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MEMORANDUM TO: All Chiefs of Police and
Commissioner Thomas Carrique
Chairs, Police Services Boards

FROM: Stephen Waldie
Assistant Deputy Minister
Public Safety Division and Public Safety Training Division

SUBJECT: ***Royal Assent of Bill C-75, An Act to Amend the Criminal Code and the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts***

DATE OF ISSUE:	July 11, 2019
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On June 21, 2019, six federal government bills received Royal Assent. Among those bills, and of note for Ontario's policing sector, is Bill C-75, *An Act to Amend the Criminal Code, Youth Criminal Justice Act and to make consequential amendments to other Acts*.

Bill C-75 is aimed at reducing delays and the overrepresentation of Indigenous and vulnerable populations in the criminal justice system. It will come into force in stages in the following manner:

- **Immediately:** Repeal of unconstitutional provisions and human trafficking;
- **30 days** after Royal Assent: Victim surcharge
- **90 days** after Royal Assent: Preliminary inquiries, reclassification of indictable offences, judicial case management, jury, and miscellaneous measures to enhance efficiencies; and
- **180 days** after Royal Assent: Bail, administration of Justice offences, *Youth Criminal Justice Act* amendments, and intimate partner violence.

This Memorandum is meant to provide a brief overview of the bill and is a useful starting point for all police leaders to assess how these amendments impact training and operational needs. For more additional information on Bill C-75, you may wish to consult the full [Bill](#), [Backgrounders](#), and the [Charter statement](#).

IN FORCE IMMEDIATELY

Unconstitutional Provisions

- A variety of sections in the *Criminal Code*, which were previously declared unconstitutional by appellate Courts, have formally been repealed or amended, namely:
 - s. 159 (anal intercourse) repealed.
 - s. 179(1)(b) (loitering) repealed.
 - s. 181 (spreading false news) repealed.
 - ss. 210-211 (keep common bawdy house and transport person to common bawdy house) repealed.
 - s. 229(c) (unlawful object murder) amended (provisions in the old section regarding a reduced *mens rea* were found to be unconstitutional).
 - s. 230 (murder in the commission of offences) amended (provisions in the old section regarding a reduced *mens rea* were found to be unconstitutional).
 - ss. 258(1)(c) and 258(1)(d) (presumption of accuracy and identity of breath or blood samples in impaired driving offences) amended (certain provisions in the old section were found to be unconstitutional).
 - s. 287 (abortion) repealed.
 - s. 719(3.1) (credit for time served) amended (provisions in the old section regarding exceptions to enhanced credit were found to be unconstitutional).

Human Trafficking

- For the purposes of ss. 279.01 and 279.011, a new s. 279.05 adds a rebuttable presumption of exercising control, direction or influence over the movements of a person who is exploited when another person lives with or is habitually in the company of a person who is exploited.
- The trafficking-in-persons offences are added to the small group of offences listed in s. 462.37(2.02) for which forfeiture of unrelated property is presumptive on application of the Attorney General, under s. 462.37(2.01).
- The French version of the definition of “exploitation” in s. 279.04 is amended.

IN FORCE JULY 21, 2019 (i.e., 30 days after Royal Assent)

Victim Surcharge

- A new s. 737 is enacted to replace the section that was struck down in *R. v. Boudreault*, 2018 SCC 58. Section 737(2.1) will now authorize the court to order the offender *not* to pay the surcharge, or to pay a reduced amount, if it would (i) cause undue hardship or (ii) would be disproportionate given the gravity of offence or the degree of responsibility of the offender. “Undue hardship” is defined.

IN FORCE SEPTEMBER 19, 2019 (i.e. 90 days after Royal Assent)

Preliminary Inquiries

- The availability of preliminary inquiries for adults will be restricted to offences punishable by *14 years or more* of imprisonment. Preliminary inquiry justices will be empowered to “regulate the course of the inquiry... including to promote a fair and *expeditious* inquiry” [emphasis added], which can include limiting the scope of the inquiry and limiting the witnesses to be heard.

Hybridization of Offences

- Most straight indictable offences punishable by a maximum penalty of 10 years or less will now be hybrid.¹

Increased Limitation Period for Summary Conviction Offences

- The limitation period in s. 786(2) for instituting summary conviction proceedings will be extended from 6 months to 12 months after the offence date.

Increased Penalty for Summary Conviction Offences

- The maximum term of imprisonment for most summary conviction offences will be 2 years less a day. A notable exception is s. 271(b) (sexual assault on person over 16).²

Jury Procedures

- Peremptory challenges will no longer be available, but the grounds in s. 633 for which a trial judge may direct a potential juror to stand aside will now include maintaining public confidence in the administration of justice.
- On a challenge for cause, the trial judge will now determine if the ground for the challenge is met (not two jury panel members).
- s. 644 is amended to allow a trial to continue as a judge-alone trial when the number of jurors falls below 10, with the consent of both parties.

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¹ Straight indictable offences that have now been hybridized are added to paragraph (c) of the definition of “secondary designated offence” in s. 487.04 so that a DNA Data Bank Order can be obtained regardless of election.

² The only other offences for which the maximum penalty on summary conviction will *not* increase to 2 years less a day are: s. 173(2)(b) (exposure to a person under 16); s. 487.0197 (preservation demand contravention); s. 708 (contempt of court); s. 320.14(4) (operating a conveyance with a low blood drug concentration).

Case Management Powers

- The power of case management judges to promote a fair and efficient trial is emphasized. There are several adjustments to their powers in that regard.

Timelines for Re-election as to Mode of Trial

- These have been amended to allow for more efficient scheduling of court time and to minimize inconvenience for witnesses. In most cases, the accused must re-elect sooner, but where a preliminary inquiry has been held, the accused has a longer time to re-elect.

Remote Appearances

- The permitted scope of remote appearances by justice participants (via audio and video conferencing) has been expanded, depending on their role and the type of proceeding.

Intimate Partner Violence (IPV)-related Amendments

- The maximum terms of imprisonment increase where an accused is convicted of an *indictable* IPV offence and has previously been convicted of an IPV offence.
- There are a number of newly stipulated considerations and factors on sentencing in IPV cases, particularly where the victim is an Aboriginal person or female.

Strangulation

- Assaults and sexual assaults involving choking, suffocation, or strangulation will now be added to s. 267 and s. 272(1), elevating them to the level of assaults/sexual assaults causing bodily harm or with a weapon.

Out-of-Province Warrants, Authorizations, and Orders

- Many types of warrants, authorizations, and orders will now be enforceable anywhere in Canada as long as the officer who executes it has authority to act as a peace officer in the province in which it is executed (and without requiring a judge in that province to confirm it).

Publication Bans for Young Persons

- Youth Court Judges will no longer be able to lift a publication ban for a young person sentenced *as a youth* for a violent offence.

IN FORCE DECEMBER 18TH, 2019 (i.e. 180 days after Royal Assent)

Bail

- The Act makes numerous changes to the bail and police release regime, including:
 - The forms of release are simplified (e.g. the general term “release order,” is used for all forms of judicial release).
 - Police release powers are simplified and there are changes to the conditions that police can and cannot impose.
 - The principle of restraint is codified and applies to both police release and bail, including restraint in the use of sureties.
 - Police and the court are to give particular attention to the circumstances of Aboriginal accused, as well as accused from vulnerable and overrepresented populations.
 - The fact that an accused is charged with an IPV offence must be considered when making a release order; and an accused in such a case will face a reverse onus if they have a previous conviction for an IPV offence.

“Judicial Referral Hearing” for Breaches of Bail and Failing to Appear

- A new proceeding called a “Judicial Referral Hearing” will allow police and crowns, in certain circumstances, to refer an accused to such a hearing for breaches of bail conditions or failing to appear, as an alternative to laying or proceeding with a charge. At such a hearing, the court will have a range of options, including cancelling the previous release order and making a new one.

Other IPV-Related Amendments

- The term “intimate partner” is defined for the purposes of the entire Code and will now include both current and former spouses, common-law partners and dating partners.

Youth Criminal Justice Act (YCJA) Amendments

- Amendments to the YCJA will emphasize the use of extrajudicial measures, especially for administration of justice offences. The YCJA’s bail provisions will be amended to correspond with changes to the adult bail regime, as well as to confirm the presumption against both detention and unnecessary bail conditions, and a prohibition against using detention or bail conditions as substitutes for social measures.
- A review of detention for summary conviction offences must occur within 30 days instead of 90 days. The imposition of custodial sentences for administration of justice offences will be restricted unless certain preconditions are met.

- Where a substantive charge has resulted in a dismissal, withdrawal, acquittal, or stay of proceedings, a new obligation in YCJA s. 24.1 requires the Crown to review any outstanding charges arising from a failure to comply with the bail associated with that charge and determine whether the prosecution of that breach should proceed.

I trust this information will assist you.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Waldie', written in a cursive style.

Stephen Waldie
Assistant Deputy Minister
Public Safety Division and Public Safety Training Division