



LEGISLATIVE SUMMARY

BILL S-204: AN ACT TO AMEND THE CRIMINAL CODE AND THE IMMIGRATION AND REFUGEE PROTECTION ACT (TRAFFICKING IN HUMAN ORGANS)

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Legislative Summary of Bill S-204
(Legislative Summary)

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1 BACKGROUND

Bill S-204, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs) was introduced in the Senate by Senator Salma Ataullahjan on 30 September 2020.¹ Bill S-204 creates specific offences in the *Criminal Code* (the Code) that cover trafficking in human organs, including what is known as “transplant tourism.” It also amends the *Immigration and Refugee Protection Act* (IRPA) to make inadmissible to Canada permanent residents or foreign nationals who, in the opinion of the Minister of Citizenship and Immigration, have engaged in any activity related to trafficking in human organs.

1.1 BACKGROUND ON ORGAN TRAFFICKING IN CANADA AND ABROAD

Organ trafficking is commonly understood as the trafficking in persons for the removal of their organs, and it is prohibited by international law as part of a general prohibition on human trafficking, defined to include exploitation for the removal of organs.² Governmental and non-governmental organizations, including medical associations, have interpreted this prohibition to include any transplantation where the organ provider benefits or profits from the transaction.³

Conservative estimates indicate that the organ trafficking industry generates US\$840 million to US\$1.7 billion in revenue annually from around 12,000 illegal transplants.⁴ One factor that contributes to this trade is a global demand for organs that far exceeds organ availability. In Canada in 2018, for example, 4,351 people were awaiting organ transplants; in that year, 2,782 organs were transplanted and 223 people died while they waited.⁵

Canada is a country of origin for patients seeking to purchase organs – rather than a country of destination.⁶ Canada does not currently have a law that bans Canadians from travelling abroad to receive a transplant. This practice, which is known as “transplant tourism,” is widely condemned for both ethical and health reasons by the international community and medical professionals.⁷

1.2 TRAFFICKING IN PERSONS FOR THE PURPOSE OF ORGAN REMOVAL AND THE *CRIMINAL CODE*

Trafficking in persons is prohibited under the Code. Sections 279.01 and 279.011 (concerning persons under the age of 18) criminalize recruiting, moving, harbouring or exercising control over a person with intent to exploit that person. An individual cannot give consent to being trafficked.

Section 279.04 of the Code describes exploitation as follows:

(1) ... a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

Factors

(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused

- (a) used or threatened to use force or another form of coercion;
- (b) used deception; or
- (c) abused a position of trust, power or authority.

Section 279.04(3) of the Code clarifies that exploitation also includes causing a person to have an organ or tissue removed by means of deception or coercion.

Trafficking in persons is an indictable offence punishable by a minimum term of imprisonment of four years (five years if the victim was younger than 18) and a maximum term of 14 years. If an offender commits aggravated assault, sexual assault or kidnapping, or causes the victim's death during the commission of an offence, the offence is punishable by a maximum term of life imprisonment; the mandatory minimum sentence is five years (six years if the victim was younger than 18). It is also an offence to receive a financial or other material benefit knowing that it was obtained through human trafficking. The maximum sentence for this offence is 10 years, if the victim is an adult. If the victim is younger than 18, the maximum sentence is 14 years, and the mandatory minimum sentence is two years (section 279.02).

The offence of withholding or destroying documents that relate to trafficking is defined in the Code at section 279.03.

Under section 7(4.11) of the Code, a Canadian citizen or permanent resident who commits an offence described at sections 279.01 to 279.03 outside of Canada is deemed to have committed the offence in Canada. This section ensures that the offence of trafficking in persons applies extraterritorially.

Notably, the United Nations Office on Drugs and Crime makes a distinction between organ trafficking (or trafficking in organs) and trafficking in persons for organ removal. In its *Assessment Toolkit: Trafficking in Persons for the Purpose of Organ Removal*, it explains:

Trafficking in organs and trafficking in persons for organ removal are different crimes, though frequently confused in public debate and among the legal and scientific communities. In the case of trafficking in organs, the object of the crime is the organ, whereas in the case of human trafficking for organ removal, the object of the crime is the person. Trafficking in organs may have its origin in cases of human trafficking for organ removal, but organ trafficking will also frequently occur with no link to a case of human trafficking. The mixing up of these two phenomena could hinder efforts to combat both phenomena and provide comprehensive victim protection and assistance.⁸

1.3 OTHER LEGISLATION RELATED TO TRAFFICKING IN PERSONS FOR THE PURPOSE OF ORGAN REMOVAL

Several attempts have been made in the last decade to amend the Code by adding sections through Senate public bills and legislation introduced by private members in the House of Commons that deal explicitly with the trafficking of human organs and other body parts.⁹ The most recent of these was Bill S-240, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs), also introduced by Senator Ataullahjan on 31 October 2017.¹⁰

Bill S-240 was adopted by the Senate on 23 October 2018 with the amendments of the Standing Senate Committee on Human Rights.¹¹ The bill then progressed through the House of Commons, where it was further amended by the House of Commons Standing Committee on Foreign Affairs and International Development and returned to the Senate on 30 April 2019.¹² However, the bill was not adopted; it died on the *Order Paper* with the dissolution of the 42nd Parliament, after receiving third reading in the House of Commons.

2 DESCRIPTION AND ANALYSIS

Bill S-204 contains three clauses. The first two add new offences to the Code, while the third amends the IRPA.

2.1 NEW OFFENCES RELATED TO TRAFFICKING IN HUMAN ORGANS (CLAUSE 2)

Clause 2 of the bill adds new section 240.1(1) to the Code. This section makes it an offence to:

- receive an organ transplant or obtain an organ for transplant into another person without the informed consent of the person from whom the organ was removed or a person authorized to consent on their behalf, or be reckless as to whether or not such consent was given;
- carry out, participate in or facilitate the removal of an organ without the informed consent of the person from whom the organ was removed or a person authorized to consent on their behalf, or be reckless as to whether or not such consent was given; and
- do anything in connection with the removal of an organ from the body of another person on behalf of, at the direction of or in association with the person who removes the organ, knowing that the person from whom it was removed (or a person authorized to consent on behalf of the person from whom it was removed) did not give informed consent to the removal, or be reckless as to whether or not such consent was given.

In each case, the accused must have actual knowledge that the person from whom the organ was removed did not give consent, or the accused must be willfully blind or reckless as to whether or not consent was given.

New section 240.1(2) makes it an offence to obtain, participate in or facilitate an organ transplant knowing or being reckless as to whether or not the organ was obtained for consideration.

Offences under sections 240.1(1) and 240.1(2) are indictable offences punishable by a maximum term of imprisonment of 14 years (new section 240.1(3)).

2.2 EXTRATERRITORIAL JURISDICTION (CLAUSE 1)

Clause 1(1) of the bill adds new section 7(4.2) to the Code under which a Canadian citizen or permanent resident who commits an offence pursuant to new section 240.1 outside Canada is deemed to have committed that offence in Canada. In other words, Canada has extraterritorial jurisdiction over this offence.

Section 6(2) of the Code states that, subject to the Code or any other Act of Parliament, a person shall not be convicted or discharged of an offence committed outside Canada. As a result, extraterritorial jurisdiction provisions are often included in Canadian legislation that deals with international and transnational crime, including other offences related to trafficking in persons.

Clause 1(2) also amends section 7(4.3) of the Code to require the consent of the Attorney General or the solicitor general of a province in order to initiate the prosecution of an offence that comes under new section 7(4.2).¹³ No such consent is required for the extraterritorial prosecution of other human trafficking offences under the Code.

2.3 AMENDMENTS TO THE *IMMIGRATION AND REFUGEE PROTECTION ACT* (CLAUSE 3)

Section 35(1) of IRPA lists the grounds on which permanent residents and foreign nationals are inadmissible to Canada for human or international rights violations.¹⁴ Clause 3 amends section 35(1) by adding a sixth ground of inadmissibility: engaging in conduct that, in the opinion of the Minister, would constitute an offence under section 240.1 of the *Criminal Code*.

NOTES

1. [Bill S-204, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act \(trafficking in human organs\)](#), 43rd Parliament, 2nd Session (third reading version, 6 May 2021).
2. *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (Palermo Protocol) is the human rights instrument that contains the international legal definition of human trafficking. It was adopted through General Assembly Resolution A/RES/55/25 of 15 November 2000 and ratified by Canada in May 2002. It entered into force on 25 December 2003. See United Nations, [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime](#), 15 November 2000, art. 3(a).
3. See, for example, [The Declaration of Istanbul on Organ Trafficking and Transplant Tourism: Participants in the International Summit on Transplant Tourism and Organ Trafficking convened by The Transplantation Society and International Society of Nephrology in Istanbul, Turkey, April 30–May 2, 2008](#). The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018 Edition) (the Declaration of Istanbul – 2018 Edition) was updated in 2018 “in response to clinical, legal and social developments in the field.” See also [The Declaration of Istanbul – 2018 Edition](#).
4. Channing May, [Transnational Crime and the Developing World](#), Global Financial Integrity, March 2017, p. 29.
5. Canadian Institute for Health Information, *Despite progress, Canada’s organ supply still isn’t meeting demand*, News release, 5 December 2019.
6. Yosuke Shimazono, “Public health reviews – The state of the international organ trade: a provisional picture based on integration of available information,” *Bulletin of the World Health Organization*, Vol. 85, No. 12, December 2007, pp. 955–962. Other major countries of origin of patients going overseas to purchase organs for transplantation (organ-importing countries) include the United States, Australia, Israel, Japan, Oman and Saudi Arabia.
7. Royal Canadian Mounted Police, [Just the facts: Illegal organ trade](#), *Gazette*, Vol. 76, No. 3, 3 October 2014.
8. United Nations Office on Drugs and Crime, [Assessment Toolkit: Trafficking in Persons for the Purpose of Organ Removal](#), 2015, p. 17.

9. See [Bill C-561, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act \(trafficking and transplanting human organs and other body parts\)](#), 41st Parliament, 2nd Session; [Bill C-381, An Act to amend the Criminal Code \(trafficking and transplanting human organs and other body parts\)](#), 40th Parliament, 3rd Session; [Bill C-381, An Act to amend the Criminal Code \(trafficking and transplanting human organs and other body parts\)](#), 40th Parliament, 2nd Session; and [Bill C-500, An Act to amend the Criminal Code \(trafficking and transplanting human organs and other body parts\)](#), 39th Parliament, 2nd Session.
10. [Bill S-240, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act \(trafficking in human organs\)](#), 42nd Parliament, 1st Session.
11. Senate, Standing Committee on Human Rights, “Twelfth Report: Bill S-240, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs), with amendment,” [Reports](#).
12. House of Commons, Standing Committee on Foreign Affairs and International Development, “Report 23 – Bill S-240, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs),” [Reports](#), 1 March 2019.
13. The term “Attorney General” is defined in the *Criminal Code*. In Yukon, the Northwest Territories and Nunavut, consent would be given by the Attorney General of Canada or their lawful deputy. See [Criminal Code](#), R.S.C. 1985, c. C-46, ss. 2(a) and 2(b).
14. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, s. 35(1).