

# PRELIMINARY VERSION

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## Legislative Summary

### **BILL S-15: AN ACT TO AMEND THE CRIMINAL CODE AND THE WILD ANIMAL AND PLANT PROTECTION AND REGULATION OF INTERNATIONAL AND INTERPROVINCIAL TRADE ACT**

44-1-S15-E

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Jesse Good and Marlisa Tiedemann

Research and Education

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### AUTHORSHIP

|                 |                   |                                      |
|-----------------|-------------------|--------------------------------------|
| 19 January 2024 | Jesse Good        | Economics, Resources and Environment |
|                 | Marlisa Tiedemann | Economics, Resources and Environment |

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For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the Senate and House of Commons and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent and come into force.

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*Legislative Summary of Bill S-15*  
(Preliminary version)

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## LEGISLATIVE SUMMARY OF BILL S-15: AN ACT TO AMEND THE CRIMINAL CODE AND THE WILD ANIMAL AND PLANT PROTECTION AND REGULATION OF INTERNATIONAL AND INTERPROVINCIAL TRADE ACT

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### 1 BACKGROUND

Bill S-15, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act,<sup>1</sup> was introduced in the Senate by Senator Marc Gold, the Government Representative in the Senate, on 21 November 2023. It received first reading that same day. The bill's sponsor is Senator Marty Klyne.

The bill creates a number of *Criminal Code*<sup>2</sup> offences in relation to elephants and great apes,<sup>3</sup> including:

- possessing, breeding or impregnating elephants or great apes in captivity;
- possessing an elephant or great ape and failing to take reasonable measures to prevent natural breeding; and
- participating in any activities that involve elephants or great apes being used for entertainment purposes.

There are a number of exceptions to these offences, including where the animal is already in someone's possession when the law comes into force.

Bill S-15 also amends the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (WAPPRIITA)<sup>4</sup> to limit the reasons for which the Minister of the Environment (the minister) can issue a permit to import or export an elephant or great ape. Federal permits for elephants or great apes are narrowed to scientific research, conservation or animal welfare purposes.

The Minister of Environment and Climate Change's December 2021 Mandate Letter included introducing legislation "to protect animals in captivity" as a listed commitment, in addition to "[w]ork[ing] with partners to curb illegal wildlife trade and end elephant and rhinoceros tusk trade in Canada."<sup>5</sup>

Bill S-15 is similar, but not identical, to Bill S-241, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (great apes, elephants and certain other animals) (the Jane Goodall Act), which is also sponsored by Senator Marty Klyne.<sup>6</sup>

Bill S-241's predecessor, Bill S-218, was introduced in November 2020 by former senator Murray Sinclair but did not move beyond second reading in the Senate. Bill S-241 was referred to the Standing Senate Committee on Legal and Constitutional Affairs on 8 June 2023. As part of a motion adopted at second reading of the bill in the Senate, both the Standing Senate Committee on Agriculture and Forestry and the Standing Senate Committee on Energy, the Environment and Natural Resources were also authorized to study the subject matter of Bill S-241.<sup>7</sup> None of the three Senate committees has to date held meetings to study the bill.

#### 1.1 JURISDICTION OVER ANIMAL CRUELTY

The *Criminal Code* and provincial legislation govern animal cruelty and the welfare of animals in human care, including marine mammals held in aquariums for public display, entertainment, rehabilitation and research. Jurisdiction to pass laws concerning animal cruelty in Canada is shared between the federal and provincial legislatures. Parliament's jurisdiction is based on the criminal law power in section 91(27) of the *Constitution Act, 1867*.<sup>8</sup> This power has been used to enact sections 444 to 447.1 of the *Criminal Code*, which make it an offence to, among other things, willfully cause or permit to be caused unnecessary pain, suffering or injury to an animal, or to neglect to provide a domestic animal or animal in captivity with adequate food, water, shelter or care.

Provincial jurisdiction derives from the authority to pass legislation concerning property and civil rights, set out in section 92(13) of the *Constitution Act, 1867*. In addition to jurisdiction over animals, which are considered to be "property," the provinces also have jurisdiction over kennels and pet shops and some aspects of farming operations. Each province has its own legislation that protects animals from cruelty and neglect and designates an enforcement agency. For example, in British Columbia, the *Prevention of Cruelty to Animals Act*<sup>9</sup> is enforced by the British Columbia Society for the Prevention of Cruelty to Animals (BC SPCA). Ontario's *Provincial Animal Welfare Services Act, 2019*<sup>10</sup> is enforced by Animal Welfare Services (AWS) within the Ministry of the Solicitor General. When an animal is reported to be in distress, the BC SPCA and the AWS have the legal authority to take action (inspection, assessment and enforcement) to protect the animal.

Provincial legislation regarding animals is primarily enacted to ensure their protection from harm, rather than punishing those who mistreat and abuse animals. If anyone harms an animal, it is a question of degree as to which legal regime may apply. Prosecutors would need to decide if a person's treatment of an animal warranted criminal sanction.

Apart from the issue of animal cruelty, with respect to the trade in wildlife, the federal government has jurisdiction to regulate the international and interprovincial trade of wildlife and does this under the WAPPRIITA.

## 2 DESCRIPTION AND ANALYSIS

Bill S-15 contains 10 clauses. Key clauses are discussed below.

### 2.1 AMENDMENTS TO THE *CRIMINAL CODE*

Section 445.2 of the *Criminal Code* currently contains offences relating to the treatment of cetaceans (whales, dolphins and porpoises), including owning a cetacean. Clause 1 of Bill S-15 amends the *Criminal Code* to create similar offences relating to elephants or great apes in captivity. Exceptions to the offences relating to cetaceans are included for persons who owned cetaceans when the prohibitions came into force, have custody of a cetacean “for the purpose of providing it with assistance or care or to rehabilitate it following an injury or another state of distress,” or are authorized to keep a cetacean in captivity for its best interest. These offences were established when former Bill S-203, An Act to amend the Criminal Code and other Acts (ending the captivity of whales and dolphins), was given Royal Assent in 2019.<sup>11</sup> Bill S-203 also amended the *Fisheries Act*.<sup>12</sup>

The offences relating to elephants or great apes include possessing, breeding or impregnating these animals in captivity (new sections 445.3(1)(a)(i) and 445.3(1)(a)(ii)) and possessing such an animal and failing to take reasonable measures to prevent their natural breeding (new section 445.3(1)(a)(iii)). It is also an offence to participate in any activities relating to these animals being used for entertainment purposes (new section 445.3(1)(b)).<sup>13</sup> Persons found guilty of these offences are subject to summary conviction and fines up to \$200,000.

Clause 1 outlines several exceptions to these offences, including where the animal is already in someone’s possession when the law comes into force (new section 445.3(3)) or if the animal was born after a gestational period that includes the day the law comes into force (new section 445.3(4)), possession for welfare, scientific research, conservation purposes (new sections 445.3(5)(a), 445.3(5)(b), 445.3(5)(c) and 445.3(5)(d)) and veterinary care (new section 445.3(5)(e)). These exceptions are contingent on permits issued by the minister under the WAPPRIITA or licences from competent provincial authorities, depending on the circumstances.

2.2 AMENDMENTS TO THE *WAPPRIITA* AND REGULATION OF INTERNATIONAL AND INTERPROVINCIAL TRADE ACT

Clauses 2 to 9 amend the WAPPRIITA. The WAPPRIITA's stated purpose "is to protect certain species of animals and plants, particularly by implementing the Convention [on international trade in endangered species of wild fauna and flora] [CITES] and regulating international and interprovincial trade in animals and plants" (section 4). The CITES came into force in 1975 and includes three appendices which list species threatened with extinction and for which trade is generally prohibited (Appendix I), species that may be threatened with extinction without trade regulations (Appendix II) and species that are protected in at least one country and for which that country has requested that other parties assist in controlling trade in that species (Appendix III).<sup>14</sup>

Section 6(1) of the WAPPRIITA prohibits importing any animal or plant listed in a CITES appendix that was taken in contravention of any law of a foreign state. That section also prohibits importing any animal or plant or their parts or derivatives that were possessed, distributed or transported in contravention of a law of a foreign state. Sections 6(2) and 6(3) prohibit the importation, exportation and interprovincial transport of animals or plants listed in a CITES appendix without a permit issued by the minister under section 10(1), subject to the *Wild Animal and Plant Trade Regulations*.<sup>15</sup>

Section 10(1) provides that the minister can issue a permit to import, export or transport interprovincially an animal or plant listed in a CITES appendix "on such terms and conditions as the Minister thinks fit." This discretion in relation to elephants and great apes is narrowed by Bill S-15. Specifically, clause 3(2), which adds new section 6(2.1), and clause 5, which adds new section 10(1.1), when read together authorize the minister to issue a permit relating to an elephant or great ape only for reasons relating to scientific research or conservation or for the animal's welfare. A permit can also be issued to allow a person to possess such an animal for the animal's welfare, or to "possess, breed, impregnate or permit natural breeding" of such an animal for scientific research or conservation purposes (new section 10(1.2)). These exceptions reflect the *Criminal Code* exceptions contained in new sections 445.3(5)(a) to 445.3(5)(d).

With respect to issuing permits, the WAPPRIITA currently allows the minister to delegate this authority, including to a provincial minister or government. Clause 5(4) clarifies that the authority relating to permits for elephants or great apes cannot be delegated to a province. Instead, it can only be delegated to another federal minister or a federal employee (new section 10(5)).

Clause 6 requires that a person who possesses an elephant or great ape at the time that the law comes into force notify the minister of such possession within six months of that offence coming into force (new section 11.1). A person must also notify the minister within two years of the coming into force of the possession offence if they possess an elephant or great ape that gives birth to an animal that was born after a gestational period that includes the day the law comes into force (new section 11.2). Finally, a person who possesses an elephant or great ape pursuant to a provincial licence must notify the minister within 60 days of the licence being issued (new section 11.3). In all three examples in which a person must notify the minister, they must also provide any information that the minister requires.

The WAPPRIITA contains two sets of penalty provisions: the first is for any contravention of the WAPPRIITA, certain provisions contained in regulations or a court order made under the Act (section 22). It is the first set of these penalty provisions that apply to importing or exporting an elephant or great ape without a permit. The range of penalties under section 22 varies depending on whether the offence is carried out by an individual, a small revenue corporation or other corporations, and whether it is a first or subsequent offence. For a first offence, an individual who is convicted on indictment is subject to a maximum fine of \$1,000,000, imprisonment up to five years, or both. The second set of penalty provisions applies to contraventions of most provisions contained in the *Wild Animal and Plant Trade Regulations* (section 22.01). Clause 9 of Bill S-15 amends section 22.01 to include contravening the notice requirements under new sections 11.1, 11.2 and 11.3 or the terms or conditions of a permit allowing for the importation, exportation or possession of elephants or great apes. As is the case for penalties under section 22, penalties under section 22.01 vary depending on whether the offence is committed by an individual, a small revenue corporation or another corporation. For a first offence, an individual who is convicted on indictment is subject to a maximum fine of \$100,000.

Clause 10 sets out coordinating amendments, all of which relate to Bill S-6, An Act respecting regulatory modernization.<sup>16</sup> Clause 10 specifies how each of Bill S-6 and Bill S-15 are affected if one comes into force before the other.

### 2.3 COMPARISON OF BILLS S-15 AND S-241

While both Bill S-15 and Bill S-241 aim to enhance animal welfare, Bill S-15 is more focused, specifically targeting elephants and great apes, with less emphasis on broader legal mechanisms and additional species. Bill S-241 has a broader scope, covering more animal species and includes additional mechanisms, such as animal advocates and more comprehensive court order provisions. Some of the differences reflect the way the amendments were drafted: Bill S-241 revised the existing provisions relating to cetaceans which were contained in Bill S-203 to include elephants and great apes; Bill S-15 instead adds new provisions that apply to elephants and great apes.



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There has been some commentary, including in second reading speeches on Bill S-15 in the Senate, that indicate a preference for Bill S-241.<sup>17</sup> Table 1 compares the two bills.

**Table 1 – Comparison of Bills S-15 and S-241**

| Differences  | Bill S-15                        | Bill S-241  |
|--|----------------------------------|---|
| Scope and animals covered  | Elephants and great apes         | Elephants and great apes and “designated animals,” listed in schedules with varying coming into force dates, which include other non-domesticated animals such as big cats, bears, wolves, pinnipeds, non-human primates and dangerous reptiles |
| Authority to add or remove species from protection under the bill  | No                               | Yes   |
| Includes provisions that deem certain organizations as having permits for great ape care and research, and designates specific animal care organizations                             | No                               | Yes   |
| Prohibits captivity, breeding and use of entertainment of specified animals  | Yes                              | Yes   |
| Requires owner to take reasonable measures to prevent natural breeding of specified animals  | Yes                              | No  |
| Prohibits possessing reproductive material of specified animals  | No                               | Yes   |
| Exceptions for animals already in captivity  | Yes                              | Yes   |
| Includes animal advocates who can represent the interests of animals in legal proceedings  | No                               | Yes   |
| Court orders for animal welfare  | No                               | Yes   |
| Amends the WAPPRIITA to require a permit to import or export an included animal, with permits only for scientific research or if it is in the best interests of the animal’s welfare | Yes                              | Yes   |
| Amends the WAPPRIITA to require certain notification requirements for persons possessing specified animals   | Yes                              | No  |
| Recognition of Aboriginal and Treaty Rights  | No explicit mention <sup>a</sup> | Yes   |

Note: a. It is possible that a non-derogation clause was not considered necessary by the Government of Canada in introducing Bill S-15 because Bill S-13, An Act to amend the Interpretation Act and to make related amendments to other Acts, will add a non-derogation clause that will apply to all federal legislation. However, at the time of writing this summary, Bill S-13 is still before Parliament.

Source: Table prepared by the Library of Parliament.

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### NOTES

1. [Bill S-15, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session. See also Justice Canada's Charter Statement, [Bill S-15: An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act](#).
2. [Criminal Code](#), R.S.C. 1985, c. C-46.
3. Great apes are defined in the bill as "any species of the family *Hominidae*, excluding the genus *Homo*" (section 445.3(10)), and therefore include orangutans, gorillas, chimpanzees and bonobos.
4. [Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act](#), S.C. 1992, c. 52.
5. Prime Minister of Canada, Justin Trudeau, [Minister of Environment and Climate Change Mandate Letter](#), 16 December 2021. Addressing elephant tusk and rhinoceros horn trade was done through amendments to the [Wild Animal and Plant Trade Regulations](#), SOR/96-263. The amendments changed eligibility for permits and came into force on 8 January 2024. See [Regulations Amending the Wild Animal and Plant Trade Regulations](#), SOR/2023-241, 9 November 2023, in *Canada Gazette*, Part II, 22 November 2023.
6. [Bill S-241, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act \(great apes, elephants and certain other animals\)](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session.
7. Senate, [Debates](#), 8 June 2023.
8. [Constitution Act, 1867](#), 30 & 31 Victoria, c. 3 (U.K.).
9. British Columbia, [Prevention of Cruelty to Animals Act](#), R.S.B.C. 1996, c. 372.
10. Ontario, [Provincial Animal Welfare Services Act, 2019](#), S.O. 2019, c. 13.
11. [Bill S-203, An Act to amend the Criminal Code and other Acts \(ending the captivity of whales and dolphins\)](#), 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session (S.C. 2019, c. 11).
12. [Fisheries Act](#), R.S.C. 1985, c. F-14.
13. Offences include, for example, promoting, arranging, or receiving money or taking part in an exhibition or event "at or in the course of which elephants or great apes that are kept in captivity are used, in Canada, for entertainment in a performance" (new section 445.3(1)(b)).
14. [Convention on International Trade in Endangered Species of Wild Fauna and Flora](#), 3 March 1973.
15. [Wild Animal and Plant Trade Regulations](#), SOR/96-263.
16. [Bill S-6, An Act respecting regulatory modernization](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session.
17. See, for example, Shannon Nickerson, "[Canada Tables Bill to Protect Elephants & Great Apes from Captivity](#)," Animal Justice blog, 23 November 2023; and speech at second reading of Senator Rosa Galvez: Senate, [Debates](#), 14 December 2023.