



BULLETIN!
October 23, 2009
LEGISLATIVE UPDATE

The Canadian Association of Police Boards passed Resolution 09-04 at their 2009 Annual General meeting in Sydney, Nova Scotia on August 15th urging the House of Commons to pass Bill C-25. On Thursday, October 22, Bill C-25, Truth in Sentencing Act, received Royal Assent. A date for this legislation to come into force has not yet been set.

Bill C- 25 (*Truth in Sentencing Act*) receives *Royal Assent* on October 22, 2009.

The Current Practice

According to the *Criminal Code*, if an individual who is accused of a crime is not granted bail, they are held in custody until they are sentenced. When sentencing does take place, the courts often use a 2-to-1 ratio for the credit given for pre-sentencing custody. On rare occasions, the credit can be as high as 3 to 1 where conditions of detention are more difficult. Giving extra credit for time served has become the practice in order to take into account certain circumstances such as lack of programming or activities for inmates, overcrowding in the facility and the fact that time spent in remand custody, unlike time spent in sentenced custody, does not count towards a prisoner's eligibility for full parole or statutory release.

Enhanced credit for time spent in pre-sentencing custody is seen as one of several factors that have contributed to considerable increases in remand populations over the past several years. Another factor that has significantly affected the number of accused held in remand is that court cases are becoming more and more complex, with many criminal cases now involving ten to twenty appearances before the court. Trials are longer, as is the amount of time an accused remains in custody awaiting sentencing.

There is a belief that some offenders deliberately choose remand custody in order to reduce their overall length of time in sentenced custody, i.e., they will serve a shorter time given the typical credit received for pre-trial custody. However, studies indicate that the most important factor contributing to the significant increase in the remand population is the fact that court cases are tending to become more complex and therefore lengthier.

The awarding of credit for time served contributes to a public perception that sentences imposed are more lenient than they actually are, especially if no explanations for the length of a sentence are provided at the time of sentencing. This leads to the public being unaware of the extent of the pre-sentence detention, and under what kind of conditions this time was served.

Amendments

The amendments to the *Criminal Code* will, as a general rule, cap the amount of credit for time served in pre-sentencing custody at a 1-to-1 ratio. For example, if an offender who served 9 months in remand custody is sentenced to 4 years imprisonment, the net sentence would be 3 years and 3 months (4 years minus 9 months).

Credit at a ratio of up to 1.5 to 1 will only be permitted where circumstances justify it, and courts will be required to explain these circumstances.

Credit for time served by offenders who have violated bail, or been denied bail because of their criminal record will also be limited to a maximum 1-to-1 ratio, and no enhanced credit beyond one to one will be permitted under any circumstances.

These amendments will bring greater consistency and certainty to sentencing, and help address provincial and territorial concerns about the growing number of persons being held in custody prior to sentencing.

Provincial-Territorial Concerns

Correctional facilities in the provinces and territories are experiencing ever-increasing numbers of accused being held in pre-sentencing custody, to the point where the population in remand now exceeds the population in sentenced custody. The Federal/Provincial/Territorial (FPT) Sentencing Working Group and the FPT Heads of Corrections have explored contributing factors and possible solutions. There is strong support in the provinces and territories for limiting credit for time served as one way to help reduce the size of their remand populations.

The bill amends the *Criminal Code* (the Code) to limit the credit a judge may allow for any time spent in pre-sentencing custody in order to reduce the punishment to be imposed at sentencing, commonly called “credit for time served.”⁽¹⁾ There are three scenarios:

- In general, a judge may allow a maximum credit of one day for each day spent in pre-sentencing custody (“custody” in the bill) (clause 3 of the bill, new section 719(3) of the Code).
- However, if, and only if, the circumstances justify it, a judge may allow a maximum credit of one and one-half days for each day spent in pre-sentencing custody (clause 3 of the bill, new section 719(3.1) of the Code).
- If the person’s criminal record or breach of conditions of release on bail was the reason for the pre-sentencing custody,⁽²⁾ a judge may not allow more than one day’s credit for each day spent in pre-sentencing custody (clause 3 of the bill, new section 719(3.1) of the Code).

The bill is the result of an agreement reached at the federal/provincial/territorial meetings of ministers of Justice held in 2006 and 2007. At those meetings, the ministers had agreed to limit, in sentencing, the credit allowed for pre-sentencing custody and had proposed rules similar to the ones set out in the bill: a maximum credit of one and one-half days against sentence for each day spent in pre-sentencing custody, and of one day for each day spent in pre-sentencing custody in cases where the accused was detained because of a criminal record or a breach of bail conditions.

CAPB Resolution 09-04: REDUCING REMAND CREDIT AND DEAD-TIME SENTENCING

WHEREAS pre-trial custody is required for offenders whose actions and criminal histories pose a risk to public safety; and

WHEREAS offenders create tactical processing delays prior to trial to maximize two-for-one or three-for-one sentencing credit for time served in pre-trial custody; and

WHEREAS public safety and confidence in the justice system is reduced by the public perception that offenders are taking advantage of this loophole in the law; and

WHEREAS the ability to amass credit has led to significant overcrowding and inhumane conditions in remand facilities;

THEREFORE be it resolved that Canadian Association of Police Boards urge all political parties to pass Bill C-25 currently before the House of Commons to amend the *Criminal Code of Canada* to prohibit 'two for one' and 'three for one' credit for pre-trial custodial time.