

**Prostitution Criminal Law Reform:
Bill C-36, the *Protection of Communities and Exploited Persons Act*
In force as of December 6, 2014**

Fact Sheet

Bill C-36, the *Protection of Communities and Exploited Persons Act*, received Royal Assent on November 6, 2014. Bill C-36 treats prostitution as a form of sexual exploitation that disproportionately impacts on women and girls. Its overall objectives are to:

- Protect those who sell their own sexual services;
- Protect communities, and especially children, from the harms caused by prostitution; and
- Reduce the demand for prostitution and its incidence.

The new criminal law regime seeks to protect the dignity and equality of all Canadians by denouncing and prohibiting the purchase of sexual services, the exploitation of the prostitution of others, the development of economic interests in the sexual exploitation of others and the institutionalization of prostitution through commercial enterprises, such as strip clubs, massage parlours and escort agencies that offer sexual services for sale. It also seeks to encourage victims to report incidents of violence to the police and to leave prostitution. Toward that end, \$20 million in new funding has been dedicated to help individuals exit prostitution.

Bill C-36 contains prostitution and human trafficking-related amendments. It also includes an amendment to the *Criminal Code*'s definition of "weapon". These amendments are explained below.

Prostitution Offences

Bill C-36 enacts new prostitution offences and modernizes old ones:

1) Purchasing Offence:

- Obtaining sexual services for consideration, or communicating in any place for that purpose (section 286.1)
- Those who sell their own sexual services are protected from criminal liability for participating in the commission of this offence if the offence relates to their own sexual services (subsection 286.5(2))

Penalty:

Adult victim (subsection 286.1(1))

- Dual procedure offence with maximum penalties of 5 years imprisonment if prosecuted on indictment and 18 months if prosecuted by summary conviction
- Escalating mandatory minimum fines starting at \$500 on summary conviction for a first offence, including higher mandatory minimum fines if the offence is prosecuted by indictment, is a subsequent offence or is committed in a public place that is or is

next to parks, schools, religious institutions or places where children can reasonably be expected to be present

Child victim (subsection 286.1(2))

- Indictable offence with maximum penalty of 10 years imprisonment and mandatory minimum penalties of 6 months imprisonment for a first offence and one year for subsequent offences

Explanation:

This offence criminalizes purchasing sexual services, or communicating in any place for that purpose, for the first time in Canadian criminal law. Since prostitution is a transaction that involves both the purchase and the sale of sexual services, the new purchasing offence makes prostitution illegal; every time the prostitution transaction takes place, an offence is committed by the purchaser.

2) Advertising Offence:

- Knowingly advertising an offer to provide sexual services for consideration (section 286.4)
- Those who sell their own sexual services are protected from criminal liability for committing this offence if they advertise their own sexual services (paragraph 286.5(1)(b)), or for participating in the commission of this offence if the offence relates to their own sexual services (subsection 286.5(2))

Penalty:

- Dual procedure offence with maximum penalties of 5 years imprisonment if prosecuted by indictment and 18 months if prosecuted by summary conviction

Explanation:

This offence criminalizes advertising the sale of sexual services, also for the first time in Canadian criminal law. This new offence applies to individuals who advertise the sale of another person's sexual services, including in print media, on websites or in locations that offer sexual services for sale, such as erotic massage parlours or strip clubs.

The offence also applies to publishers or website administrators, if they know that the advertisement exists and that it is in fact for the sale of sexual services. The new laws also allow the court to order the seizure of materials containing advertisements for the sale of sexual services, as well as their removal from the Internet, regardless of who posted them. However, the new laws protect from criminal liability a person who advertises the sale of their own sexual services.

3) Material Benefit Offence:

- Receiving a financial or other material benefit obtained by or derived from the commission of the purchasing offence (section 286.2)
- Those who sell their own sexual services are protected from criminal liability for committing this offence if the only benefit they receive is from the sale of their own

sexual services (paragraph 286.5(1)(a)), or for participating in the commission of this offence if the offence relates to their own sexual services (subsection 286.5(2))

Penalty:

Adult victim (subsection 286.2(1))

- Indictable offence, with a maximum penalty of 10 years imprisonment

Child victim (subsection 286.2(2))

- Indictable offence, with a maximum penalty of 14 years imprisonment and a mandatory minimum penalty of 2 years imprisonment

Exceptions:

This offence does not prevent those who sell their own sexual services from entering into legitimate family and business relationships, or otherwise interacting with others, on the same basis as anyone else. In this regard, no offence is committed in the following contexts, which are exceptions to the material benefit offence:

- Legitimate living arrangements (e.g., children, spouses, roommates, paragraph 286.2(4)(a));
- Legal or moral obligations (e.g., supporting a disabled parent, gifts, paragraph 286.2(4)(b));
- Goods and services offered to the general public (e.g., accountants, landlords, pharmacists, security companies, paragraph 286.2(4)(c)); and,
- Goods and services offered informally for fair value (e.g., babysitting or protective services, paragraph 286.2(4)(d)).

However, none of these exceptions apply if a person otherwise entitled to one of the exceptions listed above:

- Used, threatened to use or attempted to use violence (paragraph 286.2(5)(a));
- Abused a position of trust, power or authority (paragraph 286.2(5)(b));
- Provided any intoxicating substances to encourage the sale of sexual services (paragraph 286.2(5)(c));
- Engaged in conduct that would amount to procuring (paragraph 286.2(5)(d)); or,
- Received the benefit in the context of a commercial enterprise that offers sexual services for sale (paragraph 286.2(5)(e)).

Explanation:

This offence criminalizes receiving money or other material benefit from the prostitution of others in exploitative circumstances, including in the context of a commercial enterprise that offers sexual services for sale. This means that it is illegal to earn money by owning, managing or working for a commercial enterprise, such as a strip club, massage parlour or escort agency, knowing that sexual services are purchased there.

Since the new law protects from criminal liability those who receive money from the sale of their own sexual services, the material benefit offence does not apply to sellers of sexual services, including when they work together cooperatively and pool resources to pay for legitimate goods or services, provided that they keep only the earnings from

the sale of their own sexual services. In these circumstances, the only person who commits an offence is the purchaser of sexual services.

4) Procuring Offence:

- Procuring a person to offer or provide sexual services for consideration (section 286.3); or,
- For the purpose of facilitating the purchasing offence, recruiting, holding, concealing or harbouring a person who offers or provides sexual services for consideration, or exercising control, direction or influence over the movements of that person (section 286.3)
- Those who sell their own sexual services are protected from criminal liability for participating in the commission of this offence if the offence relates to their own sexual services (subsection 286.5(2))

Penalty:

Adult victim (subsection 286.3(1))

- Indictable offence, with a maximum penalty of 14 years imprisonment

Child victim (subsection 286.3(2))

- Indictable offence with a maximum penalty of 14 years imprisonment and a mandatory minimum penalty of 5 years imprisonment

Explanation:

This offence criminalizes active involvement in the prostitution of others. For example, a person procures another for prostitution if they cause or induce that person to sell sexual services. This distinguishes the procuring offence from the material benefit offence, which requires only passive involvement in the prostitution of others. For example, a “classic pimp” is likely to be guilty of both the procuring offence and the material benefit offence, because the pimp both induces another person to sell sexual services and receives money from the sale of those services. In contrast, a “bouncer”, who works at a strip club, knowing that prostitution takes place there, may only receive money from the sale of sexual services. In such a case, the bouncer would only be guilty of the material benefit offence.

5) Communicating Offence:

- Communicating for the purposes of offering or providing sexual services for consideration in public places that are or are next to school grounds, playgrounds or daycare centres (subsection 213(1.1))

Penalty:

- Summary conviction offence with a maximum penalty of 6 months imprisonment

Explanation:

This offence criminalizes communicating for the purposes of selling sexual services in public places that are or are next to specific locations that are designed for use by children, i.e., school grounds, playgrounds, and daycare centres.

Trafficking in Persons Offences

Bill C-36 harmonizes the penalties imposed for human trafficking and prostitution-related conduct to ensure a consistent response to practices that are linked:

1) Main Trafficking Offences:

- Recruiting, transporting, transferring, receiving, holding, concealing or harbouring a person, or exercising control direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation (sections 279.01 and 279.011)

Penalty:

Adult victim (section 279.01)

- Indictable offence with a maximum penalty of life imprisonment and a mandatory minimum penalty of 5 years if kidnapping, aggravated assault, aggravated sexual assault or death results and a maximum penalty of 14 years and a mandatory minimum penalty of 4 years in all other cases

Child victim (section 279.011)

- Indictable offence with a maximum penalty of life imprisonment and a mandatory minimum penalty of 6 years if kidnapping, aggravated assault, aggravated sexual assault or death results and a maximum penalty of 14 years and a mandatory minimum penalty of 5 years in all other cases

2) Material Benefit Offence:

- Receiving a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of a human trafficking offence (section 279.02)

Penalty:

Adult Victim (subsection 279.02(1))

- Indictable offence with a maximum penalty of 10 years imprisonment

Child Victim (subsection 279.02(2))

- Indictable offence with a maximum penalty of 14 years imprisonment and a mandatory minimum penalty of 2 years

3) Documents Offence:

- Concealing, removing, withholding or destroying travel or identity documents for the purpose of facilitating a human trafficking offence (section 279.03)

Penalty:

Adult Victim (subsection 279.03())

- Indictable offence with a maximum penalty of 5 years imprisonment

Child Victim (subsection 279.02(2))

- Indictable offence with a maximum penalty of 10 years imprisonment and a mandatory minimum penalty of 1 year

Explanation:

Research shows that increased demand for sexual services leads to higher rates of human trafficking for sexual exploitation to meet the demand. Research also shows that the decriminalization of prostitution leads to increased demand for sexual services. The human trafficking offences address the most egregious human rights abuses that take place in the context of prostitution.

Definition of Weapon

Bill C-36 amends the *Criminal Code*'s definition of "weapon" (section 2) to include anything used or intended to be used to restrain a person against their will (e.g., handcuffs, rope, duct tape). This amendment applies to three offences:

- Possession of a weapon with intent to commit an offence (section 88)
- Assault with a weapon (section 267)
- Sexual assault with a weapon (section 272)

Explanation:

A person, who possesses handcuffs, rope, duct tape or other items of restraint with intent to commit an offence, including assault or sexual assault, is guilty of an offence under section 88. A person who uses an item of restraint to commit an assault or sexual assault is guilty of the more serious form of those offences: assault with a weapon or sexual assault with a weapon, as the case may be.

For more information on the law reform implemented by Bill C-36 and the research on which it is based, please see:

<http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/index.html>.