


FOR INFORMATION

*An Act to amend the Criminal Code, the Youth Criminal Justice Act (YCJA) and other Acts and to make consequential amendments to other Acts (Bill C-75):
An Overview for Victim Service Workers*



This document is intended to highlight information about An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, as enacted (Bill C-75 in the 42nd Parliament) (“Bill C-75” or “the Act”) and is not intended to provide legal advice. It provides key information on significant amendments for Community Safety and Crime Prevention Branch (“CSCP”) staff as well as police-based and community-based victim service workers. It is not intended to be a detailed clause-by-clause analysis of the new legislation.

Overall, the Act:

- modernizes and clarifies bail provisions;
- provides an enhanced approach to administration of justice offences, including for youth;
- abolishes peremptory challenges of jurors and modifies the process of challenging a juror for cause and of judicial stand-by;
- restricts the availability of preliminary inquiries;
- streamlines the classification of offences;
- expands judicial case management powers;
- enhances measures to better respond to intimate partner violence;
- provides additional measures to reduce criminal justice system delays and to make the criminal law and the criminal justice system clearer and more efficient;
- restores judicial discretion in imposing victim surcharges;
- facilitates human trafficking prosecutions, and allows for the possibility of property forfeiture;
- removes provisions that have been ruled unconstitutional by the SCC; and
- makes consequential amendments to other Acts.

Victim Service Workers can review the entire bill at <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-75/royal-assent>. There is also a more detailed overview of Bill C-75 available at <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p3.html>, which is the source of much of the information contained in this document.

Background

Delays in the criminal justice system significantly impact all those involved, including victims of crime. The delays can cause further trauma, stress, and anxiety, and can hinder a victim's ability to move forward and begin to heal.

Pursuant to s.11(b) of the Canadian Charter of Rights and Freedoms ("the Charter"), accused persons have the right to be tried within a reasonable time. An infringement of this right can result in a stay of proceedings. Stays of proceedings due to delays can compound victimization and lead to feelings of "justice being denied."

In the last several years the issue of delays in the criminal justice system has become an increasing focus of the courts, politicians and general public. The Supreme Court of Canada's ("SCC") 2016 decision in *R. v. Jordan* (<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16057/index.do>) established a new framework for determining unreasonable delay. In the SCC's 2017 decision in *R. v. Cody* (<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16693/index.do>), the court reemphasized the responsibility of all criminal justice system participants, including judges, prosecutors and defence counsel, to move cases forward without delay. This resulted in intensified pressure to reduce criminal justice system delays. Since these decisions, numerous cases have been stayed for unreasonable delay, some of which involved charges for serious offences, including murder.

The amendments resulting from Bill C-75 will standardize practices to improve the efficiency and effectiveness of the criminal justice system. Bill C-75 received Royal Assent on June 21, 2019, with four "coming into force" dates: June 21, 2019, July 21, 2019, September 19, 2019 and December 18, 2019.

This document highlights some of the changes most relevant to victims and victim service professionals. The exact impacts and implications of these amendments may become more apparent with time, as case law and relevant policies and procedures develop. Comments and concerns about the new amendments can be forwarded to the Community Safety and Crime Prevention Branch by email at VictimServices@gov.bc.ca.

Highlights of the Act

Intimate Partner Violence

There is no specific offence of intimate partner violence in the Criminal Code, but rather, it spans a range of offences committed against intimate partners including, but not limited to, assault, kidnapping, forcible confinement, sexual assault, criminal harassment, uttering threats and homicide.

Bill C-75 amends the Criminal Code to:

- Define “intimate partner” and clarify that it includes current or former spouse, common-law partner and dating partner;
- Clarify that strangulation constitutes a more serious form of assault or sexual assault;
- Create a reverse onus at bail for accused charged with a violent offence involving an intimate partner, if they have a prior conviction for violence against an intimate partner;
- Require courts to consider prior intimate partner violence charges when determining whether to release the accused or impose bail conditions;
- Make clear that current sentencing provisions, which treat abuse against a spouse or common law partner as an aggravating factor, apply to both current and former spouses/common law partners and dating partners; and,
- Allow a higher maximum penalty in cases involving a repeat intimate partner violence offender.

Relevance to Victims

This definition of intimate partner violence and other amendments may have direct implications for victims who have experienced violence by a current or former spouse, common-law partner or dating partner.

Bail Provisions

Relevance to Victims

It is important that victims have an accurate understanding of the bail process and conditions under which an individual may be released. Although the intent of these amendments is to streamline the bail regime without impacting public safety, victims may have questions about how potential harms (including physical, psychological or financial harms) will be considered when police and courts set conditions or make bail decisions.

Bill C-75 aims to **modernize and streamline the bail regime**, while ensuring public safety, and helping maintain public confidence in the criminal justice system.

Specifically, amendments seek to:

- Streamline the process by **increasing the types of conditions police can impose** on accused, so as to divert unnecessary matters from the courts and reduce the need for a bail hearing when one is not warranted;
- **Provide guidance to police on imposing reasonable, relevant and necessary conditions** that are related to the offence and consistent with the principles of bail;
- Legislate a “principle of restraint” for police and courts to **ensure that release at the earliest opportunity** is favored over detention;
- Require that **circumstances of Indigenous accused and of accused from vulnerable populations are considered at bail**, in order to address the disproportionate impacts that the bail system has on these populations;
- Create a new process, the “**judicial referral hearing**”, to streamline certain administration of justice offences (e.g. failure to appear, failure to comply with conditions etc.) out of the traditional court system where no harm has been caused to victims; and,
- Consolidate various forms of **police and judicial pre-trial release** to modernize and simplify the release process.



Preliminary Inquiries

A preliminary inquiry takes place if an accused person charged with an indictable offence elects to be tried before the superior court (i.e. B.C. Supreme Court) and requests one. The goal of a preliminary inquiry is to determine whether there is sufficient evidence to put the accused to trial for the offence charged or any other offence in respect of the same incident. In this way, the preliminary inquiry serves a screening function (to assess suitability for trial). Over time, however, this procedure has developed other functions such as providing the Crown and the defence with an opportunity to examine and cross-examine witnesses and test their credibility.

The amendments in Bill C-75 restrict preliminary inquiries for adults accused of offences liable to a maximum punishment of 14 years or more of imprisonment (e.g., incest, aggravated assault, murder, instructing the commission of an indictable offence for a criminal organization or terrorist group, etc.). The amendments restricting preliminary inquiries also:

- **Alleviate the burden on some witnesses and victims** by preventing them from having to testify twice;
- **Frees up court time** and resources in provincial courts; and,
- Allows the justice conducting a preliminary inquiry to **limit the issues to be explored** and the witnesses to be heard at the inquiry.

Relevance to Victims

**This amendment may result in more victims/
witnesses not having to testify twice.**

Youth Criminal Justice Act (YCJA)

Sections 4 to 12 of the YCJA provide measures that police officers and Crown prosecutors may take instead of instituting legal proceedings against a young person (young person defined as any person who has reached 12 years but is less than 18). These extrajudicial measures may involve taking no further action, issuing a warning or administering a caution, or referring the young person to a program in the community or an extrajudicial sanctions program. Under the YCJA, whenever a young person has committed a non-violent offence and has not previously been convicted of an offence, it is presumed that extrajudicial measures are an appropriate response to hold the young person accountable.

Bill C-75 goes further in cases of administration of justice offences. When a young person has committed an offence under section 137 of the YCJA (failure to comply with sentence or disposition) or section 496 of the Criminal Code (failure to comply with a summons, notice, promise or order), extrajudicial measures are deemed to be adequate, with exceptions (new section 4.1 of the YCJA).

The Act limits the circumstances in which a custodial sentence may be imposed for an administration of justice offence. It adds the requirement that in committing the offence in question, the young person must have caused harm, or risk of harm, to the safety of the public.

The Act also states that a judge imposing certain conditions (e.g., not to communicate with a certain individual or not to consume drugs or alcohol) in respect of bail or as part of a youth sentence must consider certain factors, such as whether the young person will reasonably be able to comply with the condition.

Bill C-75 also removes the obligation on prosecutors to consider seeking adult sentences for serious violent offences, and reviews the publication ban on youth sentences (with exceptions).

Relevance to Victims

It is important for victims to have accurate information about how a case will proceed when the offender is a young person.





Victim Surcharge

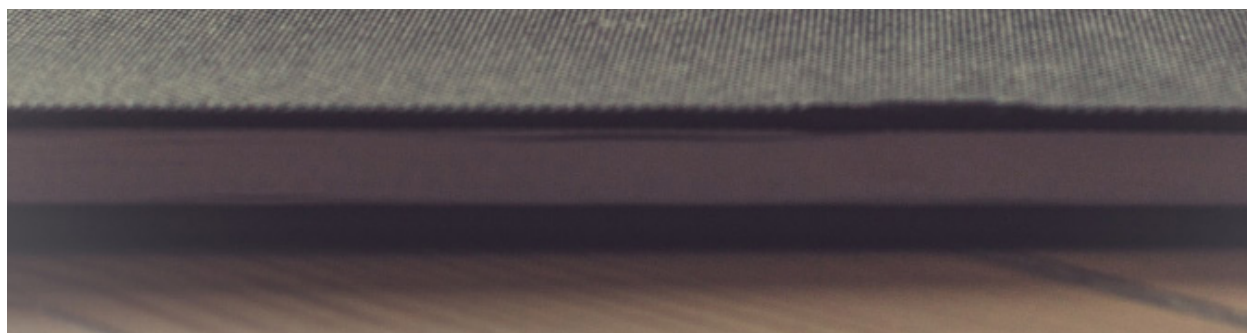
A victim surcharge is a fine automatically imposed on an offender at the time of sentencing which is used to offset costs of funding services for victims of crime.

As a result of the SCC's 2018 decision in *R. v. Boudreault*, which invalidated the federal victim surcharge, British Columbia stopped collecting the federal victim surcharge on any sentence after December 14, 2018.

Bill C-75 reintroduces the federal victim surcharge with judicial discretion to waive or reduce the surcharge on application by the offender if there is evidence of undue hardship.

Relevance to Victims

Although the federal victim surcharge does not directly impact the individual victim of a specific crime, some may see its reintroduction as a recognition of the impact that the offence has had on them as a victim. The victim surcharge is one source of funding for victim services in the province, thereby having an indirect but positive impact on other victims of crime.



Administration of Justice Offences (“AOJOs”)

Bill C-75 provides a process to help the police and courts deal more effectively with certain AOJOs, such as failure to comply with conditions of release and failure to appear in court. When the failure has not caused harm to a victim, including physical, psychological or financial harm (e.g., property damage or economic loss), the police and Crown Counsel can direct AOJOs to a judicial referral hearing as an alternative to charging the accused with an AOJO. At the judicial referral hearing, the judge will review any existing conditions of release and can decide to take no action, release the accused on new conditions or detain the accused, depending on the circumstances of the accused (e.g., mental health issues, existence of neurocognitive disorders such as FASD, addictions, homelessness).

This new procedure does not impact current police powers to decide whether or not to lay charges. Instead, it enhances police and prosecutorial discretion by allowing them to compel an accused to appear at a judicial referral hearing as an alternative to laying charges, when it is considered appropriate under the circumstances

and when it is felt that the alleged breach should still be brought to the attention of a judge or justice. It provides another tool for police, prosecutors and courts to deal more effectively with these AOJOs not involving harm to victims.

Since a judicial referral hearing reviews the conditions imposed after an accused was charged with an earlier offence, as opposed to considering the guilt or innocence of the accused in relation to an alleged AOJO, the AOJO itself will not appear on a criminal record. No finding of guilt or innocence will be made at the judicial referral hearing and any charges that may have been laid regarding that specific AOJO would be dismissed by the judge or the justice once a decision is made with respect to the release status of the accused.

If an accused does not attend their judicial referral hearing, they cannot be charged with the offence of failure to appear: the police officer will have the choice of dropping the matter, offering the accused another hearing, or charging the accused for the breach that was to be addressed through the judicial referral hearing.

Relevance to Victims

It is important that victims have an accurate understanding of the new AOJO process. Victims may have questions about how potential harms (including physical, psychological or financial harms) will be considered throughout the process.

Classification of offences



There are three types of criminal offences in Canada: summary offences, indictable offences, and hybrid offences. Summary offences are less serious offences and indictable offences are more serious offences, which come with more significant punishments. For hybrid offences, Crown Counsel can choose to proceed by indictment or by summary conviction, based on considerations including the specific nature of the accused's actions or the harm caused by the offence.

Bill C-75 hybridizes 118 indictable offences. Of these, 28 offences are punishable by a maximum penalty of 10 years imprisonment, a further 53 offences are punishable by a maximum of 5 years imprisonment and 37 are punishable by a maximum of two years imprisonment. In addition to hybridizing offences, Bill C-75 changes the default maximum penalty for summary conviction offences from 6 months to 2 years less a day of imprisonment and extends the limitation period for all summary conviction offences to 12 months (from the current 6 months).

The hybridization of a number of indictable offences provides prosecutors with the flexibility to proceed summarily for a greater number of offences, in appropriate cases, **leaving the more serious cases involving these offences to be tried by the superior courts**, with or without a jury. This would help to ensure that these cases would be dealt with more expeditiously in provincial court and would also help to ensure that superior courts would address the most serious matters.

Relevance to Victims

It is important for victims to have an accurate understanding of how Crown Counsel may proceed in relation to certain offences. Victims may have questions about how the hybridization of certain offences may impact sentences.



Facilitate remote appearances

The general rule prior to these amendments was that all persons involved in the criminal justice process must appear in person, unless otherwise specified in the Criminal Code.

The amendments in the Act modernize and facilitate the appearance by audioconference or videoconference of all persons involved in criminal cases, including a judge or justice, throughout the criminal justice process, under certain circumstances and, in some situations, in consideration of certain factors.

Relevance to Victims

Facilitating the appearance by videoconference or audioconference of all persons involved in criminal cases may positively impact vulnerable victims and witnesses, as well as those living in remote communities.

Conclusion

This document was created for Victim Service Workers to highlight key changes resulting from Bill C-75 that may most significantly impact victims of crime. In the months to come there will be further clarity on how these amendments will be put into practice by Police, Crown, Judges and other criminal justice system participants. It is important that Victim Service Workers communicate with stakeholders such as Crown to fully understand how changes may impact victims they are supporting.

Collaboration amongst criminal justice partners will be key to ensuring that victims understand the potential impacts of the amendments.

It is advised that Victim Service Workers review the more detailed overview of Bill C-75, available at <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p3.html>, if they are interested in learning more about specific amendments.