

SENTENCING, ORDERS AND PROHIBITIONS CHECKLIST

Jail Time

Please advise the court of the following:

- Total jail time to be served from sentence date
- If more than one count, how much jail time per count
- Time credited amount and count or counts to which the credit is applied
- Time served amount
- Consecutive or concurrent

Consider also: prior conditional sentences, parole eligibility and intermittent sentence

Truth in Sentencing Act:

For persons charged after February 22, 2010, the court must state for the record and record on the warrant of committal the following:

- Jail term that would have been imposed before credit granted
- Actual Pre-Sentence Time in Custody
- Credited Pre-Sentence Time in Custody (state reasons on the record)
- Jail Sentence Imposed

Outstanding Charges

Crown to advise the court

- Any charges still outstanding on Indictment?
- Stay of Proceedings to be entered?

Conditional Sentence Order

Compulsory Conditions (s. 742.3(1)):

- (1) keep the peace and be of good behaviour;
- (2) appear before the court when required to do so by the court;
- (3) report to a supervisor within two working days, or such longer period as the court directs, and thereafter, when required by the supervisor and in the manner directed by the supervisor;
- (4) remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor; and
- (5) notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation.

Section 742.3 (2) sets out a number of **optional** conditions

Probation Order

A probation order may be in Form 46 and must specify:

- the period for which the probation order is to remain in force (cannot exceed 3 years (s. 732.2(2)(b))
- **conditions**

Compulsory Conditions (s. 732.1(2)):

- (1) keep the peace and be of good behaviour;
- (2) appear before the court when required to do so by the court; and
- (3) notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

*Consider also **optional conditions** - see s. 732.1(3)*

DNA Samples

Please advise the Court of the following:

- Count(s) that DNA order applies to
- Primary Order – **Mandatory**- pursuant to 487.051 (1) or (2) (Form 5.03)
- Secondary Order – **Discretionary**- pursuant to 487.051 (3) (Form 5.04)
- If offender **not in custody**:
- is a Reporting Order required? If so,
 - where are they to report (address)
 - when are they to report for samples (day of week and time)

Sex Offender Information Registration Act (SOIRA) Order

SOIRA orders are mandatory on application of the Crown; however court has discretion to refuse if the offender establishes that the impact of the order on their privacy or liberty would be grossly disproportionate to the public interest in protecting society (s. 490.012(4)).

Crown to provide "Order to comply with SOIRA" (Form 52) and two page flysheet to Court (s. 490.012).

- Crown to note duration of the order (s. s. 490.013)
- Clerk to provide Judge with the order prepared by Crown and
- Judge to sign order on bench

Prohibitions Generally

Please advise the court on the following:

- Count(s) that prohibition applies to
- Duration of prohibition
- What conduct is prohibited

Firearms Prohibitions

Please advise the court on the following:

- Count(s) that prohibition applies to
- Section number(s) that prohibition applies to
- Duration of prohibition
- Items contained in prohibition

Offences dated after December 1st, 1998

Mandatory Order (s. 109(1)(a-d))

First Conviction (s. 109(2))

- **Minimum 10 years from the date of release from prison or conviction** - any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition and explosive substance -
- **life** - prohibited firearms, restricted firearms, prohibited weapon, prohibited device and prohibited ammunition

Subsequent Conviction (s. 109(3))

- **life** - firearm, cross-bow, restricted weapon, ammunition and explosive substance

Discretionary Order (s. 110(1)(a) or (b)

- **Minimum 10 years from the date of release from prison or conviction** - any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things -

Offences dated before December 1st, 1998

- Order pursuant to section 100 (1) – for life
- Order pursuant to section 100 (2) – not more than 10 years

Fines

The Court must clearly set out (s. 734.1):

- the **amount** of the fine;
- the **manner** of payment of the fine;
- the **time(s)** by which the fine or any portion of the fine must be paid; and
- other terms the court deems appropriate.

Section 735 deals with fines where the **offender is a corporation**.

Victim Surcharge

Amount (s. 737(1) per count:

- If fine imposed, **15%** of the fine imposed
- If **no fine**:
 - \$50 if offence punishable by summary conviction, and
 - \$100 if offence punishable by indictment
- The court can increase the victim surcharge (s. 737 (3))
- The court may exempt the offender from paying the victim surcharge where it would result in undue hardship (s. 737 (5)).
- If the court does not make an order imposing a victim surcharge, the court is to provide reasons
- The Victim Surcharge is due when the fine imposed for the offence is payable or a time established by the lieutenant governor in council.

Restitution and Forfeiture

Where orders are sought for both restitution and forfeiture with respect to the same property, restitution orders must be made first before the court considers whether forfeiture and fines would also be appropriate (s.740). Depending on the nature of the offence or the property being forfeited, different considerations and procedural rules are in place. Please consult the CC or the CDSA as appropriate.

Controlled Drugs and Substances Act

Forfeiture- Depending on the nature of the offence or the property being forfeited, different considerations and procedural rules are in place. Please consult the CC or the CDSA as appropriate.

Disposal- Section 27 allows the court to order the disposal of drugs if they are no longer required for judicial proceedings, subject to section 24 which allows a person to apply for the return of the substance.

Publication Bans

MANDATORY UPON APPLICATION

- 486.4(2) - Complainant or Witness for listed sexual offences (Crown/complainant/witness application)
- 486.4(3) - Complainant or witness under 18 for child pornography (Crown/complainant/witness application)
- 517 (1) - Judicial Interim Release (Accused's application)
- 539(1) - Preliminary Hearing (Accused's application)
- 17 YOA - Youth Raise Hearing (Accused's application)
- 65 YCJA Young Person - no Adult Sentence being sought

DISCRETIONARY

- 486.4(1) Complainant or Witness for listed sexual offences (Accused's application)
- 486.5(1) Complainant or Witness (Accused's application)
- 486.5(2) Justice System participant (i.e., undercover operators) (Crown/Witness application)
- 517 (1) Judicial Interim Release (Crown application)
- 631 (6) Identity of Juror or any information that could disclose their identity (Crown application or Court's own motion)
- 26 *Extradition Act* - Judicial Interim Release (Accused's application)
- 75 (3) YCJA - Information identifying the young person (Youth/Crown application)

AUTOMATIC

- 276.3 (1) Complainant's Sexual Activity - evidence, submissions or reasons given at application/hearing regarding admissibility of evidence of a complainant's sexual conduct.
- 278.9 (1) Personal Information Records-
- 542 (2) Admission or confession tendered in evidence at preliminary inquiry.
- 648 (1) Trial information when jury not present
- 672.51 (11) Mental Disorder Proceedings where accused excluded from hearing
- 110 (1) YCJA - Name or information that would identify a young person.
- 111 (1) YCJA - Name or information that would identify a young victim or witness.
- 38 YOA - Information concerning a young person who has committed or is alleged to have committed an offence.

This "sentencing checklist" is not a judicially prepared or endorsed document, although it appears on the website with judicial approval. It has been "approved" by representatives of the federal and provincial crown, and of the defence bar. Please note that it is a *checklist only*, intended to raise matters for counsels' consideration. It is not intended to be a treatise on the law.