

**UNIFORM LAW CONFERENCE OF CANADA
RESOLUTIONS**

**Criminal Section
August 2017**

ALBERTA

Alberta - 01

Paragraph 34(2)(a) (Purpose of assessment) of the *Youth Criminal Justice Act* should be amended to remove the reference to section 33 (Release from or detention in custody).

Carried: 18-2-3

Alberta - 02

THAT the *Youth Criminal Justice Act* be reviewed with a view to clarifying the applicable procedure upon alleged breach of a condition of conditional supervision, community supervision or a deferred custody and supervision order.

Carried: 22-0-2

Alberta - 03

It is recommended that subsection 145(9) (Proof of certain facts by certificate) of the *Criminal Code* be amended to include proof by certificate of a failure to attend at a custodial facility as required by an intermittent sentence.

Carried: 21-0-2

Alberta - 04

It is recommended that Justice Canada, in consultation with the provinces and territories, examine the *Criminal Code* and the *Canada Evidence Act* with a view to allowing the admissibility of video surveillance recordings via affidavit or solemn declaration.

Carried as amended: 26-0-1

Canadian Association of Provincial Court Judges (CAPCJ)

CAPCJ – 01

THAT Justice Canada review the provisions of section 708 (Contempt) of the *Criminal Code* and the relevant Forms, with a view to assessing whether the penalty provisions for contempt by a witness who fails to appear, are consistent with modern day principles and practice and whether a maximum fine of \$100 is consistent with current monetary values.

Carried: 27-0-0

CAPCJ – 02

THAT Justice Canada consider whether section 488.1 of the *Criminal Code*, which deals with the search of law offices and which was declared unconstitutional, should be repealed, either as part of Bill C-39 (*An Act to amend the Criminal Code (unconstitutional provisions) and to make consequential amendments to other Acts*) or separately.

Carried: 20-1-2

CAPCJ – 03

THAT Justice Canada, in consultation with the provinces and territories, continue to consider a provision in the *Criminal Code* so that judges in adult criminal proceedings would have the ability to order a psychiatric or psychological assessment for the purposes of imposing a fit and appropriate sentence.

Carried as amended: 23-0-4

CAPCJ – 04

That the *Criminal Code* be amended such that the same practices apply and the same obligations be placed on the court in the case of weapons prohibitions imposed under section 109 (Mandatory prohibition order) or 110 (Discretionary prohibition order), as apply to other orders such as probation orders, CSOs or driving prohibitions.

Carried: 26-0-0

BRITISH COLUMBIA**British Columbia – 01**

THAT Justice Canada, in consultation with the provinces and territories, review section 752.1 (Application for remand for assessment) and section 753.01 (Application for remand for assessment — later conviction) of the *Criminal Code* and consider amendments to facilitate the timely production of relevant third party records, including medical and psychiatric records of the offender, as well as consider the extension of time periods for the assessment remand and filing of the report.

Carried as amended: 20-1-5

British Columbia – 02

THAT the Criminal Section of ULCC establish a working group to undertake an examination of section 490 (Detention of things seized) of the *Criminal Code* with a view to reform the detention of seized property regime.

Carried as amended: 26-0-1

British Columbia – 03

THAT section 160 (Bestiality) of the *Criminal Code* be amended to include a definition for bestiality, this being that “bestiality” includes any direct or indirect contact with an animal for a sexual purpose.

Withdrawn

British Columbia – 04

Section 276 (Evidence of complainant’s sexual activity) of the *Criminal Code* should be expanded to include other offences which deal with the sexual or bodily integrity of a complainant, such as the offences of voyeurism in section 162 and the non-consensual distribution of intimate images in section 162.1 of the *Criminal Code*. Section 276 should be further amended to protect prior conduct involving a video or image that had been created by a complainant depicting sexual activity that does not include another person.

Withdrawn

British Columbia – 05

THAT Justice Canada, in consultation with the provinces and territories, review paragraph 145(1)(a) of the *Criminal Code*, dealing with escape from lawful custody, and paragraph 145(1)(b), dealing with being at large without lawful excuse from a term of imprisonment and consider whether these offences

should be added to subsection 515(6) (Order of detention) in order to place the onus on the accused to show cause as to why his detention in custody is not justified.

Carried as amended: 12-2-13

MANITOBA

Manitoba - 01

THAT Justice Canada, in consultation with the provinces and territories, review the Supreme Court of Canada's decision of *R v DLW*, 2016 SCC 22 and examine whether the *Criminal Code* should be amended to criminalize any direct or indirect contact with an animal for a sexual purpose.

Carried as amended: 26-0-1

NEW BRUNSWICK

New Brunswick - 01

THAT Justice Canada, in consultation with the provinces and territories, review the *Criminal Code* provisions pertaining to video and audio evidence with a view to promote and facilitate the use of technology for remote appearances of witnesses.

Carried as amended: 21-1-4

New Brunswick - 02

THAT Justice Canada, in consultation with the provinces and territories, review section 276 (Evidence of complainant's sexual activity) of the *Criminal Code*, to consider including other sexual offences, such as sections 162 (Voyeurism) and 162.1 (Publication, etc., of an intimate image without consent) to provide victims of such offences with protections in relation to prior sexual activity.

Carried as amended: 20-1-6

ONTARIO

Ontario - 01

THAT sections 745.2 (Recommendation by jury), 745.21 (Recommendation by jury — multiple murders) and 745.3 (Persons under sixteen) of the *Criminal Code*, which give the jury in certain

murder cases the opportunity to make a recommendation in respect of the period of parole ineligibility or whether parole ineligibility should be consecutive if there has been a previous conviction for murder, be repealed.

Carried: 26-0-0

Ontario - 02

THAT Part III of the *Criminal Code* and the *Firearms Act* be reviewed to determine whether the regime for reporting a lost or stolen firearm is adequate and whether the record-keeping practices in respect of those reports are adequate.

Carried as amended: 20-0-1

Ontario - 03

THAT a working group be formed to review for possible reform the law of evidence in criminal proceedings relating to the ability of a party to confront and lead its own witness, including section 9 (Adverse witnesses) of the *Canada Evidence Act*.

Carried: 25-0-0

Ontario - 04

THAT paragraph 486.4(1)(a) (Order restricting publication – sexual offences) of the *Criminal Code* be amended so that a publication ban on information tending to identify the victim or a witness is mandatory upon application of the prosecutor, victim or witness in proceedings in respect of section 162.1 (Publication etc., of an intimate image without consent).

Carried: 24-0-0

QUEBEC

Quebec - 01

Amend section 722.1 (Copy of victim impact statement) of the *Criminal Code* so that the victim impact statement will henceforth be provided to the prosecutor upon being received by the clerk of the court, even if it is received prior to the accused being found guilty.

Carried as amended: 14-5-8

CANADA

Canadian Bar Association (CBA)

CBA – 01

THAT Justice Canada review the eligibility criteria of conditional sentences of imprisonment with a view to expanding the number of offences for which a conditional sentence may be granted.

Carried as amended: 19-0-2

CBA – 02

THAT:

1. Subsection 515(1) (Order of release) of the *Criminal Code* be amended to add a subsection recognizing mental health of the accused as a relevant factor for determining when “detention is necessary” under Part XVI (Compelling appearance of accused before a Justice and interim release) of the *Criminal Code*.
2. Paragraph 718.2(e) (Other sentencing principles) of the *Criminal Code* be amended to add the words, “and offenders who suffer from mental illness, which contributed to their offending.”

Withdrawn following discussion

CBA – 03

THAT Justice Canada, as part of its ongoing review of the bail system in Canada consider amending Part XVI (Compelling appearance of accused before a Justice and interim release) and section 679 (Release pending determination of appeal) of the *Criminal Code* to promote greater efficiency and access to justice for individuals seeking to vary the terms of their judicial interim release.

Carried as amended: 19-1-1

Canadian Council of Criminal Defence Lawyers (CCCDL)

CCCDL – 01

THAT Parliament appoint by Order-in-Council under the [Inquiries Act](#) a Royal Commission to study

the reporting, investigation and prosecution of sexual offences.

Withdrawn following discussion

CCCDL – 02

THAT Justice Canada, in consultation with the provinces and territories, review section 810 (If injury or damage feared) of the *Criminal Code* to determine whether it should be amended to permit the imposition of a peace bond by consent as a means of resolving criminal charge.

Carried as amended: 17-0-3

NORTHWEST TERRITORIES

Northwest Territories - 01

THAT an amendment be made to section 734.5 (Licences, permits, etc.) of the *Criminal Code* to enable a person responsible by or under an Act of the Legislature of a territory for issuing, renewing or suspending a licence, permit or other similar instrument in relation to the offender, to exercise the powers under paragraph 734.5(b).

Carried as amended: 17-0-2

REPORTS

Criminal Section Working Group Report

Working Group on Telewarrants

BE IT RESOLVED THAT:

1. the status report of the telewarrant working group be accepted; and
2. the working group continue its work and report back to the Criminal Section at the 2018 meeting

Carried: 26-0-0

Joint Working Group Reports

Joint Working Group on Complementary Provincial / Territorial Legislation

THAT the report be accepted;

THAT the Chart be recognized as a living document: and

THAT jurisdictions continue to update the chart throughout the year.

Carried

Joint Working Group on Charter costs award and civil damages against the Crown

THAT the report be accepted; and

THAT the report be updated for presentation at the 2018 meeting.

Carried: 1 abstention

Joint Working Group on Criminal Record Checks

THAT subject to the directions of the joint session, the report of the working group be accepted;

THAT the working group continue its work in accordance with the recommendations contained in the report and the directions of the Conference; and

THAT the working group report back to the Conference at the 2018 meeting.

Carried as amended: 2 abstentions