



GOVERNMENT OF BERMUDA
The Ministry of Legal Affairs

Ministry Headquarters

By email: sstrangeways@royalgazette.com

December 20, 2016

Ms. Samantha Strangeways
The Royal Gazette
P. O. Box HM 1025
Hamilton HM DX

Dear Ms. Strangeways:

Re: PATI Request - 17/11/16

Further to your (Public Access to Information Act 2010) inquiry, please find the attached document entitled '**Government of Bermuda Ministry of Justice Attorney-General's Chambers Protocol on The Disclosure of Information Identifying Sex Offenders**'. The document is dated November 22, 2008 and was established by a former Attorney General around that date.

Please also see the attached related Ministerial Statement by Senator the Hon. Kim N. Wilson dated July 18, 2012.

The following additional attachments are also in accordance with your request:

- Favorite Techniques for Engaging Sex Offenders in Treatment
- Draft 'Protocol' document; and
- Acknowledgement of Notification Under Section 329G Criminal Code Act 1907 – Form

I trust that this satisfies your inquiry.

Sincerely,

Rosemary Tyrrell
Permanent Secretary

Encls.



GOVERNMENT OF BERMUDA
Ministry of Justice

Attorney-General's Chambers

**PROTOCOL ON THE DISCLOSURE OF
INFORMATION IDENTIFYING SEX OFFENDERS**

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1. INTRODUCTION

The Minister of Justice is empowered by section 329H of the Criminal Code Act 1907 ("the Criminal Code") to issue a Protocol governing the disclosure of information in relation to sex offenders who are considered to present a risk of significant harm to the health and safety of the public, an affected group of people or an individual.¹

In this context, "sex offender" means a person convicted of any one or more of the following offences (all references are to the Criminal Code as in effect at the date of this Protocol):—

- (a) carnal knowledge of a girl under 14 (section 180);
- (b) carnal knowledge of a girl between 14 and 16 (section 181);
- (c) sexual exploitation of a young person (section 182A);
- (d) sexual exploitation of a young person by a person in a position of trust (section 182B);
- (e) incest by a male person (section 191);
- (f) incest by a woman (section 192);
- (g) indecent acts in public or with intent to offend (section 197);
- (h) indecent act involving children (section 198);
- (i) sexual assault (section 323);
- (j) sexual assault by a person with AIDS etc. (section 324);
- (k) serious sexual assault (section 325);
- (l) aggravated sexual assault (section 326);
- (m) showing child abusive material, child pornography or offensive material to a child (section 182C);
- (n) use of children in the production of child abusive material or child pornography (section 182D);
- (o) luring of a child (section 182E);
- (p) making, distributing, etc. of child abusive material or child pornography (section 182F);
- (q) possession of child abusive material or child pornography (section 182G);
- (r) accessing of child abusive material or child pornography (section 182H).

The Minister may amend this list by secondary legislation should it become necessary to do so, but the list shown here is current at the date of this Protocol.

¹ Criminal Code Act 1907, section 329H, as inserted by the Criminal Code Amendment (No 2) Act 2000, section 2, effective from 29 October 2001

This Protocol is not intended to lay down hard and fast rules for disclosure of information. As is explained below, this is an exercise that needs to be approached on a case-by case basis, and this document is intended to preserve the flexibility that is required whilst at the same time giving an indication of the factors that will be taken into consideration in dealing with requests for information or making disclosure in the public interest.

This Protocol does not purport to affect the disclosure of information as between different Departments or Ministries within the Government of Bermuda. There should be full and frank disclosure of all relevant information between the various Departments and Ministries affected by any case falling within this Protocol.

2. CONSIDERING DISCLOSURE

2.1 The Starting Point

In *R v Chief Constable of North Wales Police Area Authority, ex parte AB and CD*², it was accepted that the Common Law position was that disclosure of information about sex offenders should be guided by three important principles:—

- (i) There is a general presumption that information should not be disclosed, because of
 - (a) the potentially serious effect on the ability of the convicted person to live a normal life;
 - (b) the risk of violence to the offender;
 - (c) the risk that disclosure might drive the offender underground;
- (ii) There is a strong public interest in ensuring that information about offenders can be disclosed where that is necessary for the prevention or detection of crime, or for the protection of young or other vulnerable people;
- (iii) Each case should be considered carefully on its particular facts, assessing the risk posed by the individual offender, the vulnerability of those who may be at risk; and the impact of disclosure on the offender.

The law in Bermuda has been drafted with these concerns in mind. If consideration is being given to disclosing information about a convicted sex offender, the starting point will be the assessment conducted on behalf of the Commissioner of Prisons and the court under section 329E(2) of the Criminal Code. Disclosure cannot be made unless that assessment concludes that the offender presents a *risk of significant harm to the health and safety of the public, an affected group of people or an individual*. It follows that this assessment must

² [1997] EWHC Admin 667, per Lord Bingham CJ at paragraphs 24 - 30

be available to the Minister when considering whether or not to make a disclosure under section 329H.

2.2 Should Disclosure be made?

If the offender is considered to pose such a risk, the next question to be answered is "should any disclosure be made?" The Minister will decide this on a case-by-case basis, but lists here the factors that will be taken into account. It must be emphasised in relation to this and the succeeding paragraphs that no one factor is conclusive, the Minister will arrive at a balanced decision based on the presence or absence of these factors and will attach such weight to each of them as he or she deems appropriate.

The Minister will consider:—

- (i) If a request for disclosure is made soon after conviction, whether the offender is appealing against conviction;
- (ii) The seriousness of the risk posed by the offender;
- (iii) Whether the offender is a risk to a particular person, group of persons or the community at large;
- (iv) Whether any persons at risk are not in Bermuda;
- (v) Whether there is any likelihood of the offender discovering their whereabouts;
- (vi) Whether there is any likelihood of the offender being able to travel to where the person(s) at risk is/are;
- (vii) The physical health of the offender;
- (viii) The health of the persons at risk;
- (ix) The impact of the disclosure on person(s) at risk;
- (x) What use will the persons to whom information is disclosed make of that information

2.3 To whom should disclosure be made?

If as a result of the exercise referred to in paragraph 2.2, it is decided that disclosure should be made, the next issue to be decided is to whom should disclosure be made. To a very great extent, the consideration in paragraph 2.2 will determine who should be told about the offender, although there may be circumstances where, as a result of the weight attached to a particular factor, the Minister decides on a wider or narrower disclosure than might otherwise be expected.

2.4 What information will be disclosed?

Generally speaking, the information that will be disclosed will depend on the purpose for which disclosure is made. Where there is a risk that the offender could come into contact with vulnerable persons, the disclosure may be more extensive than to a prospective employer based in a remote location. For example, the disclosure to the principal of a school that a convicted sex offender resides within, say, half a mile of the school, will normally include the offender's name, any alias that may be used, nature of offence, factors of concern, age, race, sex, date of birth, height, weight, hair and eye colour, home address, any current temporary address, location of employment, vehicle make, model, colour,

licence plate number and photograph. In each case, the nature and extent of the disclosure will be a matter for the Minister's judgement.

2.5 Consultation with the Commissioner of Police

The Minister is required before notifying anyone of information regarding a sex offender to consult with the Commissioner of Police.³ In practice it is envisaged that the Bermuda Police Service will be heavily involved in providing the Minister with the information and assessments mentioned in paragraphs 2.2 and 2.4, and the formal consultation may involve no more than an exchange of letters. In more complicated cases, the consultation may need to be more extensive.

3. MAKING DISCLOSURE

How information is disclosed will very much depend upon the reason for the disclosure. If individuals are to be notified, it will normally be the practice for an officer of the Bermuda Police Service to visit them by prior appointment at their home or place of work and for any documented information to be handed over in a face-to face meeting. Where a group of people have to be informed, best practice suggests that they be invited to a private face to face meeting with one or more officers, preferably in reasonably neutral but secure surroundings. Notification to the public at large would normally be undertaken through the broadcasting and/or print media, although much would depend upon the particular circumstances in which a disclosure to the public at large was contemplated.

³ Criminal Code, s. 329H(4)



GOVERNMENT OF BERMUDA
Ministry of Justice

Ministerial Statement

by

**Senator the Hon. Kim N. Wilson, JP
Attorney-General and Minister of Justice**

Sex Offenders Register

Wednesday, 18th July, 2012

Madam President, there has been much discussion in the public domain regarding the establishment of a sex offenders register and the disclosure of information pertaining to same. As this is an extremely sensitive issue that by its very nature gives rise to emotive debate, it is imperative that the public is correctly informed of the law and the protocol with respect to the disclosure of information about convicted sex offenders.

Madam President, whilst historically there have been demands from some segments of the community for a US styled sex offenders register in the wake of convictions for sexual offences, Bermuda's laws, which are modeled on UK law, do not allow for the establishment of such a register.

Further **Madam President**, contrary to media reports that I have been working with several interest groups to establish a protocol for the release of information, the protocol for the release of information about convicted sex offenders has been long established and was issued by me in 2009 as Minister of Justice, to the Bermuda Police Service.

Madam President, with regard to the law governing this subject matter, at present, the Minister of Justice is empowered by section 329H of the Criminal Code Act 1907 ("the Criminal Code") to issue a Protocol governing the disclosure of information in relation to sex offenders who are considered to present a risk of significant harm to the health and safety of the public, an affected group of people or an individual.

In this context, “sex offender” means a person **convicted** of any one or more of the following offences: –

- (a) carnal knowledge of a girl under 14 (section 180);
- (b) carnal knowledge of a girl between 14 and 16 (section 181);
- (c) sexual exploitation of a young person (section 182A);
- (d) sexual exploitation of a young person by a person in a position of trust (section 182B);
- (e) incest by a male person (section 191);
- (f) incest by a woman (section 192);
- (g) indecent acts in public or with intent to offend (section 197);
- (h) indecent act involving children (section 198);
- (i) sexual assault (section 323);
- (j) sexual assault by a person with AIDS etc. (section 324);
- (k) serious sexual assault (section 325);
- (l) aggravated sexual assault (section 326);
- (m) showing child abusive material, child pornography or offensive material to a child (section 182C);

- (n) use of children in the production of child abusive material or child pornography (section 182D);
- (o) luring of a child (section 182E);
- (p) making, distributing, etc. of child abusive material or child pornography (section 182F);
- (q) possession of child abusive material or child pornography (section 182G);
- (r) accessing of child abusive material or child pornography (section 182H).

Madam President, as Minister of Justice, I may amend this list by secondary legislation should it become necessary to do so, but the list is current at the date of this Protocol.

Madam President, this Protocol is not intended to lay down hard and fast rules for disclosure of information. As is explained below, this is an exercise that needs to be approached on a case-by case basis, and this document is intended to preserve the flexibility that is required whilst at the same time giving an indication of the factors that will be taken into consideration in dealing with requests for information or making disclosure in the public interest.

This Protocol does not purport to affect the disclosure of information as between different Departments or Ministries within the Government of Bermuda. There should be full and frank disclosure of all relevant information between the various Departments and Ministries affected by any case falling within this Protocol.

Madam President, with regard to the starting point for considering disclosure, in *R v Chief Constable of North Wales Police Area Authority, ex parte AB and CD*, it was accepted that the Common Law position was that disclosure of information about sex offenders should be guided by three important principles:-

- (i) There is a general presumption that information should not be disclosed, because of
 - (a) the potentially serious effect on the ability of the convicted person to live a normal life;
 - (b) the risk of violence to the offender;
 - (c) the risk that disclosure might drive the offender underground;

- (ii) There is a strong public interest in ensuring that information about offenders can be disclosed where that is necessary for the prevention or detection of crime, or for the protection of young or other vulnerable people;
- (iii) Each case should be considered carefully on its particular facts, assessing the risk posed by the individual offender, the vulnerability of those who may be at risk; and the impact of disclosure on the offender.

The law in Bermuda has been drafted with these concerns in mind. If consideration is being given to disclosing information about a convicted sex offender, the starting point will be the assessment conducted on behalf of the Commissioner of Prisons and the court under section 329E(2) of the Criminal Code. Disclosure **cannot** be made **unless** that assessment concludes that the offender presents *a risk of significant harm to the health and safety of the public, an affected group of people or an individual*. It follows that this assessment **must** be available to the Minister when

considering whether or not to make a disclosure under section 329H.

Madam President, if the offender is considered to pose such a risk, the next question to be answered is “should any disclosure be made?” The Minister will decide this on a case-by-case basis, but there are specific factors that will be taken into account. It must be emphasised in relation to this and the succeeding paragraphs that no one factor is conclusive, the Minister will arrive at a balanced decision based on the presence or absence of these factors and will attach such weight to each of them as he or she deems appropriate.

The Minister will consider: —

- (i) If a request for disclosure is made soon after conviction, whether the offender is appealing against conviction;
- (ii) The seriousness of the risk posed by the offender;
- (iii) Whether the offender is a risk to a particular person, group of persons or the community at large;
- (iv) Whether any persons at risk are not in Bermuda;

- (v) Whether there is any likelihood of the offender discovering their whereabouts;
- (vi) Whether there is any likelihood of the offender being able to travel to where the person(s) at risk is/are;
- (vii) The physical health of the offender;
- (viii) The health of the persons at risk;
- (ix) The impact of the disclosure on person(s) at risk;
- (x) What use will the persons to whom information is disclosed make of that information

Madam President, under section 329H(2) of the Criminal Code, the Minister may elect to give:

1. no notification;
2. notification of a specified group of persons;
3. notification of a specified individual;
4. notification to the public.
5. Notification may include such identifying information (including a photograph of the sex offender) as the Minister may determine.

In addition, before determining to give any notification in accordance with the protocol in relation to a particular sex offender the Minister shall consult with the Commissioner of Police.

Madam President, if it is decided that disclosure should be made, the next issue to be decided is to whom should disclosure be made. To a very great extent, the considerations previously outlined will determine who should be told about the offender, although there may be circumstances where, as a result of the weight attached to a particular factor, the Minister decides on a wider or narrower disclosure than might otherwise be expected.

Madam President, generally speaking, the information that will be disclosed will depend on the purpose for which disclosure is made. Where there is a risk that the offender could come into contact with vulnerable persons, the disclosure may be more extensive than to a prospective employer based in a remote location. For example, the disclosure to the principal of a school that a convicted sex offender resides within, say, half a mile of the school, will normally include the offender's name, any alias that may be used, nature of offence, factors of concern, age, race, sex,

date of birth, height, weight, hair and eye colour, home address, any current temporary address, location of employment, vehicle make, model, colour, licence plate number and photograph. In each case, the nature and extent of the disclosure will be a matter for the Minister's judgment.

Further, **Madam President**, the Minister is required before notifying anyone of information regarding a sex offender to consult with the Commissioner of Police. In practice it is envisaged that the Bermuda Police Service will be heavily involved in providing the Minister with the information and assessments previously mentioned and the formal consultation may involve no more than an exchange of letters. In more complicated cases, the consultation may need to be more extensive.

Madam President, how information is disclosed will very much depend upon the reason for the disclosure. If individuals are to be notified, it will normally be the practice for an officer of the Bermuda Police Service to visit them by prior appointment at their home or place of work and for any documented information to be handed over in a face-to face meeting. Where a group of

people have to be informed, best practice suggests that they be invited to a private face to face meeting with one or more officers, preferably in reasonably neutral but secure surroundings. Notification to the public at large would normally be undertaken through the broadcasting and/or print media, although much would depend upon the particular circumstances in which a disclosure to the public at large was contemplated.

Madam President, it is important to note that this protocol and the law operate on the presumption that information should not be disclosed because of the risk of preventing a sex offender from living a normal life and the danger of vigilante justice. However, the public can be assured that this category of offender is monitored as all convicted sex offenders who have served a term of imprisonment are required under section 329G of the Criminal Code to inform the police of their name and current address for ten years after their release. The penalty for failing to provide this information is a maximum fine of \$3000 and/or a term of imprisonment for 6 months.

Madam President, this Government shares the public outrage with respect to sexual predators and will continue to assesses the

effectiveness of the current regime for disclosure in its aim to implement measures that will maintain public confidence in the criminal justice system and law enforcement with respect to this category of offender.

Thank you **Madam President**.

Favorite Techniques for Engaging Sex Offenders in Treatment

An Invitation to Responsibility:

I particularly like this strategy because it assists in setting up the therapeutic alliance between the therapist and the client. When a therapist makes a formal invitation to the client to become responsible, it addresses the assumption that the therapist is aware of the struggle involved in taking ownership for his sex offending behaviors. It also gives the client a way out from having to refortify established defenses and instead focus on making a first step toward recovery. This technique can be used as a means of confronting the client throughout treatment, serving as the "push" factor in moving him along through the therapeutic process. This technique can also assist in reducing the "defense reflex" when the therapist intent is to continue focus on uncomfortable content in treatment.

Assisting In the Writing of Reports:

Assisting in the writing of reports has helped with juveniles who are sex offenders to take ownership for their treatment. By doing this, they are able to see exactly what will be formally presented in court about them. With the supervision of their therapist, some have even helped type their reports and signed by both the juvenile client and the therapist. This not only assists in taking ownership but also with the trust established between both the therapist and client as well. Although I have seen this technique mostly used with juvenile sex offenders, it serves as an effective strategy with adult sex offenders as well.

Video Taping Of Family Sessions:

Video taping of family sessions is known to be useful when working with juvenile sex offenders (and possibly adults too) in individual therapy sessions. This has been good for addressing sensitive content that may have been too sensitive to deal with at one family session but more appropriate to deal with at a later individual session.

Journal Writing:

Keeping a journal has proved to have many benefits in treatment with persons who are Sex Offenders. Recording for monitoring and tracking purposes of offending thoughts, frequency of masturbation, tracking and description of fantasies all have found to be useful through this medium.

Scrap Book:

I would encourage clients who are sex offenders to keep a scrap book of the things that they value and would look forward to doing after being able to reduce their risk of offending. This may include appropriate content that show no connection to the offending pathology. Such material, for a juvenile, may include content of their employment interest, the type of house they want to live in, something that would symbolize the kind of lifestyle they want to have, beyond treatment. This would serve as a "pull" factor and hopefully continue to give reason for the client to continue treatment and to anticipate an aftercare plan that could fit within their interest. This may also offer

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1. INTRODUCTION

The Minister of Justice is empowered by section 329H of the Criminal Code Act 1907 ("the Criminal Code") to issue a Protocol governing the disclosure of information in relation to sex offenders who are considered to present a risk of significant harm to the health and safety of the public, an affected group of people or an individual.¹

In this context, "sex offender" means a person **convicted** of any one or more of the following offences (all references are to the Criminal Code as in effect at the date of this Protocol):—

- (a) carnal knowledge of a girl under 14 (section 180);
- (b) carnal knowledge of a girl between 14 and 16 (section 181);
- (c) sexual exploitation of a young person (section 182A);
- (d) sexual exploitation of a young person by a person in a position of trust (section 182B);
- (e) incest by a male person (section 191);
- (f) incest by a woman (section 192);
- (g) indecent acts in public or with intent to offend (section 197);
- (h) indecent act involving children (section 198);
- (i) sexual assault (section 323);
- (j) sexual assault by a person with AIDS etc. (section 324);
- (k) serious sexual assault (section 325);
- (l) aggravated sexual assault (section 326);
- (m) showing child abusive material, child pornography or offensive material to a child (section 182C);
- (n) use of children in the production of child abusive material or child pornography (section 182D);
- (o) luring of a child (section 182E);
- (p) making, distributing, etc. of child abusive material or child pornography (section 182F);
- (q) possession of child abusive material or child pornography (section 182G);
- (r) accessing of child abusive material or child pornography (section 182H).

The Minister may amend this list by secondary legislation should it become necessary to do so, but the list shown here is current at the date of this Protocol.

¹ Criminal Code Act 1907, section 329H, as inserted by the Criminal Code Amendment (No 2) Act 2000, section 2, effective from 29 October 2001

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This Protocol is not intended to lay down hard and fast rules for disclosure of information. As is explained below, this is an exercise that needs to be approached on a case-by case basis, and this document is intended to preserve the flexibility that is required whilst at the same time giving an indication of the factors that will be taken into consideration in dealing with requests for information or making disclosure in the public interest.

2. CONSIDERING DISCLOSURE

2.1 The Starting Point

In *R v Chief Constable of North Wales Police Area Authority, ex parte AB and CD*², it was accepted that the Common Law position was that disclosure of information about sex offenders should be guided by three important principles:—

- (i) There is a general presumption that information should not be disclosed, because of
 - (a) the potentially serious effect on the ability of the convicted person to live a normal life;
 - (b) the risk of violence to the offender;
 - (c) the risk that disclosure might drive the offender underground;
- (ii) There is a strong public interest in ensuring that information about offenders can be disclosed where that is necessary for the prevention or detection of crime, or for the protection of young or other vulnerable people;
- (iii) Each case should be considered carefully on its particular facts, assessing the risk posed by the individual offender, the vulnerability of those who may be at risk; and the impact of disclosure on the offender.

The law in Bermuda has been drafted with these concerns in mind. If consideration is being given to disclosing information about a convicted sex offender, the starting point will be the assessment conducted on behalf of the Commissioner of Prisons and the court under section 329E(2) of the Criminal Code. Disclosure cannot be made unless that assessment concludes that the offender presents a risk of significant harm to the health and safety of the public, an affected group of people or an individual. It follows that this assessment **must** be available to the Minister when considering whether or not to make a disclosure under section 329H.

2.2 Should Disclosure be made?

If the offender is considered to pose such a risk, the next question to be answered is "should any disclosure be made?" The Minister will decide this on a case-by-case basis, but lists here the factors that will be taken into account. It

² [1997] EWHC Admin 667, per Lord Bingham CJ at paragraphs 24 - 30

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must be emphasised in relation to this and the succeeding paragraphs that no one factor is conclusive, the Minister will arrive at a balanced decision based on the presence or absence of these factors and will attach such weight to each of them as he or she deems appropriate.

The Minister will consider:—

- (i) If a request for disclosure is made soon after conviction, whether the offender is appealing against conviction;
- (ii) The seriousness of the risk posed by the offender;
- (iii) Whether the offender is a risk to a particular person, group of persons or the community at large;
- (iv) Whether any persons at risk are not in Bermuda;
- (v) Whether there is any likelihood of the offender discovering their whereabouts;
- (vi) Whether there is any likelihood of the offender being able to travel to where the person(s) at risk is/are;
- (vii) The physical health of the offender;
- (viii) The health of the persons at risk;
- (ix) The impact of the disclosure on person(s) at risk;
- (x) What use will the persons to whom information is disclosed make of that information

2.3 To whom should disclosure be made?

If as a result of the exercise referred to in paragraph 2.2, it is decided that disclosure should be made, the next issue to be decided is to whom should disclosure be made. To a very great extent, the consideration in paragraph 2.2 will determine who should be told about the offender, although there may be circumstances where, as a result of the weight attached to a particular factor, the Minister decides on a wider or narrower disclosure than might otherwise be expected.

2.4 What information will be disclosed?

Generally speaking, the information that will be disclosed will depend on the purpose for which disclosure is made. Where there is a risk that the offender could come into contact with vulnerable persons, the disclosure may be more extensive than to a prospective employer based in a remote location. For example, the disclosure to the principal of a school that a convicted sex offender resides within, say, half a mile of the school, will normally include the offender's name, any alias that may be used, nature of offence, factors of concern, age, race, sex, date of birth, height, weight, hair and eye colour, home address, any current temporary address, location of employment, vehicle make, model, colour, licence plate number and photograph. In each case, the nature and extent of the disclosure will be a matter for the Minister's judgement.

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2.5 Consultation with the Commissioner of Police

The Minister is required before notifying anyone of information regarding a sex offender to consult with the Commissioner of Police.³ In practice it is envisaged that the Bermuda Police Service will be heavily involved in providing the Minister with the information and assessments mentioned in paragraphs 2.2 and 2.4, and the formal consultation may involve no more than an exchange of letters. In more complicated cases, the consultation may need to be more extensive.

*and practitioners
in the event of
changes to/for i*

3. MAKING DISCLOSURE

How information is disclosed will very much depend upon the reason for the disclosure. If individuals are to be notified, it will normally be the practice for an officer of the Bermuda Police Service to visit them by prior appointment at their home or place of work and for any documented information to be handed over in a face-to face meeting. Where a group of people have to be informed, best practice suggests that they be invited to a private face to face meeting with one or more officers, preferably in reasonably neutral but secure surroundings. Notification to the public at large would normally be undertaken through the broadcasting and/or print media, although much would depend upon the particular circumstances in which a disclosure to the public at large was contemplated.

³ Criminal Code, s. 329H(4)

Definitions

329D (1) In sections 329D to 329H—

"Minister" means the Minister responsible for Justice;

"offender" means a person convicted of a serious personal injury offence;

"serious personal injury offence" means—

- (a) a sexual offence; and
- (b) any indictable offence, other than a sexual offence, except treason, premeditated murder or murder, involving—
 - (i) the use or attempted use of violence against another person;
 - (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,

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

"sex offender" means a person who has been convicted of a sexual offence;

"sexual offence" means any of the following—

- (i) carnal knowledge of a girl under 14 (section 180);
- (ii) carnal knowledge of a girl between 14 and 16 (section 181);
- (iii) sexual exploitation of a young person (section 182A);
- (iv) sexual exploitation of a young person by a person in a position of trust (section 182B);
- (v) incest by a male person (section 191);
- (vi) incest by a woman (section 192);
- (vii) indecent acts in public or with intent to offend (section 197);

CRIMINAL CODE ACT 1907

- (viii) indecent act involving children (section 198);
- (ix) sexual assault (section 323);
- (x) sexual assault by a person with AIDS etc. (section 324);
- (xi) serious sexual assault (section 325);
- (xii) aggravated sexual assault (section 326);
- (xiii) showing child abusive material, child pornography or offensive material to a child (section 182C);
- (xiv) use of children in the production of child abusive material or child pornography (section 182D);
- (xv) luring of a child (section 182E);
- (xvi) making, distributing, etc. of child abusive material or child pornography (section 182F);
- (xvii) possession of child abusive material or child pornography (section 182G);
- (xviii) accessing of child abusive material or child pornography (section 182H).

(2) The Minister may by order amend the list of sexual offences set out in subsection (1) by addition, deletion or variation of any offence.

(3) An order under subsection (2) shall be subject to the affirmative resolution procedure.

(4) References to offences in subsection (1) include a reference to an attempt to commit that offence.

(5) In the definition of "sexual offence" in subsection (1) references to sections are to sections of the Criminal Code Act 1907.

[Section 329D added by 2000:23 s.2 effective 29 October 2001; subsection (1) amended by 2007:8 s.4 effective 7 May 2008; subsection (1) amended in definition of "Minister" by 2007:8 s.6 effective 7 May 2008]

Remand of offender for assessment

329E (1) Where an offender is convicted of a ~~serious personal injury~~ offence, the court shall, before sentence is imposed on the offender, ~~remand the offender for a period not exceeding 60 days to the custody of~~ the ~~Commission~~ of Prisons.

(2) ~~The Commissioner of Prisons shall cause an assessment to be conducted by a qualified professional to determine if the offender constitutes a threat to the life, safety or physical or mental well-being of any other person on the basis of evidence establishing—~~

- (a) in the case of a sex offender, that—
 - (i) the offender, by his conduct in any sexual matter, including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses; and
 - (ii) there is a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control such impulses; or
- (b) in any other case, that—
 - (i) the offender has demonstrated a pattern of repetitive behaviour, of which the offence for which he has been convicted forms a part, showing a failure to restrain his behaviour and a likelihood of his causing death or injury to other persons or inflicting severe psychological damage on other persons, through failure in the future to restrain his behaviour; or
 - (ii) the offender has demonstrated behaviour of such a brutal nature as to compel the conclusion that his behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint.

(3) ~~The person charged with the conduct of an assessment under subsection (2) shall report his findings and recommendations for sentence to the court.~~

(4) The court, if on receipt of the report under subsection (3) it is satisfied that—

- (a) it would be appropriate to impose a sentence of three years or more for the offence for which the offender has been convicted; and
 - (b) there is a substantial risk the offender will reoffend;
- shall—
- (c) impose a sentence for the offence for which the offender has been convicted, which sentence shall be ~~imprisonment for not less than three years; and~~

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(d) order the offender to be supervised in the community for such period not exceeding ten years as may be specified in the order and subject to such conditions as are so specified.

(5) The court shall not make an order under subsection (4)(d) if the offender has been sentenced to life imprisonment.

(6) If the court is not satisfied of the matters referred to in subsection (4)(a) and (b), it shall impose any sentence it could otherwise impose for the offence for which the offender has been convicted.

(7) Nothing in this section shall be construed to derogate from section 71E (which relates to dangerous offenders).

[Section 329E added by 2000:23 s.2 effective 29 October 2001]

Supervision

329F (1) An offender who is required to be supervised by an order under section 329E(4)(d) shall be supervised by a probation officer or other person specified in the order.

(2) The period of supervision shall commence when the offender has finished serving--

(a) the sentence for the offence for which the offender has been convicted; and

(b) all other sentences for offences for which the offender is convicted and for which sentence of a term of imprisonment is imposed on the offender, whether before or after the conviction for the offence referred to in paragraph (a).

(3) A sentence imposed on an offender, other than a sentence of imprisonment, shall be served concurrently with the supervision order.

Rare (4) An offender who is required to be supervised by an order under section 329E(4)(d) or his supervisor may apply to the court for an order reducing the period of supervision or terminating it on the ground that the offender no longer presents a substantial risk of reoffending.

(5) The onus of proving that ground is on the person making the application and the standard of proof is that of the balance of probabilities.

(6) No application under subsection (4) shall be heard unless notice of an application has been given to the Director of Public Prosecutions at the time the application is made.

(7) Where an offender commits an offence while under supervision and the court imposes a sentence of imprisonment, the

~~period of supervision is suspended until the offender has finished serving that sentence.~~

(8) An offender who—

- (a) is required to be supervised by an order made under section 329E(4)(d); and
- (b) without reasonable excuse, fails or refuses to comply with that order or any condition specified in the order,

~~is guilty of an indictable offence and is liable to imprisonment for ten years—~~

(9) ~~Before the expiration of a period of supervision imposed under section 329E or under this subsection the court shall, on receipt of a further assessment conducted by a qualified professional as referred to in that section, review the issue of supervision and may by order impose an additional period of supervision for such period as may be specified in the order and subject to such conditions as are so specified.~~

(10) An order made under subsection (9) shall be deemed to have been made under section 329E(4)(d).

[Section 329F added by 2000:23 s.2 effective 29 October 2001]

Notification

Notification requirements for sex offenders

329G (1) A person becomes subject to the notification requirements of this section, if—

- (a) after this section comes into force he is convicted of a sexual offence; or
- (b) at the time this section comes into force—
 - (i) he is serving a sentence of imprisonment; or
 - (ii) he has been released on licence after serving the whole or part of a sentence of imprisonment,in respect of a sexual offence.

(2) A person who is subject to the notification requirements of this section shall continue to be so subject ~~for a period of ten years commencing on—~~

- (a) the date of his conviction; ~~or~~
- (b) if later, the date of his release from prison, whether released on licence or on the expiration of his term of imprisonment.

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(3) A person who is subject to the notification requirements of this section shall immediately upon his release notify the police of the following information—

- (a) his name, and, where he uses one or more other names, each of those names; and
- (b) his home address.

(4) A person who is subject to the notification requirements of this section shall immediately upon—

- (a) his using a name which has not been notified to the police under subsection (3); or
- (b) any change in his home address, notify that name or that change of address to the police.

(5) Any notification under this section shall be acknowledged in writing in such form as the Minister may direct.

(6) A person who—

- (a) fails, without reasonable excuse, to comply with the notification requirements set out in subsection (3) or (4); or
- (b) notifies to the police, in purported compliance with those requirements, any information which he knows to be false,

is guilty of an offence and is liable on summary conviction to a fine of \$3,000 or imprisonment for six months, or to both.

(7) A ~~certificate issued by the registrar or clerk of the court that a person has been convicted of a sexual offence and of the date of conviction shall be conclusive evidence of those facts.~~

(8) A ~~certificate of the Commissioner of Prisons that a person was released from prison and the date of release shall be conclusive evidence of those facts.~~

[Section 329G added by 2000:23 s.2 effective 29 October 2001]

Public notification of information on sex offenders

329H (1) The Minister, having regard to—

- (a) the need to protect the public, an affected group of people or an individual; and
- (b) the objective of effective management of sex offenders,

may establish a protocol governing the disclosure of information in relation to sex offenders who are considered to present a risk of significant harm to the health or safety of the public, an affected group of people or an individual.

(2) The protocol may provide for the following notification options—

- (a) no notification;
- (b) notification of a specified group of persons;
- (c) notification of a specified individual;
- (d) notification to the public.

(3) Notification may include such identifying information (including a photograph of the sex offender) as the Minister may determine.

(4) Before determining to give any notification in accordance with the protocol in relation to a particular sex offender the Minister shall consult with the Commissioner of Police.

[Section 329H added by 2000:23 s.2 effective 29 October 2001]

DIVISION IV

OFFENCES RELATING TO PROPERTY AND CONTRACTS

PART XIX

THEFT, BURGLARY AND COGNATE OFFENCES

[Part XIX (sections 330 to 367) repealed and replaced by new Part XIX (sections 329I to 375) by 2005:15 s.8 effective 1 April 2006]

Chapter 1: Trespass in and around dwelling houses

Trespass in dwelling-house

329I (1) Any person who, without lawful excuse, the proof of which shall be upon him, enters or is found in any dwelling-house or in any building which is adjacent to a dwelling-house and occupied with it but which is not part of it, is guilty of an offence.

(2) A person convicted of an offence under this section is liable

3 Ministries

PRIVATE

To:

Of:

Acknowledgement of Notification under Section 329G Criminal Code Act 1907

This notice acknowledges receipt of your notification of details of your name(s) and home address as required by section 329G(3)/329G(4) Criminal Code Act 1907.

You are reminded that you are required to notify the Bermuda Police Service of ANY change (whether by deed poll or otherwise) in your name(s) or home address for a period of ten years from [insert date of conviction or of release from custody, if later].

Failure to give notice of a change in your name or address or giving a false name or address is an offence contrary to s. 329G(6) Criminal Code Act 1907 for which you could be fined up to \$3,000 or be sent to prison for 6 months, or both.

for Commissioner of Police