



## Legislative Summary

# BILL S-12: AN ACT TO AMEND THE CRIMINAL CODE, THE SEX OFFENDER INFORMATION REGISTRATION ACT AND THE INTERNATIONAL TRANSFER OF OFFENDERS ACT

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*Legislative Summary of Bill S-12*  
(Legislative Summary)

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*CRIMINAL CODE* ON THE OBLIGATION TO REGISTER UNDER THE  
*SEX OFFENDER INFORMATION REGISTRATION ACT*

# LEGISLATIVE SUMMARY OF BILL S-12: AN ACT TO AMEND THE CRIMINAL CODE, THE SEX OFFENDER INFORMATION REGISTRATION ACT AND THE INTERNATIONAL TRANSFER OF OFFENDERS ACT

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## 1 BACKGROUND

On 26 April 2023, the Honourable Senator Marc Gold introduced Bill S-12, An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act,<sup>1</sup> in the Senate on behalf of the Government of Canada. The bill was studied by the Standing Senate Committee on Legal and Constitutional Affairs, where many amendments were made to the bill.<sup>2</sup> As of 23 June 2023, the bill passed third reading in the Senate and is awaiting first reading in the House of Commons.

According to the government, Bill S-12 aims to “strengthen the National Sex Offender Registry” (NSOR) (the federal database of registered offenders created to help police services prevent and investigate crimes of a sexual nature) and “make the criminal justice system more responsive to the needs of victims.”<sup>3</sup> Among other things, its main amendments change:

- the processes for the registration of sex offenders:
  - serious child sex offenders and repeat sex offenders are registered automatically;
  - sex offenders who demonstrate that they do not pose a public risk, among other considerations, will not be registered; and
  - additional offences are added to the list of offences that may lead to registration on the NSOR.
- the *Criminal Code*<sup>4</sup> (the Code) as it relates to victims:
  - judges are required to ask prosecutors if they have consulted with the victim about whether to impose a publication ban;
  - opportunities are included to allow victims and others to apply to the court to remove a publication ban;
  - judges are required to ask if the victim wants to receive ongoing information about the offender after sentencing:
    - If the victim’s preferences are known, they must be entered into the record of proceedings.

Bill S-12 responds to the Supreme Court of Canada's 2022 decision in *R. v. Nhdlovu*,<sup>5</sup> which holds that two provisions of the Code relating to the registration of sex offenders under the *Sex Offender Information Registration Act* (SOIRA)<sup>6</sup> are unconstitutional. Since 2011, section 490.012 of the Code has prescribed mandatory registration on the NSOR for anyone who commits a sex offence. Section 490.013(2.1) has required that anyone found guilty of more than one sex offence be registered on the NSOR for life.

In its 2022 decision, the Supreme Court struck down section 490.013(2.1) with immediate and retroactive effect. Section 490.012 was declared invalid, but the effect of this declaration was delayed one year to give Parliament time to respond to the decision with legislation; the provision becomes invalid in October 2023. (See below for further discussion of *R. v. Nhdlovu*.)

#### 1.1 PUBLICATION BANS AND VICTIMS' RIGHTS

The *Canadian Victims Bill of Rights* (CVBR)<sup>7</sup> grants victims of crime certain rights to information, protection and participation in the criminal justice system, and to seek restitution. It became law in 2015 when Parliament passed Bill C-32, An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts.<sup>8</sup> That bill also made other amendments to the Code and to the *Corrections and Conditional Release Act* (CCRA)<sup>9</sup> to increase victims' access to information about offenders.

Section 12 of the CVBR provides that "every victim has the right to request that their identity be protected if they are a complainant to the offence or a witness in proceedings relating to the offence." Supporting this right, sections 486.4 and 486.5 of the Code enable a court to order a publication ban at the request of the victim, a witness or the Crown. Section 486.4 of the Code permits publication bans concerning information that could identify witnesses or victims in proceedings involving certain sex offences, including:

- sexual interference (section 151);
- sexual exploitation (section 153);
- child pornography (section 163.1);
- child luring (section 172.1);
- sexual assault (section 271);
- aggravated sexual assault (section 273); and
- human trafficking (section 279.03).



Section 486.5 of the Code permits a general publication ban on the identity of victims or witnesses for any offence, if it is in the interests of the administration of justice. Publication bans can also be requested by a “justice system participant,” which is defined in section 2 of the Code and includes a list of various persons involved in the administration of criminal justice (prosecutor, lawyer, juror, judge, etc.), persons who play a role in certain types of proceedings (such as proceedings involving security or criminal intelligence proceedings) and legislators. A publication ban on the identity of other justice system participants can be requested for proceedings involving certain offences, including:

- intimidation of a justice system participant (section 423.1);
- a serious offence committed for the benefit or at the direction of a criminal organization;
- terrorism; and
- others, if it is in the interest of the administration of justice.

Under a publication ban, any information that could identify a victim, witness or participant cannot be published in a document or broadcast. Such individuals’ names cannot be reported in the news, nor can anyone communicate with the media in any way that would identify them. An individual who no longer wishes to continue a publication ban must obtain a court order to end it. Under section 486.6, it is an offence for anyone, including witnesses or victims, to violate a publication ban.<sup>10</sup>

In a 2022 study on support for victims of crime, the House of Commons Standing Committee on Justice and Human Rights examined publication bans and how they affect victims.<sup>11</sup> Some victims and advocates informed the committee that the provisions of the Code governing publication bans do not always protect victims’ interests or preferences. The victims and advocates argued that publication bans should not be imposed without the victims’ consent and that witnesses or victims should be able to opt out of a publication ban. They said that while publication bans should always be available to witnesses and victims who need them, in some cases, these bans also prevent victims who wish to speak publicly about their experiences from doing so. They noted that the process of lifting one’s own publication ban can be difficult, “humiliating, rampant with delays, and re-traumatizing.”<sup>12</sup>

Bill S-12 implements recommendation 11 of the committee’s report, which calls for section 486.4 of the Code to be amended so that victims must be informed before a publication ban is imposed and given the opportunity to opt out.

Bill S-12 also reflects recommendation 4 of the committee’s report, which calls for the CVBR to be amended to clarify that the information to which victims of crime are entitled should be provided automatically rather than on request.

## 1.2 THE *SEX OFFENDER INFORMATION REGISTRATION ACT*

### 1.2.1 Legislative Background

The SOIRA became law in 2004.<sup>13</sup> It creates the legislative framework for the NSOR, a database maintained by the Royal Canadian Mounted Police (RCMP).<sup>14</sup> It includes information such as the address and telephone number of offenders, a description of their physical distinguishing marks, every alias they use, the nature of the offence committed, and the age and gender of the victims and their relationship to the assailant.<sup>15</sup>

According to section 2, the Act should be “carried out” in accordance with the following principles:

- to protect society, police services must have rapid access to certain information relating to sex offenders in order to prevent or investigate crimes of a sexual nature;
- to ensure this information is current and reliable, accurate information must be continuously collected; and
- to respect the privacy interests of sex offenders and the public interest in their rehabilitation and reintegration into the community as law-abiding citizens, information concerning sex offenders must be collected only to enable police services to prevent or investigate crimes of a sexual nature. Accordingly, access to this information, its use and its disclosure are restricted.

The SOIRA operates together with sections 490.011 to 490.032 of the Code. These provisions permit a court to order offenders to supply information for the NSOR when they have been convicted of or, in some cases, found not criminally responsible on account of mental disorder for a “designated offence.” These offences are defined in section 490.011 of the Code and include sexual exploitation offences, sexual assault offences, sex offences involving minors and trafficking offences.

Section 490.012 requires a court to make an order when imposing a sentence for a designated offence, subject to certain provisions. Section 490.013 provides rules for the duration of orders made under section 490.012.

Orders to comply with the SOIRA can be imposed for past designated offences and their equivalents committed outside Canada, including where an offender has been transferred to Canada further to the *International Transfer of Offenders Act* (ITOA).<sup>16</sup> The *National Defence Act*<sup>17</sup> contains provisions to ensure that individuals under the disciplinary jurisdiction of the Canadian Forces comply with any orders to register under the Code, the SOIRA and the ITOA.<sup>18</sup>



The Code adds that failure to comply with a court order to supply information to the NSOR is a hybrid offence (section 490.031), as is knowingly providing false or misleading information (section 490.0311).

The Code provisions largely concern when an order may be imposed, how long the obligation lasts and what the various procedures are for applying to modify or end obligations, and information about appeal processes. The SOIRA, for its part, details the obligations placed upon sex offenders, including the timing of the first and subsequent obligations to report to a registration centre (section 4), the type of information that must be provided (section 5) and obligations imposed for reporting before travel away from a main or secondary residence (section 6). The SOIRA also includes prohibitions that concern how and when information may be accessed and disclosed (section 16);<sup>19</sup> breach of one of these prohibitions is a summary conviction offence (section 17).

When the SOIRA was first created, it built upon several other Canadian initiatives at both the federal and provincial levels. For example, Ontario had previously created a registry of convicted sex offenders in 2001 through *Christopher's Law (Sex Offender Registry 2000)*,<sup>20</sup> and the Canadian Police Information Centre already maintained a database of criminal records.<sup>21</sup> The United Kingdom had a similar sex offender registration law, as did the United States at both the federal and state levels.<sup>22</sup>

The SOIRA has been amended by several bills over the years, including Bill C-26, An Act to amend the Criminal Code, the Canada Evidence Act and the Sex Offender Information Registration Act, to enact the High Risk Child Sex Offender Database Act and to make consequential amendments to other Acts<sup>23</sup> and Bill S-2, An Act to amend the Criminal Code and other Acts.<sup>24</sup> More information on the development of the SOIRA and the amendments made by these bills is contained in the relevant legislative summaries prepared by the Library of Parliament.<sup>25</sup>

Among other things, Bill S-2 amended section 490.012 of the Code by making registration automatically required for offenders found guilty of offences designated under section 490.011(1)(a), 490.011(1)(c), 490.011(1)(c.1), 490.011(1)(d) or 490.011(1)(e) or found not criminally responsible on account of mental disorder. For certain offences of a non-sexual nature (as listed in sections 490.011(2)(b) and 490.011(2)(f) of the Code), it remained the prosecutor's responsibility to request an order for inclusion in the national registry and to establish beyond a reasonable doubt that the person who committed the offence did so with the intent to commit an offence of a sexual nature (those listed in sections 490.011(1)(a), 490.011(1)(c), 490.011(1)(c.1), 490.011(1)(d) and 490.011(1)(e)).<sup>26</sup>

1.2.2 *R. v. Ndhlovu*

Many of the amendments in Bill S-12 respond to the Supreme Court's decision in *R. v. Ndhlovu*. Mr. Ndhlovu had challenged the constitutionality of sections 490.012 and 490.013(2.1) of the Code on the basis that they violated his section-7 right to life, liberty and security of the person as guaranteed by the *Canadian Charter of Rights and Freedoms* (the Charter).<sup>27</sup> Mr. Ndhlovu had pleaded guilty to two counts of sexual assault against two people at a party he attended when he was 19 years old. The trial judge sentenced him to six months of imprisonment followed by three years of probation. The two counts for which the offender was guilty constituted "more than one offence" under section 490.013(2.1), which automatically made Mr. Ndhlovu subject to mandatory lifetime registration on the NSOR and compliance with the SOIRA.

The Supreme Court held that the two challenged sections violate section 7 of the Charter and that this could not be justified in a free and democratic society (in accordance with section 1 of the Charter).<sup>28</sup> The court found that the impact of a SOIRA order on "an offender's liberty can only fairly be described as serious" and that "registration has a serious impact on the freedom of movement and of fundamental choices of people who are not at an increased risk of re-offending."<sup>29</sup> Furthermore, it held that registering offenders who are not at risk of committing a future sex offence is disconnected from the purpose of registration, which is to capture information about offenders to help police prevent and investigate sex offences. It found that the law was consequently overbroad, in violation of section 7. The Court explained that:

A law is overbroad when it is so broad in scope that it includes some conduct that bears no relation to its purpose, making it arbitrary in part... In other words, overbreadth addresses the situation where there is no rational connection between the purpose of the law and some, but not all, of its impacts... [L]aws that are broadly drawn to make enforcement more practical run afoul of s. 7 should they deprive the liberty of even *one* person in a way that does not serve the law's purpose.<sup>30</sup>

The Supreme Court struck down section 490.013(2.1). It granted Mr. Ndhlovu an exemption to section 490.012, so he did not have to register with the NSOR. The court also suspended the declaration of invalidity concerning section 490.012 until 28 October 2023 (i.e., for one year), after which time it would also be struck down and sex offenders would no longer be required to register with the NSOR. This suspension allows Parliament an opportunity to amend these sections and make any consequential amendments, as required.

### 1.3 *INTERNATIONAL TRANSFER OF OFFENDERS ACT*

Bill S-12 also makes consequential amendments to the ITOA related to the SOIRA obligations of sex offenders who are transferred to Canada under an agreement with another country. The ITOA's purpose is to

enhance public safety and to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.<sup>31</sup>

In other words, it allows Canadians to serve a sentence imposed by another country in Canada and under Canada's correctional system. The offenders' conduct must also constitute an offence under the Code had the offence occurred in Canada.

## 2 **DESCRIPTION AND ANALYSIS**

Bill S-12 contains 49 clauses. Clauses 2 to 5 amend the publication ban sections of the Code. Clauses 34 and 35 amend the Code to ensure that victims can make their wishes known and have them documented if they want information about the sentence of an offender and its administration. Clause 48 includes coordinating amendments. Clauses 36 to 40 amend various forms used in the Code that are impacted by the bill. Other clauses amend sections of the Code that relate to a person's obligation to register under the SOIRA and that make consequential changes to the SOIRA and the IOTA. Only the key elements of Bill S-12 are discussed below.

### 2.1 PUBLICATION BANS

#### 2.1.1 Amendments to the *Criminal Code* (Clauses 2 to 5)

As explained in section 1.1 of this document, in proceedings concerning the offences listed in section 486.4(1)(a) of the Code, a presiding judge or justice has the authority to make an order prohibiting the publication or broadcasting of any information that would identify a victim or witness. The listed offences are primarily sex offences, although they also include offences such as human trafficking and extortion.

Under section 486.4(2), a prosecutor, a witness under 18 years of age or a complainant may make an application for a publication ban. The judge or justice of the peace must inform an underage witness or victim of the process.

Section 486.4(2.1) allows a publication ban for any offence when the victim is under 18 years of age, if it is in the interest of the proper administration of justice.

Publication bans may also be requested on application by a prosecutor on behalf of a victim or witness (section 486.5(1)) or by a justice system participant.

Clauses 2 to 5 amend sections 486.4, 486.5 and 486.6(2) of the Code and add section 486.51, all of which allow a court to order a publication ban.

Clause 2 updates the list of offences for which a publication ban may be ordered by adding the offence of knowingly publishing, distributing, transmitting, advertising or otherwise making available an intimate image without consent (section 162.1).

Key amendments in these clauses are designed to bolster the rights of victims and to give them opportunities to express whether they wish to have a publication ban ordered or lifted so they can speak publicly about their case.

Clause 2 adds section 486.4(3.1) to ensure that where the prosecutor makes an application for a publication ban, the judge or justice of the peace must ask the prosecutor if they verified whether the victim or witness wishes to have a publication ban imposed before making the application. If the victim or witness is present, the judge or justice of the peace must ask them directly whether they wish to have a publication ban imposed. Clause 2 also adds new section 486.4(3.2) to require a prosecutor to inform a victim or witness: when a publication ban is imposed, the effect of the ban, the circumstances under which information can be disclosed, and how to avoid contravening the publication ban. The prosecutor must confirm whether the victim or witness wishes to be the subject of the publication ban, and must inform the victim or witness of their right to have the order revoked or varied. The prosecutor must then inform the judge or justice of the peace when they have satisfied their duty to inform the victim or witness.

Clause 2 amends section 486.4(4) to specify that a victim or witness should not be criminally liable for breaching their own publication ban, provided they did not intentionally or recklessly reveal the identity of another person protected under the same publication ban. Similarly, a publication ban would not apply when a victim, witness, or justice system participant discloses information but does not intend for it to be shared publicly (such as with a therapist or in private conversation). Clause 5 specifies that a victim or witness should not be prosecuted for breaching their own publication ban, unless they knowingly breached the order, and in doing so revealed information that could identify another person protected under the publication ban, and a warning would not be sufficient in the circumstances.

Clause 4 adds sections 486.51(1) and 486.51(2) which require a prosecutor, when requested by the victim or witness, to apply as soon as possible to vary or revoke the order on their behalf. Victims or witnesses may also submit their own application. A court must vary or revoke the publication ban as requested, unless it could affect the privacy interests of another person who is also protected by a publication ban. In that case, a court must hold a hearing to determine whether a publication ban made under section 486.4 or 486.5 should be varied or revoked. In determining whether to vary or revoke the original order, the court “must take into account whether it is possible to do so in a manner that protects the privacy interests of any other person” who is the subject of any publication ban. The bill specifies that the accused is not considered to be one of the individuals protected by the ban. They cannot make submissions related to altering or revoking a publication ban, but must be informed if the ban is changed or revoked.

## 2.2 INFORMATION SHARING WITH VICTIMS

### 2.2.1 Victims and Information Sharing Regarding Sentence Administration (Clauses 34, 35 and 49)

Clauses 34 and 35 add provisions to Part XXIII of the Code, which include procedures and principles relevant to sentences. These are intended to ensure that victims can make their wishes known and have them documented if they want information about the sentence of an offender and its administration.

Clause 34 adds section 726.3 to the Code to indicate that when imposing a sentence, a court must ask the prosecutor if “reasonable steps were taken to determine whether the victim wishes to receive information with regard to the sentence and its administration.” If these wishes are known, the court is required to enter them into the record of proceedings.<sup>32</sup>

Clause 35 amends section 743.2, which states that a court imposing a sentence must provide its reasons to Correctional Service Canada (CSC) and enter the terms and reasons into the record of proceedings. It adds that a court must share with the CSC the name and contact information of any victim who wants to receive information under the CCRA.

Clause 49 establishes that section 35 comes into force on a date to be fixed by order of the Governor in Council.

## 2.3 AMENDMENTS TO THE *CRIMINAL CODE* REGARDING THE *SEX OFFENDER INFORMATION REGISTRATION ACT*

### 2.3.1 Definitions (Clause 6)

Clause 6 amends the definitions in section 490.011 of the Code that are used for sections 490.012 to 490.02915 of the Code, which deal with the various aspects of registration under the SOIRA. This section lists the “designated offences” for which a court is required to order registration under the SOIRA. In other words, when a person is sentenced for committing, or attempting or conspiring to commit a designated offence, or is found not criminally responsible on account of mental disorder for committing a designated offence, then the court must apply these sections of the Code where they are relevant to the circumstances.

The term “designated offence” continues to be used in the amended sections. Clause 6 amends this list and establishes two subcategories: “primary offence” and “secondary offence.” These two subcategories draw largely from the original list of designated offences, although the offence of distributing an intimate image without consent is added as a primary offence (section 162.1). Also, offences pertaining to administering a “noxious thing” (i.e., a drug) with the intent to either endanger life or cause bodily harm or to aggrieve or annoy (sections 245(1)(a) and 245(1)(b)) and pertaining to extortion (section 346) are added as secondary offences.

These two subcategories are relevant to the obligations imposed on a person required to register under the SOIRA in sections 490.012 and 490.013.

### 2.3.2 Orders (Clause 7)

Clause 7 amends section 490.012 of the Code, which requires a court to make an order requiring the offender to comply with the SOIRA using Form 52 (included in the Code) when imposing a sentence for designated offences, subject to certain provisions.

Under amended section 490.012(1), the court is required to make an order if:

- the designated offence was prosecuted by indictment;
- the sentence for the designated offence is a term of imprisonment of two years or more; and
- the victim of the designated offence is under the age of 18 years.



Under amended section 490.012(2), the court is required to make a SOIRA order if the prosecutor establishes that:

- the person<sup>33</sup> was previously convicted of a primary offence under the Code or the *National Defence Act*;<sup>34</sup> or
- the person was convicted of an offence that resulted in an order or obligation under the Code or another Act of Parliament to comply with the SOIRA.

Section 490.012(3) applies when neither section 490.012(1) nor 490.012(2) does. In other words, when a court imposes a sentence on a person who has committed a designated offence, or if the person has been found not criminally responsible on account of a mental disorder for such an offence, then this section requires that a court nonetheless make a SOIRA order, unless the court has considered certain factors and is satisfied that the person has established that certain conditions are met. For instance, if the person was prosecuted by summary conviction and is sentenced to a term of less than two years, and the victim is over 18 years of age, this section applies to determine whether the person must register under the SOIRA.

Under amended section 490.012(3), a court is not required to make an order to register and comply under the SOIRA if:

- there is “no connection between making the order and the purpose of helping police services prevent or investigate crimes of a sexual nature”; or
- “the impact of the order on the person, including on their 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.”

The language used for these two conditions recurs in several of the amended sections between 490.011 and 490.032.

In determining whether to make a SOIRA order under section 490.012(3), the court is also required to consider several factors. These are set out in section 490.012(4) and include:

- the nature and seriousness of the offence;
- the victim’s age and other personal characteristics;
- the nature and circumstances of the relationship between the person and the victim;
- the person’s characteristics, circumstances and criminal history;<sup>35</sup>
- any opinions of experts who have examined the person; and
- any other factors that the court considers relevant.

As these factors are repeated in several of the revised sections between 490.011 and 490.032, they are referred to as the “list of key factors” in this document.

The effect of amended sections 490.012(3) and 490.012(4) is that, depending on the conclusions drawn by the court after applying these considerations and factors, there are circumstances where an offender may not be ordered to comply with the SOIRA. However, since the onus is on the person to establish that these considerations have been met, there is a presumption that the person will otherwise be required to register.

For any of the circumstances outlined in sections 490.012(1) to 490.012(3), a court is only required to make an order for a person to be registered under the NSOR for a secondary offence if the prosecutor makes an application and establishes beyond a reasonable doubt that the secondary offence was committed with the intent to commit a primary offence (new section 490.012(5)).

### 2.3.3 Duration of Orders (Clause 8)

Section 490.013 is amended to provide rules for the duration of SOIRA orders made under section 490.012. These orders take effect on the day they are made, and their length depends on the factors set out in this section.

Unless an order is varied or terminated, the person will be registered for life under SOIRA if the order:

- is made under amended section 490.012(2) (amended section 490.013(5)); or
- is made under amended sections 490.012(1) or 490.012(3) and:
  - the person was convicted of, or not criminally responsible on account of mental disorder for, two or more designated offences in connection with which the order was made (new section 490.013(3)(a)); and
  - the court is satisfied that these offences are part of a pattern of behaviour that shows there is an increased risk that the person will reoffend (and commit a crime of a sexual nature) (new section 490.013(3)(b)).

If there were two or more designated offences but the court is not satisfied that this demonstrates a pattern of behaviour and increased risk, the duration of the order is the duration applicable to the offence with the longest maximum term (amended section 490.013(4)).

An order applies for 10 years if it is made under amended section 490.012(1) or 490.012(3) and in connection with an offence that was prosecuted summarily<sup>36</sup> or that carried a maximum term of imprisonment of two to five years (amended section 490.013(2)(a)).

An order applies for 20 years if the offence was punishable by a maximum term of 10 to 14 years' imprisonment (amended section 490.013(2)(b)).

Table A.1 in the appendix compares the provisions of amended sections 490.012 and 490.013 of the Code.

**2.3.4 Sexual Exploitation of a Person with a Disability  
(Clause 1)**

Section 153.1 of the Code establishes the hybrid offence of sexual exploitation of a person with a disability. Clause 1 of Bill S-12 amends this section to increase the maximum term of imprisonment for an indictable offence from five to 10 years.

An offence under section 153.1 of the Code is a designated offence under section 490.011 of the Code. As a result, this amendment increases the duration of the obligation to be registered under the ITOA.

**2.3.5 Reasons, Making an Order and a Right of Appeal  
(Clauses 9 and 12)**

Clause 9 amends section 490.0131 of the Code to add that a court making a mandatory SOIRA order under section 490.012(1) must state the designated offence and the term of imprisonment for that offence. Also, when a court makes a decision under section 490.012(3) or 490.013(3)(b), it must provide reasons.

This clause also adds that if the court has not decided whether to impose a SOIRA order at sentencing, the court has 90 days after sentencing to hold a hearing to do so.

Section 490.018 specifies the parties that are to be given notice of a SOIRA order under section 490.012, including the RCMP commissioner and the review board established or designated by a province for making and reviewing dispositions concerning accused persons that have been found not criminally responsible on account of mental disorder or unfit to stand trial.<sup>37</sup> Clause 12 amends this section to include provincial police services that are responsible for registering persons under the SOIRA.

Section 490.014 grants a right of appeal for the person or the prosecutor on grounds that raise questions of law or mixed fact and law regarding a SOIRA order. Clause 9 updates this section to reflect the amendments in sections 490.012 and 490.013. An appeal court may dismiss the appeal or allow the appeal, then order a new hearing, quash or amend the order, or make a new order under section 490.012.

### 2.3.6 Termination Orders (Clauses 10 and 11)

Sections 490.015 and 490.016, amended by clauses 10 and 11 respectively, set out rules whereby a person may apply for a termination order when they are subject to an order to comply with the SOIRA registration requirements under section 490.012. In brief, a termination order is permitted after a period of time has elapsed, depending on the duration of the original order (section 490.015(1)) or after a pardon, record suspension or absolute discharge. The court may make the order if it is satisfied that the person has demonstrated that the no-connection and impact-on-the-person provisions apply and if it has considered the list of key factors. The court must give reasons and ensure that the attorney general of the province or minister of justice of the territory in question and the RCMP commissioner are notified.

Note that section 490.017 is not amended; it allows a prosecutor or person who applied for a termination order to appeal a termination order decision made under section 490.016 on grounds of mixed law and fact.

### 2.3.7 Convictions Prior to 2004 (Clauses 13 to 16)

Sections 490.019 to 490.029 of the Code create a framework for offenders who must comply with the SOIRA but who were sentenced for a designated offence committed before the SOIRA came into force on 15 December 2004 or were registered under Ontario's sex offender registration legislation before that date. These sections detail the timing and method of service of a notice to register (section 490.021) and how the obligation to comply begins when it is served (section 490.022). They also permit an application for an exemption order (section 490.023) or a termination order (section 490.027) and for an appeal of related decisions (sections 490.024 and 490.029).

Several amendments to these sections ensure that the sections and terms referenced are understood to be those that were used prior to the coming into force of Bill S-12 or prior to 2004, given that the Code has since been amended. Other amendments, like those in clause 16, ensure that when considering an application for a termination order, the court is satisfied that the no-connection and impact-on-the-person provisions have been met and the list of key factors have been considered (section 490.027).

### 2.3.8 Convictions Outside Canada (Clauses 17 to 24)

Sections 490.02901 to 490.02911 of the Code create a framework for offenders who must comply with the SOIRA because they have been convicted of or found not criminally responsible on account of mental disorder for the equivalent of a designated offence outside Canada (in the opinion of the attorney general of the province or minister of justice of the territory). Section 490.02902 states that a person can only be served with a notice to comply with the SOIRA under this section if the person entered Canada after the SOIRA came into force on 15 April 2011.

The amendments in clauses 17 to 24 largely serve to update these sections in keeping with other amendments made in Bill S-12, such as adding the no-connection and impact-on-the-person provisions and the list of key factors for exemption orders (clause 19) and termination orders (clause 23) or ensuring that the correct new section numbers are referenced in, for instance, the section setting up the right to appeal a decision regarding an exemption or variation order (clause 21).

Clause 20 adds section 490.029051 to permit a person to apply for a variation order if, under section 490.02904(3)(d) amended by clause 18, the obligation applies for life and none of the offences in the notice to register have an equivalent offence with a maximum term of imprisonment for life provided for in Canadian law. If a court is satisfied that the offences listed in the notice do not demonstrate a pattern of behaviour showing an increased risk of reoffending by committing a crime of a sexual nature, then the court may vary the duration of the obligation in the order based on the duration of the equivalent Canadian offence with the longest maximum term of imprisonment.

### 2.3.9 International Transfer of Offenders (Clauses 25 to 27)

As explained in section 1.3 of this legislative summary, some Canadians who commit a crime in another country may be transferred to Canada to serve their sentence. In the same way that clauses 17 to 24 update the rules, procedures and obligations for persons who have committed crimes abroad, clauses 25 to 27 amend the relevant sections of the Code for persons who are subject to an obligation under section 36.1 of the ITOA (the section that links the ITOA and the obligations under the SOIRA). They establish, among other things, the court procedures for considering an exemption order (new section 490.029111 created by clause 25), a variation order (new section 490.029112 also created by clause 25) or a termination order (sections 490.02912 and 490.02913 amended by clauses 26 and 27, respectively), all subject to the no-connection and impact-on-the-person provisions and the list of key factors.

2.3.10 Disclosure of Information  
(Clause 28)

Section 490.03 sets out the circumstances in which information in the NSOR may be disclosed by the RCMP commissioner or a person authorized by the commissioner. These already include proceedings under section 490.012 and other relevant procedures relating to the SOIRA, such as for terminating an order, obligation or exemption or for an appeal. Clause 28 adds some of the new or updated provisions to the list of permitted proceedings for which information may be disclosed.

2.3.11 Additional Orders  
(Clauses 31 and 32)

Clause 31 adds procedures whereby a justice may issue a warrant authorizing a peace officer to arrest a person who has contravened any of sections 4 to 5.1 of the SOIRA and bring the person to any registration centre to remedy the contravention. It also adds that no charge can be laid against the person in respect of any contravention of these sections if it has been “remedied by the person after the warrant is issued.”

Clause 32 adds four new sections under the heading “Additional Orders.” Clause 32 allows for persons to apply to the court for:

- an exemption order regarding an order made under section 490.012 on or after 15 April 2015 but before Bill S-12 comes into force (new section 490.04(a));
- an exemption order regarding an obligation under section 490.02901 of the Code or under section 36.1 of the ITOA that began before Bill S-12 comes into force (new section 490.04(b)); or
- a variation order for other orders and obligations that apply for life (new section 490.05(1)).

The new sections in these clauses set out various procedural rules and expectations regarding these orders, including when reasons are required, when the no-connection and impact-on-the-person provisions and the list of key factors should be applied, and who should be notified of any order and when, as well as appeal procedures.

2.3.12 Forms  
(Clauses 36 to 40)

Clauses 36 to 40 update the various forms that are relevant to the SOIRA and Code proceedings that are impacted by Bill S-12, including Forms 52 and 54, which are used to advise recipients of their obligations to comply with the SOIRA.

These amendments are largely consequential to the other changes proposed by the bill. For instance, changes to Forms 34.2 and 48.2, which are used for victim impact statements, allow victims to indicate that they wish to receive further information about an offender’s sentence and its administration.



2.3.13 Changes to the *Sex Offender Information Registration Act* and the *International Transfer of Offenders Act* (Clauses 41 to 44)

Bill S-12 makes several changes to the SOIRA and ITOA, most of which ensure that references to the Code in these laws are updated along with the other amendments.

One change that will impact individuals is in clause 41, which amends section 6 of the SOIRA. This section requires registered sex offenders to notify the relevant registration centre<sup>38</sup> when they travel. The amendment modifies sections 6(1) and 6(1.01) so that the notification must be given 14 days prior to departure. New section 6(1.02) allows for a “reasonable excuse” to be provided for not complying with this time limit.

Clause 43 amends section 15(1) of the SOIRA, which concerns the retention of information in the database; instead of keeping a person’s information in the database indefinitely, the information will now only be retained for 50 years after that person’s death.

Clause 47 amends Form 1 of the ITOA, which is used to inform persons who are being transferred and who were convicted of or found not criminally responsible on account of mental disorder for a designated offence (or designated offences) that they must comply with the SOIRA. In addition to updating the language to reflect the changes to the Code in Bill S-12 (such as including “primary offence”), clause 47 it also adds references to amended section 5.1 and new section 5.2 of the SOIRA, which set out an individual’s right to apply to the court for an exemption from having to comply with the SOIRA or, if the obligation applies for life, to apply for an order to vary the duration of an order. Both sections establish a right of appeal of such decisions.

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#### NOTES

1. [Bill S-12, An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session.
2. Senate, Standing Committee on Legal and Constitutional Affairs, [Studies & Bills](#); and Senate, Standing Committee on Legal and Constitutional Affairs, [Bill S-12, An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act, with amendment and observations](#), Fifteenth report, 20 June 2023.
3. Department of Justice Canada, [Strengthening the National Sex Offender Registry and empowering victims of crime – Government of Canada introduces legislation](#), News release, 26 April 2023.
4. [Criminal Code](#) (Code), R.S.C. 1985, c. C-46.
5. [R. v. Ndhlovu](#), 2022 SCC 38.
6. [Sex Offender Information Registration Act](#) (SOIRA), S.C. 2004, c. 10.
7. [Victims Bill of Rights Act](#), S.C. 2015, c. 13, s. 12.

8. [Bill C-32, An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts](#), 41<sup>st</sup> Parliament, 2<sup>nd</sup> Session (S.C. 2015, c. 13).
9. [Corrections and Conditional Release Act](#), S.C. 1992, c. 20.
10. A conviction for violating a publication ban can result in a maximum sentence of up to two years in jail and a \$5,000 fine.
11. House of Commons, Standing Committee on Justice and Human Rights, [Improving Support for Victims of Crime](#), Seventh report, December 2022.
12. *Ibid.*, p. 44.
13. [Bill C-16, An Act respecting the registration of information relating to sex offenders, to amend the Criminal Code and to make consequential amendments to other Acts](#), 37<sup>th</sup> Parliament, 3<sup>rd</sup> Session (S.C. 2004, c. 10).
14. Royal Canadian Mounted Police, [Sex offender management](#).
15. See [SOIRA](#), S.C. 2004, c. 10, s. 5.
16. [International Transfer of Offenders Act](#), S.C. 2004, c. 21.
17. [National Defence Act](#), R.S.C. 1985, c. N-5.
18. *Ibid.*, ss. 119.1 and 227 to 227.21.
19. Canada does not currently notify other countries when offenders on the National Sex Offender Registry travel there. See, for example, Robert Fife and Steven Chase, "[U.S. wants Canada to share travel information on convicted child sex offenders](#)," *The Globe and Mail*, 2 February 2022.
20. Ontario, [Christopher's Law \(Sex Offender Registry\), 2000](#), S.O. 2000, c. 1. See also [Ontario \(Attorney General\) v. G.](#), 2020 SCC 38.
21. Government of Canada, [About the Canadian Police Information Centre](#).
22. See United Kingdom, [Sexual Offences Act 2003](#), 2003 c. 42; United States, [Violent Crime Control and Law Enforcement Act of 1994](#), s. 170101; California Department of Justice, Office of the Attorney General, "About Megan's Law," [California Megan's Law Website](#); and California Legislative Information, [Penal Code](#), s. 290.46.
23. [Bill C-26, An Act to amend the Criminal Code, the Canada Evidence Act and the Sex Offender Information Registration Act, to enact the High Risk Child Sex Offender Database Act and to make consequential amendments to other Acts](#), 41<sup>st</sup> Parliament, 2<sup>nd</sup> Session (S.C. 2015, c. 23).
24. [Bill S-2, An Act to amend the Criminal Code and other Acts](#), 40<sup>th</sup> Parliament, 3<sup>rd</sup> Session (S.C. 2010, c. 17).
25. Robin MacKay, [Legislative Summary of Bill C-16: Sex Offender Information Registration Act](#), Publication no. 37-3-LS-470-E, Library of Parliament, 16 February 2004; Robin MacKay, [Legislative Summary of Bill C-26: An Act to amend the Criminal Code, the Canada Evidence Act and the Sex Offender Information Registration Act, to enact the High Risk Child Sex Offender Database Act and to make consequential amendments to other Acts](#), Publication no. 41-2-C26-E, Library of Parliament, 14 March 2014; and Tanya Dupuis, [Legislative Summary of Bill S-2: Protecting Victims from Sex Offenders Act](#), Publication no. 40-3-S2-E, Library of Parliament, 19 March 2010.
26. [Code](#), R.S.C. 1985, c. C-46, ss. 490.011(1)(a), 490.011(1)(c), 490.011(1)(c.1), 490.011(1)(d) and 490.011(1)(e). These sections were amended to require automatic registration.
27. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).
28. The Court of Appeal of Alberta had previously concluded that the sentencing judge erred in finding that Mr. Ndhlovu had established that sections 490.012 and 490.013(2.1) caused a deprivation of section 7 rights. It held that these sections were constitutionally valid. See [R. v. Ndhlovu](#), 2020 ABCA 307 (CanLII).
29. [R. v. Ndhlovu](#), 2022 SCC 38, para. 7.
30. *Ibid.*, paras. 77 and 78. In summarizing these principles, the Supreme Court of Canada cited *Canada v. Bedford*. See [Canada \(Attorney General\) v. Bedford](#), 2013 SCC 72.
31. [International Transfer of Offenders Act](#), S.C. 2004, c. 21, s. 3.
32. [Code](#), R.S.C. 1985, c. C-46, s. 726.2. This section requires the court to give reasons for the sentence imposed and to enter the terms and reasons into the record of proceedings.

33. Ibid., ss. 490.011 to 490.032. Throughout sections 490.011 to 490.032, the person who committed a designated offence or who was found not criminally responsible on account of mental disorder for having committed an offence is referred to simply as “the person.”
34. Specifically, new s. 490.012(2) of the Code states that the person must have been “previously convicted under section 130 of the *National Defence Act* in respect of a primary offence.” Section 130 of the *National Defence Act* ensures that persons subject to that Act are liable to punishment for offences under other Acts, including the Code. Offences under the *National Defence Act* include those relating to the defence of Canada and can be committed by members of the Canadian military or civilians.
35. Under new s. 490.012(4)(e), criminal history includes “the age at which they previously committed any offence and the length of time for which they have been at liberty without committing an offence.”
36. [Code](#), R.S.C. 1985, c. C-46, s. 787(1). This section stipulates that persons convicted of offences that are punishable on summary conviction are generally liable to “a fine of not more than \$5,000 or to a term of imprisonment of not more than two years less a day, or to both.”
37. Ibid., s. 672.38(1).
38. See [SOIRA](#), S.C. 2004, c. 10, s. 7.1.

## APPENDIX A – OVERVIEW OF AMENDED SECTIONS 490.012 AND 490.013 OF THE *CRIMINAL CODE* ON THE OBLIGATION TO REGISTER UNDER THE *SEX OFFENDER INFORMATION REGISTRATION ACT*

**Table A.1 – Amended Sections 490.012 and 490.013 of the *Criminal Code*:  
Obligation to Register Under the *Sex Offender Information Registration Act***

An Order to Register Under the SOIRA Is Required	An Order to Register Under the SOIRA May Be Required	An Obligation to Be Registered Under the SOIRA Applies for Life	An Obligation to Be Registered Under the SOIRA Does Not Apply for Life
<p>If under s. 490.012(1) of the Code:</p> <ul style="list-style-type: none"> <li>▪ the designated offence was prosecuted by indictment;</li> <li>▪ the sentence for the designated offence is a term of imprisonment of two years or more; and</li> <li>▪ the victim of the designated offence is under the age of 18 years.</li> </ul>	<p>Only if under s. 490.012(5) of the Code:</p> <ul style="list-style-type: none"> <li>▪ for secondary offences only: the prosecutor applies for the order and establishes beyond a reasonable doubt that the person committed the secondary offence with the intent to commit a primary offence.</li> </ul>	<p>If under s. 490.013(3) of the Code:</p> <ul style="list-style-type: none"> <li>▪ the person was convicted of (or found not criminally responsible for) two or more designated offences and the offences demonstrate a pattern of behaviour; and</li> <li>▪ the maximum term of imprisonment for the offence is life.</li> </ul>	<p>Under s. 490.013(2) of the Code:</p> <ul style="list-style-type: none"> <li>▪ applies for 10 years if the offence was prosecuted by summary conviction or the term of imprisonment was two or five years;</li> <li>▪ applies for 20 years if the maximum penalty for the offence was 10 or 14 years.</li> </ul> <p>If under s. 490.013(4) of the Code</p> <ul style="list-style-type: none"> <li>▪ applies to the longest maximum term of multiple offences if the court is not satisfied that, in situations involving more than one designated offence, a pattern of behaviour is demonstrated.</li> </ul>

An Order to Register Under the SOIRA Is Required	An Order to Register Under the SOIRA May Be Required	An Obligation to Be Registered Under the SOIRA Applies for Life	An Obligation to Be Registered Under the SOIRA Does Not Apply for Life
<p>If under s. 490.012(2) of the Code:</p> <ul style="list-style-type: none"> <li>the person was previously convicted of a primary offence or previously convicted under section 130 of the <i>National Defence Act</i> in respect of a primary offence; or</li> <li>the person is or was, as a result of a conviction, subject to an order or obligation under this or another Act of Parliament to comply with the SOIRA.</li> </ul>	<p>Only if under s. 490.012(5) of the Code:</p> <ul style="list-style-type: none"> <li>for secondary offences only: the prosecutor applies for the order and establishes beyond a reasonable doubt that the person committed the secondary offence with the intent to commit a primary offence.</li> </ul>	<p>Under s. 490.013(6) of the Code: (applies for life)</p>	n/a
<p>If under s. 490.012(3) of the Code:</p> <ul style="list-style-type: none"> <li>neither s. 490.012(1) nor s. 490.012(2) applies to the designated offence.</li> </ul>	<p>Under s. 490.012(3) of the Code:</p> <ul style="list-style-type: none"> <li>unless the person has established that the criteria in ss. 490.012(3)(a) and 490.012(3)(b) are met regarding the lack of connection between the order and the SOIRA's purpose, or the person has established the disproportionate impact the order would have. The court must also apply the factors in s. 490.012(4) when making its decision.</li> </ul>	<p>If under s. 490.013(3) of the Code:</p> <ul style="list-style-type: none"> <li>the person was convicted of (or found not criminally responsible for) two or more designated offences and the offences demonstrate a pattern of behaviour; and</li> <li>the maximum term of imprisonment for the offence is life.</li> </ul>	<p>If under s. 490.013(2) of the Code:</p> <ul style="list-style-type: none"> <li>the offence was prosecuted by summary conviction or the term of imprisonment was two or five years (applies for 10 years); or</li> <li>the maximum penalty for the offence was 10 or 14 years (applies for 20 years).</li> </ul> <p>If under s. 490.013(4) of the Code:</p> <ul style="list-style-type: none"> <li>the court is not satisfied that in situations involving more than one designated offence a pattern of behaviour is demonstrated (applies to offence with longest maximum term).</li> </ul>

Source: Table prepared by the Library of Parliament using information obtained from [Bill S-12, An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session.