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LEGISLATIVE SUMMARY

Bill C-26:

An Act to amend the Criminal Code, the Canada Evidence Act and the Sex Offender Information Registration Act, to enact the High Risk Child Sex Offender Database Act and to make consequential amendments to other Acts

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

Legislative Summary of Bill C-26
(Legislative Summary)

Publication No. 41-2-C26-E

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1 BACKGROUND

Bill C-26, An Act to amend the Criminal Code, the Canada Evidence Act and the Sex Offender Information Registration Act, to enact the High Risk Child Sex Offender Database Act and to make consequential amendments to other Acts (short title: Tougher Penalties for Child Predators Act) was introduced in the House of Commons by the Minister of Justice on 26 February 2014. The bill amends the provisions of the *Criminal Code*[1] that deal with sexual offences committed against children and young persons by increasing the mandatory minimum penalties and maximum penalties for such offences. Bill C-26 also makes the following changes to the law:

- It increases maximum penalties for violations of prohibition orders, probation orders and peace bonds.
- It sets out rules for the imposition of consecutive and concurrent sentences.
- It requires courts to impose consecutive sentences on offenders who commit sexual offences against more than one child.
- It amends the *Canada Evidence Act*[2] to ensure that spouses of accused persons can be called as witnesses for the prosecution in child pornography cases.
- It amends the *Sex Offender Information Registration Act*[3] to increase the reporting obligations of sex offenders who travel outside Canada.
- It enacts the High Risk Child Sex Offender Database Act to establish a publicly accessible database that contains information with respect to persons who are found guilty of sexual offences against children and who pose a high risk of committing crimes of a sexual nature.

1.1 THE CURRENT LAW

1.1.1 SEXUAL OFFENCES IN THE *CRIMINAL CODE*

Part V of the *Criminal Code* is entitled “Sexual Offences, Public Morals and Disorderly Conduct.”

This part of the Code contains a number of sexual offences, some against persons under the age of 16 (the age of consent to sexual activity in Canada), and others against persons under 18.

Section 150.1 of the Code sets out some exceptions to the general rule regarding the age of consent. These exceptions apply in cases where the complainant consented to the activity that forms the subject matter of the charge if the accused is close in age to the complainant and is not in a position of trust or authority towards the complainant. Other exceptions may apply, such as when the accused and complainant are married or are common-law partners.

Sexual offences where the age of the victim is specified as being under 16, or where a particular punishment applies when the offence is committed against someone under that age, are listed below. Maximum penalties, as well as mandatory minimum sentences, are provided for all of these offences.

- Sexual interference (section 151 of the Code)
- Invitation to sexual touching (section 152)
- Bestiality (section 160(3))
- Parent or guardian procuring sexual activity (section 170(*a*))
- Householder permitting sexual activity (section 171(*a*))
- Making sexually explicit material available to child (section 171.1(1)(*b*))
- Luring a child (section 172.1(1)(*b*))
- Agreement or arrangement to commit a sexual offence against a child (section 172.2(1)(*b*))
- Exposure (section 173(2))

Sexual offences where the age of the victim is specified as being under 18, or where a particular punishment applies when the offence is committed against someone under that age, are provided below. In addition to their maximum penalties, each of these offences has a mandatory minimum sentence when it is committed against someone under 18 years of age.

- Sexual exploitation (section 153)
- Child pornography (section 163.1)
- Parent or guardian procuring sexual activity (section 170(*b*))
- Householder permitting sexual activity (section 171(*b*))
- Making sexually explicit material available to child (section 171.1(1)(*a*))
- Luring a child (section 172.1(1)(*a*))
- Agreement or arrangement to commit a sexual offence against a child (section 172.2(1)(*a*))
- Living on the avails of a prostitute under the age of 18 (section 212(2))
- Aggravated living on the avails of a prostitute under the age of 18 (section 212(2.1))
- Buying the sexual services of a person under the age of 18 (section 212(4))

Part VIII of the *Criminal Code* is entitled "Offences Against the Person and Reputation." This part contains the offences that follow. Where the complainant is under the age of 16, a mandatory minimum penalty is imposed for each of these offences.

- Sexual assault (section 271)
- Sexual assault with a weapon, threats to a third party or causing bodily harm (section 272)
- Aggravated sexual assault (section 273)

1.1.2 Sentences and Orders

When an offender is convicted of a specified sexual offence against a person who is under the age of 16, the court that sentences the offender may impose a prohibition order under section 161 of the Code.[4]

This order prohibits the offender from:

- going near certain public places and other facilities where persons under 16 years of age may be present;
- obtaining employment or a voluntary position which may involve the offender's being in a position of trust or authority over persons under 16 years of age;
- having unsupervised contact with any person under the age of 16; or
- from using any digital network, unless this is done in accordance with conditions set by the court.

The order may be for life or some shorter period and either the offender or the prosecutor may apply for its terms to be varied. Failure to comply with the order is a hybrid offence.[5]

Part XXIII of the *Criminal Code* is entitled "Sentencing," with sections 718 to 718.2 setting out the "Purpose and Principles of Sentencing." Section 718 sets out the following objectives of sentencing:

- the denunciation of unlawful conduct;
- the deterrence of the offender and others from committing offences;
- the separation of the offender from the community, when necessary;
- the rehabilitation of the offender;
- the provision of reparation to victims or the community; and
- the promotion of a sense of responsibility in the offender, and acknowledgement of the harm done to victims and to the community.

Section 718.01 gives specific direction to courts when it comes to imposing a sentence for an offence that involved the abuse of a person under the age of 18 years. In such a case, the court is directed to give primary consideration to the objectives of denunciation and deterrence of such conduct.

Section 718.1 of the Code states that the fundamental principle of sentencing is the proportionality of the sentence to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 sets out other sentencing principles, including the obligation to increase or reduce a sentence to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. Examples of aggravating circumstances include evidence that the offender, in committing the offence, abused a person under the age of 18 or took advantage of a position of trust or authority in relation to the victim. Other principles include the "totality principle," namely, that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh, along with the principle that all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

Section 718.3 of the Code deals with certain discretionary aspects of sentencing, including the choice of whether different sentences should be served concurrently or consecutively. Consecutive jail sentences may be imposed where an accused is:

- already under sentence of imprisonment;
- sentenced to serve a period of incarceration and to pay a fine; or
- convicted of more than one offence before the same court, and several periods of incarceration are imposed.

The cases where the discretion to impose concurrent or consecutive sentences has been considered have tended to follow the proposition that sentences should generally be served consecutively when they arise from separate and distinct transactions.[6] The totality principle set out in section 718.2(*c*) of the Code then requires that, when consecutive sentences are ordered to be served for multiple offences, the cumulative sentence must not exceed the overall culpability of the offender.[7]

Section 731 of the Code provides for the possible imposition of a probation order. Where a person is convicted of an offence, a court may, if no minimum punishment is prescribed by law, suspend the passing of sentence and direct that the offender be released on the conditions prescribed in a probation order, or, in addition to fining or sentencing the offender to imprisonment for a term not exceeding two years, direct that the offender comply with the conditions prescribed in a probation order. A court may also make a probation order when discharging an accused under section 730(1) of the Code. A probation order may last for three years with certain mandatory and optional conditions, as set out in section 732.1. Failure to comply with a probation order is a hybrid offence, as set out in section 733.1 of the Code.

In addition to dealing with sentencing orders for past offences, the *Criminal Code* contains provisions dealing with possible future wrongdoing. Sections 810 to 810.2 of the Code apply when there is a reasonable fear that a person will commit an offence in the future. These sections allow anyone to lay an information[8] before a justice of the peace or a provincial court judge where they fear that the person:

- will cause personal injury or damage to property (section 810);
- will commit a criminal organization or terrorism offence (section 810.01);
- will commit certain specified sexual offences against someone under 16 years of age (section 810.1); or
- will commit a serious personal injury offence (section 810.2).

The purpose of this process is to have the defendant enter into a recognizance,[9] which may include conditions, such as the condition that the person not engage in activity that involves contact with persons under 16 years of age or that the defendant be prohibited from attending certain places where persons under 16 years of age are likely to be present. The maximum duration of such an order is 12 months, except if the defendant was previously convicted of the offence in question, in which case the recognizance may be for a period of up to two years.

A refusal to enter into a recognizance may lead to imprisonment for up to one year. Failure to abide by the terms of a recognizance is a hybrid offence (section 811).

1.1.3 *Canada Evidence Act*

A common law rule known as "spousal incompetency" renders a spouse, whether willing or not, incapable of testifying against his or her spouse for the prosecution in relation to events that occurred both before and during the marriage. The rule has also been expressed as holding that a spouse is an incompetent witness in criminal proceedings in which the other spouse is an accused, except where the charge involves the person, liberty or health of the witness spouse.[10] The impetus behind this rule was the idea that forcing one spouse to testify against another could have negative effects upon marital harmony.

This common law rule has been overridden to some extent by section 4 of the *Canada Evidence Act*. Section 4(2) of that Act states that the wife or husband of a person charged with certain offences, including sexual offences committed against a child or young person, is a competent and compellable witness for the prosecution. No consent of the accused spouse is required.

1.1.4 *Sex Offender Information Registration Act*

The *Sex Offender Information Registration Act* (SOIRA) came into force on 15 December 2004. Its stated purpose is to help police services prevent and investigate crimes of a sexual nature by requiring the registration of certain information relating to sex offenders.

Section 2 of the SOIRA sets out the purpose and three principles that should guide the application of this statute.

- The first principle is that police services must have rapid access to certain information relating to sex offenders in order to prevent and investigate crimes of a sexual nature.

- The second principle is that the continuous collection and registration of accurate information is the most effective way of ensuring that such information is current and reliable.
- The third principle is that the information concerning sex offenders should be collected only to enable police services to prevent or investigate crimes of a sexual nature, and access to it should be restricted. This is designed to respect the privacy interests of sex offenders and the public interest in their rehabilitation and reintegration into the community as law-abiding citizens.

The SOIRA works in tandem with sections 490.011 to 490.032 of the *Criminal Code*. These sections set out the sentenced person's legal duty to supply information to the national sex offender database when he or she has been convicted of a "designated offence," which is defined in section 490.011 of the Code. An obligation to comply with the SOIRA can be imposed, not only for current offences, but for historical offences and offences committed outside Canada. These reporting obligations are paralleled in the *National Defence Act*.[11]

Section 36.1 of the *International Transfer of Offenders Act*[12] also contains an obligation to supply information where the offence committed outside Canada is a "designated offence." Failure to comply with a court order to supply information to the sex offender database is a hybrid offence (section 490.031 of the Code), as is knowingly providing false or misleading information (section 490.0311 of the Code).

The SOIRA then sets out the details of the obligations placed upon sex offenders. Section 4 provides for the timing of the first and subsequent obligation to report to a registration centre, while section 5 addresses the type of information that must be provided. Section 6 of the statute imposes an obligation on the sex offender to report before departure any expected absence of seven or more consecutive days from his or her main residence or any secondary residence.

A set of prohibitions is listed in section 16 of the SOIRA, the main one being section 16(4), which prohibits the disclosure of any information collected unless one of a number of possible criteria apply. Section 16(2) allows the database to be consulted only in certain circumstances, such as by a police officer in order to prevent or investigate a crime of a sexual nature. Breach of one of these prohibitions is a summary conviction offence (section 17 of the SOIRA).

2 DESCRIPTION AND ANALYSIS

Bill C-26 contains 34 clauses. The following description focuses on the substantive amendments and does not discuss the consequential and coordinating amendments.

2.1 INCREASING MAXIMUM PENALTIES UNDER THE *CRIMINAL CODE* (CLAUSES 2 TO 15, 18 AND 19)

Clauses 2 to 15, 18 and 19 of Bill C-26 amend the *Criminal Code* to increase the maximum penalty for a number of Code offences, most of them sexual offences involving children and young persons.

The increases in maximum sentences are summarized in Table 1.

Table 1 – Increased Maximum Sentences Under Bill C-26

Offence	*Criminal Code* Section	On Summary Conviction		On Indictment	
		Current Maximum	New Increased Maximum	Current Maximum	New Increased Maximum
Sexual interference	151	18 months	2 years less a day[a]	10 years	14 years
Invitation to sexual touching	152	18 months	2 years less a day	10 years	14 years
Sexual exploitation	153	18 months	2 years less a day	10 years	14 years
Bestiality in presence of person under 16 years of age	160(3)	n/a[b]	n/a[b]	10 years	14 years
Order of Prohibition	161	6 months	18 months	2 years	4 years
Publishing of child pornography	163.1(2)	n/a[b]	n/a[b]	10 years	14 years
Distribution of child pornography	163.1(3)	n/a[b]	n/a[b]	10 years	14 years
Possession of child pornography	163.1(4)	18 months	2 years less a day	5 years	10 years
Accessing child pornography	163.1(4.1)	18 months	2 years less a day	5 years	10 years
Parent or guardian procuring sexual activity	170	n/a[b]	n/a[b]	10 years	14 years
Householder permitting sexual activity	171	n/a[b]	n/a[b]	5 years	14 years
Making sexually explicit material available to child	171.1	6 months	2 years less a day	2 years	14 years
Luring a child	172.1	18 months	2 years less a day	10 years	14 years
Agreement or arrangement to commit a sexual offence against a child	172.2	18 months	2 years less a day	10 years	14 years
Prostitution of person under 18 years of age	212(4)	n/a[b]	n/a[b]	5 years	10 years
Sexual assault (complainant under 16 years of age)	271	18 months	2 years less a day	10 years	14 years
Sexual assault with a weapon, threats to a third party or causing bodily harm (complainant under 16 years of age)	272	n/a[b]	n/a[b]	14 years	Life imprisonment
Failure to comply with probation order	733.1	18 months or $2,000 fine, or both	18 months or $5,000 fine, or both	2 years	4 years

Offence	*Criminal Code* Section	On Summary Conviction		On Indictment	
		Current Maximum	New Increased Maximum	Current Maximum	New Increased Maximum
Breach of recognizance	811	6 months or $5,000-fine, or both	18 months	2 years	4 years

Notes: a. Section 743.1 of the *Criminal Code* indicates that a sentence of two years or more is to be served in a federal penitentiary. This means that a sentence of "two years less a day" will be served in a provincial facility.

b. "N/a" means that this part of the sentence is not addressed by the bill, a hybrid offence has been made a solely indictable offence (sections 163.1(2) and 163.1(3)) or the distinction based on the age of the victim has been eliminated (sections 170 and 171).

2.2 Increasing Mandatory Minimum Penalties Under the *Criminal Code* (Clauses 7 and 9 to 14)

Clauses 7 and 9 to 14 of Bill C-26 amend the *Criminal Code* to increase the mandatory minimum penalty for a number of Code offences, most of them sexual offences involving children and young persons.

The increases in mandatory minimum sentences are summarized in Table 2.

Table 2 – Increased Mandatory Minimum Sentences (MMS) Under Bill C-26

Offence	*Criminal Code* Section	On Summary Conviction		On Indictment	
		Current MMS	New Increased MMS	Current MMS	New Increased MMS
Possession of child pornography	163.1(4)	90 days	6 months	6 months	1 year
Accessing child pornography	163.1(4.1)	90 days	6 months	6 months	1 year
Householder permitting sexual activity	171	n/a	n/a	90 days	1 year
Making sexually explicit material available to child	171.1	30 days	90 days	90 days	6 months
Luring a child	172.1	90 days	6 months	n/a	n/a
Agreement or arrangement to commit a sexual offence against a child	172.2	90 days	6 months	n/a	n/a
Prostitution of person under 18 years of age	212(4)	n/a	n/a	6 months	1 year (in the case of a second or subsequent offence)
Sexual assault (complainant under 16 years of age)	271	90 days	6 months	n/a	n/a

Note: "N/a" means that this part of the sentence is not addressed by the bill, a hybrid offence has been made a solely indictable offence (sections 163.1(2) and 163.1(3)) or the distinction based on the age of the victim has been eliminated (sections 170 and 171).

2.3 Additional Aggravating Circumstance in Sentencing (Clause 16)

Section 718.2(*a*) of the *Criminal Code* sets out a list of aggravating circumstances that should lead to an increased sentence. Clause 16 of Bill C-26 adds a further aggravating circumstance to this list. New section 718.2(*a*)(vi) states that evidence that an offence was committed while the offender was subject to a conditional sentence order or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act*[13] is a further aggravating circumstance. In all four of the circumstances listed, the offender is still "under sentence"[14] but is in the community and not in a correctional institution. In addition, in each case the offender will have been assessed as not posing a danger to the safety of the community.[15] Finally, in each case the placing of the offender in the community will have been assessed as being consistent with the purpose and principles of sentencing, particularly in terms of reintegrating the offender into the community.[16]

2.4 Cumulative Punishments (Clause 17)

Currently, the decision as to whether a number of sentences should run concurrently or consecutively is left to judicial discretion.[17] As noted above, this is subject to a common law rule that unrelated criminal offences will usually have consecutive sentences applied to them and the statutory rule that, where consecutive sentences are imposed, the combined sentence should not be "unduly long or harsh" (section 718.2(*c*) of the Code).

Clause 17 of Bill C-26 adds a number of subsections to section 718.3 of the Code. An amended section 718.3(4) changes the wording that a court "may direct" that terms of imprisonment be served consecutively in certain circumstances to "shall consider directing" that a term of imprisonment it imposes be served consecutively to a sentence of imprisonment to which the offender is subject at the time of sentencing.

The amended section also addresses the situation where multiple sentences are being imposed at the same time. In such a case, under section 718.3(4)(*b*), a court must consider directing that these sentences be served consecutively when the offences do not arise from the same event or series of events, when one of the offences was committed while the accused was on judicial interim release (also called "bail"), or when one of the offences was committed while the accused was fleeing from a peace officer.[18]

New sections 718.3(5) and 718.3(6) clarify that a "term of imprisonment" (or "sentence of imprisonment") that may be served consecutively includes one imposed in default of a payment of a fine as well as a youth sentence.

New section 718.3(7) deals with a court sentencing an accused at the same time for more than one sexual offence committed against a child. A court is directed to impose any sentence of imprisonment for a child pornography offence consecutively to a sentence of imprisonment imposed for a sexual offence under another section of the *Criminal Code* committed against a child. In addition, where two sexual offences, other than a child pornography offence, are committed against two different children, the sentences of imprisonment must be served consecutively.

2.5 *Canada Evidence Act* Amendment (Clause 20)

Clause 20 of Bill C-26 amends section 4(2) of the *Canada Evidence Act* to make a spouse a competent and compellable witness for the prosecution when his or her spouse is charged with a child pornography offence under section 163.1 of the *Criminal Code*.

2.6 *Sex Offender Information Registration Act* Amendments (Clauses 21 to 28)

The main thrust of the bill's amendments to the SOIRA is the imposition of more stringent reporting requirements on sex offenders, particularly those who have been convicted of a "sexual offence against a child," which is a new definition added to the SOIRA by clause 21 of the bill.

Clause 24(1) of Bill C-26 retains the following requirements currently contained in section 6(1) the SOIRA. All sex offenders must:

- before their departure, notify a registration centre of the dates of their departure and return if they expect to be away from their main or secondary residence for a period of seven or more consecutive days; and
- if they decide to extend a shorter absence to one extending beyond seven days, notify a registration centre, within seven days of their departure, of the date of their return.

In both cases, they must give notice of every address or location at which they expect to stay in Canada. Clause 24(1) adds the new obligation to report every location or address at which the sex offender either expects to stay or is staying if the offender travels outside Canada.

Under clause 24(2), individuals convicted of a sexual offence against a child who travel outside Canada must meet these reporting obligations, no matter how long the expected absence is. Thus, a trip outside Canada of four days' duration that would currently escape the notification requirements of the SOIRA will be captured by the new provisions. Another significant change for this class of offender is that any change in the date of return from a trip outside Canada must be reported without delay. Similar notification "without delay" must be made if there is a change in address or location while staying outside Canada. There is no longer a seven-day period within which to report these changes.

Current section 15.1 of the SOIRA is entitled "Authority to Release Information." It authorizes the Correctional Service of Canada, the person in charge of a provincial correctional facility, or the person in charge of a service prison or detention barrack to disclose to a person who inputs information into the sex offender registry:

- the day on which a sex offender is received into the facility;
- if a sex offender is expected to be temporarily outside the facility for seven or more days, the days on which the offender is expected to be outside and the offender's expected address or location; and
- the date of a sex offender's release or discharge.

Clause 26 of Bill C-26 changes the section 15.1 heading to "Authority to Collect or Disclose Information." Clause 27 then adds section 15.2 to the Act. This section authorizes the Canada Border Services Agency (CBSA) to assist a police service in the prevention or investigation of a crime of a sexual nature by collecting and disclosing certain information. Information from the sex offender database may now be disclosed to the CBSA pursuant to new sections 16(4)(*j.2*) and 16(4)(*j.3*) of the Act (clause 28(3)). In addition, the CBSA will be authorized to disclose to the database information concerning the sex offender who is the subject of that disclosure, including the date of departure from and return to Canada and every address or location at which he or she has stayed outside Canada. This provision allows the CBSA to flag high-risk offenders in their lookout system and thereby assist police in ensuring compliance with travel identification requirements. It remains the case, however, that Canada does not have exit controls in place; it has only entry controls.[19]

2.7 Creation of the High Risk Child Sex Offender Database Act (Clause 29)

Clause 29 of Bill C-26 creates a new statute, the High Risk Child Sex Offender Database Act. The intention of this statute is to create at the federal level[20] a new, publicly accessible database[21] containing information with respect to persons who are found guilty of sexual offences against children from across Canada and who pose a high risk of committing crimes of a sexual nature. For the purposes of this Act, a person found guilty of a sexual offence against a child does not include a young person found guilty of a sexual offence against a child under the *Youth Criminal Justice Act*, unless that young person was given an adult sentence, or a young person found guilty of a sexual offence against a child under the *Young Offenders Act*, unless that young person was found guilty of the offence in ordinary court.

The Commissioner of the Royal Canadian Mounted Police (or someone authorized by the Commissioner) is required under section 4 of the proposed High Risk Child Sex Offender Database Act to establish and administer a publicly accessible database that contains information about persons who are found guilty of sexual offences against children and who pose a high risk of committing crimes of a sexual nature.[22] The only information that the database may contain is that which a police service or other public authority has previously made accessible to the public.[23] This information may include the offender's name and any aliases, date of birth, gender, physical description, photograph, a description of the offence(s), any conditions to which the offender is subject, and the name of the city, town, municipality or other organized district in which the offender resides.

Before the information is put in the database, the Commissioner must notify the offender of his or her intention to do so and allow the offender to make representations concerning the matter. An offender can make application to the Commissioner to have information concerning him or her removed from the database. The Commissioner is also obliged to review the information in the database at regular intervals to determine whether it should be retained. The Act provides a regulation-making authority to the Governor in Council to establish the criteria for determining whether a person who is found guilty of a sexual offence against a child poses a high risk of committing a crime of a sexual nature.

3 COMMENTARY

An internal Department of Justice report summarizing a decade's worth of opinion polls and research shows that Canadians see the courts as too slow to deliver justice, and judges as handing out sentences that are too lenient.[24] As for sexual offences against children and young persons in particular, it has been said that society's repugnance for these particularly heinous sex crimes leads to an emphasis, in sentencing, upon denunciation.[25]

The amendment proposed in Bill C-26 requiring that, in cases with multiple victims, mandatory minimum sentences must be served consecutively has prompted public debate about the "totality principle," which states that an offender's overall sentence should not be unduly harsh. Lawyer Clayton Ruby, author of the textbook *Sentencing*, has said that consecutive minimum sentences do not leave room for considering the individual offender and the nature of the offence.[26] However, Sharon Rosenfeldt, spokesperson for Victims of Violence, has stated that reliance on the totality principle allows those individuals who commit crimes against children to repeatedly reoffend.[27]

Another subject of debate concerning Bill C-26 has been the proposed creation of a publicly accessible databank containing information about those persons found guilty of sex offences against children who are deemed to be at risk of offending again. The Association des services de réhabilitation sociale du Québec has expressed concern that such a databank will create a false sense of security, as this type of information gives the impression that the danger of a sexual assault comes from strangers, whereas the evidence suggests that the vast majority of sex offences against children are committed by those close to them. The Marie Vincent Foundation has determined that in 85% of the cases of sexual offences committed against those under 12 years of age, the offender was a person known to the victim (father, next of kin, neighbour, friend of the family, etc.).[28]

A number of comments concerning Bill C-26 have mentioned the possibility of vigilantism rising from a publicly accessible database of sex offenders.[29] Detective Constable Stephen Canton, the police officer in charge of the Niagara Regional Police sex offender registry, is also concerned that "[w]hen you start to identify offenders, you start to get less compliance and it pushes them underground."[30]

Victims' rights groups have expressed support for the changes proposed in Bill C-26, however.[31] Gatineau Police Chief Mario Harel, vice-president of the Canadian Association of Chiefs of Police, has also said that the information-sharing provision is important, as is the ability to compel spouses to testify in child pornography cases. He welcomed Bill C-26, suggesting stiffer penalties could have a deterrent effect.[32]

NOTES

1. *Criminal Code*, R.S.C., 1985, c. C-46.
2. *Canada Evidence Act*, R.S.C., 1985, c. C-5.
3. *Sex Offender Information Registration Act*, S.C. 2004, c. 10.

4. However, the *Youth Criminal Justice Act*, S.C. 2002, c. 1, s. 42(2)(*j*), indicates that a section 161 prohibition order cannot be issued for a young offender.

5. Many offences can be prosecuted either by summary conviction or indictment. The Crown chooses the mode of prosecution. Such offences are referred to as "hybrid" or "Crown option" or "dual procedure" offences. Hybrid offences are considered indictable until the Crown makes its election.

   Summary conviction offences are considered to be less serious than indictable offences in the *Criminal Code*. The main differences between them are that the procedure for summary conviction offences is more straightforward and the penalties are generally less severe.

6. *R. v. Munilla* (1986), 38 Man. R. (2d) 79 (C.A.).

7. *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500.

8. "Laying an information" usually refers to the formal means of laying a charge against an alleged offender. The *Criminal Code* requires that a charge be brought in writing and under oath before a justice of the peace. For most of sections 810 to 810.2, which deal with "sureties to keep the peace," the information is laid before a provincial court judge and does not contain a formal charge, but rather sets out a fear that the defendant will commit one of the specified offences.

9. A "recognizance" refers to an obligation entered into before a justice of the peace or a judge by which the defendant must keep the peace and be of good behaviour. It is also referred to as a "peace bond."

10. *R. v. Hawkins*, [1996] 3 S.C.R. 1043.

11. *National Defence Act*, R.S.C., 1985, c. N-5.

12. *International Transfer of Offenders Act*, S.C. 2004, c. 21.

13. *Corrections and Conditional Release Act* [CCRA], S.C. 1992, c. 20.

14. Section 128(1) of the CCRA states: "An offender who is released on parole, statutory release or unescorted temporary absence continues, while entitled to be at large, to serve the sentence until its expiration according to law." A conditional sentence imposed under section 742.1 of the Code is a sentence of imprisonment, but one that is served in the community.

15. In order to serve a sentence of imprisonment in the community under a conditional sentence, the court must be "satisfied that the service of the sentence in the community would not endanger the safety of the community" (section 742.1(*a*) of the Code). Before an unescorted temporary absence is granted, the Parole Board must form the opinion that the offender will not, by reoffending, present an undue risk to society during the absence (section 116(1)(*a*) of the CCRA).

16. A conditional sentence may be imposed if "the court is satisfied that the service of the sentence in the community … would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2 [of the Code]" (section 742.1(*a*) of the Code). Section 133(3) of the CCRA states:

> The releasing authority may impose any conditions on the parole, statutory release or unescorted temporary absence of an offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender.

17. In *R. v. McDonnell*, [1997] 1 S.C.R. 948, para. 46, Justice Sopinka wrote:

> In my opinion, the decision to order concurrent or consecutive sentences should be treated with the same deference owed by appellate courts to sentencing judges concerning the length of sentences ordered. The rationale for deference with respect to the length of sentence, clearly stated in both *Shropshire* and *M. (C.A.)*, applies equally to the decision to order concurrent or consecutive sentences. In both setting duration and the type of sentence, the sentencing judge exercises his or her discretion based on his or her first-hand knowledge of the case; it is not for an appellate court to intervene absent an error in principle, unless the sentencing judge ignored factors or imposed a sentence which, considered in its entirety, is demonstrably unfit. The Court of Appeal in the present case failed to raise a legitimate reason to alter the order of concurrent sentences made by the sentencing judge; the court simply disagreed with the result of the sentencing judge's exercise of discretion, which is insufficient to interfere.

18. A "peace officer" is defined in section 2 of the *Criminal Code*.

19. Under Phase II of the Entry/Exit Initiative, on 30 June 2013, the Canada Border Services Agency and the U.S. Department of Homeland Security began exchanging entry data collected on third-country nationals (those who are neither citizens of Canada nor of the U.S.), permanent residents of Canada who are not U.S. citizens, and lawful permanent residents of the U.S. who are not Canadian citizens at all automated land ports of entry along the common border, including all major land border crossings (Canada Border Services Agency, "Canada set to launch Phase II of Entry/Exit Initiative," News release, 28 June 2013). As part of the Beyond the Border Action Plan, Canada and the United States have committed that, by 30 June 2014, they will develop a system to exchange biographical information on the entry of travellers, including citizens, permanent residents and third-country nationals, such that a record of entry into one country could be considered as a record of exit from the other (see Canada's Economic Action Plan, *Beyond the Border Action Plan*).

20. Publicly accessible databases already exist at the provincial level. One example is the *Serious, Violent and High Risk Offenders* website maintained by the ministry of Alberta Justice and Solicitor General. When a public notification on a high risk offender is issued by the police, the ministry posts the information on its High Risk Offenders Listing. The website indicates this is done to inform the public about high risk offenders residing in the community and to encourage the public to take suitable precautionary measures to ensure the safety of the community. The public notification usually includes a physical description and photograph of the offender, information about the offences the offender has committed, the general area in which the offender lives, and a contact name at the appropriate police service. Prior to the public release of the notification, the offender is advised of the information that will be made known. The offender may appeal to the Chief of Police or Assistant Commissioner of the Royal Canadian Mounted Police to challenge the accuracy or inclusion of any information that will be released (see Alberta Justice and Solicitor General, *Serious, Violent and High Risk Offenders*).

21. The issue of public access to a sex offender registry was considered by the Supreme Court of Canada in the case of *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*. In this case, a request was made under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, for disclosure of a record containing a list of the first three characters of Ontario's postal codes in one column with a second corresponding column of figures representing the number of individuals residing in each area who are listed in the Ontario Sex Offender Registry. The Ministry resisted the request based on its assertion that the information in the record might lead to the identification of the whereabouts of registered offenders. The Ontario Information and Privacy Commissioner ordered that the record be disclosed. The Supreme Court held that the Commissioner reasonably concluded that the Ministry did not prove that the record could be used to identify sex offenders or that it will ignite among sex offenders a subjective fear of being identified that will lead to lower compliance rates with Ontario's sex offender registry. The Court upheld the Commissioner's disclosure order.

22. There currently exist a number of unofficial publicly accessible databases containing information on individuals that are represented as being convicted sex offenders. One such database is stoppedophiles.ca, which is published by Canada Family Action. The website states that the individuals listed have been convicted in a court of law and the information it lists has been obtained from public sources. It also states that the public, including Canada Family Action, has no access to any updated, registry information and does not guarantee the accuracy of the information provided (see Canada Family Action, stoppedophiles.ca).

23. For example, section 41 of Ontario's *Police Services Act*, R.S.O. 1990, c. P.15, authorizes a chief of police to disclose personal information about an individual for the protection of the public. Such disclosure is deemed to be in compliance with provincial privacy statutes.

24. "Canadians think fix for courts lies in education, report says," *CBC News* (*The Canadian Press*), 17 February 2014.

25. "Stiffer penalties look good superficially," Editorial, *Yorkton This Week*, 4 September 2013.

26. Sean Fine, "Push for consecutive mandatory minimum sentences may run afoul of Criminal Code," *The Globe and Mail*, 1 March 2014.

27. Ibid.

28. Hélène Buzzetti, "Registre des délinquants sexuels : de la poudre aux yeux? La majorité des agressions sexuelles sur les enfants sont commises par un membre de leur entourage, rappelle l'ARSRQ," *Le Devoir* [Montréal], 28 February 2014, p. A2.

29. Robyn Urback, "Conservatives propose public sex offender registry, despite its failure in the U.S.," *National Post*, 5 March 2014; Jane Armstrong, "Maine reassesses sex-offender list," *The Globe and Mail*, 26 April 2006.

30. Dan Dakin, "The sex offender in your neighbourhood," *St. Catharines Standard*, 20 February 2014.

31. Amanda Connolly, "Public sex offender registry coming soon, says Peter MacKay," *CBC News*, 28 February 2014.

32. Tonda MacCharles, "Tory bill would crack down on child sex offenders, child porn, sex tourism," *Toronto Star*, 26 February 2014.