



## **CANADIAN ASSOCIATION OF POLICE BOARDS**

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### **BULLETIN!**

LEGISLATIVE UPDATE

24 October 2006

**C-27** An Act to amend the Criminal Code (dangerous offenders and recognizance to keep the peace)

### **MINISTER OF JUSTICE PROPOSES STRINGENT NEW RULES TO PROTECT CANADIANS FROM DANGEROUS AND HIGH-RISK OFFENDERS**

#### **Dangerous and High-Risk Offender Reforms**

The Honourable Vic Toews, Minister of Justice and Attorney General for Canada introduced Bill C-27 on October 17, 2006. The Bill is scheduled to receive second reading on October 24, 2006. According to the Government of Canada this piece of legislation represents significant and aggressive reforms to the *Criminal Code of Canada* in order to better manage and control Dangerous Offenders. The reforms include legislative and non-legislative measures that will serve to protect Canadian families and children from known individuals who are at a high risk to re-offend.

#### ***Protecting Innocent Canadians is Key***

In the recent past, Canadians have heard of known repeat offenders who have gone on to re-offend because laws have not been strong enough to stop them. The proposed reforms would strengthen the *Criminal Code of Canada* in two ways: by toughening the Dangerous Offender provisions, and creating much stricter Peace Bond provisions. There will be non-legislative measures, to be announced by the Minister of Public Safety, such as greater resources for the National Flagging System (NFS). The NFS was established as a method to manage released high-risk offenders no matter where they live in Canada.

A. Changes to Dangerous Offender legislation :

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The Dangerous Offender provisions, *Part XXIV* of the *Criminal Code of Canada*, are intended to protect all Canadians from the most dangerous and violent sexual predators in the country. These proposed reforms are aimed at achieving the objective of protecting innocent Canadians from future harm, by ensuring that the offender remains in prison until a risk no longer exists.

Under the reformed legislation:

- i. An individual will be presumed to meet the criteria for a Dangerous Offender designation when he or she gets a third conviction for a designated violent or sexual crime that is subject to a federal sentence of at least two years. A Dangerous Offender designation will not be automatic. The burden will be on the offender to explain why he or she should not be designated a dangerous offender. The judge retains discretion to refuse the application.
- ii. The current onus on the Crown to prove that the Dangerous Offender sentence is appropriate in the circumstances will be removed. This codification of the principle established in the 2003 decision of the Supreme Court of Canada in *R. v. Johnson* is an important reform that has the support of all provincial and territorial jurisdictions.
- iii. The time allowed for the filing of a psychiatric assessment will be extended to 30 days from 15 days, as well as allowing for an additional extension of 30 days. This addresses a procedural difficulty identified by all provincial and territorial jurisdictions.
- iv. The court now must hear a Dangerous Offender application if it is satisfied reasonable grounds exist for such a finding. This resolves a technical issue in the current provisions that had allowed courts to refuse to hear such an application.
- v. Following conviction of a third designated serious violent/sexual offence, the Crown must declare in open court whether it intends to bring a Dangerous Offender application. This will increase vigilance among provincial Crown prosecutors to pursue such applications when there are adequate grounds to do so.

The Dangerous Offender designation began in 1947 with legislation creating the “Habitual Offender” designation. Since then, the provisions have been amended a number of times. The most recent re-drafting took place in 1997.

#### B. Changes to Peace Bonds:

Section 810.1 and 810.2 peace bonds are preventative court orders requiring individuals of high risk to commit sexual and/or violent offences to agree to specific conditions to keep the peace. These instruments are available to police to protect the public before a criminal offence has been committed.

Under the reformed legislation:

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- i. The duration of s. 810.1/2 peace bonds will be extended to 24 from 12 months.
- ii. The peace bonds will clarify that a broad range of conditions regarding residency, electronic monitoring (where available) and treatment conditions can be imposed by the court to protect the general public from harm.

Peace bonds first appeared in the *Canadian Criminal Code* in 1892. In recent years, specialized forms of the section 810 peace bond have been created. In 1993, section 810.1 was added targeting individuals who police fear may commit a sex offence against someone 14-years-old and younger. Section 810.2 was created in 1997. This peace bond focuses on individuals that appear likely to commit violent or sexual offences. Both 810.1 and 810.2 are designed to be preventative and not punitive. It is not necessary for an offender to have committed a criminal offence in order for a judge to make an order against the individual. Breaches of peace bonds can result in up to two years' imprisonment.

### ***Current Legal Reforms and Long-Term Offenders***

As a further measure to protect Canadians, the Long-term Offender (LTO) designation will continue to be available to Crown prosecutors and courts. This was created in 1997 to primarily target sexual offenders, in response to concerns that many sexual and violent offenders required specific attention even though they did not meet the criteria for a Dangerous Offender. The Long-term Offender designation is given to individuals convicted of a "serious personal injury offence" who are likely to re-offend.

### ***Further Measures to Protect Canadians***

A series of non-legislative initiatives will be implemented by the Minister of Public Safety, to strengthen the base upon which these legal reforms will rest. A priority will be enhanced federal support for the National Flagging System (NFS) to ensure that it remains effective from coast to coast to coast.

The NFS is used by Crown Attorneys to help identify and track potential Dangerous Offenders, including sex offenders. This system is intended to ensure that, in cases where a prosecutor has indicated an offender has a likelihood of high and continuing risk of future violent conduct, other Crown prosecutors could be made aware of all available background information on that offender. This information better equips prosecutors in making appropriate decisions with regard to charges and prosecution strategy, including making a Dangerous Offender application.

Based upon information from a variety of sources, Provincial/Territorial National Flagging System Coordinators identify offenders who have a high likelihood of future violent and/or sexual re-offending. The offender's criminal record is flagged for future reference when the individual is before the courts on subsequent charges or recognizances. The provincial coordinators collate relevant background information on

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the offender and provide it to Crown Attorneys, who are responsible for initiating criminal proceedings against the individual.

The NFS was announced in 1995. It is operated by the RCMP on behalf of Canada's police services.

**CAPB Position:** The Canadian Association of Police Boards is reviewing the proposed legislation and will examine the possible economic impact for municipal police services to comply.