Public Safety and Emergency Preparedness Canada
Sécurité publique et Protection civile Canada

SENTENCE

Calculation

HOW DOES IT WORK?

Canada

A Message from the Minister

As Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness Canada, I am pleased to introduce this new edition of *Sentence Calculation: How does it Work?* To date, over 35,000 copies of this booklet have been distributed to the public and private sector organizations, including those serving victims.

In addition to answering basic questions about sentence calculation rules that apply to offenders serving penitentiary sentences, the updated booklet provides information about the *Sex Offender Information Registration Act,* the impact of Bill C-36 (the *Anti-Terrorism Act*) and Bill C-24 (*Organized Crime and Law Enforcement Legislation*) on parole eligibility, the effect of recent case law on the automatic revocation scheme and information about intermittent sentences.

Public Safety and Emergency Preparedness Canada, Correctional Service Canada and the National Parole Board are committed to improving public awareness and working in consultation with Canadians on issues relating to corrections, conditional release and public safety. This publication is a reflection of that commitment. I hope you find it informative.

A. Anne McLellan
Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness Canada

Introduction

Sentence calculation determines two things: the total length of the sentence length which an offender will be required to serve; at what point the offender will be eligible for parole and other forms of conditional release.

The framework for sentence calculation is found in the *Corrections and Conditional Release Act* (CCRA). Additional rules are also found in the *Criminal Code* and the *Prisons and Reformatories Act*.

This booklet explains the basic sentence calculation rules for offenders subject to penitentiary sentences. It also highlights the recent changes to sentence calculation introduced by Bill C-45 in 1996. It also briefly discusses two new changes to the *Criminal Code*: conditional sentences brought about through the passage of Bill C-41 in 1996 and the Long Term Offender Designation introduced by Bill C-55 in 1997.

The booklet also explains the effect of recent caselaw on the automatic revocation scheme and of Bill C-36, the *Anti-Terrorism Act*, and Bill C-24, *Organized Crime and Law Enforcement Legislation*, on parole eligibility. As well, it provides information on intermittent sentences and Bill C-16, the *Sex Offender Information Registration Act*.

It should be noted that principles of sentencing and how and when various sentences should be imposed are beyond the scope of this booklet.

More detailed information on sentence calculation is provided in *Sentence Calculation: a Handbook for Judges and Lawyers*. A free copy of the Handbook is available by contacting: Normand Payette, Public Safety and Emergency Preparedness Canada , 10th Floor – 340 Laurier Avenue West, Ottawa, Ontario, K1A 0P8, tel. (613) 991-2841, fax (613) 990-8295. This Handbook is also available on the Public Safety and Emergency Preparedness Canada internet site: *www.psepc.gc.ca*

Should you have further questions or wish to obtain any additional information about sentence calculation, a list of regional offices of the Correctional Service of Canada that may be contacted is provided at the end of this booklet.

I: What is the Difference Between Federal Penitentiaries (and Inmates) and Provincial Prisons (and Prisoners)?

The "two-year rule" refers to the federal-provincial jurisdictional split between sentences of two years or more and sentences less than two years. Sentences of two years or more are served in federal penitentiaries. Sentences of less than two years are served in provincial prisons. The federal *Prisons and Reformatories Act*, certain provisions of the *Corrections and Conditional Release Act* and relevant supporting provincial legislation apply in these provincial cases.

a) Applicable Laws

i) For a Penitentiary Sentence – Two Years or More

The *Criminal Code* and the *Corrections and Conditional Release Act* provide authority for the administration of penitentiary sentences of federal offenders. The *Corrections and Conditional Release Act* includes provisions outlining sentence calculation and the eligibility criteria for the various forms of conditional release. Parole eligibilities for lifers and Dangerous Offenders are set out in the *Criminal Code*.

ii) For a Prison Sentence – Up to Two Years Less a Day

Three federal statutes – the *Criminal Code*, the *Corrections and Conditional Release Act* and the *Prisons and Reformatories Act* – regulate aspects of provincial corrections and release of offenders from provincial prisons. In addition, each province has its own legislation for the management of its correctional operations.

(Note: Depending on the case, various sections within and among these various Acts must be read together to determine specific dates and time periods within a sentence.)

II: Multiple Sentences – Consecutive and Concurrent

Many offenders are serving sentences for more than one offence. It is the combination of multiple terms where sentence calculation is most complex. Offenders convicted of multiple offences are subject to consecutive sentences, concurrent sentences, or a combination of both.

a) What is a consecutive sentence?

Generally, consecutive sentences are separate sentences imposed for two or more offences that are to be served one after the other. The combined length of the sentences is the sum of the individual sentences added together. For example, an offender who receives sentences of 3 and 4 years to be served consecutively will serve a total sentence of 7 years.

b) What is a concurrent sentence?

Concurrent sentences are sentences imposed for separate offences which run at the same time. A concurrent sentence begins from the date it is imposed. Where concurrent sentences are imposed at the same time, the total time served by the offender for all the offences is the same as the longest individual sentence imposed. For example, when a court hands down on the same day concurrent sentences of 3 and 5 years, the total time served is 5 years.

Concurrent sentences include sentences with clear direction from the Court that the sentence is to be served "concurrently" and when no direction is given by the Court, i.e., sentence is "silent".

c) What is merger of sentences?

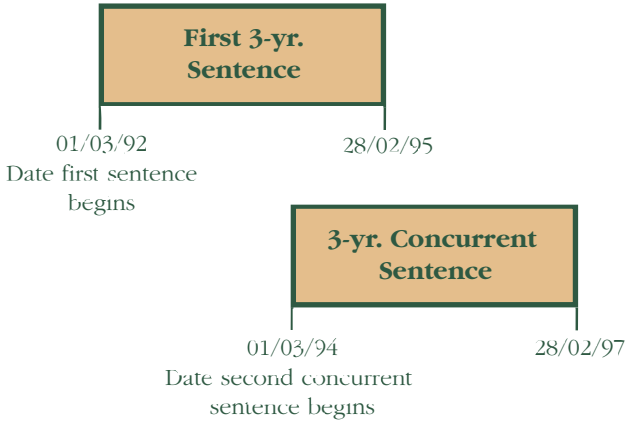
Where an offender who is serving a custodial sentence receives another custodial sentence, the old and new sentences are combined and become one sentence. The merged sentence begins from the date of imposition of the first of the sentences to be served and ends on the date of expiration of the last of them to be served.

The merged sentence serves as the basis for calculating the warrant expiry date (the end of the sentence) and conditional release eligibility dates within the sentence, including day and full parole eligibility, temporary absences and statutory release, and warrant expiry dates.

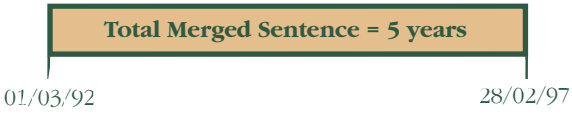
d) Examples of an original sentence merged with a concurrent and a consecutive sentence

i) Concurrent Sentence

Suppose that an offender is subject to a 3 year sentence which began on March 1, 1992. Two years later (March 1, 1994) he or she receives a 3 year sentence to be served concurrently with the first. The two sentences are combined to form a total sentence of 5 years which begins on March 1, 1992, (the start date of the first of the sentences to be served) and ends on February 28, 1997 (the expiration date of the last of the sentences to be served). In this case, the sentences run at the same time.

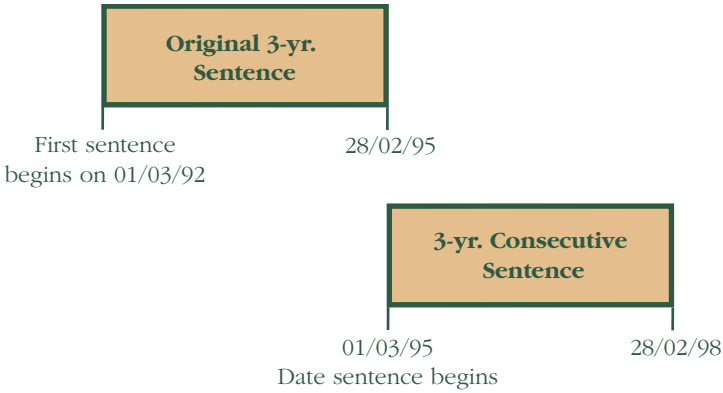


The offender is now serving a total merged sentence of 5 years beginning on March 1, 1992 and ending on February 28, 1997.

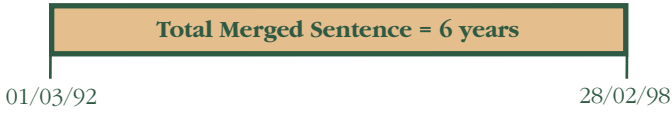


ii) Consecutive Sentence

Suppose instead in this scenario that the second 3 year sentence is to be served consecutively to the first. Then the first and second sentences are added to form a total sentence of 6 years which begins on March 1, 1992, (the start date of the first of the sentences to be served) and ends on February 28, 1998 (the expiration date of the last of the sentences to be served). Both sentences are served back-to-back with the second sentence having a start date of March 1, 1995 and an end date of February 28, 1998.



The offender is now serving a total merged sentence of 6 years beginning on March 1, 1992 and ending on February 28, 1998.



III: What are the different forms of conditional release and when can a federal offenders apply for them?

a) Work Release

Work release is a release program allowing a penitentiary inmate to work for a specified duration in the community on a paid or voluntary basis while under supervision. Generally, an inmate is eligible for work release when he or she has served one-sixth of the sentence or six months, whichever is greater. The institutional head has authority to grant a work release of up to a maximum period of 60 days under specified conditions which always include supervision.

Correctional authorities grant work release to carefully selected inmates who perform work and services of benefit to the community such as painting, general repairs and maintenance of community centers or homes for the aged. Work release is one of the first steps in the safe gradual reintegration of offenders into society.

b) Temporary Absence

Temporary absences include both occasional and a series of releases intended to safely return inmates to the community on a temporary basis for specific purposes.

Temporary absences are granted for one of the following reasons: medical, administrative, community service, family contact, personal development for rehabilitative purposes or compassionate reasons (such as to attend a funeral).

i) Escorted Temporary Absence (ETA)

An ETA is a short-term release to the community under escort. Most inmates are eligible for such an absence at any time during the sentence. The duration of an ETA varies from an unlimited period for medical reasons to not more than 15 days for any other specified reason. The institutional head may authorize an ETA. In certain instances involving lifers, National Parole Board (NPB) approval is required.

For example, ETAs are granted to allow inmates to obtain treatment that is unavailable in penitentiary, to attend critically ill family members and to prepare for other types of conditional release. An inmate may be granted a ETA to meet with the staff of the community residential centre where he or she wishes to reside and confirm employment as part of his or her release plan.

ii) Unescorted Temporary Absence (UTA)

A UTA is a short-term release to the community without an escort. Most inmates in the penitentiary system are eligible for UTAs at one-sixth of the sentence or six months into the sentence, whichever is later. However, lifers and inmates with indeterminate sentences are not eligible for UTAs until three years before their full parole eligibility date. Any inmate classified as maximum security is not eligible for a UTA.

A UTA can be for an unlimited period for medical reasons and for a maximum of 60 days for specific personal development programs. UTAs for community service or personal development can be for a maximum of 15 days, up to three times per year for a medium security inmate, or four times per year for a minimum security inmate. The duration of other types of UTAs ranges from a maximum of 48 hours per month for a medium security inmate to 72 hours per month for a minimum security inmate.

The NPB, the Commissioner of Corrections and the institutional head have authority to grant UTAs in specified circumstances.

c) Parole

Parole is a form of conditional release which allows some offenders to serve part of their sentence in the community, provided they abide by certain conditions. Because most offenders will be released eventually, the best way to protect the public is to help offenders reintegrate into society through a gradual and supervised release.

Parole is a privilege rather than a right and NPB has discretion whether or not to grant parole. In determining whether to grant parole, Board members carefully review information provided by victims, the courts, correctional authorities and the offender. In arriving at a decision, the Board considers a number of factors, but above all the protection of society.

There are two types of parole: day parole and full parole.

i) Day Parole

Day parole is more limited than full parole in that it requires the offender to return to the institution or halfway house each evening unless otherwise specified by NPB.

The eligibility date for applying for day parole is also earlier than for full parole. Most federal inmates can apply for day parole at either six months into the sentence or six months before full parole eligibility, whichever is later. Day parole is normally granted up to a maximum of six months. Lifers (for first and second degree murder) and inmates serving indeterminate sentences are eligible three years prior to the full parole eligibility date.

Day parole provides inmates with the opportunity to participate in community-based activities to prepare for full parole or statutory release.

ii) Full Parole

Full parole is a conditional release which allows an offender to serve the remainder of a sentence in the community. It is the culmination of an offender's gradual, structured and controlled release program. Under this form of release, an offender may live with his or her family and continue to work and contribute to society. Although no longer required to return to the institution, the offender remains under supervision and must continue to abide by certain conditions.

Generally, an inmate serving a definite sentence is eligible for full parole at one-third of the sentence or seven years, whichever is less.

d) Accelerated Parole Review

"Accelerated review" provides a streamlined process of review of the cases of first-time penitentiary offenders for day parole and full parole. This means that the National Parole Board will direct release under day parole at 6 months or one-sixth of the sentence, whichever is longer, and full parole at one-third of the sentence. This is only done when, after careful review of a case, the NPB is not convinced that an offender will commit a violent offence listed in Schedule I of the *Corrections and Conditional Release Act* before the expiry of his or her sentence.

It is important to note that not all first-time offenders are eligible for accelerated review. The National Parole Board will exclude from its review offenders serving a sentence for murder or for being an accessory after the fact to murder, other life sentences, a Schedule I (personal injury) offence, an offence for attempting to commit a Schedule I offence, or a Schedule II (serious drug) offence where an order has been made for parole eligibility at one-half of the sentence. Moreover, offenders serving a sentence for a criminal organization offence or a terrorism offence or whose day parole has been revoked are also not eligible for accelerated review.

e) Statutory Release

As a general rule, an inmate is legally entitled to be released into the community at two-thirds of the sentence. Similar to parole, offenders on statutory release serve the remaining third of their sentence in the community under supervision, provided they abide by certain conditions.

However, not all inmates are entitled to statutory release. Those who are excluded from this form of release are lifers, inmates serving indeterminate sentences, inmates detained to warrant expiry by NPB following a detention hearing, and inmates for whom NPB has imposed one-chance statutory release or lifted their detention orders and their statutory release has been subsequently revoked.

f) Detention

Upon a referral by the Correctional Service of Canada, the National Parole Board reviews for detention the case of any offender serving a sentence of two years or more that was imposed for an offence listed in Schedule I (personal injury) or II (serious drug) of the *Corrections and Conditional Release Act*. Moreover, the Board reviews for detention the case of any offender about whom the Commissioner of Corrections believes that the offender will (before the end of sentence) commit an offence that causes death or serious harm, a sexual offence involving a child, or a serious drug offence.

If satisfied that if the offender is released in the community, he or she is likely to commit before end of sentence an offence that causes death or serious harm, a sexual offence involving a child or a serious drug offence, the Board may order the offender detained until the expiry of the sentence.

If the Board is not satisfied as above, but is satisfied that at the time of the review the offender was serving a scheduled offence and that, in the case of a Schedule I offence, it caused death or serious harm or was a sexual offence involving a child, the Board may order that the offender be released on "one-chance" statutory release. This means that should the offender's release be revoked the offender will not be entitled to statutory release for the rest of the sentence.

If the Board is not satisfied the offender warrants detention or "one-chance" statutory release, the offender is released on statutory release. However, the Board may require, as a condition of the statutory release that the offender reside in a designated facility such as a community correctional centre.

The Board reviews the cases of detained offenders annually. At that review, the Board may confirm their previous order to detain the offender or the Board may cancel the order and allow the offender to be released on statutory release with or without a condition to reside in a community based facility. This release could also be made subject to the "one-chance" rule.

g) Long Term Offender Designation

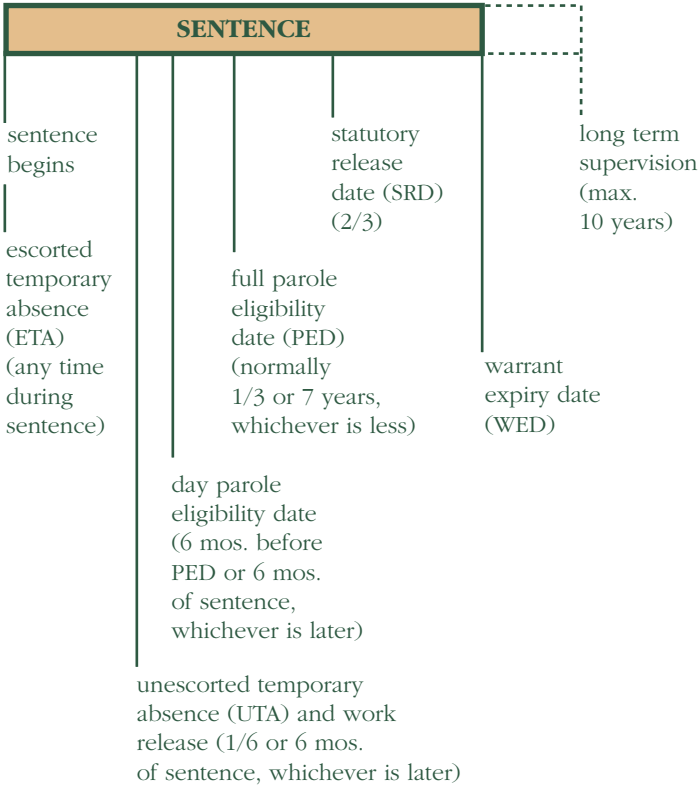
Bill C-55, which came into force in August 1997, added a new sentencing category to the Criminal Code called Long Term Offender. The procedure is similar to the Dangerous Offender process. The procedure applies primarily to offenders convicted of sexual offences such as sexual assault, sexual interference, invitation to sexual touching, sexual exploitation, exposure, aggravated sexual assault and sexual assault with a weapon or causing bodily harm. The procedure is also applicable to an offender who committed another offence with a sexual component: for example, break and enter with the intent of sexually assaulting the occupant.

An offender designated as a Long Term Offender at a special sentencing hearing will be sentenced to a penitentiary sentence and a period of long term supervision of up to a maximum of ten years which starts when the period of incarceration, including parole, expires. A court can impose long term supervision where in its judgement the risk presented by the offender can be managed in the community through appropriate supervision.

Every Long Term Offender is subject to standard conditions such as keeping the peace. Specialized conditions can be added to ensure close supervision of the offenders such as electronic monitoring and mandatory participation in counselling. The Correctional Service of Canada provides the supervision.

IV: Overview Of Eligibility Dates

The following graph presents the points in the definite sentence where an offender would normally be eligible for conditional release and subject to long term supervision:



V: How is parole eligibility determined when an offender is subject to a single and then multiple sentences?

a) Single Sentence

The parole eligibility date (PED) is normally one-third of a definite sentence or 7 years, whichever is less. For example, an offender serving a 3 year sentence would be eligible for parole 1 year after the date of imposition of the sentence.

b) Multiple Sentence

Where multiple sentences merge, eligibility dates are determined (re-calculated) on the basis of the new single sentence.

However, Bill C-45 introduced two important rules regarding the imposition of additional sentences. First, an offender who receives a new consecutive sentence will have that sentence merged with the current sentence. Before becoming eligible for parole, the offender must serve, from the date of imposition of the new sentence, the remaining parole ineligibility period on the existing sentence **plus** a period equal to the parole ineligibility period of the new sentence.

Second, although under Canadian law, any sentences imposed in addition to a life or indeterminate sentence must be concurrent rather than consecutive, the principle of adding parole ineligibility periods now also applies where a lifer receives an additional definite sentence. This ensures that receipt of a new sentence has a direct impact on the offender's parole ineligibility period. However, the parole ineligibility periods may only be added to a maximum of 15 years from the date of the last sentence imposed.

Detailed information and illustrations of the various combinations of consecutive and concurrent sentences and their impact on parole eligibility are provided in *Sentence Calculation: a Handbook for Judges and Lawyers*.

c) Automatic Revocation and Recent Case Law

The *Corrections and Conditional Release Act* provides that an offender on parole or statutory release who receives a new custodial sentence for an offence against a federal statute will be automatically revoked and returned to custody. However, in 2001, the Supreme Court of British Columbia held that the automatic revocation of an offender's statutory release without a hearing is a violation of section 7 of the *Canadian Charter of Rights and Freedoms*.

Accordingly, as of December 19, 2001, offenders sentenced to imprisonment while on parole or statutory release are no longer subject to automatic revocation. Offenders receiving new sentences while on parole or statutory release are now dealt with under the usual suspension and revocation provisions of the Act. The offender's parole or statutory release can be suspended under the Act. If so, a hearing is held and the National Parole Board decides whether to revoke the release. In some circumstances, an offender's release may be directly revoked. Where this occurs, the Board will provide the offender with an opportunity to appear at a hearing. After the hearing the Board will decide whether to confirm the revocation.

d) Where there is no Revocation of Parole or Statutory Release

Where the Board does not revoke or terminate an offender's current parole, but the offender's re-calculated parole eligibility date is set in the future, the parole becomes inoperative and the offender will be returned to custody. For example, this would occur where an offender released on parole at the start of the second year of a 3 year sentence receives a additional concurrent sentence of 8 years. The two sentences would be combined to form a total sentence of 9 years. Parole eligibility would be at one-third or 3 years from the date of imposition of the first sentence, but the offender is only at the beginning of year two (12 months into his or her sentence). Thus, the parole eligibility date would be placed 2 years in the future. The offender would have to re-apply for parole at the new eligibility date.

Suppose instead in this scenario that the offender was on statutory release at the beginning of the third year when an additional concurrent sentence of 4 years was imposed. The two sentences would be combined to form a total sentence of 6 years. The offender's statutory release date would be placed 2 years in the future and he or she would be returned to custody. The statutory release would become inoperative for 2 years and would recommence after that period, unless the National Parole Board revoked or terminated the statutory release before that time.

e) When can a judge set parole eligibility at one-half of the sentence for offences?

Where an offender is sentenced to two years or more for a personal injury or serious drug offence listed in Schedules I and II of the *Corrections and Conditional Release Act* or for a criminal organization offence, other than those in sections 467.11 to 467.13 of the *Criminal Code*, and prosecuted by indictment, the Court may order that the offender serve one-half of the sentence or 10 years, whichever is less, before being eligible for parole.

As of January 2002, where the offender is convicted of a criminal organization offence under section 467.11, 467.12 or 467.13 of the *Criminal Code*, the court **"shall"** order that the offender serve one-half of the sentence or 10 years, whichever is less, before being eligible for parole -unless satisfied that the standard parole eligibility period would be adequate having regard to the circumstances of the offence and the offender, the character of the offender, and the sentencing objectives of denunciation and deterrence. The same rule applies to offenders convicted for a terrorism offence.

f) What is the effect of revocation on parole eligibility or entitlement to statutory release when no new sentence has been imposed?

On revocation of parole or statutory release, the offender is recommitted to custody. If the offender was on parole and no new sentence has been imposed, the offender's parole eligibility date remains unchanged. However, the offender must re-apply for parole, and his or her previous failure will be given careful consideration. If the offender was on statutory release, the offender is not again entitled to statutory release until after serving two thirds of the remaining portion of the sentence. The offender whose parole has been revoked wishing to be released on statutory release again must also serve two thirds of the remaining sentence before becoming entitled.

VI: What is a Conditional Sentence?

The conditional sentence was introduced in September 1996 with the passage of Bill C-41. Under this new scheme, the court may order that an offender serve his or her sentence in the community where it imposes a term of imprisonment of less than two years (but not a minimum sentence imposed for offences such as drunk driving) and is satisfied that the safety of the community would not be endangered. In addition to compulsory conditions set out in the *Criminal Code*, the court may impose conditions that it considers necessary to secure the good conduct of the offender.

In the event of a breach of a condition, the court can terminate the conditional sentence order and direct the offender to serve all or part of the balance of the sentence in custody. Provincial correctional authorities provide the supervision.

VII: What is an Intermittent Sentence?

Subsection 732(1) of the *Criminal Code* allows the court to impose an intermittent sentence of up to 90 days which is usually served on weekends "having regard to the age and character of the offender, the nature of the offence and the circumstances surrounding its commission, and the availability of appropriate accommodation to ensure compliance with the sentence." When the offender is not in custody, he or she is subject to the conditions of a probation order.

Where an offender serving an intermittent sentence receives a sentence of imprisonment for another offence, the unexpired portion of the intermittent sentence is collapsed and served on consecutive days, unless the court orders otherwise.

VIII: What Does *the Sex Offender Information Registration Act* Do?

Bill C-16, the *Sex Offender Information Registration Act* (SOIRA), which came into force on December 15, 2004, establishes authority for the creation of a national database of convicted sex offenders to be maintained by the RCMP for the exclusive use of police for the investigation of crimes of a sexual nature. The registry is designed to be searchable by local police by specific criteria (i.e. geographical area, postal code area, physical attributes of offender, etc.), producing instant lists of previously convicted suspects matching the facts of a specific offence.

The SOIRA will allow police to determine whether convicted sex offenders reside in the vicinity of the offence, to determine who they are and where they reside, and to decide if further investigation is warranted or if they can be eliminated as suspects.

An offender convicted or found not criminally responsible on account of mental disorder for certain designated sex offences must report to a registration centre (for example, a police station) within fifteen days of being sentenced or released from custody and provide key information, including his or her home, secondary and employment address. The offender is required to re-register annually or fifteen days after any change of name or address.

Registration is possible for those offenders who are subject to a sentence for a prescribed offence that is sexual in nature as of the date of proclamation, namely December 15, 2004. Registration of offenders eligible for this retrospective scheme is triggered by the provincial Attorney General causing personal service

to be effected on those offenders. Offenders who are served have one year to apply to a Court for an exemption from the obligation to register under the SOIRA. These offenders are required to register at a registration centre where they do not apply to the Court for an exemption within a one-year period or the Court decides not to exempt them from registration. Registration must occur within fifteen days from the day the one-year period has expired or from the day of the Court's decision not to exempt the offender.

Sex offenders are required to remain registered for one of three periods; these periods are geared to the maximum penalty available for the offence of which they were convicted and begin to run on the date of sentencing: **10 years** for summary conviction offences and offences with 2 and 5 year maximums; **20 years** for offences carrying a 10 or 14 year maximum sentence, and **lifetime** for offences with a maximum life sentence or when there is a prior conviction for a sex offence.

As a rule, offenders are eligible to make an application to the Court for a termination order not before 5 years for orders lasting 10 years, 10 years for orders lasting 20 years and 20 years for lifetime orders. If more than one order is made against an offender, he or she may make an application no earlier than 20 years after the most recent order was made. Offenders are also entitled to apply for a termination order after receiving a pardon under the *Criminal Records Act*.

Sex offender information will remain on the database indefinitely except for final acquittal on appeal or free pardon under the Royal Prerogative of Mercy, section 748 of the *Criminal Code* or an exemption order under subsection 490.023(2) of the *Criminal Code* – in these cases information is permanently removed.

IX: Contacts for obtaining further information

For further information, please contact sentence administration staff at the following Correctional Service of Canada (CSC) locations.

National Headquarters

Gilles Broué
Sir Wilfrid Laurier Building
340 Laurier Avenue West
Ottawa, Ontario K1A 0P9
Phone: (613) 996-7279

Regional Headquarters

Pacific Region

Marlene McLean
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