



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 Senate Committee on Legal and Constitutional Affairs

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Overview

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.

This brief 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**. 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 **non-consensual intimate images**: criminalize the creation of non-consensual sexual deepfakes and broaden their definition;
- 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.

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Amendments regarding criminal harassment

The bill fails to protect “unreasonable women”

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

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 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 known to them, is threatened.

Amendments regarding coercive control

Criminalization strategies generally run the risk of revictimizing survivors, because abusers are skilled at manipulating justice system actors and presenting themselves as victims.² In particular, women who are victims of coercive control may themselves be charged or threatened with criminalization. This risk is evidenced by the trend, in family law, where **women who are victims of domestic violence are perceived as “alienators”, which courts are interpreting as**

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

² Black women are also particularly at risk when using defensive violence: 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.

a form of “coercive control”.³ These women are accused of controlling and manipulating their children when they engage in protective behaviours or when the child fears their abusive father.⁴ NAWL is extremely concerned that these women will now face criminalization or threatened criminalization in addition to punitive family law remedies, unless the paragraph subparagraph 264.01(2)(c)(ii) is removed. 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.

Additionally, 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.

Solution: Section 28 of the bill is amended by replacing paragraph 264(2)(c) with the following:

(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);~~

[...]

Amendments regarding firearms

Circumstances leading to a mandatory prohibition order are too narrow

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.**

³ Mosher, Janet, et al. “Submission to Justice Canada on the criminalization of coercive control” (2023); Mosher, Janet, et al. “Doing More, Doing Better? A Critique of the Criminalization of Coercive Control” (2025).

⁴ See e.g. *MAB v MGC*, 2022 ONSC 7207, an approach widely followed in other cases.

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),

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.

Ineligibility for a firearms licence in situations of domestic violence should be expanded

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.

Amendments regarding section 810 orders

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, **for the duration of the recognizance.** ~~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. The House of Commons partially corrected this issue by including “nearly nude” depictions, but not other contexts.

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.

Amendments regarding sexual history evidence

The bill fails to recognize that stereotypical reasoning regarding sexual history evidence is 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 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: Subsection 31(2) of the bill is amended by replacing proposed paragraph 276(2)(a) with the following:

- (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 constructive first-degree murder

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 that its victim must be a woman. 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.

Solution: Replace section 25 of the bill by the following, or vote against this section:

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**.

Amendments regarding 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 replaced by the following:

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 same change should also be made in subsection 278.92(1) of the Act.

Amendments regarding minimum sentences

Sentences should be proportionate. Yet the bill re-introduces minimum sentences, forcing courts 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.~~

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.