

2009 Bill 61

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Second Session, 27th Legislature, 58 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 61**

## **PROVINCIAL OFFENCES PROCEDURE AMENDMENT ACT, 2009**

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MR. LUKASZUK

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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*Bill 61*  
*Mr. Lukaszuk*

## **BILL 61**

2009

### **PROVINCIAL OFFENCES PROCEDURE AMENDMENT ACT, 2009**

*(Assented to , 2009)*

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Amends RSA 2000 cP-34**

**1 The *Provincial Offences Procedure Act* is amended by this Act.**

#### **2 Section 5 is amended**

- (a) **in subsection (2) by adding “or a peace officer” after “justice” wherever it occurs;**
- (b) **in subsection (4) by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):**
  - (d) an undertaking entered into before a peace officer,
- (c) **in subsection (7) by striking out “and” at the end of clause (b), by adding “and” at the end of clause (c) and by adding the following after clause (c):**
  - (d) in the case of proceedings under subsection (4), the person gave or entered into an undertaking and a promise to appear before a peace officer and failed to attend Court in accordance with the undertaking and promise to appear,

## Explanatory Notes

**1** Amends chapter P-34 of the Revised Statutes of Alberta 2000.

**2** Section 5 presently reads in part:

*(2) A person who, being at large on the person's own undertaking or recognizance given to or entered into before a justice and being bound to comply with a condition of that undertaking or recognizance directed by a justice, fails without lawful excuse, the proof of which lies on the person, to comply with that condition, is guilty of an offence.*

*(4) A person who is named in*

*(a) an appearance notice,*

*(b) a promise to appear, or*

*(c) a recognizance entered into before an officer in charge,*

*that has been confirmed by a justice and who fails without lawful excuse, the proof of which lies on the person, to attend Court in accordance with the appearance notice, promise to appear or recognizance, is guilty of an offence.*

**3 Section 8(1) is amended**

- (a) **by striking out** “\$2000” **and substituting** “\$25 000”;
- (b) **by adding** “, where the amount is readily ascertainable” **after** “commission of the offence”.

**4 Section 11(2) is amended**

- (a) **by striking out** “appears before a justice and signifies in writing that the defendant prefers” **and substituting** “applies in writing”;
- (b) **by adding** “without requiring the defendant to appear in person before the justice” **after** “committal”.

*(7) In proceedings under subsection (1), (3) or (4), a certificate purporting to be signed by the clerk or a justice before whom the person is alleged to have failed to attend, stating that*

- (a) in the case of proceedings under subsection (1), the person gave or entered into an undertaking or recognizance before a justice and failed to attend Court in accordance with the undertaking or recognizance,*
- (b) in the case of proceedings under subsection (3), a summons was issued to and served on the person and the person failed to attend Court in accordance with the summons, and*
- (c) in the case of proceedings under subsection (4), the person was named in an appearance notice, a promise to appear or a recognizance entered into before an officer in charge, that was confirmed by a justice, and the accused failed to attend Court in accordance with the appearance notice, promise to appear or recognizance,*

*is evidence of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.*

**3** Section 8(1) presently reads:

*8(1) A justice who convicts a defendant of an offence may, on the application of a person aggrieved, at the time sentence is imposed, order the defendant to pay to the applicant an amount of not more than \$2000 as compensation for loss of or damage to property suffered by the applicant as a result of the commission of the offence.*

**4** Section 11(2) presently reads:

*(2) Notwithstanding subsection (1), if, before the expiration of the time allowed for payment, the defendant who has been allowed time for payment appears before a justice and signifies in writing that the defendant prefers to be committed immediately rather than await the expiration of the time allowed, the justice may immediately issue a warrant of committal.*

**5 Section 17(2) is amended**

- (a) by striking out** “either”;
- (b) by striking out** “a mechanical recording of the evidence or”.

**6 Section 22(2) and (3) are repealed.**

**7 Section 27 is amended**

- (a) in subsection (2) by adding the following after clause (b):**

(b.1) the defendant enters a plea of not guilty by signing the not guilty plea on the summons and delivering it by registered mail to the Court office indicated on the summons for that purpose,

- (b) by adding the following after subsection (2):**

**(2.1)** If a defendant enters a plea of not guilty in accordance with subsection (2)(b.1), the Court shall notify the defendant by ordinary mail at the defendant’s address for service of the time fixed for the trial.

**5** Section 17(2) presently reads:

*(2) If evidence is recorded in a proceeding, the clerk shall, on payment of the applicable fee, provide either a copy of a mechanical recording of the evidence or a transcript of the evidence if it is*

- (a) requested by one of the parties,*
- (b) required for an appeal from a conviction or order,*
- (c) required by the Minister of Justice and Attorney General, or*
- (d) ordered by a justice.*

**6** Section 22(2) and (3) presently read:

*(2) If the regulations provide that proceedings with respect to an offence may be commenced under either Part 2 or Part 3, the proceedings shall be commenced under Part 3 unless it is in the public interest to compel the defendant to appear before a justice in proceedings under Part 2.*

*(3) If the proceedings with respect to an offence referred to in subsection (2) are commenced under Part 2, the peace officer shall issue a summons in accordance with section 27(3).*

**7** Section 27 presently reads in part:

*(2) A defendant is not required to appear before a justice on the initial appearance date to answer a summons if*

- (a) the defendant enters a plea of guilty before a justice prior to the initial appearance date in the manner and during the time period stated in the summons for doing so,*
- (b) the defendant enters a plea of not guilty prior to the initial appearance date in the manner and during the time period stated in the summons for doing so,*
- (c) the defendant obtains an adjournment of the proceedings prior to the initial appearance date, or*
- (d) if authorized by the regulations or a bylaw or ministerial order under section 44 and the summons states that the*

(2.2) If a defendant does not receive notice under subsection (2.1) by the initial appearance date, the defendant shall contact the Court office indicated on the summons to ascertain the time fixed for the trial.

**8 Section 30 is repealed and the following is substituted:**

**Use of violation ticket**

**30(1)** Proceedings under this Part may be commenced by issuing an offence notice by means of a violation ticket described in section 31.

(2) Subject to subsection (3), if proceedings are commenced under this Part, Part 2 does not apply to those proceedings.

(3) If it is in the public interest to compel the defendant to appear before a justice, a peace officer shall issue a summons under Part 2 respecting the offence and the summons shall require the defendant to appear before a justice on the initial appearance date without the alternative of making a voluntary payment.

(4) A prosecutor, if the prosecutor thinks it appropriate, may permit a defendant referred to in subsection (3) to make a voluntary payment.

**9 Section 31(5.1) is amended by adding “, except that if the offence notice is mailed to an address outside Alberta, that offence notice is, in the absence of evidence to the contrary, deemed to have been served on the defendant on the 14th day from the date of mailing as set out in the certificate of offence” after “the certificate of offence”.**



*defendant can make a voluntary payment, the defendant makes a voluntary payment.*

*(3) If it is in the public interest to compel the defendant to appear before a justice in proceedings under this Part, a peace officer may, if authorized by the regulations, issue a summons respecting any offence for which a voluntary payment may be made, requiring the defendant to appear before a justice on the initial appearance date without the alternative of making a voluntary payment.*

*(4) A prosecutor, if the prosecutor thinks it appropriate, may permit a defendant referred to in subsection (3) to make a voluntary payment.*

## **8 Commencement of proceedings under Part 3.**

## **9 Section 31(5.1) presently reads:**

*(5.1) Where*

*(a) an offence notice is mailed to a defendant under subsection (5), and*

**10 Section 38 is amended**

- (a) **by striking out** “a reasonable excuse” **and substituting** “an excuse”;
- (b) **by adding** “the defendant has established on a balance of probabilities that” **after** “satisfied by affidavit that”.

**11 Section 39(1) is repealed and the following is substituted:**

**Affidavit evidence**

**39(1)** In any proceedings under this Part where a defendant is charged with a contravention of the *Traffic Safety Act* or the regulations under that Act, the evidence of the interceptor of the motor vehicle or the issuer of the violation ticket, or both, as the case may be, may be given by affidavit.

**12 Section 42 is amended**

*(b) the date of mailing of the offence notice is set out in the related certificate of offence,*

*that offence notice is, in the absence of evidence to the contrary, deemed to have been served on the defendant on the 7th day from the date of mailing as set out in the certificate of offence.*

**10** Section 38 presently reads:

*38 Where a defendant has a reasonable excuse for failing to dispute the charge or failing to appear in person or by agent at a trial, the defendant or the defendant's agent may, if not more than 15 days have elapsed since the conviction first came to the attention of the defendant, appear before a justice and the justice on being satisfied by affidavit that the defendant's excuse is reasonable shall set aside the conviction and*

*(a) give the person appearing a notice of trial in accordance with section 33, or*

*(b) proceed in accordance with section 35.*

**11** Section 39(1) presently reads:

*39(1) In any proceedings under this Part where a defendant is charged with a contravention of*

*(a) the Traffic Safety Act or the Rules of the Road under that Act relating to the speed of motor vehicles, or*

*(b) the Traffic Safety Act or the Rules of the Road under that Act relating to the actions of a driver of a motor vehicle with respect to rapid intermittent flashes of yellow light displayed by a traffic control signal and the crossing of a highway by pedestrians,*

*the evidence of the interceptor of the motor vehicle and the issuer of the violation ticket may be given by affidavit.*

**12** Additional Lieutenant Governor in Council regulation-making powers.

**(a) in clause (c) by adding “or” at the end of subclause (i), by striking out “or” at the end of subclause (ii) and by repealing subclause (iii);**

**(b) by adding the following after clause (i):**

(i.1) respecting how appearances may be made;

(i.2) respecting how a defendant may enter a not guilty plea other than under section 27(2)(b) or (b.1);

**13 This Act comes into force on Proclamation.**

**13** Coming into force.





### RECORD OF DEBATE

Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To