

BEYOND BORDERS ECPAT CANADA  
CANADIAN SEX OFFENDER REGISTRY  
LEGISLATIVE REVIEW FACT SHEET

*In order to understand why, how and when those convicted of certain sexual offences under Canadian law must register on the National Sex Offender Registry, a person must refer to both the Criminal Code of Canada and the Sex Offender Information Registration Act and Regulations, all of which are discussed in more detail below.*

*The information provided below is a summary of relevant and excerpted provisions only and is not an exhaustive review of the sections noted or applicable law. This Fact Sheet is for information purposes only and is not a substitute for legal advice.*

*This Fact Sheet does not address orders under the National Defence Act or the International Transfer of Offenders Act.*

*Criminal Code of Canada*

- Under the Criminal Code of Canada, individuals who are convicted of certain crimes that are designated sexual offences will be ordered by the Court to comply with the Sex Offender Information Registration Act ("SOIRA"). In other cases, and for different types of designated sexual offences, a court shall upon application of the Crown prosecutor, make an order requiring the convicted sex offender to comply with the Sex Offender Information Registration Act. (*Criminal Code of Canada, Section 490.012*)

*NOTE: This is a high-level summary only and does not deal with those found not criminally responsible etc. – further details of which can be found in the Criminal Code of Canada.*

- Examples of offences where a convicted sexual offender will be required to comply with the SOIRA are included in Schedule "A" to this Fact Sheet.
- Orders made by the Court may vary where intent has been established or where previous offences have been established. (*Criminal Code of Canada, Section 490.012(2) and (3)*)
- The order to comply with the SOIRA – and register on the registry and to comply with the registration and notification requirements under the SOIRA - begins on the day on which the Court makes the order. (*Criminal Code of Canada, Section 490.013*)
- The length of the order obligating a convicted sex offender to comply with the SOIRA and to remain registered on the National Sex Offender Registry varies on the nature of the offence and the maximum term for that offence.
  - (a) Where the order is for an offence that was prosecuted summarily or if the

maximum term of imprisonment is two to five years, the order will end 10 years after it was made;

(b) Where the order was made for an offence with a maximum term of imprisonment that is between 10 and 14 years, the order will end 20 years after it was made; and

(c) Where the order was made for an offence with a maximum term of imprisonment of life, then the order will apply for life. In addition, those who have been previously convicted of certain designated offences may upon application have the order imposed for life. (*Criminal Code of Canada, Section 490.013 (2), Section 490.013(5), Section 490.012(3)*)

- There are appeal options from a decision of the Court provided the appeal is grounded on questions of law or of mixed fact and law. The appeal court may dismiss the appeal, (*Criminal Code of Canada, Section 490.014*)
- A convicted sex offender who is subject to an order to comply with the SOIRA can apply to have that order terminated. (*Criminal Code of Canada, Section 490.015*)

(a) Where the order would typically end 10 years after the order was made, the offender can apply for termination of the order after 5 years

(b) Where the order would typically end 20 years after it was made, the offender can apply for termination of the order after 10 years.

(c) Where the order would typically be for life, the offender can apply for termination of the order after 20 years.

(d) An offender who is subject to more than one order made under section 490.012 of the Criminal Code may apply for termination of an order if 20 years have elapsed since the most recent order was made.

- A person can also apply for an earlier termination of an order to comply with the SOIRA and be registered under the National Sex Offender Registry where they have received a pardon or once a record suspension is ordered. If their request for termination of the order against them is refused, they can reapply every five years or upon receipt of a pardon or record suspension. (*Criminal Code of Canada, Section 490.015(3), Section 490.015(5)*)
- *In considering an application by a sex offender for early termination of an order to comply with SOIRA, the Court shall make a termination order if it is satisfied that the person has established that the impact on them of continuing an order or an obligation, including on their privacy or liberty, would be grossly disproportionate to the public interest in protecting society through the effective prevention or investigation of crimes of a sexual nature, to be achieved by the registration of that person . The Court is obligated to give reasons for its decision. If the Court terminates such an order, it shall cause the Commissioner of the RCMP and the Attorney General of the Province or the Minister of Justice of that Territory to be noticed of the Decision. Either the Crown Prosecutor or the Sex Offender who*

*applied for a termination order may appeal the decision of the Court. (Criminal Code of Canada, Section 490.016, Section 490.017)*

- Orders may also be made for convicted sex offenders to comply with the SOIRA for crimes they were convicted of outside of Canada, which may vary from those steps or requirements noted above. (*Criminal Code of Canada, Section 490.02901 – Section 490.02911*).

#### *National Sex Offender Registry – Offender Obligations*

*The review in this section does not deal with offenders sentenced under the National Defence Act.*

- Keep in mind that a convicted sex offender may be subject to other conditions imposed by a Court as part of the offender's sentence, in addition to their obligations to comply with the Sex Offender Registration Act ("SOIRA"). These could include restrictions from contact with children etc.
- Sex Offenders who have been convicted of certain designated sexual offences, including offences against children, both in Canada and abroad, can be ordered to comply with the Sex Offender Registration Act ("SOIRA"). *See review of certain Criminal Code Provisions set out above and Schedule "A" attached.* Compliance with the SOIRA entails registration on the National Sex Offender Registry.
- The National Sex Offender Registry is established and regulated by Canadian federal law, namely the SOIRA. Under the SOIRA, regulations have been enacted for each Canadian Province and Territory.

Generally speaking, the SOIRA sets out the requirements for registration and reporting requirements/obligations for sex offenders who are ordered to register, as well as for those governmental and law enforcement officials who maintain the National Sex Offender Registry and work with those registered sex offenders under SOIRA.

The SOIRA regulations typically identify the Sex Offender Registration Centre for that Province or Territory, detail that reports and notifications may be made by telephone unless otherwise required, and identify those who may collect and register information for the National Sex Offender Registry for the purposes of the SOIRA.

- It is important to understand that the National Sex Offender Registry is considered to be a tool of law enforcement only, which is why members of the public do not have access to information that is on the National Sex Offender Registry, except where police make public notification statements concerning certain offenders.

This is a different philosophy than exists in other countries, where sex offender information may be made available directly to the public.

- The SOIRA specifically provides that the purpose of this law is to help police services prevent and investigate crimes of a sexual nature by requiring the registration of certain information relating to sex offenders. (SOIRA, Section 2(1))
- The requirements under the SOIRA are to be carried out in recognition of certain guiding principles: police services must have rapid access to certain information relating to sex offenders which is updated on an ongoing basis to ensure that information is current and reliable, and also that the privacy interests of sex offenders and the public interest in their rehabilitation and reintegration into the community as law-abiding citizens be taken into account. (SOIRA, Section 2(2))
- The database of offender information forming part of the National Sex Offender Registry is administered by the RCMP. Subject to certain exceptions, information that is obtained and registered in the sex offender database shall be kept in the database indefinitely. Information in the database may be destroyed or permanently removed if the person is ultimately acquitted of the offence for which the order for registration was made or the person receives a pardon (SOIRA, Section 14, Section 15(1), Section 15(2))
- Typically, offenders who have been ordered to comply with the SOIRA must register within seven days by attending at a registration centre. If the offender has been given a custodial sentence, then registration will be required after servicing the custodial portion of their sentence. (SOIRA, Section 4)
- If a sex offender is required to report to a registration centre, they must report in person. (SOIRA, Section 4(3))
- A sex offender is prohibited from leaving Canada before their initial obligation to report under the SOIRA. (SOIRA, Section 4(4))
- A sex offender has obligations to subsequently report to registration centres within a set period, if they change their address, change their given or surname, receive a driver's license, or at any time between 11 months and one year after they have last reported to a registration session. ((SOIRA, Section 4.1(1))
- If a sex offender receives a passport, the sex offender must report this occurrence to the registration centre within seven days. (SOIRA, Section 4.1(1)(b.2))0
- When a sex offender reports to a registration centre, they must provide certain information about themselves, including:
  - (a) their given name and surname, and every alias that they use;
  - (b) their date of birth and gender;
  - (c) the address of their main residence and every secondary residence;
  - (d) the address of every place at which they are employed or are engaged on a volunteer basis, the name of their employer or the person who engages them on a volunteer basis or retains them and the type of work that they do there;

(e) the address of every educational institution at which they are enrolled or, if there is no such address, the location of that place;

(f) a telephone number at which they may be reached, if any, for every place referred to in paragraphs (c) and (d), and the number of every mobile telephone or pager in their possession;

(g) their height and weight and a description of every physical distinguishing mark that they have;

(h) the licence plate number, make, model, body type, year of manufacture and colour of the motor vehicles that are registered in their name or that they use regularly;

(i) the licence number and the name of the issuing jurisdiction of every driver's licence that they hold; and

(j) the passport number and the name of the issuing jurisdiction of every passport that they hold.

*(SOIRA, Section 5(1))*

- When a sex offender reports to a registration centre in person, the person who collects the information referred to above may record any observable characteristics that may help to identify the offender, including their eye colour and hair colour, and may require that their photograph be taken. *(SOIRA, Section 5(3))*
- **Travel in Canada** Where a sex offender who is convicted of a sexual offence against a child plans to be away from their main residence or secondary residence(s) for a period of seven or more consecutive days, he or she shall notify a person who collects information at the registration centre before their departure of the dates of their departure and return. The offender who has not advised pre-departure must advise without delay after their departure of the date of their return and of every address or location at which they are staying in Canada.

The second offender must also advise of a change in address, location or date before their departure or if the change is made after departure, within seven days after the date on which the change is made.

*(SOIRA, Section 6(1)(1.01))*

- **Travel outside of Canada.** Where a sex offender who is convicted of a sexual offence against a child plans to be away from their main residence or secondary residence(s) for a period of seven or more consecutive days, the offender must notify a person who collects information at a registration centre before his/her departure, of the dates of his/her departure and return and of every address or location at which he/she expects to stay outside of Canada. The offender must also advise, without delay, after his/her departure of the date of his/her return and of every address or location at which they are staying outside of Canada if they decide after departure to extend their stay beyond the stated date of return.

The second offender must also advise of a change in address, location or date before their departure or if the change is made after departure, without delay after the date on which the change is made.

*(SOIRA, Section 6(1)(1.01)*

- **Corrections can release information.** The Correctional Service of Canada may apprise a person who registers information under the SOIRA of the day upon which a sex offender is received into a penitentiary or correctional facility, if the sex offender is expected to be out of the penitentiary or correctional facility for seven or more days (and particulars concerning same), and **the date of a sex offender's release or discharge.** *(SOIRA , Section 15.1(1) and (2))*
- **Canada Border Services Agency.** The Canada Border Services Agency ("CBSA") may assist a member or an employee of, or a person retained by, a police service in the prevention or investigation of a crime of a sexual nature or offence by collecting information disclosed to it, including: the date of the offender's departure from Canada, the date of their return to Canada, and every address or location at which they have stayed outside of Canada. The CBSA may disclose such information to the Commissioner of the RCMP.
- The use and disclosure of information that forms part of the National Sex Offender Registry is limited to law enforcement purposes and highly regulated.

Schedule "A"

*\*This excerpt definition must be read in conjunction with specific sections of the Criminal Code of Canada to determine how each of the offences listed below are to be dealt with in connection with the SOIRA.*

*designated offence* means

- (a) an offence under any of the following provisions:
  - (i) subsection 7(4.1) (offence in relation to sexual offences against children),
  - (ii) section 151 (sexual interference),
  - (iii) section 152 (invitation to sexual touching),
  - (iv) section 153 (sexual exploitation),
  - (v) section 153.1 (sexual exploitation of person with disability),
  - (vi) section 155 (incest),
  - (vi.1) subsection 160(2) (compelling the commission of bestiality),
  - (vii) subsection 160(3) (bestiality in presence of or by a child),
  - (viii) section 163.1 (child pornography),
  - (ix) section 170 (parent or guardian procuring sexual activity),
  - (ix.1) section 171.1 (making sexually explicit material available to child),
  - (x) section 172.1 (luring a child),
  - (x.1) section 172.2 (agreement or arrangement — sexual offence against child),
  - (xi) subsection 173(2) (exposure),
  - (xii) to (xv) [Repealed, 2014, c. 25, s. 25]
  - (xvi) section 271 (sexual assault),
  - (xvii) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm),
  - (xviii) paragraph 273(2)(a) (aggravated sexual assault — use of a restricted firearm or prohibited firearm or any firearm in connection with criminal organization),
  - (xviii.1) paragraph 273(2)(a.1) (aggravated sexual assault — use of a firearm),
  - (xix) paragraph 273(2)(b) (aggravated sexual assault),

- **(xx)** subsection 273.3(2) (removal of a child from Canada),
- **(xxi)** section 279.011 (trafficking — person under 18 years),
- **(xxii)** subsection 279.02(2) (material benefit — trafficking of person under 18 years),
- **(xxiii)** subsection 279.03(2) (withholding or destroying documents — trafficking of person under 18 years),
- **(xxiv)** subsection 286.1(2) (obtaining sexual services for consideration from person under 18 years),
- **(xxv)** subsection 286.2(2) (material benefit from sexual services provided by person under 18 years), and
- **(xxvi)** subsection 286.3(2) (procuring — person under 18 years);
- **(b)** an offence under any of the following provisions:
  - **(i)** section 162 (voyeurism),
  - **(i.1)** subsection 173(1) (indecent acts),
  - **(ii)** section 177 (trespassing at night),
  - **(iii)** section 230 (murder in commission of offences),
  - **(iii.1)** section 231 (murder),
  - **(iv)** section 234 (manslaughter),
  - **(v)** paragraph 246(b) (overcoming resistance to commission of offence),
  - **(vi)** section 264 (criminal harassment),
  - **(vii)** section 279 (kidnapping),
  - **(vii.1)** section 279.01 (trafficking in persons),
  - **(vii.11)** subsection 279.02(1) (material benefit — trafficking),
  - **(vii.12)** subsection 279.03(1) (withholding or destroying documents — trafficking),
  - **(viii)** section 280 (abduction of a person under age of sixteen),
  - **(ix)** section 281 (abduction of a person under age of fourteen),
  - **(ix.1)** subsection 286.1(1) (obtaining sexual services for consideration),
  - **(ix.2)** subsection 286.2(1) (material benefit from sexual services),
  - **(ix.3)** subsection 286.3(1) (procuring),



- (x) paragraph 348(1)(d) (breaking and entering a dwelling house with intent to commit an indictable offence),
  - (xi) paragraph 348(1)(d) (breaking and entering a dwelling house and committing an indictable offence),
  - (xii) paragraph 348(1)(e) (breaking and entering a place other than a dwelling house with intent to commit an indictable offence), and
  - (xiii) paragraph 348(1)(e) (breaking and entering a place other than a dwelling house and committing an indictable offence);
- (c) an offence under any of the following provisions of the [Criminal Code](#), chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 4, 1983:
    - (i) section 144 (rape),
    - (ii) section 145 (attempt to commit rape),
    - (iii) section 149 (indecent assault on female),
    - (iv) section 156 (indecent assault on male), and
    - (v) subsection 246(1) (assault with intent) if the intent is to commit an offence referred to in any of subparagraphs (i) to (iv);
  - (c.1) an offence under any of the following provisions of the [Criminal Code](#), chapter C-34 of the Revised Statutes of Canada, 1970, as enacted by section 19 of *An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof*, chapter 125 of the Statutes of Canada, 1980-81-82-83:
    - (i) section 246.1 (sexual assault),
    - (ii) section 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm), and
    - (iii) section 246.3 (aggravated sexual assault);
  - (d) an offence under any of the following provisions of the [Criminal Code](#), chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 1, 1988:
    - (i) subsection 146(1) (sexual intercourse with a female under age of fourteen),
    - (ii) subsection 146(2) (sexual intercourse with a female between ages of fourteen and sixteen),
    - (iii) section 153 (sexual intercourse with step-daughter),
    - (iv) section 157 (gross indecency),

- (v) section 166 (parent or guardian procuring defilement), and
- (vi) section 167 (householder permitting defilement);
- (d.1) an offence under any of the following provisions of this Act, as they read from time to time before the day on which this paragraph comes into force:
  - (i) paragraph 212(1)(i) (stupefying or overpowering for the purpose of sexual intercourse),
  - (ii) subsection 212(2) (living on the avails of prostitution of person under 18 years),
  - (iii) subsection 212(2.1) (aggravated offence in relation to living on the avails of prostitution of person under 18 years), and
  - (iv) subsection 212(4) (prostitution of person under 18 years);
- (e) an attempt or conspiracy to commit an offence referred to in any of paragraphs (a), (c), (c.1), (d) and (d.1); or
- (f) an attempt or conspiracy to commit an offence referred to in paragraph (b). (*infraction désignée*)
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  - (xxiv) subsection 286.1(2) (obtaining sexual services for consideration from person under 18 years),
  - (xxv) subsection 286.2(2) (material benefit from sexual services provided by person under 18 years), and
  - (xxvi) subsection 286.3(2) (procuring — person under 18 years);