

**BILL C-34: PROTECTING VICTIMS
FROM SEX OFFENDERS ACT**

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LEGISLATIVE HISTORY OF BILL C-34

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 1 June 2009
Second Reading: 8 June 2009
Committee Report: 7 December 2009
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

This bill did not become law before the 2nd Session of the 40th Parliament ended on 30 December 2009.

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

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GENERAL



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BILL C-34: PROTECTING VICTIMS FROM SEX OFFENDERS ACT*

BACKGROUND

Bill C-34, An Act to amend the Criminal Code and other Acts (short title: Protecting Victims from Sex Offenders Act) was tabled and read for the first time in the House of Commons on 1 June 2009. It was given second reading on 8 June 2009 and sent to the Standing Committee on Public Safety and National Security for more thorough study.⁽¹⁾

The bill amends the *Criminal Code*, the *Sex Offender Information Registration Act*, the *National Defence Act* and the *International Transfer of Offenders Act*, and consequentially amends the *Criminal Records Act*. To better protect the public, it aims to strengthen the National Sex Offender Registry (the national registry) and the National DNA Data Bank (NDDB) by enabling police services to improve crime prevention and more effectively investigate crimes of a sexual nature.⁽²⁾ The changes made to the national registry also apply to the military justice system.

Briefly, under Bill C-34, when persons are found guilty of a sexual offence they are automatically registered in the national registry and samples of their DNA are taken for forensic analysis. All sex offenders convicted outside Canada will henceforth be required to register when they arrive in the country, and Canadian police authorities will be able to alert other police services to the movements of sex offenders who are considered high-risk.

The *Sex Offender Information Registration Act* (SOIRA), which came into force on 15 December 2004, constitutes the legislative basis of the national registry. Section 21.1 of the SOIRA provides for a mandatory review by parliamentary committee two years after the coming into force of this Act.

* 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 or 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) To date, the committee has held one session on Bill C-34, on 18 June 2009.
- (2) Public Safety Canada, “Strengthening the National Sex Offender Registry and the National DNA Data Bank,” News release, 1 June 2009, <http://www.publicsafety.gc.ca/media/nr/2009/nr20090601-2-eng.aspx>.

The Standing Committee on Public Safety and National Security (the committee) decided on 10 February 2009 to conduct a first review of the SOIRA. It held three sessions, during which it heard evidence⁽³⁾ from various witnesses.

The main objective of the committee's review was to determine which changes should be made to the SOIRA and related legislation to make the national registry as effective as possible in serving its intended use, that is, to assist Canadian law enforcement authorities in investigating crimes of a sexual nature. Bill C-34 was sent to committee on 8 June 2009, before the committee could table a report and formulate its recommendations. To the extent possible, the observations made by witnesses in the course of this committee study have been incorporated into this legislative summary.

It should be noted that the effectiveness of the national registry has never been evaluated. As a result, in April 2009, one witness suggested that an independent third-party evaluation be carried out before any attempt is made to improve the effectiveness of the present registry.⁽⁴⁾

A. Current National Registry

1. Purpose and Principles of the *Sex Offender Information Registration Act*

The purpose of the SOIRA is to help Canadian police authorities investigate crimes of a sexual nature by requiring the registration of certain information on sex offenders. Achievement of this objective is based on the principles laid out in subsection 2(1) of the SOIRA, whereby police services must have rapid access to information relating to sex offenders so that they can effectively investigate crimes of a sexual nature and provide for the protection of society. On-going collection and registration of accurate information is the most effective way of ensuring that this information is current and reliable.

On the other hand, respect for the privacy of sex offenders and their rehabilitation and reintegration into the community require that the information be collected only to permit

(3) The following persons and organizations appeared before the committee during its proceedings: Department of Justice, Department of Public Safety, Canadian Association of Chiefs of Police, Royal Canadian Mounted Police, Ontario Provincial Police, Office of the Privacy Commissioner of Canada, Canadian Council of Criminal Defence Lawyers, Jim and Anna Stephenson.

(4) House of Commons, Standing Committee on Public Safety and National Security, *Evidence*, 2nd Session, 40th Parliament [SECU, *Evidence*], 23 April 2009, 0910 (Carman Baggaley, Strategic Policy Advisor, Office of the Privacy Commissioner of Canada).

police services to investigate crimes “that there are reasonable grounds to suspect are of a sexual nature.”⁽⁵⁾ For this reason, access to and use and disclosure of this information are restricted. It should be noted that the public does not have access to the sex offender registry.

To help police services investigate crimes of a sexual nature, the SOIRA requires that certain information be entered in the national registry, notably the address and telephone number of offenders, a description of their physical distinguishing marks and tattoos, every alias they use, the nature of the offence committed, and the age and gender of victims and their relationship to the assailant.

2. Amendments

The SOIRA was amended in 2008 by Bill S-3, An Act to amend the National Defence Act, the Criminal Code, the Sex Offender Information Registration Act and the Criminal Records Act. The purpose of this bill was to harmonize the military justice system with the civilian criminal system as regards the registration in the national registry of offenders convicted by court martial of offences of a sexual nature.

3. Registration Process

The National Sex Offender Registry is administered and maintained by the Royal Canadian Mounted Police (RCMP). At present, not all sex offenders covered by the SOIRA and related legislation must be included in the national registry. According to the *Criminal Code* (the Code), in the case of a designated offence of a sexual nature, the Crown must set the registration process in motion following sentencing or a verdict of not criminally responsible on account of mental disorder.⁽⁶⁾ Once the process is begun, the court must decide whether inclusion of the offender in the national registry is necessary, and if so, it must make an order.

In April 2009 more than 19,000 sex offenders were registered in the national registry.⁽⁷⁾ Approximately 50% of the offenders found guilty of a designated offence or not criminally responsible on account of mental disorder are currently under an order to register in the national registry, but the order enforcement rates vary considerably across the different

(5) *Sex Offender Information Registration Act*, S.C. 2004, c. 10, s. 2(2)(c)(i).

(6) Section 490.011 of the Code defines a designated offence by listing the offences for which an order may be imposed. See Appendix A of this legislative summary.

(7) SECU, *Evidence*, 21 April 2009, 0915 (Inspector Pierre Nezan, Officer in Charge, National Sex Offender Registry, Royal Canadian Mounted Police).

provinces and territories.⁽⁸⁾ This variation may be explained by different factors, such as provincial practices, plea bargains, or oversight on the part of prosecutors.⁽⁹⁾

4. Consultation

According to the current principles of the SOIRA, information is collected to permit police officers to investigate crimes “that there are reasonable grounds to suspect are of a sexual nature.” The SOIRA allows only those people referred to in section 16 to consult the registry or to disclose information in the registry. Under this section, police officers are prohibited from consulting the registry unless they do so in the context of investigating a crime and have reasonable grounds to suspect that the crime being investigated is of a sexual nature.

Police organizations contend that the current legislative provisions of the SOIRA requiring that there be a suspicion that an offence is of a sexual nature are hampering the work of the police, because the exact nature of the crime is not always known during an investigation. The organizations say that these restrictions prevent the police from accessing information that could be useful, at the risk of stalling investigations.

Police officers have also indicated that the present legislative framework of the national registry does not allow them to prevent crimes of a sexual nature. In fact, many police officers prefer, whenever possible, to consult the Ontario registry, because it can be used preventively. The substantial gap between the statistics on national registry usage versus Ontario registry usage amply illustrate this situation: according to the information collected, the National Sex Offender Registry is consulted an average of 165 times a year, and the Ontario registry about 475 times a day.⁽¹⁰⁾ In August 2008, Commissioner Julian Fantino of the Ontario Provincial Police asked the Canadian Association of Chiefs of Police to recommend to the federal government that it consider the Ontario registry as the template to be followed in order to improve the national registry.⁽¹¹⁾

(8) Ibid.

(9) Public Safety Canada, “Strengthening the Sex Offender Registry,” News release, 1 June 2009, <http://www.publicsafety.gc.ca/media/nr/2009/nr20090601-1-eng.aspx>.

(10) SECU, *Evidence*, 21 April 2009, 1050 and 1055 (Superintendent David Truax, Ontario Provincial Police, Canadian Association of Chiefs of Police).

(11) SECU, *Evidence*, 21 April 2009, 0915 (Chief Superintendent Kate Lines, Ontario Provincial Police, Canadian Association of Chiefs of Police).

B. The Ontario Registry

Ontario was the first province in Canada to establish its own sex offender registry (the Ontario registry).⁽¹²⁾ *Christopher's Law (Sex Offender Registry), 2000*⁽¹³⁾ (Christopher's Law) was proclaimed on 23 April 2001 in memory of Christopher Stephenson, an 11-year-old boy who was abducted and brutally murdered in 1988 by a sex offender on statutory release. The Ontario registry is managed by the Ontario Provincial Police, and according to the preamble to Christopher's Law, it was designed to provide police forces with the information and investigative tools they require to prevent and solve crimes of a sexual nature.⁽¹⁴⁾

1. Registration Process

Registration is automatic for offenders residing in Ontario who are found guilty of a sex offence.⁽¹⁵⁾ Ontario residents who have received a verdict of not criminally responsible on account of mental disorder and young offenders convicted in an adult court of one of the listed sex offences are also registered automatically. On 21 April 2009, 11,963 offenders were entered in the Ontario registry, and the registration rate was 96.84% – one of the highest in the world for sex offender registries. One of the advantages of the Ontario registry is that it shows the number of offenders who fail to abide by their obligations. In April 2009, for example, 278 sex offenders were being investigated for non-compliance.⁽¹⁶⁾

2. Searching the Registry

In Ontario, police officers are authorized to consult the information in the registry to prevent sex crimes or to check the accuracy of the information there. For example, they are authorized to make reasonable efforts to verify the address provided by an offender at least once

(12) There have been sex offender registries in the United States since 1940 and the United Kingdom since 1997. For more information about sex offender registries in the United States and the United Kingdom, see Robin MacKay, *Bill C-16: Sex Offender Information Registration Act*, LS-470E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 16 February 2004, <http://lopintrabp.parl.gc.ca/lopimages2/PRBpubsArchive/ls3731000/373c16-e.asp>.

(13) S.O. 2000, c. 1.

(14) The Ontario registry has been audited by the Office of the Auditor General of Ontario. For further information on the recommendations, please see Office of the Auditor General of Ontario, "Ontario Sex Offender Registry," in *2007 Annual Report*, http://www.auditor.on.ca/en/reports_en/en07/311en07.pdf.

(15) *Christopher's Law (Sex Offender Registry), 2000* and *Ontario Regulation 69/01* define a sexual offence by listing all of the offences covered. See Appendices C and D in this legislative summary.

(16) SECU, *Evidence*, 21 April 2009, 0915 (Chief Superintendent Kate Lines, Ontario Provincial Police, Canadian Association of Chiefs of Police).

after the offender last reported to a police station.⁽¹⁷⁾ The public does not have access to the registry's data bank, and any unauthorized disclosure of its content constitutes an offence. Under subsection 2(1) of *Ontario Regulation 69/01*, the Ontario registry may include the following information: the offender's driver's licence number (if applicable) and the licence plate number and make, model, year of manufacture, colour and description of any automobile owned, leased or regularly used by the offender. Also registered are the offender's date of death, if applicable, and death certificate number.

DESCRIPTION AND ANALYSIS

Bill C-34 contains 62 clauses. The following description reviews selected provisions of the bill.

A. Purpose and Principles of the SOIRA (Clause 27)

Clause 27 of the bill broadens the purpose of the SOIRA to help police officers prevent crimes of a sexual nature. Achievement of this objective is based on the principles set forth in the SOIRA, which also have been amended so that the police can use effective preventive measures to investigate and prevent crimes of a sexual nature. It is for this reason that the words "that there are reasonable grounds to suspect are of a sexual nature" have been deleted from subparagraph 2(2)(c)(i) of the SOIRA.

B. Consultation of the Registry (Clause 40)

Since it is possible under the provisions of Bill C-34 to make proactive use of the registry, the powers to consult the registry provided for in section 16 of the SOIRA have been amended accordingly. The registry may be consulted to verify the accuracy of the information it contains. Police officers may also consult it in the course of investigating a crime whose exact nature is not yet known. Clause 40 of the bill amends subsection 16(4) of the SOIRA to permit disclosure of information to a police service outside Canada for the purpose of preventing or investigating a crime of a sexual nature.

(17) See subsection 4(2) of Christopher's Law.

The words “that there are reasonable grounds to suspect are of a sexual nature” have been deleted from section 16 of the SOIRA.

Response times in the investigation of sex crimes are of critical importance, especially in cases involving child abduction. The following statistics illustrate the importance of rapid response: 44% of child victims were dead one hour after abduction, 74% were dead three hours after abduction, and 91% were dead 24 hours after abduction.⁽¹⁸⁾ The amendments mentioned earlier in this section are aimed at speeding up access to the information in the registry, thereby reducing the possibility that an investigation will be stalled.

C. Addition of Offences to the List of Designated Offences under Subsection 490.011(1) of the *Criminal Code* (Clause 4)

Clause 4 of the bill adds the offence of “compelling the commission of bestiality” to the list of offences of a sexual nature in paragraph 490.011(1)(a) of the Code. In future, commission of an offence covered in this list will result in automatic inclusion in the national registry.

The bill also adds the offences of voyeurism and murder to the non-sexual offences listed in paragraph 490.011(1)(b) of the Code.

D. Order for Automatic Inclusion in the National Registry (Clauses 5 and 7)

Clause 5 of the bill amends the provisions of the Code to make subject to an order for automatic inclusion in the national registry sex offenders who are found guilty of designated offences under paragraphs 490.011(1)(a), (c), (c.1), (d) or (e) of the Code or those who are found not criminally responsible for such offences on account of mental disorder. The Crown Attorney will no longer need to initiate the process for inclusion in the national registry for an offence referred to in these paragraphs. For example, a person found guilty of child pornography, sexual exploitation or sexual assault will automatically be entered in the national registry.

For offences of a non-sexual nature referred to in paragraphs 490.011(1)(b) or (f) of the Code, it continues to be the prosecutor’s responsibility to initiate the process for inclusion in the national registry and to establish beyond a reasonable doubt that the person who committed the offence did so with the intent to commit an offence of a sexual nature referred to

(18) See SECU, *Evidence*, 12 May 2009, 0920 (Chief Superintendent Kate Lines, Ontario Provincial Police, Canadian Association of Chiefs of Police).

in paragraphs 490.011(1)(a), (c), (c.1), (d) or (e). On application of the prosecutor when the sentence is imposed or a verdict rendered of not criminally responsible for a subsequent designated offence, the court must make an order if the prosecutor establishes the elements provided for in subsection 490.012(3).⁽¹⁹⁾ A court that does not immediately make an order referred to in subsection 490.012(1) or (3) must do so within 90 days after the sentence is imposed or the verdict rendered.

Bill C-34 eliminates the judicial discretion whereby the court was not obliged to order inclusion in the national registry if it was satisfied that the order would impact on the offender's privacy or liberty in a manner grossly disproportionate to the interest of recording information so as to protect society through the effective investigation of crimes of a sexual nature. Under clause 7 of the bill, the sex offender or the prosecutor retains the right to appeal a decision made in accordance with subsection 490.012(2) of the Code.

E. Addition of Offences to the List of Designated Offences under Section 487.04 of the *Criminal Code* (Clause 3)

Clause 3 of the bill adds offences of a sexual nature to paragraph (a) of the definition of "primary designated offence" given in section 487.04 of the Code (see Appendix B of this legislative summary). Therefore, a person found guilty of an offence appearing in this list will automatically be subject to a DNA sampling order for purposes of forensic analysis. For example, exposure, removal of a child from Canada, an offence in relation to 20 sexual offences against children, and the offence of compelling the commission of bestiality are now on the list of primary designated offences subject to such an order.⁽²⁰⁾ It should be noted that the bill does

(19) Under clause 5 of Bill C-34, the prosecutor must also establish that:

(a) the person was, before or after the coming into force of this paragraph, previously convicted of, or found not criminally responsible on account of mental disorder for, an offence referred to in paragraph (a), (c), (c.1), (d) or (e) of the definition "designated offence" in subsection 490.011(1) or in paragraph (a) or (c) of the definition "designated offence" in section 227 of the *National Defence Act*; (b) the person was not served with a notice under section 490.021 or 490.02903 or under section 227.08 of the *National Defence Act* in connection with that offence; and (c) no order was made under subsection (1) or under subsection 227.01(1) of the *National Defence Act* in connection with that offence.

(20) DNA samples taken from offenders found guilty of a primary designated offence will be placed in the NDDB. This data bank is composed of two main indices of DNA profiles: the Convicted Offender Index and the Crime Scene Index. The Convicted Offender Index contains DNA samples taken from persons found guilty of designated offences. The Crime Scene Index contains DNA identification profiles established from biological samples taken from crime scenes where a designated offence was committed.

not amend subsections 487.051(2) and (3) of the Code, which set forth the circumstances in which the order is discretionary or in which the prosecutor must make an application.

In summary, the bill adds offences of a sexual nature and places those that used to be on the lists of primary or secondary designated offences, which entailed discretionary authority to order a DNA sample, on the list of primary designated offences, which entail an automatic order for a DNA sample. Hence, any offence of a sexual nature listed in paragraph 490.011(1)(a) and entailing an automatic registration order also entails an automatic DNA sample order. Some offences that have been moved for which a DNA sample order is now automatic are sexual assault, incest, sexual exploitation, bestiality in the presence of or by a child and child pornography.

The court still has discretion with regard to the primary designated offences listed in subsections 487.051(2) and (3). For example, procuring, which is covered in paragraphs 212(1)(a) to (h) and (j) of the Code, remains on the list of primary designated offences, but for which the court has discretionary authority to order or refrain from ordering a DNA sample.⁽²¹⁾

Section 487.051(3) of the Code provides that for the secondary designated offences covered in section 487.04, it is the prosecutor who must apply to the court for an order. The court must order a DNA sample if it is satisfied that this is in the best interests of the administration of justice. The Code provides that, in deciding whether to make the order, the court must consider the impact of the order on the privacy and security of the accused, the person's criminal record, whether the person had previously been found not criminally responsible on account of mental disorder for a designated offence, the nature of the offence, and the circumstances surrounding its commission. In addition, judges are required to give reasons for their decisions.

It should be noted that the same provision in the Code applies when the court renders a verdict of not criminally responsible in the case of a designated offence on the primary or secondary list in section 487.04 of the Code. In this case, the court cannot issue an automatic DNA sample order since it is the prosecutor's responsibility to apply for one. In addition, the court must be satisfied that such an order would be in the best interests of the administration of justice.

(21) The court is not required to make the order if it is satisfied that the person concerned has established that the impact of the order on their privacy and security of the person would be grossly disproportionate to the public interest in the protection of society and the proper administration of justice achieved through the early detection, arrest and conviction of offenders.

It remains to be seen whether the laboratories⁽²²⁾ and the NDDB⁽²³⁾ are capable of accommodating the anticipated increase in the number of DNA profiles to be analyzed as a result of the changes to the list of designated offences. It should be noted that, when it reviewed the *DNA Identification Act*, the Standing Committee on Public Safety and National Security was informed that, while the NDDB has no backlogs, the laboratories are barely keeping pace with the current demands on their services. Due to a lack of funding, the Ontario and Quebec laboratories that analyze DNA samples for the NDDB's Crime Scene Index have not been able to analyze samples taken at the scenes of new designated offences since the coming into force of bills C-13 and C-18.⁽²⁴⁾ The committee has learned that the usefulness of the NDDB has been substantially diminished as a result. It has also been informed that these delays exist even in the RCMP laboratories, which were recently audited by the Office of the Auditor General of Canada.⁽²⁵⁾

F. Duration of Orders (Clause 6)

The bill does not alter the duration of orders provided for in subsection 490.013(2).⁽²⁶⁾ However, an offender convicted of or found not criminally responsible for more than one offence referred to in paragraphs 490.011(1)(a), (c), (c.1), (d) or (e) of the Code is liable to an automatic order provided for in subsection 490.012(1), and that order applies for life. The lifetime order also applies to offenders convicted outside Canada and to offenders covered by the *International Transfer of Offenders Act* who are already subject to an obligation.

(22) These are the RCMP forensic laboratories – in Halifax, Ottawa, Regina, Edmonton and Vancouver – and the two forensic laboratories in Ontario and Quebec that analyze DNA samples taken at the various crime scenes and that record the results of their analysis in the Crime Scene Index.

(23) The NDDB, located on the premises of RCMP headquarters in Ottawa, receives DNA samples taken by the police from persons convicted of designated offences. These samples are processed by the NDDB in Ottawa, and the DNA profiles obtained are uploaded and entered in the Convicted Offender Index, which is maintained and kept current by the RCMP.

(24) In 99% of cases in Quebec, police have to wait over a year for the results of analyses for non-urgent cases. See SECU, *Evidence*, 28 April 2009, 0945 (Diane Séguin, Deputy Director, Laboratoire de sciences judiciaires et de médecine légale).

(25) See “Management of Forensic Laboratory Services – Royal Canadian Mounted Police,” in *2007 May Report of the Auditor General of Canada*, http://www.oag-bvg.gc.ca/internet/English/parl_oag_200705_07_e_17482.html.

(26) According to subsection 490.013(2) of the Code:

An order made under subsection 490.012(1) or (2): (a) ends 10 years after it was made if the offence in connection with which it was made was prosecuted summarily or if the maximum term of imprisonment for the offence is two or five years; (b) ends 20 years after it was made if the maximum term of imprisonment for the offence is 10 or 14 years; and (c) applies for life if the maximum term of imprisonment for the offence is life.

G. Obligation to Provide Information (Clauses 33 and 40)

Sex offenders are now required to provide the following additional information to the person who collects information: 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 where they are employed, engaged or retained.

There is no provision requiring that information about the vehicles of sex offenders be included in the national registry. It should be noted, however, that many police officers have indicated that, without this information, the national registry will be of no use to them in cases where the only lead available to them is a description of the suspect's vehicle, a point to consider given that the officers also assert that time is critical in any police investigation involving child abduction.⁽²⁷⁾ Furthermore, the amendments made to the SOIRA do not provide for inclusion of the sex offender's date of death.

Clause 40(2) of the bill amends paragraph 16(2)(f) of the English version of the SOIRA by replacing the word "maintain" with the word "administer." Some believe that this change will permit the RCMP to administer the national registry rather than simply maintaining it, giving it the authority to include the offender's date of death if it sees fit, for example.

H. Termination Order (Clauses 8 and 9)

Sex offenders retain their right to apply for termination of an order pursuant to section 490.015 of the Code. The court may terminate any order if it is satisfied that the person concerned has established that the order's impact on him or her – and in particular on his or her 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 achieved by registering information relating to sex offenders under the SOIRA.

I. Convictions Outside Canada and Transfer to Canada (Clauses 18 and 58)

Sex offenders convicted of or found not criminally responsible for a sexual offence outside Canada are required, except in the case of an exemption order, to comply with the obligations set forth in the SOIRA. Offenders may be personally served with the notice (Form 54) only after the new section 490.02902 of the Code comes into force. The sex offence in

(27) SECU, *Evidence*, 21 April 2009, 0915 (Inspector Pierre Nezan, Officer in Charge, National Sex Offender Registry, Royal Canadian Mounted Police).

question must be equivalent to an offence referred to in paragraph (a) of the definition of “designated offence” in subsection 490.011(1). The obligation of the offender convicted outside Canada to comply with the SOIRA begins when the offender is served with the notice and ends when the exemption order is made.⁽²⁸⁾ The court may grant an exemption order if it is satisfied that the sex offender convicted outside Canada has established that the offence in question is not equivalent to an offence referred to in this paragraph. An application for exemption may be granted by the court if the offender has satisfied the court with respect to the elements set forth in new subsection 490.02905(2) of the Code. The Attorney General or the offender may still appeal the decision.

Sex offenders convicted outside Canada may also apply for a termination order. Offenders must meet the conditions set forth in new subsections 490.02908(1), (2) or (3) of the Code, in accordance with the number of offences for which they have been convicted. The court makes an order terminating the obligation if it is satisfied that the offender has established that the obligation’s impact on him or her – and particularly on the offender’s 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 achieved by the registration of information relating to sex offenders under the SOIRA (see new subsection 490.02909(1)). The Attorney General or the person concerned may appeal the decision.

Offenders who have been convicted of or found not criminally responsible for an offence outside Canada referred to in paragraph (a) of the definition of “designated offence” in subsection 490.011(1) of the Code must notify the police service of that fact within seven days of their arrival in Canada and provide their name, date of birth, gender and address. If they fail to do so, they are guilty of an offence, unless they have a reasonable excuse.

An administrative process is also established for Canadians convicted outside Canada of a sexual offence and subsequently transferred to Canada under the *International Transfer of Offenders Act* to serve their sentence. The bill creates an obligation for offenders convicted outside Canada to comply with the obligations set forth in the SOIRA in cases of offences referred to in paragraphs 490.011(1)(a), (c), (c.1), (d) or (e) of the Code. In compliance with the other provisions of the Code and the SOIRA, the new provisions provide that transferred offenders may apply to terminate their obligation (see new subsection 490.02912). The court has

(28) Under clause 18 of Bill C-34, if an exemption order is not made, the obligation ends under the terms of subsection 490.02904(3) of the Code.

discretion in such a case. The prosecutor or offender may also appeal a decision relating to this termination order. The bill provides that the obligation to comply with the SOIRA starts on the date of the transfer to Canada and that its duration corresponds to subsection 490.013(2) of the Code, and so depends on the maximum term of imprisonment. Note that this obligation applies for life if the sex offender has been convicted of or found not criminally responsible for more than one offence referred to in paragraphs 490.011(1)(a), (c), (c.1), (d) or (e) of the Code (see new section 36.2 of the *International Transfer of Offenders Act*).

J. Authority to Release Information (Clause 39)

Clause 39 of the bill authorizes the Correctional Service of Canada or, in the case of a provincial correctional facility, a person in charge of that facility, to disclose to a person who registers information the date on which sex offenders are admitted to the federal or provincial facility, the days on which they are expected to be temporarily outside the facility for seven or more days, and the address or location where they are staying. This amendment also applies to sex offenders covered by the *National Defence Act*.

K. Obligations Imposed on Sex Offenders (Clauses 29 and 30)

The bill amends section 4 of the SOIRA so as to reduce from 15 to 7 days the time within which the sex offender is first obliged to report after a registration order. There is an exception, however, for sex offenders subject to an order under the *National Defence Act*, for whom the period continues to be 15 days. This exception is maintained because of the special requirements of the army or the military justice system.

The bill also adds an obligation to report for anyone sentenced to a term of intermittent imprisonment or subject to a conditional sentence order. The enactment also modifies the categories of offenders covered by the obligation to report so as to include offenders convicted outside Canada who must serve their sentence in Canada.

The period for any subsequent reporting to a registration centre to notify the person who collects information of a change to an offender's main or secondary residence and his or her given name or surname is also reduced from 15 to 7 days. Sex offenders who are outside Canada when they are obliged to report must now report to a registration centre no later than 7 days after they return. The period does not change for offenders covered by the *National Defence Act*.

Sex offenders who are outside Canada when they are obliged to report to the registration centre must do so within 7 days (instead of 15) of their return to Canada.

L. Offences (Clauses 20 to 22)

Under clause 20 of the bill, offenders who fail to comply with their obligations under the SOIRA are guilty of an offence and liable:

- on conviction on indictment, to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or to both;
- on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

The enactment amends this provision of the Code so as to create a hybrid offence for a first failure to comply with obligations. In this way, the prosecutor who proceeds by indictment can obtain a harsher sentence for this first offence. In addition, proof of failure to comply can now be established by the certificate prepared by the person at the registration centre collecting the information, who lists each breach in the document.

Clause 21 of the bill provides that sex offenders who knowingly provide false or misleading information to the person who collects information at the registration centre are liable to the sentence provided for in clause 20 of the bill for any failure to comply. Hence the enactment amends the Code by creating a hybrid offence for a first offence, permitting the prosecutor to proceed by indictment and to seek a harsher sentence for that first offence.

M. Coming into Force Information (Clause 62)

With the exception of the coordinating amendments, the provisions of Bill C-34 come into force on a day or days to be fixed by order of the Governor in Council.

APPENDIX A

LIST OF DESIGNATED OFFENCES – SECTION 490.011 OF THE *CRIMINAL CODE*

APPENDIX A

LIST OF DESIGNATED OFFENCES – SECTION 490.011 OF THE *CRIMINAL CODE*

“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),
- (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),
- (x) section 172.1 (luring a child by means of a computer system),
- (xi) subsection 173(2) (exposure),
- (xii) paragraph 212(1)(i) (stupefying or overpowering for the purpose of sexual intercourse),
- (xiii) subsection 212(2) (living on the avails of prostitution of a person under age of eighteen),
- (xiv) subsection 212(2.1) (aggravated offence — living on the avails of prostitution of a person under age of eighteen),
- (xv) subsection 212(4) (obtaining prostitution of person under age of eighteen),
- (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), and
- (xx) subsection 273.3(2) (removal of a child from Canada);

(b) an offence under any of the following provisions:

- (i) subsection 173(1) (indecent acts),
- (ii) section 177 (trespassing at night),
- (iii) section 230 (murder in commission of offences),
- (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),
- (viii) section 280 (abduction of a person under age of sixteen),
- (ix) section 281 (abduction of a person under age of fourteen),
- (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);

(e) an attempt or conspiracy to commit an offence referred to in any of paragraphs (a), (c), (c.1) and (d); or

(f) an attempt or conspiracy to commit an offence referred to in paragraph (b).

APPENDIX B

LIST OF DESIGNATED OFFENCES – SECTION 487.04 OF THE *CRIMINAL CODE*

APPENDIX B

LIST OF DESIGNATED OFFENCES – SECTION 487.04 OF THE *CRIMINAL CODE*

“primary designated offence” means

- (a) an offence under any of the following provisions, namely,
 - (i) subsection 212(2.1) (aggravated offence in relation to living on the avails of prostitution of a person under the age of eighteen years),
 - (ii) section 235 (murder),
 - (iii) section 236 (manslaughter),
 - (iv) section 239 (attempt to commit murder),
 - (v) section 244 (discharging firearm with intent),
 - (vi) section 244.1 (causing bodily harm with intent — air gun or pistol),
 - (vii) paragraph 245(a) (administering noxious thing with intent to endanger life or cause bodily harm),
 - (viii) section 246 (overcoming resistance to commission of offence),
 - (ix) section 267 (assault with a weapon or causing bodily harm),
 - (x) section 268 (aggravated assault),
 - (xi) section 269 (unlawfully causing bodily harm),
 - (xii) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm),
 - (xiii) section 273 (aggravated sexual assault),
 - (xiv) section 279 (kidnapping),
 - (xv) section 344 (robbery), and
 - (xvi) section 346 (extortion),
- (a.1) an offence under any of the following provisions, namely,
 - (i) section 75 (piratical acts),
 - (i.01) section 76 (hijacking),
 - (i.02) section 77 (endangering safety of aircraft or airport),
 - (i.03) section 78.1 (seizing control of ship or fixed platform),
 - (i.04) subsection 81(1) (using explosives),
 - (i.05) section 83.18 (participation in activity of terrorist group),

- (i.06) section 83.19 (facilitating terrorist activity),
- (i.07) section 83.2 (commission of offence for terrorist group),
- (i.08) section 83.21 (instructing to carry out activity for terrorist group),
- (i.09) section 83.22 (instructing to carry out terrorist activity),
- (i.1) section 83.23 (harbouring or concealing),
- (i.11) section 151 (sexual interference),
- (ii) section 152 (invitation to sexual touching),
- (iii) section 153 (sexual exploitation),
- (iii.1) section 153.1 (sexual exploitation of person with disability),
- (iv) section 155 (incest),
- (iv.1) subsection 163.1(2) (making child pornography),
- (iv.2) subsection 163.1(3) (distribution, etc., of child pornography),
- (iv.3) subsection 163.1(4) (possession of child pornography),
- (iv.4) subsection 163.1(4.1) (accessing child pornography),
- (iv.5) section 172.1 (luring a child),
- (v) subsection 212(1) (procuring),
- (v.1) subsection 212(2) (procuring),
- (v.2) subsection 212(4) (offence — prostitution of person under eighteen),
- (vi) section 233 (infanticide),
- (vii) section 271 (sexual assault),
- (vii.1) section 279.01 (trafficking in persons),
- (viii) section 279.1 (hostage taking),
- (ix) paragraph 348(1)(d) (breaking and entering a dwelling-house),
- (x) section 423.1 (intimidation of a justice system participant or journalist),
- (xi) section 431 (attack on premises, residence or transport of internationally protected person),
- (xii) section 431.1 (attack on premises, accommodation or transport of United Nations or associated personnel),
- (xiii) subsection 431.2(2) (explosive or other lethal device),
- (xiv) section 467.11 (participation in activities of criminal organization),
- (xv) section 467.12 (commission of offence for criminal organization), and

(xvi) section 467.13 (instructing commission of offence for criminal organization),

(xvi.1) to (xx) [Repealed, 2005, c. 25, s. 1]

(b) 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, namely,

(i) section 144 (rape),

(ii) section 146 (sexual intercourse with female under fourteen and between fourteen and sixteen),

(iii) section 148 (sexual intercourse with feeble-minded, etc.),

(iv) section 149 (indecent assault on female),

(v) section 156 (indecent assault on male), and

(vi) section 157 (acts of gross indecency),

(c) an offence under paragraph 153(1)(a) (sexual intercourse with step-daughter, etc.) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read from time to time before January 1, 1988,

(c.1) an offence under any of the following provisions of the *Security of Information Act*, namely,

(i) section 6 (approaching, entering, etc., a prohibited place),

(ii) subsection 20(1) (threats or violence), and

(iii) subsection 21(1) (harbouring or concealing), and

(d) an attempt to commit or, other than for the purposes of subsection 487.05(1), a conspiracy to commit an offence referred to in any of paragraphs (a) to (c);

“secondary designated offence” means an offence, other than a primary designated offence, that is

(a) an offence under this Act that may be prosecuted by indictment — or, for section 487.051 to apply, is prosecuted by indictment — for which the maximum punishment is imprisonment for five years or more,

(b) an offence under any of the following provisions of the *Controlled Drugs and Substances Act* that may be prosecuted by indictment — or, for section 487.051 to apply, is prosecuted by indictment — for which the maximum punishment is imprisonment for five years or more:

(i) section 5 (trafficking in substance and possession for purpose of trafficking),

(ii) section 6 (importing and exporting), and

(iii) section 7 (production of substance),

(c) an offence under any of the following provisions of this Act:

- (i) section 145 (escape and being at large without excuse),
- (i.1) section 146 (permitting or assisting escape),
- (i.2) section 147 (rescue or permitting escape),
- (i.3) section 148 (assisting prisoner of war to escape),
- (i.4) subsection 160(3) (bestiality in presence of or by child),
- (ii) section 170 (parent or guardian procuring sexual activity),
- (iii) section 173 (indecent acts),
- (iv) section 252 (failure to stop at scene of accident),
- (v) section 264 (criminal harassment),
- (vi) section 264.1 (uttering threats),
- (vii) section 266 (assault),
- (viii) section 270 (assaulting a peace officer),
- (ix) paragraph 348(1)(e) (breaking and entering a place other than a dwelling-house),
- (x) section 349 (being unlawfully in dwelling-house), and
- (xi) section 423 (intimidation),

(d) an offence under any of the following provisions of the *Criminal Code*, as they read from time to time before July 1, 1990:

- (i) section 433 (arson), and
- (ii) section 434 (setting fire to other substance), and

(e) an attempt to commit or, other than for the purposes of subsection 487.05(1), a conspiracy to commit

- (i) an offence referred to in paragraph (a) or (b) — which, for section 487.051 to apply, is prosecuted by indictment, or
- (ii) an offence referred to in paragraph (c) or (d);

APPENDIX C

CHRISTOPHER'S LAW (SEX OFFENDER REGISTRY), 2000
S.O. 2000, CHAPTER 1

APPENDIX C

CHRISTOPHER'S LAW (SEX OFFENDER REGISTRY), 2000 S.O. 2000, CHAPTER 1

Definitions

1. (1) In this Act,

“sex offence” means,

- (a) an offence under section 151 (sexual interference), 152 (invitation to sexual touching), subsection 153 (1) (sexual exploitation), 155 (1) (incest), 160 (1), (2) or (3) (bestiality), 163.1 (2), (3) or (4) (child pornography), section 170 (parent or guardian procuring sexual activity), subsection 173 (2) (exposure), section 271 (sexual assault), subsection 272 (1) (sexual assault with a weapon, threats to a third party or causing bodily harm) or section 273 (aggravated sexual assault) of the *Criminal Code* (Canada),
- (b) an offence under a predecessor or successor to a provision set out in clause (a),
- (b.1) an offence referred to in paragraph (b) or (f) of the definition of “designated offence” in subsection 490.011 (1) of the *Criminal Code* (Canada) in respect of which an order in Form 52 has been or is made under subsection 490.012 (2) of that Act, or
- (c) an offence under a provision of the *Criminal Code* (Canada) that is prescribed; (“infraction sexuelle”)

APPENDIX D

CHRISTOPHER'S LAW (SEX OFFENDER REGISTRY), 2000
ONTARIO REGULATION 69/01
GENERAL

APPENDIX D

CHRISTOPHER'S LAW (SEX OFFENDER REGISTRY), 2000 ONTARIO REGULATION 69/01 GENERAL

Definition of sex offence

1.1 (1) Offences under the following provisions of the *Criminal Code* (Canada) are prescribed as sex offences:

1. Subsection 7 (4.1) (sexual offence against children by a Canadian citizen outside Canada).
2. Section 153.1 (sexual exploitation of person with disability).
3. Subsection 163.1 (4.1) (accessing child pornography).
4. Section 172.1 (luring a child by means of a computer system).
5. Paragraph 212 (1) (i) (stupefying or overpowering for the purpose of sexual intercourse).
6. Subsection 212 (2) (living on the avails of prostitution of a person under 18).
7. Subsection 212 (2.1) (aggravated offence — living on the avails of prostitution of a person under 18).
8. Subsection 212 (4) (purchasing sexual services of a person under 18).
9. Subsection 273.3 (2) (removal of a child from Canada for sexual offence purpose).
O. Reg. 396/04, s. 1.

(1.1) An offence under section 162 (voyeurism) of the *Criminal Code* (Canada) is prescribed as a sex offence, but only in respect of persons who, on or after the day this subsection comes into force, are serving a sentence for such offence or are convicted or found not criminally responsible on account of mental disorder of such offence. O. Reg. 419/08, s. 1.

(2) For the purpose of clause (b) of the definition of “sex offence” in section 1 of the Act, offences under the following provisions of the *Criminal Code* (Canada), chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 4, 1983, are predecessors to offences set out in clause (a) of the definition of “sex offence” in section 1 of the Act:

1. Section 144 (rape).
2. Section 145 (attempt to commit rape).
3. Section 149 (indecent assault on a female).
4. Section 156 (indecent assault on a male).
5. Subsection 246 (1) (assault with intent). O. Reg. 396/04, s. 1.

(3) For the purpose of clause (b) of the definition of “sex offence” in section 1 of the Act, offences under the following provisions of the *Criminal Code* (Canada), chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 1, 1988, are

predecessors to offences set out in clause (a) of the definition of “sex offence” in section 1 of the Act:

1. Subsection 146 (1) (sexual intercourse with a female under 14).
2. Subsection 146 (2) (sexual intercourse with a female between 14 and 16).
3. Section 153 (sexual intercourse with step-daughter).
4. Section 157 (gross indecency).
5. Section 166 (parent or guardian procuring defilement).
6. Section 167 (householder permitting defilement). O. Reg. 396/04, s. 1.

(4) Attempt to commit a sex offence under section 24 of the *Criminal Code* (Canada) is prescribed as a sex offence. O. Reg. 396/04, s. 1.

(5) Conspiracy to commit a sex offence under paragraph 465 (1) (c) or subsection 465 (4) of the *Criminal Code* (Canada) is prescribed as a sex offence. O. Reg. 396/04, s. 1.

(6) The sex offences prescribed by subsections (1), (4) and (5) apply only in respect of persons who, on or after December 15, 2004, are serving a sentence for such offence or are convicted or found not criminally responsible on account of mental disorder of such offence. O. Reg. 396/04, s. 1.