

2000 Victoria, BC

## Criminal Section Resolutions

### 1 - ALBERTA

#### ITEM 1

Dangerous Offenders That the Criminal Code be amended to add a section to the provisions respecting Search Warrants or Dangerous Offenders to allow for the gathering of information in relation to a Dangerous Offender Hearing. **(Withdrawn)**

#### ITEM 2

Prohibited Firearms That s.95(1) of the Criminal Code be amended to include unloaded firearms. **(Withdrawn)**

#### ITEM 3

Criminal Harassment That the Criminal Code be amended to restrict the ability of an accused to personally cross-examine the complainant in a harassment/stalking trial akin to s. 486(2.3). **(Carried: 16-11-5)**

#### ITEM 4

Protection of Child Witnesses (as amended) That s. 486(2.1) of the Criminal Code be amended to include references to murder, attempted murder and homicide offences. **(Carried: 20-3-10)**

### 2 - BRITISH COLUMBIA

#### ITEM 1

Medical and Psychological Reports at Sentencing That s. 721 be amended to authorize medical and psychological reports for sentence hearings modeled on the provisions of the Young Offenders Act. **(Defeated: 6-19-8)**

#### ITEM 2

Failure to Provide Copies of Orders That (subsections 732.1(5)(a), 734.2(a), 737(8) and 742.3(3)(a)) of the Criminal Code be amended to provide that failure of the court to provide an offender with a copy of any court order, notice or prohibition does not affect the validity of the order, notice or prohibition. **(Carried: 23-3-8)**

### ITEM 3

The Effect of Merged Sentences on Pre Existing Prohibition Orders (as amended) That the Federal-Provincial-Territorial Sentencing Committee review the effect of sentence merger on probation orders and make recommendations:

1. to consider the automatic retroactive invalidation of probation orders where the merged sentence is two years or more incarceration,
2. to consider capping the maximum length of a probation order and the expanding power to modify a probation order,
3. that recognize the impact a subsequent custodial sentence may have on the ability of
  1. the probation order to achieve any of its purposes, and
  2. the offender to comply with the terms of the probation order.

**(Carried: 28-0-3)**

### ITEM 4

Bail on Appeal (as amended) That the words "is not frivolous" in paragraph 679(3)(a) be replaced with the words "the appellant has a reasonable basis for questioning the decision". **(Carried: 23-2-7)**

### 3 - MANITOBA

### ITEM 1

Internet Luring and the Exploitation of Children (as amended) That the Criminal Code be amended to deal with the exploitation of children by means of the Internet ...by making it an offence for a person to use a

computer to communicate with someone they know or believe to be a child, for the purpose of facilitating an offence against the child. **(Carried: 29-0-4)**

## ITEM 2

Non-Communication Orders During Period of Imprisonment That the sentencing provisions of the Criminal Code be amended to provide to the sentencing court the power to make a non-contact or communication order during the offender's period of imprisonment. **(Carried: 22-0-11)**

## ITEM 3

Marital Communication Privilege That the marital communication privilege, set out in ss. 4(3) of the Canada Evidence Act, should be abolished. **(Carried: 21-11-2)**

## ITEM 4

Compellability of Spouses To Give Evidence That the wife or husband of a person accused of any offence should be a competent and compellable witness for the prosecution without the consent of the accused (and that ss. 4(2) and 4(4) of the Canada Evidence Act be amended accordingly). **(Carried: 23-9-2)**

## ITEM 5

Restitution (as amended) That consideration be given to (amending or enacting) legislation to allow a court of competent jurisdiction to make an order of restitution in favour of a person where both the accused and the Crown are in agreement with the order and criminal proceedings will not be concluded against the accused. **(Carried: 19-5-7)**[Note, the discussion also focussed on the need to explore the obstacles to the enforcement of restitution orders made pursuant to s.738.]

## ITEM 6

Seizure of Blood Samples (amended) That consideration be given to amending the Criminal Code to permit a police officer to obtain a blood sample, for the purpose of blood alcohol screening only, where the police reasonably suspect that the driver at the time of the accident had alcohol in his body and it is impractical to do a breath test involving an approved screening device. **(Carried: 15-9-7)**

#### ITEM 7

Support/Vulnerable Persons That the support provided to young persons in certain cases be extended to other vulnerable persons. That s. 486 be amended to permit persons with a mental or physical disability to seek permission from the court to have a support person present and in close proximity while they testify. **(Withdrawn)**

#### ITEM 8

Contempt of Court (amended) That the federal Department of Justice undertake a review of the procedure surrounding the conduct of criminal contempt proceedings, with a view to enacting amendments to the Criminal Code which would permit, to the extent reasonably possible, and recognizing the need to proceed with dispatch, such proceedings to be governed by the procedure that guides all other criminal offences in Canada. **(Carried: 34-0-0)**

### 4 - ONTARIO

#### ITEM 1

Onus At Bail Hearings Where The Charge Is Unlawfully At Large That ss. 515(6)(c) of the Criminal Code be amended to include reference to ss. 145(1). **(Carried: 23-4-6)**

#### ITEM 2

Application Of Reverse Onus At Bail Hearing That ss. 515(6)(c) of the Criminal Code be amended to include reference to ss. 145(5.1). **(Carried: 28-0-5)**

### ITEM 3

Revocation Of Suspended Sentence That s. 732.2(5) be amended to ensure that, where an application to a court is made by the Crown under this section, the running of probation order is suspended pending the hearing of the application, and that some mechanism be available to provide for an undertaking, with or without conditions, to be entered into by the offender, pending the hearing of the application. **(Carried: 10-9-4)**

### ITEM 4

Admissibility of Videotaped Evidence That s. 715.1 of the Code be amended to include the offences set out in sections 215(3), 218, 280, 281, 282, 283 and 284. **(Carried: 18-5-9)**

### ITEM 5

Prohibition Orders In Relation To Protection Of Children That s. 161 be amended to include the offences set out in s. 163.1. **(Carried: 24-3-5)**

### ITEM 6

Warrants To Arrest Absconding Witness That sections 698(2), 704 and 705 be amended to provide for an endorsement on the warrant issued pursuant to those sections that would authorize release by a police officer on an undertaking subject to conditions. **(Carried: 32-0-0)**

### ITEM 7

Impaired/Over 80 Operation Of A Vessel (amended) That the Small Vessel Regulations (Canada Shipping Act) be amended and if necessary, the Canada Shipping Act be amended, to provide authority for police officers to conduct checks on boats to determine whether the operator is impaired or to make a demand for a blood alcohol test. **(Carried: 24-0-7)**

### ITEM 8

Forfeiture Of Authorizations, Licenses And Registration Certificates That s. 116 be amended so that persons not yet found guilty are only subject to suspensions of their authorizations, licenses or certificates. **(Carried: 27-0-4)**

### ITEM 9

Procedure For Reviewing Revocations Of Firearms Authorizations That the Firearms Act be amended to provide for one procedure to review all authorizations refused or revoked under the Act. **(Carried: 28-0-2)**  
**ONTARIO, (Criminal Lawyers Association) (AMENDED)**

**ITEM 1**

"Jailhouse" Or In Custody Informants (amended) That the Department of Justice establish a task force or study group to undertake an examination of the role played by in custody informants in cases of wrongful conviction and make recommendations concerning this issue and report back to the Uniform Law Conference in 2001. **(Carried: 23-0-0)**

**ITEM 2**

Bench Warrants "With Discretion" (amended) That ss. 511(4) and 597(5) of the Code be amended to provide that where the accused appears voluntarily before a judge or justice pursuant to s. 511(3) or 597(4), the warrant shall be deemed to be rescinded and not executed. **(Carried: 22-0-4)**

**5 - QUEBEC**

**ITEM 1**

Consent By Parties To Facts Related To A Separate Offence At Sentencing That ss. 725(1)(c) of the Code be amended to make consent and consideration of the public interest prerequisites to the application of that provision. That ss. 725(2) be amended to require the court to record on the information or the indictment any consent by the parties required by that section. **(Carried: 22-0-8)**

**ITEM 2**

Order Prohibiting An Offender From Attending An Arcade (amended) That the Department of Justice, (in the context of the Children As Victims Project) study the possibility of amending s. 161 and (perhaps) s. 810.1 to include "amusement arcades" as places in respect of which an order of prohibition may be issued. **(Carried: 20-1-11)**

**ITEM 3**

Appearance By Means Of A Telecommunications Device Of A Person Held For An Offence Under s. 469 (amended) That s. 515(11) of the Code be amended to allow a person held for an offence under s. 469 to appear before a justice by means of a telecommunications device. **(Carried: 21-2-10)**

#### **ITEM 4**

Prohibition Orders Related to Explosive Offences (amended) That the Department of Justice consider whether explosives should be included in paragraphs 109(1)(d) and 110(1)(b), and whether the offences set out in sections 80, 81 and 82 of the Code should be included in paragraph 109(1)(b) of the Code. [OR That the Department of Justice examine the possibility that those who commit offences set out in sections 80, 81 and 82 should be subject to a prohibition order.] **(Carried: 27-0-5)**

#### **ITEM 5**

Person In custody Prohibited From Communicating With An Identified Person Prior To Appearance That the Criminal Code be amended to give the peace officer or officer in charge, as the case may be, the authority to require that a person he or she is holding in custody with or without a warrant for purposes of a court appearance refrain from communicating with an identified person. **(Defeated: 11-13-7)**

#### **ITEM 6**

Care And Euthanasia Of Seized Animals Add to the Criminal Code a provision allowing the authority which seizes an animal to obtain an order authorizing the euthanasia of the animal and/or, where applicable, an order requiring the owner of the animal to reimburse the seizing authority for the costs of keeping the animal during the legal proceedings. **(Withdrawn: After Discussion)**

#### **ITEM 7**

Destruction Of Seized Things Of Small Value (as amended) That s. 490.01 of the Criminal Code and s. 7 of the Seized Property Management Act be amended to permit the destruction or disposal of seized things with little value that do not need to be stored during legal proceedings. That s. 13 of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, be amended to

permit the destruction or disposal of things seized that are perishable or of little value. **(Carried: 22-1-7)**

#### **ITEM 8**

Fear Of Sexual Offences By Persons With Disability (amended) That the Criminal Code be amended to include a new provision to protect persons with a mental or physical disability in the same manner (i.e. to provide similar protections) as s. 810.1. **(Carried: 24-2-6)**

#### **ITEM 9**

Restraint And Confiscation Of Property On Behalf Of A Foreign State That the Criminal Code and Mutual Legal Assistance Act be amended to allow the restraint and confiscation of property as well as the exemplification of judgments at the request of the foreign state. **(Carried: 27-0-26)**

#### **ITEM 10**

Alcohol Ignition Interlock Program

That s. 259 of the Criminal Code be amended to provide:

1. that for greater certainty, driving after participation in the ignition interlock program has been revoked or after the ignition interlock system has been altered constitutes an operation of a vehicle while disqualified and is subject to the penalties provided for in paragraph 259(4); and
2. that participation in an ignition interlock program is not restricted to cases where a minimum driving prohibition period has been imposed.

**(Carried: 32-0-1)**

### **6 - SASKATCHEWAN**

#### **ITEM 1**

Onus At At Bail Hearing Where Accused Unlawfully At Large That s. 515(6) of the Criminal Code be amended to include reference to s. 145(5.1). **(Withdrawn: - See Ontario Item 1 - Carried)**

#### **ITEM 2**



Criminal Negligence Simpliciter (amended) That the federal government give consideration to amending the Criminal Code to make the commission of a criminally negligent act or omission that endangers the safety or life of another individual, a criminal offence. **(Carried: 18-5-7)**

**ITEM 3**

Gross Indecency (amended) That the Criminal Code (s. 171(1)(c)) be amended to create an offence of an indecent act in any place, where it is committed without the consent of the other person who is the subject or object of the act. **(Defeated: 9-13-6)**

**ITEM 4**

Making Indecent Act A Dual Procedure Offence That subsections 173(1) and 173(2) be amended to make them dual procedure offences. **(Carried: 19-0-11)**

**ITEM 5**

Mandatory Condition Of Keeping The Peace While On Bail (amended) That the relevant sections of the Criminal Code be amended to require any person released on bail be subject to a statutory condition that he keep the peace and be of good behaviour. **(Carried: 22-4-5)**

**ITEM 6**

References To Historic Sexual Offences In s. 278.2(1)(b), s. 486(3)(b) That the list of offences in sections 278.2(1)(b) and 438(3)(b) of the Criminal Code and the Schedule to Bill C-7, An Act to Amend the Criminal Records Act be amended by deleting reference to sections 245 and 246 of the Criminal Code, R.S.C. 1970 as those sections read immediately before January 4, 1983. **(Withdrawn: After Discussion)**

**ITEM 7**

Criminal Voyeurism That Part V of the Criminal Code be amended to create a specific offence that would prohibit surreptitious, non-consensual viewing, photographing or videotaping of another person in a dwelling house or business premises where there is an expectation of privacy and if the viewing, photographing or videotaping is done for a sexual purpose. **(Carried: 21-1-8)**

**ITEM 8**

Judicial Interim Release After Indictment (as amended) Part I That s. 597 of the Criminal Code be amended to provide that the onus is on the accused to show cause under ss. 597(3). **(Defeated: 12-3-15)** Part II That the federal government clarify the powers of review respecting orders made pursuant to ss. 597(3) of the Criminal Code. **(Carried: 25-0-5)**

#### ITEM 9

Detention In Custody Pending Assessment Under s. 672.11 (amended) That the federal Department of Justice ensure that Part XX1 and Form 48 be amended such that every order for an in custody assessment will include the authority to hold a person in a prison pending placement for assessment and return to court after assessment. **(Defeated: 7-9-17)**

#### 7 - CANADA

#### ITEM 1

Electronic Surveillance That consideration be given to amending s. 183 of the Criminal Code to include specified environmental and wildlife offences as set out in the Canadian Environmental Protection Act, the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act, the Canada Wildlife Act and the Migratory Birds Convention Act, 1994. **(Withdrawn: After Discussion)**

#### ITEM 2

Applications To Extend Period For Notification Of Wiretap Authorizations That Part VI of the Criminal Code be amended to permit stand alone applications for delay of notification orders. **(Carried: 22-0-7)**

#### ITEM 3

Sealing Orders (amended) That s. 487.3(1) of the Criminal Code be amended to preserve common law powers respecting sealing orders and to include other types of orders including restraint orders, income tax information orders, assistance orders, etc. **(Carried: 24-0-4)**

#### ITEM 4

Change of Venue Between Provinces That sections 531 and 599 of the Criminal Code be amended to allow for a change of venue from one

province to another, subject to the consent of Attorneys General concerned. **(Withdrawn)**

**CANADIAN BAR ASSOCIATION - CRIMINAL JUSTICE SECTION**

**ITEM 1 - FLOOR RESOLUTION** Re-Codification of Criminal Law That the federal government undertake a project to re-codify the criminal law to make it clear, fair and contemporary. **(Defeated: 14-0-15)**

**CANADIAN COUNCIL OF CRIMINAL DEFENCE LAWYERS**

**ITEM 1** That the Uniform Law Conference - Criminal Section establish a subcommittee to study the questions/issues arising out of Corbett applications with a view to recommending appropriate amendments to the Criminal Code and/or Canada Evidence Act which would address the problems identified in the research paper prepared for the Uniform Law Conference (2000) by Professor David Pacciocio. **(Carried: 21-0-9)**