

**UNIFORM LAW CONFERENCE OF CANADA
CRIMINAL SECTION RESOLUTIONS
August 2023**

Results of votes are listed as (Votes in Favour) – (Votes Opposed) – (Abstentions)

Alberta

AB2023-01

That Justice Canada, in consultation with the provinces and territories, examine sections 486.1 to 486.5 of the *Criminal Code* and the provisions governing the admission of video-recorded evidence with a view of possible law reforms to ensure their adequacy, particularly with respect to the issues of security, privacy and participation of witnesses and alleged victims in cases involving sexual offences and gender based violence, including intimate partner violence, while respecting the fair trial rights of the accused and the open court principle.

Carried as Amended: 21-0-2

AB2023-02

It is recommended that section 105 of the *Criminal Code* be amended to ensure that a person who knows, is wilfully blind to, or reckless as to his firearm (or other regulated item) having left his possession, in any unauthorized manner, is required to report it to the authorities with despatch.

Carried: 14-7-6

AB2023-03

Subsection 501(3) of the *Criminal Code* should be amended to allow an undertaking given to a peace officer to contain an optional condition to abstain from having custody or control of a specified animal or bird, or class of animals or birds, where such a condition is reasonable and necessary in the circumstances and connected to the offence.

Carried as Amended: 20-4-2

AB2023-04

That the *Criminal Code* be amended to add a provision, similar to sections 715.1 and 715.2, which would allow for the admission of a video-recorded statement taken from an adult victim of a sexual offence.

Withdrawn

AB2023-05

In light of *R v Aheer*, 2020 ABCA 232, and the conflicting authority in *R v Green*, 2006 CanLII 27306 (ONSC), it is recommended that sections 523(1)(b)(ii) and/or 523(2) of the *Criminal Code* be amended to clarify the jurisdiction to not only revoke release but to vary release conditions upon conviction and pending sentencing upon cause being shown.

Carried as Amended: 25-0-0

AB2023-06

That section 810 of the *Criminal Code* be amended to authorize a justice to order a defendant to enter into a recognizance for a period of not more than two years in cases where that defendant has been previously convicted of intimate partner violence and the application concerns intimate partner violence involving the defendant.

Carried as Amended: 19-3-4

British Columbia

BC2023-01

That section 10 of the *Criminal Code* be amended to provide the Attorney General the right to appeal, in accordance with Part XXI of the *Criminal Code*:

- (a) from the acquittal where a court, judge, justice or provincial court judge summarily acquits a person for contempt of court; and,
- (b) against the punishment imposed where a court, judge, justice or provincial court judge summarily convicts a person for contempt and imposes punishment in respect thereof.

Carried as Amended: 22-2-3

BC2023-02

That the *Criminal Code* be amended to exempt warrants to search electronic devices, conveyances, and other forms of personal property in the possession of the police from the application of section 488.

Carried as Amended: 19-0-6

Canada

Canada – Canadian Association of Provincial Court Judges

Can-CAPCJ2023-01 / Can-ACJCP2023-01

That Justice Canada, in consultation with the provinces and territories, review with a view of possible amendments, Part XX.1 of the *Criminal Code* to allow the court to consider the issue of fitness of the accused to stand trial at any stage of the proceedings.

Carried as Amended: 28-0-0

Can-CAPCJ2023-02 / Can-ACJCP2023-02

That Justice Canada, in collaboration with provinces and territories, review subsection 732.1(2) of the *Criminal Code*, which mandates that certain conditions be included in probation orders, with a view of possible amendments with the aim to modernize these provisions and address any disproportionate impacts on marginalized communities. This review might also consider whether similar amendments are advisable with respect to other similar provisions (e.g., sections 83.3, 742.3, 810, 810.01, 810.011, 810.02, 810.1, and 810.2).

Carried as Amended: 25-0-1

Canada – Canadian Bar Association

Can-CBA2023-01 / Can-ABC2023-01

It is recommended that Justice Canada, in consultation with the provinces and territories, study section 745.6 of the *Criminal Code*, with a particular view towards re-establishing the availability of “faint hope” hearings.

Carried as Amended: 23-0-4

Can-CBA2023-02 / Can-ABC2023-02

That section 2 and subsection 672.23(1) of the *Criminal Code* be amended to incorporate the requirement for fitness at the time of sentencing.

Withdrawn

Can-CBA2023-03 / Can-ABC2023-03

It is recommended that a working group be created to study the current *Criminal Code* “records regime” provisions (sections 278.1 to 278.94), with a view to making recommendations for amendments that would serve to simplify procedural issues, streamline the current regime, and provide for a more efficient process.

Carried as Amended: 19-4-3

Canada – Public Prosecution Service of Canada

Can-PPSC2023-01 / Can-SPPC2023-01

It is recommended that paragraph 271(1)b) of the *Criminal Code* be amended to increase the maximum penalty from 18 months to 2 years less a day where the prosecution proceeds summarily for the offence of sexual assault of a complainant 16 years of age or older.

Carried: 26-0-2

Can-PPSC-02 / Can-SPPC2023-02

- A) That the *Criminal Code* be amended to make it an offence for a person to, for a sexual purpose, invite, counsel or incite a person under the age of sixteen to expose their genital organs, anal region or breasts.
- B) That subsection 153(1) of the *Criminal Code* be amended to make it an offence for a person to, for a sexual purpose, invite, counsel or incite a young person to expose their genital organs, anal region or breasts.

Carried as Amended: 24-0-0

Can-PPSC2023-03 / Can-SPPC2023-03

- A) That section 26(1) of the *Canada Evidence Act* be amended to read:

A copy of any entry in any book or record kept in any office or department of the Government of Canada...
- B) That Justice Canada review relevant provisions within the *Canada Evidence Act* pertaining to “books”, “electronic documents” and “records” to ensure they accord with modern technological tools and practices and see that the terms are used consistently throughout the Act.

Carried as Amended: 25-0-0

Can-PPSC2023-04 / Can-SPPC2023-04

That subsection 109(2) of the *Criminal Code* be amended to clarify if a person is convicted of any offence enumerated under section 109(1) and that person has a prior conviction for the same or any other offence enumerated under section 109(1), then the sentencing judge must impose a lifetime prohibition order under section 109(3).

Carried as Amended: 24-0-2

Can-PPSC2023-05 / Can-SPPC-05

We recommend that paragraph 8(2)(e) of the *Privacy Act* be amended or replaced with a new subsection or paragraph that will provide police with explicit authority to obtain relevant information (including photographs and documents) held by other government and state agencies.

Withdrawn

Manitoba

MB2023-01 (A)

Criminal Code subsection 162(5) should be amended by increasing the maximum sentence for indictable proceedings from five years to ten years jail.

Carried: 13-12-2

MB2023-01 (B)

Criminal Code subsection 162.1(1) should be amended by increasing the maximum sentence for indictable proceedings from five years to ten years jail.

Carried: 16-8-2

Nova Scotia

NS2023-01

That the *Criminal Code* be amended to address a possible legislative gap which prevents police from fulfilling their duty to investigate alleged crimes by interviewing those who have just been arrested or charged with a new criminal offence if they happen to be incarcerated.

Carried as Amended: 15-5-7

NS2023-02

That Justice Canada, in collaboration with provinces and territories, review subsection 742.6(4) and subsection 742.6(8) of the *Criminal Code*, in relation to allegations of breach of conditional sentence order, with a view of possible amendments to include electronically recorded witness statements in addition to signed witness statements as currently provided. Such a review could allow for further consideration of how best to address concerns regarding the personal authentication of recorded witness statements and, ensure that the section 742.6 objectives of expeditious proceedings and evidentiary reliability are met.

Carried as Amended: 21-2-3

NS2023-03

That subsection 264.1(1)(a) of the *Criminal Code* be amended to include threats to cause death or bodily harm to any person, whether ascertained or not.

Defeated: 3-11-12

Ontario

ON2023-01

It is recommended that Justice Canada, in consultation with the provinces and territories, study the possibility of amending the *Criminal Code* to enact a new video warrant provision for contexts where there is a diminished expectation of privacy, including common spaces with controlled access, such as the shared hallways of a multi-unit dwelling. The new warrant provision should ensure that appropriate safeguards are in place to protect privacy without unduly compromising the ability of law enforcement to investigate in a timely and effective manner.

Carried: 21-4-3

ON2023-02

It is recommended that the *Criminal Code* be amended to make it clear that an authorization under section 492.1 (warrant for tracking device) may include a *general* description of the “thing” being tracked, such that the warrant may authorize a peace officer to use a tracking device on *any* “thing,” such as a vehicle or mobile phone, when they have the requisite grounds that it is being used, or will be resorted to, by the person named in the authorization (a “resort-to clause”). It is also recommended that the *Criminal Code* be amended, to make it clear that an authorization under section 492.2 (warrant for transmission data recorder) may include a resort to clause.

Carried: 19-0-7

ON2023-03

It is recommended that subsections 486.4(2.1) and 486.4 (2.2) be amended to extend the publication ban protections in relation to the identity of victims under the age of 18 to all witnesses under the age of 18 as well.

Carried: 21-2-3

ON2023-04

That Justice Canada, in consultation with the provinces and territories, study the possibility of amending section 231 of the *Criminal Code* to provide that murder is classified as first degree

when it is motivated by hatred based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.

Carried as Amended: 11-8-7

ON2023-05

It is recommended the offences in section 163.1 (prohibiting the production, distribution and possession of child pornography), section 171.1 (making sexually explicit materials available to child), and section 172.1 (luring a child) be made subject to the protections for private records of victims in paragraph 278.2(1)(a) (third party records) and paragraph 278.92(1)(a) (records in the control of the accused) by adding them to the list of offences therein.

Withdrawn after discussion

ON2023-06

It is recommended that the maximum penalty on summary conviction for the offence of sexual assault when not committed against a minor (subsection 271(b)) be increased from eighteen months to two years less a day to bring it in line with virtually every other offence in the *Criminal Code* that can be prosecuted by way of summary conviction.

Withdrawn

Saskatchewan

SK2023-01

That section 231 of the *Criminal Code* be amended to provide that the murder of a person who is a lawful occupant of a dwelling-house during the commission of a home invasion is first degree murder.

Carried: 13-8-7

SK2023-02

That section 239 of the *Criminal Code* be amended to harmonise the *mens rea* for attempted murder with the *mens rea* for murder as set out in paragraphs 229(a) and (c).

Defeated: 7-15-5

SK2023-03

That the *Criminal Code* be amended to preserve the ability of Qualified Technicians to attest or testify to the prerequisites in subsection 320.31(1).

Carried as Amended: 16-3-8

Quebec

QC2023-01

That Justice Canada, in consultation with the provinces and territories, assess the punishments for the homicide of an intimate partner, especially women, committed in a context of domestic violence, domination or coercive control. It is suggested that Justice Canada assess eligibility for parole in the case of a murder and study the appropriateness of new sanctions for the manslaughter of an intimate partner.

Carried as Amended: 14-8-5

QC2023-02

- a) It is recommended that subsection 17(1) of the *Youth Criminal Justice Act* be amended to remove the requirement for approval by the Lieutenant Governor in Council.

Carried: 24-1-1

- b) It is recommended that subsection 17(3) of the *Youth Criminal Justice Act* be amended to remove the requirement that rules be published in the provincial gazette and instead provide that they be published or otherwise made available to the public.

Carried: 24-1-1

QC2023-03

We recommend the creation of a working group (WG), chaired by a representative from Québec, with the mandate to update, in light of the coming into force of Bill C-5 (An Act to amend the *Criminal Code* and the Controlled Drugs and Substances Act, ch. 15, 2022) and the various decisions that found mandatory minimum penalties unconstitutional for sexual offences committed against a person under 16 years of age, the 2013 final report “Statutory Exemptions to Mandatory Minimum Penalties”. The WG can also opine on whether or not the mechanism discussed in paragraph 36 of the *Lloyd* decision should be implemented in the *Criminal Code* and if so, what should be the parameters of such a mechanism in Canada.

Carried as Amended: 14-2-11

QC2023-04

The resolution recommends amending section 111 of the Youth Criminal Justice Act (YCJA) to clarify that the publication ban continues to apply where a child or young person who is the victim or witness in connection with an offence committed or alleged to have been committed by a young person is deceased.

Carried as Amended: 21-2-3

QC2023-05

We recommend amending section 810.1 of the *Criminal Code* so that the protection it provides also covers young persons within the meaning of subsection 153(2) of the *Criminal Code*, when the reasonable grounds concern an offence potentially being committed under subsection 153(1) of the *Criminal Code*.

Carried: 24-0-1

QC2023-06

We recommend amending subsections 486.2(3) and 486.3(4) so that they explicitly state that one of the factors to be considered is the fact that the witness and the accused are or were intimate partners at the time of the acts complained of.

Withdrawn

QC2023-07

That Justice Canada review section 535 and paragraphs 548(1)(a) and (b) of the *Criminal Code* to determine whether they should be amended to avoid any possible ambiguity as to the jurisdiction of the justice of the peace at the preliminary inquiry, namely their limited jurisdiction to inquire into offences punishable by a maximum term of imprisonment of 14 years or more that are included in the information and not for all offences that are included in the information.

Withdrawn after discussion

REPORTS

Criminal Section Working Group Reports

Working Group on Section 490 of the Criminal Code

Be it resolved that:

1. The Status Report of the Working Group on section 490 of the *Criminal Code* be accepted; and,
2. The Working Group provide its final report to the Criminal Section at the 2024 annual meeting.

Carried: 23-0-0

Working Group on the review of section 487 of the Criminal Code

Be it resolved that:

1. The Final Report of the Working Group on section 487 of the *Criminal Code* be accepted; and
2. The recommendations in the Final Report of the Working Group on section 487 of the *Criminal Code* be approved.

Carried: 25-0-1

Working group on section 672.26 and related sections of the Criminal Code (juries and fitness hearings)

Be it resolved that:

1. The Status Report of the Working Group on section 672.26 and related sections of the *Criminal Code* be accepted; and,
2. The Working Group provide its next report to the Criminal Section at the 2024 annual meeting

Carried as Amended: 24-0-0

Working group on the status of animals

Be it resolved that:

1. The Status Report of the Working Group on the Treatment of Animals in the *Criminal Code* be accepted; and,
2. The Working Group provide its final report to the Criminal Section at the 2024 annual meeting.

Carried: 24-0-0