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Legislative Summary

BILL S-209: AN ACT TO RESTRICT YOUNG PERSONS' ONLINE ACCESS TO PORNOGRAPHIC MATERIAL

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Legislative Summary of Bill S-209
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL S-209, AN ACT TO RESTRICT YOUNG PERSONS' ONLINE ACCESS TO PORNOGRAPHIC MATERIAL

1 BACKGROUND

Bill S-209, An Act to restrict young persons' online access to pornographic material (Short title: Protecting Young Persons from Exposure to Pornography Act)[1] was introduced in the Senate on 28 May 2025 by the Honourable Senator Julie Miville-Dechêne. The bill passed second reading on 12 June 2025 and was referred to the Standing Senate Committee on Legal and Constitutional Affairs (LCJC) for study. LCJC reported the bill back with amendments on 24 March 2026. The bill passed third reading in the Senate on 15 April 2026 without further amendment. It received first reading in the House of Commons on 30 April 2026.

Bill S-209 enacts a new law: the Protecting Young Persons from Exposure to Pornography Act (the Act). The Act establishes a new offence prohibiting an organization from making pornographic material available to minors online for commercial purposes. The offence does not apply to organizations that incidentally provide services used to access pornographic material (e.g., search services). The Act also sets out certain defences, including that the organization used approved age-verification or age-estimation methods. In addition, the Act provides for certain regulatory enforcement mechanisms, which may result in a court blocking access to the material or in the imposition of administrative monetary penalties.

Bill S-209 is a modified version of Bill S-210, an Act to restrict young persons' online access to sexually explicit material,[2] which was introduced during the 44th Parliament. Bill S-210 died on the *Order Paper* without receiving third reading in the House of Commons when Parliament was dissolved in March 2025. Bill S-210 was itself a modified version of Bill S-203, An Act to restrict young persons' online access to sexually explicit material,[3] which was introduced in the 43rd Parliament but died on the *Order Paper* upon the dissolution of Parliament in August 2021.

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2 DESCRIPTION AND ANALYSIS

Following the amendments recommended by LCJC and adopted by the Senate, Bill S-209 contains a preamble and 13 clauses. Key clauses are discussed below.

2.1 DEFINITIONS (CLAUSE 2)

Clause 2 provides definitions of terms relevant to the interpretation of the Act. Of note are the following:

- "Organization" is defined in the same way as under section 2 of the *Criminal Code*.[4] It includes a public body, body corporate, society, company, firm, partnership, trade union, municipality, and an association of persons for a common purpose where certain criteria are met.
- "Young person" is defined as a person under 18 years of age.
- "Pornographic material" is defined, following amendment by LCJC, as any visual representation (e.g., photograph, film or video), except for child sexual abuse and exploitation material,[5] that

  (a) shows the genital organs or anal region of a person engaged or depicted as engaged in explicit sexual activity; and

  (b) is intended to cause sexual excitement.[6]

Under the definition put forward at first reading, "the dominant characteristic" of the material had to be "the depiction, for a sexual purpose, of a person's genital organs or anal region or, if the person is female, her breasts."[7] The amended definition is narrower in that it does not include depictions of female breasts and requires the depiction of explicit sexual activity. On the other hand, it removes the "dominant characteristic" requirement. The amended definition also clarifies that pornographic material must be "intended to cause sexual excitement," rather than being "for a sexual purpose." This change in wording was intended to narrow the scope of material captured.[8]

2.2 RESPONSIBLE MINISTER (CLAUSE 3)

Clause 3 authorizes the Governor in Council (i.e., Cabinet) to designate any federal minister to be responsible for the Act.

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2.3 PURPOSE (CLAUSE 4)

Clause 4 sets out the purposes of the Act, which fall under the general umbrella of health and safety, with a particular emphasis on protecting young persons and women.

2.4 OFFENCE (CLAUSES 5 AND 6)

Clause 5 creates a new offence that prohibits an organization from making pornographic material available on the Internet to a young person, where this is done for commercial purposes. The terms "organization," "pornographic material," "making available," and "young person" are defined under clause 2 of the bill; "commercial purposes" is not defined. The offence created by clause 5 is subject to certain defences set out under clause 7.

An organization found guilty of committing the offence is punishable on summary conviction. The penalty for a first offence is a fine of not more than $250,000. For a second or subsequent offence, the penalty is a fine of not more than $500,000.

Clause 6 clarifies that the new offence does not apply to an organization that "incidentally provides a service that is used to search for, transmit, download, store or access" pornographic material online. In the first reading version of the bill, this clause used the wording "incidentally and not deliberately," however LCJC amended the clause to remove the words "and not deliberately." The amendment was intended to narrow the range of organizations captured, ensuring that intermediaries such as search engines would not be included.[9]

2.5 DEFENCES (CLAUSE 7)

Clause 7 establishes three defences:

- Under clause 7(1), an organization may rely on a prescribed[10] age-verification or age-estimation method to justify its belief that a young person exposed to online pornography was at least 18 years of age.
- Clause 7(2) states that no organization shall be convicted of an offence under clause 5 if it made pornographic material available for "a legitimate purpose related to science, medicine, education or the arts."
- Clause 7(3) states that no organization will be convicted of an offence under clause 5 if they received a non-compliance notice under clause 9 (discussed below) and took the required steps to comply with the notice within the set deadline.

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2.6 NON-COMPLIANCE NOTICE (CLAUSES 8, 9 AND 10)

Clauses 8, 9 and 10 deal with the enforcement of the Act.

Clause 8 authorizes the Governor in Council to designate an agency, division or branch of government as the enforcement authority for the Act.

Clause 9(1) states that the enforcement authority may issue a non-compliance notice to an organization where it has "reasonable grounds to believe" that the organization committed an offence under clause 5. Clause 9(2) sets out the information that must be contained in the notice.

Clause 10(1) allows the enforcement authority to apply to the Federal Court for an order requiring Internet service providers (ISPs) to block online access to the pornographic material by young persons in Canada. The enforcement authority may apply for the order within 20 days after an organization fails to meet the compliance deadline set out in the notice.

Clause 10(4) requires the Federal Court to order any respondent ISPs to prevent online access to the pornographic material by young persons in Canada where:

- there are reasonable grounds to believe that an organization committed the offence;
- the organization has failed to comply with the notice within the set deadline; and
- the ISP subject to the order provides services that can be used to access the pornographic material made available by the organization.

Prior to LCJC's amendments, clause 10(5) stated that, if necessary, the court order could have the effect of preventing access to other (non-pornographic) material made available by the organization, or of preventing access to the pornographic material even if the person seeking access was an adult. LCJC removed clause 10(5) entirely, in response to concerns raised in evidence regarding its potential infringement of the freedom of expression guaranteed under the *Canadian Charter of Rights and Freedoms*.[11]

2.7 ANNUAL REPORT TO PARLIAMENT (CLAUSE 11)

Under clause 11, the designated minister must table an annual report on the Act in both the House of Commons and the Senate. The report must include statistics related to the enforcement of the Act from the previous fiscal year.

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2.8 REGULATIONS (CLAUSE 12)

Clause 12(1) enables the Governor in Council to make regulations for "carrying out the purposes and provisions of this Act." Clauses 12(1)(a) and 12(1)(b) list specific regulation-making powers that are included under this general authority.

Clause 12(1)(a) relates to the scope of the bill. In its first reading formulation, it allowed for regulations

> specifying the circumstances in which pornographic material *is or is not* to be regarded as made available for commercial purposes, including circumstances in which pornographic material made available free of charge *is or is not* to be regarded as made available for commercial purposes [Author's emphasis].

Following amendment by LCJC, the provision allows for regulations "specifying the circumstances in which pornographic material made available free of charge *is not* to be regarded as made available for commercial purposes" [Author's emphasis]. The amendment appears to curtail the regulation-making power somewhat; Cabinet can now only scope out (and not scope in) pornographic material, and only in cases where the material is made available free of charge.

Clause 12(1)(b) allows for regulations prescribing acceptable age-verification and age-estimation methods.

LCJC added new clause 12(1)(c), which explicitly allows for the establishment, by regulation, of a system of administrative monetary penalties to enforce compliance with the Act. A consequential amendment was made to clause 9 to ensure that organizations are properly notified regarding the administrative monetary penalty system.

Clause 12(2) requires the Governor in Council to ensure that a prescribed age-verification or age-estimation method meets certain criteria, set out in clauses 12(2)(a) to 12(2)(g). These criteria relate primarily to the protection of people's privacy. At first reading, clause 12(2)(d) required that the method "collects and uses personal information solely for age-verification or age-estimation purposes, *except to the extent required by law*" [Author's emphasis]. LCJC amended this clause to remove the limitation "except to the extent required by law," in response to testimony suggesting that this phrase was unnecessary and created uncertainty regarding whether the provision would be enforced.[12]

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2.9 COMING INTO FORCE (CLAUSE 13)

At first reading, Bill S-209 was set to come into force one year after Royal Assent. LCJC amended this clause so that the bill comes into force on a day to be fixed by order of the Governor in Council.[13]

NOTES

1. Bill S-209, An Act to restrict young persons' online access to pornographic material, 45th Parliament, 1st Session.
2. Bill S-210, an Act to restrict young persons' online access to sexually explicit material, 44th Parliament, 1st Session.
3. Bill S-203, An Act to restrict young persons' online access to sexually explicit material, 43rd Parliament, 2nd Session.
4. *Criminal Code*, R.S.C. 1985, c. C-46.
5. The exception refers to *child sexual abuse and exploitation material* as defined under section 163.1(1)(a) of the *Criminal Code*.
6. The amended definition includes some of the same elements as the definition of "sexually explicit material" under the *Criminal Code* (s. 171.1(5)). The term "pornographic material" is not used in the *Criminal Code*. However, prior to the passage of Bill C-291, An Act to amend the Criminal Code and to make consequential amendments to other Acts (child sexual abuse and exploitation material) in October 2024, "child sexual abuse and exploitation material" (defined at s. 163.1(1)) was referred to as "child pornography." The Supreme Court of Canada has also considered the meaning of pornography in *R. v. Butler*, [1992] 1 SCR 452.
7. The first reading definition closely mirrors the portion of the definition of "sexually explicit material" set out at s. 171.1(5)(a)(ii) of the *Criminal Code*. Bill S-210 referred directly to the *Criminal Code* definition of "sexually explicit material" rather than using the term "pornographic material."
8. Senate, Standing Senate Committee on Legal and Constitutional Affairs (LCJC), *Evidence*, 5 February 2026.
9. Ibid.
10. "Prescribed" means set out in regulations.
11. LCJC, *Evidence*, 5 February 2026. See also LCJC, *Evidence*, 22 October 2025 (Emily Laidlaw, Canadian Research Chair in Cybersecurity Law and Associate Professor, University of Calgary; Michael Geist, Canada Research Chair in Internet and E-commerce Law and Full Professor, Faculty of Law, University of Ottawa).
12. LCJC, *Evidence*, 5 February 2026. See also LCJC, *Evidence*, 2 October 2025.
13. See Kate Sinnott, "Coming into Force of Federal Legislation: A Practical Guide," *HillNotes*, Library of Parliament, 4 October 2022.