messages to Include Computer and Electronic Communications

Part 1

That subsection 372(2) of the Criminal Code be amended to include electronic communications.

(Carried: 31-0-0)

Part 2

That subsection 372(3) of the Criminal Code be amended to include electronic communications.

(Carried: 30-0-3)

ITEM 10

Electronic Disclosure of Evidence

That a joint study be conducted of the standards for the electronic disclosure of evidence by the Canadian Bar Association and Canadian Association of Chiefs of Police in consultation with relevant federal, provincial and territorial government departments and other interested/relevant professional associations.

(Carried: 31-0-0)

ITEM 11

Proceeds of Crime - Immigration Act

That the Criminal Code be amended to ensure that offences under the Immigration Act are included in the alien smuggling section of the Proceeds of Crime provisions.

(Carried: 30-0-0)

CANADIAN BAR ASSOCIATION - CRIMINAL JUSTICE SECTION

ITEM 1

Publication Bans - Child Pornography

That the Uniform Law Conference endorse the inclusion of section 163.1 within the enumerated offences under subsection 486(3) of the Criminal Code.

(Carried: 29-0-0)

CANADIAN COUNCIL OF CRIMINAL DEFENCE LAWYERS

ITEM 1

That the Criminal Code be amended to allow the defence the option of addressing the jury first or last and, where the defence elects to address the jury first, that the trial judge be given a discretion to allow a reply by the defence or, in the alternative, that the prosecution be required to address the jury first followed by the defence.

(Withdrawn)

(See Ontario Criminal Lawyers Association resolution on the same issue.)