



Legislative Summary

BILL S-206: AN ACT TO AMEND THE CRIMINAL CODE (DISCLOSURE OF INFORMATION BY JURORS)

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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 House of Commons and Senate, 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)

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LEGISLATIVE SUMMARY OF BILL S-206: AN ACT TO AMEND THE CRIMINAL CODE (DISCLOSURE OF INFORMATION BY JURORS)

1 BACKGROUND

Bill S-206, An Act to amend the Criminal Code (disclosure of information by jurors),¹ received Royal Assent on 18 October 2022. It had been tabled in the Senate by the Honourable Senator Pierre-Hugues Boisvenu, the bill's sponsor, on 24 November 2021.

Since 2018, several bills identical to Bill S-206 have been introduced in the Senate and the House of Commons.

More specifically, on 29 October 2018, Member of Parliament Michael Cooper tabled Bill C-417, An Act to amend the Criminal Code (disclosure of information by jurors),² in the House of Commons. The bill was passed by the House of Commons but died on the *Order Paper* in the Senate.

Similarly, in 2019 and 2020, the Honourable Senator Pierre-Hugues Boisvenu introduced bills S-207 and S-212 in the Senate, but they also died on the *Order Paper*.³

Bill S-206 amends section 649 of the *Criminal Code* (the Code),⁴ which makes it an offence for jurors to disclose any information relating to the proceedings of a jury. The bill provides for a new exception allowing former jurors to discuss jury proceedings with health care professionals after the trial, if they feel the need to do so.

1.1 PREVIOUS WORDING OF SECTION 649 OF THE *CRIMINAL CODE*

Section 649 of the Code prohibits jurors from discussing the content of jury proceedings with anyone. As a result, a juror who discloses the content of jury proceedings may be found guilty of an offence punishable on summary conviction. The previous wording of section 649 set out two exceptions to the jury secrecy rule, in sections 649(a) and 649(b):

Every member of a jury, and every person providing technical, personal, interpretative or other support services to a juror with a physical disability, who, except for the purposes of

- (a) an investigation of an alleged offence under subsection 139(2) in relation to a juror, or

(b) giving evidence in criminal proceedings in relation to such an offence,

discloses any information relating to the proceedings of the jury when it was absent from the courtroom that was not subsequently disclosed in open court is guilty of an offence punishable on summary conviction.

Section 649 of the Code is based on the common-law principle that “the jury must deliberate in private, free from outside interference.”⁵ Furthermore, according to the common-law rule of jury secrecy, “jurors may not testify about the effect of anything on their or other jurors’ minds, emotions or ultimate decision.”⁶ In fact, “statements made, opinions expressed, arguments advanced and votes cast by members of a jury in the course of their deliberations are inadmissible in any legal proceedings.”⁷ The Supreme Court of Canada stated:

The common law rule of jury secrecy, in combination with s. 649 of the Code, helps to ensure that jurors feel comfortable freely expressing their views in the jury room and that jurors who hold minority viewpoints do not feel pressured to retreat from their opinions because of possible negative repercussions associated with the disclosure of their positions.⁸

1.2 REPORT OF THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

In 2017 and 2018, the House of Commons Standing Committee on Justice and Human Rights (the Committee) undertook a study on counselling and other mental health supports for jurors. In May 2018, the Committee presented its report in the House of Commons. The report, *Improving Support for Jurors in Canada*, contains a chapter on the implication of the jury secrecy rule.⁹

In the report, the Committee explained that “jury deliberations are a challenging experience that can be particularly stressful for some jurors”¹⁰ and that a “negative consequence of [section 649] is that jurors are unable to discuss with a mental health professional what they experienced during the deliberations.”¹¹ Several witnesses who appeared before the Committee recommended amending section 649 of the Code “so that jurors would be permitted to discuss the deliberations with a mental health professional.”¹² During the study, witnesses also noted that it was important to allow counselling only after the trial has ended, to preserve the integrity of proceedings.

The Committee therefore concluded in its report that, to ensure the well-being of former jurors, it was essential to create an exception to the jury secrecy rule to allow jurors to discuss the proceedings with a designated health care professional for therapeutic reasons once the trial is over. Specifically, the Committee made the following recommendation to the Government of Canada:

Recommendation 4 – A More Lenient Secrecy Rule for Jury Deliberations

That the Government of Canada amend section 649 of the *Criminal Code* so that jurors are permitted to discuss jury deliberations with designated mental health professionals once the trial is over.¹³

In her response to the report, the Honourable Jody Wilson-Raybould, then Minister of Justice and Attorney General of Canada, wrote the following on behalf of the Government of Canada with regard to the amendment recommended by the Committee:

Federal responsibility over the criminal law includes criminal procedure and offences in the *Criminal Code*. Section 649 of the *Criminal Code* prohibits jurors from disclosing information about what took place in the jury room that was not subsequently disclosed in open court. The section was enacted in 1972 to ensure that the jury room is treated as a confidential forum. As noted by the Supreme Court of Canada in *R v Pan* (2001), the rationale for secrecy of jury deliberations includes the promotion of frank debate by jurors, the assurance of finality of verdicts, and the protection of jurors from reprisal. While section 649 of the *Criminal Code* does not prohibit discussing one's emotions during jury deliberations or the proceedings, or the evidence that was presented in court, it prohibits the disclosure of information such as opinions expressed, arguments made and votes cast during jury deliberations.

The Committee is of the view that section 649 of the *Criminal Code* creates an obstacle to fulsome discussions between jurors and mental health professionals and recommends an amendment to section 649 of the *Criminal Code* that would allow a juror to discuss jury deliberations with registered mental health practitioners in the course of treatment, similar to what is provided in the Australian State of Victoria's *Juries Act*.

Both the Supreme Court of Canada and the Steering Committee on Justice Efficiencies and Access to Justice (an independent committee composed of federal and provincial Deputy Ministers, representatives from the judiciary and the bar) in their 2009 Report on Jury Reform noted the importance of considering amendments to section 649 to allow academic research into the jury deliberations process. More recently, the difficulty in undertaking academic research on juries was highlighted in numerous media reports on issues related to jury representativeness, which required researchers' physical attendance in courtrooms to note ethnicity and other characteristics of jurors.

I am committed to examining jury-related issues, including section 649 of the *Criminal Code*, with provincial and territorial colleagues as part of my ongoing review of the criminal justice system, which would apply a Gender-based Analysis Plus approach to identify potential differential impacts.¹⁴

During the Senate debate on Bill S-206, the Honourable Pierre-Hugues Boisvenu noted that the bill stemmed from the Committee's fourth recommendation.¹⁵ During the House of Commons debate on Bill C-417, Member of Parliament Michael Cooper also stated that that bill arose from the Committee report.¹⁶

2 DESCRIPTION AND ANALYSIS

Clause 1 of the bill amends section 649 of the Code to provide for new section 649(2)(c) which states that the jury secrecy rule does not apply in respect of the disclosure of information for the purposes of:

(c) any medical or psychiatric treatment or any therapy or counselling that a person referred to in subsection (1) receives from a health care professional after the completion of the trial in relation to health issues arising out of or related to the person's service at the trial as a juror or as a person who provided support services to a juror.

It also adds section 649(3), which states that, "[f]or the purpose of paragraph (2)(c), the health care professional who provides any medical or psychiatric treatment or any therapy or counselling must be entitled to do so under the laws of a province."

NOTES

1. [Bill S-206, An Act to amend the Criminal Code \(disclosure of information by jurors\)](#), 44th Parliament, 1st Session (S.C. 2022, c. 12).
2. [Bill C-417, An Act to amend the Criminal Code \(disclosure of information by jurors\)](#), 42nd Parliament, 1st Session.
3. [Bill S-207, An Act to amend the Criminal Code \(disclosure of information by jurors\)](#), 43rd Parliament, 1st Session; and [Bill S-212, An Act to amend the Criminal Code \(disclosure of information by jurors\)](#), 43rd Parliament, 2nd Session.
4. [Criminal Code](#), R.S.C. 1985, c. C-46, s. 649 (version in effect from 17 November 2022 to 14 December 2022).
5. [R. v. Pan; R. v. Sawyer](#), 2001 SCC 42, para. 47.
6. *Ibid.*, para. 77.
7. *Ibid.*
8. *Ibid.*, para. 81.
9. House of Commons, Standing Committee on Justice and Human Rights, [Improving Support for Jurors in Canada](#), Twentieth report, May 2018.

10. Ibid., p. 30.
11. Ibid., p. 31.
12. Ibid.
13. Ibid., p. 32.
14. Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, [Government response to the twentieth report of the House of Commons Standing Committee on Justice and Human Rights, entitled *Improving Support for Jurors in Canada*](#), tabled on 22 May 2018.
15. Senate, [Debates](#), 1 December 2021 (Pierre-Hugues Boisvenu).
16. House of Commons, [Debates](#), 27 November 2018, 1855 (Michael Cooper); and House of Commons, [Debates](#), 12 April 2019, 1330 (Michael Cooper).