



Legislative Summary

Bill S-2: Protecting Victims from Sex Offenders Act

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Legislative Summary of Bill S-2

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LEGISLATIVE SUMMARY OF BILL S-2: PROTECTING VICTIMS FROM SEX OFFENDERS ACT

Bill S-2: 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 Senate on 17 March 2010. It was given second reading on 29 March 2010, and sent to the Standing Committee on Legal and Constitutional Affairs for more thorough study.

Bill S-2 essentially reiterates the provisions of former Bill C-34,¹ adding certain amendments made by the Standing Committee on Public Safety and National Security during examination in committee.² It amends the *Criminal Code*, the *Sex Offender Information Registration Act*, the *National Defence Act* and the *International Transfer of Offenders Act* and makes a consequential amendment to the *Criminal Records Act*. Its purpose is to strengthen the National Sex Offender Registry (the national registry) and the National DNA Data Bank by enabling police in Canada to more effectively prevent and investigate crimes of a sexual nature.³

Briefly, when individuals 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.⁴ As well, all sex offenders convicted outside Canada will henceforth be required to register with the national registry when they arrive in Canada, and Canadian police authorities will be able to alert other police services in Canada and abroad to the movements of sex offenders who are considered high risk within their jurisdictions.

1 BACKGROUND

The *Sex Offender Information Registration Act* (SOIRA), which came into force on 15 December 2004,⁵ 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 legislation came into force.

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 from various witnesses.⁶ The effectiveness of the national registry had never been formally evaluated since it had come into being. As a result, a witness suggested to the committee that an independent evaluation of the national registry be done by a third party before any attempt was made to improve the legislative basis of the registry.⁷

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. The committee's report, which was tabled in the House of Commons in December 2009, describes the flaws in the national registry.⁸ Where possible, the comments made by witnesses during committee study have been incorporated into this legislative summary.

1.1 OPERATION OF THE CURRENT NATIONAL REGISTRY AND CONCERNS RAISED BY CANADIAN POLICE AUTHORITIES REGARDING THE CURRENT NATIONAL REGISTRY

1.1.1 PURPOSE AND PRINCIPLES OF THE *SEX OFFENDERS 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, under which police services must have rapid access to information relating to sex offenders so 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, as well as their rehabilitation and reintegration into the community require that the information be collected only to permit police services “to investigate crimes that there are reasonable grounds to suspect are of a sexual nature.”⁹ For this reason, access to and use and release of this information are restricted. It should be noted that the public does not have access to the sex offenders 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.

1.1.2 AMENDMENTS TO THE STATUTORY FRAMEWORK OF THE NATIONAL REGISTRY

The original statutory scheme for the national sex offenders registry (Bill C-16: *Sex Offender Information Registration Act*¹⁰) did not include amendments to the *National Defence Act*. As a result, members of the military convicted by a court martial of an offence of a sexual nature were not required to comply with the SOIRA. Amendments were therefore made, in 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*,¹¹ to harmonize the military justice system with the criminal justice system. Since those amendments came into force, members of the military convicted of an offence of a sexual nature have been required to be registered in the national registry and comply with the SOIRA.

1.1.3 PROCESS OF REGISTRATION IN THE NATIONAL REGISTRY

The National Sex Offender Registry is administered and maintained by the Royal Canadian Mounted Police (RCMP). Under the present statutory scheme, set out in the SOIRA, not all sex offenders are required to register in the national registry. The *Criminal Code* (the Code) provides that 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.¹² 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.

As of April 2009, more than 19,000 sex offenders were registered in the national registry.¹³ 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 application rates vary considerably across the different provinces and territories.¹⁴ This variation may be explained by various factors, such as provincial practices, plea bargains, or oversight on the part of prosecutors.¹⁵

1.1.4 CONSULTING THE NATIONAL REGISTRY

Any consultation, comparison or disclosure of or link to information collected in the national registry is prohibited; persons referred to in section 16 of the SOIRA are exempted from this prohibition if they use the national registry for purposes provided for by the Act. 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.” 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 reasonable suspicion that an offence is of a sexual nature are hampering the work of the police, because the exact nature of a crime is not always known during an investigation. The organizations say that these restrictions prevent the police from accessing information that could be useful, thereby risking stalling investigations.

Police have also indicated that the present legislative framework of the national registry does not allow them to prevent crimes of a sexual nature. 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 are dead one hour after abduction, 74% are dead three hours after abduction, and 91% are dead 24 hours after abduction.¹⁶ In fact, police prefer, where possible, to use the Ontario registry, since it can be used preventively. The substantial gap between the statistics on national registry usage versus Ontario registry usage amply illustrates 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.¹⁷ In August 2008, Ontario Provincial Police Commissioner Julian Fantino 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.¹⁸

1.2 THE ONTARIO REGISTRY

Ontario was the first province in Canada to establish its own sex offender registry (the Ontario registry).¹⁹ *Christopher's Law (Sex Offender Registry), 2000*²⁰ (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.²¹

1.2.1 REGISTRATION PROCESS IN THE ONTARIO REGISTRY

Registration is automatic for offenders residing in Ontario who are found guilty of a sex offence.²² Ontario residents who have received a verdict of not criminally responsible on account of mental disorder and young offenders given an adult sentence for one of the listed sex offences are also registered automatically. As of 21 April 2009, 11,963 offenders were listed 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.²³

1.2.2 SEARCHING THE ONTARIO REGISTRY

In Ontario, police are authorized to consult the registry to prevent sex crimes or to check the accuracy of the information in the registry. For example, they are authorized to make reasonable efforts to verify the address provided by an offender at least once after the offender last reported to a police station.²⁴ 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.

2 DESCRIPTION AND ANALYSIS

Bill S-2 contains 65 clauses. Clause 19 alone adds 15 sections to the Code. The following description does not review all of the provisions of the bill, but it highlights certain aspects of Bill S-2, such as these:

- amendments to the purpose and principles of the SOIRA and authority to consult the national registry;
- the imposition of orders requiring automatic registration in the national registry and the taking of DNA samples;

- the addition of offences to the list of designated offences of a sexual and non sexual nature in the Code and the addition of offences of a sexual nature to the designated offences for which DNA samples may be taken;
- the obligations imposed on sex offenders convicted in Canada and outside Canada, and in particular the time allowed for registering and the obligations relating to providing information for registration in the national registry; and
- the consequences of failing to comply with an obligation or an order to register.

2.1 PURPOSE AND PRINCIPLES OF THE SOIRA (CLAUSE 28)

Clause 28 of the bill broadens the purposes of the SOIRA set out in subclause 2(1) of the bill by expressly adding that it now has the purpose of helping police *prevent crimes of a sexual nature*, in addition to enabling them to investigate those crimes. Achievement of that objective is based on the principles set out in subsection 2(2) of the SOIRA, which have also been amended so that police can use *effective preventive measures* to investigate crimes of a sexual nature.

On the other hand, the current principle that the privacy interests of sex offenders and the public interest in their rehabilitation and reintegration into the community require that the information in the national registry be collected only to enable police services “to investigate crimes that there are reasonable grounds to suspect are of a sexual nature”²⁵ has been amended. The need for reasonable grounds has been removed from subparagraph 2(2)(c)(i) of the SOIRA. As a result, police may collect information for the purpose of preventing and investigating crimes of a sexual nature. During examination of former Bill C-34 in committee, no witnesses raised the possibility of any abusive use resulting from these amendments.

2.2 AUTHORITY TO CONSULT THE NATIONAL REGISTRY (CLAUSE 44)

Clause 44 of the bill now permits the proactive use of the national registry. The powers set out in section 16 of the SOIRA have thus been amended to permit authorized persons to consult the registry, make comparisons and links and disclose information in the registry in order to prevent and investigate crimes of a sexual nature and any related offences. Clause 44 makes amendments to permit the exercise of any power assigned by section 16 in relation to sex offenders who have been convicted outside Canada and sex offenders transferred under the *International Transfer of Offenders Act* who are required to comply with the SOIRA.

In addition, clause 44 of the bill adds a new provision to subsection 16(4) of the SOIRA to permit the disclosure of information collected or registered in the registry to a foreign police service that needs it to prevent or investigate a crime of a sexual nature.

2.3 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 offenders who are found guilty of offences designated under paragraph 490.011(1)(a), (c), (c.1), (d) or

(e) of the Code or who are found not criminally responsible for such offences on account of mental disorder subject to an order for automatic inclusion in the national registry. The Crown Attorney will no longer need to initiate the process for inclusion in the national registry for one of these offences. For example, a person found guilty of child pornography, sexual exploitation or sexual assault will automatically be entered in the national registry. Under the new provisions of section 490.012 of the Code, the court is also required to make an order when it imposes a sentence or renders a verdict of not criminally responsible, rather than after sentencing as was previously the case. Clause 5 also provides that if a court does not make an order under subsection 490.012(1) or (3) of the Code, it must do so within 90 days after the day on which it imposes the sentence or renders the verdict of not criminally responsible.

For offences of a non-sexual nature referred to in paragraphs 490.011(2)(b) and (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 in paragraph 490.011(1)(a), (c), (c.1), (d) or (e).

Clause 5 of the bill also eliminates the judicial discretion whereby the court was not obliged to order inclusion in the national registry if it was satisfied that the impact of the order on the offender's privacy or liberty would be grossly disproportionate to the public interest of protecting society through the effective investigation of crimes of a sexual nature to be achieved by the registration of information relating to sex offenders.

Under clause 7 of the bill, a sex offender or the prosecutor retains the right to appeal in the case of an order made in relation to an offence of a non-sexual nature.

2.4 ADDITION OF OFFENCES TO THE LIST OF DESIGNATED OFFENCES OF A SEXUAL AND NON-SEXUAL NATURE UNDER PARAGRAPHS 490.011(1)(A) AND (B) OF THE *CRIMINAL CODE* (CLAUSE 4)

Clause 4 of the bill amends the list of offences of a sexual nature in paragraph 490.011(1)(a) of the Code (see Appendix A of this legislative summary) by adding the offence of "compelling the commission of bestiality." In future, the offences set out in that list will result in automatic registration in the national registry.

The bill also adds the offences of voyeurism and murder to the offences of a non-sexual nature set out in paragraph 490.011(1)(b) of the Code (see Appendix A of this legislative summary). Offenders who are convicted of an offence set out in that list could be made subject to an order for registration if the prosecutor makes application for an order and establishes beyond a reasonable doubt that the person committed the offence with the intent to commit an offence of a sexual nature.

2.5 AUTOMATIC DNA SAMPLING ORDERS UNDER SECTION 487.04 OF THE *CRIMINAL CODE* AND ADDITION OF OFFENCES OF A SEXUAL NATURE TO THE LIST OF PRIMARY DESIGNATED OFFENCES FOR THE TAKING OF DNA SAMPLES (CLAUSE 3)

The Code already provides that when a person is convicted of an offence set out in paragraph (a) of the definition “primary offence” in section 487.04 of the Code (see Appendix B of this legislative summary), the court is required to order that a DNA sample be taken for forensic analysis. Clause 3 of the bill adds to that list all offences of a sexual nature that previously were not necessarily subject to a DNA sampling order for purposes of forensic analysis.

A person convicted of an offence that appears on that list will automatically be subject to a DNA sampling order for the purpose of forensic analysis. For example, exhibitionism, removal of a child from Canada, the offence in relation to sexual offences against children, compelling the commission of bestiality, sexual assault, incest, sexual exploitation, bestiality in the presence of or by a child and child pornography now appear on the list of primary offences that are subject to an order of this kind. Thus any offence of a sexual nature set out in paragraph 490.011(1)(a) for which there is an automatic order for registration in the national registry will also result in an automatic order for the taking of a DNA sample for the purpose of forensic analysis.

It must be noted that the bill does not amend the other provisions of the Code that set out the circumstances in which an order for the taking of DNA samples for the purpose of genetic analysis is discretionary or in which the prosecutor must apply for an order. Thus the court still has discretion in relation to certain primary and secondary offences set out in section 487.04. For example, procuring, which is set out in paragraphs 212(1)(a) to (h) and (j) of the Code, remains on the list of primary designated offences, but is an offence for which the court has discretion as to whether to order DNA sampling.²⁶

DNA samples taken from offenders convicted of a primary designated offence will be placed in the National DNA Data Bank (NDDB), which is composed of two main indexes 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 generated from biological samples taken from crime scenes where designated offences are committed. The NDDB, which is located at RCMP Headquarters in Ottawa, receives the DNA samples taken by police from persons convicted of designated offences. It processes the samples in Ottawa, and the genetic profiles obtained are downloaded and entered in the Convicted Offender Index, which is established and updated by the RCMP.

It must be noted that when the Standing Committee on Public Safety and National Security examined the *DNA Identification Act*, it was informed that the NDDB had no backlog at that time. However, it remains to be seen whether the NDDB will be capable of accommodating the increase in the number of DNA profiles that will result from changes to the list of designated offences and will have to be placed in one of the NDDB's two indexes, and whether it will have the financial and human resources needed to meet the demand.

2.6 DURATION OF ORDERS (CLAUSE 6)

An obligation to comply with the SOIRA under the Code takes effect when the order is made by the court. In general, 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.²⁷

Clause 6 of the bill adds a provision that an offender who is convicted of or found not criminally responsible on account of mental disorder for more than one offence referred to in paragraphs 490.011(1)(a), (c), (c.1), (d) and (e) of the Code is liable for an order to comply with the SOIRA for life. An order for life also applies to a sex offender convicted outside Canada and a sex offender covered by the *International Transfer of Offenders Act* who is already subject to an obligation.

2.7 OBLIGATIONS IMPOSED ON SEX OFFENDERS

2.7.1 PROCESS OF REGISTERING IN THE NATIONAL REGISTRY (CLAUSE 30)

Clause 30 of the bill amends section 4 of the SOIRA to reduce the time that may elapse before a sex offender's first obligation to report following a registration order. The offender must now report within seven rather than 15 days. There is an exception, however, for an offender who is subject to an order under the *National Defence Act*, who may still report within 15 days. The exception has been retained because of the particular requirements of the military and the military justice system.

Clause 30 of the bill also adds the obligation to report for any person ordered to serve an intermittent or conditional sentence. The enactment also amends the categories of offenders who are subject to the obligation to report to include an offender convicted outside Canada and a person sentenced outside Canada to serve a sentence in Canada.

Clause 31 of the bill amends the time that may elapse before subsequent reporting to a registration centre to inform the person who collects information of a change in the offender's main residence or any secondary residence or of the offender's given name or surname. The period within which the offender is required to report is reduced to seven days from 15 days. A sex offender who is outside Canada when required to report must now report to a registration centre no later than seven days (instead of 15 days) after returning to Canada. There is no change in the reporting period for offenders covered by the *National Defence Act*.

2.7.2 OBLIGATIONS OF SEX OFFENDERS TO PROVIDE INFORMATION FOR THE PURPOSES OF REGISTRATION IN THE NATIONAL REGISTRY (CLAUSE 34)

Sex offenders are currently required to provide information such as date of birth, gender, height, weight and distinguishing physical marks.

Clause 34 of the bill amends that section to provide that sex offenders will now be required to give the person who collects information the following additional information: the name of their employer or the person who engages them on a volunteer basis or retains them, and the type of work they do.

The bill further provides that sex offenders must also disclose 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. Because time is critical in any police investigation involving children²⁸ and in most cases the only piece of evidence that the police have is a description of the suspect's vehicle, some police have said that the national registry is of no use to them if it does not contain that description.

2.7.3 TERMINATION OF ORDERS TO COMPLY WITH THE SOIRA (CLAUSES 8 AND 9)

The Code provides that a sex offender may apply to have an order to comply with the SOIRA terminated:

- (a) if five years have elapsed since the order was made, in the case of an order referred to in paragraph 490.013(2)(a);
- (b) if 10 years have elapsed since the order was made, in the case of an order referred to in paragraph 490.013(2)(b); or
- (c) if 20 years have elapsed since the order was made, in the case of an order referred to in paragraph 490.013(2)(c) or subsection 490.013(3) or (5).²⁹

In the case of multiple orders, a sex offender may apply to have the orders terminated if 20 years have elapsed since the most recent order was made.

The bill allows sex offenders to retain their right to apply for termination of an order. Clause 8 of the bill amends section 490.015 of the Code to ensure consistency with the new provisions relating to offenders convicted outside Canada and offenders subject to the *International Transfer of Offenders Act*. Under clause 9 of the bill, the court may terminate an order if it is satisfied that the person has established that the impact on him or her of continuing an order or obligation, including on personal 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 information relating to sex offenders under the SOIRA.

2.7.4 OBLIGATIONS OF SEX OFFENDERS CONVICTED OUTSIDE CANADA AND TRANSFERRED UNDER THE *INTERNATIONAL TRANSFER OF OFFENDERS ACT* (CLAUSES 19, 61 AND 62)

Clause 19 of the Act adds 15 new sections to the Code. Those sections cover the obligations imposed on sex offenders convicted outside Canada and transferred under the *International Transfer of Offenders Act*. Under new sections 490.02901 and 490.02905, 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,³⁰ to comply with the obligations set out in the SOIRA. If the court makes an exemption order, it shall make an order requiring the RCMP to permanently remove from the national registry all information that relates to the offender.³¹ Sex offenders who are convicted outside Canada may appeal a decision concerning an application for an exemption order.³²

Under new section 490.02902, the Attorney General of a province or the minister of justice of a territory may serve a person convicted outside Canada with a notice (new Form 54). New section 490.02904 provides that the obligation to comply with the SOIRA begins on the day on which the person is served with the notice and ends on the day on which an exemption order is made. If an exemption order is not made, the obligation

- (a) ends 10 years after the person was sentenced or found not criminally responsible on account of mental disorder if the maximum term of imprisonment provided for in Canadian law for the equivalent offence is two or five years;
- (b) ends 20 years after the person was sentenced or found not criminally responsible on account of mental disorder if the maximum term of imprisonment provided for in Canadian law for the equivalent offence is 10 or 14 years;
- (c) applies for life if the maximum term of imprisonment provided for in Canadian law for the equivalent offence is life; or
- (d) applies for life if, before or after the coming into force of this paragraph, the person was convicted of, or found not criminally responsible on account of mental disorder for, more than one offence referred to in paragraph (a), (c), (c.1), (d) or (e) of the definition “designated offence” in subsection 490.011(1) or referred to in paragraph (a) or (c) of the definition “designated offence” in section 227 of the *National Defence Act* and if more than one of those offences is listed in the notice.

Sex offenders who are convicted outside Canada may also apply for termination of their obligation to comply with the SOIRA under new section 490.02908.³³ A court shall make an order terminating the obligation if it is satisfied that the person has established that the impact on him or her of continuing the obligation, including on personal 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 information relating to sex offenders under the SOIRA (see new subsection 490.02909(1)). The court shall give

reasons for its decision. The Attorney General or the person who applied for a termination order may appeal the decision.³⁴

Offenders who were convicted of or found not criminally responsible on account of mental disorder for an offence outside Canada referred to in paragraph (a) of the definition “designated offence” in subsection 490.011(1) of the Code must advise the police service within seven days after the day on which they arrive in Canada of that fact and of 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.³⁵

An administrative process is also established for offenders who are transferred to Canada under the *International Transfer of Offenders Act*. Clause 62 of the bill creates a new provision (section 36.1 of the *International Transfer of Offenders Act*) under which sexual offenders are required to comply with the obligations provided in the SOIRA where the offence of which they were convicted abroad is equivalent to an offence of a sexual nature referred to in paragraph 490.011(1)(a), (c), (c.1), (d) or (e) of the Code. Clause 19 of the bill thus creates a new provision in the Code (section 490.02912) which provides that offenders who are transferred may apply for an order terminating their obligation to comply with the SOIRA.³⁶

Where there are multiple offences, offenders must wait 20 years from the day on which sentence was imposed or the verdict of not criminally responsible was rendered for the most recent offence, before making an application for a termination order. The court has discretion in this regard and shall make an order terminating the obligation if it is satisfied that the offender has established that the impact on him or her of continuing the obligation, including on personal 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 information relating to sex offenders under the SOIRA (see new section 490.02913). The Court shall give reasons for its decision. The Attorney General or the offender may appeal the decision.³⁷

Clause 62 of the bill provides that the obligation to comply with the SOIRA begins on the day of the person’s transfer. New section 36.2 of the *International Transfer of Offenders Act* provides for the point at which the obligation terminates and the duration of the obligation to comply with the SOIRA.

2.8 DUTIES OF PERSONS WHO REGISTER INFORMATION (CLAUSE 38)

The bill amends section 8 of the SOIRA to provide that when a person who registers information for the police service or the commissioner of the RCMP receives a copy of an order to register, he or she shall ensure that the sex offender’s method of operation in relation to the offence or offences is registered when that information is available. This amendment applies to sexual offenders who are convicted outside Canada of an offence of a sexual nature and to offenders who are transferred under the *International Transfer of Offenders Act*.

2.9 AUTHORITY TO RELEASE INFORMATION (CLAUSE 43)

The new provision set out in clause 43 of the bill authorizes the Correctional Service of Canada or, in the case of a provincial correctional facility, a person in charge of the facility, to disclose to a person who registers information in the national registry the days on which a sex offender is expected to be absent for seven or more consecutive days and the address or place where they are expected to stay. This amendment also applies to sex offenders covered by the *National Defence Act*.

2.10 CONSEQUENCES OF FAILING TO COMPLY WITH AN ORDER TO REGISTER (CLAUSES 21 AND 22)

Under subclause 21(1) of the bill, offenders who fail to comply with their obligations or an order made under the Code, the *National Defence Act* or the *International Transfer of Offenders Act* without reasonable excuse 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 subsection 490.031(1) of the Code so as to create a hybrid offence for a first failure to comply with obligations or an order. In this way, a prosecutor who proceeds by indictment can obtain a harsher sentence for this first offence. In addition, clause 21 of the bill creates a new provision which allows evidence of certain facts to be given by certificate. Notice of intention to produce the certificate must be given to the sex offender, and the person who signed it may be asked to appear for cross-examination.

Clause 22 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 21 of the bill for any failure to comply. Clause 22 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.

2.11 COMING INTO FORCE INFORMATION (CLAUSE 65)

The provisions of Bill S-2 come into force on a day or days to be fixed by order of the Governor in Council.

NOTES

1. Bill C-34, An Act to amend the Criminal Code and other Acts (short title: Protecting Victims from Sex Offenders Act), 2nd Session, 40th Parliament. The bill 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. The bill died on the *Order Paper* when the 2nd session of the 40th Parliament ended on 30 December 2009.
2. The amendments appear in House of Commons, Standing Committee on Public Safety and National Security, [Fourth Report](#), 2nd Session, 40th Parliament, 3 December 2009.
3. Public Safety Canada, "[Strengthening the National Sex Offender Registry and the National DNA Data Bank](#)," News release, 1 June 2009.
4. Only the offences designated in para. (a), (c), (c.1), (d), or (e) of the definition of designated offence in subsection 490.011(1) of the Code are subject to an automatic registration order. An application must still be made by the prosecution in respect of the other sexual offences that are designated offences. Only primary designated offences under para. 487.04(a) will result in an automatic order for samples of DNA to be taken for forensic analysis. The court still has discretion with respect to the other offences.
5. *Sex Offender Information Registration Act*, S.C. 2004, c. 10 (SOIRA).
6. 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, and Jim and Anna Stephenson.
7. 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).
8. See House of Commons, Standing Committee on Public Safety and National Security, [Statutory Review of the Sex Offender Information Registry Act](#), 2nd Session, 40th Parliament, December 2009.
9. Subpara. 2(2)(c)(i) of the SOIRA.
10. Bill C-16: An Act respecting the registration of information relating to sex offenders, to amend the Criminal Code and to make consequential amendments to other Acts (short title: Sex Offender Information Registration Act), 3rd Session, 37th Parliament.
11. 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, 1st Session, 39th Parliament.
12. 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.
13. SECU, *Evidence*, 21 April 2009, 0915 (Inspector Pierre Nezan, Officer in Charge, National Sex Offender Registry, Royal Canadian Mounted Police).
14. Ibid.
15. Public Safety Canada, "[Strengthening the Sex Offender Registry](#)," News release, 1 June 2009.
16. SECU, *Evidence*, 12 May 2009, 920 (Chief Superintendent Kate Lines, Ontario Provincial Police, Canadian Association of Chiefs of Police).

17. SECU, *Evidence*, 21 April 2009, 1050 and 1055 (Superintendent David Truax, Ontario Provincial Police, Canadian Association of Chiefs of Police).
18. SECU, *Evidence*, 21 April 2009, 0915 (Chief Superintendent Kate Lines, Ontario Provincial Police, Canadian Association of Chiefs of Police).
19. There have been sex offender registries in the United States since 1940 and the in 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.
20. S.O. 2000, c. 1.
21. 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](#).
22. *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.
23. SECU, *Evidence*, 21 April 2009, 0915 (Chief Superintendent Kate Lines, Ontario Provincial Police, Canadian Association of Chiefs of Police).
24. See subsection 4(2) of Christopher's Law.
25. Subpara. 2(2)(c)(i) of the SOIRA.
26. The court is not required to make the order if it is satisfied that the person has established that the impact of such an order on his or her 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, to be achieved through the early detection, arrest and conviction of offenders.
27. Subsection 490.013(2) of the Code.
28. SECU, *Evidence*, 21 April 2009, 0915 (Inspector Pierre Nezan, Officer in Charge, National Sex Offender Registry, Royal Canadian Mounted Police).
29. Subsection 490.015(1) of the Code.
30. Under new s. 490.02905, the court
 - (a) shall make an exemption order if it is satisfied that the offender has established that
 - (i) they were not convicted of or found not criminally responsible on account of mental disorder for or were acquitted of the offence in question, or
 - (ii) the offence in question is not equivalent to an offence referred to in paragraph (a) of the definition "designated offence" in subsection 490.011(1); and
 - (b) shall order that the notice be corrected if it is satisfied that the offence in question is not equivalent to the offence referred to in the notice but is equivalent to another offence referred to in paragraph (a) of the definition "designated offence" in subsection 490.011(1).
31. New s. 490.02905 of the Code.
32. New s. 490.02906 of the Code.

33. Under new s. 490.02908 of the Code, the person may apply for a termination order if the following period has elapsed since the sentence was imposed or the verdict of not criminally responsible on account of mental disorder was rendered:
- (a) five years, if the maximum term of imprisonment provided for in Canadian law for the equivalent offence is two or five years;
 - (b) 10 years, if the maximum term of imprisonment provided for in Canadian law for the equivalent offence is 10 or 14 years; or
 - (c) 20 years, if the maximum term of imprisonment provided for in Canadian law for the equivalent offence is life.
34. New s. 490.0291 of the Code.
35. New s. 490.02911 of the Code.
36. Under new s. 490.02912 of the Code, the person may apply for a termination order if the following period has elapsed since the sentence was imposed or the verdict of not criminally responsible on account of mental disorder was rendered:
- (a) five years, if the maximum term of imprisonment provided for in Canadian law for the equivalent offence is two or five years;
 - (b) 10 years, if the maximum term of imprisonment provided for in Canadian law for the equivalent offence is 10 or 14 years; or
 - (c) 20 years, if the maximum term of imprisonment provided for in Canadian law for the equivalent offence is life.
37. New s. 490.02914 of the 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*

“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),
 - (vi.1) section 244.2 (discharging firearm – recklessness),
 - (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),
 - (xi.1) section 270.01 (assaulting peace officer with weapon or causing bodily harm),
 - (xi.2) section 270.02 (aggravated assault of peace officer),
 - (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”
 « *infraction secondaire* »

“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

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

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.