**Legislative Summary** **LS-633E**

# BILL C-14: AN ACT TO AMEND THE CRIMINAL CODE (ORGANIZED CRIME AND PROTECTION OF JUSTICE SYSTEM PARTICIPANTS)

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**16 March 2009**

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# LEGISLATIVE HISTORY OF BILL C-14

| HOUSE OF COMMONS | | SENATE | |
|---|---|---|---|
| **Bill Stage** | **Date** | **Bill Stage** | **Date** |
| First Reading: | 26 February 2009 | First Reading: | 28 April 2009 |
| Second Reading: | 26 March 2009 | Second Reading: | 27 May 2009 |
| Committee Report: | 21 April 2009 | Committee Report: | 18 June 2009 |
| Report Stage: | 24 April 2009 | Report Stage: | |
| Third Reading: | 24 April 2009 | Third Reading: | 22 June 2009 |

Royal Assent: June 23, 2009

Statutes of Canada 2009, c. 22

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

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# BILL C-14: AN ACT TO AMEND THE CRIMINAL CODE (ORGANIZED CRIME AND PROTECTION OF JUSTICE SYSTEM PARTICIPANTS)*

## BACKGROUND

### A. Purpose of the Bill and Principal Amendments

Bill C-14, An Act to amend the Criminal Code (organized crime and protection of justice system participants) was introduced by the Minister of Justice and Attorney General of Canada, the Honourable Robert Nicholson, and passed first reading in the House of Commons on 26 February 2009.

One of the main purposes of the bill is to facilitate the battle against organized crime, and to that end, it amends the *Criminal Code* (the Code) in essentially three ways:

- It makes murders connected with organized crime activity ("for the benefit of, at the direction of or in association with a criminal organization") automatically first-degree murders, irrespective of whether they are planned and deliberate (clause 5 of the bill).

- It creates three new offences:

  - intentionally discharging a firearm while being reckless about endangering the life or safety of another person (clause 8 of the bill);
  - assaulting with a weapon or causing bodily harm to a peace officer (clause 9 of the bill);
  - or aggravated assault of a peace officer (clause 9 of the bill).

- It extends the maximum duration of a recognizance to two years for a person who has been previously convicted of a criminal organization offence, a terrorism offence or an offence of intimidating a justice system participant (clause 19 of the bill).(1)

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* 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) Section 2 of the *Criminal Code* (R.S. 1985, c. C-46) defines "criminal organization offence," "terrorism offence" and "justice system participant."

## B. Organized Crime Legislation in Canada

### 1. Bill C-95

On 17 April 1997, after more than a year of study and broad consultations, the then Minister of Justice, Allan Rock, introduced Bill C-95, An Act to amend the Criminal Code (criminal organizations) and to amend other Acts in consequence,[(2)] in the House of Commons. Given the urgency of the situation brought on by biker wars, the parties in the House of Commons and the Senate agreed to examine and pass the bill as quickly as possible, and in fact it was passed in less than 10 days. The bill received Royal Assent on 25 April 1997 and came into force on 2 May 1997.

Bill C-95 added a definition of "criminal organization"[(3)] and "criminal organization offence" to the Code. It also provided that a murder committed with the use of explosives is a first-degree murder if it is in association with a criminal organization, irrespective of whether it is planned and deliberate. Other amendments provided, for example, for restrictions on interim judicial release in the case of criminal organization offences and a longer waiting period before parole eligibility. The bill also contained provisions dealing with forfeiture of property used to commit an offence linked to a criminal organization and also for forfeiture of proceeds of crime. As well, the bill created a recognizance to be used for members of criminal organizations, to prevent them from engaging in their criminal activities.

### 2. Bill C-24

While Bill C-95 provided new legislative tools that were better suited to the reality of organized crime, it was not without its critics, particularly because of its complexity and limited application. The elements of the new organized crime offences and the definition of "criminal organization" were in fact difficult to prove in court.

In October 2000, the House of Commons Subcommittee on Organized Crime tabled a report containing 18 recommendations for legislative measures to combat organized

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(2) S.C. 1997, c. 23.

(3) The expression "criminal organization," as defined in Bill C-95, means "any group, association or other body consisting of five or more persons, whether formally or informally organized, (*a*) having as one of its primary activities the commission of an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more, and (*b*) any or all of the members of which engage in or have, within the preceding five years, engaged in the commission of a series of such offences."

crime.[4] In response to those recommendations, the then Minister of Justice, Anne McLellan, introduced Bill C-24, An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts,[5] in the House of Commons on 5 April 2001. The bill addressed the most urgent priorities set out in the National Agenda on Organized Crime[6] and enabled Canada to comply with its international commitments in that regard.[7] Bill C-24, as amended by the House of Commons and the Senate, received Royal Assent on 18 December 2001. Some sections of the bill came into force on 7 January 2002, and others on 1 February 2002.

Bill C-24 replaced the definition of "*gang*" in the French version with the definition of "*organisation criminelle*" and revised the definition of "criminal organization" in the English version.[8] In particular, the definition no longer contained the requirement that criminal activities were to have occurred in the previous five years in order for a group to be considered a criminal organization, and it reduced to three from five the minimum number of people connected with a group, including people outside Canada, that characterized the group as a "criminal organization."

The offence of participation in a criminal organization within the meaning of Bill C-95 required that the accused had participated in the activities of a criminal organization *and* had participated in the commission of an indictable offence in association with a criminal group. The offence was punishable by a maximum term of imprisonment of 14 years. Bill C-24 essentially divided the offence into two offences: participation in the activities of a criminal organization (punishable by a maximum term of imprisonment of five years[9]) and commission of an indictable offence for the benefit of a criminal organization (punishable by a maximum

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(4) House of Commons, Subcommittee on Organized Crime of the Standing Committee on Justice and Human Rights, *Combatting Organized Crime*, October 2000.

(5) S.C. 2001, c. 32.

(6) In September 2000, the federal, provincial and territorial ministers of Justice adopted the National Agenda on Organized Crime, which laid out certain priorities in combatting organized crime and advocated a coordinated approach.

(7) See *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1990 (CTC 1990 No. 42), and the Council of Europe, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, 1990 (ETS 1990 No.141).

(8) See the definition in *Criminal Code*, R.S. 1985, c. C-46, s. 467.1.

(9) R.S. 1985, c. C-46, s. 467.11.

term of imprisonment of 14 years[10]). Instructing a person to commit an offence for the benefit of a criminal organization was made punishable by imprisonment for life.[11] All of these sentences had to be served consecutively to any other punishment.[12]

In addition to those amendments, Bill C-24 included provisions for combatting organized crime, including by creating a new offence of intimidation of journalists, federal, provincial and municipal elected representatives, and persons who play a role in the administration of the criminal justice system.[13] A mechanism was also adopted to provide for criminal immunity, on certain conditions, for peace officers who commit acts or omissions in the course of a criminal investigation that would otherwise constitute offences.[14] The *Mutual Legal Assistance in Criminal Matters Act* was also amended to allow for the execution in Canada of search warrants, restraint orders or forfeiture orders made by foreign jurisdictions.[15]

### 3. Other Provisions Relating Specifically to Combatting Organized Crime

In addition to Bill C-95 and Bill C-24, which deal generally with organized crime, there are Acts that include specific provisions that are useful in combatting organized crime.

In 1999, an amendment to the *Corrections and Conditional Release Act* provided that inmates convicted of an organized crime offence could not have access to the accelerated parole review available to some offenders after they have served one sixth of their sentence.[16] In 2005, Bill C-53[17] reversed the burden of proof connected with forfeiture applications concerning proceeds of crime[18] in relation to an accused convicted of a criminal organization offence or an offence under certain provisions of the *Controlled Drugs and Substances Act*.[19]

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(10) Ibid., s. 467.12.

(11) Ibid., s. 467.13.

(12) Ibid., s. 467.14.

(13) Ibid., s. 423.1.

(14) Ibid., s. 25.1. This mechanism was adopted as a result of the decision of the Supreme Court of Canada in *Campbell and Shirose* v. *The Queen* [1999] 1 S.C.R. 565.

(15) R.S.C. 1985, c. 30 (4th Supplement), s. 9.3.

(16) *An Act to amend the Criminal Code, the Controlled Drugs and Substances Act and the Corrections and Conditional Release Act* (Bill C-51).

(17) S.C. 2005, c. 44.

(18) To avoid forfeiture, the offender must prove that his or her property is not proceeds of crime.

(19) These are offences involving the trafficking, importation, exportation and production of drugs.

In 2008, Bill C-13 provided for a DNA sample to be taken from an offender convicted of a criminal organization offence.[20] Also in 2008, the *Tackling Violent Crime Act*[21] required that longer minimum terms of imprisonment be imposed for certain firearms-related offences committed in association with a criminal organization.

## DESCRIPTION AND ANALYSIS

### A. First-degree Murder (Clause 5)

There are two categories of murder: first-degree and second-degree. Unlike second-degree murder, first-degree murder is planned and deliberate.[22] The punishment is the same for both categories of murder: a minimum term of imprisonment for life.[23] The difference between the two lies in the time to be served before parole eligibility: a minimum of 25 years in the case of first-degree murder[24] and between 10 and 25 years in the case of second-degree murder.[25]

To obtain a conviction for first-degree murder, usually the prosecution must prove, beyond a reasonable doubt, that the accused committed the murder, and that the murder was planned and deliberate.[26] However, the Code now provides for situations in which proof of the murder alone will result in conviction for first-degree murder. These include the murder of a peace officer or prison guard,[27] or murder where death is caused in the commission of certain offences, including sexual assault, hostage-taking, criminal harassment or intimidation of a justice system participant, a terrorist activity, kidnapping and forcible confinement.[28]

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(20) *An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act*, S.C. 2005, c. 25.

(21) S.C. 2008, c. 6 (Bill C-2).

(22) Subsection 231(2) of the Code. “Planned and deliberate” refers to a firm plan whose nature and consequences have been considered (see *R.* v. *Gentry*, REJB 1999-12648 (Que. C.A.)).

(23) R.S. 1985, c. C-46, s. 235.

(24) Ibid., para. 745(*a*).

(25) Ibid., para. 745(*c*).

(26) See *R.* v. *Aalders*, [1993] 2. S.C.R. 482.

(27) R.S. 1985, c. C-46, subsection 231(4).

(28) Ibid., subsections 231(5), 231(6), 231(6.01) and 231(6.2).

In 1990, the Supreme Court of Canada held that Parliament's decision to deal more harshly with murders committed by people abusing their power by illegally dominating victims was consistent with sentencing principles and with the provisions of the *Canadian Charter of Rights and Freedoms*.(29)

With respect to organized crime, the present subsection 231(6.1) of the Code provides that murder committed by a person using explosives at the direction of a criminal organization is considered to be first-degree murder, irrespective of whether it was planned and deliberate. Clause 5 of the bill amends that subsection of the Code by treating as first-degree murder any murder committed in association with a criminal organization (new paragraph 231(6.1)(*a*) of the Code) and murder committed while committing an indictable offence in association with a criminal organization (new paragraph 231(6.1)(*b*) of the Code).(30) In such cases, the prosecutor need not prove that the murder was planned and deliberate to secure a conviction for first-degree murder, but must prove that the accused intended to cause the death.

B. Discharging Firearm – Recklessness (Clause 8)

At present, section 244 of the Code provides that a person who discharges a firearm at a person with intent to wound the person or to endanger the person's life is liable to imprisonment for a term of between four and 14 years.

Clause 8 of the bill creates a new offence entitled "Discharging firearm – recklessness," which consists of intentionally discharging a firearm into or at a place (e.g., a building or vehicle), knowing that a person is in a place or being reckless as to whether another person is present in the place (new paragraph 244.2(1)(*a*) of the Code) or intentionally discharging a firearm anywhere while being careless as to the life or safety of another person (new paragraph 244(1)(*b*) of the Code).

The punishment provided for the new offence is identical to the punishment in the present section 244 of the Code: imprisonment for a minimum of four years and a maximum of 14 years. If the offender used a restricted or prohibited firearm, or the offence was committed in association with a criminal organization, the sentence is more severe: a minimum term of

(29) *R.* v. *Arkell*, [1990] 2 S.C.R. 695. The Quebec Court of Appeal has held that the provision regarding the murder of peace officers is consistent with the Charter (*R.* v. *Lefebvre*, [1992] R.J.Q. 590).

(30) For example, murder committed in the course of a drug transaction engaged in for the benefit of a criminal organization.

imprisonment of five years, and seven years in the case of a second or subsequent offence[31] (new subs. 244.2(3) of the Code).

1. Judicial Interim Release (Clause 17)

As a rule, if an accused is detained by peace officers after being arrested, the judge must release the accused at the bail hearing, with or without conditions. For certain offences listed in subsection 515(6) of the Code (e.g., a criminal organization offence, a terrorism offence or certain drug-related offences or offences involving a firearm), the accused must be detained in custody during the proceedings, but may be released if he or she shows cause why the detention is not justified in the circumstances. This means that the burden of proof is shifted from the prosecution to the accused, if the accused is charged with one of these offences.

Clause 17 of the bill adds to the offences listed in subsection 515(6) of the Code the new offence of recklessly discharging a firearm. Accordingly, as in the case of the other offences listed, the judge must order that an accused charged with this new offence be detained in custody, unless the accused shows cause[32] why he or she should instead be released during the criminal proceedings.

2. Subsequent Offences (Clauses 2, 6, 7, 10, 11, 12, 13, 14 and 15)

For certain offences involving a firearm, the Code provides for more severe punishment in the case of subsequent offences. The bill considers a person to have committed a subsequent offence if he or she is convicted of certain specific offences involving a firearm after being convicted of the new offence of recklessly discharging a firearm. Those specific offences include firearms trafficking[33] (clause 2), attempted murder[34] (clause 6), aggravated sexual assault[35] (clause 11) and robbery[36] (clause 14).

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(31) The second or subsequent offence must have resulted in a conviction within 10 years of the previous offence (which may have been for certain other firearms-related offences) in order for the minimum term of seven years to apply.

(32) In relation to the three grounds in R.S. 1985, c. C-46, subsection 515(10).

(33) R.S. 1985, c. C-46, para. 84(5)(*b*) and subsection 99(2).

(34) Ibid., para. 239(2)(*b*).

(35) Ibid., para. 273(3)(*b)*.

(36) Ibid., para. 344(2)(*b)*.

Accordingly, a person convicted today of the new offence of recklessly discharging a firearm, and convicted within 10 years of one of the specific offences involving a firearm (such as firearms trafficking), will be considered to have committed a subsequent offence and will be liable to harsher punishment.

C. Offences against Peace Officers (Clause 9)

Clause 9 of the bill creates two new offences against peace officers:[37] assault while carrying, using or threatening to use a weapon or an imitation of one, or causing bodily harm to a peace officer[38] (new section 270.01 of the Code); and aggravated assault, that is, wounding, maiming, disfiguring or endangering the life of a peace officer (new section 270.02 of the Code).

At present, the Code provides for the offences of assaulting a peace officer[39] and disarming a peace officer.[40] A person who assaults a peace officer while armed or causes bodily harm or serious bodily injury to a peace officer will generally be charged under the existing provisions covering assault with a weapon, causing bodily harm[41] or aggravated assault[42] that cover any kind of victim, not only peace officers.

The two new offences in the bill that relate specifically to peace officers result in the same sentences as are provided at present for assault on any kind of victim, a maximum term of imprisonment of 10 years for assault with a weapon or causing bodily harm and a maximum term of imprisonment of 14 years for aggravated assault.

D. Interception of Private Communications (Clause 4)

Judicial authorization for electronic interception of a private communication can be obtained only for certain offences listed in section 183 of the Code. Clause 4 of the bill adds

(37) “Peace officer,” as defined in s. 2 of the Code, includes a police officer, a customs officer and a prison guard.

(38) “Bodily harm” is defined in s. 2 of the Code as “any hurt or injury that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature.”

(39) Punishable by a maximum term of imprisonment of five years (R.S. 1985, c. C-46, s. 270).

(40) Punishable by a maximum term of imprisonment of five years (R.S. 1985, c. C-46, s. 270.1).

(41) R.S. 1985, c. C-46, s. 267.

(42) Ibid., s. 268.

to that section the offence of discharging a firearm with intent and the new offences of recklessly discharging a firearm or assaulting a peace officer with a weapon or causing bodily harm and aggravated assault of a peace officer. This means that law enforcement agencies will be able to use electronic surveillance to investigate those offences.

### E. DNA Samples (Clause 16)

Where an accused is convicted of one of the "primary designated offences" listed in paragraph 487.04(*a*) of the Code, the court must make an order authorizing the taking of the number of samples of bodily substances considered necessary for genetic analysis.[43] Clause 16 of the bill adds the following three new offences to the list of primary designated offences: recklessly discharging a firearm, assaulting a peace officer with a weapon or causing bodily harm to a peace officer, and aggravated assault of a peace officer causing serious bodily injury. Accordingly, DNA must be taken from an accused convicted of one of the three new offences.

### F. Sentencing Objectives: Denunciation and Deterrence (Clause 18)

Section 719 of the Code lists a number of objectives of sentencing, including denunciation, deterrence and rehabilitation of offenders. Section 718.01 of the Code provides that a court shall give primary consideration to the objectives of denunciation and deterrence in the case of an offence involving the abuse of a person under the age of 18 years. Similarly, clause 18 of the bill provides that a court must give primary consideration to the objectives of denunciation and deterrence when it imposes a sentence for any kind of assault of a peace officer (including the two new offences) or intimidation of a justice system participant. The imposition of harsher sentences might be anticipated in these cases.

### G. Recognizance to Keep the Peace (Clause 19)

A recognizance to keep the peace is a preventive measure. Generally speaking, someone, very often a peace officer, may lay an information before a judge if there are

(43) Subsection 487.051(1) of the Code.

reasonable grounds to fear that a particular offence will be committed.(44) The court may then impose conditions on the defendant to prevent the commission of the offence.

If there are reasonable grounds to believe that a person will commit one of the three offences of intimidating a justice system participant or a journalist, committing a criminal organization offence or committing a terrorism offence, the court may, at present, impose conditions on the defendant for a maximum of 12 months.(45) Clause 19 of the bill extends the maximum period to two years where the defendant was convicted previously of one of the those three offences (new subsection 810.01(3.1) of the Code). The *Tackling Violent Crime Act* had also extended the maximum period to two years in the case of recognizances relating to a sexual offence in respect of a person under the age of 16 years(46) and serious personal injury offences.(47)

The court may impose the conditions it considers to be reasonable, such as a firearms prohibition order.(48) Clause 19 of the bill provides five examples of conditions that may be imposed by the court to secure the good conduct of the defendant:

- participation in a treatment program;
- the wearing of an electronic monitoring device;
- remaining within a specified geographic area;
- keeping a curfew; and
- abstaining from the consumption of alcohol or drugs (new subsection 810.01(4.1) of the Code).(49)

The bill also provides that if the court prohibits the defendant from possessing firearms or other weapons, it must specify the period during which the condition applies (new subsection 810.01(5) of the Code).

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(44) While it is not necessary, then, that the accused has committed an offence, reasonable apprehension of a serious and imminent danger will have to be proved on a balance of probabilities (see *R.* v. *Budreo*, (1996) 45 C.R. (4th) 133 (Ont. S.C.), aff'd (2000) 32 C.R. (5th) 127 (Ont. C.A.), and *Québec (Procureur général)* v. *Nabhan*, REJB 2003-47974 (Que. C.A.)).

(45) R.S. 1985, c. C-46, subsection 810.01(3).

(46) R.S. 1985, c. C-46, subsection 810.1(3.01).

(47) R.S. 1985, c. C-46, subsection 810.2(3.1).

(48) R.S. 1985, c. C-46, subsections 810.01(3) and 810.01(5).

(49) The conditions are the same as for recognizances relating to serious personal injury offences (R.S. 1985, c. C-46, subsection 810.2(4.1)).