



RETURN TO WRITTEN QUESTION

Asked by: Adam Arreak Lightstone

Asked of: Hon. Jeannie Ehaloak, Minister of Justice

Number: 17 – 5(2)

Date: February 19, 2019

Subject: Child Abuse in Nunavut – Registered Sex Offenders

1. How many individuals are currently listed as registered sex offenders in Nunavut?

There are 619 offenders in National Sex Offender Registry (NSOR) from Nunavut.

2. How many individuals currently listed as registered sex offenders in Nunavut, and are convicted with a child sex offence?

There are 307 child sex offenders in NSOR for Nunavut.

3. What is the process for determining high-risk child sex offenders?

In 2016, the Government of Canada passed Bill C-26 “*Tougher Penalties for Child Predators Act*” which allows for information sharing with the Canada Border Services Agency (CBSA) about sex offenders considered to be high-risk to re-offend against children. The RCMP’s National High-Risk Sex Offender Program located in the Behavioural Sciences Branch in Ottawa has established a formal risk assessment process to determine if convicted child sex offenders are at a higher risk of committing sex offences against children. This process utilizes investigative techniques which can’t be disclosed.

Once a child sex offender is deemed to be at a higher risk, the National Sex Offender Registry Program in Ottawa informs the RCMP in Nunavut.

There is a separate process for determining if an offender is a dangerous offender. This process has been included as Appendix A as additional information.

4. How many individuals currently listed as registered sex offenders in Nunavut convicted with a Child sex offence, and listed as high-risk child sex offenders?

There are 4 individuals registered as sex offender's and convicted with a child sex offence in Nunavut.

5. Of the individuals that are currently listed as registered sex offenders in Nunavut, how many reside in Iqaluit both in correctional facilities and out of correctional facilities respectively?

Due to disclosure prohibitions in Section 16(4) of the *Sex Offender Information Registration Act* (SOIRA) and the risk of identifying registered sex offenders, the RCMP can't disclose the number of sex offenders in any particular community.

It is important to note here that identifying an offender can also identify their victim. In most cases, victims of sexual assault have their identities protected by court ordered publication bans.

6. Of the individuals that currently listed as registered sex offenders in Nunavut and have been convicted with a child sex offence, how many reside in Iqaluit both in correctional facilities and out of correctional facilities respectively?

Due to disclosure prohibitions in Section 16(4) of the SOIRA and the risk of identifying registered sex offenders, the RCMP can't disclose the number of sex offenders in any particular community.

7. Of the individuals that currently listed as registered sex offenders in Nunavut and have been convicted with a child sex offence and listed as high-risk child sex offenders, how many reside in Iqaluit both in correctional facilities and out of correctional facilities respectively?

Due to disclosure prohibitions in Section 16(4) of the *SOIRA* the risk of identifying registered sex offenders, the RCMP can't disclose the number of sex offenders in any particular community.

8. What conditions or court orders are placed on registered sexual offenders?

When a Court imposes a sentence on a person for a designated sex offence (see Section 490.011(1) of the *Criminal Code of Canada*), the Court issues an Order in Form 52 requiring the person to comply with the SOIRA for the duration of the Order.

The SOIRA imposes obligations on the registered sex offender that are listed in Sections 4(1) to 6(1).

These obligations include:

- Reporting in person to the local registration site (Nunavut RCMP Detachment) or any other registration site in the province or territory of the offender's main residence between 11 months and one year from your last annual registration date.
- Reporting in person or by other means as determined by the province or territory to a registration centre within 7 days after a change in the offender's main address or any secondary addresses (employment, education, volunteer etc.) and within 7 days after receiving a passport or driver's licence.
- Reporting in person or by other means as determined by the province or territory to a registration centre within 7 days after a change of the offender's given or surname (last name).

9. What conditions or court orders are placed on registered sexual offenders convicted of child sexual offences?

The Courts may impose, at their discretion, conditions under Section 161(1) of the criminal code if the victim is a person under the age of 16. These conditions are not part of the National Sex Offender Registry Program.

They include prohibiting the offender from:

- Attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground or community centre; (a.1) being within two kilometres, or any other distance specified in the order, of any dwelling-house where the victim identified in the order ordinarily resides or of any other place specified in the order;
- Seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years;
- Having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; or
- Using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court.

It is important to note that, although all the above mentioned conditions have been used at some point somewhere in Canada, it is likely that several of these conditions would be subject to a court challenge since they are overly restrictive and do not meaningfully reduce the risk.

10. What conditions or court orders are placed on registered sexual offenders convicted of child sexual offences and listed as high-risk child sex offenders?

A long term supervision order may be ordered subject to the conditions prescribed by s. 161.1 of the Criminal Code as follows:

- on release, the offender must travel directly to their place of residence, as set out in the release certificate respecting the offender, and report to their parole supervisor immediately and thereafter as instructed by the supervisor;
- the offender must remain at all times in Canada within the territorial boundaries fixed by the parole supervisor;
- the offender must obey the law and keep the peace;
- the offender must inform the parole supervisor immediately on arrest or on being questioned by the police;
- at all times, the offender must 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;
- the offender must report to the police if and as instructed by the parole supervisor;
- the offender may not own, possess or have the control of any weapon, as defined in s.2 Criminal Code, except as authorized by the parole supervisor;
- the offender must advise the parole supervisor of the following:
 - any change in their address of residence,
 - any change in their normal occupation, including employment, vocational or educational training and volunteer work,
 - any change in their domestic or financial situation and, on request of the parole supervisor, any change that the offender has knowledge of in the family situation of the offender; and
 - any change that may reasonably be expected to affect the offender's ability to comply with the conditions of parole or statutory release.

If 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.

Please refer to question 9 for additional information.

11. Is the public notified when registered sex offenders are released from correction facilities?

When a registered sex offender is released from a correctional facility in Nunavut, the Corrections division of the Department of Justice notifies the RCMP, Victim Services, and the victim of the sexual offence.

For offenders serving a sentence in a federal correctional facility, information is available through the Correctional Service Canada (CSC) as the offenders will be in their care prior to being released.

Under the *Corrections and Conditional Release Act*, a victim can apply for information notifications. Additional information about this application process is available at <https://www.csc-scc.gc.ca/victims/003006-0007-eng.shtml>

12. Are there extra precautions taken when releasing a high-risk sex offender from a correction facility?

When a registered sex offender is released from a correctional facility in Nunavut, the Corrections division of the Department of Justice notifies the RCMP, Victim Services, and the victim of the sexual offence. Please refer to question 11 for additional information.

13. What are the reporting requirements of registered sex offenders in Nunavut?

The SOIRA imposes obligations on registered sex offenders that are listed in Sections 4(1) to 6(1). These obligations are listed in the response to question 8.

14. What are the reporting requirements of registered sex offenders listed as high-risk child sex offenders in Nunavut?

Please refer to question 13.

15. How often are persons convicted of a sex offence required to provide updates for change addresses or legal name, employment or volunteer activity, and how is this enforced and verified?

Individuals convicted of a child sex offence who are under probation orders are required to notify their Community Corrections Officer for all cases concerning a change in address, legal name, employment or volunteer activity. Please refer to the response to question 8 for additional information.

16. How often are persons convicted of a sex offence and listed as high-risk child sex offenders required to provide updates for change addresses or legal name, employment or volunteer activity, and how is this enforced and verified?

Individuals convicted of a child sex offence who are under probation orders are required to notify their Community Corrections Officer for all cases concerning a change in

address, legal name, employment or volunteer activity. Please refer to the response to question 8 for additional information.

17. What penalties exist if sexual offenders do not meet the reporting requirements?

Failing to comply with reporting obligations is an offence under Section 490.031(1) of the Criminal Code. If an offender is found guilty they are liable of the following;

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

18. How often are the penalties for failing to comply with a registration order applied? Please provide the number of failures to comply for the last 5 fiscal years respectively.

There have not been any charges laid in Nunavut for offenders failing to comply with their SOIRA obligations, however; the RCMP is currently working on a compliance strategy for Nunavut. This strategy will focus on investigating offenders who are non-compliant and laying the appropriate criminal charges.

19. Are registered sex offenders required to inform the RCMP of any travel out of their listed community? If travel advisory is not required why not?

Please refer to the response to question 8.

Additional information regarding sexual offenders is available from:

Nunavut Sex Offender Information Registration Centre (NSOIRC)

960 Federal Rd

Bag 500

Iqaluit, NU X0A 0H0

(867) 975-4418

VDIV_NSOR@RCMP-GRC.GC.CA

Appendix A – Dangerous Offender Status

According to the Criminal Code, only offenders who stand convicted of, and are awaiting sentencing for, a "serious personal injury offence" can be made the subject of a dangerous offender application. Under s. 752 of our *Criminal Code* (CCC) a "**serious personal injury offence**" is defined as either:

- a. any offence, other than high treason, treason, first degree murder or second degree murder, that carries a maximum sentence of 10 years or more and that involved the use or attempted use of violence, conduct that endangered or was likely to endanger another's life or safety, or was likely to inflict severe psychological damage (a violent offence); or
- b. sexual assault (s. 271 CCC), sexual assault with a weapon, with threats to a third party, or causing bodily harm (s. 272 CCC), aggravated sexual assault (s. 273 CCC), or attempts to commit any of these offences.

Dangerous Offender Criteria: Before a court can find that an offender is a dangerous offender, it has to be satisfied that the offender meets one of the statutory sets of the behaviour criteria identified ins. 753(1) CCC:

- If the threshold offence was a violent offence, the dangerousness test requires that the prosecution show that the offender has demonstrated repetitive, persistent and/or brutal behaviour that is evidence that the offender is a threat to the lives, safety or physical or mental well-being of others.
- If the threshold offence was a sexual assault, the prosecution must satisfy the court that the offender has failed to control his sexual impulses and is likely to cause injury and pain to others as a result. Among the factors the court will consider:
 - the nature and circumstances of the offence;
 - any pattern of repetitive behaviour of which the offence forms a part;
 - the accused's current mental condition;
 - the past and expected course of the accused's treatment, including the accused's willingness to follow treatment; and
 - the opinions of experts who have examined the accused

An offender who gets a third conviction for a primary designated violent or sexual crime that should result in a sentence of at least two years is presumed to be a dangerous offender, if two previous convictions each resulted in a sentence of two years or more.

- **Notice of Intent:** When an offender is convicted of a third designated offence, the prosecution, at its earliest opportunity, must declare in open court whether it intends to make an application to have the offender remanded for an dangerous/long-term offender assessment under s. 752.01 of the Criminal Code.
- **Investigation:** The preparations for dangerous offender applications require the participation and investigative resources of police, prosecutorial and correctional authorities.

- **Assessment:** Before a dangerous offender application can be made, the prosecution has to apply to have the offender remanded in custody to have an assessment done by court-appointed experts. The experts are usually psychiatrists, other mental health professionals and/or correctional specialists. The *Criminal Code* allows up to 120 days for completion of the assessment process, which is often complex and labour intensive.
- **Hearing:** Dangerous offender applications are heard by a judge without jury. The responsible provincial/Territorial Attorney General has to consent to the dangerous offender application before the court will hear it however consent is not needed for an application to remand the offender for an assessment.
- **Notice of Grounds:** The prosecution has to give the offender an appropriate notice outlining the basis on which it is intended to found the application. The notice has to be given at least seven days before the hearing.
- **Presumption of Dangerousness:** The prosecution has the onus of satisfying the court that an offender meets the dangerous offender behaviour criteria, unless it can first satisfy the court that:
 - a. The offence for which the offender has just been convicted is a "primary designated offence" listed in Part XXIV of the *Criminal Code*;
 - b. it would be appropriate to sentence the offender to two years or more for that offence; and
 - c. the offender has, on at least two previous occasions, been sentenced to two years or more for "primary designated offences."

If the court is satisfied that these conditions are met, the offender is presumed to be a dangerous offender unless he/she can prove the contrary on a balance of probabilities:

- **Sentence:** Dangerous offenders are sentenced to indeterminate detention unless, as specified in the *Criminal Code*, the sentencing judge is satisfied that there is a "reasonable expectation" that the public can be protected against the offender committing murder or a serious personal injury offence by either:
 - a. a prison sentence of two years or more followed by up to ten years of long-term supervision, or
 - b. a regular sentence for the offence.