

**UNIFORM LAW CONFERENCE OF CANADA
CRIMINAL SECTION RECOMMENDATIONS – AUGUST 2019**

Alberta – Canadian Association of Provincial Court Judges

AB-CAPCJ2019-01

That the Criminal Section of the ULCC recognizes the fundamental importance of having appropriate time periods to ensure appropriate education, training, and operational changes precede significant criminal law reform. These time periods are essential for the effective administration of justice. When such reforms come into force on Royal Assent it undermines the ability of key stakeholders to properly prepare for and implement these changes.

Justice Canada should encourage an appropriate period of time between Royal Assent and a Bill coming into force on significant criminal law legislative reforms.

Carried as amended: 23-0-0

British Columbia

BC2019-01

That sections 450 and 452 of the *Criminal Code* be amended to give the Crown the election to proceed by indictment or by summary conviction for the offences of possession and uttering of counterfeit currency.

Withdrawn without discussion because similar to MB2019-02

BC2019-02

That section 486.1 of the *Criminal Code* be amended to allow support dogs as an available testimonial accommodation in a manner that provides provinces and territories with the flexibility to determine whether to establish any requirements in order for a support dog to be available pursuant to this provision.

Carried as amended: 23-2-1

BC2019-03

That Justice Canada in consultation with the Provinces and Territories review relevant *Criminal Code* provisions to ensure and if necessary clarify that protective conditions continue to protect victims and witnesses during the periods when a Conditional Sentence Order is under suspension pursuant to ss. 742.6 and 742.7 of the *Criminal Code*.

Carried as amended: 26-0-1

Canada – Canadian Bar Association

Can-CBA2019-01

That provincial Attorneys-General consider offering direction to prosecutors about laying charges and conduct of prosecutions for HIV non-disclosure that is consistent with the 2018 federal Directive to the Public Prosecutions Service of Canada in light of evolving medical science, while still recognizing the independence and constitutional role of each Attorney General to administer criminal justice in their individual jurisdictions.

Amended recommendation withdrawn following discussion of the mandate of the Criminal Section

Can-CBA2019-02

Amend as necessary section 770 of the *Criminal Code*, Form 33, and any other provisions governing bail to ensure that the forfeiture process is clear, streamlined and efficient across Canada.

Carried as amended: 27-0-0

Can-CBA2019-03

That all regions adopt an Independent Adjudication model of decision-making on Prison Discipline with corresponding legislation and enabling regulations.

Withdrawn following discussion of the mandate of the Criminal Section

Can-CBA2019-04

That the federal government legislate fair pay for federal prisoners with cost of living increases established each year.

Withdrawn following discussion of the mandate of the Criminal Section

Can-CBA2019-05

That Justice Canada officials work with counterparts at Immigration, Refugees and Citizenship Canada to propose amending subsection 64(2) of the *Immigration and Refugee Protection Act* to replace the words “six months” with “two years less a day”.

Amended recommendation withdrawn following discussion of the mandate of the Criminal Section

Canada – Public Prosecution Service of Canada

Can-PPSC2019-01

That Justice Canada, in consultation with the provinces and territories and, as necessary relevant stakeholders, examine options for amending the *Criminal Code* in a manner consistent with the *Canadian Charter of Rights and Freedoms*, to permit law enforcement officers acting under lawful authority to access data contained on seized electronic devices, that is encrypted and/or protected by a password, biometric key or other similar security measure.

Carried as amended: 15-10-2

Can-PPSC2019-02

That Justice Canada review the entire scheme enacted under the *Journalistic Source Protection Act (JSPA)* to ensure that it operates properly with the other criminal law processes it implicates, including the application process in section 488.01 of the *Criminal Code* as it relates to wiretap authorizations as well as the scope of the definition of “journalist” in the *Canada Evidence Act*.

Carried as amended: 26-0-1

Can-PPSC2019-03

That Justice Canada study section 703.2 of the *Criminal Code* to consider the inclusion of a procedure for substituted service on an organization.

Carried as amended: 27-0-0

Manitoba

MB2019-01

That Justice Canada examine whether the language used in sections 745(b) and 745.51 of the *Criminal Code* can be changed to more clearly express Parliament’s intention as it relates to:

- i. The meaning of “previously been convicted of,” in relation to the period of parole ineligibility for those sentenced to life imprisonment; and
- ii. The meaning of “already been convicted of,” in relation to whether periods of parole ineligibility for those convicted of murder are to be served consecutively.

Withdrawn following discussion

MB2019-02

Both possession (s. 450) & uttering (s. 452) of counterfeit money should be hybridized to allow the Crown the option of summary proceedings.

Carried: 20-0-5

Ontario

ON2019-01

That Justice Canada, in consultation with Provinces and Territories, examine ways to define a less serious sub-category of the offence of Robbery (s. 344 of the *Criminal Code of Canada*) that would have a maximum penalty of ten years' imprisonment or less.

Withdrawn following discussion

ON2019-02

That the *Criminal Code of Canada* be amended to increase the monetary limit for the offence of Theft Under/Over (s. 334) and other property-related offences with a monetary limit (e.g., Possession of Property Obtained by Crime (ss. 355 and 355.5), False Pretences (s. 362(2)), Fraud (s. 380(1)), and Mischief to Property (s. 430(3)) from \$5,000 to \$10,000.

Carried: 21-0-5

ON2019-03

It is recommended that the *Criminal Code* be amended to provide for sealing orders in relation to exhibits or other material that contain child pornography or intimate or voyeuristic images. Consideration should be given to whether this provision should include other sensitive material that may not be covered by these terms.

Carried: 26-0-0

ON2019-04

It is recommended that the *Criminal Code of Canada* be amended so that a witness in a prosecution for identity theft (s. 402.2) or identity fraud (s. 403) can provide evidence by way of affidavit or solemn declaration that the identity information in the possession of or used by the accused pertains to a person other than the accused. Consideration should also be given to creating a comparable evidentiary provision (affidavit or solemn declaration) for the offence in section 56.1 relating to identity documents.

Carried as amended: 17-2-4

ON2019-05

That Justice Canada, in consultation with the provinces and territories, examine the offence of luring a child in s. 172.1 of the *Criminal Code* in the wake of the decision of the Supreme Court of Canada in *R v Morrison*, 2019 SCC 15, striking down subsection 172.1(3).

Carried as amended: 22-0-2

Quebec

QC2019-01

Amend the *Criminal Code* to include warrants, orders or authorisations inspired by those specified in sections 487.01, 487.014, 487.016, 487.017, 487.018 and 487.1 of the *Criminal Code* that would apply to offence-related property, and, in doing so, facilitate its seizure and forfeiture.

Carried as amended: 17-2-4

QC2019-02

Create an offence under the *Criminal Code* for failure to comply with an order prohibiting disclosure issued under section 487.0191 of the *Criminal Code*.

Carried: 18-0-6

QC2019-03

Amend section 743.21 of the *Criminal Code* to include a mechanism that would allow the court that issued the non-communication order to amend it, upon application by the prosecution or the person protected by the order, if warranted by new circumstances.

Carried as amended: 21-0-4

Saskatchewan

SK2019-01

(1) That the mandatory minimum fines applicable to impaired driving-related offences in their simpliciter and aggravated forms be harmonised.

Carried as amended: 21-1-3

(2) That the minimum and maximum driving prohibitions for aggravated offences be at least as significant as those for simpliciter offences.

Carried as amended: 17-0-8

SK2019-02

That the definition of “secondary designated offence” in s. 487.04 of the *Criminal Code* be amended to include flight from peace officer contrary to s. 320.17 to allow sentencing judges to order the taking of DNA in flight offences where it is in the best interests of the administration of justice to do so.

Carried: 19-0-8