

NATIONAL ASSEMBLY

FIRST SESSION

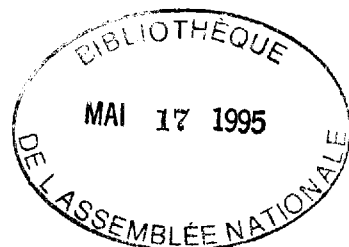
THIRTY-FIFTH LEGISLATURE

Bill 92

An Act to amend the Code of Penal Procedure

Introduction

**Introduced by
Mr Paul B  gin
Minister of Justice**



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EXPLANATORY NOTES

This bill makes various amendments to the Code of Penal Procedure.

Provision is made for the drawing up and signing of documents by electronic means, including statements of offence, offence reports and any other written proceedings, and for the reproduction in an electronic format of documents in paper form. Documents in an electronic format will henceforth be admissible in evidence and both judges and parties will be able to act on the basis thereof.

In addition, it will be possible to serve a statement of offence by ordinary mail but such service will be deemed to be completed only if the defendant has transmitted a plea, the whole amount of the fine and costs or part thereof, or a preliminary application.

Moreover, the rules governing the execution of judgments are modified in respect of defendants convicted of an offence under the Highway Safety Code or under a municipal traffic or parking by-law. As well, the table of equivalences between sums due under the Code and days of imprisonment or hours of compensatory work is updated.

Among the other amendments to the Code, one is designed to facilitate service of a statement of offence on the owner or lessee of a commercial vehicle or bus or on a carrier. Finally, the bill relaxes or adds greater precision to certain rules of procedure, particularly as concerns the summoning of witnesses, the giving of evidence, preliminary applications, the rectification of judgments and appeals.

LEGISLATION AMENDED BY THIS BILL:

- Code of Penal Procedure (R.S.Q., chapter C-25.1).

Bill 92

An Act to amend the Code of Penal Procedure

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Article 10 of the Code of Penal Procedure (R.S.Q., chapter C-25.1) is amended by inserting the words “on request” after the word “transmitted” in the fourth line of the third paragraph.

2. Article 24 of the said Code is amended by adding, at the end of the second paragraph, the words “or from a judge of the judicial district referred to in the second paragraph of article 187”.

3. The said Code is amended by inserting, after article 39, the following article:

“39.1 The summoning of police officers as witnesses for the prosecutor may be the subject of an agreement determining the form of the summons and the mode of service to be used.”

4. Article 62 of the said Code is amended

(1) by replacing the words “in the form prescribed by regulation” in the first and second lines of the first paragraph by the words “drawn up in the form prescribed by regulation or on a statement of offence form”;

(2) by replacing the word “certifié” in the first line of the second paragraph of the French text by the word “certifiée”.

5. Article 66 of the said Code, amended by section 4 of chapter 61 of the statutes of 1992, is again amended by replacing the second paragraph by the following paragraph:

“Proof that the authorization was not granted or was suspended or that conditions or restrictions were attached to the authorization may be established by means of an attestation signed by the person having the authority to issue such authorization.”

6. The said Code is amended by inserting, after article 66, the following article:

“66.1 The sending of a document pursuant to this Code may be attested by means of an extract from the record, certified by the person having custody of the record or by means of a writing signed by the person who effected the sending.”

7. Article 67 of the said Code is amended by striking out the words “according to law” in the first line.

8. Article 68 of the said Code is amended by striking out the words “under an Act” in the second line.

9. The said Code is amended by inserting, after article 68, the following articles:

“68.1 For the purposes of this Code, a document, including a statement of offence, offence report or any other written proceeding, may be drawn up and signed by electronic means and may be transmitted, held, attested, submitted in evidence and filed by electronic means. Such a document, if in paper form, may be reproduced, transmitted, held, attested, submitted in evidence and filed in an electronic format.

Documents in an electronic format may be duplicated in paper form. In the absence of evidence to the contrary, the contents of such a duplicate need not be proved in any proceedings if its accuracy is attested by the person having authority to issue the duplicate.

“68.2 A document is signed by electronic means if the document contains a code, number, mark or name, affixed in accordance with the regulations, that is capable of identifying the person who drew up, authorized or attested the document.

“68.3 The judge and any party may act on the basis of documents in an electronic format.”

10. The said Code is amended by inserting, after article 70, the following article:

“70.1 The signature of the Attorney General’s prosecutor on a statement of offence may be affixed by means of an automatic device or in the form of an engraved, lithographed or printed facsimile.”

11. Article 71 of the said Code is amended

(1) by inserting, after paragraph 3, the following paragraph:

“(3.1) the person having custody of the record or who signed the writing referred to in article 66.1;”;

(2) by striking out the words “under an Act” in paragraph 5;

(3) by inserting, after paragraph 5, the following paragraph:

“(5.1) the person who attested the accuracy of the duplicate referred to in the second paragraph of article 68.1;”;

(4) by adding, after paragraph 7, the following paragraph:

“(8) the person who attested the receipt of the guilty plea or of the whole amount of the fine and costs requested from a defendant.”

12. Article 76 of the said Code is amended by striking out the third paragraph.

13. Article 111 of the said Code is amended by replacing the words “at the office of the Court of Québec in the judicial district where the search was made” in the fourth and fifth lines by the following: “either at the office of the Municipal Court or of the Court of Québec in the judicial district where the search warrant was issued or, if the search was made without a warrant, at the office of the Court of Québec in the judicial district where the search was made.

If the search was made in a judicial district other than the judicial district where the search warrant was issued, the person from whom the thing was seized or the person in charge of the premises may obtain a copy of the minutes at the office of the Court of Québec in the judicial district where the search was made.”

14. Article 137 of the said Code is amended by adding the following sentence at the end of the second paragraph: “Such prior notice may, where applicable, be given on the statement of offence, specifying that the application for forfeiture is to be made at the time of the judgment.”

15. Article 141 of the said Code is amended by inserting, after the first paragraph, the following paragraph:

“Where a defendant has transmitted or is deemed to have transmitted a plea of guilty without indicating his intention to contest the penalty imposed on him, or is deemed to have transmitted a plea of not guilty, a judge having jurisdiction in the judicial district referred to in the second paragraph of article 187 also has jurisdiction to decide an application under article 137.”

16. Article 145 of the said Code is replaced by the following article:

“145. The form of the statement of offence shall be prescribed by regulation.

The form of the statement of offence may vary according to the offence and according to whether the statement is drawn up and signed or reproduced in paper form or in an electronic format.”

17. Article 146 of the said Code, amended by section 8 of chapter 61 of the statutes of 1992, is again amended by replacing the words “an offence served pursuant to article 158” in paragraph 2 by the words “a parking violation”.

18. The said Code is amended by inserting, after article 157, the following article:

“157.1 Service of a statement of offence may also be made by ordinary mail after the commission of the offence.

In such case, service is deemed completed if the defendant transmits, in respect of the statement of offence, a plea, the whole amount of the fine and costs requested or part thereof or a preliminary application. Moreover, service is deemed to have been made on the day the plea, amount or application is received by the prosecutor.

The attestation of service may be made by producing an extract from the record indicating the date of receipt of the plea, amount or application, certified by the person having custody of the record.”

19. The said Code is amended by inserting, after article 158, the following article:

"158.1 Where the offence is imputable to the owner or lessee of a commercial vehicle or bus within the meaning of the Highway Safety Code (chapter C-24.2) or to a carrier as defined in article 519.2 of that Code, the statement of offence may be served, at the time of the commission of the offence, by delivering a duplicate of the statement to any person having custody or control of the vehicle.

The person having served a statement of offence shall promptly send notice thereof to the defendant at his residence or place of business or, in the case of a legal person, to its head office or to one of its places of business or the place of business of one of its agents. The sending of such notice does not operate to vary any time limit fixed by this Code. However, if the defendant alleges that he received no such notice, the judge may either proceed with the trial and render a judgment or order that notice be given to the defendant and adjourn the trial for such purpose."

20. The said Code is amended by inserting, after article 166.1, the following article:

"166.2 The defendant may, at any time before the trial, enter a plea of guilty or pay the whole amount of the fine and costs requested and the amount of additional costs prescribed by regulation in respect of such cases."

21. Article 169 of the said Code is amended by adding, at the end of the first paragraph, the following sentence: "Where a defendant is deemed to have transmitted a plea of not guilty, a preliminary application may also be made by the prosecutor to a judge having jurisdiction to conduct the trial in the judicial district referred to in the second paragraph of article 187."

22. The said Code is amended by inserting, after article 180, the following article:

"180.1 Where the fine requested from the defendant is greater than the minimum fine prescribed by law, a judge having jurisdiction to conduct the trial in the judicial district where the proceedings have been instituted or in the judicial district referred to in the second paragraph of article 187 may, on an application without prior notice by the prosecutor, order that the statement of offence be amended so as to reduce the fine. The prosecutor shall inform the defendant thereof."

23. The French text of article 195 of the said Code is amended by replacing the word “incapable” in the second line of the first paragraph and in the second line of the second paragraph by the word “empêché”.

24. Article 243 of the said Code, amended by section 12 of chapter 61 of the statutes of 1992, is again amended

(1) by striking out the words “, except the judgment referred to in article 165,” in the first and second lines;

(2) by adding the following paragraph:

“In the case of a judgment referred to in article 165, a correction made under this article is without effect if it is unfavourable to the defendant.”

25. Article 301 of the said Code is amended by adding the following paragraph:

“He shall also give notice to the Attorney General of any judgment granting leave to appeal and transmit to him a copy of the application for leave to appeal provided for in article 296.”

26. Article 302 of the said Code is amended by replacing the second paragraph by the following paragraph:

“At the request of a judge of the Court of Appeal, the clerk of the court where the appealed judgment was rendered shall transmit the record forthwith to the office of the Court of Appeal, in accordance with the rules of practice.”

27. The French text of article 310 of the said Code is amended by replacing the word “valable” in the fourth line of the second paragraph by the word “sérieux”.

28. Article 311 of the said Code is amended by replacing the third paragraph by the following paragraphs:

“A copy of the notice of abandonment must be transmitted to the office of the court where the appealed judgment was rendered. The same applies to the record transmitted, at the request of a judge of the Court of Appeal, to the office of the Court of Appeal.

A copy of the notice of abandonment must also be transmitted to the Attorney General.”

29. Article 324 of the said Code is amended by inserting the words “or before a judge having jurisdiction in the judicial district where the warrant was executed” after the word “district” in the seventh line of the second paragraph.

30. Article 333 of the said Code is amended by adding the following paragraph:

“A defendant convicted of an offence under the Highway Safety Code or under a traffic by-law passed by a municipality is not eligible for such a program. The same applies in respect of a parking violation under any of sections 380, 381, 382, the second paragraph of section 383, sections 384, 385 or any of paragraphs 1 to 7 and 8 of section 386 of the Highway Safety Code or a similar offence under a municipal by-law.”

31. Article 339 of the said Code is replaced by the following article:

“339. Upon completion of the work, the person or body referred to in article 334 shall make a report to the collector on the carrying out of the work.

On the signing of the report by the collector, the defendant is released from payment of the sums due.”

32. Article 347 of the said Code is amended by adding, after the second paragraph, the following paragraph:

“However, in no case may imprisonment be ordered in respect of a defendant convicted of an offence under the Highway Safety Code or under a traffic by-law passed by a municipality. The same applies in respect of a parking violation under any of sections 380, 381, 382, the second paragraph of section 383, sections 384, 385 or any of paragraphs 1 to 7 and 8 of section 386 of the Highway Safety Code or a similar offence under a municipal by-law.”

33. Article 356 of the said Code is amended by striking out the words “, if the defendant consents thereto,” in the third line of the first paragraph.

34. Article 364 of the said Code is amended

(1) by striking out the words “ or where, at the expiration of such time, although he had agreed to do compensatory work, the defendant has failed to honour his agreement,” in the second, third and fourth lines of the first paragraph;

(2) by replacing the words “other than a parking infraction” in the third line of the second paragraph by the following: “In the case of a parking violation, a notice is required only in respect of an offence under sections 380, 381, 382, the second paragraph of section 383, sections 384, 385 and paragraphs 1 to 7 and 8 of section 386 of the Highway Safety Code or a similar offence under a municipal by-law.”;

(3) by replacing the words “provided for in” in the second line of the third paragraph by the words “in accordance with”.

35. Article 365 of the said Code is amended by replacing the words “acquitted as a result of a payment or seizure or if the defendant has been released from payment under the second paragraph of article 339 or has served the term of imprisonment ordered in default of payment of a sum due” in the third, fourth and fifth lines by the words “discharged as a result of a payment or seizure”.

36. Article 367 of the said Code is amended by inserting, after paragraph 1, the following paragraphs:

“(1.1) determine the conditions subject to which a statement of offence or offence report may be drawn up and signed by electronic means and reproduced, transmitted, held, attested, duplicated, submitted in evidence and filed by electronic means;

“(1.2) determine the conditions subject to which a document may be signed by electronic means;”.

37. The French text of the said Code is amended by replacing the words “siège social” wherever they appear in articles 20, 21, 23, 142 and 372 by the word “siège”.

38. The Schedule to the said Code is replaced by the following schedule:

“SCHEDULE

**“DETERMINATION OF THE EQUIVALENCE BETWEEN
THE AMOUNT OF THE SUMS DUE AND THE DURATION OF
THE IMPRISONMENT OR COMPENSATORY WORK**

(Articles 336 and 348)

For the portion of the sums due between:	One day of imprisonment is equivalent to:	One hour of compensatory work is equivalent to:
\$1 and \$5 000:	\$50	\$20
\$5 001 and \$10 000:	\$100	\$40
\$10 001 and \$15 000:	\$150	\$60
\$15 001 and \$20 000:	\$200	\$80
\$20 001 and \$25 000:	\$250	\$100
\$25 001 and \$30 000:	\$300	\$120
\$30 001 and \$35 000:	\$350	\$140
\$35 001 and \$40 000:	\$400	\$160
\$40 001 and \$45 000:	\$450	\$180
\$45 001 and \$50 000:	\$500	\$200
\$50 001 and over:	\$800	\$320”.

39. The provisions of this Act come into force on the date or dates to be fixed by the Government.