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Legal challenge to "truth in sentencing" law

By **KEVIN CONNOR**, TORONTO SUN

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The first challenge of the Truth in Sentencing Act, which gives criminals only one day for each day served in pretrial custody has been launched.

Marvin Johnson — who has pleaded guilty to trafficking cocaine — has been in the Toronto Jail since Feb. 27 while waiting for a sentencing hearing that didn't start until Friday.

The jail is notorious for being severely overcrowded and judges were giving inmates credit for up to three days for each day they were in pretrial custody.

"The effect of this legislation is that an offender who is denied bail and serves pre-sentence custody awaiting resolution of his case will serve more actual time in custody than he would have had he been granted bail or pleaded guilty immediately and received the same sentence," Johnson's lawyers wrote in a legal brief filed in court. "In denying any enhanced credit to certain offenders thus extends the period of imprisonment for these offenders.

The sentences for most people in custody end with statutory release, which is generally two-thirds of the sentence.

But the clock doesn't start ticking until they've been formally sentenced.

They argue that if two people are charged with the same crime and sentenced identically, one of them would end up serving a much longer sentence if he or she either didn't seek or didn't receive release on bail pending trial.

So on a 90-day jail sentence, for example, an accused who received bail would be released after 60 days. But a person who served 30 days of pre-trial custody would also not be released until serving an additional 60 days.

But for a sentence to be constitutional, a jail sentence can't be arbitrary and must be consistent and fair, the lawyers wrote.

The federal government got the math wrong when it drew up the law, which came into effect in February, said Anthony Doop, a professor of criminology at the University of Toronto.

"People are getting less credit in pretrial custody than those in post-trial custody," Doop said. "They need to figure out a way so that it counts as the same."

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