

**BILL C-53: AN ACT TO AMEND THE CRIMINAL CODE
(AUTO THEFT AND TRAFFICKING IN PROPERTY
OBTAINED BY CRIME)**

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LEGISLATIVE HISTORY OF BILL C-53

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 14 April 2008

Second Reading:

Committee Report:

Report Stage:

Third Reading:

SENATE

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

This bill did not become law before the 39th Parliament ended on 7 September 2008.

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

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BILL C-53: AN ACT TO AMEND THE CRIMINAL CODE
(AUTO THEFT AND TRAFFICKING IN PROPERTY OBTAINED BY CRIME)*

BACKGROUND

A. Purpose of the Bill and Principal Amendments Made

Bill C-53, An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime), was introduced by the Minister of Justice and Attorney General of Canada, the Honourable Robert Nicholson, and received first reading in the House of Commons on 14 April 2008.

Although the bill is directed essentially to auto theft, it also addresses trafficking in, exporting and importing any property obtained by crime. The bill therefore amends the *Criminal Code* (the Code) in three ways:

- it creates the offence of trafficking in property obtained by crime, which is punishable by imprisonment for a maximum of 14 years (new s. 355.2 of the Code);
- it allows the Canada Border Services Agency (CBSA) to prevent the crossborder movement of property obtained by crime, including stolen vehicles (new s. 355.3 of the Code);
- it creates the offence of tampering with a vehicle identification number (VIN), which is punishable by imprisonment for a maximum of five years (new subs. 377.1(1) of the Code).

With respect to the VIN, former Bill C-64⁽¹⁾ had created a similar offence. Bill C-64 died on the *Order Paper* when the last general election was called.

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) Act to amend the Criminal Code (vehicle identification number), 1st Session, 38th Parliament.

B. Nature of the Problem and Motor Vehicle Theft Statistics

1. Motor Vehicle Theft in General

According to a report published by Statistics Canada, the rate⁽²⁾ of motor vehicle theft has been declining since 1996,⁽³⁾ with the exception of 2001 and 2003, when it rose.⁽⁴⁾ Data for 2006 confirm that the motor vehicle theft rate has fallen by 20% since 1996.⁽⁵⁾

However, motor vehicle theft has a major effect on vehicle owners, third party victims, law enforcement agencies and the insurance industry. According to the Insurance Bureau of Canada, it costs insurers and the public close to \$1 billion a year.⁽⁶⁾

In 2006, nearly 160,000 motor vehicle thefts – roughly 438 a day – were reported to police.⁽⁷⁾ Rates tend to be lower in eastern Canada than in the West. Again according to 2006 statistics,⁽⁸⁾ Prince Edward Island had the lowest rate (115)⁽⁹⁾ and Manitoba the highest (1,376),⁽¹⁰⁾ nearly three times the Canadian average (487).⁽¹¹⁾

This could be explained in part by the fact that Winnipeg has the highest rate of all the major metropolitan areas (1,932).⁽¹²⁾ It should be noted, moreover, that vehicle theft tends to be concentrated in the major urban areas. According to 2005 figures, the rate of motor vehicle

(2) The number of auto thefts per 100,000 population.

(3) The rate had risen steadily between 1984 and 1996 (Statistics Canada, Canadian Centre for Justice Statistics, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft*, No. 85-563-XIF, May 2004, p. 6).

(4) Statistics Canada, Canadian Centre for Justice Statistics, *Canadian Crime Statistics, 2004*, Juristat, No. 85-002-XPF, Vol. 25, No. 5, July 2005, p. 10.

(5) Statistics Canada, Canadian Centre for Justice Statistics, *Canadian Crime Statistics, 2006*, Juristat, No. 85-002-XPF, Vol. 27, No. 5, July 2007, p. 6.

(6) Criminal Intelligence Service Canada, *Annual Report on Organized Crime in Canada 2005*, 15 July 2005, p. 42, http://www.cisc.gc.ca/annual_reports/annual_report2005/document/annual_report_2005_f.pdf.

(7) Statistics Canada, *Canadian Crime Statistics* (2007), p. 6.

(8) Ibid.

(9) In fact, Newfoundland and Labrador had the lowest rate for more than 20 years (Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), p. 7). However, in 2004, “the largest increase was reported by [that province] (+52%), spurred by the rate of motor vehicle theft in St. John’s, which doubled” (ibid., p. 11).

(10) Manitoba has had the highest rate almost every year since 1992 (ibid., p. 7).

(11) In 2006, “large increases were reported in Manitoba (+14%) and Alberta (+13%), while large decreases were recorded in Prince Edward Island (-28%) and British Columbia (-16%)” (Statistics Canada, *Canadian Crime Statistics* (2007), p. 6).

(12) Statistics Canada, *Canadian Crime Statistics* (2005), p. 10.

theft in major urban areas (559) was about 25% higher than in small urban areas (442) and 80% higher than in rural regions (307).⁽¹³⁾

In addition to Winnipeg, Regina and Vancouver have had very high rates for more than 10 years.⁽¹⁴⁾ Between 1992 and 2002, vehicle theft rates doubled in London, nearly tripled in Regina and virtually quadrupled in Winnipeg.⁽¹⁵⁾

Although cars were still the type of vehicle most frequently stolen in 2004 (56% of all thefts), trucks, including mini-vans and sport utility vehicles, are increasingly popular among thieves (35% of all thefts).⁽¹⁶⁾

A criminal who steals a vehicle may want it for various purposes. He or she may want to use it as a means of transportation or to facilitate another crime. The motive may also be thrill-seeking,⁽¹⁷⁾ as frequently occurs among young offenders. In general, vehicle theft is more closely associated with young offenders than other offences.⁽¹⁸⁾ In addition, vehicle thefts committed by young offenders often result in accidents causing serious injury or death.⁽¹⁹⁾ To help prevent this kind of crime, the federal Department of Transport amended the Canada Motor Vehicle Safety Standard (CMVSS 114) in February 2005. As a result, starting in September 2007, automobile manufacturers have had to install anti-theft immobilization systems in most new light vehicles sold in Canada.⁽²⁰⁾

2. Motor Vehicle Theft by Criminal Organizations

Bill C-53 aims to address the problem of motor vehicle theft, specifically by assisting law enforcement agencies in more effectively fighting organized vehicle theft, since criminal organizations often falsify vehicle identity and export vehicles from Canada.

(13) Statistics Canada, *Study: A comparison of urban and rural crime rates*, The Daily, 28 June 2007, <http://www.statcan.ca/Daily/English/070628/d070628b.htm>.

(14) Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), p. 8.

(15) Ibid.

(16) Statistics Canada, *Canadian Crime Statistics* (2005), p. 10. Between 1992 and 2002, the rate of truck theft rose 26%, while the car theft rate declined 16%.

(17) This kind of theft is committed for the purpose of joyriding.

(18) In 2002, 40% of individuals charged with motor vehicle theft were between the ages of 12 and 17. (Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2005), p. 14).

(19) In examining actual cases of thefts by youths causing injury to the vehicle's passengers or to third parties, a study conducted by Project 6116, a national committee whose purpose was to reduce motor vehicle theft in Canada, found an average of 27 deaths and 117 injuries a year in Canada from 1999 to 2001 (*Fatalities and Injuries as a Result of Stolen Motor Vehicles (1999–2001)*, prepared for Project 6116 by Matthew J. Miceli, December 2002).

(20) *Regulations Amending the Motor Vehicle Safety Regulations (Locking and Immobilization Systems)*, SOR/2005-45, 22 February 2005.

The theft and resale of vehicles, facilitated by the alteration of VIN numbers, is a relatively low-risk,⁽²¹⁾ high-profit⁽²²⁾ activity that is commonly used to finance criminal organizations' other activities. According to a study conducted by the Royal Canadian Mounted Police in 1998,⁽²³⁾ criminal organizations are involved in all aspects of vehicle theft: the ordering of specific vehicles, recruitment of young offenders who steal the vehicles, dismantling of vehicles for parts ("chopping"),⁽²⁴⁾ altering of VINs and documents, and the transportation of stolen vehicles outside the province or country. According to the Insurance Bureau of Canada, of the 170,000 vehicles stolen each year, 20,000 are exported out of Canada.⁽²⁵⁾

These multi-level⁽²⁶⁾ criminal networks have all the necessary expertise to obtain, deface and resell stolen vehicles on a large scale. It is estimated that one in five vehicle thefts is attributable to organized crime networks.⁽²⁷⁾

While vehicle theft by organized groups is a national problem, the major urban areas of Quebec and Ontario are particularly hard hit.⁽²⁸⁾ According to 2002 data, Montréal⁽²⁹⁾ and Halifax had the highest rates (respectively, 354 and 151 unrecovered stolen vehicles per 100,000 inhabitants).⁽³⁰⁾

Luxury cars and trucks are most often the target of organized groups.⁽³¹⁾ We would note that automobile dealerships (41%) and private residences (34%) are the preferred

(21) Of the total number of vehicle theft cases in Canada in 2002, 12% were solved by police and 8% resulted in the laying of charges (Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), p. 8).

(22) Europol believes that international trafficking in vehicles by organized crime is more profitable than prostitution or other black market activities, since it generally yields a net profit of 90% (ibid., p. 16, citing Europol, *An Overview on Motor Vehicle Crime from A European Perspective*, 2002).

(23) Royal Canadian Mounted Police, Criminal Analysis Branch, *Organized Crime and Vehicle Theft*, 1998.

(24) The collective value of the parts of a dismantled vehicle is very often two or three times that of the vehicle itself (Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), p. 17).

(25) Insurance-Canada website, *IBC hosts 2006 Auto Theft Export Summit (June 8, 9) – "Combating Auto Theft, Organized Crime & Terrorism,"* <http://www.insurance-canada.ca/claims/canada/IBC-Auto-Theft-606.php#en>.

(26) For example, the organizations include thieves, brokers, intermediaries and chopping specialists.

(27) Statistics Canada uses the percentage of unrecovered stolen vehicles in estimating the extent of vehicle theft by criminal organizations. This substantive indicator thus has its limits. (Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), pp. 6 and 11).

(28) Ibid., p. 11.

(29) Forty-four percent of vehicles stolen in Montréal were not recovered (ibid., p. 5).

(30) Followed by London (141), Ottawa (135), the York region (118), downtown Gatineau (117) and Toronto (97). Although, as noted above, the Western provinces have the highest vehicle theft rates, most vehicles stolen there are recovered, which is why fewer vehicle thefts are attributed to organized groups in that part of Canada (ibid., p. 11).

(31) Ibid., p. 13.

locations where criminal organizations find the vehicles they seek.⁽³²⁾ Since sought-after vehicles are often protected by high-tech anti-theft systems, thieves sometimes steal the keys by breaking into private homes and dealerships, thus causing a series of offences.

C. Vehicle Identification Number

Under the *Motor Vehicle Safety Regulations*,⁽³³⁾ the VIN, which is affixed to every vehicle in Canada, consists of 17 alphanumeric characters that provide a unique identifier for every motor vehicle.⁽³⁴⁾ Based on the established codes, certain characters designate, for example, the manufacturer, make and class of the vehicle, the model year, the plant where the vehicle was manufactured, and the production serial number assigned by the manufacturer to the vehicle. The VIN appears on various parts of the vehicle, such as its fenders, hood and doors.⁽³⁵⁾

The currently required methods to affix the VIN allow the number to be easily transferred from one vehicle to another. To correct the problems associated with the alteration and replacement of VINs, the federal Department of Transport has introduced measures, which will enter into effect on 1 September 2008, to ensure that the VIN cannot be removed without damaging or destroying the plate, sticker or vehicle.⁽³⁶⁾

With respect to falsification methods using the VIN, the Canadian Crime Intelligence Service recently noted:

The Insurance Crime Prevention Bureau has identified an increase in four main fraud techniques that are used by organized crime to steal vehicles. These include: the illegal transfer of Vehicle Identification Numbers (VINs) from wrecked vehicles to similar ones that have been stolen; a legitimate VIN is used to change the legal identity of a stolen vehicle of the same make, model, and colour, a process called “twinning.”⁽³⁷⁾

(32) Ibid.

(33) C.R.C., c. 1038, s. 115, Schedule IV.

(34) Manufacturers are prohibited from using the same identification number for two vehicles produced within an interval of less than 30 years.

(35) Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), p. 19. In the United States, the Department of Transportation requires, under the *Code of Federal Regulations*, Part 541 of Division 49, that several parts of certain high-risk vehicle lines bear a VIN.

(36) *Regulations Amending Certain Regulations Made Under the Motor Vehicle Safety Act*, SOR/2004-250, 16 November 2004, subs. 3(1).

(37) Criminal Intelligence Service Canada (2005), p. 40. That organization also observes that “criminals are getting replacement keys from car dealerships using the VIN numbers taken from parked cars.”

DESCRIPTION AND ANALYSIS

A. Offences Relating to Trafficking in Property Obtained by Crime (clause 1)

At present, the *Criminal Code* deals only with the possession of property obtained by crime.⁽³⁸⁾ The bill adds two offences to the Code: trafficking (new s. 355.2) and possession of property obtained by crime for the purpose of trafficking (new s. 355.4).

As in the case of possession of property obtained by crime, the property must have been derived from the commission of an indictable offence in Canada or outside Canada. In addition to proving criminal origin, the prosecution will also have to prove, beyond a reasonable doubt, that the accused had knowledge of the criminal origin.⁽³⁹⁾ Also, as in the case of possession of property obtained by crime and laundering proceeds of crime,⁽⁴⁰⁾ the Attorney General of Canada can conduct proceedings in respect of the two new offences created by the bill (clause 3).

The definition of “traffic” (new s. 355.1 of the Code) covers a wide range of activities, including selling, offering and delivering, as well as exporting and importing. The new offences may therefore apply to all intermediaries who are involved in the movement of property obtained by crime.⁽⁴¹⁾

New section 355.5 of the Code provides that the two new offences are indictable offences (if the value of the property is more than \$5,000) or hybrid offences, which means that the prosecution may elect to proceed by indictment or by way of summary conviction (if the value of the property is \$5,000 or less). Table 1 compares the maximum penalties for the new offences with those for the existing offence of possession of property obtained by crime.

Table 1 – Penalties for possession and trafficking in property obtained by crime

Value of the property	Method of prosecution	Existing offence in the <i>Criminal Code</i>	Offences in the bill	
		Possession of property obtained by crime	Trafficking in in property obtained by crime	Possession of property obtained by crime for the purpose of trafficking
> \$5,000	Indictment	10 years	14 years	
	Indictment	2 years	5 years	
≤ \$5,000	Summary conviction	6 months and/or \$2,000 fine		

(38) Section 354.

(39) See *R. v. Lamontagne*, REJB 1999-15273, (Que. C.A.).

(40) Section 462.31 of the *Criminal Code*.

(41) See Office of the Prime Minister, “Backgrounder – Auto theft and trafficking in property,” 14 April 2008, <http://www.pm.gc.ca/eng/media.asp?id=2065>.

B. Cross-border Movement of Property Obtained by Crime (clause 1)

The *Customs Act*⁽⁴²⁾ authorizes the CBSA to seize goods whose the importation or exportation is prohibited under an Act of Parliament. At present, however, there is no federal legislation that prohibits the importation or exportation of property obtained by crime.⁽⁴³⁾

The bill prohibits the importation and exportation of property obtained by crime (new s. 355.3 of the Code). This means that CBSA officers will be able to examine, seize and forfeit property obtained by crime that is imported or destined for exportation.

In addition, the *Reporting of Exported Goods Regulations*⁽⁴⁴⁾ were amended in 2005 to require that VINs be reported for conveyances permanently exported from Canada. The purpose of that amendment was to allow CBSA officers to examine containers destined for export in order to identify stolen vehicles.⁽⁴⁵⁾

C. Offence of Tampering with a Vehicle Identification Number (clause 2)

Currently, a person who alters a VIN in order to conceal the identity of a stolen vehicle is often charged with possession of property obtained by crime or an offence under other theft-related provisions. The *Criminal Code* deals specifically with VINs in subsection 354(2), which provides, in the context of an offence under subsection 354(1), for the assumption that if the VIN has been altered, the vehicle was stolen.⁽⁴⁶⁾ However, a person does not commit an offence as such by altering the VIN.

The bill makes it an offence to alter, remove or obliterate a VIN⁽⁴⁷⁾ (new subs. 377.1(1) of the Code.). The VIN is defined in terms that are similar to those used for the offence of possession of property obtained by crime (new subs. 377.1(2) of the Code).⁽⁴⁸⁾ An

(42) S.C. 1985, c. 1 (2nd Supp.), Part VI – Enforcement.

(43) See Office of the Prime Minister, “Backgrounder – Auto theft and trafficking in property,” 14 April 2008.

(44) SOR/2005-23, s. 19.

(45) See Public Safety Canada, *A Public Report On Actions Under the National Agenda to Combat Organized Crime* (2006), p. 19.

(46) The presumption of knowledge that the vehicle was stolen was held to be unconstitutional in *R. v. Boyle*, (1983), 5 C.C.C. (3d) 193 (C.A. Ont.).

(47) The term “obliterate” includes the destruction of the integrity of the VIN and altering some of the letters and numbers comprising it to produce a new VIN (*R. v. Hodgkins* (1985), 19 C.C.C. (3d) 109 (Ont. C.A.)).

(48) For the purposes of the offence of possession of property obtained by crime, “‘vehicle identification number’ means any number or other mark placed on a motor vehicle for the purpose of distinguishing the motor vehicle from other similar motor vehicles” (subs. 354(3) of the *Criminal Code*).

additional tool is thus made available to law enforcement agencies to enable them to lay charges in cases of theft, defacement and resale of motor vehicles.

In the terms used in the bill, the new offence applies to an accused who “wholly or partially, alters, removes or obliterates a vehicle identification number on a motor vehicle.” Since criminal organizations often dismantle stolen vehicles, it might be asked whether it would not be prudent to add the phrase “or on a part thereof” or a similar expression.⁽⁴⁹⁾

The previous bill C-64 provided that the prosecution had to prove that the VIN had been altered “under circumstances that give rise to a reasonable inference that the person did so to conceal the identity of the motor vehicle.” The same offence in Bill C-53 does not include that last phrase. However, Bill C-53 expressly provides that lawful conduct, such as regular maintenance of the vehicle, body work and auto recycling or wrecking, is a valid defence (new subs. 377.1(3) of the Code).

Under new subsection 377.1(4) of the Code, altering, removing or obliterating a VIN is a hybrid offence. Subsection 377.1(4) provides for a maximum sentence of imprisonment for five years in the case of an indictable offence. If the prosecution decides to proceed by way of summary conviction instead, the offence is punishable by a \$2,000 fine and imprisonment for six months, or both.⁽⁵⁰⁾ These are the same sentences as were provided for in the previous Bill C-64.

Because the offence of altering a VIN is punishable by imprisonment for a maximum of five years, it falls into the “serious offence” category. If such an offence is repeatedly committed by a group of three or more persons, it may be considered to be an offence committed by a “criminal organization,”⁽⁵¹⁾ with all the consequences that may have for police investigations, prosecutions and sentencing.⁽⁵²⁾

(49) Subsection 354(2) of the *Criminal Code*, concerning possession of property obtained by crime, uses similar terms: “... a person has in his possession a motor vehicle the vehicle identification number of which has been wholly or partially removed or obliterated *or a part of a motor vehicle* being a part bearing a vehicle identification number that has been wholly or partially removed or obliterated ...” (emphasis added).

(50) Subsection 787(1) of the *Criminal Code*.

(51) See the definitions of “serious offence” and “criminal organization” in subs. 467.1(1) of the *Criminal Code*.

(52) See, inter alia, ss. 467.11 and following of the *Criminal Code*.

COMMENTARY

Insurance companies believe that Bill C-53 will be effective in combating motor vehicle theft in Canada.⁽⁵³⁾ More specifically, the Insurance Bureau of Canada has welcomed the provisions giving express power to Canada Border Services Agency officers to prevent cross-border movement of property obtained by crime.⁽⁵⁴⁾ It believes that the present uncertainty is exploited by criminal organizations.

Others believe that the bill is only a partial solution to the major auto theft problem in Canada.⁽⁵⁵⁾ Because the proposed measures primarily target vehicle theft by criminal organizations, they do not apply to a majority of thefts.⁽⁵⁶⁾ Four out of five thefts do not involve criminal organizations.⁽⁵⁷⁾

The bill's provisions will therefore be useful only in major urban centres where criminal organizations are well established, such as Montréal, Toronto and Vancouver.⁽⁵⁸⁾ They will not be useful in other parts of the country where, as in Winnipeg, according to police chief Keith McCaskill, a majority of auto thefts are committed by people who want to take an impromptu ride and do not intend to resell the vehicle.⁽⁵⁹⁾ To deal with that problem, Sam Katz, Mayor of Winnipeg, would prefer to see tougher sentences for auto theft, both for adults and for young offenders.⁽⁶⁰⁾

(53) Steve Lambert, "New Anti-Auto Theft Law Not Enough," *The Lethbridge Herald*, 15 April 2008, p. A6.

(54) James Mennie, "New Legislation Aims To Put Dent In Thriving Car-Theft Industry; Montreal Is Still National Epicentre Of Organized Crime's Export Activities," *Montreal Gazette*, 18 April 2008, p. A6.

(55) "PM Told Anti-Theft Promise A Miss; Victim 'Disappointed' With Harper's Vow," *Winnipeg Free Press*, 15 April 2008, p. A1.

(56) Paul Rutherford, "Pomp And No Ceremony," *The Winnipeg Sun*, 15 April 2008, p. 8.

(57) Canadian Press, "Pas assez sévère, selon une victime," *Le Journal de Montréal*, 15 April 2008, p. 24.

(58) *Winnipeg Free Press* (2008).

(59) Julie Horbal, "A chop to the shops PM plans new penalties for car theft; 'Peg left out'," *The Winnipeg Sun*, 15 April 2008, p. 4.

(60) *Winnipeg Free Press* (2008).