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Legislative Summary

BILL C-4: AN ACT TO AMEND THE CRIMINAL CODE (CONVERSION THERAPY)

44-1-C4-E

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Legislative Summary of Bill C-4
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL C-4: AN ACT TO AMEND THE CRIMINAL CODE (CONVERSION THERAPY)

1 BACKGROUND

1.1 SUMMARY OF BILL C-4

Bill C-4, An Act to amend the Criminal Code (conversion therapy),¹ was introduced in the House of Commons on 29 November 2021 by the Minister of Justice and Attorney General of Canada, the Honourable David Lametti. The bill was passed unanimously by the House of Commons on 1 December 2021.² It received its first reading in the Senate the following day, and was passed unanimously on 7 December 2021.³

A similar bill had previously been introduced twice by the minister. The first time, it was introduced as Bill C-8 during the 1st Session of the 43rd Parliament,⁴ but it died on the *Order Paper* when Parliament was prorogued on 18 August 2020. The second time, it was introduced as Bill C-6 during the 2nd session.⁵ It died on the *Order Paper* when Parliament was dissolved on 15 August 2021. Bill C-6 is discussed further in Part 1.2.5.2.⁶

The definition of “conversion therapy” included in Bill C-4, as paraphrased by the Department of Justice, is

any practice, service or treatment designed to change a person’s sexual orientation to heterosexual, gender identity to cisgender, or gender expression to match the sex assigned at birth, or designed to repress or reduce non-heterosexual attraction or sexual behaviour, or gender expression that does not match the sex assigned at birth, or to repress non-cisgender gender identity.⁷

The preamble of Bill C-4 states that conversion therapy causes harm to persons who are subjected to it. It harms society more broadly by propagating myths and stereotypes about sexual orientation, gender identity and gender expression, including “the myth that heterosexuality, cisgender gender identity, and gender expression that conforms to the sex assigned to a person at birth are to be preferred over other sexual orientations, gender identities and gender expressions.” Consequently, the bill aims to protect “the human dignity and equality of all Canadians.”

Bill C-4 amends the *Criminal Code* (the Code)⁸ to, among other things, prohibit anyone from

- causing a person to undergo conversion therapy or providing it to a person;
- promoting or advertising services related to conversion therapy;
- removing a child from Canada to undergo conversion therapy abroad; and
- receiving a financial or material benefit from the provision of conversion therapy.

Bill C-4 also adds provisions to authorize courts to make certain orders related to the promotion of conversion therapy, such as requiring the removal of advertisements for conversion therapy services from computer systems and the Internet.

1.2 CONVERSION THERAPY

1.2.1 Defining Conversion Therapy

Various definitions of conversion therapy exist, both in Canada and globally, and they have evolved over time. According to the Canadian Psychological Association, conversion therapy refers to “any formal therapeutic attempt to change the sexual orientation of bisexual, gay and lesbian individuals to heterosexual.”⁹ Sexual orientation is a term used to describe an individual’s pattern of emotional, romantic or sexual attraction.¹⁰ It may include attraction to the same sex (homosexuality), a different sex (heterosexuality), to both the male and female sexes (bisexuality), or to neither sex (asexuality).¹¹ Sexual orientation is distinct from an individual’s gender identity, which will be discussed below. The American Psychological Association uses the term “sexual orientation change efforts” (SOCE) to describe methods that aim to change a person’s same-sex sexual orientation to an other-sex sexual orientation.¹² These methods can include behavioural techniques, psychoanalytic techniques, medical approaches, and religious and spiritual approaches. SOCE has been conducted by both mental health professionals and lay individuals, with the latter including religious professionals, religious leaders, social groups and other lay networks, such as self-help groups.¹³

The term SOCE has also been expanded to include gender identity change efforts (SOGICE), which refer to methods that aim to change the gender identity or gender expression of an individual.¹⁴ Gender identity refers to an individual’s deeply felt internal and individual experience of gender, which may be male or female or lie outside the male/female binary.¹⁵ An individual’s gender identity may differ from the sex they were assigned at birth, which refers to the characterization of an individual’s sex based on their primary physiological and biological sexual characteristics at birth.¹⁶ Meanwhile, gender expression refers to the ways individuals express their gender identity.¹⁷ Gender identity and gender expression change efforts involve similar approaches to those aimed at changing an individual’s sexual orientation. However,

the goal of these efforts is for individuals to become cisgender, meaning that their gender identity aligns with the biological sex assigned to them at birth.¹⁸

1.2.2 Historical Origins of Conversion Therapy

Conversion therapy was first developed in the 19th century. At the time, same-sex sexual activity between consenting adults was considered a crime punishable by imprisonment in Canada.¹⁹ Within the mental health profession, homosexuality was predominantly viewed as a pathology or mental illness.²⁰ Psychiatrists viewed homosexuality as having its origins in delayed maturity or in pathology such as genetic defects, hormone exposure in the womb, parental abuse or molestation.²¹ Consequently, they began offering treatments to correct or repair homosexuality as a pathology. Such treatments focused on addressing family dynamics, aversion techniques (electric shock treatments and induced nausea and vomiting), behavioural interventions (dating skills, assertiveness and affection towards the other sex) and cognitive interventions (reframing of thoughts and desires).²²

However, research conducted in the 1950s and 1960s examining human sexual behaviour found homosexuality to be a normal variation of human sexual behaviour.²³ In the 1960s, there were also significant shifts in societal views regarding homosexuality, which resulted in the Parliament of Canada passing legislation that decriminalized private same-sex sexual acts between two people over the age of 21.²⁴ In the United States, in response to both scientific and broader societal changes and advances in the rights of lesbian, gay, bisexual, trans, queer and two-spirit plus (LGBTQ2+) individuals, the American Psychological Association and the American Psychiatric Association also undertook reviews of the scientific literature in the early 1970s. The reviews concluded that homosexuality could not be considered a psychological disorder, and it was removed from the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* in 1973.²⁵ In 1990, the World Health Organization removed homosexuality from the 10th edition of the International Classification of Diseases.²⁶ Thus, in the years that followed, conversion therapy was gradually removed from mainstream mental health practice.²⁷ However, some mental health professionals continued to provide a form of conversion therapy, referred to as “reparative therapy,” and founded the National Association of Research and Therapy of Homosexuality.²⁸

Beginning in the 1970s, some faith-based organizations created “ex-gay groups,” which offered individuals engaging in sexual behaviours with or having feelings of attraction towards individuals of the same sex the opportunity to obtain spiritual healing through a process of repentance and forgiveness.²⁹ Those faith-based organizations, referred to as “ex-gay ministries,” drew on psychoanalytic conversion theories and practices that were now rejected by the mainstream mental health community, as well as traditional religious practices such as prayer and scripture

reading.³⁰ Those services were generally targeted at individuals belonging to conservative Protestant communities who were seeking to reconcile their same-sex attractions and behaviours with their religious beliefs.³¹

It is important to note that the approach of faith-based organizations that were part of the “ex-gay movement” differs from the pastoral counselling currently provided by many Christian and other religious denominations, which aims to provide support to LGBTQ2+ individuals but not to change their sexual orientation or gender identity.³²

1.2.3 Scientific Evidence Regarding Conversion Therapy

Controversies surrounding the provision of conversion therapy resulted in the American Psychological Association undertaking a systematic review of the scientific evidence regarding its effectiveness and possible harms in 2009.³³ Having considered peer-reviewed research literature from 1960 to 2006, it found that individuals did not experience long-lasting change in their sexual orientation after being exposed to SOCE, and any changes that occurred were uncommon or rare.³⁴ Outside a laboratory setting, most participants did not stop engaging in sexual behaviours with, or having feelings of attraction toward, individuals of the same sex, and exposure to SOCE did not increase their sexual behaviour with, or their feelings of attraction toward, individuals of the other sex. Studies examining the impacts of aversion techniques used in conversion therapy found that participants experienced significant harms, including loss of sexual feeling, depression, suicidal ideation, anxiety, impotence and relationship dysfunction.³⁵

According to the American Psychological Association review, more recent studies examining the efficacy of non-aversion techniques and religious approaches to changing a person’s sexual orientation were not scientifically rigorous.³⁶ Rather, those studies were based on self-reporting of perceived benefits, harms and changes to sexual orientation or identity. Some of them documented harms that individuals were reported to have experienced as a result of their exposure to SOCE, which included negative social and emotional consequences, deteriorated relationships with family, loss of social support, loss of faith, sexual dysfunction, suicidal ideation and self-hatred.³⁷ Those studies were countered by several other studies, conducted by Dr. Joseph Nicolosi and others, that included self-reports from other individuals who said they had experienced benefits from exposure to SOCE. The benefits cited included relief, happiness, an improved relationship with God and perceived improvements in mental health status.³⁸ However, it is noteworthy that the subjects in those studies were predominantly men who indicated that religion was of central importance in their lives.³⁹

As a result of the limited scientific evidence supporting its efficacy and the significant risk of harms that it may pose to individuals, many health professional organizations,

including the Canadian Psychological Association, the Canadian Psychiatric Association,⁴⁰ the American Psychiatric Association, the American Psychological Association and other health professional bodies, have denounced conversion therapy.⁴¹ According to the Canadian Psychological Association, scientific research does not support the efficacy of conversion therapy.⁴² Furthermore, conversion therapy “can result in negative outcomes such as distress, anxiety, depression, negative self-image, a feeling of personal failure, difficulty sustaining relationships, and sexual dysfunction.”⁴³ The Canadian Paediatric Society has particularly recommended against providing conversion therapy to minors on the grounds that it reinforces the anxiety and guilt that adolescents experience in coming to terms with their sexual orientation or gender identity, leading to poor mental health outcomes.⁴⁴

Internationally, 12 United Nations (UN) entities issued a joint statement in 2015 calling on states to end violence toward LGBTQ2+ individuals. According to the statement, such violence includes “abuse in medical settings, including unethical and harmful so-called ‘therapies’ to change sexual orientation.”⁴⁵ In 2020, the UN’s Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity issued a report on conversion therapy, noting that it has a demeaning and degrading impact on individuals who are subjected to it as it treats “LGBT persons as lesser human beings.” Furthermore, it “may amount to torture depending on the circumstances, namely the severity of physical and mental pain and suffering inflicted.”⁴⁶ He called for a global ban of conversion therapy that should be based on, among other things, clearly defined prohibited practices, banning advertisements, ensuring suitable punishment for non-compliance and creating mechanisms for reparation to victims.⁴⁷

1.2.4 Current Prevalence of Exposure to Conversion Therapy in Canada

Recent data suggests that exposure to some form of conversion therapy in Canada remains a significant but under-reported issue. One 2020 survey published by the Trans PULSE Canada Team found that “11% of the 2033 trans and non-binary people who answered this question had experienced conversion therapy.”⁴⁸ Another Canadian study published in the journal *PLOS ONE*, which used data collected from the Community-Based Research Centre’s 2019 *Sex Now Survey*,⁴⁹ reported that 21% of 9,214 respondents “indicated that they or any person with authority (e.g., parent, caregiver) ever tried to change their sexual orientation or gender identity, and 10% had experienced” conversion therapy practices.⁵⁰ Responses were highest among non-binary (20%) and transgender respondents (19%) and 67% had their experiences in religious/faith-based settings (67%) or licensed health care provider offices (20%).⁵¹

According to the 2011–2012 *Sex Now Survey*, approximately 3.5% of the 8,388 sexual minority⁵² men surveyed had been exposed to conversion therapy in Canada.⁵³ The study found that for 78.3% of those who had been exposed, the

exposure had occurred more than 12 months prior to the study, but also that 7.9% had been exposed in the previous 12 months, suggesting that conversion therapy remains an ongoing practice in the country. The survey also found that exposure to conversion therapy was associated with significant harms, including loneliness, regular illicit drug use, suicidal ideation and suicide attempts. It is important to note that this data is limited because it does not include the experiences of sexual minority women in Canada.⁵⁴

1.2.5 The Canadian Legal Context

1.2.5.1 Division of Powers and Provincial Laws

In introducing Bill C-4, the federal government is relying on Parliament's authority to pass criminal laws, further to section 91(27) of the *Constitution Act, 1867*.⁵⁵ The Supreme Court of Canada has determined that to be within the authority of Parliament's powers relating to criminal law, a law must be a prohibition with a penal sanction and be directed toward a public purpose (such as peace, security, health or morality).⁵⁶ Furthermore, as health care is largely a provincial responsibility, criminal laws related to the protection of health must address a "legitimate public health evil."⁵⁷

Some provincial legislatures and municipalities have already responded to the harms posed by conversion therapy by prohibiting or restricting it, or certain activities associated with it, in accordance with their jurisdiction. While those measures may restrict or discourage the provision of conversion therapy, they do not criminalize the practice, as this would fall under federal jurisdiction.

Under their powers over "property and civil rights in the province" in section 92(13) of the *Constitution Act, 1867*, provinces may regulate health care professionals and the provision of health insurance.⁵⁸ To date, Ontario,⁵⁹ Nova Scotia,⁶⁰ Prince Edward Island,⁶¹ Quebec,⁶² and the Yukon⁶³ have enacted legislation prohibiting regulated health professionals from providing treatment or services that aim to change the sexual orientation or gender identity of a person under 18 or 19 years of age, depending on the jurisdiction.⁶⁴ Those laws also prohibit conversion therapy from being considered an insured health service under the provinces' respective public health care plans.⁶⁵

Nova Scotia's *Sexual Orientation and Gender Identity Protection Act* prohibits a "person in a position of trust or authority towards a young person" from providing conversion therapy (referred to as "change effort" in the law).⁶⁶ However, it allows conversion therapy to be provided to mature minors aged 16 and older, provided they consent to treatment.⁶⁷ Ontario's legislation does not prohibit conversion therapy for adults or for individuals under 18 years of age who have the capacity to consent to treatment and who consent to it.⁶⁸ In both Ontario and Nova Scotia, parents, guardians, and other substitute decision-makers may not give consent for conversion therapy on

another person's behalf.⁶⁹ In Prince Edward Island, the legislation prohibits a substitute decision-maker from consenting to conversion therapy on behalf of an incapable patient.⁷⁰

While the legislation in Ontario, Nova Scotia, Prince Edward Island, Quebec, and the Yukon varies in terms of the definitions and terms used for conversion therapy, each province's legislation specifies in its own language something to the effect that conversion therapy does not include the following:

- (a) services that provide acceptance, support or understanding of a person or the facilitation of a person's coping, social support or identity exploration or development; and
- (b) sex-reassignment surgery or any services related to sex-reassignment surgery.⁷¹

While Manitoba has not passed legislation, it has adopted a policy that “conversion therapy can have no place in the province's public health care system.”⁷² In other provinces and territories where there is currently no legislation in place, some municipalities (whose powers are delegated to them by the province) have introduced bylaws prohibiting businesses from offering, advertising or receiving remuneration for providing conversion therapy.⁷³ For example, Vancouver, British Columbia, has passed *By-law No. 12147, A By-law to Amend Business Prohibition By-law No. 5156 Regarding Conversion therapy*, which prohibits businesses in the city from “[c]harging a fee for any services that seek to change the sexual orientation or gender identity of any person.”⁷⁴ Other municipalities have enacted broader bylaws. For example, Edmonton's Bylaw 19061 prohibits businesses from providing conversion therapy, regardless of whether they receive remuneration from providing such therapy.⁷⁵ That bylaw also defines businesses broadly to include associations of persons, as well as for-profit and not-for-profit organizations.⁷⁶

1.2.5.2 Previous Federal Bills

As mentioned above, Bill C-4 is similar to two government bills introduced during the 43rd Parliament that died on the *Order Paper*: bills C-8 and C-6. While Bill C-8 only received first reading in the first session of that Parliament, Bill C-6 was passed by the House of Commons, after being amended by the House of Commons Standing Committee on Justice and Human Rights (JUST).⁷⁷ It died on the *Order Paper* in the Senate upon the dissolution of the 43rd Parliament.

Bill C-6 differed from Bill C-4 in several ways regarding the new criminal offences it proposed. Had Bill C-6 been passed into law, it would have made it an offence for one person to cause another person who is under the age of 18 to undergo conversion

therapy. In other words, a child could not have consented to receive conversion therapy, nor could a parent or guardian consent on their behalf. For an adult, it would have only made it illegal to cause a person to undergo conversion therapy “without the person’s consent.” This meant that it would have been legal to provide conversion therapy to a willing adult, so long as this was not done for material or financial benefit. Like Bill C-4, Bill C-6 did not make it a criminal offence for a person to seek out and/or receive conversion therapy. The definition of conversion therapy in Bill C-6 was similar in scope to Bill C-4, but used some different phrasing and words.⁷⁸

Prior to bills C-6 and C-8, Bill S-260, An Act to amend the Criminal Code (conversion therapy), was introduced in the Senate by former Senator Serge Joyal and passed first reading on 9 April 2019.⁷⁹ Bill S-260 died on the *Order Paper* with the dissolution of the 42nd Parliament on 11 September 2019 and the calling of the 2019 general election.

Bill S-260 would have amended the Code to “protect” Canadians, particularly young people, from “the damage caused by practices and treatments designed to change an individual’s sexual orientation or gender identity.”⁸⁰ The bill would have added new section 172.01(2) to the Code to make advertising conversion therapy a hybrid offence. In addition, new section 172.01(3) of the Code would have made it a hybrid offence to receive a financial or other material benefit either directly or indirectly from providing conversion therapy to a person under 18 years of age. A person found guilty of either of those hybrid offences could have been liable to imprisonment for a term of not more than five years on indictment or, on summary conviction, for a period of up to two years less a day.

2 DESCRIPTION AND ANALYSIS

2.1 PREAMBLE

As noted in Part 1.1 of this Legislative Summary, the preamble of Bill C-4 sets out its premise and purpose.⁸¹ The preamble states that conversion therapy is harmful to those who are subjected to it. It adds that the practice has broader social harms, including how it is based on and propagates myths and stereotypes about sexual orientation, gender identity and gender expression, including the myth that heterosexuality, cisgender gender identity, and gender expression that conforms to the sex assigned to a person at birth are to be preferred over other sexual orientations, gender identities and gender expressions. The bill aims to address these harms and to “discourage and denounce the provision of conversion therapy in order to protect the human dignity and equality of all Canadians.” In the clauses that follow the preamble, the bill seeks to achieve its purpose by criminalizing the provision of conversion therapy and certain related aspects.

2.2 NEW OFFENCES
(CLAUSE 5)

Clause 5 of Bill C-4 adds four new sections to the Code that prohibit core practices and activities related to the provision of conversion therapy. The new offences established by those sections are

- causing a person to undergo conversion therapy or providing it to them (new section 320.102);
- promoting or advertising conversion therapy (new section 320.103); and
- receiving a financial or material benefit from the provision of conversion therapy (new section 320.104).

The new sections are placed at the end of Part VIII of the Code, which addresses “Offences Against the Person and Reputation.” Other offences in this part include criminal negligence, homicide, kidnapping and trafficking in persons, and hate propaganda.

The first new section of the Code introduced by Bill C-4 is section 320.101, which defines “conversion therapy” as including any practice, treatment or service that is “designed to” do one of the following:

- change a person’s sexual orientation to heterosexual;
- change a person’s gender identity to cisgender;
- change a person’s gender expression so that it conforms to the sex assigned to the person at birth;
- repress or reduce non-heterosexual attraction or sexual behaviour;
- repress a person’s non-cisgender gender identity; or
- repress or reduce a person’s gender expression that does not conform to the sex assigned to the person at birth.

This provision adds, “for greater certainty,” that practices, treatments or services that relate “to the exploration and development of an integrated personal identity – such as a practice, treatment or service that relates to a person’s gender transition – and that is not based on an assumption that a particular sexual orientation, gender identity or gender expression is to be preferred over another” are not included in the definition.⁸² New section 320.101 also introduces the term “cisgender” to Canadian law, though it is not defined in the bill. As discussed in section 1.2.1 of this Legislative Summary, the term refers to an individual whose gender identity aligns with the biological sex assigned to that individual at birth.⁸³

New section 320.102 of the Code makes it an offence to knowingly cause a person to undergo conversion therapy, including by providing it to that person. By including the word “knowingly,” the mental intent or knowledge component required for conviction (i.e., the mens rea) is that the accused must have known they were causing a person to undergo the therapy or that they were providing it to them. In other words, this means that a Crown prosecutor would need to demonstrate beyond a reasonable doubt that the accused knew that the activity in question constituted conversion therapy.

Persons convicted under this section may be sentenced to imprisonment for up to two years less a day on summary conviction or for up to five years on indictment.

New section 320.103 of the Code makes it an offence to knowingly promote or advertise to provide conversion therapy. Persons convicted under this section may be sentenced to imprisonment for up to two years less a day on summary conviction or for up to two years on indictment.

New section 320.104 of the Code makes it an offence to receive a financial or other material benefit⁸⁴ in the knowledge that the benefit is being obtained or derived, directly or indirectly, through the provision of conversion therapy. Persons convicted under this section may be sentenced to imprisonment for up to two years less a day on summary conviction or for up to two years on indictment.

New sections 320.103 and 320.104 mostly use the same language as the offences included in sections 286.2 and 286.4 of the Code, which respectively prohibit the provision of sexual services for material benefit and the advertising of sexual services.⁸⁵ Those provisions form part of Canada’s approach to prostitution: certain activities are criminalized to deter and denounce the practice, but other elements are not prohibited in order to achieve other goals, such as the protection of sex workers.

Bill C-4 does not criminalize the receipt of conversion therapy services.

While former Bill C-6 was being debated in the House of Commons, the definition of conversion therapy received much attention, both in Parliament and in the media. For instance, some witnesses before the JUST committee stated that the definition was too broad and could unintentionally capture counselling, discussion, or private conversations about sexuality or gender, whether provided by counsellors, members of religious communities, or even friends and families.⁸⁶

Minister Lametti and the Department of Justice have commented on the type of conduct that is and is not intended to be criminalized by either Bill C-6 or Bill C-4. The Department of Justice indicates that for Bill C-4:

These proposed new offences would not criminalize interventions that assist a person in exploring or developing their personal identity, provided that they are not based on the assumption that a particular sexual orientation, gender identity or gender expression is preferable to others. This includes interventions that relate to one's gender transitioning. They also would not criminalize activities that do not amount to practices, treatments or services, such as expressions of personal views on sexual orientation, gender identity or gender expression.⁸⁷

The Charter Statement tabled in the House of Commons for Bill C-6 by the minister stated that:

The proposed offences would be limited to practices, services or treatment and would therefore exclude purely private discussions between an individual struggling with their sexual orientation or gender identity and those seeking to support that individual, such as teachers, school counsellors, faith leaders, family members and friends. They would also not include services relating to an individual's gender transition or an individual's exploration of their identity or its development.⁸⁸

These points were also made by the minister when he appeared before the JUST committee concerning Bill C-6, including when he said:

We're not trying to criminalize the legitimate kinds of mentoring conversations that people have – pastoral conversations, family conversations such as parent-child, grandparent-child – where the legitimate question is “Who am I, and how do I develop in that framework?”⁸⁹

He also explained how the terms “treatment,” “service” and “practice” are used in the Code and various other federal and provincial statutes, including in provincial conversion therapy-related statutes' definitions of conversion therapy.

2.3 SEIZURE OF ADVERTISEMENTS FOR CONVERSION THERAPY (CLAUSES 1 AND 2)

Bill C-4 introduces several provisions pertaining to warrants and to the seizure, disposal or deletion of materials related to the advertising of conversion therapy. These are added to Part V of the Code, which is titled “Sexual Offences, Public Morals and Disorderly Conduct,” under the subheading “Offences Tending to Corrupt Morals.”

Section 164(1) of the Code currently permits a judge to issue a warrant authorizing the seizure of copies of a recording, a publication, a representation or any written material if the judge is satisfied there are reasonable grounds to believe that such material is a voyeuristic recording, an intimate image, obscene, child pornography or an advertisement of sexual services.⁹⁰

The remaining subsections of section 164 pertain to procedures that permit the forfeiture to the Crown of any materials that are seized as a result of any warrant. The occupier of a premises where the materials were seized, or the owner or maker of the materials, is provided an opportunity to oppose this forfeiture. If the court is not satisfied that the materials meet the criteria in section 164(1), it may order that they be returned to the person from whom they were seized.

Bill C-4 adds advertisements for conversion therapy to the types of materials for which a warrant may be issued and that may be seized under section 164.

Certain terms used in relation to the materials referenced in section 164(1) of the Code are listed and defined in section 164(8). Clause 1 of Bill C-4 adds the following definition of an advertisement for conversion therapy:

[A]dvertisement for conversion therapy means any material – including a photographic, film, video, audio or other recording, made by any means, a visual representation or any written material – that is used to advertise an offer to provide conversion therapy contrary to section 320.103.

Clause 2 of the bill adds advertisements for conversion therapy to section 164.1 of the Code, which provides for warrants of seizure and other procedures when the same types of prohibited materials referenced in section 164 are stored on and made available through a computer system that is within the jurisdiction of the court.

Section 164.1(1) of the Code permits a judge to make an order when there are reasonable grounds to believe that prohibited materials are stored on and made available through a computer system. This order may be for the custodian of the system to give an electronic copy to the court, ensure that the material is no longer stored on the computer system or made available from it, or provide information that helps find the person who posted the material. Additional subsections allow for the deletion of the material, for the person who posted the material to oppose the deletion, for the proceedings to be held in the absence of that person and for the return of the material if it is not determined to be prohibited.

2.4 REMOVAL OF A CHILD FROM CANADA
(CLAUSE 4)

Section 273.3 of the Code prohibits anyone from taking a person under the age of 16 or 18 (depending on the offence) outside the country to commit acts that would constitute one of several listed offences, most of which are sexual offences. This is a hybrid offence that may be prosecuted by way of indictment, with a maximum term of imprisonment of five years, or by summary conviction, with a maximum term of imprisonment of up to two years less a day.

Clause 4 of Bill C-4 adds new section 320.102 to the list of offences in section 273.3(1)(c) of the Code,⁹¹ making it an offence to take a person who is both ordinarily resident in Canada and under the age of 18 outside Canada with the intention of causing them to undergo conversion therapy.

2.5 ELECTRONIC SURVEILLANCE
(CLAUSE 3)

Part VI of the Code includes provisions to permit designated peace officers and agents to obtain judicial authorization to conduct electronic surveillance for the purpose of criminal investigations into offences listed in section 183 of the Code (e.g., facilitating terrorist activity, weapons trafficking, child pornography, child abductions, drug trafficking and organized crime offences). Bill C-4 amends section 183 of the Code by adding two offences to the existing list:

- section 273.3 – removal of child from Canada; and
- new section 320.102 – conversion therapy.

NOTES

1. [Bill C-4, An Act to amend the Criminal Code \(conversion therapy\)](#), 44th Parliament, 1st Session.
2. House of Commons, [Journals](#), 1 December 2021.
3. Senate, [Journals](#), 7 December 2021.
4. [Bill C-8, An Act to amend the Criminal Code \(conversion therapy\)](#), 43rd Parliament, 1st Session.
5. [Bill C-6, An Act to amend the Criminal Code \(conversion therapy\)](#), 43rd Parliament, 2nd Session.
6. For a full summary of Bill C-6, see Karin Phillips and Julian Walker, [Legislative Summary of Bill C-6: An Act to amend the Criminal Code \(conversion therapy\)](#), Publication no. 43-2-C6-E, Library of Parliament, 7 September 2021.
7. Government of Canada, [Proposed changes to Canada's Criminal Code relating to conversion therapy](#).
8. [Criminal Code](#), R.S.C. 1985, c. C-46 (the Code).
9. Canadian Psychological Association (CPA), [CPA Policy Statement on Conversion/Reparative Therapy for Sexual Orientation](#), 2015.

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10. Clare Annett, "[Gender Equality Week: Understanding Gender and Sexual Diversity Terminology](#)," *HillNotes*, Library of Parliament, 24 September 2018.
11. Ibid.
12. American Psychological Association (APA), [Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation](#), 2009, p. 12.
13. Ibid. See also: David J Kinitz, Trevor Goodyear, Elisabeth Dromer, Dionne Gesink, Olivier Ferlatte, Rod Knight, Travis Salway, "['Conversion Therapy' Experiences in Their Social Contexts: A Qualitative Study of Sexual Orientation and Gender Identity and Expression Change Efforts in Canada](#)," *Canadian Journal of Psychiatry*, 9 July 2021.
14. Travis Salway et al., [Protecting Canadian sexual and gender minorities from harmful sexual orientation and gender identity change efforts](#), Brief submitted to the House of Commons Standing Committee on Health (HESA), 2019.
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35. Ibid.
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37. Ibid., p. 42.
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54. Ibid.
55. [Constitution Act, 1867](#), 30 & 31 Victoria, c. 3 (U.K.).
56. [Reference re Validity of Section 5 \(a\) Dairy Industry Act](#), [1949] S.C.R. 1 (also known as the Margarine Reference).
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59. Ontario, [Affirming Sexual Orientation and Gender Identity Act, 2015](#), S.O. 2015, c. 18 – Bill 77.
60. Nova Scotia, [Sexual Orientation and Gender Identity Protection Act](#), S.N.S. 2018, c. 28.
61. Prince Edward Island, [Sexual Orientation and Gender Identity Protection in Health Care Act](#), 2019, c. 33.



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62. Quebec, [An Act to protect persons from conversion therapy provided to change their sexual orientation, gender identity or gender expression](#), S.Q. 2020, c. 28.
63. Yukon, [Sexual Orientation and Gender Identity Protection Act](#), S.Y. 2020, c. 7.
64. In Ontario and Prince Edward Island, the age is 18, whereas in Nova Scotia the age is 19. See Ontario, [Affirming Sexual Orientation and Gender Identity Act, 2015](#), S.O. 2015, c. 18 – Bill 77, s. 2; Prince Edward Island, [Sexual Orientation and Gender Identity Protection in Health Care Act](#), 2019, c. 33, s. 4; and Nova Scotia, [Sexual Orientation and Gender Identity Protection Act](#), S.N.S. 2018, c. 28, s. 6(1).
65. Ontario, [Affirming Sexual Orientation and Gender Identity Act, 2015](#), S.O. 2015, c. 18 – Bill 77, s. 1 (which amended section 11.2 of the [Health Insurance Act](#), R.S.O. 1990, c. H.6); Nova Scotia, [Sexual Orientation and Gender Identity Protection Act](#), S.N.S. 2018, c. 28, s. 4; and Prince Edward Island, [Sexual Orientation and Gender Identity Protection in Health Care Act](#), 2019, c. 33, ss. 2–3.
66. Nova Scotia, [Sexual Orientation and Gender Identity Protection Act](#), S.N.S. 2018, c. 28, s. 7(1).
67. *Ibid.*, s. 6(2).
68. Ontario, [Affirming Sexual Orientation and Gender Identity Act, 2015](#), S.O. 2015, c. 18 – Bill 77, s. 29.1(3).
69. *Ibid.*, s. 29.1(4); and Nova Scotia, [Sexual Orientation and Gender Identity Protection Act](#), S.N.S. 2018, c. 28, s. 6(3).
70. Prince Edward Island, [Sexual Orientation and Gender Identity Protection in Health Care Act](#), 2019, c. 33, s. 5(2).
71. Ontario, [Affirming Sexual Orientation and Gender Identity Act, 2015](#), S.O. 2015, c. 18 – Bill 77, s. 1. See also the nearly identical provisions in Nova Scotia, [Sexual Orientation and Gender Identity Protection Act](#), S.N.S. 2018, c. 28, ss. 8(a) and 8(b); and Prince Edward Island, [Sexual Orientation and Gender Identity Protection in Health Care Act](#), 2019, c. 33, s. 2(b.1)(ii).
72. Manitoba, Health and Seniors Care, [Position on Conversion Therapy](#).
73. Other cities not mentioned in the body of this summary include: Calgary ([Bylaw Number 20M2020, Being a Bylaw of the City of Calgary to Authorize the Council of the City of Calgary to Prohibit Business](#), 25 May 2020) and Saskatoon ([Bylaw 9747 – The Prohibited Businesses Bylaw, 2021](#), 22 February 2021).
74. City of Vancouver, British Columbia, [By-law No. 12147, A By-law to Amend Business Prohibition By-law No. 5156 Regarding Conversion therapy](#), 19 June 2018, amending [Business Prohibition By-law No. 5156](#), Schedule A, s. 15.
75. City of Edmonton, Alberta, [The City of Edmonton Bylaw 19061, Prohibited Businesses Bylaw](#), 10 December 2019, Schedule A.
76. *Ibid.*, s. 2(2)(a).
77. House of Commons, Standing Committee on Justice and Human Rights (JUST), [Report 5: Bill C-6, An Act to amend the Criminal Code \(conversion therapy\)](#), 11 December 2020.
78. The definition of “conversion therapy” proposed for section 320.101 of the Code in the version of Bill C-6 that was passed by the House of Commons reads as follows:
- In sections 320.102 to 320.105, conversion therapy means a practice, treatment or service designed to change a person’s sexual orientation to heterosexual, to change a person’s gender identity or gender expression to cisgender or to repress or reduce non-heterosexual attraction or sexual behaviour or non-cisgender gender expression. For greater certainty, this definition does not include a practice, treatment or service that relates to the exploration and development of an integrated personal identity without favouring any particular sexual orientation, gender identity or gender expression.
- As noted, this is similar to the definition in Bill C-4, with some changes in phrasing. Bill C-6 did not, however, explicitly exclude practices, treatments, or services that relate “a person’s gender transition” (as Bill C-4 does).
79. [Bill S-260, An Act to amend the Criminal Code \(conversion therapy\)](#), 42nd Parliament, 1st Session.
80. *Ibid.*

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81. Section 13 of the [Interpretation Act](#), R.S.C. 1985, c. I-21, states that preambles are to be read as part of an enactment that is intended to assist in explaining its “purport and object.”
82. In the first reading version of the bill, clause 5 did not refer to “gender expression” and the “for greater certainty” provision added that the definition
- does not include a practice, treatment or service that relates
- (a) to a person’s gender transition; or
- (b) to a person’s exploration of their identity or to its development.
- Amendments made by JUST added, among other things, reference to gender expression and modified the “for greater certainty” provision. See JUST, [Bill C-6, An Act to amend the Criminal Code \(conversion therapy\)](#), Fifth report, 11 December 2020.
83. Translation Bureau, [Gender and sexual diversity glossary](#).
84. In other words, this could be money in a form of currency or some other thing of value to the recipient that motivates the recipient to perform a particular action.
85. Lyne Casavant and Dominique Valiquet, [Legislative Summary of Bill C-36: An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts](#), Publication no. 41-2-C36-E, Library of Parliament, 18 July 2014.
86. See, for example, JUST, [Evidence](#), 1 December 2020, 1250 (Kenneth J. Zucker); JUST, [Evidence](#), 3 December 2020, 1115 (André Schutten); JUST, [Evidence](#), 3 December 2020, 1120 (Jose Ruba); JUST, [Evidence](#), 8 December 2020, 1220 (Daniel Santoro); or JUST, [Evidence](#), 8 December 2020, 1230 (Cardinal Thomas Collins).
87. Government of Canada, [Proposed changes to Canada’s Criminal Code relating to conversion therapy](#).
88. Department of Justice Canada, [Charter Statement – Bill C-6: An Act to amend the Criminal Code \(conversion therapy\)](#), 27 October 2020.
- At the time of writing, the Charter Statement for Bill C-4 has not yet been tabled.
89. JUST, [Evidence](#), 1 December 2020, 1210 (Hon. David Lametti, Minister of Justice and Attorney General of Canada).
90. For all these types of materials, related prohibitions are set out elsewhere in the Code (sections 162, 162.1, 163, 163.1 and 286.4), and further definitions are provided in section 164(8).
91. Other offences included in section 273.3(1)(c) are those found in sections 155, 160(2), 170, 171, 267, 268, 269, 271, 272 and 273 of the Code.