

Bill C-9 Conditional Sentencing

Bill C-9 was passed by both the House of Commons (on November 3, 2006) and the Senate (on May 16, 2007), and received Royal Assent on May 31, 2007. Bill C-9 will now come into effect six months after that date.

Originally, as proposed by the Conservative government, Bill C-9 would have amended s. 742.1 of the *Criminal Code* so that a person prosecuted for any offence which has a maximum term of imprisonment of 10 years or more would not be eligible to receive a conditional sentence. The Standing Committee on Justice and Human Rights amended Bill C-9 restricting ineligibility for a conditional sentence to specific additional offences.

The version of Bill C-9 which has been passed into law amends s. 742.1 of the *Criminal Code* by adding new categories of offences for which a person may not be sentenced in the community. Specifically, a judge will no longer be able to order a conditional sentence where a person is convicted of either

- a serious personal injury offence (which includes the use or attempted use of violence against another person, sexual assault, sexual assault with a weapon, and aggravated sexual assault),
- a terrorism offence, or
- a criminal organization offence

which was prosecuted by way of indictment and for which the maximum term of imprisonment is 10 years or more.

Under the former version of s. 742.1, only persons convicted of an offence punishable by a minimum term of imprisonment were not eligible to receive a conditional sentence. Those persons remain ineligible.

Conditional sentences are also still only available where the judge determines that the person would otherwise be sentenced to a term of less than two years and that sentencing the person in the community would not endanger the community.

Commentary

Restrictions on the use of conditional sentences run counter to the fundamental principles of sentencing.

In 1996, principles of sentencing (s. 718) and conditional sentences (s. 742) were introduced into the *Criminal Code*. The principles of sentencing are intended to reinforce the premise that incarceration should be regarded as extraordinary and should only be used as a last resort. The intent of Parliament in creating conditional sentences was to reduce the reliance on imprisonment by providing judges with an alternative sentencing mechanism, and to further the use of restorative sentencing processes that encourage those who have caused harm to acknowledge this fact and to make reparations.

Bill C-9 removes the option of responding with restorative and reparative approaches, instead of incarceration, in a greater number of situations. Such restrictions take away the ability of judges to assess the specific circumstances of individual cases in determining the appropriate sentence, and will only lead to an increase in incarceration.