



SEX OFFENDER REGISTRIES FACT SHEET

This fact sheet discusses common questions regarding sex offender registries in Canada in the context of the criminal law and HIV non-disclosure.

This is general legal information and not legal advice.

If you want legal advice specific to your situation, you should talk to a lawyer.



Canadian HIV/AIDS Legal Network | Réseau juridique canadien VIH/sida

WHAT ARE SEX OFFENDER REGISTRIES IN CANADA?

If you are convicted of any of the “designated offences” outlined in specific provisions of the *Criminal Code* (such as sexual assault or aggravated sexual assault), the *Sex Offender Information Registration Act* (SOIRA)¹ requires you to register your information in the federal government’s electronic database, known as the National Sex Offender Registry (NSOR). Information such as your name, date of birth, current address, a current photograph, identifying marks such as tattoos or scars, vehicle information, type of employment and address, relevant offence(s), driver’s licence and passport information are kept in this registry. Residents of every province and territory must comply with this law and promptly register in the NSOR if they have been convicted of a designated offence.

The RCMP administers the SOIRA, while the provinces and territories are responsible for implementing the SOIRA registration process in their respective jurisdictions, and local police are responsible for inputting data and enforcing registration provisions.²

Besides registering in the NSOR, residents of Ontario are also required to register in a provincial database for sex offenders, pursuant to *Christopher’s Law*.³ If you are convicted of a designated offence outside of Ontario but later become a resident of the province, you must register with the Ontario registry as well. The designated offences that require registry in the NSOR are similar to the offences that require registration in Ontario’s registry.

Ontario is the only province that has its own separate sex offender registration system.

+ WHEN ARE PERSONS LIVING WITH HIV REQUIRED TO REGISTER IN A SEX OFFENDER REGISTRY?

Canadian law currently requires people living with HIV to disclose their status before having sex that poses a “realistic possibility of HIV transmission.”⁴ Failing to disclose your HIV status before certain sexual acts can result in criminal charges, the most commonly applied charge being *aggravated sexual assault*, with fewer charges for *sexual assault*. (For more information on the criminal law as it applies to HIV non-disclosure, see *Criminal Law & HIV Non-Disclosure in Canada*.)

A conviction for aggravated sexual assault carries a sentence of jail time (up to a maximum of life imprisonment), while a conviction for sexual assault can carry a sentence of up to 10 years. As noted above, if you are convicted for either offence, you must promptly register in the NSOR. If you live in Ontario, you must also register in the Ontario registry.

+ WHAT MUST I DO IF I AM REGISTERED ON A SEX OFFENDER REGISTRY?

If you are registered on a sex offender registry, you have many reporting obligations. You must report to a registration center, which is a designated area that services the province or territory where your main residence is located. SOIRA requires those in NSOR to register in person every year, and to provide the police with certain information, including their address, their place of paid or volunteer employment or their school, and license plate numbers and descriptions of any vehicles registered in their name or that they use. They must also notify the police if they expect to be away from one of their registered residences for more than seven days. In addition, they must abide by these SOIRA reporting obligations by registering with the local police authorities.

The reporting requirements are the same for people registered under *Christopher’s Law* in Ontario.

Failure to register and provide accurate information to a registry could result in criminal charges, and a fine or jail term if convicted. If you are ordered to register with NSOR and you do not comply with any of the terms of the order or provide inaccurate information, you may be fined up to \$10,000 and/or face up to two years in prison.⁵

In Ontario, a person who fails to comply with the terms that are ordered under *Christopher’s Law* or provides false information may be fined up to \$25,000 and/or face up to a year in prison.⁶

Moreover, anyone convicted of a sexual offence, including aggravated sexual assault, must provide a DNA sample that will be included in the National DNA Data Bank, which is maintained by the RCMP.

+ AS A PERSON ON A SEX OFFENDER REGISTRY, AM I PERMITTED TO REVIEW AND CORRECT MY INFORMATION IN THE DATABASE?

Yes. You are entitled to receive, free of charge, a copy of the information that is registered about you in the NSOR database.⁷ If you are on Ontario’s sex offender registry, you are also entitled to review and receive a copy of the information about you that is contained in the sex offender registry.⁸ In both cases, you are permitted to correct any incorrect information about you.

¹ *Sex Offender Information Registration Act*, S.C. 2004, c. 10.

² *Sex Offender Information Registration Act*.

³ *Christopher’s Law (Sex Offender Registry)*, 2000, S.O. 2000,

c. 1.

⁴ *R. v. Mabior*, 2012 SCC 47 and *R. v. D.C.*, 2012 SCC 48.

⁵ *Criminal Code*, R.S.C., 1985, c. C-46, ss. 490.031(1) and 490.0311.

⁶ *Christopher’s Law (Sex Offender Registry)*, 2000 s. 11(1).

⁷ *Sex Offender Information Registration Act*, s. 11.

⁸ *Christopher’s Law (Sex Offender Registry)*, s. 6.

WHO CAN SEE THE INFORMATION ON A SEX OFFENDER REGISTRY?

Information stored in the NSOR is not public. Only Canadian police agencies, such as the RCMP and provincial and local police authorities, have access to the information on these registries to help prevent or investigate sexual offences. There are criminal penalties for the misuse of the data.

Under *Christopher's Law*, no one can disclose the information within the sex offender registry to another person,⁹ with the exception of a police force, an employee of a police force, or an employee of or person authorized by Ontario's Ministry of Community Safety and Correctional Services,¹⁰ and only with compliance of specific provisions of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.¹¹ Disclosure can only be carried out for the purposes of law enforcement or crime prevention.

CAN BEING ON A SEX OFFENDER REGISTRY IMPEDE MY ACCESS TO EMPLOYMENT OR HOUSING?

ACCESS TO EMPLOYMENT

The public, including prospective employers, does not have access to sex offender registries. Sex offender registries are databases accessible only to police services to improve their ability to investigate and prevent crimes of a sexual nature.

Prospective employers, however, can access information about your previous conviction(s), if you, as a prospective employee, give access to your criminal record by agreeing to a police record check.

Police background checks should only be requested where it is a reasonable and *bona fide* requirement of the job or volunteer position. This means that many employers cannot automatically subject every employee they hire to a criminal record check.

In some provinces and territories (e.g., British Columbia,¹² Newfoundland,¹³ Northwest Territories,¹⁴ Nunavut,¹⁵ Ontario,¹⁶ Prince Edward Island,¹⁷ Quebec,¹⁸ and Yukon¹⁹) and for employment with the federal government,²⁰ a job applicant cannot be discriminated against because of a previous conviction, although some jurisdictions permit employers to discriminate against a prospective employee if the criminal conviction is related to the employment or if a record suspension or pardon has not been granted. (For more information on record suspensions and pardons, see the text box on the following page.) For more information on the law in your province or territory, please consult a lawyer where you plan to work.

If a police information check is conducted after a record suspension or pardon has been granted, the check will return stating no criminal record was found. Note, however, that conviction of a sexual offence, including aggravated sexual assault or sexual assault, will continue to appear on a **vulnerable sector check**, which may be required if you are seeking employment and/or a volunteer role with vulnerable people, defined as those "who, because of their age, a disability or other circumstances, whether temporary or permanent are (a) in a position of dependence on others or (b) are otherwise at a greater risk than the general population of being harmed by a person in a position of authority or trust relative to them."²¹ This check would reveal the existence of a criminal record, adverse police contact, and any convictions for a sexual offence that were subjected to a record suspension.

ACCESS TO HOUSING

The public, including prospective landlords, does not have access to sex offender registries. Sex offender registries are databases accessible only to police services to improve their ability to investigate and prevent crimes of a sexual nature.

In some jurisdictions, as a condition of renting or providing any service to a tenant, a landlord cannot ask for your consent to collect personal information beyond what is necessary to provide tenancy or that service. There are limited circumstances where requiring a criminal records check is reasonably necessary.²² In such circumstances, a landlord must still obtain permission from you, the prospective tenant, before conducting the record check.

WHEN DOES AN ORDER TO COMPLY WITH A SEX OFFENDER REGISTRY END?

In general, people convicted of **aggravated sexual assault** are required to comply with SOIRA's reporting obligations for life,²³ while those convicted of **sexual assault** who face up to a maximum of 10 years of imprisonment are required to comply with SOIRA's reporting obligations for 20 years.²⁴

But you can apply to a court to terminate the order earlier: people convicted of aggravated sexual assault can apply 20 years after the order was made, while those convicted of sexual assault can apply 10 years after the order was made. Anyone who has received a record suspension or a pardon via executive clemency can also apply to court to terminate the order earlier.²⁵

When considering your application for early termination of your SOIRA order, a court must determine whether you have established that the impact on your life of continuing an order, including on your privacy or liberty, would be "grossly disproportionate to the public interest in protecting society through the effective prevention or investigation of crimes of a sexual nature," achieved by the registration of information in SOIRA.²⁶ The few rulings that demonstrate the application of this test suggest that the standard of "grossly disproportionate" is very high. You should consult a lawyer to help you make this application.

If you are also on the Ontario registry, a conviction of aggravated sexual assault requires you to comply with provincial reporting requirements for life, whereas a sexual assault conviction requires you to comply for 10 years after you first begin reporting.²⁷

In Ontario, the only way to terminate your reporting requirements earlier than the prescribed period is if you receive a record suspension or a pardon via executive clemency for the sex offence that was the subject of the registration order.²⁸ You must provide proof of your record suspension or pardon to police services to be removed from the Ontario registry.

⁹ *Christopher's Law (Sex Offender Registry)*, s. 10(1).

¹⁰ *Ibid.*, s. 10(2).

¹¹ *Ibid.*, s. 10(4).

¹² *Human Rights Code*, RSBC 1996, c. 210, s. 13(1).

¹³ *Human Rights Code*, RSNL 1990, c. H-14, s. 14(1).

¹⁴ *Human Rights Act*, SNWT 2002, c. 18, s. 7(1).

¹⁵ *Human Rights Act*, SNU 2003, c. 12, s. 7(1).

¹⁶ *Human Rights Code*, RSO 1990, c. H.19, s. 5(1).

¹⁷ *Human Rights Act*, RSEI 1988, c. H-12, s. 6(1).

¹⁸ *Charter of Human Rights and Freedoms*, C-12, s. 18.2.

¹⁹ *Human Rights Act*, RSY 2002, c. 116, s. 9.

²⁰ *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, s. 2.

²¹ *Criminal Records Act*, R.S.C., 1985, s. 6.3(1).

²² The Ontario Human Rights Commission describes a

scenario involving a "lone mother with young children who rents out the basement of her house" as one example where a landlord may be able to establish, due to safety concerns, that it is a *bona fide* requirement that a tenant in her home not have a criminal record. See Ontario Human Rights Commission, "Identifying discrimination in rental housing," *Policy on human rights and rental housing*, July 21, 2009.

²³ *Criminal Code*, s. 490.13(2)(c).

²⁴ *Criminal Code*, s. 490.013(2)(b).

²⁵ *Criminal Code*, s. 490.015(3).

²⁶ *Criminal Code*, s. 490.016(1).

²⁷ *Christopher's Law (Sex Offender Registry)*, s. 7(1).

²⁸ *Christopher's Law (Sex Offender Registry)*, s. 7(4).

RECORD SUSPENSION (PREVIOUSLY CALLED A PARDON)

A record suspension (previously called a pardon) can be ordered by the Parole Board of Canada after you make an application under the *Criminal Records Act*. If you have been convicted of a criminal offence but have completed your sentence and demonstrated “good conduct” for a prescribed number of years, a record suspension allows your criminal record to be kept separate and apart from other criminal records, meaning a search of the Canadian Police Information Centre (CPIC) database will not show that you were convicted of the offence for which the record suspension was granted. However, the record will be flagged and will show up when a **vulnerable sector** check is done.

If you have been convicted of sexual assault and face a sentence of up to 10 years or convicted of aggravated sexual assault, **you must wait 10 years to apply for a record suspension** after completing your sentence (including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for the offence).²⁹ The Parole Board may consider some people ineligible for record suspension, so please consult a lawyer about your particular case.

PARDON VIA EXECUTIVE CLEMENCY

A pardon via “Her Majesty’s royal prerogative of mercy” is vested in Canada’s Governor General, who can grant a “free” or “conditional” pardon on the recommendation of a federal minister, usually the Minister of Public Safety and Emergency Preparedness.

The Governor in Council can also grant a “free” or “conditional” pardon under section 748 of the *Criminal Code*. The exercise of these powers is considered by the federal cabinet on the advice of the Minister of Public Safety and Emergency Preparedness, or that of at least one other minister.

A free pardon is a formal recognition that a person was wrongly convicted of an offence, so that any consequences resulting from the conviction — including registration on a sex offender registry — is cancelled upon the grant of a free pardon. In order for a free pardon to be considered, an applicant must have exhausted all possibilities for appeal under the *Criminal Code* or other legislation and provide new evidence to clearly establish innocence. A conditional pardon has the same meaning and effect as a record suspension, but can be granted in advance of eligibility under the *Criminal Records Act*. An applicant must demonstrate evidence of good conduct and undue hardship.

Pardons via executive clemency are only granted in exceptional circumstances in deserving cases involving federal offences, where no other remedy exists in law to reduce severe negative effects of criminal sanctions.

WHAT CAN I DO TO DELETE MY INFORMATION ON A SEX OFFENDER REGISTRY?

It is very difficult for information on the sex offender registries to be **deleted**, and information in sex offender databases may be maintained even for people who no longer need to comply with reporting obligations because their sex offender registration has ended. Information that is registered in the NSOR database is kept indefinitely, but it can be destroyed and permanently removed from the database if you are either acquitted **or** granted a free royal pardon under “Her Majesty’s royal prerogative of mercy” or under section 748 of the *Criminal Code* for the offence for which the order was made.³⁰

For residents of Ontario, the Ministry of Community Safety and Correctional Services will delete from the sex offender registry every reference to you and your record if you have been granted a free pardon under “Her Majesty’s royal prerogative of mercy” or under section 748 of the *Criminal Code*.³¹ As a resident of Ontario, you may also be removed from Ontario’s sex offender registration system if you are acquitted of the sexual offence for which the order was made (i.e., on appeal), but this is a complicated process that will likely require the assistance of a lawyer. You should consult a lawyer about your particular case.

ANYTHING ELSE?

HIGH-RISK OFFENDER DESIGNATION

In rare cases, a court may declare that a person living with HIV convicted for not disclosing their HIV-positive status and designated as a sex offender is also a “high-risk offender.” Designation as a high-risk offender only happens in very limited circumstances, when the offence qualifies as a “serious personal injury offence.” For example, in the case of a sexual assault conviction, the prosecution must prove that the convicted person in all likelihood will cause further injury and pain to others.³²

A person designated as a high-risk offender may be classified as either a “long-term” or a “dangerous” offender.

Someone classified as a long-term offender will be imprisoned for at least two years and face up to 10 years’ supervision after their release.

Someone classified as a dangerous offender will be imprisoned for an indeterminate period unless a judge is satisfied that there is a “reasonable expectation” that the public can be protected by a prison sentence of two years or more followed by up to ten years of long-term supervision or a regular sentence for the offence.

In some provinces and territories, police can provide the general public with information about “high-risk offenders” in their area when they are deemed to pose a significant risk. This information may include the person’s description, photograph and general area where they live.



²⁹ *Criminal Records Act*, R.S.C., 1985, c. C-47, s. 4(1)(a).

³⁰ *Sex Offender Information Registration Act*, s. 15(2).

³¹ *Christopher’s Law (Sex Offender Registry)*, s. 9.1.

³² *Criminal Code*, s. 753(1).