



Proposed changes to improve the operation of the criminal justice system and address the impacts of the COVID-19 pandemic

On February 8, 2022, the Government of Canada reintroduced proposed changes to the *Criminal Code*, the *Identification of Criminals Act* as well as related changes to other federal legislation to help address the challenges faced by criminal courts caused or exacerbated by the COVID-19 pandemic, and modernize our criminal justice system now and for the future.

The effects of the ongoing COVID-19 pandemic are still being felt throughout the criminal justice system, and particularly in the operation of criminal courts. Canada's criminal courts have been adapting and modernizing to address the challenges they face, but many remain unable to operate at their pre-pandemic capacity.

Bill S-4 proposes a number of targeted changes to the *Criminal Code* that would give courts increased flexibility in how they hold criminal proceedings and issue orders. These changes would not compromise public safety, or participants' rights and freedoms, and would support greater access to justice moving forward, including for those living in remote communities.

The proposed changes take into consideration input received from the provinces and territories and key stakeholders. In addition, the Minister of Justice and Attorney General of Canada has been kept apprised of the challenges faced by courts across Canada in his role as co-chair of the Action Committee on Court Operations in Response to COVID-19.

Proposed changes reintroduced in Bill S-4

The Bill proposes a number of changes to help address the challenges faced by criminal courts caused or exacerbated by the COVID-19 pandemic, to modernize our criminal justice system, and to facilitate access to justice.

These proposed changes would:

- clarify and expand the law by providing a clear legislative mechanism for certain remote hearings and processes, with consent, judicial discretion and appropriate safeguards, for:
 - video appearances of accused persons at the preliminary inquiry and the entire trial, including for presentation of evidence (except before a jury)

- audio appearances of accused persons for pleas and sentencing hearings where appropriate, and where video appearances are not available
- video participation of prospective jurors in jury selection processes under certain circumstances
- allow for the enhanced use of technology to draw the names of prospective jurors in the jury selection process
- allow courts to make judicial case management rules that permit court personnel to deal, out of court, with administrative matters relating to proceedings with unrepresented accused persons
- revise the existing telewarrant process to allow peace officers to remotely apply for a wider range of investigative orders
- allow fingerprinting under the Identification of Criminal Act to occur at a later date, particularly where previous attempts at fingerprinting were not possible due to exceptional circumstances, such as those posed by COVID-19
- make minor technical changes to the Criminal Code and Identification of Criminals Act that were identified during the implementation of former Bill C-75 (delays in the criminal justice system, 2019)

Clarification and expansion of availability of remote appearances for accused individuals

Criminal proceedings are, by default, held in person before criminal courts. The *Criminal Code* currently provides limited exceptions to this rule. These allow for hearings by audio or video technology in certain instances. The possibility for remote appearances by accused persons was expanded in 2019, when the amendments in [former Bill C-75](#) were enacted.

The COVID-19 pandemic has revealed the need for further clarification and expansion of the *Criminal Code's* current remote appearance provisions. While the courts have been able to make use of the recently expanded remote appearance provisions in the *Criminal Code*, he unanticipated demand for remote hearings during the pandemic has revealed the need for certain amendments.

The proposed changes would clarify and expand the law by providing a clear legislative mechanism for certain remote appearances to enhance access to justice and mitigate the risk of delays. More specifically, the Bill would explicitly allow:

- accused persons to appear by videoconference for preliminary inquiries and for trials, including for the presentation of evidence except before a jury, with consent and where the court finds that it would be appropriate
- accused persons to appear by audioconference for pleas, with consent of the parties and where the court is satisfied that the conditions for accepting a guilty plea are present and that videoconferencing is not readily available
- offenders to appear by audioconference for sentencing hearings, at the courts discretion, with consent of the parties, and where videoconferencing is not readily available

These proposed changes would give the courts more flexibility while continuing to protect participants' rights, freedoms and health. The amendments would generally only be applicable with consent, and would all need to be approved by the court. The court would be able to monitor the ongoing appropriateness of remote appearances and adjust them at any time if required. These proposed changes would also require the court to ensure that represented accused persons who are appearing remotely are given the opportunity to communicate privately with counsel. They would also require that the court be satisfied that an accused person who does not have access to legal advice during the remote proceedings is able to understand the proceedings and make voluntary decisions throughout.

Under these proposed changes, in-person proceedings would remain the norm. These provisions would ensure that remote appearances remain an option that would be used only in appropriate circumstances.

Remote participation for jury selection proceedings

The COVID-19 pandemic and the public health guidelines for physical distancing have made it challenging for criminal courts to hold jury selection proceedings. Under the current rules, jury selection must be done in person and can involve hundreds of prospective jurors having to appear in court at the same time.

The proposed changes would allow prospective jurors to participate in a remote selection process by videoconference under certain circumstances, with the consent of the parties and at the court's discretion.

The changes would also add the requirement to make an in-person option available to prospective jurors when a court-approved location is not provided for the videoconference to ensure that those who do not have access to adequate videoconferencing technology continue to be able to participate in the selection process.

Judicial case management rules for unrepresented accused persons

Currently, the courts may make case management rules that permit court personnel to deal with administrative matters relating to proceedings out of court, but only if the accused person is represented by a lawyer.

The proposed change would allow the courts to make rules to allow court personnel to deal with administrative matters relating to proceedings out of court for unrepresented accused persons as well.

This would help unrepresented accused persons avoid having to attend court in person for issues that could be dealt with by court officials outside of the courtroom, including by telephone.

Expansion of the telewarrant process

Currently, peace officers can remotely apply for certain warrants by telephone or by other means of telecommunication, such as fax or e-mail. However, such a process is not currently available for all investigative orders in the *Criminal Code*.

The proposed changes to the telewarrant process would allow peace officers and public officers to apply remotely for a wider range of investigative orders while maintaining the judicial oversight and standards that currently apply in such cases.

The COVID-19 pandemic has underscored the need to expand the application of the current telewarrant process. Reducing the need for in-person attendance would be beneficial to peace officers and public officers seeking to obtain investigative orders as it would allow them to respect public health guidelines, including physical distancing.

Such an expansion would also improve the criminal justice system's efficiency and better reflect the reality of technology, including by enabling the submission of electronic warrant applications as easily and securely as in-person applications.

Changes to the fingerprinting process

Currently, individuals alleged to have committed or who have been charged with an offence can be required to provide fingerprints for identification purposes at specific points in time, as set out in the *Identification of Criminals Act* and the *Criminal Code*.

When police are not able to take fingerprints at these times due to exceptional circumstances, the law does not authorize them to be taken otherwise.

The COVID-19 pandemic and the health risks involved in procedures such as fingerprinting, due to the close contact involved, have affected this practice such that police officers have either had to take them despite the risks for the accused persons and themselves, or to suspend the taking of fingerprints and consequently lose the opportunity to fingerprint these individuals altogether.

The proposed changes would allow courts to order fingerprinting for identification purposes if it could not be done at an earlier date. This would only affect the timing: fingerprinting would still only be permitted where it is already authorized by the *Identification of Criminals Act*.

Technical corrections

The Bill also proposes to make minor technical changes to the *Criminal Code* and *Identification of Criminals Act*. These would fix minor errors or omissions that were identified during the implementation of former Bill C-75 [*An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts*](#) and to make consequential amendments to other Acts, which came into force in 2019.