

TRUTH IN SENTENCING ACT

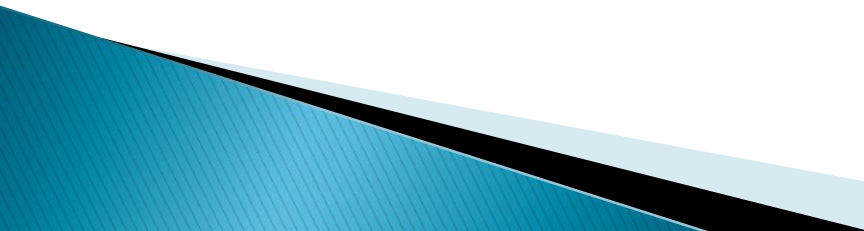
Bill C- 25

In Force February 22, 2010



- ▶ Amends the Criminal Code to limit the amount of credit that can be granted for pre-sentence custody (PSC)

Overview

- ▶ Restricts credit for PSC to 1:1 as a general rule
 - ▶ Provides an exception to the general rule and allows for **enhanced** credit for PSC up to 1.5:1, if the circumstances justify it
 - ▶ It prohibits enhanced credit if the PSC is due to the accused being detained primarily because of a previous conviction or due to a breach of an earlier release order
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The Previous Regime

Pre-Bill C-25

- ▶ PSC at common law
 - ▶ PSC in legislation
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Common Law

- ▶ Courts had long recognized the unfairness created by failing to consider PSC when passing sentence

Legislative Reform

- S. 719(3) added in 1972 as part of the Bail Reform Act
- **S. 719(3) “In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence”**

Credit vs. Enhanced Credit

- ▶ Courts have found favour with granting enhanced credit for PSC for a variety of reasons

3 Reasons Advanced Leading to Enhanced Credit

- PSC is not subject to remission
 - R. v. Wust (2000) 143 C.C.C. (3d) 129 (S.C.C.) at para. 24–5
 - “...after a sentence of imprisonment is imposed, The Corrections and Conditional Release Act comes in play...with the almost invariable effect of reducing the amount of time actually served in detention. Under the Act, the offender earns statutory remission, that is, time that will be automatically deducted from the sentence imposed.”

- **Conditions in remand centres are harsh**

- More crowded than correctional centres
- Subject to more lockdowns
- Substandard conditions

R. v. Wust at para. 28; “PSC “often in harsher circumstances that the punishment will ultimately call for”

R. v. A.O. (2007) 218 C.C.C. (3d) 409 (Ont. C.A.) at para. 75; “detention facilities are often more crowded and more onerous than in correctional facilities”

R. v. Rowan [1976] O.J. 560 (Ont. C. A.) at para. 6; “...imprisonment in [the Toronto Don Jail] for any but a brief period is a severe punishment.”

▶ **Lack of programs in remand centres**

R. v. Wust at para. 45; “PSC not involving “full access to educational, vocational and rehabilitation programs”

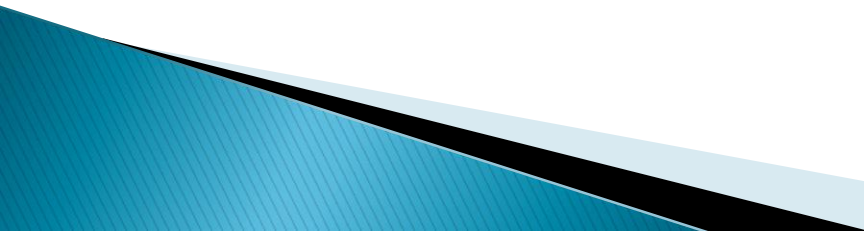
R. v. Rezaie (1996) 31 O.R. 713 at pg. 721; “local detention centres ordinarily do not provide educational, rehabilitation or retraining programs”

Enhanced Credit

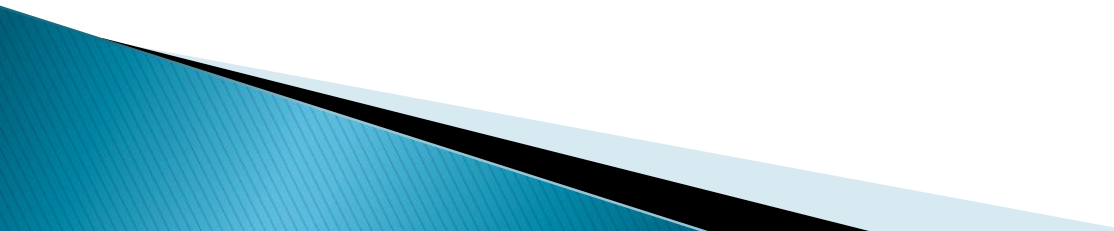
- Granting credit on a 2:1 basis, 2 days credit for every day served became the accepted norm

R. v. Wust at para 45; “2:1 is entirely appropriate ...The often applied ratio of 2:1 reflects not only the harshness of the detention due to the absence of programs...but reflects also the fact that none of the remission mechanisms ...apply.”

- ▶ R. v. Sabourin [2009] N.W.T.J. 49 (C.A.) at para. 11–12; “Judges may resort to the 2 for 1 credit as a generalized assumption or default position...the consensus in appellate courts is in favour of a 2 for 1 credit being presumptive unless a factor arises that justifies a different credit”

- Although 2:1 is not a rule of law, deviation from it requires reasons
 - R. v. Downey [2005] O.J. 6301 (Ont. C. A.) at para. 2; “when departing from the 2:1 guideline the trial judge should give reasons”
 - R. v. Branco [2007] O.J. 1778 (Ont. C. A.) at para. 1
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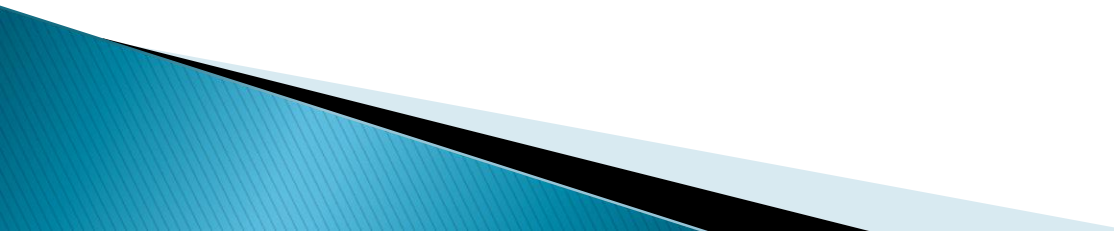
New Regime

- ▶ Why
 - ▶ The effect of the legislation is to restrict or prohibit the use of *enhanced* credit for PSC
 - ▶ 6 rationales given for the legislation
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Informing the Public

- ▶ The current system “leaves people in the dark” and because judges don’t always give reasons for PSC credit, this “deprives the public of information about the reasons credit is given for pre-sentence detention” leaving them wondering why a “discounted sentence” was imposed. The “amendments bring greater consistency and certainty to sentencing”

Restoring Confidence in the Sentencing Process

- Crediting of “generous” PSC erodes public confidence “in the integrity of the justice system” – greater “transparency” relating to PSC will lead to greater confidence in the system
 - Ordinary Canadians presently cannot comprehend how sentences giving 2:1 credit for PSC “can act as a condemnation of illegal behaviour, dissuade offenders from committing offences or protect society.”
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Restoring Confidence in the Sentencing Process cont'd

- ▶ The practice of awarding overly generous credit can put the administration of justice into disrepute because it creates the impression that offenders are getting more lenient sentences than they deserve; the public cannot understand how “the final sentence reflects the seriousness of the crime”

Stop Current Abuses of PSC

- ▶ “Generous credit” for PSC encourages accused persons “to abuse the court system” by deliberately choosing to remain in remand in the hope of a shorter jail sentence when sentenced

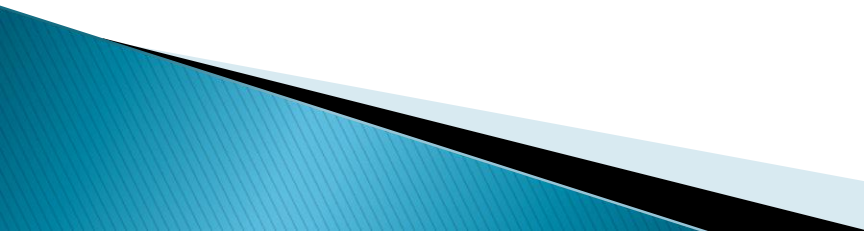
Unclog the Courts

- ▶ Bill C-25 “will help to unclog our court system and avoid costly delays”, limiting judicial discretion as to the award of PSC credit will provide an incentive for accused persons to move their cases forward as opposed to choosing to remain in pre-trial detention and contribute to unreasonable delays in coming to trial

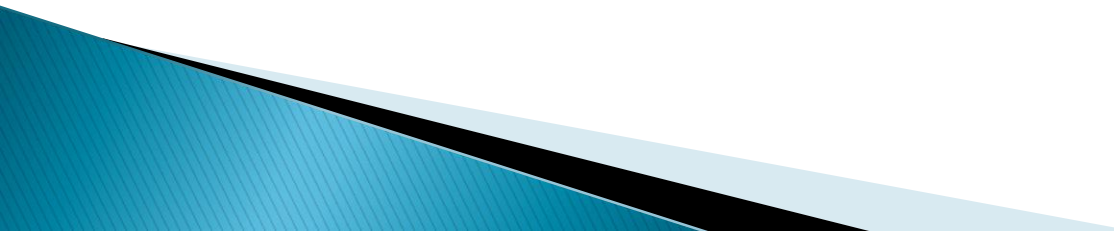
Enhanced Public Safety

- ▶ New limits on crediting PSC in the sentencing process will contribute to the government's broader strategy of enhancing public safety
- ▶ “The practice of awarding generous credit... undermines the commitment of the government to enhance the safety and security of Canadians by keeping violent or repeat offenders in custody for long periods

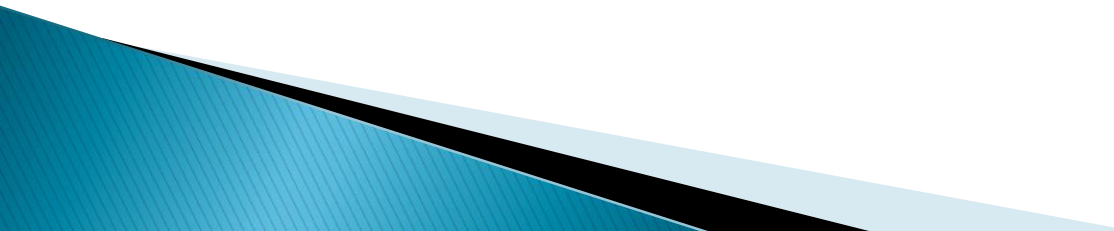
Reduce Pressures in Remand Centres

- The Bill will reduce pressures on Remand Centres
 - “extra credit for time spent in pre-sentence custody is widely seen as one of several factors that have contributed to significant increases in the remand population in the last few years”
 - Since 2007, “more people have been held in provincial remand jails than were serving sentences in provincial jails”
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Bill Proclaimed

- ▶ Bill C-25 passed very quickly
 - ▶ All party support; passed on division
 - ▶ 1st reading – March 27, 2009
 - ▶ 3rd reading – June 8, 2009
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Mixed Support

- ▶ Support from the Minister of Justice and the Provincial AGs
 - ▶ No support from defence, crowns, academics, correctional staff or service agencies such as the John Howard Society, Elizabeth Fry, etc.
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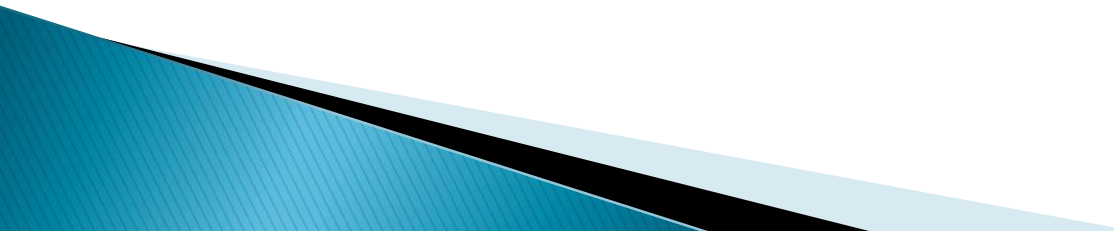
New Regime Bill C-25

- ▶ Limits the amount of credit given to PSC to one day for every day in PSC; i.e. 1:1
- ▶ S. 719(3) In determining the sentence to be imposed on a person convicted of an offence, a court *may* take into account any time spent in custody by the person as a result of the offence **but the court *shall* limit any credit for that time to a maximum of one day for each day spent in custody**

Exception to 1:1 Credit

- ▶ The Code provides for an exception to limiting credit for PSC to 1:1
- ▶ S. 719(3.1) Despite subsection (3), **if the circumstances justify it**, the maximum is one and one-half days for each day spent in custody ...

Issues with the Exception

- ▶ “if the circumstances justify it...”
 - ▶ No guidance
 - ▶ Parole/remission?
 - ▶ Lack of programming?
 - ▶ Harsh conditions?
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Limitation to the Exception

- ▶ The new provisions also prohibit enhanced credit in some circumstances and limits PSC to the maximum of 1:1

1st Limitation to the Exception

- ▶ S. 719(3.1) Despite subsection (3), if the circumstances justify it, the maximum is one and one-half days for each day spent in custody **unless the reason for detaining the person in custody was stated in the record under subsection 515 (9.1) [principally due to a previous conviction]** or the person was detained in custody under subsection 524(4) or (8).

Limiting PSC Credit: Detention due Primarily to Previous Record

- ▶ Limits the amount of credit for PSC to a maximum of 1:1

2nd Limitation to the Exception

- ▶ S. 719(3.1) Despite subsection (3), if the circumstances justify it, the maximum is one and one-half days for each day spent in custody unless the reason for detaining the person in custody was stated in the record under subsection 515 (9.1) [principally due to a previous conviction] **or the person was detained in custody under subsection 524(4) or (8).**

Limiting PSC Credit: Detention pursuant to a s. 524 application

- ▶ When an accused's detention is due to his or her breach of a previous release order, PSC credit is also limited to 1:1

Acknowledgements

- ▶ Justice Casey Hill for his permission to generously plagiarize from his recent paper “Pre-Sentence Custody: A New Era”
 - ▶ Assistance of Ayderus Alawi, Criminal Intensive Student, Osgoode Hall Law School
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