



LEGISLATIVE SUMMARY

BILL C-23: AN ACT TO AMEND THE CRIMINAL CODE AND THE IDENTIFICATION OF CRIMINALS ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS (COVID-19 RESPONSE AND OTHER MEASURES)

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Legislative Summary of Bill C-23
(Legislative Summary)

Publication No. 43-2-C23-E

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LEGISLATIVE SUMMARY OF BILL C-23: AN ACT TO AMEND THE CRIMINAL CODE AND THE IDENTIFICATION OF CRIMINALS ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS (COVID-19 RESPONSE AND OTHER MEASURES)

1 BACKGROUND

On 24 February 2021, the Honourable David Lametti, Minister of Justice and Attorney General of Canada, introduced Bill C-23, An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures) in the House of Commons.¹

Bill C-23 aims to increase the efficiency, effectiveness and accessibility of the criminal justice system in response to the challenges posed by the COVID-19 pandemic. According to the federal government, it will “give courts flexibility in how they hold criminal proceedings and issue orders.”² In particular, the bill:

- allows law enforcement officers to obtain warrants by telecommunication (i.e., “telewarrants”) in a wider range of circumstances;
- clarifies and broadens the circumstances under which accused individuals, offenders and others involved in criminal proceedings may appear by audioconference or videoconference;
- permits prospective jurors to appear by videoconference during the jury selection process and provides for jury selection via electronic or other automated means;
- allows courts to compel the attendance of an accused or offender for fingerprinting or other identification measures in certain additional circumstances;
- removes restrictions on the development of case management rules for accused individuals not represented by counsel; and
- makes a number of technical amendments to correct minor errors and simplify the language in the *Criminal Code* (the Code).³

Bill C-23 follows other pre-pandemic efforts to modernize the criminal justice system and reduce delays in court proceedings. Most notably, the bill is preceded by Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, which received Royal Assent on 21 June 2019.⁴ Bill C-75 was intended to make the criminal justice system more efficient in response to the decisions of the Supreme Court of Canada in

R. v. Jordan and *R. v. Cody*, and the final report of the Standing Senate Committee on Legal and Constitutional Affairs, *Delaying Justice Is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada*.⁵ Bill C-23 includes a number of minor technical amendments to address issues identified during the implementation of Bill C-75.⁶

While delays in the criminal justice system were already a serious concern prior to the COVID-19 pandemic, the pandemic and related public health measures have significantly exacerbated the problem. In March 2020, at the outset of the pandemic, courts across Canada suspended regular operations, most of them adjourning criminal matters involving out-of-custody accused until May 2020 or later.⁷ Jury trials in some jurisdictions were postponed for much longer.⁸ Courts have adapted both their physical spaces and their practices in various ways to overcome the challenges of the pandemic, for example, by allowing documents to be filed electronically and by conducting proceedings remotely whenever possible.⁹ However, such efforts have been limited by statutory and other barriers, such as the requirement that the accused be physically present in court for any part of a trial in which evidence is being taken.¹⁰ Bill C-23 addresses some of these barriers, and it facilitates the use of new technologies and practices within the criminal justice system.

2 DESCRIPTION AND ANALYSIS

Bill C-23 contains 77 clauses. Key clauses are discussed in the following section.

2.1 AMENDMENTS TO THE *CRIMINAL CODE* (CLAUSES 1 TO 59)

2.1.1 Warrants and Telewarrants (Clauses 5, 9, 11, 17, 19 to 23, 33 and 55)

Unlike an application for a regular warrant, a telewarrant application does not require the officer to appear in person before a judge or justice. A number of current provisions under the Code require an officer applying for a telewarrant to state why it would be impracticable to appear in person before a judge or justice to obtain the warrant. This can include describing what efforts were made to make a personal appearance possible, including verifying whether a judge or justice is available. The term “impracticable” can be defined as “something less than impossible” and relies on “what may be termed common sense.”¹¹ Failure to demonstrate an officer’s efforts to confirm whether a judge or justice is available for an in-person application can invalidate a telewarrant.¹²

Bill C-23 amends or repeals numerous provisions related to warrants, telewarrants and telecommunications. Some of the changes are comparatively minor and serve primarily to modernize or update the language currently used, for example, removing

references to faxes. One key difference is the repeal or amendment of requirements to justify making a warrant application by telecommunication instead of making an in-person application. This effectively normalizes the use of telecommunication when applying for a warrant in certain cases, instead of treating it as a secondary procedural option or an exception.

In the bill, the term “telewarrant” is replaced with warrant applied for “by means of telecommunication.” The term “telewarrant” is used here when referring to existing provisions. References to relevant amended or new provisions use the term “warrant” to reflect the language of the bill.

2.1.1.1 Warrants and Telecommunication: Application
(Clauses 17 and 21 to 23)

Currently under the Code, an officer who believes an indictable offence has occurred may apply for a search warrant (section 487) or telewarrant (section 487.1) to authorize the search of a “place” for a “thing” related to the offence and to seize it.

Clause 21 amends section 487.1 to create a new process that permits the use of telecommunication to apply for and issue a variety of warrants, authorizations and orders.

The appendix to this document contains a table that lists the various types of applications for warrants or orders that may now be submitted by a means of telecommunication.

As with the current provisions, the new process in amended section 487.1 distinguishes between telecommunications that produce a writing (such as email) and those that do not (such as a telephone or video call) when applying for a warrant or order. Additional procedural steps are included for the use of telecommunications that do not produce a writing, mirroring the existing steps for applications submitted by telephone. In addition, the bill removes existing references to telephones and faxes, and instead refers to more general “means of telecommunication.”

The bill preserves current alternatives to swearing an oath in person when applying for a warrant using telecommunication, when required. An application made via telecommunication that produces a writing may include a written statement as to the truth of the application’s contents, which will be deemed to be a statement made under oath (amended section 487.1(2)). Where the application is made via telecommunication that does not produce a writing, any required oath may also be sworn via telecommunication (amended section 487.1(7)).

Under the new process, an applicant may use a means of telecommunication that does not produce a writing only if it is impracticable to use a means of telecommunication that does (amended section 487.1(5)). The applicant must also include a statement

justifying that choice (amended section 487.1(6)). While the current provisions draw some procedural distinctions between telecommunications that produce a writing and those that do not, this specific requirement is new. The application may be denied absent reasonable grounds to use telecommunication that does not produce a writing (amended section 487.1(9)). A judge or justice must record such applications verbatim, either in writing or by other means (amended section 487.1(8)). If the application is approved, a judge or justice may issue the warrant or order using the same type of telecommunication used by the applicant. If the application was made using a form of telecommunication that does not produce a writing, the judge or justice will direct the applicant to transcribe the approved warrant or order (amended section 487.1(10)).

Clause 17 adds new section 487.02(2) which allows for an order to provide assistance with a warrant or authorization or an order to intercept private communication to also be issued by telecommunication.

The existing restriction on publishing, broadcasting or transmitting information related to a search warrant or telewarrant is removed for warrants issued by telecommunication (section 487.2 as amended by clause 22). Clause 23 amends section 488(a) to provide that a warrant issued via telecommunication under section 487.1 may be executed either by day or by night. Currently, a warrant under section 487 or telewarrant issued under section 487.1 may only be executed by night if specifically authorized under that warrant or telewarrant. The restriction still applies to warrants applied for in person.

2.1.1.2 Warrants: Bodily Substances, Fingerprints and Other Types of Prints
(Clauses 9, 19 and 20)

The current requirement to justify the use of a telewarrant instead of an in-person warrant is repealed, and the new process established under section 487.1 applies to:

- warrants to take bodily substances for forensic DNA analysis (section 487.05(3), clause 19); and
- warrants to obtain fingerprints, footprints, teeth impressions or other types of prints or impressions of a body part (section 487.092(4), clause 20).

Clause 9 amends section 320.29 to remove references to telephones or telecommunication when applying for a warrant to obtain blood samples to determine blood alcohol or blood drug concentration. The option to use telecommunication when submitting an application for this type of warrant is now provided under section 487.1(1).

2.1.1.3 Warrants: Arrest
(Clause 33)

Clause 33 amends section 529.5 by removing references to telephones and to the impracticability of appearing in person for arrest warrants, warrants to enter a house to arrest a person or warrants to enter a house unannounced. The existing section 487.1 currently applies to these types of warrants. The new process under amended section 487.1 also covers applications for these types of warrants via all means of telecommunication.

2.1.1.4 Warrants: Wiretaps
(Clause 5)

Clause 5 amends the procedural steps for warrants to intercept a private communication (under section 184.3). An officer may now apply using telecommunication that produces a writing for the following (amended section 184.3(1)):

- a warrant for a third-party wiretap (section 185(1));
- a warrant for covert removal of a wiretap device after expiration of the original warrant (section 186(5.2));
- an extension of a third-party wiretap (section 185(2));
- an extension of the period before required written notification to a target of a wiretap (sections 196(2) and 196.1(2)); and
- the renewal of a warrant for a wiretap (section 186(6)).

An officer may now apply for a warrant via telecommunication that does or does not produce a writing for the following:

- a warrant for a wiretap of a private communication with consent from a participant (section 184.2(2)); and
- a warrant for an emergency wiretap (section 188(1)).

The remaining amended procedural steps for a wiretap application are very similar to those established in the new process under section 487.1 (amended sections 184.3(3) to 184.3(8)).

Bill C-23 also removes the current 36-hour expiration limit on telewarrants for wiretaps with consent from a participant (current section 184.3(6)).

2.1.1.5 Duties when Executing: Warrants and Notices
(Clauses 11, 21 and 55)

Current sections 487.1(7) and 487.1(8) require an officer executing a telewarrant issued under section 487.1 to provide a fax of the warrant to a person who is present and in control of the property. If no one present fits that description, the officer must post the faxed warrant on the property. The bill removes this requirement from the new application process for warrants using telecommunication in amended section 487.1.

Bill C-23 preserves the requirement for an officer to provide or post a copy of the warrant when executing certain types of warrants, but makes no reference to faxes. In some circumstances, it adds a requirement to also provide a notice (amended Form 5.1, clause 55) that provides the address of the court from which to get a copy of the report filed by the person who executed the warrant. The report lists the property seized, if any, and the location at which this property is being held. The current notice form includes the details of the warrant, including the offence, the things to be searched for and the place to be searched. These details are not included in the amended notice form.

Clause 21 adds new section 487.093(1), which extends the requirements to provide a copy of the warrant and a notice in relation to any search for weapons or ammunition (section 117.04(1)), illegal betting (section 199(1)), valuable minerals (section 395(1)) or warrants not applied for using telecommunication (section 487(1)). This new requirement does not apply if the warrant relates to the search of anything that has already been seized (new section 487.093(2)). If the warrant is for the search of a person relating to the possession of valuable minerals, the person executing the warrant must provide the person to be searched with a copy of the warrant and the notice (new section 487.093(1)(c)).

Clause 11 amends section 462.32(4) by adding an identical requirement to provide or post a warrant and a notice when executing a warrant for the search, seizure and detention of proceeds of crime. Currently, the person who executes a warrant must provide a copy of a report that lists the property seized to the owner and other individuals who have an interest in that property (section 462.32(4)(c)), upon request. The bill removes the responsibility of the person executing the warrant to provide a copy of the report beyond filing it with the court, and instead places the onus on the interested party to request a copy from the court.

Similarly, an officer executing a warrant for a blood sample to determine drug or alcohol concentration is now required to provide a copy of the warrant and notice as soon as is practicable to the person giving the sample (amended section 320.29(5)). This amendment replaces the existing requirement to provide only a copy of the warrant, or in the case of a warrant issued by telephone or other type of telecommunication, a fax of the warrant.

2.1.2 Case Management of Unrepresented Accused (Clause 12)

Currently under the Code, courts are granted the power to make rules about the procedure to be followed in criminal proceedings (section 482), as well as rules for case management (section 482.1). The latter expressly includes the power to make rules permitting court staff to deal with administrative matters relating to proceedings out of court, but only where the accused is represented by counsel (section 482.1(1)(b)). Bill C-23 eliminates the requirement for the accused to be represented by counsel under this section. It thereby opens the door for court staff to assist unrepresented accused with administrative matters.

2.1.3 Attendance by Audioconference or Videoconference (Clauses 13, 29, 31, 34, 36, 38, 42 to 48 and 50 to 52)

Bill C-23 amends or replaces a number of sections of the Code that deal with the remote attendance of accused individuals (i.e., individuals charged with a criminal offence), offenders (i.e., individuals convicted of a criminal offence) and others at criminal proceedings. The principal amendments are found in clause 45, which replaces current sections 715.23 and 715.24 with a more detailed set of provisions relating to remote attendance. Some of the new provisions clarify the language and/or broaden the application of existing provisions, while others are entirely new to the Code.

2.1.3.1 Accused Individuals and Offenders (Clauses 34, 36, 38, 45 and 51)

There are currently a number of sections throughout the Code that provide for the appearance of an accused either by counsel or by closed-circuit television or videoconference at different types of proceedings. For several of these sections, Bill C-23 effectively replaces the portion dealing with appearances by closed-circuit television or videoconference with new sections 715.231 to 715.241. These new sections set out the circumstances under which a court may allow an accused or offender to appear by audioconference or videoconference at different types of proceedings. The new sections do not refer to closed-circuit television.

Currently under sections 650(1), 650(1.1) and 650(1.2) of the Code, an accused is required to “be present in court during the whole of his or her trial,” subject to certain exceptions that permit an accused to appear by counsel (if not in prison) or by closed-circuit television or videoconference for parts of the trial in which evidence is not being taken. For an accused not in prison, such an appearance requires the agreement of the prosecutor and the accused. Section 537(1)(j) gives a justice at a preliminary inquiry the power to allow an accused to appear by counsel or by closed-circuit television or videoconference under similar conditions.

Amended section 650(1) preserves the requirement that an accused be present in court throughout a trial, but specifies that the accused’s presence may be either in person or by audioconference or videoconference, where authorized under sections 715.231 to 715.241 (clause 38).

Amended sections 650(1.1) and 537(1)(j) preserve the existing conditions for appearing by counsel at trial and at a preliminary inquiry, respectively. However, the portions of these sections dealing with appearances by closed-circuit television or videoconference are eliminated, as they are now dealt with under sections 715.231 to 715.241 (clauses 38 and 34(1)).

Currently, section 715.23(1) of the Code gives a court the power to order an accused to appear by audioconference or videoconference, and sets out a list of factors to consider in determining whether such an order is appropriate. New section 715.23 sets out the same list of factors but applies more broadly whenever the court makes “a determination to allow or require an accused or offender to appear by audioconference or videoconference under any of sections 715.231 to 715.241” (clause 45).

Table 1 presents the new sections setting out the circumstances under which an accused or offender may be allowed to appear remotely.

Table 1 – Remote Appearances by Accused and Offenders

New Section of the <i>Criminal Code</i> (Clause 45 of Bill-23)	Type of Proceeding	Appearance by Videoconference	Appearance by Audioconference	Related Sections of the <i>Criminal Code</i>
s. 715.231	Preliminary inquiry	Court may allow, with consent of prosecutor and accused.	No express power to allow.	<ul style="list-style-type: none"> ▪ Replaces a portion of section 537(1)(j) that is eliminated by clause 34(1). ▪ Subject to new section 715.241, under which court may allow or require an accused in custody with access to legal advice to appear by videoconference, except when evidence is being taken.

New Section of the <i>Criminal Code</i> (Clause 45 of Bill-23)	Type of Proceeding	Appearance by Videoconference	Appearance by Audioconference	Related Sections of the <i>Criminal Code</i>
s. 715.232	Trial for a summary conviction offence	Court may allow, with consent of: a) accused and prosecutor, if accused is not in custody; or b) accused, if accused is in custody.	No express power to allow.	<ul style="list-style-type: none"> ▪ Replaces section 800(2.1), which is repealed by clause 51(2). ▪ Subject to new section 715.241, under which court may allow or require an accused in custody with access to legal advice to appear by videoconference, except when evidence is being taken.
s. 715.233	Trial for an indictable offence	Court may allow, with consent of prosecutor and accused, except when evidence is being presented to a jury.	No express power to allow.	<ul style="list-style-type: none"> ▪ Replaces section 650(1.2) and a portion of section 650(1.1), which are eliminated by clause 38. ▪ Subject to new section 715.241, under which court may allow or require an accused in custody with access to legal advice to appear by videoconference, except when evidence is being taken.
s. 715.234	Plea	Court may allow, with consent of prosecutor and accused.	Court may allow, with consent of prosecutor and accused, if court is satisfied that: a) videoconferencing is not readily available; and b) court will still be able to inquire into conditions for accepting plea.	<ul style="list-style-type: none"> ▪ Replaces section 606(5), which is repealed by clause 36.
s. 715.235	Sentencing	Court may allow, with consent of prosecutor and accused.	Court may allow, with consent of prosecutor and accused, if videoconferencing is not readily available.	<ul style="list-style-type: none"> ▪ None.

New Section of the <i>Criminal Code</i> (Clause 45 of Bill-23)	Type of Proceeding	Appearance by Videoconference	Appearance by Audioconference	Related Sections of the <i>Criminal Code</i>
s. 715.24	Other proceedings not expressly provided for	Court may allow.	Court may allow.	▪ None.

Sources: Table prepared by the Library of Parliament using data obtained from [Bill C-23, An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts \(COVID-19 response and other measures\)](#), 43rd Parliament, 2nd Session; and [Criminal Code](#), R.S.C. 1985, c. C-46.

As shown in the table, remote appearances continue to require the consent of the prosecutor and the accused in most cases. However, an accused may now appear remotely at a trial even when evidence is being taken, unless the evidence is being presented to a jury in a trial for an indictable offence (new section 715.233). In addition, remote appearances at sentencing proceedings are now expressly provided for under the Code (new section 715.235).

Bill C-23 also broadens the protections afforded to accused individuals with regard to remote appearances. Currently, section 715.24 of the Code ensures that an accused in prison and without access to legal advice is only allowed to appear by videoconference if the court is satisfied that they will be able to understand the proceedings and make voluntary decisions. This section is replaced by new section 715.242, which extends the relevant protection to all accused people and offenders. Similarly, the protection of the right of a represented accused in prison to communicate privately with counsel when appearing remotely under current sections 537(1)(k), 650(1.2) and 800(2.1) is extended to include all represented accused people and offenders under new section 715.243.

Clause 34(2) also repeals paragraph (k) of section 537(1), which gives justices the power to require an accused in prison to appear by closed-circuit television or videoconference at a preliminary inquiry under certain conditions. Under new section 715.241, this may only be required where the accused has access to legal advice (in addition to the existing conditions), though it can now also occur at trial.

2.1.3.2 Remote Attendance by Others and Generally
(Clauses 13, 29, 31, 42 to 46, 48 and 50 to 52)

Clause 46 amends section 715.25, which addresses the presence in court of other “participants,” such as counsel, court support workers or members of the public. The definition of a “participant” excludes an accused, a witness, a juror and a judge or justice, and is amended to also exclude an offender. Under the amended section, a court may now “allow” rather than “order” a participant to join a proceeding by audioconference or videoconference, where appropriate.

Currently, a court must give reasons for denying a request from an accused (section 715.23(2)) or a participant (as defined above) (section 715.25(3)) to attend a proceeding by audioconference or videoconference. The Code also provides that a court may halt the participation of an accused or a participant via these technologies at any time (sections 715.23(3) and 715.25(4)). New sections 715.221 and 715.222 replace these four sections with two more broadly worded ones that apply to anyone seeking to attend or attending court via audioconference or videoconference (clauses 45 and 46). Consequently, these sections now apply to witnesses, jurors, judges and justices.

Clause 50 renders Part XXII.01 of the Code, which deals with remote attendance and includes new sections 715.21 to 715.27, applicable to summary conviction proceedings under Part XXVII.

Bill C-23 also clarifies the distinction between appearing “personally” versus “in person” in a number of sections throughout the Code. While these terms are not expressly defined in the bill or the Code, the plain meaning, statutory context and some jurisprudence indicate that “in person” refers to being physically present, whereas “personally” refers to being present in some form (whether in person or via telecommunication), rather than appearing by counsel only.¹³ Bill C-23 substitutes one term for another in a number of sections to more accurately reflect this distinction, clarify which term applies and/or ensure equivalent wording in the English and French versions of the Act (amended sections 502.1(1), 502.1(4), 502.1(5), 515(2.2), 688(2.1), 714.1(b), 715.21, 715.23(b), 774.1, 800(2) and 817(2)). For the most part, these amendments clarify that those involved in criminal proceedings should be present in person, unless otherwise provided for.

Clause 13 also amends section 485(1.1) of the Code to clarify that jurisdiction over an accused is not lost where the accused fails to appear either personally or in person, so long as either option is permitted under another provision of the Code.

2.1.3.3 Appearance of Prospective Jurors During Jury Selection (Clause 47)

Clause 47 adds new section 715.27 to the part of the Code that deals with remote attendance. This gives courts the power to allow or require prospective jurors to participate in the jury selection process by videoconference where appropriate, with the consent of the prosecutor and the accused.

New section 715.27(2) sets out a list of circumstances for the court to consider in determining whether participation by videoconference is appropriate. Participation by videoconference may only be required if the court provides prospective jurors with an approved location from which they can do so; otherwise jurors retain the option to appear in person (sections 715.27(3) and 715.27(4)).

2.1.4 Electronic Jury Selection (Clause 37)

Currently, section 631 of the Code sets out a process for selecting a jury from a pool of prospective jurors by drawing name cards from a box. Clause 37 adds new section 631.1, which allows for a jury to be randomly selected by “electronic or other automated means.” This provides statutory authority for selecting a jury via a computer-generated list.

2.1.5 Identification Measures Under the *Identification of Criminals Act* (Clauses 14, 27, 28, 30, 32, 56 and 58)

2.1.5.1 Background

Under the *Identification of Criminals Act*,¹⁴ an accused or offender who meets certain criteria may be subject to fingerprinting or other identification measures. Under the Code, an accused who is not in custody may be ordered to appear for the purposes of the *Identification of Criminals Act* via an appearance notice (section 500(3)) or undertaking (section 501(4)), or as part of a summons requiring their attendance in court (section 509(5)).

Since the outset of the COVID-19 pandemic, many accused have been unable to attend for fingerprinting on the date they were initially required to do so. This has created a problem, since there is no provision expressly authorizing a court to compel the attendance of an accused or offender for fingerprinting where the initial date is missed. According to a 1983 court decision from Manitoba, a summons compelling attendance for the purposes of the *Identification of Criminals Act* only (rather than as part of a summons to attend court) is unlawful.¹⁵ In a more recent case dealing with several accused who had failed to present themselves for fingerprinting during the pandemic, an Ontario court did find it had the authority to issue a summons for this purpose under section 512(1) of the Code¹⁶ (contrary to the Manitoba decision). Section 512(1) gives justices the residual discretion to issue a summons where necessary in the public interest. However, the court found that section 512(1) could not be relied upon to issue a summons for identification purposes to a convicted offender.

2.1.5.2 Amendments

Bill C-23 provides a court with clear and express authority to compel the attendance of an accused or offender for the purposes of the *Identification of Criminals Act* in two scenarios.

First, clause 14 adds new section 485.2 to the Code, which gives a justice or judge the power, on application, to issue a summons to an accused or offender for the purposes of the *Identification of Criminals Act*, if identification measures were not completed at a previously required appearance for exceptional reasons (section 485.2(1)). This power

applies only when the matter to which the previously required appearance relates is ongoing (section 485.2(2)). The application can be made by telecommunication, but must be in writing and must state the reasons why the identification measures were not previously completed (sections 485.2(1), 485.2(3) and 485.2(5)). Clause 56 adds two new forms for the purposes of this new section of the Code: Form 6.1 to apply for a summons and Form 6.2 for the summons itself.

Clause 32 adds section 515.01 to the portion of the Code that deals with judicial interim release (commonly referred as “bail”). This new section gives a judge or justice the power to order an accused to appear for the purposes of the *Identification of Criminals Act* when making a judicial interim release order. Clause 58 adds a new form (Form 11.1) for this purpose.

Clauses 27, 28 and 30 amend sections 500(3), 501(4) and 509(5), respectively, which set out the existing means and criteria according to which an accused may be required to appear for identification purposes. These sections now refer directly to section 2(1)(c) of the *Identification of Criminals Act*, which is also amended by Bill C-23 (see section 2.2 of this publication below).

2.1.6 Other Amendments

2.1.6.1 Secondary Designated Offences (Clause 18)

The definitions of primary and secondary designated offences are set out in section 487.04 of the Code, along with lists of these types of offences. For most primary designated offences, an offender will be ordered to provide a DNA sample (section 487.051(1)). For secondary designated offences prosecuted by indictment, an offender may be ordered to provide a DNA sample if certain criteria are met (section 487.051(3)). Clause 18 amends section 487.04(c)(iv.4) to remove “infanticide” from the definition of secondary designated offences.

2.1.6.2 Appeals: Remedies (Clause 41)

Clause 41 rectifies a previous omission in the Code relating to appeals for:

- interim release (section 522);
- cancellation of a release order, undertaking, appearance notice, summons or order to be detained in custody, or issuance of a new release order without conditions (sections 524(3) to 524(5));
- stay of order (following conviction) pending appeal (section 320); and
- release from custody pending appeal (section 679).

The Code currently does not provide any remedies for when a court does not confirm a decision on appeal. Amended section 680(1) adds two: a court may either vary the original decision or substitute the decision with the one that should have been made.

2.2 AMENDMENTS TO THE *IDENTIFICATION OF CRIMINALS ACT*
(CLAUSE 60)

The principal change made to the *Identification of Criminals Act* is an amendment to section 2(1)(c), which sets out the types of offences for which a person may be required to appear for identification purposes under the amended Code. This now includes hybrid offences in addition to indictable offences, but excludes ticketable offences under the *Cannabis Act* (clause 60).

2.3 RELATED AMENDMENTS TO OTHER ACTS
(CLAUSES 61 TO 73)

Numerous Acts in addition to the Code currently include provisions that authorize the use of telewarrants in certain circumstances. Bill C-23 amends each of these provisions to authorize the general use of telecommunication when applying for and issuing a warrant. The new process outlined in amended section 487.1 of the Code applies to warrants submitted and issued under these Acts via telecommunication.

Table 2 presents the Acts with amended sections related to warrants and telecommunication.

Table 2 – Amendments Related to Warrants and Telecommunication

Clause of Bill C-23	Act	Amended Section
cl. 61	<i>Food and Drugs Act</i>	s. 23(12)
cl. 62	<i>Hazardous Products Act</i>	s. 22.1(4)
cl. 63	<i>Pilotage Act</i>	s. 46.13(4)
cl. 64	<i>Controlled Drugs and Substances Act</i>	s. 11(4) A requirement to provide or post a copy of the warrant and a Form 5.1 notice also applies.
cl. 65	<i>Tobacco and Vaping Products Act</i>	s. 36(4)
cl. 66	<i>Canada Elections Act</i>	s. 175(9)
cl. 67	<i>Pest Control Products Act</i>	s. 49(4)
cl. 68	<i>Human Pathogens and Toxins Act</i>	s. 42(4)
cl. 69	<i>Canada Consumer Product Safety Act</i>	s. 22(4)
cl. 70	<i>Safe Food for Canadians Act</i>	s. 26(4)

Clause of Bill C-23	Act	Amended Section
cls. 71 and 72	<i>Cannabis Act</i>	ss. 86(10) and 87 A requirement to provide or post a copy of the warrant and a Form 5.1 notice also applies.
cl. 73	<i>Wrecked, Abandoned or Hazardous Vessels Act</i>	s. 75(4)

Source: Table prepared by the Library of Parliament using data obtained from [Bill C-23, An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts \(COVID-19 response and other measures\)](#), 43rd Parliament, 2nd Session.

2.4 TRANSITIONAL AND COORDINATING PROVISIONS (CLAUSES 74 TO 77)

Upon receiving Royal Assent, Bill C-23 applies to all ongoing proceedings (clause 74). However, the current version of the Code continues to apply to certain authorizations and warrants issued or applied for before the bill receives Royal Assent (clause 75(1)). Similarly, the current versions of provisions under other Acts amended by Bill C-23 continue to apply to pending telewarrant applications made under those Acts (clause 75(2)).

The current version of section 489.1 of the Code, which deals with the restitution of property, also continues to apply to anything seized under a warrant for which the application was made before the date Bill C-23 receives Royal Assent (clause 76).

Clause 77 of Bill C-23 contains coordinating amendments to amend the Code should Bill C-21, An Act to amend certain Acts and to make certain consequential amendments (firearms)¹⁷ also receive Royal Assent. In particular, clause 77 of the bill ensures that the duty of those executing warrants set out in new section 487.093(1) of the Code and the authority to apply for a warrant via telecommunication set out in amended section 487.1 apply to certain new warrants created by Bill C-21.

NOTES

1. [Bill C-23, An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts \(COVID-19 response and other measures\)](#), 43rd Parliament, 2nd Session.
2. Department of Justice Canada, [Responding to the impacts of the COVID-19 pandemic, Government of Canada proposes changes to the Criminal Code and other related laws to improve effectiveness of criminal justice system](#), News release, 24 February 2021.
3. [Criminal Code](#), R.S.C. 1985, c. C-46.
4. [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](#), 42nd Parliament, 1st Session (S.C. 2019, c. 25).

5. [R. v. Jordan](#), 2016 SCC 27; [R. v. Cody](#), 2017 SCC 31; and Senate, Standing Committee on Legal and Constitutional Affairs, [Delaying Justice Is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada](#), Final report, June 2017, cited in Laura Barnett et al., [Legislative Summary 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](#), Publication no. 42-1-C75-E, Library of Parliament, 25 July 2019.
6. Department of Justice Canada, [Responding to the impacts of the COVID-19 pandemic. Government of Canada proposes changes to the Criminal Code and other related laws to improve effectiveness of criminal justice system](#), News release, 24 February 2021.
7. Palma Paciocco, [“Trial Delay Caused by Discrete Systemwide Events: The Post-Jordan Era Meets the Age of COVID-19,”](#) *Osgoode Hall Law Journal*, Vol. 57, No. 3, 2021, pp. 841–845.
8. See, for example, The Canadian Press, [“Ontario courts urged to limit in-person proceedings in light of new COVID-19 measures,”](#) *CBC News*, 14 January 2021; and Blair Rhodes, [“COVID-19 creates further complications for jury trials in Halifax,”](#) *CBC News*, 23 October 2020.
9. See, for example, Elizabeth Raymer, [“Pandemic will aid in use of more technology in future, says Canada’s chief justice,”](#) *Canadian Lawyer*, 29 May 2020; and Maria Rosa Muia, [“Realities of criminal Zoom court,”](#) *The Lawyer’s Daily*, 4 February 2021.
10. [Criminal Code](#), R.S.C. 1985, c. C-46, s. 650; and Palma Paciocco, [“Trial Delay Caused by Discrete Systemwide Events: The Post-Jordan Era Meets the Age of COVID-19,”](#) *Osgoode Hall Law Journal*, Vol. 57, No. 3, 2021, p. 843.
11. [R. v. Erickson](#), 2003 BCCA 693 (CanLII), para. 33.
12. [R. v. Ling](#), 2009 BCCA 70 (CanLII), para. 16.
13. See, for example, [Canada v. BCS Group Business Services Inc.](#), 2020 FCA 205 (CanLII), para. 22; and [R. v. Schick](#), 1920 CanLII 259 (SK QB), para. 7. In the recent case of [Woods \(Re\)](#), 2021 ONCA 190 (CanLII), the Ontario Court of Appeal interpreted the term “personally” in section 715.21 of the *Criminal Code* to mean being physically present. See [Woods \(Re\), 2021 ONCA 190 \(CanLII\)](#) paras. 25 and 57. It should be noted, however, that Bill C-23 amends this section to say “in person” rather than “personally.”
14. [Identification of Criminals Act](#), R.S.C. 1985, c. I-1.
15. [R. v. Michelsen](#), 1983 CanLII 3564 (MB QB).
16. [R. v. Chevalier](#), 2020 ONCJ 514 (CanLII).
17. [Bill -21, An Act to amend certain Acts and to make consequential amendments \(firearms\)](#), 43rd Parliament, 2nd Session.

APPENDIX A – WARRANTS AND ORDERS THAT MAY BE APPLIED FOR USING TELECOMMUNICATION

Table A.1 – Types of Warrants and Orders that May Be Applied for Using Telecommunication

Amended Section 487.1(1) of the <i>Criminal Code</i> (Clause 21 of Bill C-23)	<i>Criminal Code</i> Section	Warrant or Order
s. 487.1(1)(a)	s. 83.222(1)	Warrant for the seizure of copies of terrorist propaganda publications for sale or distribution.
s. 487.1(1)(b)	s. 83.223(1)	Order for the custodian of a computer system that stores and makes available terrorist propaganda to: <ul style="list-style-type: none"> ▪ give an electronic copy of the material to the court; ▪ ensure that the material is no longer stored on and made available through the computer system; and ▪ provide information to identify and locate the person who posted the material.
s. 87.1(1)(c)	s. 117.04(1)	Warrant for the seizure of a weapon, prohibited device, ammunition, prohibited ammunition or explosive substance.
s. 487.1(1)(d)	s. 164(1)	Warrant for the seizure of copies of voyeuristic recordings, intimate images, obscene publications, child pornography or advertisements of sexual services.
s. 487.1(1)(e)	s. 164.1(1)	Order for the custodian of a computer system that stores and makes available voyeuristic recordings, intimate images, child pornography or advertisements of sexual services to: <ul style="list-style-type: none"> ▪ give an electronic copy of the material to the court; ▪ ensure that the material is no longer stored on and made available through the computer system; and ▪ provide information to identify and locate the person who posted the material.

Amended Section 487.1(1) of the <i>Criminal Code</i> (Clause 21 of Bill C-23)	<i>Criminal Code</i> Section	Warrant or Order
s. 487.1(1)(f)	s. 320(1)	Warrant for the seizure of copies of hate propaganda publications for sale or distribution.
s. 487.1(1)(g)	s. 320.1(1)	Order for the custodian of a computer system that stores and makes available hate propaganda to: <ul style="list-style-type: none"> ▪ give an electronic copy of the material to the court; ▪ ensure that the material is no longer stored on and made available through the computer system; and ▪ provide information to identify and locate the person who posted the material.
s. 487.1(1)(h)	s. 320.29(1)	Warrant to obtain blood samples to determine blood alcohol or blood drug concentration.
s. 487.1(1)(i)	s. 395(1)	Warrant to search for valuable minerals.
s. 487.1(1)(j)	s. 462.32(1)	Warrant for the seizure of proceeds of crime.
s. 487.1(1)(k)	s. 462.33(3)	Restraint order prohibiting the disposal or altering of property.
s. 487.1(1)(l)	s. 487(1)	Warrant to search for and seize evidence related to the commission of an offence.
s. 487.1(1)(m)	s. 487.01(1)	General warrant to use a particular device, investigative technique or procedure, as long as it does not authorize the observation of a person by means of a television camera or other similar electronic device.
s. 487.1(1)(n)	s. 487.01(5.2)	Extension to a general warrant issued under section 487.01(1). The application must be submitted by means that produce a writing (new section 487.1(4)).
s. 487.1(1)(o)	ss. 487.013 to 487.018	Order to preserve computer data; order to produce a document; order to trace specified communication; order to produce transmission data; order to produce tracking data; and order to produce financial data.
s. 487.1(1)(p)	s. 487.019(3)	Revocation or variation of a production order.

Amended Section 487.1(1) of the <i>Criminal Code</i> (Clause 21 of Bill C-23)	<i>Criminal Code</i> Section	Warrant or Order
s. 487.1(1)(q)	s. 487.0191(1)	Order prohibiting disclosure of a preservation order or production order.
s. 487.1(1)(r)	s. 487.0191(4)	Revocation or variation of an order prohibiting disclosure under section 487.0191(1).
s. 487.1(1)(s)	s. 487.05(1)	Warrant to take bodily substances for forensic DNA analysis.
s. 487.1(1)(t)	s. 487.092(1)	Warrant for a handprint, footprint, foot impression, teeth impression or a print or impression of another body part.
s. 487.1(1)(u)	s. 487.3(1)	Order denying access to information related to a warrant, order or authorization.
s. 487.1(1)(v)	s. 487.3(4)	Application to terminate or vary an order under section 487.3(1).
s. 487.1(1)(w)	s. 492.1(1)	Warrant for a tracking device on a thing or vehicle.
s. 487.1(1)(x)	s. 492.1(2)	Warrant for a tracking device on a person.
s. 487.1(1)(y)	s. 492.1(7)	Warrant for the covert removal of a tracking device.
s. 487.1(1)(z)	s. 492.2(1)	Warrant to obtain transmission data using a transmission data recorder.

Sources: Table prepared by the Library of Parliament using data obtained from [Bill C-23, An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts \(COVID-19 response and other measures\)](#), 43rd Parliament, 2nd Session; and [Criminal Code](#), R.S.C. 1985, c. C-46.