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Legislative Summary

BILL S-205: AN ACT TO AMEND THE CRIMINAL CODE AND TO MAKE CONSEQUENTIAL AMENDMENTS TO ANOTHER ACT (INTERIM RELEASE AND DOMESTIC VIOLENCE RECOGNIZANCE ORDERS)

44-1-S205-E

30 January 2025

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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 Senate and House of Commons and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent and come into force.

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Legislative Summary of Bill S-205
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL S-205: AN ACT TO AMEND THE CRIMINAL CODE AND TO MAKE CONSEQUENTIAL AMENDMENTS TO ANOTHER ACT (INTERIM RELEASE AND DOMESTIC VIOLENCE RECOGNIZANCE ORDERS)

1 BACKGROUND

Bill S-205, An Act to amend the Criminal Code and to make consequential amendments to another Act (interim release and domestic violence recognizance orders) was introduced as a Senate public bill on 24 November 2021 by Senator Pierre-Hugues Boisvenu.¹

The bill amends sections pertaining to interim release (commonly referred to as bail) and recognizance orders (commonly referred to as peace bonds) in the *Criminal Code*² (the Code) and the *Youth Criminal Justice Act*³ to provide additional protections for victims of intimate partner violence.⁴

Bill S-205 was given second reading in the Senate on 26 April 2022. It was then referred to the Standing Senate Committee on Legal and Constitutional Affairs (LCJC). LCJC reported the bill with amendments on 14 December 2022 to the Senate. On 15 February 2023, the bill was concurred in at report stage, and ultimately passed at third reading on 18 April 2023. Bill S-205 was given second reading in the House of Commons on 1 November 2023 and was referred to the House of Commons Standing Committee on the Status of Women (FEWO). FEWO reported the bill to the House of Commons with amendments on 8 February 2024. The bill completed third reading in the House of Commons on 24 September 2024, and received Royal Assent on 10 October 2024.

In addition to other amendments, the bill:

- Amends section 515(4) of the Code pertaining to interim release by adding the requirement for the justice to ask the prosecutor whether victims of the offence have been informed of their right to request a copy of the order when making a judicial interim release order with conditions under section 515(2) of the Code.
- Amends section 810 of the Code pertaining to recognizance orders by adding a new type of recognizance order related specifically to intimate partner violence (new section 810.03). It allows for any individual to lay an information before a judge if they fear that an intimate partner will commit an offence causing personal injury to their own intimate partner, their child or a child of the intimate partner. The new type of recognizance order has an identical period of application

to other recognizance orders found in the Code and includes a requirement to consider Indigenous support services, if appropriate. It also includes conditions that can be added to the recognizance.

2 DESCRIPTION AND ANALYSIS

2.1 SENATE AMENDMENTS

Clause 1 of the first reading version of Bill S-205 amended section 501(3)(e) of the Code to authorize peace officers to require individuals to wear an electronic monitoring device as a condition for bail. LCJC amended Bill S-205 to remove this clause.

Additionally, the first reading version of the bill at clause 2(2) amended section 515(4) of the Code by adding two new conditions that judges could impose when granting conditional release to an accused: the requirement to wear an electronic monitoring device (section 515(4)(e.1)) and the requirement to participate in substance abuse treatment or domestic violence counselling programs (section 515(4)(e.2)). LCJC amended the first new condition by adding the necessity for the Attorney General to request that the accused wear an electronic monitoring device before the judge can make such an order and removed the second condition related to treatment programs and domestic violence counselling.⁵

A third amendment made by LCJC was adding the requirement of the Attorney General's consent before a judge can oblige the accused to wear an electronic monitoring device under the terms of the new fear of domestic violence recognizance order (new section 810.03).

Bill S-205 consists of 12 clauses, which are summarized below.

2.2 JUDICIAL INTERIM RELEASE (CLAUSE 1)

Clause 1(1) of Bill S-205 amends section 515 of the Code to add a requirement for a justice to ask the prosecutor whether the victim has been consulted about their safety and security needs when making a conditional release order for a person accused of a violent offence against their intimate partner. This supplements the current requirement for a justice to consider the safety and security of victims when making a judicial interim release order under section 515(13) of the Code.

Clause 1(2) of Bill S-205 adds a new item to the list of conditions in section 515(4) of the Code that may be included in a release order, namely that the accused be required to wear an electronic monitoring device if the Attorney General requests it.

FEWO amended Bill S-205 to remove clauses 1(1) and 1(2), to ensure that victim services would remain in charge of communicating with victims instead of moving this responsibility to the prosecutor.⁶ The amendment also removed the addition of electronic monitoring from the list of bail condition options for all crimes.⁷

The amendment made to clause 1(3) of the bill adopts a reverse onus in bail proceedings where an accused has previously been discharged for a violent offence against an intimate partner.⁸

Clause 1(4) of the bill amends the Code by adding new section 515(14.1), which creates a requirement that the justice must ask the prosecutor whether the victim(s) have been informed of their right to request a copy of the conditional release order. This additional requirement supplements the current requirement for a justice who makes a release order to provide a copy to any victim of the offence upon request in accordance with section 515(14) of the Code.

2.3 FEAR OF DOMESTIC VIOLENCE RECOGNIZANCE ORDER (CLAUSES 2 TO 7)

2.3.1 Recognizance order (Clause 2)

Clause 2 of Bill S-205 adds new section 810.03 of the Code which creates a new type of recognizance order related specifically to intimate partner violence. The new order aims to provide a solution to the increased reliance on Code section 810 orders (commonly referred to as peace bonds) in domestic violence cases.⁹

Clause 2(1) creates a recognizance that may be ordered by a judge when a person has laid an information before them stating that they fear “on reasonable grounds that their intimate partner will commit an offence that will cause personal injury to them, to their child or to a child of that intimate partner” (new section 810.03(1)).

FEWO amended clause 2 of the bill to allow other individuals to apply for intimate partner violence specific peace bonds on behalf of victims.¹⁰

Clause 2(2) allows for a judge to order for the informant and the person who is the subject of the information to appear before a provincial court judge.

Clause 2(3) originally stated that the section 810.03 recognizance can apply for a period of not more than two years, while clause 2(4) allowed for an increase in the length of the recognizance for a period of up to three years if the person has a prior conviction for a related offence (new section 810.03(3) and new section 810.03(4)).

FEWO amended clauses 2(3) and 2(4) to change the application period of the new recognizance order to not more than 12 months or not more than two years if the defendant was previously convicted of a related offence.

FEWO also amended clause 2(4) to add new section 810.03(4.1), which introduces the requirement for the court to consider recommending that Indigenous support services be provided instead of making a recognizance order if the informant or the defendant is Indigenous.

Clause 2(5) specifies that a domestic violence recognizance order “must be made in a timely manner” (new section 810.03(5)). FEWO amended the bill to remove new section 810.03(5), after hearing evidence that this would ensure consistency in the implementation of intimate partner violence specific peace bonds, as well as consistency with other elements of Code provisions such as the language used in existing peace bonds.¹¹

Clause 2(6) states that a person who fails or refuses to enter into the recognizance may be imprisoned for up to two years (new section 810.03(6)). FEWO amended clause 2(6) by changing this term to 12 months, as is the case for other recognizance orders in the Code.

2.3.2 Conditions of the Recognizance (Clauses 2(7) to 2(13))

As with existing recognizances in the Code, clause 2(7) allows a provincial court judge to add any reasonable conditions to the recognizance that the judge considers desirable to ensure the good conduct of the defendant or the safety and security of the informant and others (new section 810.03(7)).¹² FEWO amended clause 2(7) to change the term “informant” in section 810.03(7) to the term “intimate partner.”

The conditions in clause 2(7) (new section 810.03(7)) that may be added to the recognizance include:

- The accused may be required to attend a court-supervised addiction treatment or family violence counselling program (new section 810.03(7)(a)).
- The accused may be required to remain within a specified geographic area unless given written permission to leave (new section 810.03(7)(b)).
- The accused may be required to refrain from going to any specified place (new section 810.03(7)(c)). FEWO amended clause 2(7)(c) to replace the wording in section 810.03(7)(c) “to refrain from going to any specified place, except” with “refrain from going to any specified place or being within a specified distance of any specified place, except.” According to the Department of Justice, this amendment allows the imposition of a radius around the home of the intimate partner or child within which the defendant would be prohibited from entering.¹³

- At the request of the Attorney General, the accused may be required to wear an electronic monitoring device (new section 810.03(7)(d)). Not all existing Code recognizances specifically include a condition that the defendant wear an electronic monitoring device, though this is included in section 810.2(4.1)(b) (serious personal injury offences).
- The accused may be required to abstain from direct or indirect communication with the informant, a child of the informant or the defendant or any relative or close friend of the informant (new section 810.03(7)(e)). FEWO amended clause 2(7)(e) to change the term “informant” to the term “intimate partner.”
- The domestic violence recognizance order includes the requirement for the accused to refrain from using social media (new section 810.03(7)(f)).¹⁴ FEWO amended clause 2 by removing section 810.03(7)(f) to remain in line with the requirement that any conditions imposed on someone in a recognizance context must be reasonable and linked to ensuring the good conduct of the defendant or the safety of the informant or the intimate partner.¹⁵ This amendment ensures that the condition limiting social media is not routinely imposed in a broad way.¹⁶
- Clause 2(8) states that the person seeking a domestic violence recognizance order (i.e., the informant) can make submissions about the conditions that should be added to the order (new section 810.03(8)). FEWO amended clause 2(8) by removing section 810.03(8), namely, to ensure consistency.
- As with existing recognizances in the Code, clauses 2(9) to 2(11) add the requirement for the judge to consider adding a condition to the recognizance order prohibiting the possession of “any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all of those things” (new section 810.03(9)). If such a condition is added, the judge must also specify the terms regarding surrender or disposal of these devices, and the period during which the condition applies (new section 810.03(10)). The judge is required to specify the reasons for not adding such a condition (new section 810.03(11)).
- Clause 2(12) states that the court may vary the conditions fixed in the recognizance on application of the informant or the defendant (new section 810.03(12)). FEWO amended clause 2(12) to specify that the variation of the conditions in a recognizance may be made on application of the Attorney General, the informant, the person on whose behalf the information is laid or the defendant.
- Clause 2(13) states that the court must consult with the informant about their safety and security needs before varying any conditions of the order at the request of the defendant (new section 810.03(13)).

2.4 COORDINATING AMENDMENTS
(CLAUSES 3 TO 7 AND CLAUSE 11)

Some recognizance orders under the Code, including the new domestic violence recognizance order created by Bill S-205, may require the defendant to provide bodily substance samples, either on a one-time basis or at regular intervals.¹⁷ Clauses 3 to 5 of Bill S-205 ensure that preexisting Code provisions regarding the proper procedure for taking bodily substance samples apply to samples taken under the new domestic violence recognizance order.

Clauses 6 and 7 ensure that the forms for recognizance orders (Form 32) and for notice of the obligation to provide a bodily substance sample (Form 51) under the Code apply to the new domestic violence recognizance order in section 810.3.¹⁸

Clause 11 was initially added by LCJC to coordinate with Bill C-233, An Act to amend the Criminal Code and to make consequential amendments to another Act (interim release and domestic violence recognizance orders).¹⁹ Given FEWO's amendment to Bill S-205 removing clause 1(2), FEWO also deleted clause 11 since the bill no longer includes provisions on electronic monitoring in the bail context.²⁰

2.5 TRANSITIONAL PROVISION AND CONSEQUENTIAL AMENDMENTS
(CLAUSES 8 TO 10)

Clause 8 applies the new domestic violence recognizance provisions to any general recognizance (i.e., under section 810) that is pending at the time Bill S-205 comes into force, and that meets the requisite criteria.

The *Youth Criminal Justice Act* provides that a youth justice court has exclusive jurisdiction to make the recognizance orders set out in the Code against a person aged 12–18 years old (section 14(2)). It also states that the Code provisions related to summary conviction offences apply to youth justice proceedings dealing with these types of recognizance orders. Clauses 9 and 10 ensure that the new domestic violence recognizance order is included in these provisions.

FEWO amended Bill S-205 by adding clause 10.1. The addition would ensure the proposed changes to the Code made by both Bill S-205 and Bill C-21, An Act to amend certain Acts and to make certain consequential amendments (firearms), would be harmonized and would not negate each other. Bill C-21 received Royal Assent on 15 December 2023.²¹

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NOTES

1. [Bill S-205, An Act to amend the Criminal Code and to make consequential amendments to another Act \(interim release and domestic violence recognizance orders\)](#), 44th Parliament, 1st Session (S.C. 2024, c. 22).
2. [Criminal Code](#), R.S.C. 1985, c. C-46 (*Criminal Code*).
3. [Youth Criminal Justice Act](#), S.C. 2002, c. 1.
4. Section 2 of the *Criminal Code* defines “intimate partner” as including a person’s current or former spouse, common-law partner, and dating partner.
5. Under section 2(a) of the *Criminal Code*, “Attorney General” is defined, with respect to proceedings to which the Act applies, as the Attorney General of the province in which the proceedings are taken, or the Attorney General of Canada when the proceedings are conducted by the latter. Given that bail is a proceeding in the *Criminal Code* in relation to the conduct of prosecutions, the authority to prosecute is typically assigned to provincial prosecutors. Jurisdiction is jointly held by the provinces and the federal government in certain cases (e.g., terrorism, organized crime, proceeds of crime, offences committed outside of Canada).
6. House of Commons, Standing Committee on the Status of Women (FEWO), [Evidence](#), 4 December 2023, 1615 (Anita Vandenbeld, Ottawa West—Nepean; and Marc Serré, Nickel Belt).
7. The requirement for a justice to consider whether an accused should be ordered to wear an electronic monitoring device as a condition for granting judicial interim release in a context of violence against an intimate partner and for other offences has been added to the *Criminal Code* through [Bill C-233, An Act to amend the Criminal Code and the Judges Act \(violence against an intimate partner\)](#), 44th Parliament, 1st Session (S.C. 2023, c. 7). The bill received Royal Assent on 27 April 2023.
8. This change has already been made through the enactment of [Bill C-48, An Act to amend the Criminal Code \(bail reform\)](#), 44th Parliament, 1st Session (S.C. 2023, c. 30). Bill C-48 received Royal Assent on 5 December 2023. In general, the burden is on the Crown to demonstrate that an accused person should not be released on bail. However, there are some exceptions where the burden is reversed, meaning that it is up to the accused to demonstrate why they should not be detained (see section 515(6) of the *Criminal Code*). One such exception is where the offence involves violence against an intimate partner, and the accused has a previous conviction for this type of offence. Bill C-48 (now law) and clause 1(3) of Bill S-205 expand this exception by replacing section 515(6)(b.1) of the *Criminal Code* in order to include situations where an accused has previously been discharged (rather than convicted) for a violent offence against an intimate partner after pleading or being found guilty.
9. Senate, [Debates](#), 7 March 2023, 2100 (Hon. Pierre-Hugues Boisvenu). For an overview of the sections of the *Criminal Code* pertaining to recognizances, see Robert Mason and Julian Walker, [Legislative Summary of Bill C-36: An Act to amend the Criminal Code and the Canadian Human Rights Act and to make related amendments to another Act \(hate propaganda, hate crimes and hate speech\)](#), Publication no. 43-2-C36-E, Library of Parliament, 8 September 2021; and Government of Canada, [“Peace Bonds Fact Sheet,” Victims’ Rights in Canada](#).
10. FEWO, [Evidence](#), 4 December 2023, 1640 (Sonia Sidhu, Brampton South).
11. FEWO, [Evidence](#), 11 December 2023, 1635 (Julia Nicol, Counsel, Criminal Law Policy Section, Department of Justice).
12. Note that the current version of Bill S-205 contains a spelling error in new section 810.03(7) (clause 2) where the word “that” appears twice on line 13.
13. FEWO, [Evidence](#), 30 January 2024, 1200 (Chelsea Moore, Acting Senior Counsel, Criminal Law Policy Section, Department of Justice).
14. Note that “social media” is not defined in the bill or in the *Criminal Code*.
15. FEWO, [Evidence](#), 30 January 2024, 1205 (Chelsea Moore, Acting Senior Counsel, Criminal Law Policy Section, Department of Justice).
16. Ibid.



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17. The *Criminal Code* includes several provisions regarding the proper procedure for taking these samples (sections 810.3 and 810.4), and the evidence they can provide in proceedings for a breach of recognizance (section 811.1).
18. Note that the current version of Bill S-205 contains a spelling error in new clause 7(3) where section 801.03 is referenced twice in both English and in French as part of the amendments to Form 32. Presumably, this should be section 810.03. Section 801.03 does not exist in the *Criminal Code*, nor is it created by the bill.
19. [An Act to amend the Criminal Code and to make consequential amendments to another Act \(interim release and domestic violence recognizance orders\)](#), S.C. 2024, c. 22. Bill C-233 received Royal Assent on 10 October 2024.
20. FEWO, [Evidence](#), 1 February 2024, 1535 (Julia Nicol, Counsel, Criminal Law Policy Section, Department of Justice).
21. [An Act to amend certain Acts and to make certain consequential amendments \(firearms\)](#), S.C. 2023, c. 32. Bill C-21 introduced a definition and the term “firearm part” to peace bonds provisions dealing with firearms prohibition orders.