



CANADIAN ASSOCIATION OF POLICE BOARDS

P.O. Box 4670, Station E, Ottawa, ON K1S 5H8 Tel. 819.682.1440 Fax. 819.682.4569

Email: jlanzon@capb.ca Website: www.capb.ca

BULLETIN!

LEGISLATIVE UPDATE

September 11, 2006

As we head into the Fall Session of Parliament, the Canadian Association of Police Boards is pleased to provide you with a brief legislative update. The Federal Government introduced 23 bills in their first session of Parliament. Only four bills have passed in the House of Commons and received Royal Assent in the Senate. The only major bill to receive Royal Assent was the budget implementation bill, Bill C-13.

With just four bills passed, there will be a lot of legislative work for MPs when Parliament returns on September 18, 2006. Fifteen bills introduced in Parliament are still in the House. There are seven bills that may be of interest to CAPB members, including: Bill C-9 conditional sentencing; C-10 imposes mandatory minimum sentences for the use of firearms in a crime; Bill C-18 DNA identification; Bill C-19 creates tougher penalties for street racing; Bill C-21 Firearms Act; Bill C-22 raise the age of consent to 16 from 14 and Bill C-23 strengthening and updating criminal law.

BILLS TABLED IN PARLIAMENT OF INTEREST TO CAPB MEMBERS

C-9 An Act to amend the Criminal Code (conditional sentence of imprisonment)

Background information and a copy of Bill C-9 sent out in June.

Status: Referred to Justice Committee on June 6, 2006

C-10 An Act to amend the Criminal Code (minimum penalties for offences involving firearms) and to make a consequential amendment to another Act

Background information and a copy of Bill C-10 sent out in June.

Status: Referred to Justice Committee on June 13, 2006

C-18 An Act to amend certain Acts in relation to DNA identification

Background information and a copy of Bill C-18 are attached.

Status: Introduced on June 8, 2006

C-19 An Act to amend the Criminal Code (street racing) and to make a consequential amendment to the Corrections and Conditional Release Act

Background information and a copy of Bill C-19 are attached.

Status: Introduced on June 15, 2006

This bill toughens punitive measures against convicted street racers.

C-21 An Act to amend the Criminal Code and the Firearms Act (non-registration of firearms that are neither prohibited nor restricted)

Background information and a copy of Bill C-21 are attached.

Status: Introduced on June 19, 2006

C-22 An Act to amend the Criminal Code (age of protection) and to make consequential amendments to the Criminal Records Act

Background information and a copy of Bill C-22 are attached.

Status: Introduced on June 22, 2006

C-23 An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)

Background information and a copy of Bill C-23 are attached.

Status: Introduced on June 22, 2006

BACKGROUND

Bill C-18 An Act to amend certain Acts in relation to DNA identification

The Government has introduced Bill C-18 to strengthen Canada's DNA data bank laws. The proposed reforms involve a series of technical amendments to help implement earlier changes to the law, which were already endorsed by Parliament under Bill C-13 in May 2005.

Increasing the Efficiency of the Data Bank

Designed to increase the efficiency of the National DNA Data Bank and to simplify procedures for police and prosecutors, this new legislation proposes changes to the *Criminal Code* that include:

- Clarifying that a warrant can be executed for the arrest of a person who fails to show for a DNA sampling and the bodily substances be taken by any Canadian police force that arrests the person;
- Making it an offence to fail to appear for DNA sampling, similar to the offence for failing to show up for fingerprinting;
- Adding attempted murder and conspiracy to commit murder to the offences covered by the retroactive provisions, which apply to offenders convicted of a

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- single murder, sexual offence or manslaughter prior to June 30, 2000, when the legislation that enabled the creation of the National DNA Data Bank came into force;
- Allowing video links for retroactive hearings, to reduce the costs and security risks associated with transporting a greater number of offenders now eligible for retroactive sampling; and,
 - Helping ensure DNA data bank orders can be carried out even when, for logistical reasons, it may not be possible to take the sample at the precise time set out in the order.

This legislation also proposes a number of changes to the *DNA Identification Act*, which include:

- Permitting the destruction of samples when the provincial Attorney General certifies that the order was made for an offence not intended to be included in the DNA data bank. This simpler approach will eliminate the expense of having the Attorney General make an application to the court to have the order quashed; and
- Ensuring information provided by the National DNA Data Bank can be used to investigate all criminal offences.

Changes would be made to the *National Defence Act* to ensure that corresponding reforms apply to the military justice system.

Implementing Earlier Reforms

This new legislation will allow for the effective implementation of the reforms included in Bill C-13. Bill C-13, which received Royal Assent in May 2005, responds to priority issues raised by the provinces and territories and builds upon earlier public consultations on the topic. Most notably, the legislation expands the list of offences for which a DNA data bank order can be made. Under Bill C-13, for example, courts must make a data bank order for those persons convicted of the very worst and most violent offences, including murder, manslaughter and aggravated assault. Internet luring of children, child pornography and organized crime offences were also added to the list of designated offences for a data bank order.

The new legislation will not replace the upcoming Parliamentary review of Canada's DNA data bank laws, and any further changes will be considered at that time.

Understanding the Value of the DNA Data Bank

The use of forensic DNA analysis has emerged as one of the most powerful tools available to law enforcement for the administration of justice. The National DNA Data Bank assists in solving crime by:

- linking crimes together where there are no suspects;

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- helping to identify suspects;
- eliminating suspects where there is no match between crime scene DNA and a profile in the data bank; and,
- determining whether a serial offender is involved.

The National DNA Data Bank, located in Ottawa and operated by the RCMP on behalf of all Canadian police agencies, is responsible for two principal indices:

- The **Convicted Offender Index** – an electronic index developed from the DNA profiles of offenders convicted of designated *Criminal Code* offences, as well as persons who are subject to the military’s Code of Service Discipline and convicted of a designated offence under the *National Defence Act*.
- The **Crime Scene Index** – a separate electronic index composed of DNA profiles obtained from unsolved crime scenes of the same designated offences.

As of May 15, 2006, the Convicted Offender Index had just under 100,000 entries and the Crime Scene Index contained more than 28,000 DNA profiles. The National DNA Data Bank has recorded over 5,200 crime-scene-to-offender matches, and more than 750 crime-scene-to-crime-scene matches.

CAPB Position: The Canadian Association of Police Boards is reviewing the proposed legislation and will examine the possible economic impact for municipal police services to comply.

Bill C-19 An Act to amend the Criminal Code (street racing) and to make a consequential amendment to the Corrections and Conditional Release Act

The current Government proposal would create a separate *Criminal Code* offence of street racing, which would reference the offences of *dangerous driving (no bodily harm or death)*, *dangerous driving causing bodily harm*, *dangerous driving causing death*, *criminal negligence causing bodily harm*, and *criminal negligence causing death*. This new offence would also include increased maximum punishments and escalating mandatory driving prohibitions for those convicted of street racing.

The proposed punishments for the new street racing offence are as follows:

Offence	Current Punishment	Proposed Punishment with Street Racing
<i>Dangerous Driving (no bodily harm or death)</i>	Summary Conviction or, on Indictment imprisonment up to five years maximum	Summary Conviction or, on Indictment imprisonment up to five years maximum
<i>Dangerous Driving</i>	Up to 10 years maximum	Up to 14 years maximum

<i>causing Bodily Harm</i>	imprisonment	imprisonment
<i>Dangerous Driving causing Death</i>	Up to 14 years maximum imprisonment	Up to lifetime maximum imprisonment
<i>Criminal Negligence causing Bodily Harm</i>	Up to 10 years maximum imprisonment	Up to 14 years maximum imprisonment
<i>Criminal Negligence causing Death</i>	Up to lifetime maximum imprisonment	Up to lifetime maximum imprisonment

In addition, the Government proposal would include mandatory minimum driving prohibitions on a first, second and subsequent street racing conviction.

For a **first** street racing conviction, the mandatory driving prohibitions are:

Offence	Mandatory Driving Prohibitions
<i>Dangerous Driving (no bodily harm or death)</i>	1 year minimum up to 3 years maximum
<i>Dangerous Driving causing Bodily Harm</i>	1 year minimum up to 10 years maximum
<i>Dangerous Driving causing Death</i>	1 year minimum up to 10 years maximum
<i>Criminal Negligence causing Bodily Harm</i>	1 year minimum up to 10 years maximum
<i>Criminal Negligence causing Death</i>	1 year minimum up to lifetime maximum

For a **second** street racing conviction, the mandatory driving prohibitions are:

Offence	Mandatory Driving Prohibitions
<i>Dangerous Driving (no bodily harm or death)</i>	2 years minimum up to 5 years maximum
<i>Dangerous Driving causing Bodily harm</i>	2 years minimum up to 10 years maximum
<i>Dangerous Driving causing Death</i>	*Lifetime minimum
<i>Criminal Negligence causing Bodily harm</i>	2 years minimum up to 10 years maximum
<i>Criminal Negligence causing Death</i>	*Lifetime minimum

**The lifetime minimum driving prohibition would apply if an offender has two convictions where someone was injured or killed as a result of street racing, and at least one of these offences caused a death .*

For **subsequent** street racing convictions, the mandatory driving prohibitions are:

Offence	Mandatory Driving Prohibitions
<i>Dangerous Driving (no bodily harm or death)</i>	3 years minimum up to lifetime maximum
<i>Dangerous Driving causing Bodily Harm</i>	3 years minimum up to lifetime maximum

<i>Dangerous Driving causing Death</i>	*Lifetime minimum
<i>Criminal Negligence causing Bodily Harm</i>	3 years minimum up to lifetime maximum
<i>Criminal Negligence causing Death</i>	*Lifetime minimum

**The lifetime minimum driving prohibition would apply if an offender has three or more convictions where someone was injured or killed as a result of street racing, and at least one of these offences caused a death.*

These periods of driving prohibition would be in addition to any period to which the offender is sentenced to imprisonment.

CAPB Position: The Canadian Association of Police Boards fully supports the proposed legislation and a resolution endorsing Bill C-19 was passed by the membership at the Annual General Meeting on August 18, 2006.

C-21 An Act to amend the Criminal Code and the Firearms Act (non-registration of firearms that are neither prohibited nor restricted)

Bill C-21 will repeal the requirement for long-gun owners to register their hunting rifles and shotguns. Certain requirements will remain in place. Firearms owners will still require a valid firearms license to purchase or possess firearms and to purchase ammunition, and will still be required to undergo background checks and pass a safety training course.

The requirement to obtain a registration certificate for all firearms and to renew the license every five years was included in the *Firearms Act* and in amendments to the *Criminal Code* when it was introduced in 1995. This is still in effect today. It also set out offences and penalties for illegal possession and misuse of a firearm.

For example, a first-time offender who has failed to register a non-restricted rifle or shotgun may be charged under the *Firearms Act* or under the *Criminal Code*. A temporary legal amnesty introduced on May 17th, 2006 shielded certain firearm owners from prosecution of offences related to non-registration of their long-guns to give them time to come into compliance with the law by next May 17, 2007.

The proposed amendments introduced in Bill C-21 will require current owners to verify that a potential purchaser or another new owner of their non-restricted firearm has a valid firearms license by contacting the Chief Firearms Officer. This measure will help ensure

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that guns do not get into the hands of individuals who should not have them, such as convicted criminals, and to help investigators identify the owners of stolen firearms or conduct criminal investigations.

Bill C-21 reintroduces the requirement for businesses to maintain records of all transactions involving the sale, purchase or disposal of non-restricted firearms. This is another measure meant to assist police investigators in locating owners of stolen firearms or those used in the commission of a crime.

In May the government introduced a series of non-legislative measures, which included the following:

- transferring responsibility for the *Firearms Act* and regulations to the Royal Canadian Mounted Police (RCMP), taking over from the former Canada Firearms Centre;
- reducing the annual operating budget for the program by \$10 million;
- implementing individual license renewal fee waivers and refunds;
- eliminating physical verification of non-restricted firearms; and
- introducing a one-year amnesty to protect currently licensed and previously-licensed owners of non-restricted firearms from prosecution and to allow them to come into compliance with all laws and regulations by May 17, 2007.

CAPB Position: The Canadian Association of Police Boards is reviewing the proposed legislation and if warranted after consulting with membership, a written response on Bill C-21 will be sent to the Minister of Public Safety.

C-22 An Act to amend the Criminal Code (age of protection) and to make consequential amendments to the Criminal Records Act.

Age of Protection Legislation

Bill C-22 introduces amendments to “age of protection” legislation. The legislation proposes to **raise the age of consent from 14 to 16 years old**, in order to help stop adults from sexually exploiting vulnerable young people.

Understanding “Age of Protection”

The age of protection, or age of consent as it is also called, refers to the age at which the criminal law recognizes the legal capacity of a young person to consent to sexual activity. Below this age, all sexual activity with a young person, ranging from sexual touching to sexual intercourse, is prohibited. The current age of consent is 18 years old when the sexual activity involves *exploitative* activity. This applies to such cases as prostitution,

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pornography, or where there is a relationship of trust, authority, dependency or any other situation that is otherwise exploitative of a young person. Under the current law, the age of consent for non-exploitative sexual activity is 14 years old.

Recognizing the Threat of Adult Predators

Protection of children and youth against sexual exploitation remains a high priority for Canadians. These concerns have been amplified with the use of new technologies such as the Internet by adult predators to sexually exploit youth. By raising the age of protection, Bill C-22 is targeting those who sexually prey upon some of society's most vulnerable individuals.

Building in Reasonable Exceptions

Bill C-22 recognizes that Canadian youth, like all youth around the world, are sexually active. Close-in-age exceptions have been included in the legislation to protect against the criminalization of consensual teenage sex. This exception would apply to **14 and 15 year old youth** who engage in non-exploitative sexual activity with a partner **who is less than five years older**.

Under the proposed reforms, an additional time-limited exception would be available for a 14 or 15 year old youth whose sexual partner is more than five years older but with whom, when the new age of protection comes into effect, the youth is already legally married or living in a common-law relationship, as defined in the Bill.

The proposed reforms maintain an existing close-in-age exception that exists for 12 or 13 year olds who engage in sexual activity with a peer who is less than 2 years older, provided the relationship is not exploitative. The legislation also maintains the existing age of protection of 18 years old for exploitative sexual activity.

CAPB Position: The Canadian Association of Police Boards fully supports Bill C-22. In 1998 and in 2005, CAPB approved resolutions urging the Federal Government to amend the Criminal Code of Canada to raise the age of consent for sexual activity from 14 years to 16 years.

C-23 An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)

Strengthening and Updating the Criminal Law

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Bill C-23 is expected to improve Canada's criminal procedure and sentencing as well as clarify court-related language rights provisions have been proposed to the *Criminal Code*. The intent of the *Act to Amend the Criminal Code (Criminal Procedure, Language of the Accused, Sentencing and Other Amendments)* is to further modernize the criminal justice system and make it more efficient and effective. Some of the amendments make certain processes more effective through greater use of technology and by consolidating and rationalizing existing provisions. The majority of these reforms respond to issues that were identified by, and developed in collaboration with, provincial and territorial justice partners across Canada.

Criminal Procedure :

The amendments relating to criminal procedure in Canada provide for, among other things:

- the use of a means of telecommunication to forward warrants for the purpose of endorsement and execution in a jurisdiction, other than the jurisdiction where the search warrant was obtained;
- changes to the process with respect to the challenge of jurors to, among other things, assist in preserving their impartiality;
- summary dismissal by a single judge of the court of appeal when an appeal has erroneously been filed with that court;
- an appeal of a superior court order with respect to things seized lying with the court of appeal;
- a summary conviction trial with respect to co-accused that can proceed where one of the co-accused does not appear; and
- the reclassification of the offence of possession of break and enter instruments into a dual procedure offence to allow the Crown to determine whether this offence should be prosecuted by way of indictment or by the more expeditious procedure of summary conviction.

Another amendment modernizes *Criminal Code* offences relating to betting, pool-selling and book-making by clarifying that these offences can be committed by using any communication technology and by providing that the exemption with respect to pari-mutuel betting applies where the pari-mutuel betting system is accessed by any communication technology.

Sentencing:

Amendments related to sentencing provide for, among other things:

- the power to order an offender not to communicate with identified persons while in custody and the creation of an offence for failing to comply with the order, thereby enhancing protection of victims;
- clarifications with respect to the application of impaired driving penalties;

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- an increase of the maximum fine that can be imposed for a summary conviction offence from \$2,000 to \$10,000;
- the suspension of a conditional sentence order or a probation order during an appeal;
- the power to delay the sentencing proceedings so that an offender can participate in a provincially approved treatment program;
- in the case of a person serving a youth sentence who receives an adult sentence, to clarify that the remaining portion of the youth sentence is converted to an adult sentence; and
- the power of a court to order, on application by the Attorney General and after convicting a person of the offence of luring a child by means of a computer system, the forfeiture of things used in relation to that offence.

Language Rights:

Other amendments will allow for better implementation of the language rights provisions in the *Criminal Code*. These amendments will improve the means through which an accused is informed of the right to be heard by a judge or a judge and jury who speak the official language of Canada that is the language of the accused, or both official languages of Canada. The amendments also codify the right of the accused to obtain a translation of the information or indictment on request. Other provisions clarify the application of the language provisions of the *Criminal Code* in the context of bilingual trials.

CAPB Position: The Canadian Association of Police Boards is reviewing the proposed legislation and will report back on its progress