May 10, 2019

The Honourable Serge Joyal, PC, OC, OQ
Chair of the Standing Senate Committee on Legal and Constitutional Affairs
Senate of Canada
Ottawa, Ontario
Canada
K1A 0A4

Dear Senator Joyal:

On May 1, 2019, my officials and I appeared before the Standing Senate Committee on Legal and Constitutional Affairs in the context of the Committee’s study of 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 (Bill C-75).

During my appearance, I undertook to provide further information to the Committee on five issues of interest to the Committee relating to amendments in Bill C-75.

1. (page 1530-19) Why are the maximum penalties for two summary conviction offences, exposure involving a person under the age of 16 years, paragraph 173(2)(b) and sexual assault against a person who is 16 years or older, paragraph 271(b) not being increased to two years less a day?

Currently, the offence of indecent acts against a complainant under 16 years carries a maximum penalty of 6 months imprisonment and a mandatory minimum penalty of 30 days imprisonment on summary conviction (paragraph 173(2)(b)); on indictment, it carries a maximum penalty of 2 years imprisonment and a minimum penalty of 90 days imprisonment. The offence of sexual assault on summary conviction (paragraph 271(b)), carries a maximum penalty of 18 months imprisonment if the complainant is 16 years of age or older; if the complainant is under the age of 16 years, the maximum penalty is 2 years less a day and the mandatory minimum penalty is 6 months.

Bill C-75 does not propose to increase the maximum penalty on summary conviction for indecent acts where the complainant is under 16 years or for sexual assault where the complainant is 16 years or older. This is because, under legislative drafting practice, increasing the maximum penalties for these two offences would have necessitated repealing and re-enacting these paragraphs, including the mandatory minimum penalties.

Our Government is committed to advancing sentencing reform that will stand the test of time. That means continuing to work with our provincial and territorial partners and all
actors in the criminal justice system, as well as taking advice from our courts and listening to Canadians. We are committed to reviewing the mandatory minimum penalties in the Criminal Code with an eye to eliminating many of them and restoring judicial discretion. As the former Minister of Justice indicated during her testimony before the House of Commons Standing Committee on Justice and Human Rights on June 5, 2018, the Government is engaged in a broad review of sentencing and sentencing reform that includes mandatory minimum penalties. This review will help ensure that future reforms are consistent with the objectives of the criminal justice system, our values and the Charter. Accordingly, Bill C-75 does not propose to amend these penalties pending this broader review.

However and pending that review, where the 2 year maximum penalty would be more appropriate in the facts and circumstances of a case involving indecent acts, the Crown can already elect to proceed on indictment and have the same maximum penalty option. Similarly, in the case of sexual assault, where the facts and circumstances of a case indicate that the appropriate penalty would be more than 18 months, the Crown can already elect to proceed on indictment.

2. (page 1530-13) Can I provide the content of any gender-based analysis conducted, particularly in regards to the issue of counter assault in intimate partner violence and that intimate partner violence is gendered?

As with any legislative initiative, a gender-based analysis (GBA+) is carried out to assess the potential impacts of law reform on divers groups of women, men and individuals with other gender identities as well as other factors (e.g., age, sexual orientation, etc.). Attached as Annex 1 is a compilation of data considered in the original GBA+ undertaken in preparation for the tabling of Bill C-75, with updates where available.

3. (pages 1530-15 and 1530-16) Is there any empirical data on the types of sentences that are received for the offences that are being hybridized by Bill C-75?

I have attached, as Annex 2, a chart prepared by my officials outlining a list of 19 offences punishable by a maximum of 5 and 10 years imprisonment and their sentencing ranges. The list does not contain all of the offences that would be hybridized by Bill C-75 (118) but only a select number of offences for which data is available at this time. It does include the impaired driving provisions that were previously hybridized in Bill C-46 and that were included in Bill C-75 for coordinating purposes.

As you can see from the chart, and as mentioned at Committee, offences being hybridized already result in sentences of less than 2 years imprisonment where warranted due to the facts of the case and circumstances of the offender.

4. (page 1530-18) Are the terms “dating partner” and “partenaire amoureux”, which are included in the English and French versions of the definition of “intimate partner” in Clause 2(3), consistent with each other?

Bill C-75 proposes to define “intimate partner” for all Criminal Code purposes as including a dating partner, or “partenaire amoureux” in French. These terms are intended
to have the same meaning and the approach is consistent with several other federal statutes (see Annex 3). I would note in particular that Parliament first enacted the use of this term in the *Criminal Code* in 2015.

I am pleased to advise the Committee that our legislative jurilinguists have confirmed that the French and English versions of these proposed paragraphs convey the same meaning.

As you know, neither the French nor the English version of federal legislation is a translation of the legislative text of the other language. Both are drafted simultaneously, by a Francophone and an Anglophone drafter, each responsible for ensuring that the legislative text achieves the desired policy objectives. French and English legislative text will sometimes differ in structure or formulation; this is not problematic as long as both achieve the same policy objective.

5. (pages 1530-6 and 1530-9) **Will Bill C-75 not bring into force the requirement for mandatory consecutive sentences for human trafficking offences as enacted by former Bill C-452, An Act to amend the *Criminal Code* (exploitation and trafficking in persons)?**

Former Bill C-452 (S.C. 2015, c. 16) received Royal Assent on June 18, 2015, but has not been proclaimed into force. Bill C-75 proposes to bring into force all of former Bill C-452 upon Royal Assent of Bill C-75 except for its requirement to impose consecutive sentences for human trafficking offences, and other related offences arising out of the same event, many of which are punishable by mandatory minimum sentences of imprisonment.

The mandatory sentencing provision is particularly concerning given the mandatory minimum penalties that were imposed by former Bill C-36, the *Protection of Communities and Exploited Persons Act*. Specifically, former Bill C-36 imposed or increased mandatory minimum penalties on most human trafficking offences and all child prostitution offences ranging from 1 to 6 years. Prostitution offences are often charged in sex trafficking cases, along with human trafficking offences. This means that a sentencing judge in a trafficking case involving multiple convictions for, human trafficking, prostitution offences and sexual assault, would be required to impose multiple mandatory minimum penalties consecutively, resulting in exceedingly lengthy sentences.

Parliament did not consider the cumulative impact of former Bills C-36 and C-452. During Parliament’s consideration of former Bill C-36 and following its enactment, Private Member’s Bill C-452 continued to progress through the legislative process on a separate track. Their collective impact was not before Parliament.

It is now clear that Bill C-452’s consecutive sentencing provision, together with the mandatory minimum penalties enacted by former Bill C-36, could foreseeably lead to grossly disproportionate cumulative sentences. This could amount to cruel and unusual punishment under section 12 of the Charter.
Accordingly, Bill C-75 proposes that this provision would only come into force upon on a
day to be fixed by order of the Governor in Council and which would allow for the
Charter risks to be considered as part of a broader review of sentencing.

Human trafficking is a very serious criminal offence and our Government is committed to
strengthening its efforts to combat it and better protect its victims, who are among
society's most vulnerable. Bill C-75 will provide law enforcement and prosecutors more
tools to better fight human trafficking and will strengthen human trafficking laws in our
country.

6. (pages 1530-28 and 1530-29) Would a court's decision to apply the exception or
exemption to the mandatory victim surcharge be considered a sentence under
section 785 of the Criminal Code and whether it would create the possibility of an
appeal mechanism?

Clause 301 of Bill C-75 proposes to clarify that a court would be permitted to apply an
exception to the mandatory imposition of the surcharge for each offence for certain
administration of justice offences where the cumulative impact would be disproportionate
under the circumstances (subsection 737(1.1)). It would also clarify that a court could
exempt the offender from the mandatory payment of the surcharge if it amounts to
"undue hardship" (subsection 737(5)).

A consequential amendment is proposed in clause 314 of Bill C-75 that would amend
paragraph 785(b) to clarify that orders made under subsections 737(1.1) and (5) are
included in the definition of a "sentence" for the purposes of appeals of summary
conviction offences. Clause 278 proposes a similar amendment for paragraph 673(b) of
the Criminal Code, which defines "sentence" for the purposes of appeals in matters that
proceed by indictment. These amendments would provide, in all cases, the Crown and the
defendant with a right to appeal the decision of the court to apply, or not, the exception or
the exemption to the victim surcharge.

7. (pages 1530-30 and 1530-31) Can the Department provide background
information, trends and statistics, with respect to the anecdotal evidence that the
Committee has been provided from a number stakeholders that there has been an
increase in counter-charging of women, and in particular immigrant women. In
addition, can the Department provide information on what informed the
government's decision-making around these provisions?

Counter-charging refers to the laying of criminal charges against the victim of violence
when violence in an intimate relationship is reported to police. This can occur both in
cases where victims have used violence to defend themselves against violent partners,
and where violent partners falsely report that they have been hurt by the victim partner.
"Dual charging" occurs where both partners are charged when violence is reported to
police.

The Department has been aware of the concerns that dual charging and counter-charging
might impact particular groups more than others. However, the issues of dual charging
and counter-charging are issues of implementation that are best addressed through the
development and implementation of policies by the provinces and territories who are responsible for the administration of justice. For example, in 2003, FPT Ministers responsible for Justice approved of the Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation which examined pro-charging policies and recommended the use of “primary aggressor models” in order to avoid dual charging (http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/pol/p2.html).

The practice of dual charging was addressed during a national consideration of police charging policies. In March 2016, the Canadian Association of Chiefs of Police released a National Framework for Collaborative Police Action on Intimate Partner Violence, which was prepared by the Canadian Observatory on the Justice System’s Response to Intimate Partner Violence, University of New Brunswick, after national consultation with subject matter experts from policing, academia, and community organizations.

The framework recommends that a model be followed where charges are usually only laid against the “dominant aggressor”; the determination would include factors that would distinguish between assault and self-defence, as well as the history and context of the relationship. The model recommends that police should consult with a Crown prosecutor before charging both parties. Further, it recommends that police should consult with a supervisor prior to laying a charge against a victim in an abusive relationship or prior to laying a dual charge.¹

I am not aware of any available data on the practice of dual charging that distinguish between immigrant and non-immigrant women in Canada, nor that would distinguish between Indigenous and non-Indigenous women in Canada. However, I can provide some statistical information with respect to the practice of “dual charging” in the context of intimate partner violence. I have attached this as Annex 4.

8. (pages 1530-29 and 1530-30) During testimony Ms. Paulette Corriveau orally provided the Committee data relating to preliminary inquiries.

I am providing the Committee the written version of her testimony on data as Annex 5 to facilitate their study of this issue.

9. (pages 1530-41 and 1530-42) Concerns were raised during the third panel before the Committee with respect to the potential immigration consequences of Bill C-75’s proposal to hybridize offences and to increase the maximum penalty for summary offences.

I would like to take this opportunity to clarify that the proposed changes in Bill C-75, which advance criminal law policy objectives, are not expected to have immigration consequences under the Immigration and Refugee Protection Act (IRPA).

Under section 36 of the IRPA, a person is inadmissible to Canada on grounds of serious criminality or criminality. A person is inadmissible for serious criminality if they have been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of ten years or more or for which they have been imprisoned for more than six months. A person is inadmissible for criminality if they have been convicted of an indictable offence or two summary convictions (not arising from a single occurrence). Regardless whether a prosecutor proceeds summarily or by way of indictment, the IRPA treats hybridized offences as indictable offences under paragraph 36(3)(a). Thus, the proposal in C-75 to hybridize indictable offences would not have the effect of broadening the group of persons who are inadmissible to Canada.

Moreover, increasing the maximum penalty on summary conviction does not alter the fundamental principle of sentencing requiring courts to impose sentences that are proportionate to the gravity of the offence and the degree of responsibility of the offender. Offences that would be punished by a period of imprisonment of less than six months would continue to be punished in the same way following the passage of Bill C-75. The Supreme Court of Canada has also been clear that sentencing judges may exercise their discretion to take collateral immigration consequences into account, provided that the sentence ultimately imposed is proportionate to the gravity of the offence and the degree of responsibility of the offender (R v Pham, 2013).

The determination of whether a non-citizen is inadmissible to Canada for criminality or serious criminality is a policy question best answered by my colleague, the Honourable Ahmed Hussen, Minister of Immigration, Refugees and Citizenship.

I am aware that Minister Hussen has been carefully considering the immigration consequences of former Bills C-45 (Cannabis Act) and C-46 (Impaired Driving), including by launching an information campaign in October 2018 to raise awareness of the potential immigration consequences of these new laws. Immigration officials also continue to monitor the immigration consequences of these reforms.

I hope this response will be helpful to the Committee’s study of Bill C-75.

Sincerely,

[Signature]

The Honourable David Lametti, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada
Gender-based Analysis +

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*

Gender-based Analysis (GBA) is carried out to assess the potential impacts of law reform on diverse groups of women, men, and people with other gender identities, as well as other factors such as age, sexual orientation, disability, education, language, geography, culture and income. This document provides a summary of information considered in the development of Bill C-75 and the anticipated impacts on women and other vulnerable/marginalized groups.¹

**Characteristics of individuals involved in the criminal justice system**

**Demographics:** Men and young adults are more likely to be involved in the criminal justice system as accused/offenders. According to the data available from Statistics Canada,² 80% of accused persons in adult criminal courts were male: men represented a higher proportion of individuals accused of violent offences such as sexual assault, intimate partner violence, attempted murder and robbery. As well, Statistics Canada reported that 56% of all accused persons appearing in criminal court were between the ages of 18 and 34.

Women comprise about 20% of accused persons in adult criminal courts and are most frequently before the courts for non-violent offences such as theft and fraud. Women are more likely to be involved in the criminal justice system as victims of crime, and the rate of police-reported violent crime was higher for girls and women aged 24 and younger. For girls under 18 years of ages, sexual offences were the most predominant, while for women aged 18 to 24, the rate for physical assault offences was the highest. Women and girls are most commonly victimized by a male accused: younger girls were most often victimized by a family member, and older girls by a casual acquaintance and young women, by a non-spousal intimate partner.³

**Indigenous overrepresentation:** Indigenous persons are overrepresented in the criminal justice system among both accused/offenders and victims. In 2016/2017, Indigenous adults represented 27% of admissions to federal custody and 28% to provincial/territorial custody while representing 4.1% of the Canadian adult population. Similarly, Indigenous youth represented 46% of admissions to provincial/territorial youth custody while representing 8% of the youth population in the nine reporting jurisdictions. The overrepresentation of adult Indigenous women

¹ The data presented in this document was considered in the original gender-based analysis undertaken in preparation for the tabling of Bill C-75, and updated, where available, for the purpose of the study of Bill C-75 by the Standing Senate Committee on Legal and Constitutional Affairs.
in provincial / territorial sentenced custody is more pronounced than that of Indigenous males: they accounted for 43% of female admissions to provincial/territorial sentenced custody, compared to 28% for Indigenous males.\(^4\)

Indigenous persons are also overrepresented as victims of crime, and perpetrators of violence against Aboriginal people are most often other members of the Aboriginal community such as spouses, relatives, or friends of the victim, and as such, victimization among Aboriginal people in Canada is often regarded as a mirror image of Aboriginal offending.\(^5\) In its General Social Survey (GSS) on Victimization, Statistics Canada reported that, in 2014, more than one quarter (28%) of Indigenous people aged 15 and older reported that they, or a member of their household, had been a victim of at least one of the eight types of offences\(^6\) measured by the GSS in the previous 12 months (compared to 18% of non-Indigenous people).\(^7\) Further, the overall rate of violent victimization, which includes sexual assault, physical assault and robbery, among Indigenous people was more than double the rate of violent victimization of non-Indigenous people (163 versus 74 incidents per 1,000 people). Lastly, Indigenous women are also disproportionately represented among homicide victims; between 2001 and 2011, at least 8% of all murdered women aged 15 years and older were Indigenous, a figure that is more than double their representation in the Canadian population.\(^8\) Regardless of the type of violent offence, victimization rates were always higher for Indigenous people, compared to non-Indigenous people.

**Overrepresentation of Mentally Ill and Substance Addicted Persons:** Individuals suffering from mental health issues or substance abuse problems are more likely to come into contact with the police, and this trend has increased in recent years. Statistics Canada reported\(^9\) that of the 2.8 million Canadians aged 15 and older that met the criteria for at least one mental or substance use disorder (i.e., depression, bipolar disorder, generalized anxiety disorder, alcohol/cannabis/other drug abuse or dependence), one-in-three (34%) reported coming into contact with police for at least one reason in the twelve months preceding their 2012 Canadian Community Health Survey (Mental Health). This was twice the proportion of those without a disorder (17%). As well, Canadians who reported a mental or substance use disorder were about four times more likely than those without a disorder to report being arrested by the police (12.5% and 2.8% respectively).

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\(^6\) The General Social Survey on Victimization surveyed Canadians on their experiences with eight types of offences, which are: sexual assault, robbery, physical assault, theft of personal property, breaking and entering, theft of motor vehicle or parts, theft of household property, and vandalism.


Intimate Partner Violence: Recent data shows the prevalence of intimate partner violence\(^{10}\) (IPV) in Canada and highlights that the overwhelming majority of victims are women.\(^{11}\)

- In 2017, over 96,000 people in Canada were victims of intimate partner violence, representing just under one-in-three (30%) victims of police-reported violent crime. The majority of victims were women (79%), while the majority of accused were men (79%).
  - Victimization by an intimate partner was the most common form of police-reported violent crime committed against women (45% women compared to 14% men).
  - Violence within dating relationships was more common than violence within spousal relationships, according to police reported data (17% versus 13% of all victims of violent crime), and it was twice as common between current partners (20%) than former partners (10%).
  - The type of violence most often experienced by police-reported intimate partner violence victims was physical force, such as pushing, hitting or choking (72%).
- Based on findings from the GSS on Victimization:
  - The majority (70%) of IPV victims never report the violence to the police. This is exacerbated in communities that are overrepresented in the criminal justice system (i.e., Indigenous, visible minority and immigrant) who are less likely to report the IPV to the police for fear of the repercussions of discriminatory treatment of their partners, children or even themselves.\(^{12}\)
  - Indigenous women (10%) were about three times as likely to report being a victim of spousal violence as non-Indigenous women (3%); GSS data also suggests that Indigenous women experience more serious forms of IPV than non-Indigenous women, such as having been sexually assaulted, beaten, choked, or threatened with a gun or knife (48% versus 32%) or sustaining an injury (58% versus 41%).\(^{13}\)
- Of the 933 intimate partner homicides between 2007 and 2017, almost two-thirds (62%) were preceded by a history of family violence. A large majority (79%) involved female victims and most were committed by a current or former legally married or common-law husband (75%) and boyfriends were responsible for 25% of female victims’ deaths.

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\(^{10}\) Intimate partner violence (IPV) is defined by Statistics Canada as “violent offences that occur between current and former legally married spouses, common-law partners, dating partners and other kinds of intimate partners (relationships where the people involved have a sexual relationship or a mutual sexual attraction but to which none of the other relationship options apply, which can include “one-night stands” or brief sexual relationships)”. (Burczycka, M., Conroy, S. and Savage, L. (2018). Family violence in Canada: A statistical profile, 2017, p. 22).


\(^{13}\) Statistics Canada advises to use this data with caution.
• Intimate Partner Violence victims tend to experience multiple victimizations before reporting the violence to the police:
  o Sixty-one percent (61%) of victims experienced more than one violent incident prior to contacting the police, and just under one-half of these victims experienced more than 10 incidents of violence before the police were informed.\(^\text{14}\)
  o Between one-fifth to one-third of violent intimate partners re-offend, and the majority of this recidivism (61%) occurs within six months of the previous offence, with more than one-third (37%) occurring within three months.\(^\text{15}\)
  o One-in-six (17%) victims of spousal violence indicated that they had been abused by their current or former partner on more than 10 occasions and victims were at a higher risk of being re-victimized in the aftermath of charges being laid against their partner.\(^\text{16}\)

• Female IPV victims also tend to be victims of severe violence:
  o Female IPV victims were over three times more likely than their male counterparts to report being sexually assaulted, beaten, choked or threatened with a gun or a knife (34% versus 10%). They were also much more likely than men to experience chronic forms of spousal violence, with 53% of female victims reporting multiple victimizations compared to 35% of male victims.\(^\text{17}\)

**Dual charging:** Dual charging is an operational issue predominantly impacting the provinces who are responsible for investigating and prosecuting *Criminal Code* offences in their respective jurisdictions and the federal government in the territories. In 2003, FPT Ministers responsible for Justice approved a report\(^\text{18}\) which examined pro-charging policies and recommended the use of “primary aggressor models” in order to avoid dual charging. Although data is limited and outdated in this FPT report, it showed that between 4% and 8% of charges laid for intimate partner violence over the years involved dual charging in Winnipeg and in Alberta. A more recent report in British Columbia showed that between the years 2000 and 2005, between 8% and 10% of spousal violence incidents involved dual charging.\(^\text{19}\)

Provinces and territories have also developed policies and/or training in this area. More recently, in March 2016, the Canadian Association of Chiefs of Police (CACP) released a *National Framework for Collaborative Police Action on Intimate Partner Violence (IPV):* dual charging was addressed in the report and guidance is provided with respect to the approach that should be

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\(^\text{15}\) Hanson, Helmus, & Bourgon, 2007; Hendricks, Werner, Shipway, & Turinetti, 2006; Ventura and Davis, 2004; Gondolf, 2000; as referenced in Cohen, I, McCormick, A and Plecas, D (2011). *Reducing Recidivism in Domestic Violence Cases.* University of Fraser Valley Centre for Public Safety & Criminal Justice Research.


taken in cases where charges against a victim are contemplated. They recommend that Police Service policy and procedure consider: distinguishing the assault from defensive self-protection; recognizing abusing and victim behaviors/characteristics; determining the context of the relationship to assist in identifying the abusive partner; ascertaining injuries consistent with victim and with offender; and consultation with local Crown Prosecutor prior to charging both parties.

**Sexual violence:** Based on findings from the GSS on victimization, there were 22 incidents of sexual assault for every 1,000 Canadians aged 15 and older in 2014, which represented approximately 636,000 self-reported incidents of sexual assault. A higher risk of sexual assault was noted among those who were women, young, Aboriginal, single, and homosexual or bisexual, and those who had poorer mental health. In addition, individuals who had certain experiences—childhood abuse and homelessness—and more evening activities outside the home also had a higher risk of sexual assault. Victims of sexual assault often had negative perceptions of their neighbourhood, lower levels of trust in others and less confidence in the police, compared to those who were not sexually assaulted. They were also less satisfied with their personal safety from crime and less likely to feel safe in certain situations.

**Human trafficking:** The majority of known trafficking cases in Canada involve trafficking in persons for the purpose of sexual exploitation. While men, women and children can all fall victim to this crime, females represent the majority of victims. According to the Statistics Canada, between 2009 and 2016, the vast majority of victims of police-reported human trafficking were female (95%), while the majority of accused were male (81%). Among these victims, close to half (44%) were between the ages of 18 and 24, and one-quarter (25%) were under the age of 18. More than half of the reported trafficking incidents also involved another offence, including kidnapping, sexual assault and aggravated assault.

**Anticipated Impacts**

Although not intended to disproportionately impact Canadians based on a variety of factors such as gender, age, Indigenous/cultural affiliation, or disability, the proposed amendments included in Bill C-75 are expected to have differential, but positive impacts, on women and other vulnerable/marginalized groups as explained below.

**Marginalized persons, including Indigenous persons:** The proposed reforms with regards to bail, administration of justice offences and the reclassification of offences support an approach that is expected to minimize the differential impact on these populations through modernizing and streamlining processes, providing flexibility and creating appropriate tools for managing factors such as vulnerability, mental health and addiction. In addition, the proposed bail reforms would require police and courts to take into account the unique circumstances of Indigenous accused and vulnerable populations who face systemic barriers in obtaining bail. The potential adverse

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impacts on any group will not be as a result of the proposed legislation, but will likely be influenced by ongoing social issues.

It is important to note that Criminal Code amendments are not designed to address all social issues that impact the criminal justice system population, and as such, operational changes in the courts or administration of justice at the provincial and territorial level may better address such issues. As well, training for criminal justice system actors (police, Crown, judges) would likely alleviate potential differential impacts of the proposed amendments on individuals involved in the criminal justice system.

Intimate partner violence: Intimate partner violence remains a serious and complex issue for all women in Canada. The proposed reforms that would strengthen the criminal justice system response to IPV are expected to have a positive impact on IPV victims, who are predominantly women, including many Indigenous women, by providing them with greater protection at different stages of the criminal justice system. Specifically, these reforms would: allow a sentencing judge to impose a higher maximum penalty in cases involving a repeat intimate partner violence offender; require bail judges to take into consideration whether the offence before them involves IPV; create a reverse onus at bail for IPV where an accused has a previous IPV conviction; and, ensure that strangulation, choking and suffocation are treated as elevated forms of assault or sexual assault, depending upon the context in which the conduct occurred. The reverse onus proposed in Bill C-75 would be restricted in its application to accused persons who have been previously been convicted of an IPV offence. As a group, these individuals have been found to pose an elevated risk of violence, escalating the risk of re-offending toward their intimate partners. This will ensure that the criminal justice system response better reflects the gravity of more serious and violent incidents of intimate partner violence.

In contrast, it is expected that the proposed reforms will have a disproportionate negative impact on Indigenous IPV offenders, both male and female. The overrepresentation of Indigenous peoples in the criminal justice system, as both offenders and victims, coupled with the specific circumstances surrounding IPV, and most importantly, IPV against Indigenous women, create a set of complex issues.

The proposed reforms will require judges to take IPV against Indigenous women very seriously. While this will likely increase the extent to which the criminal justice system protects most Indigenous female victims of IPV, given the over-representation of Indigenous women as both offenders and victims, it is likely that more Indigenous female IPV victims will be charged notwithstanding primary aggressor policies, absent new training measures/directives for police / Crown (in pre-charge jurisdictions) upon the enactment of Bill C-75. Furthermore, given that Indigenous women are more likely to have male partners who are Indigenous, Bill C-75’s proposals to create a reverse onus on bail and to permit higher sentences for repeat IPV offenders at sentencing may be expected to have a disproportionate impact on Indigenous IPV accused.

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male and convicted offenders. In these situations, Bill C-75 would also require bail courts to consider circumstances of Indigenous accused, and the Criminal Code already requires consideration of this for Indigenous offenders at sentencing. In these instances, courts would be required to balance both requirements after due consideration of all of the circumstances of each case, victim and accused/offender.

Bill C-75 would raise similar considerations for IPV cases involving racialized victims and offenders.

**Human trafficking:** Bill C-75 would bring into force certain amendments originally proposed by Private Member’s Bill C-452. These amendments would facilitate proving human trafficking offences and seizing proceeds of crime related to trafficking offences, which are expected to have a positive impact on human trafficking’s primary victims, women and girls, including Indigenous women and girls, by reducing the instances where they would need to testify against their traffickers and strengthening the ability of the criminal justice system to hold traffickers accountable. Notably, the proposed hybridization of sections 279.02 and 279.03 will not change the applicable sentencing principles, including the fundamental principle of sentencing that requires that a sentence by proportionate to the degree of responsibility of the offender and the seriousness of the offence.

**Preliminary inquiries (sexual violence):** The removal of preliminary inquiries for some sexual assault offences is expected to positively impact women, including Indigenous women, by reducing instances where they would have to testify twice, which research shows they often experience as revictimization.²⁴

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Sentencing Ranges for Specified Indictable Offences that would be Hybridized by Bill C-75*  

*Please note that this list does not contain all of the offences that would be hybridized by Bill C-75, but only a select number of offences for which data is available at this time.

<table>
<thead>
<tr>
<th>Section (s) - Criminal Code</th>
<th>Offence Description</th>
<th>Clause of the Bill</th>
<th>Sentencing Range</th>
<th>Sentences Below 2 Years of Imprisonment</th>
</tr>
</thead>
</table>
| 1 121(1)                    | Frauds on the Government  
(Straight indictable offence currently punishable by a maximum of 5 years of imprisonment) | 33 | Absolute discharge to 5 years imprisonment |  
R v Carson, 2018 ONSC 4250 – 12 month probation order  
R v Gionet, 2009 NBQB 261 – absolute discharge  
R v Deng, 2009 BCPC 248 - $4000 fine  
R v Zinck, 2013 NSSC 338 – 4 months imprisonment, 12 month probation order |
| 2 122                       | Breach of trust by public officer  
(Straight indictable offence currently punishable by a maximum of 5 years of imprisonment) | 35 | $500 fine to 5 years imprisonment |  
R v Bonney, 2018 BCPC 12 – 9 months conditional sentence order  
R v Bispo, 2004 ONCJ 331 – 9 months conditional sentence order and 12 month probation order, which included a restitution order of $9,897.12  
R v Singh, 2007 ABPC 119 – 90 days intermittent prison sentence  
R v Spindor, 2016 BCPC 396 – 2 year probation order as part of a conditional discharge |
| 3 123(1)                    | Municipal Corruption  
(Straight indictable offence currently punishable by a maximum | 36 | 15 months to 2 years imprisonment |  
R v McKita, 1982 BCJ No 2244 – 15 months imprisonment |

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1 Clayton C Ruby, “Sentencing” (2017:) at 1198

May 7, 2019
Sentencing Ranges for Specified Indictable Offences that would be Hybridized by Bill C-75*  

*Please note that this list does not contain all of the offences that would be hybridized by Bill C-75, but only a select number of offences for which data is available at this time.

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| 4 139(2)                   | Obstructing Justice with dissuasion, influence or bribery, or attempts to use such means
                             | (Straight indictable offence currently punishable by a maximum of 10 years of imprisonment) | 47                 | 90 days to 5 years imprisonment          | R v Downey, 2015 NBCA 25 – 6 months imprisonment
                             |                                                                                    |                    |                                          | R v Gardner, 2015 ABPC 8 – 90 days imprisonment, followed by a 2 year probation order
                             |                                                                                    |                    |                                          | R v Kaiswatum, 2019 SKCA 7 – 10 months imprisonment
                             |                                                                                    |                    |                                          | R v Thompson, 2017 NSPC 18 – 18-month probation order as part of a conditional discharge |
| 5 221                      | Cause bodily harm by criminal negligence
                             | (Straight indictable offence currently punishable by a maximum of 10 years of imprisonment) | 76                 | 15 months conditional sentence to 6 years imprisonment | R v Baker, 2006 ONCA 3544 – 15 months less a day conditional sentence order
                             |                                                                                    |                    |                                          | R v Lights, 2017 ONSC 5153 – 12 months imprisonment on two counts of criminal negligence causing bodily harm to be served concurrently. |
| 6 237                      | Infanticide
                             | (Straight indictable offence currently punishable by a maximum                           | 79                 | 3 year probation order to 2 years imprisonment | R v Venditti, 1993 OJ No 1096 – 3 year probation order
                             |                                                                                    |                    |                                          | R v Peter, 1992 OJ No 1626 – 3 year probation order                                                |
Sentencing Ranges for Specified Indictable Offences that would be Hybridized by Bill C-75*  

*Please note that this list does not contain all of the offences that would be hybridized by Bill C-75, but only a select number of offences for which data is available at this time.

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<tr>
<th>Section(s) -</th>
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<tbody>
<tr>
<td>Criminal Code</td>
<td></td>
<td>Bill</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 (Former) 253</td>
<td>Of 5 years of imprisonment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1(a)), 255 (2)*</td>
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</tr>
<tr>
<td></td>
<td>New subsection 320.14(2) and 320.2 as a result of coming-into-force of Bill C-46</td>
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<td></td>
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</tr>
<tr>
<td>7 (Former) 253</td>
<td>Impaired operation causing bodily harm</td>
<td>90</td>
<td>$1250 fine and 2 years probation to 6 years imprisonment</td>
<td></td>
</tr>
<tr>
<td>(1(a)), 255 (2)*</td>
<td>(Was a straight indictable offence currently punishable by a maximum of 10 years of imprisonment; now is a hybrid offence punishable by max 14 years on indictment and 2 years less a day on summary conviction.)</td>
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</tr>
<tr>
<td>8 (Former) 253</td>
<td>Operation &quot;over 80&quot; causing accident resulting in bodily harm</td>
<td>90</td>
<td>$1000 fine and 2 years probation – 5 years imprisonment</td>
<td></td>
</tr>
<tr>
<td>(1)(b), 255 (2.1)*</td>
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**Sentences:**
- *R v Schinkel, 2014 YKTC 42 – 60 days intermittent prison sentence and a 2 year probation order*
- *R v Tahmasebi, 2018 ONCJ 112 – 60 days imprisonment*
- *R v Sittingeagle, 2016 ABPC 97 – fine and probation (quantum of the fine and terms of probation not specified in reported decision)*
- *R v Kawapit, 2013 QCCQ 5935 – suspended sentence and a 2 year probation order*
- *R v Isenhoff, 2014 QCCQ 1961 - $1,250 fine on two counts of impaired causing bodily harm and a 2 year probation order*
- *R v Simpson, 2018 NLS 197 – 4 months imprisonment and a 2 year probation order*
- *R v Marshall, 2018 YKTC 39 - $2,600 fine and a 2 year probation order*
- *R v Kuhl, 2018 YKTC 27 – 90 days imprisonment to be served intermittently and 12 months probation*
Sentencing Ranges for Specified Indictable Offences that would be Hybridized by Bill C-75*

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| coming-into-force of Bill C-46 | by max 14 years on indictment and 2 years less a day on summary conviction. | | | $R c Appaqaq, 2016 QCCQ 7765 - $1000 (per each count (2) - $2000 total) and 2 years probation.  
$R v Lommerse, 2013 YKTC 49 - $1500 fine and 18 months probation |
| 9 279.02(1) | Material benefit (trafficking in persons) (Straight indictable offence currently punishable by a maximum of 10 years of imprisonment) | 104 | 3 months to 5 years imprisonment | $R v Gray, 2018 NSPC 10 – 24 months imprisonment less 14 months pre-sentence credit, after time served was taken into account, as well as 24 month probation order  
$R v AA, [2012] OJ No 6256 – 3 months imprisonment |
| 10 279.03(1) | Withholding/destroying documents – trafficking (Straight indictable offence currently punishable by a maximum of 5 years of imprisonment) | 105 | 6 months to 1 year imprisonment | $R v RRS, 2016 ONSC 2939 – 6 months imprisonment  
$R v Tang, 1999 ABCA 174 – 6 months imprisonment |
| 11 280 | Abduction of person under 16 (Straight indictable offence currently punishable by a maximum | 106 | 68 days to 2 years imprisonment | $R v Thrones, 2009 ONCJ 469 – 68 days intermittent prison sentence and 3 year probation order  
$R v Packham, 2008 NWTSC 97 – 5 months imprisonment |
Sentencing Ranges for Specified Indictable Offences that would be Hybridized by Bill C-75*

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| 12 281                    | Abduction of person under 14 (Straight indictable offence currently punishable by a maximum of 10 years of imprisonment) | 107                | 18 months conditional sentence to a long-term dangerous offender designation (indeterminate incarceration) | *R v Marini, 2014 BCPC 288 – 14 months imprisonment, less 7 months credit for time served, followed by a 3 year probation order  
R v Baksh, 2006 OJ No 2398 – 18 months conditional sentence order after one month credit for pre-sentence custody* |
| 13 286.2(1)               | Material benefit from sexual services (Straight indictable offence currently punishable by a maximum of 10 years of imprisonment) | 109                | 18 months to 2 years imprisonment | *R v Morgan, 2018 ONSC 2007 – 18 months imprisonment and a two year probation order  
R v Gray, 2018 NSPC 10 – 24 months imprisonment less 14 months credit for pre-sentence custody and a 24 month probation order* |
| 14 293.1                  | Forced marriage (Straight indictable offence currently punishable by a maximum of 5 years of imprisonment) | 115                | No cases found |                                        |

May 7, 2019
Sentencing Ranges for Specified Indictable Offences that would be Hybridized by Bill C-75*

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| 15  293.2                   | Marriage under age of 16 years  
(Straight indictable offence currently punishable by a maximum of 5 years of imprisonment) | 115 | No cases found |  |
| 16  435                     | Arson for fraudulent purpose  
(Straight indictable offence currently punishable by a maximum of 10 years of imprisonment) | 163 | Two years less a day conditional sentences to 8 years imprisonment |  
  
  *R v Engram, 2006 NBQB 280 – Conditional sentence of two years less a day*  
  
  *R v Magno, 2011 ONSC 5552 – 8 years imprisonment* |
| 17  436                     | Arson by negligence  
(Straight indictable offence currently punishable by a maximum of 5 years of imprisonment) | 164 | 2 year probation order to 3 years imprisonment |  
  
  *R v Nguyen, 2011 ONSC 6229 – 2 year term of imprisonment*  
  
  *R v Cary, 2016 ONCJ 764 – a 2 year probation order*  
  
  *R v Auger, 2003 ABCA 338 – 1 year imprisonment* |
| 18  467.11                  | Participating in criminal organization | 184 | 4 months to 2 years imprisonment |  
  
  *R v Mastop, 2013 BCSC 738 – 1 year imprisonment*  
  
  *R v Masters, 2014 ONCA 556 – 1 year imprisonment* |
Sentencing Ranges for Specified Indictable Offences that would be Hybridized by Bill C-75*

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<td>(Straight indictable offence currently punishable by a maximum of 5 years of imprisonment)</td>
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<td></td>
<td><em>R v Gordon, 2017 ONSC 428 – 4 months imprisonment</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><em>R c Chicoine, 2012 QCCA 1621 – 8 months imprisonment</em></td>
</tr>
</tbody>
</table>
Examples of “intimate partner” in federal legislation

- Section 110.1 of the *Criminal Code*, which defines “intimate partner” for the purposes of the firearms prohibition orders provisions (sections 109 and 110) as including a “dating partner”, or “partenaire amoureux” in French;

- The *Immigration and Refugee Protection Act Regulations*, which allows a sponsorship application to be approved by an officer, if there is evidence that the sponsor, among other things, has not been convicted of a *Criminal Code* offence that resulted in bodily harm, including to a person “the sponsor is dating or has dated” or, in French, to a person “avec qui il a ou a eu une relation amoureuse” (section 133(1)(ii)(I));

- Bill C-78, *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*, currently before the Standing Senate Committee on Legal and Constitutional Affairs, which proposes to define “family member” to include a “dating partner” or “partenaire amoureux” in French (subclause 1(7), which would amend subsection 2(1) of the *Divorce Act*); and,

- Statistics Canada publications on intimate partner violence (IPV), which define IPV as including violent offences that occur between various types of intimate partners, including “dating partners” or “partenaires amoureux” in French. See, for example: https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54978/02-fra.htm.
Intimate Partner Violence Statistics

Statistics with respect to intimate partner violence (IPV) were provided at pages 16 and 44 of Legislative Background: An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts; however, more recent statistics from 2017 are now available.

In 2017, IPV represented close to one-third (30%) of all police-reported violent crime in Canada, affecting almost 96,000 victims aged 15 to 89. In 13% of cases, the victim was a current or former spouse. In 17% of cases, the victim was a current or former dating partner, and in 1.4% of cases it was another intimate partner. As well, 79% of victims of intimate partner violence were women, and intimate partner violence was the leading type of violence experienced by women.¹

Based on findings from the 2014 General Social Survey on Victimization, Indigenous women (10%) were about three times as likely to report being a victim of spousal violence as non-Indigenous women (3%)².

The available data indicates that all violent crimes are more likely to end in a guilty decision for males, and more likely to end with charges being stayed or withdrawn for females. In 2015/2016, while criminal court cases involving a male accused of a crime of violence most commonly ended with findings of guilt (52%), cases with female accused were most commonly stayed or withdrawn (51%). This data does not, however, break down which cases involved IPV or the practice of dual charging. However, as is the case for male accused, in cases where there is only one accused and one victim, female accused most commonly victimized an intimate partner (36% of cases for females and 41% for males)³.

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² Statistics Canada advises to use this data with caution.
2018 - Adult criminal court processing times, Canada, 2015-2016, Statistics Canada

<table>
<thead>
<tr>
<th>Provincial Court – 2015-2016 data</th>
</tr>
</thead>
<tbody>
<tr>
<td>34,698 (3%) completed charges OR 8,047 (2%) cases with a preliminary inquiry</td>
</tr>
<tr>
<td>A proportion that has slowly decreased over the last 10 years.</td>
</tr>
<tr>
<td>Time to reach final decision</td>
</tr>
<tr>
<td>Number of court appearances to reach final decision</td>
</tr>
<tr>
<td>average number of days between court appearances</td>
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- Approximately 29% of the charges with a preliminary inquiry were related to serious violent offences, such as major assault (7%) and other sexual offences (5%).
- Charges with a preliminary inquiry did not account for a large number (7% or 4,610 charges) of all the charges that were over the Jordan presumptive ceiling in 2015/2016.

<table>
<thead>
<tr>
<th>Superior Court – 2015-2016 data</th>
</tr>
</thead>
<tbody>
<tr>
<td>6,467 superior court charges (or 1,674 (54%) superior court cases) with a preliminary inquiry</td>
</tr>
<tr>
<td>This represents almost half (49%) of all completed superior court charges.</td>
</tr>
<tr>
<td>Time to reach final decision</td>
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- Three-quarters (75%) of the charges in superior court that took more than 30 months to reach a final decision had a preliminary inquiry.
- However, close to half (45%) of the superior court charges that were below the presumptive ceiling also had a preliminary inquiry.
- See https://www.statcan.gc.ca/daily-quotidien/180213/dq180213b-eng.htm


- There were 9,179 completed adult criminal court cases (provincial and superior court cases) that had at least one charge with a preliminary inquiry that was requested and/or held, which has been a consistent trend over the last 10 years.
- Of those cases, 7,432 were completed in less than 30 months, while 1,747 took 30 months or longer to complete. Furthermore, there were also 23,850 completed provincial court cases without a preliminary inquiry that was requested and/or held that took 18 months or longer to complete.
- See https://www.statcan.gc.ca/pub/85-002-x/2017001/article/14699-eng.htm