

**BILL C-64: AN ACT TO AMEND THE CRIMINAL CODE
(VEHICLE IDENTIFICATION NUMBER)**

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LEGISLATIVE HISTORY OF BILL C-64

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 28 September 2005

Second Reading: 17 October 2005

Committee Report:

Report Stage:

Third Reading:

SENATE

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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TABLE OF CONTENTS

	Page
BACKGROUND	1
A. Purpose and History of the Bill.....	1
B. Issue and Statistics	2
1. Motor Vehicle Theft in General.....	2
2. Motor Vehicle Theft by Organized Crime.....	3
DESCRIPTION AND ANALYSIS	5
A. Offence: Subsection 377.1(1) of the <i>Criminal Code</i>	5
B. Vehicle Identification Number: Subsection 377.1(2) of the <i>Criminal Code</i>	6
C. Punishment: Subsection 377.1(3) of the <i>Criminal Code</i>	7
COMMENTARY.....	8



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BILL C-64: AN ACT TO AMEND THE CRIMINAL CODE
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BACKGROUND

A. Purpose and History of the Bill

Bill C-64, An Act to amend the Criminal Code (vehicle identification number), was introduced in the House of Commons on 28 September 2005. Its purpose is to add a new offence to the *Criminal Code*:⁽¹⁾ the act of altering, removing or obliterating a vehicle identification number (VIN) on a motor vehicle. Any person who is convicted of this offence is liable to imprisonment for a term not exceeding five years.

Although the Minister of Justice introduced the bill in the House, Bill C-64 comes in the wake of calls by the late Chuck Cadman⁽²⁾ for more measures to fight the scourge of motor vehicle theft.⁽³⁾ Mr. Cadman, the former member for Surrey-North, a British Columbia riding coping with serious problems related to this kind of theft, introduced a bill with the same purpose on 19 March 2003.⁽⁴⁾ That bill was reintroduced on the opening of the following session, on 2 February 2004,⁽⁵⁾ but died on the *Order Paper* when the 37th Parliament was dissolved.

* Notice: 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 and 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.

(1) R.S.C. 1985, c. C-46.

(2) Mr. Cadman died on 9 July 2005.

(3) Bill C-65, which concerns street racing, also originated as a result of Mr. Cadman's urgings.

(4) Bill C-413, An Act to amend the Criminal Code (vehicle identification number), first reading, 2nd Session, 37th Parliament.

(5) Bill C-413, An Act to amend the Criminal Code (vehicle identification number), first reading, 3rd Session, 37th Parliament. This bill was reintroduced from the previous session under section 86.1 of the provisional Standing Orders.

Convinced that this was a necessary measure in effectively fighting motor vehicle theft, Mr. Cadman introduced his bill once again on 17 November 2004.⁽⁶⁾ With a few differences, Bill C-64 has essentially the same content as that bill.

B. Issue and Statistics

1. Motor Vehicle Theft in General

Although the rate of motor vehicle theft⁽⁷⁾ in Canada has been declining since 1996⁽⁸⁾ (except for increases in 2001 and 2003),⁽⁹⁾ motor vehicle theft has a major impact on vehicle owners, third-party victims, law enforcement agencies and the insurance industry. According to the Insurance Bureau of Canada, it costs insurers and the public nearly \$1 billion a year.⁽¹⁰⁾

In 2004, there were approximately 170,000 motor vehicle thefts,⁽¹¹⁾ roughly 465 a day. Rates tend to be lower in eastern Canada than in the West. Again according to the 2004 statistics,⁽¹²⁾ Newfoundland and Labrador had the lowest rate (191)⁽¹³⁾ and Manitoba the highest (1,364),⁽¹⁴⁾ more than twice the Canadian average (531). This could be explained in part by the fact that Winnipeg has the highest rate of all the major metropolitan areas (1,932).⁽¹⁵⁾ It

(6) Bill C-287, An Act to amend the Criminal Code (vehicle identification number), first reading, 1st Session, 38th Parliament. The text of this bill was identical to that of Bill C-413.

(7) The rate of theft is the number of vehicle thefts per 100,000 inhabitants.

(8) The rate rose constantly from 1984 to 1996 (Statistics Canada, Canadian Centre for Justice Statistics, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft*, Cat. No. 85-563-XWE, May 2004, p. 6).

(9) Statistics Canada, Canadian Centre for Justice Statistics, *Canadian Crime Statistics*, Juristat, Cat. No. 85-002-XIE, Vol. 25, No. 5, 2004, p. 10.

(10) Crime Intelligence Service Canada, *Annual Report on Organized Crime in Canada 2005*, 15 July 2005, p. 42, http://www.cisc.gc.ca/annual_reports/annualreport2005/document/annual_report_2005_e.pdf.

(11) Statistics Canada, *Canadian Crime Statistics* (2004), p. 10.

(12) *Ibid.*

(13) In fact, Newfoundland and Labrador had the lowest rate for more than 20 years (Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), p. 7). However, in 2004, the largest increase was reported by that province (+52%), spurred by the rate of motor vehicle theft in St. John's, which doubled (*ibid.*, p. 11).

(14) Manitoba has had the highest, or nearly the highest, rate since 1992 (*ibid.*, p. 7).

(15) Statistics Canada, *Canadian Crime Statistics* (2004), p. 10.

should be noted, moreover, that vehicle theft tends to be concentrated in the major urban areas. In addition to Winnipeg, Regina and Vancouver have had very high rates for more than 10 years.⁽¹⁶⁾ Between 1992 and 2002, vehicle theft rates doubled in London, nearly tripled in Regina and virtually quadrupled in Winnipeg.⁽¹⁷⁾

Although cars were still the type of vehicle most frequently stolen in 2004 (56% of all thefts), trucks, including mini-vans and sport utility vehicles, are increasingly popular among thieves (34% of all thefts).⁽¹⁸⁾

A criminal who steals a vehicle may want it for various purposes. He or she may want to use it as a means of transportation or to facilitate the commission of another crime. The motive may also be thrill-seeking,⁽¹⁹⁾ as frequently occurs among young offenders. In general, vehicle theft is more closely associated with young offenders than other offences.⁽²⁰⁾ In addition, vehicle thefts committed by young offenders often result in accidents causing serious injury or death.⁽²¹⁾ To help prevent this kind of crime, the federal Department of Transport amended the Canada Motor Vehicle Safety Standard (CMVSS 114) in February 2005. As a result, by September 2007, automobile manufacturers will be required to install anti-theft immobilization systems in most new light vehicles sold in Canada.⁽²²⁾

2. Motor Vehicle Theft by Organized Crime

Bill C-64 aims to address the problem of motor vehicle theft, specifically by assisting law enforcement agencies in more effectively fighting organized vehicle theft, since criminal organizations often falsify vehicle identity.

(16) Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), p. 8.

(17) *Ibid.*

(18) Statistics Canada, *Canadian Crime Statistics* (2004), p. 10. Between 1992 and 2002, the rate of truck theft rose 26%, while the car theft rate declined 16%.

(19) This kind of theft is committed for the purpose of joy-riding.

(20) In 2002, 40% of individuals charged with motor vehicle theft were between the ages of 12 and 17 (Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), p. 14).

(21) In examining actual cases of thefts by youths causing injury to the vehicle's passengers or to third parties, a study conducted by Project 6116, a national committee whose purpose was to reduce motor vehicle theft in Canada, found an average of 27 deaths and 117 injuries a year in Canada from 1999 to 2001 (*Fatalities and Injuries as a Result of Stolen Motor Vehicles (1999-2001)*, prepared for Project 6116 by Matthew J. Miceli, December 2002).

(22) *Regulations Amending the Motor Vehicle Safety Regulations (Locking and Immobilization Systems)*, SOR/2005-45, 22 February 2005.

The theft and resale of vehicles, facilitated by altering VIN numbers, is a relatively low-risk,⁽²³⁾ high-profit⁽²⁴⁾ activity that is commonly used to finance criminal organizations' other activities. According to a study conducted by the Royal Canadian Mounted Police in 1998,⁽²⁵⁾ criminal organizations are involved in all aspects of vehicle theft: the ordering of specific vehicles, recruitment of young offenders who steal the vehicles, dismantling of vehicles for parts,⁽²⁶⁾ altering of VINs and documents, and the transportation of stolen vehicles outside the province or country. These multi-level⁽²⁷⁾ criminal networks have all the necessary expertise to obtain, deface and resell stolen vehicles on a large scale. It is estimated that one in five vehicle thefts is attributable to organized crime networks.⁽²⁸⁾

While vehicle theft by organized groups is a national problem, the major urban areas of Quebec and Ontario are particularly hard hit.⁽²⁹⁾ According to 2002 data, Montréal⁽³⁰⁾ and Halifax (respectively 354 and 151 unrecovered stolen vehicles per 100,000 inhabitants) had the highest rates.⁽³¹⁾ Luxury cars and trucks are most often the target of organized groups.⁽³²⁾ Lastly, automobile dealerships (41%) and private residences (34%) are the preferred locations

(23) Of the total number of vehicle theft cases in Canada in 2002, 12% were solved by police and charges were laid in 8% of cases (Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), p. 8).

(24) Europol believes that international trafficking in vehicles by organized crime is more profitable than prostitution or other black market activities, since it generally yields a net profit of 90% (*ibid.*, p. 16, citing Europol, *An Overview on Motor Vehicle Crime from A European Perspective*, 2002).

(25) Royal Canadian Mounted Police, Criminal Analysis Branch, *Organized Crime and Vehicle Theft*, 1998.

(26) This process is known as “cannibalizing” or “chopping.” The collective value of the parts of a dismantled vehicle is very often two or three times that of the vehicle itself (Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), p. 17).

(27) For example, the organizations include thieves, brokers, intermediaries and chopping specialists.

(28) Statistics Canada uses the percentage of unrecovered stolen vehicles in estimating the extent of vehicle theft by criminal organizations. This substantive indicator thus has its limits. (See Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), pp. 6 and 11.)

(29) *Ibid.*, p. 11.

(30) Forty-four percent of vehicles stolen in Montréal were not recovered (*ibid.*, p. 5).

(31) Followed by London (141), Ottawa (135), the York region (118), downtown Gatineau (117) and Toronto (97). Although, as noted above, the western provinces have the highest vehicle theft rates, most vehicles stolen there are recovered, which is why fewer vehicle thefts are attributed to organized groups in that part of Canada (*ibid.*, p. 11).

(32) *Ibid.*, p. 13.

where criminal organizations find the vehicles they are looking for.⁽³³⁾ Since sought-after vehicles are often protected by high-tech anti-theft systems, thieves sometimes steal the keys by breaking into private homes and dealerships, thus causing a series of offences.

In view of the extent of the problem, motor vehicle theft became a new priority of the National Agenda to Combat Organized Crime in 2000.

DESCRIPTION AND ANALYSIS

Bill C-64 contains only one clause, which adds the new section 377.1, containing three subsections, to the *Criminal Code*. This paper will follow the order of those subsections.

A. Offence: Subsection 377.1(1) of the *Criminal Code*

Currently, a person who alters a VIN in order to conceal the identity of a stolen vehicle is often charged with possession of property obtained by crime⁽³⁴⁾ or an offence under other theft-related provisions. The *Criminal Code* deals specifically with VINs in subsection 354(2), which provides, in the context of an offence under subsection 354(1), for the assumption that, if the VIN has been altered, the vehicle was stolen.⁽³⁵⁾ However, a person does not commit an offence as such by altering, removing or obliterating the VIN of a motor vehicle.

Bill C-64 makes this an offence by adding subsection 377.1(1) to the division entitled “Forgery and Offences Resembling Forgery” of Part IX of the *Criminal Code* (“Offences Against Rights of Property”). An additional tool is thus made available to law enforcement agencies to enable them to lay charges in cases of theft, defacing and resale of motor vehicles.

Subsection 377.1(1) uses the terms “wholly or partially, alters, removes or obliterates a vehicle identification number on a motor vehicle” to create the new offence. Since criminal organizations often dismantle stolen vehicles, it might be asked whether it would not be prudent to add the phrase “or on a part thereof” or a similar expression.⁽³⁶⁾

(33) *Ibid.*

(34) Subsection 354(1) of the *Criminal Code*.

(35) The presumption of knowledge that the vehicle was stolen was held to be unconstitutional in *R. v. Boyle*, (1983), 5 C.C.C. (3d) 193 (C.A. Ont.).

(36) Subsection 354(2) of the *Criminal Code*, concerning possession of property obtained by crime, uses similar terms: “... a person has in his possession a motor vehicle the vehicle identification number of which has been wholly or partially removed or obliterated *or a part of a motor vehicle* being a part bearing a vehicle identification number that has been wholly or partially removed or obliterated ...” (emphasis added).

It should be noted, moreover, that the new offence requires that criminal intent be proven. Bill C-64 expressly states this requirement, which was absent from the bill introduced by Mr. Cadman: “under circumstances that give rise to a reasonable inference that the person did so *to conceal the identity of the motor vehicle*”⁽³⁷⁾ (emphasis added). In addition, subsection 377.1(1) clearly recognizes, through the use of the expression “without lawful excuse,”⁽³⁸⁾ the accused’s right to present a full and complete defence. Legitimate conduct, such as body repair work or the recycling or demolition of automobiles, constitutes a valid defence. The Crown will therefore have to prove each essential element of the offence in accordance with the standard of proof in criminal law, that is, beyond a reasonable doubt.

B. Vehicle Identification Number: Subsection 377.1(2) of the *Criminal Code*

The new subsection 377.1(2) of the *Criminal Code* defines the VIN in terms similar to those used in its existing subsection 354(3).⁽³⁹⁾

Under the *Motor Vehicle Safety Regulations*,⁽⁴⁰⁾ the VIN, which is affixed to every vehicle in Canada, consists of 17 alphanumeric characters and must be unique in order to distinguish every motor vehicle.⁽⁴¹⁾ Based on the established codes, certain characters designate, for example, the manufacturer, make and class of the vehicle, the model year,⁽⁴²⁾ the plant where the vehicle was manufactured and the production serial number the manufacturer assigned to the vehicle. The VIN appears on various parts of the vehicle, such as its fenders, hood and doors.⁽⁴³⁾

It should be noted that the methods used to affix the VIN, in accordance with current requirements, allow the number to be easily transferred from one vehicle to another. To correct the problems associated with the alteration and replacement of VINs, the federal

(37) See *R. v. Holmes*, [1988] 1 S.C.R. 914, pp. 944 and 945, on the offence of possession of break-in tools.

(38) *Ibid.*, p. 945: “... these words create no such reverse onus.”

(39) Subsection 354(3) on possession of property obtained by crime provides that “‘vehicle identification number’ means any number or other mark placed on a motor vehicle for the purpose of distinguishing the motor vehicle from other similar motor vehicles.”

(40) C.R.C., c. 1038, s. 115, Schedule IV.

(41) Manufacturers are prohibited from using the same identification number for two vehicles produced within an interval of less than 30 years.

(42) For example, “Y” represents the year 2000 and “6” 2006.

(43) Statistics Canada, *Exploring the Involvement of Organized Crime in Motor Vehicle Theft* (2004), p. 19. In the United States, the Department of Transportation requires, under the *Code of Federal Regulations*, Part 541 of Division 49, that several parts of certain high-risk vehicle lines bear a VIN.

Department of Transport has introduced measures, which will enter into effect on 1 September 2008, to ensure that the VIN cannot be removed without damaging or destroying the plate, sticker or vehicle.⁽⁴⁴⁾

On falsification methods using the VIN, the Canadian Crime Intelligence Service recently noted:

The Insurance Crime Prevention Bureau has identified an increase in four main fraud techniques that are used by organized crime to steal vehicles. These include: the illegal transfer of Vehicle Identification Numbers (VINs) from wrecked vehicles to similar ones that have been stolen; a legitimate VIN is used to change the legal identity of a stolen vehicle of the same make, model, and colour, a process called “twinning.”⁽⁴⁵⁾

C. Punishment: Subsection 377.1(3) of the *Criminal Code*

Under the new subsection 377.1(3) of the *Criminal Code*, altering, removing or obliterating a VIN in order to conceal the identity of a motor vehicle constitutes a hybrid offence. The prosecution may therefore proceed either by indictment or by summary conviction. In the former case, the offence is punishable by imprisonment for a term not exceeding five years, and in the latter, by a fine of up to \$2,000 or imprisonment of up to six months, or both.⁽⁴⁶⁾

This is a lesser offence than possession of a stolen vehicle worth over \$5,000, which is an indictable offence punishable by imprisonment of up to 10 years. Nonetheless, since the offence of altering, removing or obliterating a VIN is punishable by imprisonment for a term not exceeding five years, it falls into the “serious offence” category. If such an offence is regularly committed by a group of three or more persons, it may be considered as an offence committed by a “criminal organization,”⁽⁴⁷⁾ with all the consequences that can have as regards police investigations, legal proceedings and sentencing.⁽⁴⁸⁾

(44) *Regulations Amending Certain Regulations Made Under the Motor Vehicle Safety Act*, SOR/2004-250, 16 November 2004, subs. 3(1).

(45) Crime Intelligence Service Canada (2005), p. 40. The same organization also observes that “criminals are getting replacement keys from car dealerships using the VIN numbers taken from parked cars.”

(46) See subsection 787(1) of the *Criminal Code*: “Except where otherwise provided by law, every one who is convicted of an offence punishable on summary conviction is liable to a fine of not more than two thousand dollars or to imprisonment for six months or to both.”

(47) See the definitions of “serious offence” and “criminal organization” in subsection 467.1(1) of the *Criminal Code*.

(48) See, *inter alia*, ss. 467.11 ff. of the *Criminal Code*.

COMMENTARY

According to Chuck Cadman, law enforcement organizations have expressly requested that the offence of altering VINs be added to the *Criminal Code*, since that new offence is necessary in order to effectively fight organized networks involved in vehicle theft.

The Canadian private automobile insurance industry has welcomed Bill C-64. However, insurers would also like to see stiffer penalties and a minimum prison term added to the *Criminal Code* for vehicle theft.⁽⁴⁹⁾

Furthermore, according to Vic Toews, the Conservative Party's justice critic, the bill does not go as far as the one Mr. Cadman originally introduced.⁽⁵⁰⁾ Mr. Toews has emphasized that the present bill leaves the entire burden of proof on the prosecution. Preferring that the accused be required to provide an explanation, he believes that amendments are necessary.

Lastly, since organized crime has no borders, the subject of VIN alteration could well be addressed at the Vehicle Theft Export Summit, which will be held in Victoria in May and June 2006.⁽⁵¹⁾

(49) Insurance Bureau of Canada, "Canada's private auto insurers applaud anti-auto theft measures introduced in Parliament," News Release, 30 September 2005, <http://www.abc.ca/story.asp?sindex=115&return=0>.

(50) Paul Turenne, "Street-Racing Law Proposed – Cops Support New Legislation," *The Winnipeg Sun*, 29 September 2005, p. 3.

(51) The Summit will bring together North American Export Committee, which consists of representatives from Canada, Mexico and the United States and whose mission is to combat the export of stolen vehicles.