

High-Risk Offenders

A Handbook for Criminal Justice Professionals

**Solicitor
General
Canada**

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Introduction

As Solicitor General of Canada, the safety and security of all Canadians is my primary concern. Over the past several years, the Government of Canada has made legislative changes to improve public safety in Canada. These initiatives have been put forward after careful consideration and extensive consultation.

This desk reference will help criminal justice professionals stay up-to-date with recent amendments to existing law. It covers four basic areas:

- **Changes to Dangerous Offender legislation**
- **The development of Long-Term Supervision Orders for sex offenders**
- **Extension of Judicial Restraint Orders (810 orders)**
- **Information systems for public safety**

Each of these changes support the Government's priority of public safety including, fighting organized crime, effective corrections, and citizen engagement while building public confidence in the criminal justice system.

I trust this guide will provide a useful overview of our various public safety initiatives.

**The Honourable Lawrence MacAulay, P.C., M.P.
Solicitor General Canada**

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Foreword

The early 1990's were a time of growing public concern about "high risk offenders" and the risks they posed for Canadians and Canadian society. Drops in the national crime rate during these years did not relieve this public apprehension. These concerns were, in part, fueled by concentrated and sensationalist media attention to several high-profile cases. In response to public concerns, the Federal/Provincial/Territorial Deputy Ministers responsible for Justice established a Task Force on High-Risk Violent Offenders in February 1993.

The Task Force presented its report on High-Risk Offenders to Ministers responsible for Justice in 1994. Based upon the findings of the Task Force, the Government enacted a comprehensive package of reforms to improve public safety. These reforms were tailored to address specific gaps within the Canadian criminal justice system.

Even the most cursory review of High-Risk offenders leads very quickly to the conclusion that these offenders are not a homogeneous group. Some have profound mental health problems that cloud judgment and render the offender unfit to participate in the justice process. Others are of such perceived risk that arrangements must be made for their indeterminate detention. Some, while presenting a current risk, can have that risk managed in the community after a period of incarceration and treatment. And still others may inspire fear in the community even after they have served their entire sentence. It quickly becomes evident that a "one-size-fits-all" solution, is no solution at all.

This handbook describes the principal legislative and policy options developed by the Government of Canada and available to members of Canada's criminal justice system for dealing with High-Risk offenders. It reviews the Dangerous Offender provisions that allow the worst offenders to be kept in prison for an indeterminate period. Long-Term Supervision Orders allow for extended supervision of designated offenders in the community after they have completed a penitentiary sentence. The Judicial Restraint, or "810" orders allow conditions to be placed upon people in the community who induce fear of a violent offence.

Finally, this manual reviews the information systems used to screen volunteers and others who would work with children and other vulnerable people. It also reviews the information systems used to flag high-risk violent offenders for special prosecution and catch pardoned sex offenders who apply to volunteer or work with children or vulnerable adults.

We would like to thank the following people for their assistance in the preparation of this handbook: Dr. Tom Davidson, Oak Ridge Division, Penetanguishene Mental Health Centre; Detectives Wendy Leaver, Gwen Hovey, Patricia Clements of the Sexual Assault Squad, Toronto Police Service; Detective Paul Lobsinger, High-Risk Co-ordinator, Toronto Police Service; Jennifer Crawford, Assistant Crown Attorney, Toronto Ontario; Rita Zaied, Assistant Crown Attorney, Toronto Ontario; Sgt. Bruce Brown, NCO in charge, General Investigation Section, Western Communities Detachment, R.C.M.P.; Staff Sgt. Marc Daigle, Canadian Police Information Centre, R.C.M.P.; Ron Hurt, British Columbia High Risk Offenders Identification Program; Marjo Callaghan, Lynn Cuddington, Hugh Kirkegaard, Dan Rowan, and Linda McLaren of the Correctional Service of Canada, National Headquarters; Bob Brown, Andrew McWhinnie, Vancouver Island Parole, Correctional Service of Canada; Dan Strimas, Guelph Parole Office, Correctional Service of Canada; Danielle Paris, Ottawa District Parole Office, Correctional Service of Canada; Dwight Mater, Case Management Coordinator Matsqui Institution, Correctional Service of Canada; David Whellams, Department of Justice, Canada; Chris Trowbridge, National Parole Board; Françoise Le Prohon, Communications Operations, Solicitor General Canada; Diane Thompson, Corrections Directorate, Solicitor General Canada.

Note: 1 This manual attempts to accurately summarize various procedure manuals, internal directives and statutes. The user is strongly encouraged to consult the source documents for precise wording and interpretation. When sections of actual statutes are provided in this handbook, most often sections of the *Criminal Code of Canada*, they are presented in a smaller italic font. These sections represent the law as written in February 2001. Statutes should be checked to assure that amendments have not been made after the publication of this document.

Note: 2 The entire High-Risk Offenders: A Handbook for Criminal Justice Professionals can be downloaded from the Solicitor General Canada website.

www.sgc.gc.ca

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Section 1 Dangerous Offenders

1:A Legislative References

Criminal Code of Canada Sections: 752, 752.1, 753.(1), 754.(1), 757, 758, 759, 760, 761

1:B Purpose

To provide a mechanism that allows dangerous convicted offenders to be removed from society for an indeterminate period. Should the offender continue to pose an undue risk to society they will remain in federal custody for life. This legislation also allows for periodic review of that offender's status and for their gradual and supervised return to society should they meet parole criteria in the future. However, even if released to the community with supervision and conditions on their behaviour, these offenders are supervised for the rest of their lives.

1:C Background

Canada has a long history of legislation allowing indeterminate detention for 'persistent dangerous criminals'. The earliest Canadian "habitual criminals" legislation, 1947, was based upon the British *Prevention of Crime Act, 1908*. This legislation has been amended and up-dated on several occasions. In 1977, the *Criminal Code of Canada* was again amended; the term "Habitual Offender" and "Dangerous Sexual Offender" were removed and replaced by a section simply called "Dangerous Offenders". In 1977, the concept of the "Serious Personal Injury" offence was introduced with the intent of bringing into focus the perceived "dangerousness" of the offender. Between 1977 and 1997, upon finding an offender to be a Dangerous Offender, a judge could sentence the offender to either a determinate or an indeterminate sentence. In 1997, the law was amended again and determinate sentences were removed as a sentencing option. Today, a Dangerous Offender finding automatically produces an indeterminate sentence.

The Dangerous Offender (DO) provision within the *Criminal Code of Canada* is important in that it allows the court to evaluate patterns of offending

over time. There are four possible criteria for a finding of Dangerous Offender, see section 1J. While most Dangerous Offender candidates have extensive criminal histories, it is possible for an offender to be found a Dangerous Offender based on a single offence, section 753.(1) C.C.C. This could happen where there has been a demonstrated failure to control sexual impulses, where there is a likelihood of causing injury, pain or other evil to other persons in the future, or because of the brutal nature of the offence. The DO provision has been upheld by the Supreme Court of Canada, most notably in *R. v. Lyons, 1987*.

1:D *R. v. Lyons [1987] 2 S.C.R. 309*

The Supreme Court of Canada held that the Dangerous Offender provisions of the *Criminal Code of Canada* (PartXXI, ss. 687-695) do not contravene the rights guaranteed by sections 7, 9, 11, or 12 of the *Canadian Charter of Rights and Freedoms*.

Section 7 of the *Canadian Charter of Rights and Freedoms (The Charter)* states that every person has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. The court found that the Dangerous Offender provisions do not deny fundamental justice and that the respective importance of prevention, deterrence, retribution, and rehabilitation will vary in a rational system of sentencing. The DO provisions allow the court to accommodate its sentence to the present condition of the offender who is not inhibited by normal standards of behavioural restraint.

Section 9 of the *Charter* states that everyone has the right not to be arbitrarily detained or imprisoned. The appellant argued that prosecutorial discretion as to whether to proceed with a DO application against any given offender caused a lack of uniformity in the treatment of dangerous persons and hence, the process was arbitrary. The court found that the absence of such discretion would, in many cases, make rigid application of the DO provisions arbitrary.

Section 11 (f) of the *Charter* states that anyone charged with an offence has the right to a jury trial where the maximum punishment for the offence is imprisonment for five years or more. The court found that the process of designating someone a Dangerous Offender is not the equivalent of “charging” someone with an offence and is simply a part of the sentencing process. Hence, a judge alone makes the finding concerning the Dangerous Offender application.

Section 12 of the *Charter* states that everyone has the right not to be subjected to any cruel or unusual treatment or punishment. The court found that an indeterminate sentence under the DO provisions does not amount to cruel and unusual punishment. However, the parole process assumes great significance in assessing the constitutionality of an indeterminate sentence. The availability of parole ensures that incarceration is imposed only for as long as the circumstances of that individual case require.

1:E Who are Dangerous Offenders?

The Solicitor General Canada conducted a study of Dangerous Offenders in 1995-1996. While the Dangerous Offender legislation is directed at all forms of violence, this survey found that over 90% of Dangerous Offenders are sex offenders and that the prevalence of anti-social personality disorders among this group is high. Dangerous Offenders are almost always male who have, on average, normal IQ's and have finished 8.5 years of schooling. Sixty-three percent of these men had some high school. Just under half (48%) were single, 95% were Caucasian, and 63% were unemployed. Ninety-two percent had been convicted of a sexual offence and 86% had a female victim. Fifty-nine percent of these offenders had a victim under the age of 16 and brutality was evident in 70% of cases. On average these men were first arrested at age 16, 75% had a juvenile record, and 88% had had a previous period of incarceration. Seventy-three percent had previously failed on a period of community probation or parole. At this time there are no female Dangerous Offenders in the Justice system. Two females have been found to be Dangerous Offenders - one of these women died and the other finding was overturned on appeal.

The study found there was, on the whole, sufficient information available to Crown Attorneys to allow them to come to a reasonable judgement about who should be prosecuted as a Dangerous Offender. Today there are approximately 280 Dangerous Offenders in Canada. Fewer than 10% of these have been released under parole supervision even though many of these offenders have spent more than 20 years in prison. The number of offenders incarcerated as Dangerous Offenders has been generally increasing since 1978 and the use of this designation varies across jurisdictions, see Section 5, Appendix A for a graphical representation of this data.

1:F *Criminal Code* requirements

If a Crown Attorney believes that an individual may be an appropriate candidate for proceedings under the Dangerous Offender provisions of the *Criminal Code of Canada*, the accused must be convicted following trial or guilty plea of a “Serious Personal Injury Offence” (SPIO). A list of Serious Personal Injury Offences can be found in Section 5, Appendix B. In addition, Crowns and the police should be aware that recent case law has indicated that a certain level of harm must have occurred in the commission of the crime for the court to consider a Dangerous Offender application.

1:G A "Serious Personal Injury Offence" is defined in the *Canadian Criminal Code* as (Sec. 752):

752. (a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving

(i) the use or attempted use of violence against another person, or

(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person,

and for which the offender may be sentenced to imprisonment for ten years or more, or

(b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

Once an offender has been convicted of a Serious Personal Injury Offence, an application may be made by the Crown under Section 752.1 (1) of the *Code* to have the offender sent for a behavioural assessment. The court may order an assessment if the court is of the opinion that there are reasonable grounds to believe that the offender might be found to be a Dangerous Offender under Section 753, or a Long-Term Offender under Section 753.1. The court may order, in writing, that the offender be remanded to the custody of the person that the court directs to perform the assessment for a period not exceeding 60 days.

The assessment is to be carried out “*by experts*” and is to be used as evidence in an application under Section 753 or 753.1. Pre-1997 legislation required two psychiatrists, one to testify for the defense and one for the

prosecution. This was amended in 1997 to allow other criminal justice and mental health experts to testify and to allow for the use of only one ‘neutral’ expert. Both the Crown and the Defense can call any other experts they feel are relevant. As a general rule, the defense will almost always get an independent assessment but may not bring this assessment before the judge, and can not be forced to do so. The assessor has 15 days after the end of the assessment period to file a report of the assessment with the court and to make copies of the report available to the prosecutor and to the defense. This assessment will generally take place with the offender in a remand facility or resident at a mental health facility.

1:H Time for making application

An application to have someone adjudicated as a Dangerous Offender is made following a conviction for a Serious Personal Injury Offence (SPIO) and prior to sentencing for that crime. Typically, however, the offender has an extensive criminal history and shortly after arrest the offender is notified that if convicted, the Crown will seek a DO designation.

There is, however, one exception to this rule, the so-called “window of opportunity”:

Section 753.(2) An application under subsection (1) must be made before sentence is imposed on the offender unless

(a) before the imposition of sentence, the prosecution gives notice to the offender of a possible intention to make an application under section 752.1 and an application under subsection (1) not later than six months after that imposition;

and

(b) at the time of the application under subsection (1) that is not later than six months after the imposition of sentence, it is shown that relevant evidence that was not reasonably available to the prosecution at the time of the imposition of sentence became available in the interim.

1:I The Assessment Process

Prior to the offender arriving for assessment, the expert charged with assessing the offender should have received an information package from the Crown. The information package should contain Crown briefs, a complete criminal

history, and other background information. For a list of suggested contents for this information package see Section 1:O, Role of the Crown Attorney in the sub-section Information to be forwarded to the Expert Assessor later in this section. It should be noted that the offender is not legally obligated to participate in the assessment process. In some cases defense lawyers advise their clients not to cooperate with the assessment.

A good assessment will review the offender's mental health and psychological functioning. The clinician will also complete cognitive and memory testing to check for signs of physical damage to the brain and general psychological diagnostics to check for the presence of mental illness. If the offender being assessed is a sex offender, additional tests will be used in an attempt to determine sexual preferences and deviant sexuality.

The best assessments make use of a multi-disciplinary team approach. These teams should include nursing or correctional officers who often have excellent opportunities to observe the offender during detention. Residential staff often have the opportunity to observe interpersonal interactions in the residential setting, some of which may place the offender under considerable situational strain. Social workers, recreationists, psychologists, psychiatrists, occupational therapists, and other staff should all report on their interactions with the offender.

In order to place the offender in context for the court it is important to do a general assessment first, then to look specifically at the forensic issues. Actuarial, empirically based assessments should always be employed in dangerousness assessments as clinical judgement alone has proved insufficient in assessing risk of reoffence.

The most widely used risk assessments are:

- The Violence Risk Appraisal Guide [VRAG] (Quinsey et al., 1998; Rice & Harris, 1997; Harris et al., 1993) Assesses risk for general violence
- The Rapid Risk Assessment of Sex Offender Recidivism [RRASOR] (Hanson, 1997) Assesses risk of sex offence recidivism
- The Level of Supervision Inventory - Revised [LSI-R] (Andrews & Bonta, 1995) Assesses needs of the offender and risk of general criminal recidivism
- The GSIR (Bonta et al., 1996) Assesses general criminal recidivism
- The STATIC-99 (Hanson & Thornton, 1999) Assesses risk of sex offence recidivism

- The Sex Offender Need Assessment Rating (SONAR) (Hanson & Harris, 2000) Assesses sex offender treatment and intervention targets
- The Hare Psychopathy Checklist-Revised [PCL-R] (Hare et al., 1990; Hare, 1991) Assesses criminal psychopathy

(Note: The RRASOR, SONAR, and the STATIC-99 can be downloaded from the website shown in the **Forward** of this handbook. Complete references for these risk assessments can be found in Section 5, Appendix C.)

In addition, the report should specifically review reasonable criteria for “dangerousness”. The report should make reference to known factors such as:

- the extent to which the offender thinks in a criminal manner
- the extent to which the offender, in his or her environment, is surrounded by individuals involved in criminal activity
- the offender’s temperamental disposition as it relates to anti-social tendencies and criminal propensities
- the offender’s level of social supports within the community
- problems the offender experiences such as substance abuse or having a deviant sexual preference
- the offender’s general ability to access community resources
- the offender’s criminal history, focusing on the presence or absence of Serious Personal Injury Offences
- the offender’s treatment and counseling history
- the offender’s level of social competence
- the offender’s problem resolution skills
- whether the offender has a sufficient level of life-skills to function in the community
- the mechanisms the offender uses to cope with stress and the perceived utility of these mechanisms

An example of an outline of a standard “dangerousness” assessment is provided in Section 5, Appendix D.

1:J Criteria

Once the court has been provided with the dangerousness assessment the court may find the offender to be a Dangerous Offender if **any** of the following criteria are met:

753. (1) (a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing

(i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,

(ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or

(iii) any behaviour by the offender, associated with the offence for which he or she has been convicted, that is of such a brutal nature as to compel the conclusion that the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint; or

(b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by his or her conduct in any sexual matter including that involved in the commission of the offence for which he or she has been convicted, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.

1:K The Hearing Process

Hearing of the application Section 754

Three things have to happen before the court will hear an application for a Dangerous Offender finding. Section 754. (1) of the *Code* states that the court shall hear and determine the application only after:

- (a) The Attorney General of the province in which the offender was tried, or if in the Territories the Attorney General Canada, has consented to this application, either before or after the application has been made;
- (b) at least seven (7) days notice has been given to the offender by the prosecutor, following the making of the application, outlining the basis on which it is intended to found the application;
- (c) a copy of the notice of application has been filed with the clerk of the court or the magistrate, as the case may be.

Section 754. (2) of the *Code* states that the Dangerous Offender application shall be heard and determined by the court without a jury.

Where an offender admits to any of the allegations put forward by the Crown (“b” above) no proof of those allegations is required [Section 754. (3)].

It is not necessary for the Attorney General of the province, or if in the Territories the Attorney General Canada, to be present to give consent. The production of a document purporting to be the signed consent of the Attorney General shall be accepted, in absence of any evidence to the contrary (Section 754. (4)).

Evidence in Dangerous Offender Applications

Typically, in a Dangerous Offender application the Crown may wish to present the following types of evidence, either through *viva voce* (live voice, a live witness) or through the filing of exhibits:

- victim impact statements from victim(s) of the offence which brought about this application (the predicate offence)
- updated victim impact statements from previous victims
- transcripts of the offender’s prior criminal trials or *viva voce* evidence from past victims
- if there are any alleged criminal offences that were not the subject of criminal charges, these could be considered aggravating factors. However, evidence would have to be called and all allegations would have to be proved beyond a reasonable doubt.

- Provincial/Territorial correctional records, Correctional Service of Canada records, school records and Children's Aid records.

Evidence of character Section 757 C.C.C.

If the court thinks fit, evidence of character and repute may be admitted on the question of whether the offender is or is not a Dangerous Offender or a Long-Term Offender.

Presence of the accused at the hearing of the application Section 758 C.C.C.

The offender shall be present at the hearing of the application. If the accused is in custody, the court may order the person holding the offender to bring him before the court. If the offender is not in custody, the court shall issue a summons or a warrant to compel the accused's attendance before the court.

Notwithstanding the above, the court may order the offender removed from the courtroom where the offender is engaging in conduct such that continuing the proceedings would not be feasible. The court may also permit the offender to be out of the court through some or all of the hearing as the court considers proper.

1:L Possible dispositions

1. If offender found to be a Dangerous Offender

753. (4) If the court finds an offender to be a Dangerous Offender, it shall impose a sentence of detention in a penitentiary for an indeterminate period.

Prior to 1997 it was possible for a judge to declare someone to be a Dangerous Offender but still give that offender a determinate sentence (a sentence with a fixed number of years). For offenders convicted of offences committed prior to August 1, 1997, the Dangerous Offender provisions in force at the time of the offence are the applicable laws and hence the court may impose either a determinate or an indeterminate sentence for those offences. For offences committed after August 1, 1997, the only available disposition is an indeterminate sentence.

2. If offender not found to be a Dangerous Offender

753. (5) *If the court does not find an offender to be a Dangerous Offender,*

(a) the court may treat the application as an application to find the offender to be a Long-Term offender, section 753.1 applies to the application and the court may either find that the offender is a Long-Term offender or hold another hearing for that purpose; or

(b) the court may impose sentence for the offence for which the offender has been convicted.

If the Crown attempts to have someone found to be a Dangerous Offender but the judge determines that the offender in question does not meet the criteria for a Dangerous Offender, the judge may treat the Dangerous Offender application as a Long-Term Offender application and find the offender to be a Long-Term offender. Note however, that while a Dangerous Offender application can be changed to a Long-Term Offender application, a Long-Term Offender application can not be changed to a Dangerous Offender application.

If neither a finding of Dangerous Offender nor Long-Term offender are appropriate, the convicted offender will receive a normal determinate sentence for their crime (a fixed number of years).

1:M Responsibilities of the Court

Disclosure to Correctional Service of Canada Section 760 C.C.C.

Where the court finds an offender to be a Dangerous Offender or a Long-Term Offender, the court shall order that a copy of all reports and testimony given by psychiatrists, psychologists, criminologists, and other experts and any observations of the court with respect to the reasons for the finding, together with a transcript of the trial of the offender, be forwarded to the Correctional Service of Canada (CSC).

1:N Role of Police

This section is not intended to be a guide for police officers but rather an overview for other members of the justice community of some of the tasks generally undertaken by the police on a Dangerous Offender Application. Policies, procedures and protocols differ from jurisdiction to jurisdiction and hence this review will restrict itself to general themes. In some jurisdictions the Crowns themselves take a more active role in gathering information than in other jurisdictions.

The primary role of the police officer in the pursuit of a Dangerous Offender application is to gather the evidence necessary to establish a pattern of dangerous behaviour. This differs from a regular police investigation as the officer is not trying to prove guilt but is attempting to analyze or reanalyze patterns of behaviour and relate them to the Dangerous Offender criteria. The only way to establish this pattern is to gather and review all information from the past and put it on a timeline.

Generally, the decision to pursue a Dangerous Offender application will be made by the Crown either before trial or shortly after a guilty verdict, but before the sentencing phase. It is also possible to pursue a Dangerous Offender application up to six months after a sentence has been imposed should relevant evidence come to light that would not have reasonably been available to the prosecution at the time of the imposition of sentence. See Section 1:H, Time for making an application.

The criteria for a finding that someone is a Dangerous Offender are clearly outlined in section 753. (1) (a) and (b) of the *Code*. There are four specific criteria (see Section 1:J, Criteria) that have specific reference to the offender's behaviour. Sub-section (i) states "*a pattern of repetitive behaviour*", sub-section (ii) states "*a pattern of persistent aggressive behaviour*", sub-section (iii) states that the offender's behaviour would be of such a brutal nature that "*the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint*" and finally section (b) states that the offender's "*conduct in any sexual matter ... has shown a failure to control his or her sexual impulses*".

Hence, the investigative goal for the police officer is to gather and collate historical information so that a clearly defined pattern of dangerous behaviour can be demonstrated in court. The officer will review the physical and behavioural evidence looking for patterns of repetitive behaviour, especially if there appears to

be a pattern of escalating violence. The officer will compare and contrast degrees or levels of gratuitous violence and indifference towards the victim by reviewing victim impact statements and the offender's comments to family and friends. This involves a lot of time, re-interviewing to get historical information and talking to a large number of people who knew or had dealings with the offender. The investigating officer would generally contact the offender's friends, family, and acquaintances. The officer would also interview past and present spouses, girlfriends/boyfriends, and employers. Generally, the officer would also want to interview the offender's physician, and any other health/mental health practitioners that the offender has been involved with, such as, psychologists, psychiatrists, social workers, and counselors. The officer will also want to check if there are Children's Aid Society records, school records, mental health records, psychological or psychiatric counseling records, or evidence of involvement with other agencies such as the Addiction Research Foundation. The officer will generally have to proceed either by way of a summons or a search warrant to obtain access to these types of information.

The officer will assemble the following types of paper-based records:

- past criminal records and arrest reports
- information from the Correctional Service of Canada (see Section 1:Q, Role of the Correctional Service of Canada)
- information from the provincial correctional system (Note: Look in the Provincial/Territorial files even if the offender has never done any "provincial" time as there may be pre-sentence reports, or pre-disposition reports if this offender was seen as a Young Offender.)
- all past trial transcripts in which this offender was involved
- employment performance reports and employment termination reports
- written medical records
- school records

The officer may have to obtain search warrants to gather some of this information and subpoena records and other witnesses. This will often involve re-interviewing people involved with past cases. This is because details of past cases, which were not salient or relevant to past cases, could be key indicators of behavioural patterns when added to the long-term view of this offender. To maintain forward momentum on a DO application one officer should be assigned to lead the Dangerous Offender process. Lack of a lead investigator will result in diffusion of responsibility that can slow and impede evidence discovery and data

collation. It is not uncommon for an officer to be involved almost full-time for 6 months to properly prepare a Dangerous Offender application.

The investigating officer will strive to create a strong working relationship with the Crown. Generally, this relationship will grow during the early stages of the investigation through frequent, sometimes daily, telephone contacts, e-mails, and faxes between the investigating officer and the Crown. As the investigation continues and the officer builds the case binder and the timeline, the number of face-to-face meetings will increase as the DO hearing approaches. In addition, the investigating officer should generally be present when the Crown interviews potential witnesses. The officer should take notes and attempt to develop a rapport with the witnesses. Potential witnesses should be made to feel comfortable telling the officer details that they may not be inclined to discuss, as these details may well be unpleasant memories for the witness. The officer will have to be mindful that recounting their story may be painful for witnesses/victims and that there is a potential for re-victimization in the legal process. The officer may want to consider whether victims assistance personnel or other support services should be engaged to help the witness/victim deal with the issues that the investigation will revisit.

As the DO hearing approaches the officer and the Crown will meet with all witnesses, including parole and probation officers, correctional officers, nurses, and social workers. The officer and the Crown may need to meet with these “professional” witnesses several times before the Dangerous Offender hearing. All “civilian” witnesses should review their testimony before the DO hearing; the officer will generally be present and assist the Crown through this process. These reviews are important as the time delay from commission of the offence, through trial, and now on to the DO hearing/sentencing stage may be measured in years rather than months. This is especially true for witnesses that the Crown is going to call to give historical reports of the offender from memory, memories that may well reach back as far as the offender’s childhood. The officer will also generally want to call witnesses the day before the DO hearing and remind them of their appearance.

In short, there is a lot of footwork to be done to prepare a Dangerous Offender application and it is the job of the officer to “beat the bushes” for the Crown. The secrets to success, however, are relatively simple: a) collect all the evidence, persistently and comprehensively, b) organize the information in some form so that it is readily assessable and understandable, and c) create a timeline,

put the events in some chronological order that shows the dangerous behavioural patterns of the offender.

1:0 Role of the Crown Attorney

This section is intended to give those outside the legal profession a view of the Crown's role in the preparation of a Dangerous Offender or Long-Term Offender application. Policies and procedures may differ from jurisdiction to jurisdiction.

The Crown, to properly prosecute each case, requires timely and accurate information from many parts of the Canadian criminal justice system. First, the Crown requires enough information to determine whether it is in the public interest to pursue a Dangerous Offender or a Long-Term Offender designation. Secondly, should the Crown decide to proceed, the Crown requires sufficient information to support the application. By developing an understanding of the role of the Crown and the types of information needed to pursue these applications, other professionals in the criminal justice system can facilitate the DO and Long-Term Supervision Order (LTSO) process by providing useful information when and where it is needed. The decision to pursue a Dangerous Offender or Long-Term Offender application is at the discretion of the Crown Attorney in each Province or Territory.

The Crown Attorney will review the case and determine if the severity or brutality of the case warrants proceeding with a Dangerous Offender or a Long-Term Offender application. Section 754 of the *Criminal Code* instructs the Crown to gain consent for the Dangerous Offender application from the Attorney General of the province in which the offender is tried, or if in the Territories from the Attorney General of Canada. With respect to the Yukon, Northwest, and Nunavut Territories there is no involvement of the Territorial Attorney General in criminal matters. In pursuing a Dangerous Offender application or a Long-Term Offender application section 752.1 of the *Criminal Code* (Application for Remand for Assessment) should be construed as an "application" and therefore subject to the requirement under section 754 of the *Criminal Code* that the appropriate Attorney General consent to the assessment. The offender must be given at least seven (7) days notice that a Dangerous Offender or a Long-Term Offender application will be pursued. This notification must outline the basis on which the Crown intends to base the application, and the Crown has to assure that notice has been filed with the clerk of the court or the magistrate.

Consideration of whether a Dangerous Offender or Long-Term Offender application is appropriate generally begins when the Crown Attorney first reviews the charges. Cases that may meet the criteria (see Section 1:J, Criteria for a review) will generally be flagged in some way such that the case will not proceed to a regular sentencing hearing until a review has been completed and a decision made as to whether an application will be initiated.

Some of the factors that a Crown might wish to consider are listed below:

- Protection of the public is the paramount concern. This has been affirmed by the Supreme Court of Canada in *R. v. Carleton* [1983] 2 S.C.R. 58.
- The offender must have been convicted of a Serious Personal Injury Offence (SPIO). This means either an offence of sexual assault, sexual assault with a weapon, or aggravated sexual assault as described in section 752 (b), or any offence which is punishable by ten years or more and falls within the definition set out in section 752(a). For a list of SPIO's please see Section 5, Appendix B.
- The offender must appear to fall within one or more of the statutory definitions of Dangerous Offender or Long-Term Offender.
- While the vast majority of DO applications involve a sexual offence, non-sexual violent offences where the offence is a "serious personal injury offence" also should be considered.
- Whether a treatment program is available to address the offender's needs and whether there are indications that the offender is willing or unwilling to undergo treatment.
- If the offence under immediate consideration can be considered a "brutal act" unlikely to be restrained by normal standards of behavioural restraint, then no prior conduct needs to be considered. It is possible to be designated a Dangerous Offender for a single crime. Most often, however, the Crown will argue multiple grounds for a Dangerous Offender designation and the offender's past history will usually provide important information.

Factors a Crown may consider in assessing for a pattern of behaviour include:

- number and nature of past offences
- time span between offences (offences getting closer together?)
- pattern of violence or harm to victims
- circumstances surrounding the offences, e.g., was the offender allegedly involved in such behaviours as stalking?
- is there a history of past convictions for violent or sexual offences?
- is there a history of violent acts for which the offender has not been prosecuted? (Include violent acts committed by the offender while in custody.)

Where proof of past conduct is necessary, the Crown will generally consider how best this information can be obtained. Among others, the Crown will generally take into consideration the following factors:

- the availability and willingness of victims and other witnesses to testify
- whether the impact of testifying would be so harmful to the past victims that their testimony is not in the public interest
- whether such factors as extreme age or terminal illness preclude the offender from serving an indeterminate sentence or a period of Long-Term supervision (in these cases the Crown retains the discretion not to refer the case)
- for the offence in question, what the likely determinate sentence would be, and whether it is more appropriate to pursue a determinate or an indeterminate sentence

Information sources that Crowns may consult:

- criminal records (Federal, Provincial, and Young Offender) (Note: Look in the Provincial/Territorial files even if the offender has never done any “provincial” time as there may be pre-sentence reports, or pre-disposition reports if this offender was seen as a Young Offender)
- description of any outstanding charges
- all available psychiatric and psychological reports
- the offender’s correctional file(s) (Check federal and provincial, look at disciplinary records, drug use in the institution, threats or fights with

- other inmates or correctional officers, weapons used or found in cell searches, psychological and program reports.)
- other institutional records such as school, military, and Children’s Aid Society
- police reports
- victim impact statements and/or transcripts of the victim’s evidence
- trial transcripts or transcripts of the guilty plea

If the offender is youthful, with little or no formal record, the offender’s school records and Children’s Aid records become important - especially if the offender is unlikely to co-operate with the assessment process. These records may be the only source of information for the “*experts*” carrying out the behavioural assessment. For much of this information, absent the accused’s consent, the officer will have to obtain search warrants to gather this information or subpoena records and/or witnesses to court.

Preparing a submission for review by a Senior Crown Attorney

In preparing a Dangerous Offender or Long-Term Offender application for review by a Senior Crown Attorney, the Crown Attorney will generally prepare a package of information. Police and correctional officials can aid in the preparation of this package by providing information in a timely fashion. In smaller jurisdictions this process may not be as formal and may take the form of a meeting or oral briefing. This package would generally include the following types of information:

- a summary of the history and circumstances of the conviction(s) before the court on which the application is based
- a summary of all relevant past conduct of the offender
- a summary of how the offender meets the definition of a Dangerous or Long-Term Offender
- an opinion as to the likely definite sentence the offender would receive for the offence(s) before the court
- copies of all victim impact statements
- a copy of the offender’s complete criminal record
- a summary description of any outstanding charges
- a copy of the information or the indictment
- other institutional records (school, military, Children’s Aid Society)

A Senior Crown Attorney will generally review the information provided by the Crown and decide whether it is in the public interest to make an application to the court under section 752.1 for an order remanding the offender for assessment. Depending upon jurisdiction there may also be a waiting list to have the offender seen for assessment. Possible delays of this nature should be taken into consideration in case planning. In pursuing a Dangerous Offender application or a Long-Term Offender application, section 752.1 of the *Criminal Code* (Application for Remand for Assessment) should be construed as an “application” and therefore subject to the requirement under section 754 of the *Criminal Code* that the appropriate Attorney General consent to the assessment. The application for a remand order should be made on the date of conviction or shortly thereafter and will require a request for an adjournment to prepare the application.

Information to be forwarded to the Expert Assessor

An information package is assembled and forwarded to the person charged with completing the dangerousness assessment. This package would generally include, but is not limited to:

- all Crown briefs
- a complete criminal history
- the contents of, or access arranged to, the offender’s correctional files (past and present, federal, provincial, and young offender)
- police reports
- all past general and specific psychological and psychiatric assessments

As a general rule the Crown will control the information going to the assessor. This is so the Crown will know at all times what information did or did not factor into the assessment. This may be particularly significant where differences of expert opinion are offered before the court. It should be noted that in some jurisdictions the Crown Attorney presents the proposed information package to the Court, seeking direction that the package is suitable before sending it to the court appointed expert. In some cases, in the face of defense objections to some of the materials being forwarded to the expert assessor, a hearing is held and

a ruling sought as to whether certain aggravating circumstances described in the materials could be proven beyond a reasonable doubt.

When the assessment report ordered by the court has been received, a Senior Crown Attorney will review the assessment report and exercise discretion as to whether to seek the consent of the Attorney General for a Dangerous Offender or a Long-Term Offender application. The Crown may rely on the ‘neutral’ assessment report ordered by the court or may order an assessment report by an ‘expert’ retained by the Crown.

The Crown may wish to have complete records and duplicate packages of what the expert assessor received for court purposes as well as for distribution to additional experts who may be called upon to offer opinions.

Preparing an Application for Consent of the Attorney General

Each jurisdiction will have its own procedures and preferences setting out the format of the application. An application for consent of the Attorney General will generally include the following:

- a one-page synopsis or index in point form
- a concise statement of fact
- a note containing the comments of the Senior Crown Attorney (This may include the original submission by the Crown Attorney. It would also include all the elements seen in sub-section “Preparing a submission for a Senior Crown Attorney” in Section 1:O, Role of the Crown Attorney)
- a copy of the court ordered assessment
- all relevant psychological, psychiatric, or other pre-sentence reports
- a draft consent of the Attorney General

This information is generally forwarded to the designated person at the office of the Attorney General.

1:P Role of the Attorney General

The Attorney General of the Province, or the Attorney General of Canada if in the Territories, must consent to a DO application that is to be held in their jurisdiction. This generally takes the form of the Deputy Attorney General

reviewing the application, which has been prepared by the Crown, and deciding whether to sign the application as the lawful deputy of the Attorney General of the province in question. In the territories it is the Deputy Attorney General of Canada who signs the consent.

1:Q Role of Correctional Service of Canada (CSC)

This section is intended to give those outside the correctional professions an overview of the correctional process as it relates to Dangerous Offenders.

If the offender has not had a previous term of federal incarceration in preparation for a Dangerous Offender hearing the Service will, when requested by the court, provide information on the general operation and offender programming capacities within CSC. CSC staff, including psychologists and program specialists, are available to provide expert testimony to the court on offender programs and program efficacy.

If the offender is a current or former CSC inmate, a written information request should be directed to the local CSC Area Office, District Office or Regional Headquarters. [See Section 5, Appendix E for a list of contact addresses and phone numbers.] This letter should request CSC to make case information available to the police or Crown Attorney for the purposes of the Dangerous Offender application and hearing. CSC staff can provide information on the offender's behaviour while in custody or in the community on conditional release.

CSC staff can provide testimony during the application hearing on the methods in which file information is collected and explain or interpret the various tests, scales and forms which are used within the system. If the offender was under the supervision of a parole officer, that officer can be called upon to provide information and evidence on the particulars of supervision.

CSC's role in carrying out the sentence

Section 3 of the *Corrections and Conditional Release Act* (CCRA) states:

The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by:

(a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and

(b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

Once identified as Dangerous Offenders, these offenders are assessed the same way as other offenders entering CSC. It is important to note that the Court is required (section 760 of the *Code*) to forward:

“all reports and testimony given by psychologists, psychiatrists, criminologists and other experts and any observations of the court with respect to the reasons for the finding, together with a transcript of the trial of the offender, be forwarded to the Correctional Service of Canada for information.”

This information is critical, not only for the maintenance of a historical record but also for the individual programming and risk assessment of the offender. The National Parole Board of Canada will also use this information to assist in making release decisions.

Program delivery will vary based upon an individual assessment of needs and risks. In addition, the long period of incarceration associated with a Dangerous Offender finding has an impact on program type, duration, and when a given program is delivered. Dangerous Offenders maintain the same inmate rights and privileges afforded non-Dangerous Offenders. Access to some programs, opportunities, and privileges may be subject to the security assessment of the offender and the physical and security limitations of their assigned accommodations. During the custodial period the offender can expect the following:

Intake

- After sentencing, the Provincial Detention Centre or jail notifies the local CSC Parole Office that an offender has been sentenced to a penitentiary (a sentence of two years or greater).
- A Community Parole Officer completes a preliminary assessment before the inmate is transferred to federal custody. This assessment has to be done within 5 days of sentencing.

- The offender is received at a CSC Reception Centre, normally a maximum security setting, from the Provincial Detention Centre or jail.
- Immediate needs are addressed including a medical examination, mental health examination, and suicide screening. Security issues are reviewed, including whether the institution contains any individual with whom the offender is incompatible. “Incompatibles” are other offenders who may wish to do harm to the offender or to whom the offender may wish to do harm.
- An orientation to CSC is provided to each inmate. This is an extensive process that includes a review of security procedures, the *Corrections and Conditional Release Act*, and daily procedures.
- A process of information collection from Police, Crown Attorneys, the Courts, and community-based sources is ongoing from the time of the offender’s sentencing.
- The Parole Officer at the Reception Centre interviews the offender while the information is being received and the process of completing the Offender Intake Assessment is begun.

The Intake Assessment

This assessment is designed to measure risk and identify the security and programming needs of the offender upon admission. Known as the Offender Intake Assessment (OIA) this process is based upon a multi-disciplinary approach that involves input from community agencies (the courts & police) and the systematic collection of information by the Intake Assessment Unit team (parole officers, correctional officers, psychologists, educators, health care personnel and others). The core of the OIA is a nationally consistent measure of risk and programming needs. This is so that factors which could lead that offender back into crime (substance abuse, pro-criminal attitudes, pro-criminal associates) can be addressed during the period the offender is under sentence.

- In collaboration with the inmate a Correctional Plan is developed. This plan outlines the offender’s programming needs, short term and long term goals, and

a recommended list of programs required to address the offenders individual needs.

- Once the Offender Intake Assessment is completed, the inmate is assigned a custody level and is placed in a penitentiary appropriate to their assessed security risk and programming needs.

Penitentiary Placement

As part of the intake assessment a decision is made as to which institution will house the offender. This decision process is controlled by regulation and the decision is based on, but not limited to, the following factors:

- The safety of the public, the offender and other persons in the penitentiary
- Utilization of the least restrictive environment required to protect the public
- The offender's individual security classification
- The security level of the receiving institution
- Accessibility to the offender's home community and family
- The cultural and linguistic environment best suited to the offender
- The family and community relationships of the offender
- The availability of appropriate programs and services to meet the offender's needs
- The offender's willingness to participate in programs

Incarceration

Throughout the time of incarceration the Correctional Service of Canada strives to assist offenders to become law-abiding citizens while exercising reasonable, safe, secure, and humane control. During incarceration the offender will be encouraged to attend programs to address such personal problems as substance abuse, domestic violence, anger management, or sexual deviance. The offender will also be offered opportunities for meaningful work and treatment programs designed to target skill deficits and to encourage personal growth.

As Conditional Release eligibility dates approach, the inmate will be assisted in preparing for their hearing before the National Parole Board or the Warden. The Parole Officer and other members of the Case Management Team in the institution will review the inmate's progress to date against the goals set out in the offender's correctional plan, assist with program recommendations and, if appropriate, release planning. Prior to a hearing before the National Parole Board a Parole Officer will investigate the feasibility of the offender's release plan. This investigation will include interviewing prospective social supports in the community where the offender plans to reside.

After completion of this investigation the Case Management Team will make a recommendation to the National Parole Board to either support or not support the offender's application for conditional release. In all cases, the National Parole Board makes the final decision to grant or deny parole.

Community Supervision

Upon receipt of the Community Assessment or a Community Strategy, the Institutional Case Management Team or the Community Parole officer will submit a written recommendation to the National Parole Board for regular parole. The community parole office does all submissions to the National Parole Board for Statutory Release and Statutory Release Residency cases. The Parole Board reviews the inmate's file and interviews the inmate at a hearing. At this hearing a decision is made to grant or deny conditional release.

Upon release, Dangerous Offenders are subject to very close supervision. Policies and procedures provide guidelines for the creation of an individualized supervision plan based upon the individual offender's assessed need and risk factors. Similar to all releases, the community parole office will work closely with local police to exchange information while the offender is under supervision. During the period of community supervision the offender can expect the following:

- Upon release, the offender is interviewed within one working day of arriving at their release destination. At this face-to-face interview, the National Parole Board approved release plan is reviewed by the offender and the community parole officer. The officer and the offender will review the offender's current circumstances, the conditions of release, the frequency of contact required, and other issues pertinent to the offender's release. In most jurisdictions, this includes reporting to the police on a regular basis.

- The Parole Officer regularly reviews the offender's release plan, and judges progress against the offender's Correctional Plan. An assessment is made of the offender's overall level of risk in the community and this determines the frequency of face-to-face contacts with the Parole Officer.
- The Parole Officer is required to update the Correctional Plan as the offender's circumstances change.
- Supervision in the community consists of regular face-to-face interviews between a Parole Officer and the offender, interviews with collateral contacts associated with the offender's release, i.e., police, family members, employers, teachers, program delivery staff and/or psychologists/psychiatrists. Supervision may also include a requirement for urinalysis testing. The Parole Officer constantly monitors the offender's progress against the Correctional Plan and assesses the offender's level of risk in the community.
- At anytime during release, if the offender fails to abide by the terms or conditions of release or the risk to the community becomes unmanageable, the person with delegated authority, usually a Senior Parole Officer, can issue a Canada-wide suspension warrant. This warrant is sufficient to temporarily return the offender to custody. The Parole Office then has up to 30 days to investigate the circumstances leading to the suspension. A Parole Officer will assess the offender's level of risk and address alternatives to re-incarceration if appropriate. As a result of this assessment the person with delegated authority will either cancel the suspension warrant which will re-release the offender or submit a recommendation to the National Parole Board to cancel the suspension warrant or to revoke the release.
- Such post-suspension decisions are made at a hearing with the National Parole Board unless the offender waives their right to the hearing.

Types of Conditional Releases available to all offenders, such as Day Parole, Full Parole, and Temporary Absences are reviewed in Section 5, Appendix F.

1:R Role of the National Parole Board (NPB)

The National Parole Board is guided by the principle that the protection of society is the paramount consideration in the determination of any case. The criteria for granting parole are that the offender will not present an undue risk to society and the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law abiding citizen.

Dangerous Offenders serving an indeterminate sentence who are paroled remain on parole for the rest of their lives unless parole is revoked and they are returned to prison. Without a grant of parole, the offender will remain incarcerated for the rest of their lives. The Supreme Court of Canada has held that only the possibility of conditional release through regular parole review makes indeterminate sentences acceptable under the *Canadian Charter of Rights and Freedoms*. The National Parole Board review is the sole protection of the offender's liberty interests.

For offenders sentenced before October 15, 1977

An offender serving an indeterminate sentence that was imposed before October 15, 1977, was classified as either a Dangerous Sexual Offender or as an Habitual Criminal. Before the most recent changes, August 1, 1997, Dangerous Offenders became eligible for all types of conditional release three years after their date of arrest. The National Parole Board reviews these offenders at least once every year [Sec. 761. (2)] to determine whether the offender should be granted parole under Part II of the *Corrections and Conditional Release Act (CCRA)* and if so, under what conditions.

For offenders sentenced after October 15, 1977, but before August 1, 1997

An offender sentenced to an indeterminate period after October 15, 1977, is classified as a Dangerous Offender. The National Parole Board reviews these offenders for parole after three years from the date of arrest and every two years thereafter. These offenders are eligible for unescorted temporary absence, day parole, and full parole after serving three years in custody.

For offenders sentenced after August 1, 1997

Section 761 of the *Criminal Code*, came into force on August 1, 1997, and provides that a person incarcerated as a Dangerous Offender must be reviewed for parole seven years after custody commenced, and at least every two years thereafter. Dangerous Offenders now become eligible to apply for unescorted temporary absence passes and day parole three years before their full parole eligibility date (7 years). A hearing is arranged for the offender based upon the time guidelines in the *Corrections and Conditional Release Act (CCRA)*. The offender may waive a full parole hearing but the NPB will still conduct a review of the case.

Protection of the public is the primary concern in any release decision. The National Parole Board (NPB) is under the duty to act fairly and the offender has the right to know what information the NPB will be using to make their decision. The offender also has the right to a fair opportunity to address this information before the NPB. In addition, the offender has the opportunity to tell the Board what changes in behaviour and thinking they have made which might reduce the risk any release may pose to the community.

Prior to each hearing, the three Board members who will conduct the hearing review the offender's case. Among others, the National Parole Board considers the following factors:

- the offender's background and criminal history
- the circumstances surrounding the offender's crimes
- the offender's behaviour within prison
- whether the offender has taken advantage of treatment and other programming opportunities while incarcerated and the outcomes reported from those treatment programs
- changes in the offender's thinking and behaviour while in prison
- the nature and feasibility of the offender's release plans

The Hearing Process

A National Parole Board hearing has three stages:

- Stage one: the introductions and procedural safeguards stage
- Stage two: the interview with the offender
- Stage three: the Board member's deliberations and the rendering of a decision

Stage One

The first step in the hearing is the introduction of all those in attendance, including their name, position, and role at the hearing. Next, the process to be followed during the hearing and the purpose of the hearing is reviewed with the offender. This generally includes a brief summary of the different stages of the hearing and a review of all procedural safeguards. An attempt is made to ensure that the offender understands the criteria that the Board is obligated to apply in coming to its decision. The rights of the offender are reviewed, including: the right to have an assistant present at the hearing, the right to have had access to all information in advance, and the right to postpone the hearing if new information is to be shared during the hearing. Finally there is a review of the decision policies of the NPB as they apply to this hearing.

Section 140 (4) of the *Corrections and Conditional Release Act* (CCRA) allows for the presence of approved "observers" at a parole hearing. Observers must apply in writing to attend and must not threaten to:

- a) disrupt the hearing
- b) adversely affect those who have provided information to the Board
- c) adversely affect an appropriate balance between the person's or the public's interest in knowing and the public's interest in the effective re-integration of the offender
- d) affect the security and good order of the institution in which the hearing is held

Stage Two

Stage two proceeds, with some regional variation, through three basic phases. There is input into the hearing from the case management team. This is a report from the offender's home institution or supervising parole officer. Input is also solicited from the offender's assistant, often a family member, another inmate, a native elder, or a lawyer. The offender is then given the opportunity to speak to the Board members about his or her case. The offender should show that they are aware of their offence cycle, review their program participation while incarcerated, and outline their plans should release be granted.

The hearing is not meant to be a confrontational meeting. The goal of these hearings is to allow the Board members to make an assessment of the offender and the offender's progress based upon information provided by CSC, victims, police, the courts, and the offender's self-disclosure. The hearing allows the offender to respond to the information presented to the Board. It is hoped that the offender's self-disclosure will provide some true insight and understanding of the offender. Members of the NPB are obligated to be aware of cultural differences at all times.

Stage Three

Stage three is the final phase of the hearing and consists of two distinct parts, the Board's decision deliberations, and informing the offender of the decision and the reasons for that decision.

During the Board's decision deliberations, the offender, the offender's assistant, observers, and CSC staff are asked to leave while the Board members discuss the case. The discussion, unlike the rest of the proceedings, is not audiotaped. This discussion allows the members to review all the information before them against the NPB's decision-making criteria. In most cases, the reasons for the decision and the decision are written before the offender, assistant, observers, and CSC staff are asked back into the room.

As a general rule the offender is given the decision, and the reasons for that decision, at the end of the hearing. This notification will include any special conditions should some form of release be granted. Otherwise, the offender will be informed that the decision, conditions, and the reasons will be forwarded to them in writing. Negative decisions may be appealed to the Appeal Division of the

National Parole Board. The NPB audiotapes all hearings, except the board member's deliberations, to assist review by the Appeal Division. Offenders may ask for a copy of the tape. All National Parole Board decisions are included in a national registry and are publicly available, for offenders currently under sentence, upon request. See Section 5, Appendix G for a list of National Parole Board Regional offices and the National Headquarters.

Conditional Release

Conditional release for Dangerous Offenders is a very gradual process that generally begins after many years of incarceration. This process typically moves through a number of escorted and then unescorted temporary absences from prison. Each of these releases is monitored and assessed. Should these releases prove to be without incident, it is possible for the offender to move on to day parole and finally full parole. Absences are supervised by the Correctional Service of Canada, and the offender must obey both standard release conditions and any special conditions imposed by the National Parole Board to address offender-specific risk factors. If they violate these conditions, or if their behaviour indicates an increase in risk, they may be returned to custody.

Standard Conditions

Standard release conditions that apply to **all** conditional releases are set out in section 161. (1) of the *Corrections and Conditional Release Regulations (CCRR)*. These standard conditions generally require the offender to report to a parole officer and to remain within certain geographic boundaries, to keep the peace, and to keep their parole supervisor apprised of their activities and whereabouts. The complete list of standard release conditions is shown in Section 5, Appendix H.

Special Conditions

The National Parole Board may, in addition, impose additional special conditions on the release of the offender. The authority for special conditions is in section 133 (3) of the *CCRA*:

133 (3) 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.

There are no examples in the *CCRA* or the *CCRR* of these special conditions. Special conditions must be "reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender" (section 133 (3) *CCRA*). These special conditions generally relate to factors that have contributed to the offender's criminal lifestyle. These conditions may include prohibiting the consumption of alcohol or drugs, prohibiting any association with known criminals, requiring attendance at counseling or treatment programs, abstaining from gambling or driving, not to have contact with victims or children without supervision, and orders prescribing where the offender may live.

In short, the Board can impose any condition that meets the criteria set out in section 133 (3), subject to the *Canadian Charter of Rights and Freedoms*. National Parole Board policy requires Board members to provide the reasons for imposing any special condition. A list showing examples of some of the more common special conditions can be found in Section 5, Appendix I.

Section 2 Long-Term Offenders (LTO) and Long-Term Supervision Orders (LTSO)

2:A Legislative References

<i>Criminal Code of Canada</i>	Sections:	753.(5)(a), 753.1, 753.2, 753.3, 753.4, 759, 760
<i>Corrections and Conditional Release Act</i>	Sections:	2, 2.1, 84.1, 99.1, 134.1, 134.2, 135.1, 157.1
<i>Criminal Records Act</i>	Section:	4.01

2:B Purpose

To provide an alternative to indeterminate incarceration for some sex offenders who, in the opinion of the court, while exhibiting a substantial risk, could be effectively controlled in the community after a period of incarceration lasting two years or more. This designation targets those offenders who have a high likelihood of committing further sexual offences, but who do not meet the criteria for a designation of Dangerous Offender. The Long-Term Offender designation is premised on an assessment of risk of reoffending that indicates that this offender may be managed in the community with appropriate, focused supervision and intervention, including sex offender treatment. The Court may impose up to a maximum of 10 years of supervision. Indeed, as seen in Section 5, Appendix J, the ten-year term of supervision is the most common.

2:C Background

The Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders (1995) suggested these provisions. These measures were intended for sexual offenders returning to the community. The changes proposed in Bill C-55 came into force on August 1, 1997. Section 753.1(2) of the *Criminal Code* defines the substantial risk which should be present for an offender to be designated a Long-Term Offender (see Section 2:D, Substantial risk for this definition).

Long-Term Offenders are generally sex offenders who would benefit from extended supervision in the community. The LTSO extends the length of time that the Correctional Service of Canada can supervise and support a sex offender in the community beyond the completion of their regular sentence.

Every offender with a LTSO is subject to a standard set of conditions as set out in section 134.1 (1) of the *Corrections and Conditional Release Act (CCRA)*, see Section 5, Appendix H, Standard Conditions of Release. These conditions will include keeping the peace and not being able to possess firearms. Additional conditions such as abstinence and participation in counseling may be imposed by the NPB during the supervision period.

A Long-Term Supervision Order does not begin until the offender has completed serving the sentence imposed by the court and any other custodial sentence that may have been imposed on that offender. Hence, Long-Term Supervision Orders (LTSO's) do not begin until after the "Warrant Expiry Date" (WED), the official end of the original sentence. The LTSO designation does not, however, remove the offender from consideration for conditional release. This means that an offender may have been in the community for an extended period on conditional release before beginning their period of supervision as a Long-Term Offender.

2:D *Criminal Code* requirements

Application for finding that an offender is a Long-Term Offender

An application for a finding that an offender is a Long-Term Offender can be brought as a stand-alone application or, having not met the standard for a Dangerous Offender designation, a DO application can be changed to a LTSO application. This process, however, does not work in the reverse direction and a stand-alone Long-Term Offender application cannot result in a Dangerous Offender finding. The application to have the offender declared a Long-Term Offender is heard by judge alone.

As in the Dangerous Offender application, an assessment of the offender's psychological state and behavioural patterns is required. The assessment process is the same, and the final report would be substantially the same, as in a Dangerous Offender application assessment. Please see Section 1:I and Section 5,

Appendix D, for a review of the assessment process and the resultant report. However, where the DO assessment report would comment upon the potential dangerousness of the offender in the future, the LTSO assessment report should comment upon the possibility of eventual control of the offender in the community after a period of federal incarceration. After such an assessment has been presented to the court, the court may find an offender to be a Long-Term Offender if the court is satisfied that:

Section 753.1 (1) (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;

(b) there is a substantial risk that the offender will reoffend; and

(c) there is a reasonable possibility of eventual control of the risk in the community.

The *Code* goes on to define the concept of “substantial risk” for the court.

Substantial risk

*Section 753.1 (2) The court **shall be satisfied** that there is a substantial risk that the offender will reoffend if*

(a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching) or 153 (sexual exploitation), subsection 173(2) (exposure) or section 271 (sexual assault), 272 (sexual assault with a weapon) or 273 (aggravated sexual assault), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and

(b) the offender

(i) has shown a pattern of repetitive behaviour, of which the offence for which he or she has been convicted forms a part, that shows a likelihood of the offender's causing death or injury to other persons or inflicting severe psychological damage on other persons, or

(ii) by conduct in any sexual matter including that involved in the commission of the offence for which the offender has been convicted, has shown a likelihood of causing injury, pain, or other evil to other persons in the future through similar offences.

2:E Possible Dispositions

(a) If offender found to be a Long-Term Offender

If the court finds the offender to be a Long-Term Offender the court shall:

Section 753.1 (3) (a) impose a sentence for the offence for which the offender has been convicted, which sentence must be a minimum punishment of imprisonment for a term of two years; and

(b) order the offender to be supervised in the community, for a period not exceeding ten years, in accordance with section 753.2 and the Corrections and Conditional Release Act.

(b) If offender found not to be a Long-Term Offender

The court will impose a normal determinate sentence (a sentence of a fixed number of years) for the offence for which the offender has been convicted. This may include life sentences if the offender has been found guilty of an offence where a life sentence is possible, for example, Breaking and Entering section 348. (1) (d) of the *Criminal Code of Canada*.

2:F Suspension and Breach of a Long-Term Supervision Order - Penalties

Section 753.3 (1) An offender who is required to be supervised by an order made under paragraph 753.1(3)(b) and who, without reasonable excuse, fails or refuses to comply with that order is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Offenders under a Long-Term Supervision Order can be suspended for 90 days. During this time, CSC can remand the offender to a community correctional facility, to a penitentiary, or to a mental health facility. Within the first 30 days of this suspension CSC must cancel the suspension or refer it to the National Parole Board (NPB). Following review of the case, the Board may cancel the suspension, allowing the resumption of Long-Term Supervision on any conditions that the Board considers necessary to protect society. Or, if the Board is satisfied that no appropriate program of supervision can be established that would adequately

protect society from the risk of the offender reoffending, and it appears that a breach has occurred, the National Parole Board may recommend that an information be laid (charges) with the Provincial/Territorial Attorney General charging the offender with an offence under s. 753.3 (1) of the *Criminal Code*.

2:G Role of the Police

The primary police role is to provide information to the Crown. This may include CPIC and FPS (criminal record) checks and gathering Victim Impact statements. The information required to successfully prosecute a Long-Term Offender application is basically the same as for a Dangerous Offender application and the officer is encouraged to review Role of the Police in Section 1:N.

Breach of a Long-Term Supervision Order is an indictable offence and a peace officer who believes on reasonable grounds that a warrant is in force for the apprehension of a person may arrest that person and remand that person in custody.

2:H Role of the Crown Attorney

The decision to pursue a Long-Term Offender application is at the discretion of the Crown Attorney in each Province, or if in the Territories, the Attorney General Canada. Procedures, protocols, and preferences will vary slightly from jurisdiction to jurisdiction.

The Crown Attorney will review the case and determine if the severity or brutality of the case warrants proceeding with a Long-Term Offender application. Section 754 of the *Criminal Code* instructs the Crown to gain consent for the Long-Term Offender application from the Attorney General of the province, or in the case of the Territories the Attorney General Canada, in which the offender was tried. The offender must be given at least seven (7) days notice that a Long-Term Offender application will be pursued. This notification must outline the grounds on which the Crown intends to base the application, and the Crown has to assure that notice has been filed with the clerk of the court or the magistrate.

The role of the Crown in Long-Term Offender applications and the information needed within each of the steps mirrors that of a Dangerous Offender

application. Please refer to Section 1:O for a review of these procedures and to Appendix D for an example of a typical assessment report.

2:I Role of the Attorney General

The Attorney General of the Province, or in the case of the Territories the Attorney General Canada, in which the proceeding is to be held must consent to a Long-Term Offender application. This generally takes the form of the Deputy Attorney General reviewing the application, which has been prepared by the Crown, and deciding whether to sign the application as the lawful deputy of the Attorney General of the province in question, or in the case of the Territories the Attorney General Canada.

2:J Role of the Correctional Service of Canada (CSC)

Role of CSC during the application for a Long-Term Supervision Order

The Long-Term Offender application was designed to deal with specific sexual offences. As is the case with a Dangerous Offender application, where the offender has previously served a federal term of incarceration, CSC will likely be asked to provide information to the court regarding the offender's previous treatment participation and behaviour while incarcerated. Staff may be subpoenaed to court to discuss the content of an offender's file and/or to provide information on treatment and programs available through CSC. CSC's procedures during the time of intake, penitentiary placement, custodial supervision, and conditional release are the same for LTSO's as they are for DO's. Please refer to Section 1:Q Role of the Correctional Service of Canada for a review of these procedures.

Role of CSC during community supervision of a Long-Term Supervision Order (LTSO)

The imposition of a Long-Term Supervision Order does not preclude the offender from conditional release during the custodial term. The court has deemed these offenders to be potentially manageable in the community after they have had access to institutional programming and gradual conditional release where

appropriate. The Long-Term Supervision Order comes into effect at Warrant Expiry Date (WED). This means that the offender may have been in the community on conditional release before the order begins. The Correctional Service of Canada is responsible for the support and supervision of LTSO's in the community. For a review of the different forms of conditional release see Section 5, Appendix F.

Risk and reintegration management in the community involves continuity of services and constant re-assessment of the offender's Correctional Plan. The Correctional Plan is a written document completed following the intake assessment that specifically outlines the offender's risk factors and establishes a plan of action to address these factors throughout the offender's sentence. While the offender is incarcerated, a CSC team will help the offender to develop their plan. This plan outlines the steps that offenders will take to make themselves more likely to succeed in reintegrating into the community. When the offender arrives in the community on conditional release or long term-supervision, the parole officer engages in the following activities to support risk and reintegration management:

- confirming that all relevant information about the offender's circumstances is documented
- confirming that assessments are based on all relevant information
- completing a community strategy; (a strategy for managing the offender while on conditional release and then on a LTSO)
- conducting an initial face-to-face contact with the offender
- completing an assessment to determine appropriate levels of intervention and frequency of contact
- assisting the offender to carry-out the remaining steps of their correctional plan
- updating on a regular basis the correctional plan progress report and the supervision activities
- updating and monitoring of the offender's progress through contact with collateral contacts, visits to the home and work sites, confirmation of leisure activities and ensuring compliance with treatment requirements and restrictions of activities, this may include urinalysis testing
- maintaining ongoing support and supervision of the offender
- suggesting community-based treatment, support, social or educational opportunities which might benefit the offender
- appearing before the National Parole Board with the offender, when and if necessary

Suspension

A parole officer who has been given delegated authority may suspend the release of an offender in order to prevent a breach of any condition of that offender's order or to protect society. If the offender has a Long-Term Supervision Order the parole officer may also suspend and commit the offender to a community-based residential facility, a penitentiary, or a mental health facility. For a LTS offender this period of commitment must not exceed 90 days.

The parole officer with delegated authority who signs the warrant must review the case as soon as possible. However, a warrant may be issued in City-A and then the offender is arrested in City-B. In cases such as this, the City-B office would take over and review the case. Within 30 days, the officer must either cancel the suspension or refer the case to the National Parole Board together with a written assessment and a recommendation.

An offender who is designated a Long-Term Offender will remain under federal jurisdiction at all times until the expiration of the order. This means that if an offender who is being supervised under a LTSO receives a short term of incarceration, that would generally be served in a provincial facility, he/she will spend that term in a federal penitentiary. In addition, should the offender receive another sentence while under a LTSO the "clock stops" on the LTSO while the offender is serving their additional sentence and begins again when the sentence is completed. This way the entire term of the LTSO must be served. By having the offender remain under federal supervision at all times, there is far less likelihood that the offender could "slip through the cracks" between the federal, provincial, and territorial correctional systems.

2:K Role of the National Parole Board

The National Parole Board has numerous responsibilities with respect to Long-Term Offenders. All standard conditions of release apply to LTS orders. These standard conditions can be found in Section 5, Appendix H of this manual. These conditions are set out in section 161. (1) of the *Corrections and Conditional Release Regulations (CCRR)*. The Board may also choose to impose additional special conditions to protect society and to assist the offender in maintaining a crime-free lifestyle. There are no examples in the *Corrections and Conditional*

Release Act (CCRA) or the *CCRR* of these special conditions. The only criteria are that the condition be considered "reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender". Examples of special conditions that have been used in the past can be found in Section 5, Appendix I of this manual.

As the offender's circumstances change throughout the supervision period, the Board may choose to amend, replace, or add additional conditions. Conditions can be added if there is a perception of increased risk, or a condition may be removed when the offender's behaviour has demonstrated that a particular condition is no longer needed.

Should the offender be suspended during the course of the supervision order, CSC must cancel the suspension or refer the offender to the Board within the first 30 days of a suspension. Upon receiving a report from CSC, the Board will review the behaviour of an offender under a Long-Term Supervision Order. At this point the National Parole Board (NPB) will conduct a post-suspension review, with two Board members voting. Following review of the case, the Board may cancel the suspension, allowing the resumption of Long-Term Supervision on any conditions that the Board considers necessary to protect society.

One of the Board's options is to reprimand the offender, section 135.1(6) (a) *CCRA*. If the Board is of the opinion that it is necessary or reasonable to reprimand the offender in order to protect society, or to facilitate the reintegration of the offender, the Board, when it cancels a suspension of the Long-Term Supervision Order may reprimand the offender in order to warn the offender of the Board's dissatisfaction with the offenders behaviour while being supervised.

The Board may also alter the conditions of the long-term supervision at any time, section 135.1(6) (b) *CCRA*. The Board may order that the cancellation of the suspension not take place until a specific date. This date must not be later than the end of the ninety days to which the offender might maximally be suspended. It is intended that the extended cancellation of the suspension would be used to allow the offender to participate in a program that would help ensure that society is protected from the risk of the offender reoffending.

In the final case, the Board may recommend that an information be laid (charges) with the provincial Attorney General charging the offender with an

offence under s. 753.3 (1) (Breach of an LTSO) of the *Criminal Code*. Or, in the Territories the recommendation for charges would go to the local RCMP detachment. This recommendation may only be made when the Board is satisfied that no appropriate program of supervision can be established that would adequately protect society from the risk of the offender re-offending, and the offender has breached a release condition. However, in the vast majority of cases charges will have been laid for breaches before the National Parole Board sees the case.

For a review of the hearing process see Section 1R, Role of the National Parole Board in the Dangerous Offender section.

Section 3 Judicial Restraint Orders

3:A Legislative References

Criminal Code of Canada Sections: 161, 515, 524, 811

810 Orders	Where Injury or Damage Feared
810.01 Orders	When Fear of a Criminal Organization Offence
810.1 Orders	Where Fear of Sexual Offence
810.2 Orders	Where Fear of a Serious Personal Injury Offence

3:B Purpose

To provide those who have reasonable grounds to believe that a person may, in the foreseeable future, become the victim of a violent crime or a sex offence with a method to restrict the movements and behaviour of a particular person they have reason to fear.

3:C Background

Section 810 orders, “peace bonds”, or “Sureties to keep the peace” have existed in Canadian law since the first Canadian Criminal Code in 1892. Initially this part of the law consisted of only *Where injury or damage feared* but since that time these provisions have been expanded to the four sections shown above. On August 1, 1993, Bill C-126 came into force in Canada and the *Code* was amended to create the 810.1 order. This allows the court to restrict a person’s movements and behaviour where there are reasonable grounds to fear that a person will commit a sex offence against someone under the age of 14 years. On August 1, 1997, Bill C-55 came into effect and created the section 810.2 order. The 810.2 order focuses on violent offenders, including sexual offenders. Both of these sections are designed to be preventative and not punitive, hence, it is not necessary for an offender to have a previous criminal record in order to qualify for one of these orders.

These orders can be made for a maximum of one year. Conditions can be attached to these orders and a breach of an 810 order constitutes an offence. These orders are quite broad in their application, as a crime need not have been

committed and the potential victim need not be named. Should a defendant refuse to enter into an 810 order they can be imprisoned for up to one year.

Two of these orders, 810.01, (When fear of a criminal organization offence); and 810.2, (Where fear of a serious personal injury offence) require the consent of the Attorney General of the province, or if in the territories the consent of the Attorney General Canada, to proceed. Each of the 810 orders has standard conditions set out in the *Code*. In each case the court will consider whether to impose these conditions based on the interests of society and the interests of the safety of the potential victims. The court also has the discretion to impose any additional conditions it sees fit as long as these conditions meet the test of reasonableness. Additional conditions are commonly applied to 810.1 orders (Where Fear of a Sexual Offence) and to 810.2 orders (Where Fear of a Serious Personal Injury Offence).

The British Columbia Supreme Court ruled in *R. v. Baker* (1999) [B.C.J No. 681 (B.C.S.C.)] that it is not necessary for the informant (the person who has the fear) to have had contact with the defendant in order to lay an information under section 810.2.

Generally, while the conditions associated with 810 orders do impose some restrictions on the defendant, they should not prevent the defendant from leading a reasonably normal life. See *R. v. Budreo* (1996), 104 C.C.C. (3d) 245, 45 C.R. (4th) 133 (Ont. Ct. (Gen. Div.)), *affd* (unreported, January 19, 2000, Ont. C.A., Court File No. C23785).

3:D *R. v. Budreo [2000]* [*R. v. Budreo* (1996), 104 C.C.C. (3d) 245, 45 C.R. (4th) 133 (Ont. Ct. (Gen. Div.)), *affd* (unreported, January 19, 2000, Ont. C.A., Court File No. C23785).]

Regina v. Budreo is one of the key decisions in the evolution of peace bonds in Canada. The Ontario Court of Appeal held that Section 810.1 of the *Criminal Code of Canada* (Where fear of a sexual offence) did not contravene the rights guaranteed by sections 7, 9, 11, and 15 of the *Canadian Charter of Rights and Freedoms*.

Wray Budreo was a 55-year-old child molester with a long criminal record of sexual offences against young boys dating back to 1961. Of Mr. Budreo's 36 convictions, 26 have been for the physical touching of young males. He was

released from Kingston penitentiary on November 18, 1994 after serving a six-year sentence for three counts of sexual assault.

Section 7 of the *Canadian Charter of Rights and Freedoms (The Charter)* states that every person has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. The appellant argued that s. 810.1 contravenes the principles of fundamental justice for three reasons: it creates an offence based on status, it is overbroad, and it is void for vagueness.

The appellant argued that s. 810.1 creates an offence based on a person's status alone, whether based on a person's medical diagnosis or a past criminal record but without any current offending conduct. The court found that s. 810.1 does not create an offence or mete out a criminal punishment as it is a preventative provision aimed at the protection of children, not a punitive provision.

The appellant also claimed that section 810.1 was overbroad. "Overbreadth" is now accepted as a principle of fundamental justice. This means that when a legislature has chosen to achieve a legitimate objective that the means chosen to achieve that objective must be sufficiently tailored and narrowly targeted to meet the objective. If the law goes further than necessary to accomplish this objective the law becomes arbitrary or disproportionate. The Ontario Court of Appeal found that section 810.1 was not overbroad as the restrictions stop short of detention or incarceration and that the restrictions on the offender's liberty are proportional to important social interests. In addition the court found, among other things, that the impossibility of making exact predictions as to the offender's present likelihood of future dangerousness or present risk of committing a sexual offence against children in the future does not render the section overbroad or contrary to principles of fundamental justice.

In *R. v. Budreo* the Ontario Court of Appeal held that a section 810.1 order could be imposed in a situation where a defendant had no previous criminal convictions for sexual offences against children. The court was of the opinion that insisting on a previous record for that type of crime would undermine the preventative purpose of section 810.1.

The court also found that section 810.1 was not void for vagueness. Pre-trial arrest and detention may be necessary to prevent harm to children pending a hearing. The court found the procedural safeguards to be sufficient. On these grounds Mr. Budreo's appeal was dismissed. The Ontario Court of Appeal gave

the opinion in the *Budreo* case that, in theory, a person could be detained pending resolution of the application but stated that this would be an unusual circumstance.

Section 3:E

Section 810 C.C.C. Where fear of injury or damage

Criminal Code Requirements

810. (1) An information may be laid before a justice by or on behalf of any person who fears on reasonable grounds that another person will cause personal injury to him or her or to his or her spouse or child or will damage his or her property.

Note: For 810 orders an information may be laid before a justice. All others require the information to be laid before a provincial court judge.

Adjudication

810. (3) The justice or the summary conviction court before which the parties appear may, if satisfied by the evidence adduced that the person on whose behalf the information was laid has reasonable grounds for his or her fears,

(a) order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months, and comply with such other reasonable conditions prescribed in the recognizance, including the conditions set out in subsections (3.1) and (3.2), as the court considers desirable for securing the good conduct of the defendant;

or

(b) commit the defendant to prison for a term not exceeding twelve months if he or she fails or refuses to enter into the recognizance.

Conditions - As summarized from the Code

Any reasonable conditions considered desirable for securing the good conduct of the defendant, including:

- prohibition from possessing any firearm, any ammunition or explosive
- surrendering any firearms licenses (both possession and acquisition)

- prohibiting the defendant from being at, or within a specified distance from, a place where the person on whose behalf the information was laid or that person's spouse or child, is regularly found
- prohibiting the defendant from communicating, directly or indirectly, with the person on whose behalf the information was laid or that person's spouse or child

Each of the 810 orders has standard conditions laid out in the *Code*. In each case the court will consider whether to impose these conditions based on the interests of society and the interests of the safety of the potential victims. The court also has the discretion to impose any additional conditions it sees fit as long as these conditions meet the test of reasonableness. In some provinces, one of the most frequent conditions is that the defendant will have to report on a regular basis to a police officer. In other provinces, Provincial Corrections plays an important role in supervising 810 orders and the most frequent condition is that the offender report on a regular basis to a probation officer. The defendant can be committed to prison for up to 12 months if they refuse to enter into the agreement.

Section 3:F

Section 810.01 C.C.C.

When fear of criminal organization offence

Criminal Code Requirements

810.01 (1) A person who fears on reasonable grounds that another person will commit a criminal organization offence may, with the consent of the Attorney General, lay an information before a provincial court judge.

Note: To obtain this order you must have the consent of the Attorney General.

Adjudication

810.01 (3) The provincial court judge before whom the parties appear may, if satisfied by the evidence adduced that the informant has reasonable grounds for the fear, order that the defendant enter into a recognizance to keep the peace and be of good behaviour for any period that does not exceed twelve months and to comply with any other reasonable conditions prescribed in the recognizance, including the conditions set out in subsection (5), that the provincial court judge considers desirable for preventing the commission of a criminal organization offence.

Definitions

A **Criminal Organization** is defined in section 2 of the *Criminal Code of Canada* as:

any group, association or other body consisting of five or more persons, whether formally or informally organized, having as one of its primary activities the commission of an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more, and any or all of the members of which engage in or have, within the preceding five years, engaged in the commission of a series of such offences;

A **Criminal Organization Offence** is defined in section 2 of the *Criminal Code of Canada* as:

an offence under section 467.1 (this section designates Participation in Criminal Organization) or an indictable offence under this or any other Act of Parliament committed for the benefit of, at the direction of or in association with a criminal organization for which the maximum punishment is imprisonment for five years or more, or a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence

Conditions - As summarized from the *Code*

Any conditions considered desirable for preventing the commission of an organized criminal offence, including:

- prohibiting the defendant from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance

Each of the 810 orders has standard conditions laid out in the *Code*. In each case the court will consider whether to impose these conditions based on the interests of society and the interests of the safety of the potential victims. The court also has the discretion to impose any additional conditions it sees fit as long as these conditions meet the test of reasonableness. In some provinces, one of the most frequent conditions is that the defendant will have to report on a regular basis to a police officer. In other provinces, Provincial Corrections plays an important role in supervising 810 orders and the most frequent condition is that the offender report on a regular basis to a probation officer. The defendant can be committed to prison for up to 12 months if they refuse to enter into the agreement.

Section 3:G

Section 810.1 C.C.C. Where fear of sexual offence

Criminal Code Requirements

810.1 (1) Any person who fears on reasonable grounds that another person will commit an offence under section 151, 152, 155 or 159, subsection 160(2) or (3), section 170 or 171, subsection 173(2) or section 271, 272 or 273, in respect of one or more persons who are under the age of fourteen years, may lay an information before a provincial court judge, whether or not the person or persons in respect of whom it is feared that the offence will be committed are named.

Criminal Code Sections for above:

151	Sexual interference
152	Invitation to sexual touching
155	Incest
159	Anal intercourse
160(2)	Compels another to commit bestiality
160(3)	In the presence of a person under the age of 14 years, commits bestiality or incites a person under the age of 14 to commit bestiality
170	Parent or guardian procuring sexual activity by a child
171	Householder permitting sexual activity prohibited by the Act by a child
173(1)	Indecent acts
173(2)	Exposure of genital organs to a person under the age of 14
271	Sexual assault
272	Sexual assault with a weapon/threats/causing bodily harm
273	Aggravated sexual assault

Adjudication

810.1 (3) The provincial court judge before whom the parties appear may, if satisfied by the evidence adduced that the informant has reasonable grounds for the fear, order the defendant to enter into a recognizance and comply with the conditions fixed by the provincial court judge

Conditions - As summarized from the *Code*

Any reasonable conditions, including:

- prohibit the defendant from engaging in any activity that involves contact with persons under the age of fourteen years
- prohibit the defendant from attending a public park or public swimming area where persons under the age of fourteen years are present or can reasonably be expected to be present
- prohibit the defendant from attending a daycare centre, schoolground, playground or community centre (Note: in the *Budreo* case the court read down this section in that a defendant should only be prohibited from attending a community centre at times when children might reasonably be expected to be present)

Each of the 810 orders has standard conditions laid out in the *Code*. In each case the court will consider whether to impose these conditions based on the interests of society and the interests of the safety of the potential victims. In some provinces, one of the most frequent conditions is that the defendant will have to report on a regular basis to a police officer. In other provinces, Provincial Corrections plays an important role in supervising 810 orders and the most frequent condition is that the offender report on a regular basis to a probation officer. The defendant can be committed to prison for up to 12 months if they refuse to enter into the agreement.

The court also has the discretion to impose any additional conditions it sees fit as long as these conditions meet the test of reasonableness. Special conditions, due to the nature of sexual offenders, are often added to an 810.1 order. Please see Section 5, Appendix K for a listing of some special conditions that have been applied to offenders. It is important to note that some of the special conditions listed in Appendix K would be unlikely to survive a court challenge as they are overly restrictive and do not meaningfully reduce the risk that an offender might contact victims, particularly children. Moreover, several of these conditions are generally unenforceable.

Section 3:H

Section 810.2 C.C.C.

Where fear of serious personal injury offence

Criminal Code Requirements

810.2 (1) Any person who fears on reasonable grounds that another person will commit a serious personal injury offence, as that expression is defined in section 752, may, with the consent of the Attorney General, lay an information before a provincial court judge, whether or not the person or persons in respect of whom it is feared that the offence will be committed are named.

Note 1): To obtain this order you must have the consent of the Attorney General.

Note 2): See Section 5, Appendix B for the list of Serious Personal Injury Offences.

Adjudication

810.2 (3) The provincial court judge before whom the parties appear may, if satisfied by the evidence adduced that the informant has reasonable grounds for the fear, order that the defendant enter into a recognizance to keep the peace and be of good behaviour for any period that does not exceed twelve months and to comply with any other reasonable conditions prescribed in the recognizance, including the conditions set out in subsections (5) and (6), that the provincial court judge considers desirable for securing the good conduct of the defendant.

Conditions - As summarized from the *Code*

Any reasonable conditions considered desirable for securing the good conduct of the defendant, including:

- prohibit the defendant from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance
- order that the defendant report to the correctional authority of a province or to an appropriate police authority

Each of the 810 orders has standard conditions laid out in the *Code*. In each case the court will consider whether to impose these conditions based on the interests of society and the interests of the safety of the potential victims. Should the judge decide not to make a weapons prohibition in accordance with the conditions set out in section 810.2 (5) he/she must give reasons for not doing so, section 810.2 (5.2). The court also has the discretion to impose any additional conditions it sees fit as long as these conditions meet the test of reasonableness. The defendant can be committed to prison for up to 12 months if they refuse to enter into the agreement.

One of the most frequent conditions is that the defendant will have to report on a regular basis to a police officer. It is also important to note that the 810.2 order allows the offender to be ordered to report to a provincial correctional officer (Section 810.2 (6) *Criminal Code of Canada*).

3:I Breach of recognizance - Penalties

811. A person bound by a recognizance under section 810, 810.01, 810.1 or 810.2 who commits a breach of the recognizance is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding two years;

or

(b) an offence punishable on summary conviction.

The Quebec Superior Court in *R. v. Monroe* [1998] Q.J. No. 1415, held that on a charge under section 811 that “guilt may not result from mere carelessness or negligence or forgetfulness”. The Court found that a mental element is required for a breach under section 811 such that there is “the willful action of an accused knowing that it is contrary to the terms of an existing recognizance”. This must be present before a charge should be laid under section 811.

Conditions

Standard conditions for 810 orders are set out in the *Criminal Code*. Other conditions often found on 810 orders include:

- Report to police on a scheduled basis (either in person or by telephone)
- Notify police 24 hours in advance of any changes in employment status
- Provide police with 24 hours advance notice of any changes in residential address
- Notify the police 24 hours in advance of any travel outside a designated geographical area - such information to include intended destination and intended route of travel
- That the offender carry on his/her person, at all times when away from their residence, a copy of their conditions

In light of the *Budreo* decision it is difficult to predict whether any of these conditions would survive a constitutional challenge. When drafting conditions it is

important to ask why each of the conditions is required. What specific risk does the defendant pose and how will each condition reduce that risk. The *Budreo* decision makes it clear that the conditions can not be so broad or restrictive as to contravene the *Charter*. Conditions must be the type of restrictions that are designed to prevent the commission of another offence, not punishment for past crimes.

The process of developing a meaningful set of conditions is greatly enhanced through the participation of the offender. This is especially true for federal offenders. After years in the system they have learned their offence cycles and offence triggers. If you can convince them to tell you the circumstances of their offence, their offence triggers, and their offence cycle, meaningful and useful conditions can be developed which help the offender not to re-offend. This is the best protection for society. Special conditions can include such things as not to enter into a relationship with a woman with children until such time as she has been apprised by the officer of the offender's past behaviour. It is recommended that you avoid unnecessary or irrelevant conditions such as alcohol bans where alcohol has not been a factor in the offender's past convictions, or curfews where the offender's crimes have been committed in daylight. Conditions that are irrelevant to an offender's crimes can easily be portrayed as arbitrary.

It has been held that even in the context of a probation order imposed following a finding of guilt that it is a violation of an individual's *Charter* rights to force them to take medication and that such a violation can not be saved by section 1 of the *Charter*. A condition of an 810 order, such as in the case of an 810.1 order, requiring the defendant to submit to a particular treatment regimen such as taking anti-arousal medications would likewise be impermissible. In *Budreo*, the Ontario Court of Appeal drew a distinction between conditions intended to separate child molesters from children and those that seek to treat their condition.

It is implicit in the *Budreo* decision that if conditions are overbroad or punitive that it is likely that they will not survive a court challenge and the use of some conditions would likely be restricted.

3:J Role of Police

For police, 810 orders are a useful and innovative form of crime prevention. It should be noted that it is not necessary to have a civilian complaint to pursue an 810 order. For an 810.1 (Where fear of a sexual offence) or for an 810.2 order, (Where fear of a serious personal injury offence), you need not even name a specific victim. Officers must remember that no new crime has been committed to this point. 810 orders are very powerful in terms of restricting the liberty of an individual and 810 orders should not be abused. The reason for seeking an 810 order is that there is a reasonable expectation of fear. The person you are seeking an order against does not have to have committed any offence.

An 810 order can be sought on “*Any person*”, however, for the bulk of this section this manual will refer to the administration of 810 orders on offenders leaving the criminal justice system. These orders are renewable by one-year terms and in at least one case, four renewals have been granted. Most often however, offenders placed on 810.1 orders are untreated or persistent sex offenders who have been held in prison for their entire sentence. When this is the case, the process of obtaining an order should be started before the offender is released from custody.

For 810 orders **Where Injury or damage feared** an information may be laid before a justice, for the other three 810 orders (810.01, 810.1, 810.2) the information must be sworn before a provincial court judge. The officer swearing the information before the judge/justice must be familiar with this section of the *Code* as some judges/justices may not be. A summons will be issued to compel the defendant to appear in court unless the officer (or other informant) can satisfy the judge that it is necessary to issue a warrant. In the case of a summons, there is no arrest and so the issues of release and detention never arise.

When the officer attends before a justice (section 810) or a provincial court judge (sections 810.1, 810.01, 810.2), they must consider which method is most appropriate to compel the appearance of the defendant in court. The *Code* authorizing the arrest of a defendant must not be abused, as the defendant has not been charged with a criminal offence. A potential advantage to obtaining an arrest warrant is that the defendant can then be released on an undertaking with conditions pending the adjudication of the application.

The officer will alert the judge/justice that the defendant should generally be released, but that conditions can be attached to this release.

Section 515(4), Judicial Interim Release, sets out a list of authorized conditions that a justice may impose.

(4) The justice may direct as conditions under subsection (2) that the accused shall do any one or more of the following things as specified in the order:

(a) report at times to be stated in the order to a peace officer or other person designated in the order;

(b) remain within a territorial jurisdiction specified in the order;

(c) notify the peace officer or other person designated under paragraph (a) of any change in his address or his employment or occupation;

(d) abstain from communicating with any witness or other person expressly named in the order, or refrain from going to any place expressly named in the order, except in accordance with the conditions specified in the order that the justice considers necessary;

(e) where the accused is the holder of a passport, deposit his passport as specified in the order;

(f) comply with such other reasonable conditions specified in the order as the justice considers desirable

Information sources

The police are responsible for obtaining information relating to the offender and forwarding this information to the Crown. These materials should include:

- information regarding the defendant's prior criminal history (charges and convictions)
- information from the National Parole Board and Correctional Service of Canada, or where the offender has had a provincial sentence, materials from provincial/territorial probation/parole and corrections
- victim impact statements
- any interviews with the defendant or their family
- any psychological or psychiatric assessments or reports

Where the police are seeking an 810 order (Where Injury or Damage Feared) or an 810.1 order (Where Fear of Sexual Offence) the police should prepare five (5)* copies of the materials for the following parties:

- copy for the assigned Crown Attorney
- copy for disclosure
- copy for possible flagging
- copy for court proceedings
- copy for police to retain

Where the police are seeking an 810.01 order (Where Fear of a Criminal Organization Offence) or an 810.2 order (Where Fear of a Serious Personal Injury Offence) the police should prepare six (6)* copies of the materials, the additional copy to be sent to the Provincial Attorney General, or if in the Territories the Attorney General Canada. (*These numbers are given as guidelines, as actual practice will vary by jurisdiction.)

Ninety days before the offender is due to be released from penitentiary custody (indicating a federal sentence of at least two years, administered by the Correctional Service of Canada), a Warrant Expiry Release Package (WED package) is forwarded from the Correctional Service of Canada to the police department in the jurisdiction where it is believed the offender will travel to upon release. WED packages are standard for offenders coming from federal incarceration. Some provinces and territories are starting to prepare similar packages and the officer may want to contact the provincial correctional authorities for their jurisdiction to obtain release and risk information. The contents of a WED package are shown in Section 5, Appendix L.

Offenders approaching the end of their sentences are under no legal obligation to inform CSC of where they plan to go upon release. This means that CSC may not know where the WED package should be sent. If a released offender arrives in your community and you do not have this information - phone for it. See Section 5, Appendix E for a list of phone numbers and addresses for the Correctional Service of Canada.

Prior to the first court appearance, the officer in charge should find out if the defendant has been issued a Firearms License (both possession and acquisition). Having this information in advance prevents the Crown from having to rely on the defendant to disclose that they have a firearms license. Note however, especially

in the case of an 810.1 (Where Fear of Sexual Offence) where there is no history of violence or weapons use, requiring the defendant to give up their firearms may be considered overbroad and subsequently challenged in court.

When the offender is still in custody

Where possible, if you are considering acquiring an 810 order against an offender that is still in custody, contact should be made with the offender prior to release from prison. The objective of this visit is to assess if there are reasonable grounds to proceed with an 810 order and to make personal contact with the offender. Experienced officers are often successful in convincing the offender to agree to the conditions of an order before they are released from custody. To get offenders to agree it is necessary that these conditions meet the needs of the offender and the community. Offenders can often be persuaded to “buy-into” the process, providing it is reasonable, so that there will be no surprises once they leave prison.

With this in mind, it is important that the offender understand that they are not obligated to consent to the order, that they may contest it, and that they are entitled to legal representation both at the hearing and prior to deciding if they want to sign the order. They must also understand that the ultimate decision will rest with the judge after a full and fair hearing. If the offender does not understand their right to refuse and right to counsel the order may later be held to be involuntary.

Officers can often convince the offender to agree to appear before the judge and negotiate reasonable conditions. Even though the offender may agree to go before the court, the officer would get a warrant and take the offender before the court to negotiate conditions. Also, you can negotiate with the offender such that if they co-operate with you, you will support any appropriate changes to the conditions once that offender is in the community should their job or living conditions change throughout the course of the order.

Offenders often have no social or practical supports in the community. While many officers do not see it as part of their job to offer support to offender's in the community, a few minutes spent over a cup of coffee can provide more information about an offender's movements and contacts than several hours of observation or phoning collateral contacts. In some cases the offender will agree to come straight from prison to see the officer in their office. Experienced officers

indicate that a “hard-nosed” approach is often counter-productive to efficient supervision.

When an offender is already in the community

When attempting to file an order against an offender already released to the community it is preferable to proceed by way of a warrant rather than a summons. However, to obtain a warrant the judge must be satisfied that it is necessary in the public interest to issue a warrant. If you proceed by summons and the offender shows up at court on the designated date you would not be able to have any conditions placed on the offender if they disputed the 810 application. Release conditions can only be imposed if there is a warrant issued. The judge may say to the officer that if you felt this offender was of a low enough risk to proceed by summons that you probably can not justify any release conditions. Cases have been observed where the police have asked for a warrant for an offender, brought that offender to court, and the offender disputes the 810 application. The judge may release the offender on the same conditions that the police were seeking in the 810 order. Cases have been observed where the offender has been on those conditions for almost a year before their hearing.

Should an offender arrive in your jurisdiction without warning, you are free to contact the Correctional Service of Canada (CSC) to see if a WED package or other information is available. The addresses and phone numbers of CSC regional headquarters can be found in Section 5, Appendix E. If you have reason to believe that an offender is of particularly high risk you may also wish to check with provincial/territorial corrections/probation in your jurisdiction or with your Provincial/Territorial High-Risk Coordinator, see Section 5, Appendix M for a list of phone numbers and addresses.

Frequency of contact with the offender varies in direct relation to the estimated risk of re-offence and the victim damage likely to be involved should the offender re-offend. This can range from face-to-face contact three times a week for an offender who is at extremely high risk to infrequent randomized phone contacts for a low-risk offender. The average offender makes contact with the officer once per week.

3:K Role of the Crown Attorney

Once the materials are received from the police, the assigned Crown Attorney should read the information and produce a summary of the material. The objective of the summary is to provide sufficient information to establish whether the defendant is a serious risk to the community. This summary should include, but is not limited to, the following types of information:

- a) The defendant's background:
 - family background
 - previous psychiatric/psychological assessments and diagnoses
 - a review of previous violent behaviour, including behaviour for which the defendant has been charged but not convicted
 - the defendant's criminal record
 - victim impact statements

- b) The defendant's progress while incarcerated:
 - institutional behaviour
 - treatment/counseling obtained while incarcerated (anger management programs, substance abuse programs, etc.)
 - the defendant's progress in treatment/counseling (did they complete the program and what was their participation like?)

- c) The basis for the 810 application
(that upon which the "reasonable fear" is based):
 - nature of the past offences (vulnerable victims, escalating violence, demonstrated lack of personal control)
 - has the offender been diagnosed as sexually deviant
 - has the offender been diagnosed as a psychopath (PCL-R)
 - has the offender's risk to reoffend been assessed with actuarial risk assessments (RRASOR, STATIC-99, SONAR, VRAG, LSI-R, see Section 1:I and Section 5, Appendix C for information on these instruments)
 - evidence or testimony that the offender lacks empathy, remorse, or insight into their problems

- the offender's plans upon release into the community - living arrangements, work or school plans, and treatment/counseling
- previous victims concerns

Once this summary has been prepared it should be forwarded with a copy of the information and a draft recognizance, setting out the conditions that you propose to seek, to the Senior Crown Attorney. Two of these orders, 810.01, (When fear of a criminal organization offence), and 810.2, (Where fear of a serious personal injury offence) require the consent of the Attorney General of the province, or if in the territories the consent of the Attorney General Canada, to proceed and hence a package will have to be forwarded to that office. For guidelines for preparing an information package for an Attorney General see the heading Preparing an Application for Consent of the Attorney General in the Dangerous Offenders section of this document, Section 1:O.

Where a defendant consents to enter into an 810 recognizance, the Crown Attorney should ensure that the defendant has been advised of their right to counsel and that they understand that they are entitled to remand their case until they can consult with a lawyer. Where an unrepresented defendant consents to the order, especially on their first court appearance, the Crown Attorney should arrange for the defendant to speak to duty counsel before entering into the recognizance. If possible the duty counsel should be present in the Court to assist the defendant when they enter into the recognizance. Unless this is done the recognizance is open to attack on grounds that it was not entered into voluntarily or that consent was not informed.

Section 810 orders must be renewed each year by a hearing “*de novo*”, which means a whole new hearing. This includes obtaining the Attorney General's consent for 810.01 and 810.2 orders. Hence, the Crown must be willing to repeat the entire process in order to have the defendant enter into a subsequent recognizance at the end of the existing 810 order.

High-Risk Flagging

When preparing an 810 application the assigned Crown Attorney should also consider whether or not it would be appropriate to have the defendant flagged as a High-Risk Offender. The High-Risk Offender Flagging System tracks potential candidates for future Long-Term Offender and Dangerous Offender applications and ensures that information relating to a potential candidate is stored in a central location where it is available to police and prosecutors from all jurisdictions in

Canada. See Section 4 of this document titled **Information Systems for Public Safety**, the sub-section entitled National Flagging System for High-Risk Violent Offenders, and Section 5, Appendix M.

Note: The foregoing sections include, with permission, information based upon previous writings by Jennifer Crawford, Assistant Crown Attorney, Toronto.

3:L Role of the Correctional Service of Canada

The majority of CSC offenders released at their Warrant Expiry Date (WED) who are subject to 810.1 and 810.2 are untreated or persistent sex offenders who are assessed as continuing to pose a risk to the community.

The primary role CSC plays in the application of any 810 order is to provide relevant file information and where necessary, provide assistance in interpreting any of that file information. The information that is typically provided at release is listed in Section 5, Appendix L.

By policy, CSC is to provide the information well in advance of the offender's release. Current practice requires that CSC forward the WED package to the police in the receiving jurisdiction 90 days before release. However, as the majority of the offenders in question are being released at Warrant Expiry (WED) and CSC no longer has jurisdiction after the WED date, offenders on occasion will delay providing information on their eventual destination until very close to their release date. Very infrequently, offenders will refuse to provide any information as to their post-release plans. In these cases CSC will provide information to the police department in the jurisdiction where the last offence took place.

In several jurisdictions across Canada, CSC Parole Offices are supporting and assisting in the creation of Circles of Support & Accountability for WED released offenders. The Circles of Support and Accountability consist of up to seven, trained community volunteers who develop a relationship and a written agreement with the offender. This agreement makes clear to the offender their responsibilities upon return to the community and in turn the circle members support the offender's return to the community. Please see Section 5, Appendix N for a description of the Circles of Support and Accountability process.

Section 4 Information Systems for Public Safety

4:A The National Screening System

The National Screening System allows volunteer and other community organizations access to criminal records of applicants for positions of trust with children and vulnerable adults. The National Screening System was launched in 1994. This system is a collaborative project involving child-care agencies, the police community, the Canadian Police Information Centre (CPIC), the Departments of the Solicitor General Canada, Health and Justice. This system was developed after extensive public consultation and is widely supported by the voluntary sector.

At the same time, the system stresses that safety from victimization for children and vulnerable adults is not as simple as just checking for the presence of a criminal record. Safety for children and vulnerable adults results from a range of safe organizational and screening practices. Volunteer Canada has developed a ten-step process for effective screening and the Federal/Provincial/Territorial Working Group on High Risk Offenders supports the use of this strategy. These 10 steps can be found in Section 5, Appendix O.

Screening proceeds by having local police, with the consent of the applicant, check the CPIC records system for a criminal record. The results of that search are then provided to the screening agency and that agency can then evaluate whether the existence of a record has any relevance to the position in question.

What are "Positions of Trust"?

For CPIC purposes, "positions of trust" means paid or voluntary positions dealing with children or vulnerable people.

Who are "Vulnerable People"?

Vulnerable people are individuals or groups who are at greater risk of being harmed than the general population, because of their age, disability or handicap, or circumstances, whether temporary or permanent. Vulnerable people can include: children, youth, senior citizens, people with physical, developmental, emotional, social, or other disabilities. This category may also include people who have been victims of crime or an accident, those who are addicted to, or dependent on,

addictive substances, and who are otherwise left with little or no defense against those who would harm them.

4:B The Flagging System for Pardoned Offenders

The House of Commons and Senate passed Bill C-7 in February 2000. The bill received Royal Assent on March 30, 2000 and was proclaimed on August 1, 2000. This bill creates a special flag within the Canadian Police Information Centre (CPIC) system for those offenders who have been pardoned of offences against children and other vulnerable people. Before the implementation of Bill C-7, once a pardon was granted, the “record” became invisible to normal volunteer screening procedures.

Pardons

Pardons are granted when it has been demonstrated that the offender has returned to a crime-free life. For summary conviction offences this requires a three-year period after the completion of all sentences before the offender may apply. In the case of an indictable offence, the waiting period is five years. Before granting a pardon the National Parole Board takes steps to confirm that the pardon applicant has been of good conduct during the waiting period. Pardon applicants must obtain a record of their behaviour from the police in every community where they have lived during the waiting period. The most common reasons for seeking a pardon are for employment purposes or to travel outside the country.

The System

Pardoned records are removed from the CPIC system and kept separately in a sealed database. They do not show up when a routine query of CPIC is made. An important element of this Bill is that it allows for the confirmation of identification through the use of fingerprints.

There are two procedural safeguards for the pardoned person in this process. Firstly, the pardoned person has to consent, in writing, to taking part in a criminal records screening. Should a flag come up during the screening process that person is then asked to submit fingerprints. At that point the pardoned person can either abandon the screening process or they can consent and forward their fingerprints to the police so that they may be checked against the file for a confirmation of identification.

Under Bill C-7 when a criminal record that includes a sex offence is pardoned and removed from CPIC, a “flag” or notation will be left in its place indicating the presence of a pardoned record. When a screening check is conducted, that notation or flag will direct the police officer doing the search to submit fingerprints to RCMP Identification Services in Ottawa. If confirmed by fingerprint identification the record will then be brought forward to the Solicitor General Canada to consider its unsealing.

Under Bill C-7 the criteria to be considered by the Solicitor General is set out in the *Criminal Records Act Regulations*. These criteria would include: age at last offence, time since last conviction, length and seriousness of record, and the connection between the record and the sensitivity of the position being sought. The provisions of Bill C-7 are retroactive such that those who now have a pardon for a sex offence will be flagged on the system.

4:C National Flagging System for High-Risk Violent Offenders

A National Flagging System for High-Risk Offenders was created in 1995. The concern at the time was that offenders who were committing serious crimes, but crimes not yet serious enough to warrant a Dangerous Offender application, would only have to move to another province or territory to avoid attracting a Dangerous Offender application. At that time there was no system in place that Crowns could check to see if this offender had been of particular concern in another jurisdiction and no way that the Crowns could easily gather information on an offender from another jurisdiction. The offices of the High-Risk Flagging Coordinators facilitate this transfer of information.

The Special Interest Police (SIP) category of the Investigative Data Bank within CPIC is used to identify offenders who have been judged by Crown Prosecutors to be high risk for future violent conduct. These offenders will generally demonstrate a high potential for prosecution as Dangerous Offenders or Long-Term Offenders under Part XXIV of the *Criminal Code*. Such cases are flagged for CPIC entry only on the authority of a Crown agent designated for this purpose and are entered as SIP records only in accordance with policy.

When a subject being investigated is found to be "flagged" as a SIP high-risk violent offender, the CPIC agency must notify the Crown agent of the finding and the circumstances surrounding the investigation. The flagging system alerts Crowns to previous concerns about an offender, such as an escalating pattern of violence. This would assist in the determination as to whether the present offence should attract a DO application.

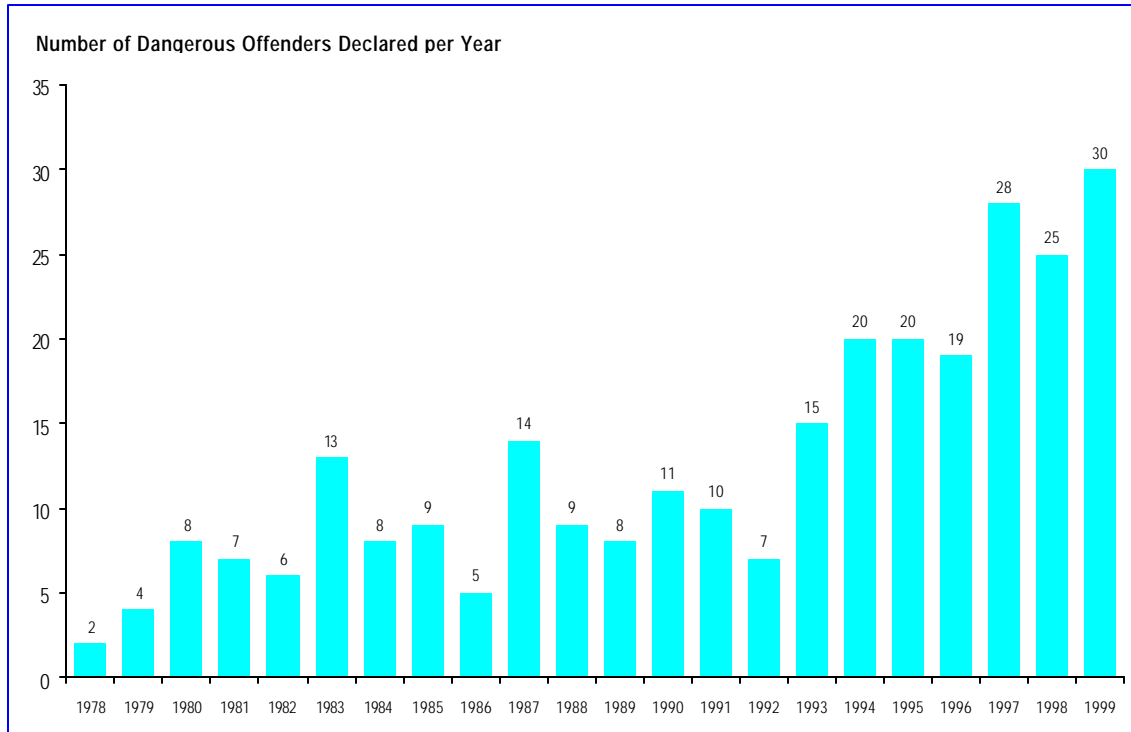
CPIC operates across Canada with links to other computerized information systems in other jurisdictions. The flag normally contains only a brief reference to the offender as a possible Dangerous Offender candidate and gives information as to who to contact for further information. Because offenders often move across the country, the national flagging system makes sure that Crowns in one province or territory can obtain full information from a Crown in another province or territory who has previously been involved in prosecuting the offender. The hardcopy file resides with the coordinator that entered the offender on CPIC.

Addresses and contact information for the High-Risk Flagging Coordinators for each Province and Territory are listed in Section 5, Appendix M.

Section 5 Appendix A

Dangerous Offender Statistics

The number of dangerous offender designations has increased



Source: Correctional Service Canada.

- As of September 24, 2000, there were 276 active Dangerous Offenders (DOs), representing approximately 2% of the total federal inmate population. Of these, 268 are incarcerated, one has been deported and seven are being supervised in the community.
- Of the 276 DOs, 11 offenders have determinate sentences, whereas 265 have indeterminate sentences.
- The majority of DOs were designated in Ontario and British Columbia.
- There are currently no female Dangerous Offenders.
- Aboriginal offenders account for 17.4% of Dangerous Offenders and 17% of the total inmate population.
-

Note:

In addition to the DOs, there remain within federal jurisdiction 52 Dangerous Sexual Offenders and 8 Habitual Offenders.

Section 5 Appendix A

Dangerous Offender Statistics

The number of dangerous offender designations has increased

Province of Designation	All Designations	Active Indeterminate Offenders
Newfoundland	9	8
Nova Scotia	11	10
Prince Edward Island	0	0
New Brunswick	3	2
Quebec	7	7
Ontario	126	110
Manitoba	10	9
Saskatchewan	17	16
Alberta	21	18
British Columbia	84	77
Yukon	0	0
Northwest Territories	5	5
Unknown	4	3
Total	297	265

Source: Correctional Service Canada.

Note:

*These numbers are as of September 24, 2000.

The number of Dangerous Offenders declared per year does not include decisions which were overturned. Offenders who have died since receiving designations are no longer classified as 'active'; however, they are still represented in the total number of offenders 'designated'.

Section 5 Appendix B

Serious Personal Injury Offences

As defined in Section 752 of the *Canadian Criminal Code*

<u>Section</u>	<u>Offence</u>
240	Accessory after the fact to murder
268	Aggravated assault
273	Aggravated sexual assault
433	Arson
267(b)	Assault causing bodily harm
267(a)	Assault with a weapon
239	Attempted murder
348(1)(b)	Break and Enter with intent to commit an indictable offence
348(1)(a)	Break and Enter and commit an indictable offence
465(1)(a)	Conspiracy to commit murder
244	Discharge firearm with intent to wound or endanger life
152	Invitation to sexual touching
279(1)(1.1)	Kidnapping
222	Manslaughter
88	Possession of weapon for purpose dangerous
343	Robbery
151	Sexual interference
279(2)	Unlawful confinement
349	Unlawfully in a dwelling house with intent to commit an indictable offence
271	Sexual assault
272	Sexual assault with a weapon, threats to a third party or causing bodily harm

Section 5 Appendix C

Risk Assessment References

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Section 5 Appendix C Continued

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Section 5 Appendix D

The Assessment Report An example of a typical assessment report for Dangerous Offender and Long-Term Offender Designations

The following sections would be typical in an assessment for a finding of Dangerous Offender or Long-Term Offender.

- (a) Background of the referral. This section states where the referral came from, who initiated the assessment, and on what grounds.
- (b) Informed consent. This section would state that the offender had been fully and understandably informed as to the nature and purpose of this assessment. This section would also generally state that the offender has signed a statement indicating that they have been informed of the purpose and nature of this assessment or a witnessed statement indicating that the offender declined to give their consent to the assessment. When the offender is in a residential facility and the offender declines to be involved in the assessment, the assessment proceeds without consent. In cases where the offender declines to participate in the assessment process the assessment is conducted primarily from file review. In these cases observational information gained from front-line staff is even more important.
- (c) Demographics. This section would generally include the offender's date of birth, family information (or lack there of), marital status (including past marriages and involvements) vocational and schooling information and employment status at time of arrest.
- (d) List of tests used. This section of the report should list all psychological tests and assessments administered to the offender in the course of the assessment.
- (e) List of information provided. This section should list all papers and files reviewed by the assessor in preparation of the report. This is an essential check that the person giving an overall assessment of dangerousness has seen all relevant documentation.

- (f) Review of the index offence. The index offence is the Serious Personal Injury Offence or set of offences that brought the offender for assessment. Generally the set of offences for which the offender has just been found guilty. This section should compare and contrast the information received from the Crown, such as police incident reports and court transcripts, with the offender's verbal report of what happened.
- (g) Review of previous psychological/psychiatric assessments. Offenders who reach this level of intervention have usually been seen in the judicial or mental health system before. It is important to review previous reports to look for trends in psychological and behavioural functioning over time.
- (h) Standard behavioural observations. This section should include not only how the offender presented themselves while in direct assessment by the principal assessor, but also staff reviews of the offender's behaviour as seen in the residential setting. The report of the principal assessor would review the presentation, attitude, and posture of the offender, their level of co-operation, and the rapport developed between the assessor and the offender during the assessment interview(s). Residential staff should be encouraged to comment upon how the offender interacts with their environment. This would include observations on any temperamental/violent outbursts, how the offender interacted with staff and other residents and the degree to which this offender was a management concern while in remand. Emphasis should be placed upon the offender's ability to cope with their surroundings and the offender's problem resolution skills.
- (i) Test results. This section presents the results of the various tests used during the assessment. This section should include references to tests of cognitive ability and intelligence, a section devoted to tests of psychopathology, a personality assessment inventory, and tests of anxiety and depression, tests of alcohol and drug use/dependency. This section would also include results of specific assessments of dangerousness, recidivism potential, and psychopathy.

- (j) Phallometric data. In cases where a sexual offence had been committed phallometric testing may be useful. Phallometric testing assesses the physiological response to pictures of sexual content or audiotaped descriptions of sexual activities. This test helps to determine the presence of sexual deviance, non-normative sexual attractions, and proclivities. It is important to remember that these tests, while helpful in outlining possible treatment targets, do not speak to the issue of guilt or innocence. Physiological sexual preference tests for female offenders are seldom used and remain at the experimental stage.
- (k) Clinical interview. A summary review of the interview is presented. This section deals more with impressions and opinions, as opposed to the section on behavioural observations. This would include a description of how the offender defines their problem and a description of what general areas of inquiry were covered during the clinical interview(s).
- (l) Summary and conclusions. This section should include prognostic statements concerning the offender and some direct statement concerning the offender's risk level. A statement about the offender's general psychological fitness, levels of sexual deviance, and the extent to which deviant behaviours appear to have been repeated or are persistent. This section should include a statement concerning the offender's attitude towards accepting treatment or willingness to participate in treatment. When the assessment is being used for a Dangerous Offender hearing, a statement should be included concerning the offender's potential for future dangerousness. When the assessment is being used for a Long-Term Offender application, this section should include a statement giving an opinion on the possible eventual control of this offender in the community after a term of federal incarceration.
- (m) Potential treatment targets. Recommendations should be made considering needed treatment options for this offender. These might include sex offender treatment, social competencies training or anger management.

Section 5 Appendix E

Correctional Service of Canada Contact Numbers

National Headquarters

Sir Wilfrid Laurier Building
340 Laurier Avenue West
Ottawa, Ontario
K1A 0P9

Phone: (613) 992-5891
Fax: (613) 996-5049

Ontario Region

P.O. Box 1174
440 King Street West
Kingston, Ontario
K7L 4Y8

Phone: (613) 545-8211
Fax: (613) 545-8684

Regional Headquarters

Atlantic Region

1045 Main Street, 2nd Floor
Moncton, New Brunswick
E1C 1H1

Phone: (506) 851-6313
Fax: (506) 851-2418

Prairie Region

P.O. Box 9223
2313 Hanselman Place
Saskatoon, Saskatchewan
S7K 3X5

Phone: (306) 975-4850
Fax: (306) 975-4435

Quebec Region

3 Place Laval, 2nd Floor
Chomedey, City of Laval,
Quebec H7N 1A2

Phone: (514) 967-3333
Fax: (514) 967-3326

Pacific Region

P.O. Box 4500
32560 Simon Avenue
2nd Floor, Room 205
Abbotsford, British Columbia
V2T 5L7

Phone: (604) 870-2501
Fax: (604) 870-2430

G. Section 5 Appendix F

Types of Conditional Release

Offenders in federal custody may be released from an institution on different types of release under different authorities. These types of release apply to all offenders and are not restricted to Dangerous Offenders or those on Long-Term Supervision Orders.

- Temporary Absences (escorted or unescorted) An offender may be allowed to leave the institution for short periods of time to access community services, maintain family contacts, or to access rehabilitative programs. All offenders may be considered for medical or humanitarian escorted temporary absences from the beginning of their sentences. Temporary absences may be escorted or unescorted. For escorted absences, the offender is accompanied by one or more security officers or by a trained volunteer from the community. The authority to grant temporary absences is either the Warden or the National Parole Board depending upon case specifics. Maximum-security inmates are not eligible for unescorted temporary absences.
- Work Release This type of release is potentially available to an inmate, classified as minimum or medium security, who has been judged not to pose an undue risk to reoffend, and who has generally served at least one-sixth of their sentence. This type of release allows the inmate to do paid or voluntary work in the community under supervision and authorized by the Warden.
- Day Parole Day parole is a release that allows an offender to participate in community-based activities in preparation for full parole or statutory release. The offender must reside in a halfway house or an institution and be subject to the rules of that facility. Generally, an offender is eligible for day parole at one-sixth of their sentence or six months before their full parole eligibility date. Inmates serving life sentences are eligible for day parole three years before full parole eligibility. For example, in cases of first-degree murder, parole eligibility is set at 25 years and for second-degree murder parole eligibility is set between 10 and 25 years.

- Full Parole Full parole allows an offender to live independently and work in the community, subject to conditions. This provides the offender with the opportunity to demonstrate that they can be a law-abiding member of society. Most offenders become eligible for full parole after serving one-third of their sentence, although judges may require certain violent or drug offenders to serve one-half of their sentence incarcerated before becoming eligible for full parole. For first-degree murder parole eligibility is set at 25 years and for second-degree murder parole eligibility is set between 10 and 25 years. Offenders who are serving a life sentence, who are granted parole, remain on parole for the rest of their lives unless returned to penitentiary for a violation of their conditions or for further criminal activity.
- Statutory Release Statutory release is prescribed by law. The law requires that most offenders who are serving a penitentiary sentence of a fixed length and who are not on parole be released on statutory release after having served two-thirds of their sentence. In some cases, an offender may be referred to the National Parole Board for detention until the end of their sentence. Statutory Release does not apply to Dangerous Offenders who received their sentence after October 1, 1997. Offenders on statutory release must abide by conditions of release and are under supervision in the community. They may be returned to penitentiary for violation of conditions or further criminal activity.

Section 5 Appendix G

National Parole Board Addresses / Phone numbers

National Parole Board

410 Laurier Avenue West
Ottawa, ON
K1A 0R1
(613) 954-7474

National Parole Board

Atlantic Region
1045 Main Street, Unit 101
Moncton, NB
E1C 1H1
(506) 851-6345

National Parole Board

Ontario Region
516 O'Connor Drive
Kingston, ON
K7P 1N3
(613) 634-3861

National Parole Board

Québec Region,
Guy-Favreau Complex - West Tower
200 René Lévesque Blvd. West
10th Floor, Suite 1001
Montréal, Quebec
H2Z 1X4
(514) 283-4584

National Parole Board

Prairie Region
6th Floor
101 - 22nd Street East,
Saskatoon, Sask.
S7K 0E1
(306) 975-4228

National Parole Board

Pacific Region
32315 South Fraser Way, 3rd Floor
Abbotsford, BC
V2T 1W6
(604) 870-2498

Section 5 Appendix H

Standard conditions of release

The authority to impose standard conditions on all offenders is found in section 133 (2) of the *Corrections and Conditional Release Act* and special authority to impose conditions of release for Long-Term offenders are found in section 134.1 of the *Corrections and Conditional Release Act (CCRA)*. Subsection 134.1(1) *CCRA* states that "every offender who is required to be supervised by a **Long-Term supervision order** is subject to the conditions prescribed by subsection 161(1) of the *Corrections and Conditional Release Regulations (CCRR)* with such modifications as the circumstances require".

Section 161.1 Corrections and Conditional Release Regulations

- (a) *on release, travel directly to the offender's place of residence, as set out in the release certificate respecting the offender, and report to the offender's parole supervisor immediately and thereafter as instructed by the supervisor;*
- (b) *remain at all times in Canada within the territorial boundaries fixed by the parole supervisor;*
- (c) *obey the law and keep the peace;*
- (d) *inform the parole supervisor immediately on arrest or on being questioned by the police;*
- (e) *at all times carry the release certificate and the identity card provided by the releasing authority and produce them on request for identification to any peace officer or parole supervisor;*
- (f) *report to the police if and as instructed by the parole supervisor;*
- (g) *advise the parole supervisor of the offender's address of residence on release and thereafter report immediately*
 - (i) *any change in the offender's address of residence,*
 - (ii) *any change in the offender's normal occupation, including employment, vocational or educational training and volunteer work,*
 - (iii) *any change in the domestic or financial situation of the offender and, on request of the parole supervisor, any change that the offender has knowledge of in the family situation of the offender, and*
 - (iv) *any change that may reasonably be expected to affect the offender's ability to comply with the conditions of parole or statutory release [Long-Term supervision to be added];*
- (h) *not own, possess or have the control of any weapon, as defined in section 2 of the Criminal Code, except as authorized by the parole supervisor;*
- (i) *in respect of an offender released on day parole, on completion of the day parole, return to the penitentiary from which the offender was released on the date and at the time provided for in the release certificate.*

Section 5 Appendix I

Special conditions imposed by the National Parole Board

The National Parole Board may, in addition, impose additional special conditions on the release of any offender (section 133 (3) of the *Corrections and Conditional Release Act, CCRA*). The authority for special conditions for Long-Term Supervision is in section 134.1(2) of the *CCRA*:

(2) The Board may establish conditions for the Long-Term supervision of the offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender.

There are no examples in the *CCRA* or the *CCRR* of these special conditions. The only criteria are that the condition be considered "reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender" (section 133 (3) of the *CCRA*). However, the Board regularly imposes one or more of the following special conditions, as deemed necessary, on offenders on conditional release. The following list is not exhaustive. National Parole Board policy also requires Board members to provide the reasons for imposing any special condition.

Typical special conditions include:

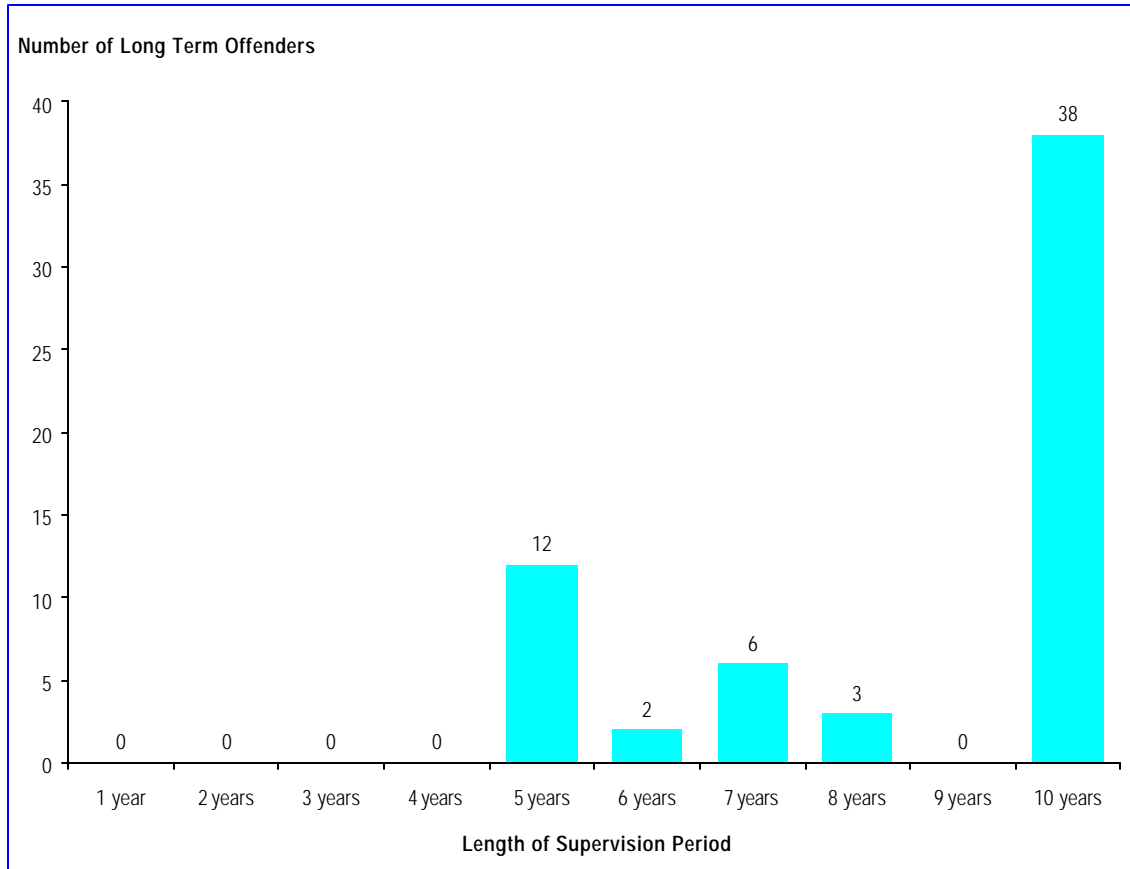
- Abstain from the use of alcohol;
- Abstain from the use of drugs other than prescribed medication and over-the-counter drugs (taken as recommended by the manufacturer);
- Abstain from the use of all intoxicants, including alcohol;
- Abstain from the use of drugs;
- Abstain from gambling;
- Abstain from driving;
- Participate in a substance abuse counseling program ;
- Participate in a sex offender program ;
- Follow psychological counseling, to be arranged by the offender's supervisor;

- Follow psychiatric counseling, to be arranged by the offender's supervisor and as specified by the offender's clinician;
- Follow a treatment plan, to be arranged by the offender's supervisor and as specified by the offender's clinician;
- Take prescribed medication, as directed by the offender's clinician;
- Refrain from communicating with the following person(s) (e.g.: victims, ex-wife, friends with criminal records, children without supervision):_____;
- Refrain from communicating with children under the age of ____ without supervision;
- Refrain from entering _____ (a given establishment);
- Refrain from frequenting a licensed establishment, except restaurants (including the following):_____;
- Reside at the following address: _____;
- Reside in a community-based residential facility;
- Reside in the following community-based residential facility:
_____;
- Refrain from communicating, except accidentally, with any person whom the offender knows to have a criminal record or for whom the offender has reasons to believe that he/she has a criminal record.

Section 5 Appendix J

Long-Term Offenders

**Most offenders with long term supervision orders
have a 10-year supervision period**



Source: Correctional Service Canada.

- There are currently 60 offenders with long term supervision orders, and of these, 53 have at least one sex offence on the current sentence.
- There are no female offenders with long term supervision orders.

Note:

Long Term Offender (LTO) legislation came into effect in Canada on August 1, 1997, which allows the court to impose a sentence of two years or more for the predicate offence and order that the offender be supervised in the community for a further period not exceeding 10 years. The supervision period is not available for 3 incarcerated offenders. Sixty-one offenders have been declared 'long term offenders'; however, one offender is deceased, leaving the number of currently active LTOs at 60.

Section 5 Appendix J

Long-Term Offenders

Most offenders with long term supervision orders have a 10-year supervision period

Sentence	Length of Supervision Period (years)						Current Status		
	5	6	7	8	10	Total	Incarcerated	Community	Total
1- 2 years	1	0	0	0	0	1	0	1	1
2-3 years	5	1	1	1	7	15	7	7	14
3-4 years	1	0	2	0	7	10	9	1	10
4-5 years	3	1	1	0	4	9	9	0	9
5-6 years	0	0	1	1	3	5	4	1	5
6-7 years	0	0	0	0	4	4	4	0	4
7-8 years	0	0	1	0	6	7	7	0	7
8-9 years	0	0	0	1	1	2	2	0	2
9-10 years	0	0	0	0	3	3	3	0	3
10-11 years	1	0	0	0	3	4	4	0	4
11-12 years	0	0	0	0	0	0	0	0	0
12-13 years	1	0	0	0	0	1	1	0	1
Total	12	2	6	3	38	61	50	10	60

Source: Correctional Service Canada.

Note:

These numbers are as of September 24, 2000.

Sixty-one offenders have been declared 'long term offenders'; however, one offender is deceased, leaving the number of currently active LTOs at 60.

Section 5 Appendix K

Examples of conditions that have been used on 810.1 Orders: Where fear of a sexual offence

Note: all of these conditions have been used at some point somewhere in Canada. However, it is unlikely that several of these would survive a court challenge as they are overly restrictive, do not meaningfully reduce the risk that an offender might contact children and are generally unenforceable.

- that the offender must carry on his/her person at all times a copy of the conditions whenever he/she is away from their residence
- a 'no go' condition where the offender is prohibited from going to a certain geographical region
- that the offender obtain counselling, therapy or treatment as directed by a particular institution or doctor, i.e., the Centre for Addiction and Mental Health
- that the offender enter a program of psychophysiological detection of deception, commonly referred to as polygraph examinations, for the purpose of periodic monitoring and management of sexual behaviour
- that the offender reports to a certain police officer, or their designate, in person or by telephone
- that the offender reside with a certain person or remain in the employ of a certain person and cannot change without the written permission of the police and/or probation officer
- if the offender used a weapon in his offences the condition not to possess firearms, ammunition, explosive substances or knives
- that the offender surrender any passport
- that the offender not own any pets (if the offender used a dog or a cat to lure children)

- that the offender not wear shorts (for offenders who expose themselves while wearing shorts)
- that the offender shall not be found in a nude, semi-nude or exposed condition within public view
- that the offender must allow random checks of computer hard-drives and disks
- that the offender not visit web sites dealing with child pornography
- curfews may be appropriate depending on the types and timing of crimes committed
- that the offender not enter into any relationship until the other person has been made aware of the offender's crimes and/or background

Section 5 Appendix L

Warrant Expiry Release Package

The CSC Area Director is responsible for compiling a comprehensive information package which shall be entitled “Warrant Expiry Release Package” which shall contain, at a minimum:

- a. a current photograph;
- b. the risk assessment report prepared for the original detention review;
- c. a copy of the NPB decision from the original detention hearing;
- d. the risk assessment report for the most recent annual review;
- e. a copy of the NPB decision from the most recent annual review;
- f. the criminal history and details of the current offence(s);
- g. copies of available psychiatric and/or psychological reports related to detention and the assessment of risk;
- h. any information with respect to potential victims and any information shared with actual victims;
- i. any other relevant documentation that the case management team believes will assist police in developing their plan for the case.

Section 5 Appendix M

Addresses of High-Risk Flagging Coordinators

Alberta

9833 109th Street
3rd Flr. Bowker Bldg.
Edmonton, Alberta
T5K 2E8
ph: (403) 427-5042
fax: (403) 422-9747

British Columbia

Suite 600
865 Hornby Street
Vancouver, British Columbia
V6Z 2G3
ph: (604) 660-3918
fax: (604) 660-1142

Manitoba

5th Flr. Woodsworth Bldg.
405 Broadway
Winnipeg, Manitoba
R3C 3L6
ph: (204) 945-2870
fax: (204) 945-1260

New Brunswick

Public Prosecutions Unit
Rm 445 Centennial Bldg.
Box 6000
Fredericton, New Brunswick
E3B 5H1
ph.: (506) 453-2784
fax: (506) 453-5364

Newfoundland

Department of Justice
Special Prosecutions Unit
4th Flr. Atlantic Place
215 Water Street
St. Johns, Newfoundland
A1C 5W2
ph: (709) 729- 5022
fax: (709) 729-1135

Northwest Territories

Department of Justice Canada
Box 8
5020 48th Street
Yellowknife, NWT
X1A 2N1
ph: (867) 669-6910
fax: (867) 920-4022

Nova Scotia

Public Prosecution Service
99 High Street
Suite 204
Bridgewater, Nova Scotia
B4V 1V8
ph: (902) 543-7662
fax: (902) 543-0679

Nunavut

Department of Justice Canada
P.O. Box 1030
Iqaluit, Nunavut
X0A 0H0
ph: (867) 979-5324
fax: (867) 979-4889

Quebec

Department of Justice
5th Flr. 1200 Route de l'Eglise
Ste. Foy, Quebec
G1V 4M1
ph: (418) 643-9059
fax: (418) 646-5412

Ontario

Ministry of Attorney General
720 Bay Street
Toronto, Ontario
M5G 2K1
ph: (416) 326-2416
fax: (416) 326-2423

Saskatchewan

Public Prosecutions
3rd Floor, 1874 Scarth Street
Regina, Saskatchewan
S4P 3V7
ph: (306) 787-5490
fax: (306) 787-8878

Prince Edward Island

40 Great George Street
Charlottetown, Prince Edward Island
CIA 4J9
ph: (902) 368-5076
fax: (902) 368-5812

Yukon

Regional Director
Department of Justice Canada
200-300 Main Street
Whitehorse, Yukon
Y1A 2B5
ph: (780) 667-8103
fax: (780) 667-3934

Section 5 Appendix N

Circles of Support and Accountability

Circles of Support was formed as a pilot program for community reintegration by the Ontario Mennonite Central Committee of Toronto, in cooperation with the Correctional Service of Canada. It had become obvious that many offenders leaving prison at the end of a long sentence had no ties to the community and no supports to facilitate re-integration. This project attempts to form a community circle around the offender holding them accountable to the community for their actions and standing with the offender as they re-enter the community.

Instigated by a call from a CSC psychologist, the Mennonite faith community pulled together a few of its members, met the offender upon release, and helped with the task of community re-integration. From this beginning, the first "circle" was formed and today, more than five years later, this offender lives in the community and has not reoffended. There have been no more victims from this offender. The Mennonite Central Committee has replicated this successful integration process with over thirty-five offenders. To date, there have only been two instances of sexual reoffence in the five years the project has been in operation. This project has grown such that there are now more than 35 circles running in six cities.

It is important to understand that volunteers with Circles of Support and Accountability are not supervisors or naïve do-good baby-sitters. As members of the community, they represent the concerns of the community in which they live. Private citizen volunteers from the community stand beside the offender as they face the challenges of re-entering a society from which they were removed. For example, a circle member would not rent an apartment for an offender, but would most likely accompany the offender to meet the landlord. These citizens, through their continuing contact with the offender support the offenders while holding them responsible for their actions in the community. Circles of Support and Accountability work effectively to facilitate the "hand-off" from the institutionalized criminal justice system to the community. Circles of Support and Accountability are the connecting link between prison living and community membership.

For further information about Circles of Support and Accountability across Canada, or about building Circles in your community, contact:

National Contacts:

David Molzahn
Special Advisor to the Director General of Chaplaincy
Correctional Service of Canada
340 Laurier Avenue West
Ottawa, Ontario K1A 0P8
Phone: (613) 995-6878
fax: (613) 952-8464
e-mail: molzahnda@csc-scc.gc.ca

Regional Coordinators:

- 1) Drew McWhinnie Western Canada
Regional Consultant
Western Canada
Correctional Service of Canada
Circles of Support and Accountability
Phone: (250) 363-0105
e-mail: McWhinniaj@csc-scc.gc.ca

- 2) Evan Heise Central Canada
Correctional Service of Canada
Central Ontario District
180 Dundas Street West, Suite 215
Toronto, Ontario M5G 1Z8
Phone: (416) 536-8368
e-mail: eheise@yahoo.com

- 3) David Dyck Eastern Canada
2750 Gottingen Street
Halifax, Nova Scotia
B3K 3C7
Phone: (902) 454-9249
e-mail: davedyck@attcanada.ca

Section 5 Appendix O

Screening – 10 Steps to a Safer Community

As taken from Volunteer Canada, *The Screening Handbook: Protecting Clients, Staff and the Community*, Ottawa, 1996.

1. Determining the Risk

The first principle of risk management is to do all you can to prevent problems from occurring in the first place. Organizations can control the risk in their programs by looking at the possibilities of loss or injury that might arise in programs or services and take steps to minimize, prevent or eliminate the risk altogether.

2. Position Design & Position Description

The responsibilities in each position determine the position's level of risk. Careful position design and clear position description send the message that your organization is serious about screening. By including dos and don'ts in your position descriptions, responsibilities and expectations are clear.

3. Recruitment

Recruitment of volunteers is usually done less formally than the recruitment of employees. One of the ways to move to a formal recruitment process is to post notices or send home requests for volunteers with your clients. Recruitment materials should indicate that your organization screens applicants.

4. Application Form

An application form can only ask for information related to the requirements of the position being filled. Be aware that the Canadian Charter of Human Rights protects applicants. Application forms can ask permission to do a police records check or any other screening measure that may be required for that position (medical check).

5. Interviews

Interviews help ensure that you hire people who meet your requirements and “fit” your organization. Use the position description to ensure that the candidate understands the specific requirements of the position.

6. Reference Checks

Do not assume that applicants will only give you names of people who will speak well of them. People often do not expect that references will be followed up. By identifying the level of trust required in the position and asking specific questions you can determine quite a bit about an applicant’s suitability. (e.g., “Joe will be working closely with children and will be alone with them...would you be comfortable with Joe having these kinds of relationships with your child?”)

7. Police Records Check (PRCs)

PRCs are one step on a 10 step screening process. It is important to realize there are a number of limitations to PRCs. For example, they encourage a false sense of security, the individual may be using an alias, and there are lags between the date of conviction and the date the information is entered into the system. Although there are limitations, PRCs do serve a purpose, particularly for high-risk positions when the organization is committed to a full and complete screening process. The PRC signals, in a very public way, that the organization is concerned about the safety of its clients.

8. Orientation and Training

Responsibility does not end once the volunteer is in place – ongoing vigilance is necessary. Orientation and training sessions offer the opportunity to observe volunteers in a social setting and provide information on the organization’s policies and procedures. Probation periods give both the organization and the volunteer time to learn more about each other.

9. Supervision and Evaluation

The greater the risk in a position, the more frequent and intense the supervision and evaluation process should be. Frequent feedback in the first year is particularly important. Evaluations must be based on position descriptions.

10. Participant or Client Follow-ups

Regular ongoing contact with clients and family members can act as an effective deterrent to someone who might otherwise do harm or go undetected. It is important that volunteers are aware of any follow-up activities that may occur, including spot checks, which are a possibility in high-risk positions.

Section 5 Appendix P

Reprint and Contact Information

The entire High-Risk Offenders: A Handbook for Criminal Justice Professionals can be downloaded from the Solicitor General Canada website.

www.sgc.gc.ca

1. Click on language preference
2. Click on “Publications”
3. Click on “Corrections”
4. On the bookshelf, click on “2001”
5. Click on:
 “High-Risk Offenders: A Handbook for Criminal Justice Professionals”

It is anticipated that this handbook will be updated as the law and court decisions change existing conditions. Should you have any comments or observations about the handbook, or if you would like to see other information incorporated into future editions, please send your responses to the address below. Hardcopies of this report can be ordered by contacting:

Andrew Harris
Senior Research Officer
Corrections Directorate
Solicitor General Canada
340 Laurier Avenue West
Ottawa, Ontario K1A 0P8

Phone: (613) 991-2033
fax: (613) 990-8295
e-mail: harrisa@sgc.gc.ca