

A BILL

entitled

CRIMINAL CODE (SEX OFFENDER MANAGEMENT) AMENDMENT ACT 2018

TABLE OF CONTENTS

1	Citation
2	Inserts section 70QA and amends Prison Rules 1980
3	Amends section 329C
4	Amends section 329E
5	Amends section 329F
6	Inserts section 329FA
7	Amends section 329H
8	Application and transitional provision
9	Commencement

WHEREAS it is expedient to amend the Criminal Code Act 1907 to enhance the effective oversight and management of sex offenders, to establish a sex offender register, and for connected purposes;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Criminal Code (Sex Offender Management) Amendment Act 2018.

Inserts section 70QA and amends Prison Rules 1980

2 (1) After section 70Q of the Criminal Code Act 1907 (the "principal Act"), insert—

"Release on licence subject to completion of mandated programmes

70QA (1) Notwithstanding sections 70N, 70O, 70P and 70Q, a sex offender (as defined in section 329D) shall not be entitled—

(a) to apply for release on licence; or

(b) to be released on his earliest release date,

CRIMINAL CODE (SEX OFFENDER MANAGEMENT) AMENDMENT ACT 2018

until any mandated programmes, contained in his case plan, are completed.

(2) In this section, “case plan” means a document that outlines goals, interventions, outcomes and strategies for the supervision of a sex offender, prepared by the Department of Corrections or the Department of Court Services (as the case may be).”.

(2) In rule 32 of the Prison Rules 1980 (offences against discipline), after paragraph (c.1) insert—

“(c.1A) being a sex offender, fails to complete programmes mandated under section 70QA of the Criminal Code Act 1907;”.

Amends section 329C

3 In section 329C of the principal Act, delete “\$5,000” and substitute “\$10,000”.

Amends section 329E

4 In section 329E of the principal Act—

(a) in subsection (4)(d), delete “such period not exceeding ten years as may be specified in the order” and substitute “the period specified in the order”;

(b) after subsection (4), insert—

“(4A) For the purposes of subsection (4)(d), the period specified in the order shall be—

(a) a period of ten years or more, in the case of a sex offender; or

(b) a period not exceeding ten years, in any other case.”

Amends section 329F

5 In section 329F of the principal Act—

(a) in subsection (1), delete “An offender” and substitute “Subject to subsection (1A), an offender”;

(b) after subsection (1), insert—

“(1A) A sex offender who is required to be supervised by an order under section 329E(4)(d) shall be supervised by a probation officer, and the level of supervision shall be—

(a) determined by the probation officer according to the gravity of the offence committed and in accordance with the policies and procedures outlined in the case plan (as defined in section 70QA(2)); and

(b) guided by the risk posed by the offender and the need for the protection of the community.”.

CRIMINAL CODE (SEX OFFENDER MANAGEMENT) AMENDMENT ACT 2018

Inserts section 329FA

6 After section 329F of the principal Act insert—

“Sex Offender Registration

Registration as a sex offender

329FA (1) There shall be established a sex offender register, to be maintained and administered by the Minister, which shall contain—

- (a) a list of all persons—
 - (i) convicted of a sexual offence in Bermuda and sentenced to a term of imprisonment for the offence;
 - (ii) convicted of an overseas sexual offence and sentenced to a term of imprisonment for the offence, where the offender is or becomes resident in Bermuda;
- (b) photographs of all such convicted sex offenders;
- (c) home addresses of all such convicted sex offenders;
- (d) any information that is reasonably necessary to be included in the sex offender register; and
- (e) any information that is reasonably necessary to give effect to the protocol established under section 329H.

(2) Where a person is sentenced to a term of imprisonment following conviction for a sexual offence, the court shall order the Commissioner of Police to enter that person’s name, photograph and home address in the sex offender register.

(3) At the time of sentencing, the sex offender shall be informed by the court that his name has been entered in the register.

(4) A person whose name is entered in the sex offender register shall be subject to a period of registration of ten years or more as may be determined by the offender risk management team, following guidance issued by the Minister in a code of practice.

(5) The period of registration shall be suspended during any time in which the offender is imprisoned.

(6) A person whose name is listed in the sex offender register shall during the period of registration—

- (a) report to the offender risk management team as required by the case plan;
- (b) submit to such assessments as may be determined by the offender risk management team;

CRIMINAL CODE (SEX OFFENDER MANAGEMENT) AMENDMENT ACT 2018

- (c) notify the offender risk management team in writing in advance of any intended change of address;
- (d) notify the offender risk management team before any change of employment or occupation;
- (e) notify the offender risk management team in advance of any plans to travel overseas, and shall not leave Bermuda without the written permission of the team; and
- (f) comply with such other conditions as may be imposed by the offender risk management team for the purposes of facilitating the successful reintegration of the person into the community.

(7) A person who—

- (a) fails, without reasonable excuse, to comply with any requirements imposed by or under subsection (6); or
- (b) notifies the offender risk management team, in purported compliance with those requirements, of 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.

(8) Notwithstanding subsection (4), a person whose name is listed in the sex offender register may apply to the court for an order reducing the period of registration, or terminating it, on the ground that he does not present a risk of reoffending.

(9) 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.

(10) No application under subsection (8) shall be heard unless notice of an application has been given to the Director of Public Prosecutions at the time the application is made.

(11) In this section—

“case plan” means a plan devised by the offender risk management team to manage offender supervision;

“offender risk management team” means a team appointed by the Minister comprising representatives from—

- (a) the Bermuda Police Service;
- (b) the Department of Court Services; and
- (c) the Department of Corrections;

“overseas sexual offence” means an offence committed in an overseas jurisdiction which is of like nature to a sexual offence as defined in section 329D;

CRIMINAL CODE (SEX OFFENDER MANAGEMENT) AMENDMENT ACT 2018

(12) For the purposes of this section, the functions of the offender risk management team are—

- (a) to manage the supervision of offenders in the community in accordance with the policies of the offender risk management team;
- (b) to assess the re-offending risks an offender may pose in order to assist with effective supervision;
- (c) to provide on-going or regular assessments that will guide an offender's case management plan;
- (d) to manage identified risks (including drug addiction, substance abuse and mental health concerns) in order to minimize re-offending by an offender; and
- (e) to require the offender to submit to an updated risk assessment to be conducted by a qualified professional, as outlined in the protocol established under section 329G upon the offender risk management team receiving intelligence or pertinent information of any suspected or purported elevation in risk of the offender's re-offending.

Disclosure of information

329FB (1) Subject to section 329H, no person shall, without lawful authority, disclose information contained in the sex offender register established in accordance with section 329FA, or held for the purposes of section 329G.

(2) Any person who discloses information in contravention of this section commits an offence and is liable on summary conviction to a fine of \$10,000.

(3) The Public Access to Information Act 2010 shall not apply in relation to the sex offender register.”.

Amends section 329H

7 In section 329H of the principal Act—

- (a) in subsections (1) and (2), delete “may” and substitute “shall”;
- (b) after subsection (3), insert—

“(3A) For the purposes of this section, the Commissioner of Prisons shall notify the Minister of a sex offender's pending release at least two months prior to the release date, and shall indicate whether the person has completed any programmes mandated under section 70QA.”

CRIMINAL CODE (SEX OFFENDER MANAGEMENT) AMENDMENT ACT 2018

Application and transitional provision

8 (1) For the avoidance of doubt, the amendments made by sections 2, 4 and 6 of this Act shall apply in relation to persons convicted of a sexual offence (as defined in section 329D of the principal Act) committed on or after the commencement of this Act.

(2) Where, upon the commencement of this Act, a person is the subject of the notification requirements for sex offenders under section 329G of the principal Act, that person shall continue to be subject to those requirements in accordance with that section, but section 329G shall not apply to persons to whom section 329FA of the principal Act as inserted by section 6 of this Act applies (registration as a sex offender if sentenced to a term of imprisonment following conviction for a sexual offence).

Commencement

9 This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

CRIMINAL CODE (SEX OFFENDER MANAGEMENT) AMENDMENT BILL 2018

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Criminal Code Act 1907 (the "principal Act") to enhance the effective oversight and management of sex offenders, to establish a sex offender register, and for connected purposes.

Clause 1 is the citation.

Clause 2(1) inserts new section 70QA into the principal Act. Section 70QA(1) provides that, notwithstanding sections 70N, 70O, 70P and 70Q, a sex offender shall not be entitled to apply for release on licence or be released on his earliest release date, until completion of any mandated programmes contained in his case plan, as defined in subsection (2). In consequence, clause 2(2) amends rule 32 of the Prison Rules 1980 by inserting new paragraph (c.1A) which provides that failure by a sex offender to complete programmes mandated under new section 70QA is a disciplinary offence. This follows paragraph (c.1) which contains the disciplinary offence of refusing to participate in a specified training, educational or rehabilitation programme when required to do so by the Commissioner. Penalties for disciplinary offences under the Prison Rules include forfeiture of remission.

Clause 3 amends section 329C of the principal Act to increase from \$5,000 to \$10,000 the penalty for an offence of publishing or broadcasting information as to the identity of the complainant or, before conviction, the accused in a trial relating to a sexual offence.

Clause 4 amends section 329E of the principal Act. New subsection (4A) provides that the specified period of supervision for a sex offender who is sentenced to at least three years in prison, and if the court considers that there is a substantial risk of re-offending, shall be a period of at least ten years (it remains a period not exceeding ten years for other offenders subject to supervision).

Clause 5 amends section 329F of the principal Act, by inserting subsection (1A). Subsection (1A) provides that a sex offender who is required to be supervised by an order under section 329E(4)(d) shall be supervised by a probation officer, and that the level of supervision shall be determined by the probation officer, according to the gravity of the offence committed and in accordance with the policies and procedures outlined in the offender's case plan (as defined in section 70QA(2), inserted by clause 2), and guided by the risk posed by the offender as well as the need for the protection of the community.

Clause 6 inserts new sections 329FA and 329FB into the principal Act. Section 329FA (1) establishes the sex offender register to be administered by the Minister. Subsection (2) requires the court sentencing a person to a period of imprisonment following conviction of a sexual offence to order the Commissioner of Police to enter the person's name in the register. Subsection (3) requires the court to inform the offender accordingly. Subsections (4) and (5) provide that the period of registration shall be a period of ten years or more as determined by the offender risk management team ("the team") in accordance with guidance issued by the Minister in a code of practice. Subsection (6) sets out the obligations of being on the register: to report to the team; to be assessed by the team; to notify the team

CRIMINAL CODE (SEX OFFENDER MANAGEMENT) AMENDMENT BILL 2018

regarding change of address; to notify the team before any change of employment or occupation; to notify the team regarding travel plans and not to leave Bermuda without written permission of the team; to comply with other conditions imposed by the team for the purposes of facilitating the successful reintegration of the person into the community. Subsection (7) creates an offence (similar to the offence in section 329G(6)) for failure to comply with any obligations imposed by or under subsection (6). Subsections (8) to (10) provide for an offender to apply to the court to reduce or terminate the period of registration on the ground that he does not present a risk of re-offending. Subsection (11) sets out definitions, including of the offender risk management team, and subsection (12) sets out the functions of the team. Section 329FB creates an offence of disclosing information in the sex offender register, subject to a penalty on summary conviction of \$10,000. Subsection (3) provides that the Public Access to Information Act 2010 does not apply in relation to the register.

Clause 7 amends section 329H of the principal Act, changing the word “may” to “shall” in subsections (1) and (2), thus imposing a duty on the Minister to establish a sex offender protocol. New subsection (3A) requires the Commissioner of Prisons to inform the Minister at least two months before the pending release date of a sex offender and indicate whether the offender has completed programmes mandated under section 70QA.

Clause 8(1) provides, for the avoidance of doubt, that the amendments made by clauses 2, 4 and 6 of this Bill apply to persons convicted of a sexual offence committed on or after the commencement day. Clause 8(2) clarifies that the new registration regime in section 329FA of the principal Act will replace section 329G’s notification requirements in relation to a sex offender sentenced to a term of imprisonment following conviction for a sexual offence committed on or after the commencement day.

Clause 9 provides for commencement by notice.