

Overview of Bill C-36: Protection of Communities and Exploited Persons Act

Under the previous Criminal Code regime, prostitution offences were largely focused on addressing public nuisances and certain forms of exploitation. For example, prostitution involving adults was not illegal, but rather activities such as communicating for the purposes of prostitution in public, were. Bill C-36: Protection of Communities and Exploited Persons Act changes this dynamic and criminalizes the purchase of all sexual services, making prostitution among adults illegal for the first time in Canadian law; as opposed to just the activities associated with prostitution. The Bill also highlighted prostitution as an exploitative act and indicated its intent to reduce the demand for prostitution and address the community harms often associated with the sex trade.

As a means of realizing these objectives, Bill C-36 created four offence categories, representing a collection of new offences and modernized versions of previous Criminal Code offences; including:

Purchasing Offence

The purchasing offence reflects a shift towards acknowledging prostitution as a form of sexual exploitation. This guiding principle supports the primary change in Bill C-36, criminalizing the purchase, but not the sale, of sexual services. For instance, in the past, a police officer could charge a prostitute with communicating for the purposes of selling sexual services along with charging the buyer of the services; now only the buyer would be charged. This offence is intended to target those creating the demand for prostitution and to subsequently reduce that demand. The practice of criminalizing the buyer rather than the seller is a common theme in a variety of other jurisdictions around the world, including the “Nordic model”, most commonly associated with Sweden.

Material Benefit Offence

This offence represents a modification of the previous “living on the avails of prostitution” offence into what is now referred to as a “material benefit offence”. This offence criminalizes receiving a material benefit from the prostitution of others in exploitative circumstances. It does however provide certain exceptions which were not in place previously, including allowing for the hiring of protective or administrative services (i.e. security, accounting, landlord arrangements, etc). This change addresses one of the primary reasons the Supreme Court struck down the previous prostitution-related offences, citing them as endangering the safety of prostitutes by criminalizing protection related services.

Procuring Offence

This is a modernization of offences related to procuring others for the purposes of prostitution; including recruiting them into the industry or forcing them to participate. This offence clarifies the circumstances in which procurement can take place and increases the penalties involved; up to 14 years imprisonment. The primary difference between this offence and the material benefit offence hinges on the level of involvement, procuring implies active rather than passive involvement in the provision of sexual services.

Advertising Offence

Bill C-36 also targets for the first time in Canadian criminal law, the advertising of sexual services through an advertising offence, seen as a means of further reducing demand. This includes print media and websites and holds publishers or administrators responsible if they knowingly promote the sale of sexual services through these mediums. It is important to note that this offence does not apply to people who advertise their own sexual services, only those who advertise the services of others. The intent is once again to focus on those who may receive a benefit from the sale of services while not criminalizing the seller.