

***Bill C-9 – An Act to amend the Criminal Code***  
***(conditional sentence of imprisonment)***

The Canadian Resource Centre for Victims of Crime (CRCVC) is a national, non-profit victim advocacy group for crime victims. We provide direct assistance to crime victims dealing with the criminal justice system, as well as advocate for justice reform to better protect their rights and prevent victimization.

The CRCVC is pleased to take part in the debate over Bill C-9, *An Act to amend the Criminal Code (conditional sentence of imprisonment)*. The proposed change to section 742.1 of the *Criminal Code* will address concerns that victims of serious and violent crime have expressed to our organization on numerous occasions. These concerns predominantly surround the distress and unease that they feel when they see offenders, not only those who perpetrated their own victimization, but also those who commit other serious crimes, sentenced to house arrest, penalties that are not proportionate to the gravity of the offence committed. We believe that the elimination of access to conditional sentences for serious and/or violent crimes addresses some of these concerns.

Conditional sentences were introduced in 1996 and allowed that certain sentences of imprisonment be served in the community, or under house arrest. These sentences are neither incarceration nor probation, but fall in between the two. The theory behind the sentencing provisions was that offenders who commit less serious, non-violent offences may serve their sentence in the community, avoiding incarceration. They remain under supervision, and have restrictions on their freedom and mobility. Conditional sentencing provisions do achieve this end, but some offenders have been receiving conditional sentences for more serious offences, including serious assaults, sexual assault, and driving offences that result in death or serious harm.

There are several criteria that must be met for an offender to be eligible for a conditional sentence; that the offence not carry a minimum term of imprisonment; that the sentencing judge have determined that a fitting punishment for the offence be a term of

imprisonment of less than two years and that serving said sentence in the community would not endanger the community; and that the sentence be consistent with the purposes and principles of sentencing set out in s.718-718.2 of the *Criminal Code*. These criteria have not sufficiently restricted access to conditional sentences for offenders who commit the serious and violent offences, including repeat offenders.

Bill C-9 seeks to address this discrepancy, by adding another restriction, addressing the type of crime that is eligible for house arrest. The amendment to s.742.1 provides that offences tried by way of indictment for which the maximum term of imprisonment is ten years or more are ineligible for conditional sentence. As such, the CRCVC supports the underlying goal of Bill C-9, but has reservations that the criteria for eliminating access to conditional sentences, that the offence carry a maximum term of imprisonment of ten years or more and be tried by indictment, will leave certain serious and violent offences still eligible for a conditional sentence. It also leaves hybrid offences that are ineligible for house arrest if tried by indictment eligible if tried summarily. These offences include sexual assault and criminal harassment.

The CRCVC believes that serious and/or violent offences, especially those which victimize children or other vulnerable people should not be eligible for conditional sentences. Of particular concern to our organization are sexual offences. Unfortunately, the ten year maximum term rule that this bill proposes would not restrict offenders convicted of the following offences from receiving conditional sentences, if they meet the other criteria:

- removal of a child from Canada (s. 273.3);
- sexual exploitation (s.153)
- sexual exploitation of a person with a disability (s.153.1(1))
- voyeurism (s.162)
- duty to provide necessities (s.215)
- abandoning child (s.218)
- luring a child (s.172.1)
- abducting a person under 16 (s.280)

We believe that the above noted offences are serious and often violent in nature, and therefore the offenders that commit them should not be allowed to serve their sentence under limited supervision within the community. According to the Legislative Summary provided on Bill C-9, the Canadian Centre for Justice Statistics estimates that the average cost of supervising an offender in the community in 2002-2003 was \$1792. We question how effective that supervision is for the offenders, given that figure equates with less than \$5.00/per day spent supervising any given offender. Given that supervision of these offenders is carried out by probation and parole officers that are overworked and come from understaffed offices, it is unlikely that the supervision is very effective for these offenders. We also question the effectiveness of that supervision for certain types of offenders and restrictions. For example, given the concerns mentioned above, and the almost limitless ways that individuals can access the internet, how is a probation officer to ensure that a sex offender who is not permitted to access the internet is not doing so when he is not supervised?

Like those offences covered by Bill C-9, the offences we list above often have lasting physical and emotional consequences for their victims. Failing to include them on the list of those offences no longer eligible for conditional sentence minimizes the impact of these crimes, and is a failure to address the gravity of these offences. There are numerous offences for which conditional sentences, and the associated level of supervision that would be attached to the sentence, are appropriate. Research has shown that victims also support this view. They do not; however support conditional sentences for violent offences. We echo that position.

Proponents of conditional sentences maintain that they are a necessary component of the restorative justice process. Restricting the proposed offences from eligibility for conditional sentence does not mean that there is no hope for restorative justice in these cases. Restorative justice principles do not advocate for the reduction of incarceration to facilitate the restorative justice process. Restorative justice is about ensuring that victims needs are both heard and addressed.

The CRCVC feels that the provisions for conditional sentencing, as introduced in 1996, have resulted in far too many violent criminals to receiving sentences that are too lenient when compared to the impact of their offences. This was not the intent of the provisions. Bill C-9 begins to address this imbalance, and we support the bill in principle. We feel that the proposal can be strengthened, so that crimes of violence that fall outside of its scope may be included in the legislative change. Adopting a scheme that includes a list of offences that encompasses both those that fall within its current scope and those that we feel should be included will serve to limit the applicability of conditional sentencing options to those offences for which the provision were originally intended.

### **Recommendations**

- The CRCVC recommends that Bill C-9 be amended to include the following offences, in addition to those specified by the ten year maximum rule:
  - o removal of a child from Canada (s. 273.3);
  - o sexual exploitation (s.153)
  - o sexual exploitation of a person with a disability (s.153.1(1))
  - o voyeurism (s.162)
  - o duty to provide necessities (s.215)
  - o abandoning child (s.218)
  - o luring a child (s.172.1)
  - o abducting a person under 16 (s.280)
- Bill C-9 should be amended such that the list of offences that are ineligible for conditional sentence should be specified in a schedule, rather than the by current method proposed by the bill. This would allow for the inclusion of offences not currently included, and the exclusion of offences for which a conditional sentence is appropriate.
- The amended legislation should be passed by Parliament without delay.