



---

---

# NATIONAL ASSEMBLY

---

---

FIRST SESSION

THIRTY-FIFTH LEGISLATURE

## Bill 92

(1995, chapter 51)

### **An Act to amend the Code of Penal Procedure and other legislative provisions**

---

---

**Introduced 10 May 1995**  
**Passage in principle 22 June 1995**  
**Passage 6 December 1995**  
**Assented to 7 December 1995**

---

**Québec Official Publisher  
1995**

## EXPLANATORY NOTES

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

*Provision is made, subject to certain conditions, for the electronic drawing up and signing of documents, including statements of offence and offence reports for the conversion of such documents into hard copy and for the digitization of documents drawn up and signed in paper form.*

*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.*

*As concerns the execution of judgments, changes are made to the powers of the collector. Moreover, the equivalence between the amount of sums due and time of imprisonment that was established in the Schedule to the Code has been removed and the equivalence between such amounts and the duration of compensatory work has been modified. Also introduced in the bill is a provision permitting the suspension of a driver's licence for non-payment of fines relating to parking violations. To ensure the payment of fines for traffic or parking violations, the bill provides for the towing or immobilizing of the vehicle of the offender if it is parked on a public road or on municipal land.*

*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. 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.*

*Finally, the bill changes the amount of certain fines prescribed by the Act respecting labour relations, vocational training and manpower management in the construction industry.*

**LEGISLATION AMENDED BY THIS BILL:**

- Code of Penal Procedure (R.S.Q., chapter C-25.1);
- Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20).



## Bill 92

### **An Act to amend the Code of Penal Procedure and other legislative provisions**

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 15 of the said Code is amended by replacing the words “on the statement of offence” in the fourth line of the second paragraph by the words “in the statement of offence, either on the statement itself if it is in paper form, or in a document electronically appended to the statement if it is drawn up electronically or digitized”.

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

**“20.1** Service of a summons may also be made by ordinary mail or, where the witness may be so reached, by fax machine or by electronic means. If the witness is a peace officer, he may also be summoned by means of a notice sent to him in the manner agreed to between the prosecutor and the authority to whom the peace officer reports.”

**4.** 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”.

**5.** Article 42 of the said Code is replaced by the following article:

“**42.** A judge before whom a witness is called to appear who finds that the witness has failed to appear before him or has left the place of the hearing without having been released from the obligation of remaining in attendance may

(1) order that a new summons be served on the witness by a peace officer or a bailiff or by registered, certified or priority mail; or

(2) issue a warrant of arrest if he is satisfied that the witness can give useful evidence and, on the strength of proof of the receipt of the summons, that he was duly summoned, or that the witness is attempting to evade justice.”

**6.** The said Code is amended by replacing article 62 by the following articles:

“**62.** A statement of offence or any offence report, including in electronic or hard copy form, has the same value and effect as evidence given under oath by the peace officer or the person entrusted with the enforcement of an Act who issued the statement or drew up the report, if he attests in the statement or report that he personally ascertained the facts stated therein.

The same applies to a copy of a statement of offence or offence report certified by a person authorized to do so by the prosecutor and to an electronically duplicated statement of offence or offence report certified in the manner set out in article 68.1.

“**62.1** The form, including the electronically-generated form, of an offence report shall be prescribed by regulation.

A statement of offence that has been issued but has not been served on the defendant may serve as an offence report.

“**62.2** To be produced as evidence in electronic or hard copy form, a statement of offence or offence report that has been drawn up electronically or digitized and any hard copy thereof must meet the security standards for electronic data and documentation in penal matters established by regulation.

The same applies to other proceedings drawn up electronically, digitized or converted to hard copy by the prosecutor, a government department or body or the office of the court which the prosecutor wishes to produce as evidence or which may be required in such form for the purposes of this Code.

**“62.3** Where the prosecutor produces a proceeding as evidence in electronic or hard copy form, he is not required to prove the integrity or reliability of the proceeding unless the defendant establishes, upon a preponderance of evidence, that the proceeding was modified after its electronic generation or upon its conversion into hard copy.

A proceeding in electronic form or a hard copy thereof is proof of its contents, in the absence of any evidence to the contrary, if it is otherwise admissible in evidence.

**“62.4** To produce as evidence a document in electronic form, other than a proceeding of the prosecution, or a hard copy thereof, which is otherwise admissible in evidence, the prosecutor or the defendant must establish the integrity and reliability of the document upon a preponderance of evidence, notably on the basis of the security measures taken to prevent any modification of the document after its electronic generation or upon its conversion into hard copy.

**“62.5** A judge or court clerk who is not equipped to receive a proceeding or other document in electronic form is not required to do so. He may in such case require that the party concerned file a hard copy of the document.”

**7.** Article 66 of the said Code is 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.”

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

**“66.1** The sending of a document by the prosecutor, a government department or body or the office of the court may be attested by means of an extract from the record certified by the person having custody thereof and indicating that the document was sent or by means of a writing signed by the person who sent the document.”

**9.** Article 67 of the said Code is amended by replacing the words “according to law” in the first line by the words “under or for the purposes of an Act”.

**10.** The said Code is amended by inserting, after article 67, the following article:

**“67.1** Notwithstanding article 62.4, where a document establishing the ownership of an immovable pursuant to article 65 or a document referred to in article 66 or 67 is produced as evidence by a party in electronic or hard copy form, the party is not required to prove the integrity or reliability of the document unless the opposing party establishes, upon a preponderance of evidence, that the document was modified after its electronic generation or upon its conversion into hard copy.”

**11.** Article 68 of the said Code is replaced by the following articles:

**“68.** A copy of a document in paper form, including a hard copy, has the same probative value as the original if it is certified by the person who is authorized under an Act to issue copies of the document or by the person entrusted with the enforcement of an Act.

**“68.1** Where a proceeding in electronic form has been electronically duplicated or converted into hard copy in accordance with the security standards for electronic data and documentation in penal matters established by regulation, the duplicate or hard copy, if certified by a person authorized therefor under an Act or by the person entrusted with the enforcement of an Act, or by means of an electronic certification procedure meeting those standards, has the same probative value as the proceeding that has been duplicated.

The same applies to a document referred to in article 62.4 or 67.1 that has been electronically duplicated or converted into hard copy, if the duplicate or hard copy is certified by a person authorized therefor under an Act or by the person entrusted with the enforcement of an Act, or by means of an electronic certification procedure, and security measures considered adequate have been taken in respect of the electronic duplication and certification procedures to ensure the integrity and reliability of the document.”

**12.** 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, or electronically as prescribed by regulation.”



**13.** Article 71 of the said Code is amended

(1) by inserting the words “, including a digitized signature or a signature affixed by means of an automatic device,” after the word “signature” in the first line;

(2) 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;”;

(3) by inserting the words “kept under or for the purposes of an Act” after the word “register” in the first line of paragraph 4;

(4) by replacing paragraph 5 by the following paragraph :

“(5) the person who certified a copy which he is authorized to issue under an Act or which the person entrusted with the enforcement of an Act authorized him to issue;”;

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

“(8) the person who attested receipt of the plea of guilty or of the whole amount of the fine and costs imposed on the defendant.”;

(6) by adding, after the first paragraph, the following paragraph :

“Likewise, the prosecutor is not required to prove the validity of an electronic certification procedure prescribed by regulation unless the defendant contests such validity and the judge is of the opinion that proof thereof must be established.”

**14.** Article 76 of the said Code is amended by replacing the third paragraph by the following paragraph :

“The security is payable in cash, by money order, by cheque certified by a Québec financial institution or by any other instrument of payment offering the same guarantees, or by means of a credit card or a transfer of funds to an account of the creditor in a financial institution.”

**15.** 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.”

**16.** 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 with the statement of offence, specifying that the application for forfeiture is to be made at the time of the judgment.”

**17.** 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.”

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

“**145.** The form, including the electronically-generated form, of a statement of offence shall be prescribed by regulation.”

**19.** Article 146 of the said Code is amended

(1) by replacing the words “an offence served pursuant to article 158” in paragraph 2 by the words “a parking violation”;

(2) by adding, at the end of paragraph 4, the words “if the statement is drawn up electronically or digitized, the date of service shall also be indicated in a document electronically appended to the document”.

**20.** 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.”

**21.** 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.”

**22.** 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.”

**23.** 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.”

**24.** 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.”

**25.** The said Code is amended by inserting, after article 184, the following article:

**“184.1** The details provided pursuant to article 178 and the amendments made to a count pursuant to article 179 or to a statement of offence pursuant to article 180, 180.1 or 184 may be recorded in the minutes or in a document electronically appended to the statement of offence if the latter is drawn up electronically or digitized.”

**26.** The said Code is amended by inserting, after article 191, the following article:

**“191.1** Where the defendant or both parties are absent, the clerk may transmit to the judge a proceeding received in electronic or hard copy form from the prosecutor or file any other type of document in such form in the record of the court.”

**27.** 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”.

**28.** The said Code is amended by inserting, after article 218, the following article:

**“218.1** The clerk of the court may, in accordance with the security standards for electronic data and documentation in penal matters, convert into electronic form documents in paper form admitted in evidence or filed in the record of the court and use, store and archive them in electronic form.

Such documents may thereafter be used, in accordance with article 62.3, in electronic or hard copy form for the purposes of this Code.”

**29.** The said Code is amended by inserting, after article 225, the following article:

**“225.1** A written judgment may be rendered in paper form or in electronic form.

Where a judge hearing an application against a judgment is not equipped to receive a document in electronic form, he may direct the clerk of the court to convert the judgment, and any other document filed in electronic form in the record of the court, into hard copy. In the case of a judgment deemed to be rendered under article 165, the prosecutor shall convert into hard copy all documents relevant to the application.”

**30.** Article 226 of the said Code is replaced by the following article:

**“226.** The judge or the clerk may record the judgment in minutes the form, including the electronically-generated form, of which shall be prescribed by order of the Minister of Justice.”

**31.** Article 241 of the said Code is amended

(1) by replacing the word “Where” in the first line by the words “Subject to articles 350 and 351, where”;

(2) by striking out the second sentence.

**32.** Article 243 of the said Code is 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:

“No correction unfavourable to the defendant may be made to a judgment referred to in article 165.”

**33.** 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.”

**34.** 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.”

**35.** 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”.

**36.** 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.”

**37.** The said Code is amended by inserting, after article 322, the following articles:

“**322.1** Where an order to pay an amount of money becomes executory, the collector may summon the defendant to appear before a judge or the clerk of the court in the district where the judgment was rendered or in the district of the defendant’s residence so that the defendant can be examined as to the property he owns and his sources of income.

Where the defendant is a legal person, the summons shall be addressed to one of its senior officers; where the defendant is a foreign partnership or legal person carrying on business in Québec, the summons shall be addressed to its agent.

«**322.2** A judge may, on the motion of the collector, order a defendant to produce all documents allowing his financial situation to be established and authorize the examination before the clerk of any person who is in a position to provide information regarding the defendant’s situation.”

**38.** 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.

**39.** The said Code is amended by inserting, after article 332, the following articles:

**“332.1** Where an order to pay an amount of money has been issued for a parking or traffic violation under an Act, regulation or by-law, the local collector may also cause a peace officer, a bailiff or an employee designated by a municipality to seize and immobilize, tow away or impound a motor vehicle registered in the name of the defendant, without fulfilling the formalities of seizure provided for in the Code of Civil Procedure, in order that the vehicle be disposed of by judicial sale; the seized party or a third person may oppose the seizure in accordance with the said Code.

**“332.2** A motor vehicle may be immobilized or towed away only if it is parked on a public road or on land belonging to a municipality.

Where a motor vehicle is immobilized, a notice shall be posted in plain view on the vehicle to warn the driver that the vehicle has been immobilized and that any attempt to move the vehicle could damage it. The notice shall also indicate where the driver may apply to have the immobilizing device removed.

**“332.3** Unless he makes a written agreement with the collector, the defendant may not recover possession of the motor vehicle until he has paid the fine and costs, including reasonable immobilization, towing or impounding costs as prescribed by by-law of the municipality in which the payment order was issued.”

**40.** Article 333 of the said Code is amended by inserting the words “and is convinced, after examining the defendant’s financial situation, that the defendant is unable to pay” after the word “defendant” in the second line.

**41.** 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.”

**42.** Article 348 of the said Code is amended by striking out the first two paragraphs.

**43.** Article 351 of the said Code is amended

(1) by replacing the word “may” in the second line by the word “shall”;

(2) by replacing the word “Sentences” in the third line by the words “Moreover, sentences”.

**44.** 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.

**45.** Article 364 of the said Code is amended 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”.

**46.** Article 367 of the said Code is amended

(1) by replacing paragraph 1 by the following paragraphs:

“(1) prescribe the form, including the electronically-generated form, of statements of offence and offence reports, which may vary according to the offence;

“(1.1) in order to ensure the integrity and reliability of proceedings that are drawn up electronically, digitized or converted into hard copy by the prosecutor, a government department or body or the office of the court, establish security standards for electronic data and documentation in penal matters; such standards may vary according to the proceeding, the nature of the information contained in the proceeding and according to whether the proceeding is drawn up electronically or digitized; such standards may, in particular, pertain to

(a) the origin or source of the proceeding;

(b) authenticity of signatures and how signatures may be affixed to a proceeding;



- (c) access to and consultation of a proceeding;
  - (d) conversion of a proceeding into hard copy;
  - (e) digitization of a proceeding drawn up in paper form and subsequent conversion of the proceeding into hard copy;
  - (f) electronic transmission, transfer, use, storage and archiving of a proceeding;
  - (g) electronic certification of a proceeding;
  - (h) electronic duplication of a proceeding;
  - (i) compatibility of electronic systems;”;
- (2) by striking out the words “and determine how it may be paid” in the second and third lines of paragraph 6.

**47.** 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”.

**48.** 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 COMPENSATORY WORK

*(Article 336)*

For the portion of the sums due between:	One hour of compensatory work is equivalent to:
\$1 and \$500:	\$10
\$501 and \$5 000:	\$20
\$5 001 and \$10 000:	\$40
\$10 001 and \$15 000:	\$60
\$15 001 and \$20 000:	\$80
\$20 001 and \$25 000:	\$100
\$25 001 and \$30 000:	\$120
\$30 001 and \$35 000:	\$140
\$35 001 and \$40 000:	\$160
\$40 001 and \$45 000:	\$180
\$45 001 and \$50 000:	\$200
\$50 001 and over:	\$320”.

**49.** The English text of the said Code is amended by replacing the word “on” by the word “with”

- (1) in the third line of the third paragraph of article 10;
- (2) in the first line of the first paragraph of article 38;
- (3) in the last paragraph of article 41.

**50.** The figures “\$400”, “\$700”, “\$1 400”, “\$1 600”, “\$3 200” and “\$4 000” wherever they appear in sections 83, 83.1, 83.2, 119, 119.1, 119.3 and 119.4 of the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20) and in paragraph 4 of section 122 of the said Act, amended by section 61 of chapter 61 of the statutes of 1993, are replaced by the figures “\$200 to \$400”, “\$350 to \$700”, “\$700 to \$1 400”, “\$800 to \$1 600”, “\$1 600 to \$3 200” and “\$2 000 to \$4 000”, respectively.

**51.** The provisions of this Act come into force on the date or dates to be fixed by the Government, except sections 46 and 50 which come into force on 7 December 1995.

