



Recommended amendments regarding Bill C-16, An Act to amend certain Acts in relation to criminal and correctional matters (child protection, gender-based violence, delays and other measures)

Brief submitted by the **National Association of Women and the Law (NAWL)**
to the Standing Committee on Justice and Human Rights

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This brief was authored by Suzanne Zaccour (Director of Legal Affairs), with support from Amanda Therrien (staff lawyer) and NAWL's violence against women working group (Lise Gotell, Jennifer Koshan, Janet Mosher and Suzie Dunn)

About NAWL

The National Association of Women and the Law is an award-winning organization dedicated to advancing women's rights in Canada through feminist law reform advocacy.

Since its creation over 50 years ago, NAWL has contributed to major milestones for women's rights, including in the areas of criminal, family, health and constitutional law.

Find out more at nawl.ca

Summary

This brief by the National Association of Women and the Law (NAWL) proposes **concrete amendments** to Bill C-16 to **strengthen protections** for survivors of gender-based and intimate partner violence while ensuring that criminal law reforms **do not produce unintended harms**.

NAWL's brief identifies gaps and potential for improvement across multiple parts of Bill C-16. Key proposals include:

- Regarding **criminal harassment**: ensure protection for victims whose fear may not align with that of a hypothetical "reasonable person";
- Regarding **coercive control**: ensure the offence does not backfire against survivors who are wrongly identified as perpetrators of coercive control based on myths and stereotypes about family violence;
- Regarding **firearms**: ensure domestic abusers lose access to firearms, regardless of their occupation, and close a loophole in the *Firearms Act*;
- Regarding **procedural protections**: extend those protections to all victims of intimate partner violence, regardless of the offence charged;
- Regarding **non-consensual intimate images**: criminalize the creation of non-consensual sexual deepfakes and broaden their definition;
- Regarding **sexual history evidence**: extend protections so courts cannot rely on stereotypical reasoning to admit irrelevant evidence into the court record;
- Regarding **constructive first-degree murder**: recognize the gendered nature of femicide to avoid the offence backfiring against women survivors who kill their abuser in self-defence;
- Regarding **personal records**: ensure similar protection for all sensitive records, rather than only therapeutic records;
- Regarding **minimum sentences**: allow judges to deviate from a default minimum sentence where that sentence would be disproportionate to the gravity of the offence and the degree of responsibility of the offender;
- Regarding the *Canadian Victims Bill of Rights*: grant actual rights and remedies to victims of crime.
- Regarding **publication bans**: prevent the criminalization of survivors who breach a publication ban on their own name by sharing their story.

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Amendments regarding criminal harassment

The bill fails to protect “unreasonable women” from criminal harassment

C-16 changes the criminal harassment offence to remove the requirement that the victim reasonably experience subjective fear.

Before	After
264 (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably , in all the circumstances, to fear for their safety or the safety of anyone known to them.	264 (1) Everyone commits an offence who, with intent to harass another person or being reckless as to whether they could be harassing another person, engages without lawful authority in conduct referred to in subsection (2) if, in all the circumstances, the conduct could reasonably be expected to cause that other person to believe that the other person’s safety, or the safety of anyone known to the other person, is threatened.

While removing the subjective fear requirement is a positive change (the subjective standard fails to protect the “resilient victim” who was not afraid), the objective standard can also be problematic as it fails to protect someone who is more easily afraid (or afraid of different things) than the imagined “reasonable” victim.¹ It should not matter that a victim’s fear is “unreasonable”, given that the *mens rea* (intent or recklessness) already protects the accused against “accidentally” causing fear with benign acts. Suppose a woman is deeply and unreasonably afraid of spiders, and her harasser uses the knowledge of her vulnerability to cause intended fear; the fact that another woman would not have been afraid should be irrelevant.

Consistent with harassing conduct including threats towards an animal, and given that abusers often use threats to animals to terrorize their intimate partners, fear for an animal’s safety could also be included in the definition of criminal harassment.

Finally, the *mens rea* of “knowing” is missing from the wording of the offence.

¹ See Grant, Isabel. “Intimate Partner Criminal Harassment Through a Lens of Responsibilization.” *Osgoode Hall Law Journal* 52.2 (2015) : 552-600.

Solution: Subsection 27(1) of the bill is replaced by:

Subsection 264(1) of the Act is replaced by the following:

Criminal harassment

264 (1) Everyone commits an offence who, with intent to harass another person or **knowing that, or** being reckless as to whether they could be harassing another person, engages without lawful authority in conduct referred to in subsection (2) if

(a) the conduct caused that other person to fear for their safety, or the safety of anyone [or any animal] known to them, or

(b) in all the circumstances, the conduct could reasonably be expected to cause that other person to believe that their safety, or the safety of anyone [or any animal] known to them, is threatened.

The use of violence against animals to terrorize women is defined too restrictively

The bill includes as harassing conduct: **(d)** engaging in threatening conduct directed at the other person, or anyone known to them or at **any animal that is in their care or is their property**. This is underinclusive. If a person uses a threat to an animal, intending to cause fear, the relationship with the animal does not matter. “I will kill your dog” or “I will kill your mother’s dog” are equally blameworthy. What matters is the effect on the victim and the state of mind of the accused, not the ownership relationship with the animal. *(The same change should be made to the coercive control offence.)*

Solution: Subsection 27(4) of the Bill is replaced by:

Paragraph 264(2)(d) of the Act is replaced by the following:

(d) engaging in threatening conduct directed at the other person, at anyone known to them or **at any animal known to them.**

Amendments regarding coercive control

Criminalization strategies generally run the risk of revictimizing survivors. Additionally, the criminal justice system disproportionately targets and impacts Black, Indigenous and racialized people, as well as disabled, trans, and poor people. For these reasons, feminists often approach criminal law avenues with caution.

Criminalization cannot be the only response to coercive control; other important measures also need to be taken, including implementing the Calls of Justice presented by the [National Inquiry into Missing and Murdered Indigenous Women and Girls](#), addressing gender-based violence holistically, addressing women’s economic security and financial dependence (for example,

through the adoption of a guaranteed livable basic income), and engaging in family law reform that will allow women to leave an abusive partner without further endangering themselves and their children. On that last point, Parliament must pass Bill C-223, the Keeping Children Safe Act, and ensure the bill, even if amended, still protects women from accusations of parental alienation.

If coercive control is criminalized, specific attention must be paid to avoiding the risk of backlash against survivors. Abusers are skilled at manipulating justice system actors and presenting themselves as victims. Women who are victims of coercive control may themselves be charged or threatened with criminalization, especially given the cultural stereotype that women engage in more “psychological violence” than men. Black women are also particularly at risk when using defensive violence.² NAWL is further concerned that the countless women who are labelled as “alienators” and therefore “abusive” by family courts may now face criminalization in addition to punitive family law remedies.

The proposed approach to criminalizing coercive control focuses too much on “control” rather than “coercion”. Because women are easily seen as “controlling”, there is a high risk of criminalizing women, especially mothers who are considered by family courts to be “alienators”. These women are accused of controlling and manipulating their children when they engage in protective behaviours or when the child fears their abusive father.³ While part (2)(c) of the offence is an open-ended list, meaning that any other conduct can still rise to the level of coercive control, the focus on controlling caretaking must be removed.

Moreover, the circumstances in paragraph (3) should not include “whether the accused manipulated the intimate partner by targeting their vulnerabilities”, but only “whether the intimate partner is in a position of vulnerability in relation to the accused”. What matters is the power dynamics rather than any causal link between the vulnerability and the type of violence inflicted.

Further, as explained in the section above discussing criminal harassment, recognizing the use of animals to threaten an intimate partner only if the victim owns the animal is underinclusive.

Finally, the offence needs to protect so-called “unreasonable women” in cases where their intimate partner uses his knowledge of the victim’s vulnerability to cause fear. It is irrelevant, in offences targeting intimate partner violence, that another woman might not have been afraid if she experienced the same behaviour, because the abuser knows the victim and exploits that knowledge. Therefore, the test of fear should include causing subjective fear rather than only recognizing behaviours that would cause a reasonable person to be afraid. The *mens rea* requirement ensures people are not criminalized for behaviours that they couldn’t know would cause fear.

² Patrina Duhaney, “Contextualizing the Experiences of Black Women Arrested for Intimate Partner Violence in Canada” (2022) 37:21-22 *Journal of Interpersonal Violence* NP21189 at NP21197-NP21198.

³ See e.g. *MAB v MGC*, 2022 ONSC 7207, an approach widely followed in other cases.

Solution: Section 28 of the bill is replaced with the following:

The Act is amended by adding the following after section 264:

~~Coercion or control~~ Coercive control of intimate partner

264.01 (1) Everyone commits an offence who engages in a pattern of coercive **and or** controlling conduct referred to in subsection (2), with intent to cause their intimate partner to believe that the intimate partner's safety is threatened or knowing that, or being reckless as to whether, the pattern of coercive **and or** controlling conduct would cause their intimate partner to believe that the intimate partner's safety is threatened.

Pattern of coercive **and or controlling conduct**

(2) A pattern of coercive **and or** controlling conduct consists of any combination, or repeated instances, of any of the following acts:

- (a) using, attempting to use or threatening to use violence against
 - (i) the intimate partner,
 - (ii) any person under the age of 18 who is the intimate partner's child or who is in the intimate partner's lawful care or charge,
 - (iii) any other person known to the intimate partner, or
 - (iv) any animal **known to the intimate partner** ~~that is in the care or is the property of the intimate partner;~~
- (b) coercing or attempting to coerce the intimate partner to engage in sexual activity;
- (c) engaging in any other conduct — including conduct listed in any of the following subparagraphs — if, in all the circumstances, the conduct **causes or** could reasonably be expected to cause the intimate partner to believe that the intimate partner's safety, or the safety of anyone known to them, is threatened:
 - (i) controlling, attempting to control or monitoring the intimate partner's location, movements, actions or social interactions, including by a means of telecommunication,
 - ~~(ii) controlling or attempting to control the manner in which the intimate partner cares for any person under the age of 18 referred to in subparagraph (a)(ii) or any animal referred to in subparagraph (a)(iv);~~
 - (iii) controlling or attempting to control any matter related to the intimate partner's employment or education,
 - (iv) controlling or attempting to control the intimate partner's finances or other property or monitoring their finances,
 - (v) controlling or attempting to control the intimate partner's expression of gender, physical appearance, manner of dress, diet, taking of medication or access to health services or to medication,

(vi) controlling or attempting to control the intimate partner's expression of their thoughts, their opinions, their religious, spiritual or other beliefs, or their culture, including the intimate partner's use of their language or their access to their linguistic, religious, spiritual or cultural community, or

(vii) threatening to die by suicide or to self-harm.

Circumstances

(3) The circumstances referred to in paragraph (2)(c) include the nature of the relationship between the accused and the intimate partner, in particular whether the intimate partner is in a position of vulnerability in relation to the accused ~~and whether the accused manipulated the intimate partner by targeting their vulnerabilities.~~

Punishment

(4) Everyone who commits an offence under this section is

(a) guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or

(b) guilty of an offence punishable on summary conviction.

For greater certainty

(5) For the purposes of this section, and for greater certainty, a person's safety includes their psychological safety.

Amendments regarding protecting women from intimate partner gun violence (*Criminal Code* and *Firearms Act*)

Circumstances leading to a mandatory prohibition order are too narrow (section 4 of the bill)

Section 4 of the bill adds coercive control among the list of offences that give rise to a mandatory prohibition order preventing the offender from having or using firearms (amendment to paragraph 109(1)(b) of the *Criminal Code*). The bill should **expand the circumstances that lead to a mandatory prohibition order to all family violence offences.**

Someone who commits an offence against intimate partner or family member commits family violence, regardless of the nature of the crime or the way it is prosecuted. As such, any such offence, including those resulting in summary convictions, should lead to a firearms prohibition. It is not helpful to distinguish violent versus non-violent offences, as this goes against modern understanding of family violence (which includes non-physically violent abuse). A theft against an intimate partner, for example, is evidence of domestic violence, as is a sexual assault prosecuted summarily.

While domestic violence is already a reason for a person to lose their firearms licence under the *Firearms Act*, this change is necessary to protect the intimate partners and family members of people who are exempt from needing a firearms licence to carry guns, such as police officers.

Solution: The bill is amended by adding the following after section 4:

4.1 Paragraph 109(1)(a.1) is replaced by the following:

(a.1) an **indictable** offence **committed in the commission of which violence was used, threatened or attempted** against

- (i) the person's intimate partner,
- (ii) a child or parent of the person or of anyone referred to in subparagraph (i), or
- (iii) any person who resides with the person or with anyone referred to in subparagraph (i) or (ii),

What the subsection will look like once amended:

Mandatory prohibition order

109 (1) Where a person is convicted, or discharged under section 730, of

(a) an indictable offence in the commission of which violence against a person was used, threatened or attempted and for which the person may be sentenced to imprisonment for ten years or more,

(a.1) an offence committed against

- (i) the person's intimate partner,
- (ii) a child or parent of the person or of anyone referred to in subparagraph (i), or
- (iii) any person who resides with the person or with anyone referred to in subparagraph (i) or (ii),

(b) an offence under subsection 85(1) (using firearm in commission of offence), 85(2) (using imitation firearm in commission of offence), 95(1) (possession of prohibited or restricted firearm with ammunition), 99(1) (weapons trafficking), 100(1) (possession for purpose of weapons trafficking), 102(1) (making automatic firearm), 102.1(1) (possession of computer data), 102.1(2) (distribution of computer data), 103(1) (importing or exporting knowing it is unauthorized) or 104.1(1) (altering cartridge magazine) or section 264 (criminal harassment), **or 264.01 (coercion or control of intimate partner),**

(c) an offence relating to the contravention of subsection 5(1) or (2), 6(1) or (2) or 7(1) of the Controlled Drugs and Substances Act,

(c.1) an offence relating to the contravention of subsection 9(1) or (2), 10(1) or (2), 11(1) or (2), 12(1), (4), (5), (6) or (7), 13(1) or 14(1) of the Cannabis Act, or

(d) an offence that involves, or the subject-matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, a firearm part, any ammunition, any prohibited ammunition or an explosive substance and, at the time of the offence, the person was prohibited by any order made under this Act or any other Act of Parliament from possessing any such thing,

the court that sentences the person or directs that the person be discharged, as the case may be, shall, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, firearm part, ammunition, prohibited ammunition and explosive substance during the period specified in the order as determined in accordance with subsection (2) or (3), as the case may be.

Warning: Because the inclusion of coercive control will only come into force two years after the bill is passed, the change to paragraph 109(1)(a.1) needs to be separated from the change made to paragraph 109(1)(b) in section 4 of the bill. Section 4.1 should come into force a month after royal assent, like other changes not related to coercive control.

The employment exemption should be removed

There is no right to bear arms in Canada; being authorized to have and use firearms is a privilege that can be removed if a person is dangerous, including to their intimate partner. Consistent with the removal of the employment exception in the *Firearms Act* in December 2023, the employment exemption should also be removed in the *Criminal Code*. This is necessary to ensure consistency in our laws.

Solution: The bill is amended by adding the following after section 4:

Subsection 113(1) of the Act is replaced by the following:

Lifting of prohibition order for sustenance ~~or employment~~

113 (1) Where a person who is or will be a person against whom a prohibition order is made establishes to the satisfaction of a competent authority that

~~(a)~~ the person needs a firearm or restricted weapon to hunt or trap in order to sustain the person or the person's family, ~~or~~

~~(b) a prohibition order against the person would constitute a virtual prohibition against employment in the only vocation open to the person,~~

the competent authority may, notwithstanding that the person is or will be subject to a prohibition order, make an order authorizing a chief firearms officer or the Registrar to issue, in accordance with such terms and conditions as the competent authority considers appropriate, an authorization, a licence or a registration certificate, as the case may be, to the person for sustenance ~~or employment~~ purposes.

Ineligibility for a firearms licence in situations of domestic violence should be expanded (section 185 of the bill)

The bill modifies section 6.1 of the *Firearms Act* regarding the ineligibility to hold a licence in situations of family violence. Ineligibility should apply to any crime committed against a family member, as even non-physically violent crimes (such as the distribution of intimate images or theft) signal a context of intimate partner violence.

Solution: Section 185 of the bill is replaced by the following:

Section 6.1 of the *Firearms Act* is replaced by the following:

Protection orders, etc.

6.1 Subject to section 70.3 and the regulations, an individual is not eligible to hold a licence if

(a) they are subject to a protection order;

(b) they have been convicted of an offence ~~in the commission of which violence was used, threatened or attempted~~ against their intimate partner or any member of their family; or

(c) a chief firearms officer has reasonable grounds to suspect that the individual may have engaged in an act of domestic violence, as defined in subsection 70.1(2), or stalking.

Police officers are exempt from losing their access to firearms in situations of domestic violence

In 2023, Parliament enacted bill C-21, ensuring that individuals who commit domestic violence do not have access to a firearms licence. Section 185 of Bill C-16 complements these changes. However, these measures do not apply to police officers, conservation officers, security guards and some other people who use guns as part of their employment. This is because section 117.07 of the Criminal Code exempts “public officers” (defined inclusively of police officers in the regulations) from firearms-related offences under the *Criminal Code* and the *Firearms Act*, unless the person is subject to prohibition order and acts contrary to that order (117.1). Yet the partners and family members of these people should also be protected in cases of family violence.

Therefore, to avoid police officers and others continuing to use and carry guns despite a situation of domestic or family violence, the law would need to trigger prohibition orders in those situations.

Solution: Amendments should be made as follows:

- 1) Amendment to the *Firearms Act*, to direct a Chief Firearms Officer to apply for a prohibition order as soon as they become aware that a public officer has engaged in domestic violence or stalking or has become subject to a protection order:

The bill is amended by adding the following after section 185:

185.1 section 70.1 is amended by adding the following after subsection (1):

70.1 (1.1) If a chief firearms officer has reasonable grounds to suspect that an individual who is prescribed by the regulations made by the Governor in Council under Part III of the *Criminal Code* to be a public officer may have engaged in an act of domestic violence or stalking, or knows that the person is subject to a protection order, the chief firearms officer must apply for a prohibition order under section 111 of the *Criminal Code*.

- 2) Amendment to the *Criminal Code*, section 111(1), to enable an application for a prohibition order when a person has engaged in an act of domestic violence or family violence or stalking, or when a person is subject to a protection order;

The bill is amended by adding the following after section 4:

4.1 Subsection 111(1) of the Act is replaced by the following:

111 (1) A peace officer, firearms officer or chief firearms officer may apply to a provincial court judge for an order prohibiting a person, **including a public officer as defined in subsection 117.07(2)**, from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, where the peace officer, firearms officer or chief firearms officer believes on reasonable grounds

- (a) that it is not desirable in the interests of the safety of the person against whom the order is sought or of any other person that the person against whom the order is sought should possess any such thing;
- (b) **that the person against whom the order is sought may have engaged in an act of domestic or family violence or stalking; or**
- (c) **that the person against whom the order is sought is subject to a protection order.**

4.2 Section 111 of the Act is amended by adding the following after subsection (1):

111 (1.1) For the purpose of subsection (1), protection order means an order made by a court or other competent authority in the interests of the safety or security of a person, including an order that prohibits the person from

(a) being in proximity to an identified person or following that person from place to place;

(b) communicating with an identified person, either directly or indirectly;

(c) being at a specified place or within a specified distance of that place;

(d) engaging in harassing or threatening conduct directed at an identified person;

(e) occupying a family home or a residence;

(f) engaging in family violence as defined in subsection 2(1) of the Divorce Act; or

(g) engaging in domestic violence as defined in subsection 70.1(2) of the Firearms Act.

- 3) Amendment to the *Criminal Code*, section 113(1), to remove the employment exemption (see above).

The incentive to contest findings of domestic violence to exploit a loophole needs to be removed

Before its adoption in 2023, Bill C-21 was amended to ensure that people who lose their firearms licence for reasons of family violence must surrender their guns, rather than being allowed to dispose of them in any way they want (e.g. by selling them to their brother or roommate). While Members of Parliament made this change almost everywhere, one section was forgotten.

Individuals who contest the revocation of their licence and lose will be the only ones to be allowed to dispose of their firearms as they wish.

This is a very serious problem as sections 72 (7) and (8) of the Firearms Act now **create an incentive for gun owners to contest any licence revocation** so they temporarily can gain access to their firearms as well as attempt to “dispose” of them in the manner of their choosing. This temporary re-accessing of confiscated guns may lead to tragedies, as the abuser knows it is their last chance to use their firearms.

Specifically, under the current law, if a Chief Firearms Officer refuses or revokes a licence and the decision is contested and then confirmed, the judge “may ... order the return of the firearm to the applicant for or holder of the licence, in order for (them) to lawfully dispose of it” under

specified conditions. **This appears to be an error made by the SECU committee, since the committee removed the ability to “lawfully dispose” of the firearm everywhere else in the Act.**

It makes no sense that a judge can decide to return the firearm to the owner for lawful disposal once the decision to revoke the licence has been confirmed. As was highlighted during the consultations, this gives the owner a last chance to use it to commit irreparable violence, knowing that they won't have the gun for long. Given that this seems to have been an oversight, an amendment to the *Firearms Act* should be included to remove the ability of a judge to return a gun to someone whose licence was revoked in relation to domestic violence so they can dispose of them themselves.

Solution: the bill is amended by adding the following after section 186.

186.1 Subsections 72(7), 72(8) and 72(9) of the Act are repealed.

Result:

~~Order—return of firearm~~

~~(7) If the decision of the chief firearms officer is confirmed, the judge may, if a firearm was delivered to a peace officer under subsection (6), order the return of the firearm to the applicant for or holder of the licence, in order for the applicant or holder to lawfully dispose of it.~~

~~Conditions~~

~~(8) When making an order under subsection (7), the judge may impose any conditions that they consider appropriate in the interests of the safety of the applicant for or holder of the licence or any other person, including~~

~~(a) the time within which and manner in which the firearm is to be returned;~~

~~(b) the manner in which the applicant or holder is to have access to the firearm during the period beginning with the return of the firearm and ending with its disposal; and~~

~~(c) the manner in which the firearm is to be disposed of.~~

~~Effect~~

~~(9) An order made under subsection (7) takes effect on~~

~~(a) the day after the day on which the period for making an appeal has expired, if no appeal is made; or~~

~~(b) the day on which a final determination is made in respect of the appeal, if an appeal is made and the decision of the chief firearms officer is confirmed.~~

Amendments regarding section 810 orders (section 81 of the bill)

The bill changes some of the language used in section 810. But these orders should come with an automatic firearm prohibition to ensure women's safety in situations of domestic violence. While some of these situations will be covered by the *Firearms Act* if the Government amends its proposed regulations as recommended by NAWL, the *Firearms Act* does not apply to certain professions such as police officers. It therefore isn't redundant to make the change in the *Criminal Code*.

Solution: Section 81(4) of the bill is replaced by the following:

Subsection 810.03(7) of the Act is replaced by the following:

Conditions — firearms

(7) The justice shall **include as a condition to the recognizance a prohibition for** ~~consider whether it is desirable, in the interests of the intimate partner's safety or that of any other person, to prohibit~~ the defendant from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, firearm part, ammunition, prohibited ammunition or explosive substance, or all of those things. ~~If the justice decides that it is desirable to do so, the justice shall add that condition to the recognizance and specify the period during which the condition applies.~~

Amendments regarding non-consensual intimate images

The bill fails to criminalize the non-consensual creation of intimate images, including deepfakes

The creation of deepfakes must be criminalized for three primary reasons. First, a person whose image is used to create a deep fake is harmed in their sexual integrity, even if the image is never distributed. Second, criminalizing creation will allow police to intervene before images are distributed. Once distribution has happened, ending or mitigating the harm experienced by the victim is excessively difficult. Third, criminalizing the creation of deep fakes will impact the platforms that make money from these non-consensual deepfakes.

There is precedent for criminalizing the creation of non-consensual deep fakes, as the UK just did so in February 2026.

Furthermore, while the creation of real intimate images (not deep fakes) without consent is already criminalized in the context of voyeurism, that offence only covers recordings made for a sexual purpose. Recordings made non-consensually and for the purpose of threatening, extorting, terrorizing or controlling a person are no less wrongful.

Therefore, the bill should be amended to criminalize the creation of non-consensual intimate images, whether real or fake.

Solution: Subsection 15(1) of the bill is replaced by the following:

Subsection 161.2(1) of the Act is replaced by the following:

Publication, etc., of an intimate image without consent

162.1 (1) Everyone who knowingly **creates**, publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty

(a) of an indictable offence and liable to imprisonment for a term of not more than 10 years; or

(b) of an offence punishable on summary conviction.

The bill's definition of deep fakes is underinclusive

There are two key problems with the definition of non-consensual synthetic intimate images (i.e. deepfakes). First, the person being nude, exposing their sexual organs or engaged in explicit sexual activity does not cover all sexualized imagery. [Users of grok](#) have chosen prompts such as “make her wear bikini with big tits” and “put her in a transparent bikini and coat her with baby oil”. Near nudity or positions or contexts that are reasonably interpreted as sexual should be covered.

Second, the requirement that the depiction be likely to be mistaken for a visual recording of that person is too restrictive. The harm in a deepfake comes from the fact that someone's image is exploited for the production of sexual materials, not from the fact that others believe that the materials are from a real recording. Creating a deep fake of a woman where she is depicted as engaging in sexual activity with an imaginary creature, or engaging in sexual activity in outer-space, would not meet the realism test, but would nonetheless be harmful. In our view, the requirement that the deepfake represent an identifiable person is sufficient, without requiring the deepfake to be so realistic as to be mistaken for a recording. The relative realism should focus on the body of the person rather than the context of the image.

Solution: Amend subsection 15(2) of the bill by replacing what comes after “intimate image means” by the following:

(a) a visual recording of a person made by any means including a photographic, film or video recording,

(i) in which the person is nude, **is nearly nude**, is exposing their sexual organs or is engaged in **explicit** sexual activity **or sexually suggestive activity**,

(ii) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy, and

(iii) in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed; or

(b) a visual representation that is made by any electronic or mechanical means and that shows an identifiable person whose body is depicted **in a position or context that is reasonably interpreted as sexual, or is depicted as nude, as nearly nude**, as exposing their sexual organs or as engaged in **explicit** sexual activity **or sexually suggestive activity, if the depiction is likely to be mistaken for a visual recording of that person.**

Note: If there are concerns about criminalizing cartoonish representations, consider this language instead:

(b) a visual representation that is made by any electronic or mechanical means and that shows an identifiable person whose body is depicted **in a reasonably convincing manner** in a position or context that is reasonably interpreted as sexual, or is depicted as nude, as nearly nude, as exposing their sexual organs or as engaged in sexual activity.

Amendment regarding bestiality

Similar to intimate images and deepfakes, the bill needs to criminalize the creation of recordings of bestiality. Crimes of bestiality often include women and children as co-victims – for example, where they are forced to engage in sexual acts with animals. Recording the sexual violence adds to the harm experienced by the victims. Because the crime already includes a defence of public good, this would not prevent legitimate uses of depictions of bestiality.

Solution: Subsection 12(1) of the bill is amended by replacing what comes before “Defence of public good (3.2)” with the following:

12 (1) Section 160 of the Act is amended by adding the following after subsection (3):

Representation of bestiality

(3.1) Every person commits an offence who knowingly **creates**, publishes, distributes, transmits, sells, makes available or advertises any visual representation that is or is likely to be mistaken for a photographic, film, video or other visual recording of a person committing bestiality.

Amendments regarding procedural protections for victims of intimate partner violence

Protections such as testimonial aids, preventing the accused from cross-examining the victim, and others should **extend to all offences committed against an intimate partner**. What matters is the context of domestic violence, not the type of offence. A person who commits a crime against their intimate partner (even if the crime is non-sexual and non-violent, such as theft) can generally be considered as engaging in domestic violence. Therefore, victim protections should apply. Otherwise, the bill reinforces the stereotypical belief that intimate partner violence is physical violence.

Solutions:

- 1) Amend subsection 38(1) of the bill by replacing the amendment to paragraph 1.1 by the following:

Victims — certain offences

(1.1) In any proceedings against an accused in respect of an offence that is of a sexual nature or committed for a sexual purpose, an offence related to criminal harassment or trafficking in persons or an offence **committed in the commission of which violence was used, threatened or attempted** against their intimate partner, the judge or justice shall, on application of the prosecutor in respect of a witness who is a victim, or on application of such a witness, order that a support person of the witness's choice or a support animal be permitted to be present and to be close to the witness while the witness testifies, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice.

- 2) Amend subsection 39(1) of the bill by replacing the amendment to paragraph 1.1 by the following:

Victims — certain offences

(1.1) Despite section 650, in any proceedings against an accused in respect of an offence that is of a sexual nature or committed for a sexual purpose, an offence related to criminal harassment or trafficking in persons or an offence **committed in the commission of which violence was used, threatened or attempted** against their intimate partner, the judge or justice shall, on application of the prosecutor in respect of a witness who is a victim, or on application of such a witness, order that the witness testify, at the option of the witness, either outside the court room or behind a screen or other device that would allow the witness not to see the accused, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice.

3) Replace subsection 40(1) of the bill by the following:

40 (1) Subsection 486.3(2) of the Act is replaced by the following:

Accused not to cross-examine victim — certain offences

(2) In any proceedings against an accused in respect of an offence that is of a sexual nature or committed for a sexual purpose, an offence related to criminal harassment or trafficking in persons or an offence ~~committed in the commission of which violence was used, threatened or attempted~~ against their intimate partner, the judge or justice shall, on application of the prosecutor in respect of a witness who is a victim, or on application of such a witness, order that the accused not personally cross-examine the witness, unless the judge or justice is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination. If such an order is made, the judge or justice shall appoint counsel to conduct the cross-examination.

Inquiry by court

(2.1) If an application for an order under subsection (1) or (2) is not made, the judge or justice shall inquire of the prosecutor whether reasonable steps have been taken to inform the witness that such an application may be made.

4) Amend section 69 of the bill by replacing the portion of it that comes before “Duration of prohibition (2)” by the following:

69 The Act is amended by adding the following after section 729.1:

Order prohibiting contact

729.2 (1) When an offender is convicted, or is discharged under section 730 on the conditions prescribed in a probation order, of an offence that is of a sexual nature or committed for a sexual purpose, an offence related to criminal harassment or trafficking in persons or an offence ~~committed in the commission of which violence was used, threatened or attempted~~ against their intimate partner, the court that imposes a sentence on the offender or directs the discharge may make an order prohibiting the offender from having any contact — including by communicating by any means — with any victim, witness or other person identified in the order except in accordance with any conditions specified in the order that the court considers necessary.

5) Amend subsection 157(1) of the bill to replace the amendment to subsection 183.1(1.1) with the following:

Victims — certain offences

(1.1) In proceedings against an accused person in respect of an offence punishable under section 130 that is an offence under the Criminal Code and that is also an offence of a sexual nature or committed for a sexual purpose, an offence related to criminal

harassment or trafficking in persons or an offence **committed in the commission of which violence was used, threatened or attempted** against their intimate partner, a military judge — or, if the court martial has been convened, the military judge assigned to preside at the court martial — shall, on application of the prosecutor in respect of a witness who is a victim of such an offence or on application of such a witness, order that a support person of the witness's choice or a support animal be permitted to be present and to be close to the witness while the witness testifies, unless the military judge is of the opinion that the order would interfere with the proper administration of military justice.

6) Amend subsection 158(1) of the bill to replace the amendment to subsection 183.2(1.1) with the following:

Victims — certain offences

(1.1) In proceedings against an accused person in respect of an offence punishable under section 130 that is an offence under the Criminal Code and that is also an offence of a sexual nature or committed for a sexual purpose, an offence related to criminal harassment or trafficking in persons or an offence **committed in the commission of which violence was used, threatened or attempted** against their intimate partner, a military judge — or, if the court martial has been convened, the military judge assigned to preside at the court martial — shall, on application of the prosecutor in respect of a witness who is a victim of such an offence, or on application of such a witness, order that the witness testify, at the option of the witness, either outside the courtroom or behind a screen or other device that would allow the witness not to see the accused person, unless the military judge is of the opinion that the order would interfere with the proper administration of military justice.

7) Replace section 159 of the bill with the following:

159 Subsection 183.3(2) of the Act is replaced by the following:

Accused not to cross-examine victim — certain offences

(2) In any proceedings against an accused in respect of an offence that is of a sexual nature or committed for a sexual purpose, an offence related to criminal harassment or trafficking in persons or an offence **committed in the commission of which violence was used, threatened or attempted** against their intimate partner, the judge or justice shall, on application of the prosecutor in respect of a witness who is a victim, or on application of such a witness, order that the accused not personally cross-examine the witness, unless the judge or justice is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination. If such an order is made, the judge or justice shall appoint counsel to conduct the cross-examination.

Inquiry by court

(2.1) If an application for an order under subsection (1) or (2) is not made, the military judge shall inquire of the prosecutor whether reasonable steps have been taken to inform the witness that such an application may be made.

- 8) Amend section 165 of the bill by replacing the portion that comes before “Duration of prohibition (2)” with the following:

165 The Act is amended by adding the following after section 203.72:

Order prohibiting contact

203.73 (1) When an offender is convicted of an offence punishable under section 130 that is an offence under the Criminal Code and that is also an offence of a sexual nature or committed for a sexual purpose, an offence related to criminal harassment or trafficking in persons or an offence ~~committed in the commission of which violence was used, threatened or attempted~~, the court martial that imposes a sentence on the offender may make an order prohibiting the offender from having any contact — including by communicating by any means — with any victim, witness or other person identified in the order except in accordance with any conditions specified in the order that the court martial considers necessary.

Amendments regarding sexual history evidence

The bill fails to recognize that stereotypical reasoning regarding sexual history evidence is always problematic, regardless of the offence charged

The *Criminal Code* prohibits courts, when certain offences are charged, from hearing and using sexual history evidence when that evidence is intended to serve for stereotypical reasoning (e.g. a woman is less credible because she has a sexual past). The bill responds to the concern that the listed offences to which this prohibition applies is too narrow. However, it doesn’t go far enough.

Sexual history evidence cannot be used for certain purposes because it is deemed **irrelevant**. It is no more or less relevant to consent or credibility based on the offence that is charged. While sexual history evidence is primarily used (improperly) in sexual offences, it could also be used to attack a victim’s credibility in cases of coercive control, conspiracy, breaking and entering, or any other offence. For the sake of consistency and completion, therefore, the prohibited inferences should apply to all offences where the accused attempts to use sexual history evidence.

Solution: Subsection 31(1) of the bill is replaced by the following

31 (1) The portion of subsection 276(1) of the Act before paragraph (a) is replaced by the following:

Evidence of complainant's sexual activity

276 (1) In proceedings in respect of ~~any offence an offence under section 151, 152, 153, 153.1 or 155, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 272 or 273 or any other offence under this Act that is of a sexual nature or that is committed for a sexual purpose~~, evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant

The bill should recognize one more prohibited inference

[Research](#) has shown that accused people and their lawyers often attempt to circumvent the ban on using sexual history evidence for irrelevant purposes, and, in many cases, are successful. One loophole exploited by accused people is the following: instead of arguing that because the complainant has a sexual past, they were more likely to consent, they argue that they *thought* that because the complainant has a sexual past, they were more likely to consent. By accepting the admission of sexual history evidence through this argument, courts are simply displacing the sexist prohibited reasoning from the court to the accused. This is very problematic since, in Canada, consent must be contemporary, belief in consent must be based on reasonable steps to ascertain consent, and ignorance of the law on consent is not a defense.

Therefore, an accused should not be permitted to have intrusive sexual history admitted to argue that they believed the victim consented due to their sexual past. Clarifying that sexual history cannot be admitted for that purpose would reduce errors by lower courts and protect complainant's sexual integrity.

Another loophole exploited by accused people, despite [direction from the Supreme Court of Canada to the contrary](#), is the following: instead of explaining clearly how sexual history could be relevant and what inference it could support, they simply say that the victim's sexual past is relevant to "context" or "general credibility". This simply begs the question. Accused people who want sexual history evidence to be admitted should be able to point to a clear reason why it is relevant (for example, it offers another explanation than sexual assault for the complainant being pregnant).

Explicitly affirming the state of the law on sexual history evidence will reduce mistakes by making legislative intent even clearer.

Solution:

Subsection 31(1) of the bill is replaced by the following

31 (1) Subsection 276(1) of the Act is replaced by the following:

Evidence of complainant's sexual activity

276 (1) In proceedings in respect of **any offence** ~~an offence under section 151, 152, 153, 153.1 or 155, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 272 or 273 or any other offence under this Act that is of a sexual nature or that is committed for a sexual purpose~~, evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, ~~the complainant~~

- a) **the complainant** is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or
- (b) **the complainant** is less worthy of belief; **or**
- (c) **the accused is more likely to have had an honest belief in communicated consent.**

The bill is amended by adding the following after subsection 31(1):

31(1.1) Section 276 of the Act is amended by adding the following before subsection (3).

(2.1) Evidence is not relevant to an issue at trial merely because it goes to general context or the credibility of the accused's assertion of mistaken belief in communicated consent.

The bill allows prosecutors to more easily introduce private sexual history evidence without the complainant's consent

Sexual history evidence is intrusive and generally irrelevant, and its admissibility dissuades the reporting of sexual offences. Parliament's decision to lower the threshold for admission when the crown seeks to adduce that evidence should not be made at the complainant's expense.

Therefore, the lower threshold, if maintained, should only apply if the complainant consents to the admission of sexual history evidence.

Solution: The bill is amended by replacing subsection 31(2) with the following:

(2) Subsection 276(2) of the Act is replaced by the following:

Conditions for admissibility

(2) In proceedings in respect of **any offence** ~~an offence referred to in subsection (1)~~,

evidence that the complainant has engaged in sexual activity, other than the sexual activity that forms the subject matter of the charge, whether with the accused or with any other person, shall not be adduced unless the judge, provincial court judge or justice determines, in accordance with the procedures set out in sections 276.01, 276.06, 276.1, 278.3 and 278.35, as the case may be, that the evidence is not being adduced for the purpose of supporting an inference described in subsection (1), is relevant to an issue at trial, is of specific instances of sexual activity and:

- (a) if sought to be adduced by or on behalf of the accused **or without the informed consent of the complainant**, has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice; or
- (b) if sought to be adduced by or on behalf of the prosecutor **with the informed consent of the complainant**, has probative value that is not outweighed by the danger of prejudice to the proper administration of justice.

Amendments regarding sexual assault

In Canada, a defense of mistaken belief in consent cannot be raised by an accused unless they took steps to ascertain consent and the complainant communicated consent:

Where belief in consent not a defence

273.2 It is not a defence to a charge under section 271, 272 or 273 that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge, where

- (a) the accused's belief arose from
 - (i) the accused's self-induced intoxication,
 - (ii) the accused's recklessness or wilful blindness, or
 - (iii) any circumstance referred to in subsection 265(3) or 273.1(2) or (3) in which no consent is obtained;
- (b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting; or
- (c) there is no evidence that the complainant's voluntary agreement to the activity was affirmatively expressed by words or actively expressed by conduct.

Therefore, an accused cannot simply say "I did not ask, and she did not say, but I thought she was consenting", as consent can never be assumed. Nevertheless, courts sometimes fail to require of accused raising a defence of mistaken belief in consent to point to evidence that actually suggests that they took reasonable steps to ascertain consent and that they had a mistaken belief in *communicated* consent.

This proposed amendment makes that an error of law, enabling appellate courts to intervene.

Solution: The bill is amended by adding the following after section 29:

29.1 The Act is amended by numbering the text in section 273.2 as subsection (1) adding the following:

Error of law

(2) In a proceeding before a judge without a jury in respect of an offence under section 271, 272 or 273 in which the accused successfully raises a defence of mistaken belief in consent, it is an error of law for a judge not to point to evidence

(a) that the accused took reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting; and

(b) that the complainant’s voluntary agreement to the activity was affirmatively expressed by words or actively expressed by conduct.

Amendments regarding constructive first-degree murder (“femicide”)

While recognizing femicide is a lofty goal, the bill does not do so as it uses neither the term “femicide” nor its definition (the killing of a woman because she is a woman). Rather, this provision is about constructive first-degree murder (i.e. convicting a person for first-degree murder despite the murder not being planned and deliberate).

The purpose for making these changes is unclear, as the circumstances described in the new provision already exist as pathways to first degree murder and/or as an aggravating factor at sentencing. Under section 718.2 of the *Criminal Code*, it is already an aggravating factor that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression; and it is also an aggravating factor that the offender abused their intimate partner. Additionally, it is already a constructive first-degree murder to kill someone in the context of sexual assault or criminal harassment.

As for the creation of a constructive first-degree murder avenue applying during or after a relationship involving coercive control, this new path could have adverse consequences, such as problematically affecting the interpretation of coercive control, making prosecutors more hesitant to charge regular first-degree murder in cases of femicide, or being used to over-criminalize women who kill their long-term abusers. It also needlessly confuses the law to blur the lines between first- and second-degree murder; constructive offences make it less likely that offenders will receive a just and proportionate punishment.

It is important to understand that Bill C-16 **does not introduce femicide to the *Criminal Code***. As set out by the *Interpretation Act*, section 14, “Marginal notes and references to former enactments that appear after the end of a section or other division in an enactment form no part

of the enactment, but are inserted for convenience of reference only.” Therefore, femicide is not being recognized simply through a marginal note that is not part of the law.

To recognize femicide, Parliament needs to recognize its gendered nature. While definitions may vary, all accord on the point that femicide is the murder of a woman. The offence should cover all women, cis or trans. Femicide could apply to female intimate partners, or more broadly to family members.

Without this change, this amendment to the Criminal Code should be opposed as it will have adverse effects on victims of intimate partner violence who kill their abuser. While victims who kill in self-defence should be acquitted, they often plead guilty to manslaughter to avoid the risk of a failed defence leading to a murder conviction. With this amendment to the *Criminal Code*, women who kill their long-term abuser could be pressured to plead guilty to second-degree murder instead of manslaughter, to avoid the risk of a first-degree murder conviction.

Only if the provision is gendered should legislators consider removing the requirement to prove coercive control, which is onerous, especially in the absence of a victim to testify.

Solution: Replace section 25 of the bill by the following:

25 The Act is amended by adding the following after subsection 231(5):

(5.1) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder when the victim is a woman and that person’s intimate partner.

OR

(5.1) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder when the death is caused by that person

~~(a) while engaging in, or after having engaged in, a pattern of coercive or controlling conduct with intent to cause the victim to believe that the victim’s physical or psychological safety is threatened, in the case where the victim is that person’s intimate partner a woman;~~

~~(b) while exercising control, direction or influence over the movements of the victim with intent to exploit the victim, within the meaning of section 279.04;~~

~~(c) while committing or attempting to commit an offence of a sexual nature or an offence for a sexual purpose; or~~

~~(d) while motivated by hate based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.~~

Amendments regarding the production of personal records

The bill raises protections with regard to therapy records but not for other, similarly sensitive records

The bill distinguishes therapeutic from other records, with a higher threshold for production for therapeutic records. While these records are highly private and sensitive, so are child protection records, diaries, and records of sexual assault crisis centers. The threshold should be raised for all records.

Solution: Section 34 of the Bill is replaced by the following:

34 Section 278.5(1) of the Act is replaced by the following:

Judge may order production of record for review

278.5 (1) The judge may order the person who has possession or control of the record to produce the record or part of the record to the court for review by the judge if, after the hearing referred to in subsection 278.4(1), the judge is satisfied that

- (a) the application was made in accordance with subsections 278.3(2) to (6);
- (b) the accused has established that the record **contains evidence that could raise a reasonable doubt as to the accused's guilt** ~~is likely relevant to an issue at trial or to the competence of a witness to testify~~; and
- (d) the production of the record is necessary in the interests of justice.

Note: This change raises the threshold for all records to the level that had been chosen for therapeutic records. It is **no longer necessary to define and distinguish therapeutic records, as currently done in Bill C-16**. The government's Charter statement on Bill C-16 considers the new threshold to be Charter-compliant.

The bill only protects complainants in a limited number of cases, based on the offence charged

This regime should apply to all offences, not just listed offences. The production of a complainant's records amounts to a search and seizure that engage their Charter rights; it should not be done lightly. These considerations apply regardless of the offence that the accused is charged with.

Solution:

Section 34 of the bill is amended as follows

34 Subsection 278.2(1) of the Act is replaced by the following:

Production of record to accused

278.2 (1) Except in accordance with sections 278.3 to 278.91, no record relating to a complainant or a witness that is in the possession or control of a third party shall be produced to an accused in any proceedings ~~in respect of any of the following offences or in any proceedings in respect of two or more offences at least one of which is any of the following offences:~~

~~(a) an offence under section 151, 152, 153, 153.1, 155, 160, 170, 171, 172, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 286.1, 286.2 or 286.3; or~~

~~(b) any offence under this Act, as it read from time to time before the day on which this paragraph comes into force, if the conduct alleged would be an offence referred to in paragraph (a) if it occurred on or after that day.~~

The bill is amended by adding the following after section 34:

34.1 Subsection 278.92(1) of the Act is replaced by the following:

Admissibility — accused in possession of records relating to complainant

278.92 (1) Except in accordance with this section, no record relating to a complainant that is in the possession or control of the accused — and which the accused intends to adduce — shall be admitted in evidence in any proceedings ~~in respect of any of the following offences or in any proceedings in respect of two or more offences at least one of which is any of the following offences:~~

~~(a) an offence under section 151, 152, 153, 153.1, 155, 160, 170, 171, 172, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 286.1, 286.2 or 286.3; or~~

~~(b) any offence under this Act, as it read from time to time before the day on which this paragraph comes into force, if the conduct alleged would be an offence referred to in paragraph (a) if it occurred on or after that day.~~

Amendments regarding minimum sentences

Sentences should be proportionate. Yet the bill re-introduces minimum sentences, forcing courts to order prison sentences as well as to meet a certain minimum regardless of the blameworthiness or dangerousness of the offender, unless the sentence would be grossly disproportionate. This explicitly calls on courts to order merely disproportionate sentences.

If legislators want to signal the seriousness of certain crimes, NAWL suggests that minimum punishments could be adopted as a default sentence, deviation from which must be justified by the Court, rather than as strict minimums. This will protect offenders who are not dangerous to the community or may have attenuating circumstances in engaging in criminal behaviour, such as women who are victims of intimate partner violence, while still signaling Parliament’s intent that sentences should increase for certain crimes.

Solution: section 63 of the Bill is replaced by the following:

63 The Act is amended by adding the following after section 718.3:

Shorter term of imprisonment than minimum punishment

718.4 (1) When imposing a sentence for an offence that has a minimum punishment of a specified term of imprisonment, a court ~~may shall~~ impose ~~a different sentence a shorter term of imprisonment~~ than the specified term if, in the circumstances, the minimum punishment would ~~be disproportionate to the gravity of the offence and the degree of responsibility amount to cruel and unusual punishment~~ for that offender.

~~**Exception—imprisonment for life**~~

~~(2) Subsection (1) does not apply with respect to an offence for which the minimum punishment is imprisonment for life.~~

Indigenous individuals

(2) For the purpose of subsection (1), the reference to the circumstances includes the consideration of the sentencing principle set out in paragraph 718.2(e).

For greater certainty

(3) For greater certainty, subsection (1) does not affect the operation of section 320.23.

Reasons

(4) A court that imposes a shorter term of imprisonment under subsection (1) shall include in the record a statement of its reasons for doing so.

Minimum punishment

(5) For the purposes of this Part, the shorter term of imprisonment imposed under subsection (1) is a minimum term of imprisonment.

Note: If the Committee does not support lowering the threshold from “cruel and unusual punishment” to “disproportionate” sentencing, we ask that it still consider including our other amendments. In that case, it could also consider the following wording for the first subsection (keeping amendments to subsection (2) as above):

When imposing a sentence for an offence that has a minimum punishment of a specified term of imprisonment, a court ~~may shall~~ impose ~~a different sentence a shorter term of imprisonment~~ than the specified term if, in the circumstances, the minimum punishment would amount to cruel and unusual punishment for that offender ~~or would otherwise~~

infringe upon any of the individual's rights or freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*.

Amendments to the Canadian Victims Bill of Rights

The bill gives victims no enforceable right

While the bill proposes improvements to the *Canadian Victims Bill of Rights*, the primary issue with this law is left unaddressed: that it gives victims no enforceable right. Sections 27 to 29 indicate:

Status

27 Nothing in this Act is to be construed as granting to, or removing from, any victim or any individual acting on behalf of a victim the status of party, intervenor or observer in any proceedings.

No cause of action

28 No cause of action or right to damages arises from an infringement or denial of a right under this Act.

No appeal

29 No appeal lies from any decision or order solely on the grounds that a right under this Act has been infringed or denied.

Solution: The bill is amended by adding the following after section 143:

143.1 Section 28 of the Act is repealed.

The bill does not give survivors a right to be represented

Victims in cases involving sexual violence or intimate partner violence should have a right to be represented.

Solution: The bill is amended by adding the following after section 142:

142.1 The Act is amended by adding the following after section 14:

Representation

14.1 Every victim who is a complainant or witness in an offence under the *Criminal Code* that is of a sexual nature or that is committed for a sexual purpose, or that is alleged to have been committed by their intimate partner as defined in the *Criminal Code*, has a right to be represented and to participate in the proceedings.

The bill should include a right to non-discriminatory treatment

While the bill ensures victims have a right to be treated with respect, courtesy, compassion and fairness, non-discrimination should be explicitly included.

Solution: The portion of section 136 of the bill before the heading “Timely Justice” is replaced by the following:

136 The Act is amended by adding the following after the heading “Rights” after section 5:

Respect

Respect, courtesy, compassion and fairness

5.1 Every victim has the right to be treated with respect, courtesy, compassion, **non discrimination** and fairness by the appropriate authorities in the criminal justice system.

Amendments regarding publication bans

In 2023, Parliament adopted Bill S-12, An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act. Among other changes, this bill responded to survivors’ concern that they were at risk of criminalization for breaching their own publication bans – that is, orders by a court not to disclose the name of a sexual assault complainant. While Parliament attempted to correct this injustice, some issues remain:

- 1) Bill S-12 contained no transitional provisions, leaving victims with existing publication ban in the dark as to whether they were at risk of being criminalized
- 2) Bill S-12 discourages prosecutors from prosecuting survivors for breaching their publication ban, but does not prevent it. While the risk of criminalization was lowered, victims’ fear wasn’t necessarily.
- 3) Bill S-12 includes exemptions where victims can talk about what happened to them without breaching the publication ban, but these exemptions are too narrow.

Solution:

The bill is amended by adding the following after section 40:

40.1 Subsection 486.6(1) and 486.6(1.1) are replaced by the following:

Offence

486.6 (1) Every person who fails to comply with an order made under any of subsections 486.4(1) to (3) or subsection 486.5(1) or (2) **and is not the subject or one of the subjects of the order** is guilty of an offence punishable on summary conviction.

Prosecution — limitation

~~(1.1) A prosecutor shall not commence or continue a prosecution against a person who is the subject of the order unless, in the opinion of the prosecutor,~~

~~(a) the person knowingly failed to comply with the order;~~

~~(b) the privacy interests of another person who is the subject of any order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that person have been compromised; and~~

~~(c) a warning to the individual is not appropriate.~~

The bill is amended by adding the following after section 102:

102.1 For greater certainty, section 486.6, as amended by section 40.1, applies with respect to any order that is in force on commencement day.

Section 132 of the bill is replaced by the following:

132 Subsection 111(1) of the Act is replaced by the following:

Identity of victim or witness not to be published

111 (1) Subject to this section, no person **who is not that child or young person** shall publish the name of a child or young person, or any other information related to a child or a young person, even if the child or young person is deceased, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.

Additional change: **Consider also including a process for the child or young person to request that this publication ban be lifted (copying sections 486.51 of the Criminal Code).**