THE CRIMINAL LAW AMENDMENT BILL 1999: NOTIFICATION LAWS FOR CHILD SEX OFFENDERS

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CONTENTS

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1. INTRODUCTION

The Criminal Law Amendment Bill 1999 amends ss 19 and 20 of the *Criminal Law Amendment Act 1945* (Qld), and inserts a proposed new s 22, and transitional provisions. The *Corrective Services Act 1988* (Qld) is also amended in one substantive aspect, and minor and consequential amendments are also made to that Act and a number of other Acts. The objective of the Bill is stated to be "*to address community concerns about the availability of information about the whereabouts of convicted child sex offenders and to take the decision making process about releasing such information out of the political arena*".[1]

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1 Criminal Law Amendment Bill 1999 (Qld), *Explanatory Notes*, p 1.

2. THE CURRENT LEGISLATION

2.1 THE CRIMINAL LAW AMENDMENT ACT 1945

2.1.1 Reporting requirements

Section 19(1) of the Criminal Law Amendment Act 1945 provides that, where someone has been convicted on indictment of an offence of a sexual nature in relation to a child under 16, the trial court, or another court of like jurisdiction, upon application by a Crown law officer, may order that the **offender**:

- is to report the offender's address to the officer in charge of Police at any place specified in the order within 48 hours after being released from custody, and
- thereafter, for as long as is specified in the order, is to report any change of address, within 48 hours of that change, to the officer in charge of Police at that place or at another place approved by the Commissioner of Police.

An order will not be made unless the court is satisfied that "*a substantial risk*" exists that the offender will commit another offence of a sexual nature upon or in relation to a child under 16: s 19(2).

Offences to which reporting orders will apply

"Offence of a sexual nature" is defined in s 2A(1) of the Criminal Law Amendment Act 1945, inserted by the *Criminal Law Amendment Act 1946* (Qld), as:

> *includ*[ing] *any offence constituted wholly or partly by an act whereby the offender has exhibited a failure to exercise proper control over the offender's sexual instincts and any offence in the circumstances associated with the committal whereof the offender has exhibited a failure to exercise such proper control over the offender's sexual instincts, and includes an assault of a sexual nature.*

The section is intended to be read with Qld's *Criminal Code* and the *Justices Act 1886* (Qld): s 2A(2).

Who may make/apply for an order

Under s 19(1)(a), the trial court has the **discretion** to make a reporting order. Provisions are also included to ensure that the Crown may make an application for

a requirement to be imposed on an offender at a stage subsequent to sentencing[2]: s 19(1)(b). In the latter case, notice that an order is being applied for must be served upon an offender: s 19(3)(a), and the offender or his or her legal representative is entitled to be present at the hearing of the application and, if present, is to be given a reasonable opportunity to be heard: s 19(3)(b).

Manner of reporting

When an offender is required to report his address to police within 48 hours after being released from custody, this must be done in person: s 19(6). Thereafter, an offender can report the required details in person or by letter sent by registered post: s 19(7).

Effect of rehabilitation period

The *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) allows the notional sealing of criminal records in certain circumstances. Offenders who are ordered to serve a period not greater than 30 months in custody, or who have not been ordered to serve any period in custody, are eligible for rehabilitation under the Act: s 3(2). For adults, the rehabilitation period is usually 10 years, and for juveniles, it is usually five years: s 3(1). Subject to certain exceptions, convictions may not be disclosed once the rehabilitation period has expired: ss 6 & 7, and person or bodies responsible for determining a person's fitness to be admitted to a profession or occupation are to disregard convictions in relation to which the rehabilitation period has expired unless the person being assessed is expressly required by law to disclose his or her criminal history, or the person or body making the assessment is expressly required by law to take into the account the criminal history of the person to be assessed: ss 9 & 9A.

By virtue of s 19(5) of the Criminal Law Amendment Act 1945, where a rehabilitation period is capable of running under the Criminal Law (Rehabilitation of Offenders) Act in relation to a conviction for which a reporting order is made, then when the rehabilitation period expires, the reporting order will also expire.

Offences

It is an offence to fail to report as ordered, punishable by a fine of 20 penalty units ($ 1500) or six months imprisonment: s 19(8). A prosecution for this offence is to

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[2] The Criminal Code, Evidence Act and Other Acts Amendment Bill (Qld), Second Reading Speech, Hon BD Austin MLA, *Queensland Parliamentary Debates*, pp 3252-3262 at p 3261.

be upon the complaint of a person authorised in writing by the Attorney-General or a person belonging to a class so authorised: s 21(1).

Appeal provisions

It is open to a person against whom an order under s 19(1) has been made to appeal against it as if the order were a sentence given upon the person's conviction: s 19(9)(a). Conversely, where the court has refused to make an order, the Attorney-General may appeal against the refusal: s 19(9)(b).

2.1.2 Disclosure Provisions

Section 20(1) of the 1945 Act gives the Attorney-General the discretion to inform any person that a person is subject to a reporting order, and give details of any offence of a sexual nature of which the person subject to the order has been convicted. However, the Attorney-General must be satisfied that the person to be given the information has "*a legitimate and sufficient interest*" in obtaining it.

According to advice received by the Attorney-General and Minister for Justice, Hon MJ Foley MLA, from the Crown Solicitor, the provision does not enable the Attorney-General to volunteer to certain people information about the convictions for sexual offences of a person subject to a reporting order. Rather, a **request** is said to be necessary ie the provision allows the Attorney-General to answer queries from persons whom the Attorney-General is satisfied have a legitimate and sufficient interest as to whether a person has convictions for sexual offences and to provide details of those offences and of the fact that the person is subject to a s 19 reporting order.[3]

The Attorney-General may release the information subject to such conditions as he or she thinks fit: s 20(2). Failing to comply with any such condition attracts a maximum penalty of 10 penalty units ($750): s 20(3). The offence is dealt with summarily.

Protection from Liability for Disclosure

Section 20(4) of the Criminal Law Amendment Act 1945 provides that neither the Crown nor any person shall incur any liability for a disclosure made in accordance with s 20.

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[3] Hon MJ Foley MLA, Attorney-General and Minister for Justice and Minister for the Arts, Ministerial Statement 'Criminal Law Amendment Act', *Queensland Parliamentary Debates*, 8 June 1999, p 2146.

2.2 OTHER LEGISLATION

Section 10.2 of the *Police Service Administration Act 1990* (Qld) allows the Commissioner of Police to authorise, in accordance with any applicable regulations, the disclosure of information that is in the possession of the police service. Subject to any regulation made in relation to the disclosure of such information, the Commissioner may impose conditions on the disclosure of the information, and failing to abide by them carries a maximum penalty of 40 penalty units ($3000). Where information is disclosed under and in accordance with the Commissioner's authorisation, neither the Crown nor any person incurs any legal liability.

3. BACKGROUND

3.1 HISTORY BEHIND THE CURRENT PROVISIONS IN THE CRIMINAL LAW AMENDMENT ACT 1945

Sections 19, 20 and 21 of the Criminal Law Amendment Act 1945 were inserted in 1989 by the *Criminal Code, Evidence Act and Other Acts Amendment Act 1989*, introduced by the National Party Government following recommendations made by the then Director of Public Prosecutions Mr Des Sturgess QC in his 1985 report.[4] In relation to his recommendations that reporting conditions should be imposed on offenders convicted of sexual offences against children, and that such information should be able to be disclosed in certain circumstances, Mr Sturgess had said:

> *Paedophiles, in particular, are driven by a strong compulsion to seek children; they actually hunt for them; many will be, or will act as, single men and are not tied to one place by the demands of home and a family. Some are constantly on the move. … Many paedophiles, also, seem to dedicate much of their lives to insinuating their way into places and occupations where they will have ready contact with children and they become very good at it. So it is clear, from time to time, there will be parents and organisations who need to be informed a person with whom they have, or may be about to have, dealings has a history of interfering sexually with children.*
>
> *There is, of course, another side to this and offenders who have reformed are entitled to live down their past. That view is acknowledged by the defamation laws of this State where truth is not a defence to the publication of defamatory matter; it must be both true and for the public benefit.*
>
> *It would not be possible to set down an exact set of rules relating to when information about a sex offender's past should be given and of whom and to whom it*

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[4] DG Sturgess, QC, *An Inquiry into Sexual Offences Involving Children and Related Matters*, Director of Prosecutions, Queensland, 1985.

> *should be given. Consequently, it seems best to leave the matter to discretion; the discretion of the sentencing court to decide who, in a proper case, should be liable to have information about his past revealed and the discretion of the Attorney-General to decide whether, because of later circumstances, it is a proper case. Consequently, the scheme of things I recommend is, when a court sentences a person convicted of a sexual offence against a child who, in its opinion, may re-offend, the court be given the power to order him to report his whereabouts to the police; also, any person or organisation, provided it can establish a proper interest, may apply to the Attorney-General for information whether a particular person is the subject of such a reporting requirement and, if he is, for particulars of the offences of which he has been convicted. This arrangement keeps police out of the actual decisions involved in revealing the information; their duty is to keep track of the offender… .*[5]

In his Second Reading Speech to introduce the Criminal Code, Evidence Act and Other Acts Amendment Bill, Hon BD Austin MLA explained how the proposed amendments to the Criminal Act Amendment Act 1945 would work, and the rationale behind them, as follows :

> [The requirement of sexual offenders to report addresses] *will only be available if the court believes there is a substantial risk that the person will re-offend.*
>
> *Provisions have been inserted to ensure that such information may only be released in appropriate circumstances and to control the use which may be made of such material.*
>
> *Furthermore, it has been brought to my attention that a number of serious sexual offenders remain at large in the community and that some of them are manipulating their way into situations where they will have access to innocent young children.*
>
> *In particular, one recent case was brought to my attention where a well-known sex offender has become involved in an organisation which provides care for young children.*
>
> *Indeed such is the success of this person that he successfully misled all the people involved until a stage where many of the children were at substantial risk.*
>
> *The unacceptability of this situation will be evident to all honourable members.*
>
> *Accordingly the Bill has been amended to ensure that the Crown may make an application for a requirement to be imposed on an offender at a stage subsequent to the sentencing of the offender.*
>
> *Provisions relating to service of documents on the offender have been included as has his right to be heard on the hearing of such an application.*
>
> *These provisions will not guarantee that young children are not the subject of molestation by known sex offenders.*

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[5] Sturgess, p 117.

They do however, go some way towards the development of a community awareness of the insidious nature of the practices which are undertaken by these people.

Everyone's children are at risk from these people and the damage which is ultimately done to them as a result of such activities may be profound.

It may either be physical or psychological and in either event many children bear the scars and the trauma for the remainder of their life".[6]

3.2 USE OF THE PROVISIONS

In April 1997, following discussions between the Department of Justice and the Office of the Director of Public Prosecutions,[7] a directive was issued by Royce Miller QC, the then Director of Public Prosecutions, in which attention was drawn to the 1989 provisions and Mr Miller stated:

Crown Prosecutors and Counsel appearing for the Director of Public Prosecutions should make an application under section 19(1)(a) if it is considered that, having regard to the offences of which the offender has been convicted either alone or in conjunction with his or her past criminal history, the court will be satisfied that the substantial risk referred to in subsection (1) exists.

Where such an order is made it allows police to know the offender's whereabouts during the reporting period, and the Attorney-General, pursuant to section 20 … to inform any person of the making of the order and give the person details of any offence of a sexual nature of which the person has been convicted if the Attorney-General is satisfied that the person has a legitimate and sufficient interest in obtaining the information.

Thus neighbours or a potential employer might be supplied with this information if the Attorney-General is satisfied of the person's legitimate and sufficient interest in having the information.

Sexual offences against vulnerable young persons are prevalent. It behoves Crown Prosecutors and Counsel acting on behalf of the Director of Public Prosecutions to take advantage of these statutory provisions, where appropriate, for the protection of potential victims". [8]

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6 The Criminal Code, Evidence Act and Other Acts Amendment Bill 1988, Second Reading Speech, Hon BD Austin MLA, *Queensland Parliamentary Debates*, 24 November 1998, pp 3252-3262, p 3261.

7 'Convicted Child Sex Offenders; Notification Orders', Mr Beanland MLA, seconding a motion moved by Mr Springborg MLA, *Queensland Parliamentary Debates*, 26 May 1999, pp 1991-2 at p 1991.

8 Queensland. Director of Public Prosecutions, *Guideline to Crown Prosecutors and Legal Officers of the Office of the Director of Public Prosecutions and Others Acting on My Behalf*, issued by the Director of Public Prosecutions pursuant to s 11(1)(a) of the *Director of Public*

As subsequently reported in Ministerial Statements to Parliament in June 1999, the courts had made orders in 12 cases since the amendments to the Criminal Law Amendment Act 1989. Ten of the offenders against whom reporting orders had been made remained in custody. One person had reported to police as required. The other person was in custody charged with a breach of the court order.[9] (This offender was subsequently jailed for two months for failing to comply with the s 19 reporting requirements.[10])

The Director of Public Prosecutions had also been directed to consider whether any applications should be made to courts for orders requiring offenders in custody to report their address to police on release from custody, pursuant to s 19, and had identified some 24 cases in which consideration was being given to the making of applications to the court for reporting orders.[11] In addition, the Minister for Police and Corrective Services had directed the Department of Corrective Services to develop effective procedures to enforce the s 19 reporting provisions.[12]

No application had been made to any Attorney-General for release of information under s 20.[13]

3.3 THE CRIMINAL LAW AMENDMENT ACT 1945 AND MRS BIRD'S PRIVATE MEMBER'S BILL

On 18 November 1997, Mrs Lorraine Bird, former Member for Whitsunday, introduced a Private Member's Bill, the Criminal Law (Sex Offenders Reporting) Bill into the Queensland Legislative Assembly. On Mrs Bird's motion, the Bill was referred to the Parliamentary Legal, Constitutional and Administrative Review

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Prosecutions Act 1984: Regarding Section 19 of the *Criminal Law Amendment Act 1945-1989*, 28 April 1997.

9 Hon MJ Foley MLA, Ministerial Statement, 'Convicted Child Sex Offenders; Notification Orders', *Queensland Parliamentary Debates*, 10 June 1999, p 2473.

10 'First test of Megan's law', *Courier Mail*, 30 July 1999, p 17.

11 Hon MJ Foley MLA, Ministerial Statement, 'Criminal Law Amendment Act', *Queensland Parliamentary Debates*, 8 June 1999, p 2146.

12 Hon TA Barton MLA, Ministerial Statement, 'Criminal Law Amendment Act', *Queensland Parliamentary Debates*, 8 June 1999, pp 2146-7, at p 2147.

13 'Convicted Child Sex Offenders; Notification Orders', Hon MJ Foley MLA, moving an amendment to a motion by Mr Springborg MLA, *Queensland Parliamentary Debates*, 26 May 1999, pp 1992-3 at p 1993.

Committee for investigation and report to the House by the last week in February 1998.[14]

Under key proposals in the Bill, adults convicted and sentenced to serve a term of imprisonment of at least six months for a serious sex offence against a child would, upon release from custody, be required to notify the Police Commissioner of their presence in Queensland by personally reporting at the police station nearest the offender's residential address, and registering their name, residential address, date of birth, details of their conviction, and any other information as required. Any change of name or residential address would also be required to be registered, as would any further conviction that made the person a sex offender for the purpose of the proposed legislation.

Under the Bill, a sex offender who was sentenced to 6 months or more imprisonment, but less than life imprisonment, would be subject to a reporting period equal to 2.5 times the term of imprisonment imposed. Someone sentenced to life imprisonment would be subject to an indefinite reporting period.

The Bill also included a requirement for the registrar of a court to notify the Commissioner where a person was sentenced to six months or more imprisonment for a serious sex offence against a child. The Bill gave the Commissioner the power to keep a register of sex offenders, and to disclose the information to the chief executive of a government department, a law enforcement agency (whether in Queensland or outside Queensland), the Children's Commissioner, or another entity prescribed by regulation.

Finally, the Bill proposed, as a consequential amendment, to repeal ss 19 and 20 of the Criminal Law Amendment Act 1945.

In its report, tabled in February 1998, the Parliamentary Legal, Constitutional and Administrative Review Committee specifically drew attention to the provisions already existing in the Criminal Law Amendment Act 1945, particularly the s 19 reporting requirements. In a submission to the Committee, Hon DE Beanland MLA, the then Attorney-General, argued that:

> *The legislative scheme in the CLAA 1945 has many advantages when compared to the proposals in the subject Bill. One of the most significant of these is flexibility. For example, a court under the existing legislation may order a reporting period in accordance with the perceived risk and is not artificially limited by statutory maximums.*

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[14] Criminal Law (Sex Offenders Reporting) Bill, Referral of Bill to Legal, Constitutional and Administrative Review Committee, *Queensland Parliamentary Debates*, 18 November 1997, pp 4252-53.

> *Further, under the CLAA 1945 a court can order reporting conditions regardless of the sentence imposed on the offender. A difficulty with the Criminal Law (Sex Offenders Reporting) Bill 1997 is that there appears to be an implicit assumption that the risk to the community is solely linked to the seriousness of the previous offence. This is not always the case and it is possible for an offender to be found guilty of a relatively less serious paedophile related crime but still be an obvious danger to the community. Such persons should clearly be the subject of reporting conditions. Under the Bill offenders falling into this category would not be so subject unless the court sentenced the offender to six months imprisonment.*
>
> *One of the results of the legislation could be that the potential number of offenders who will be caught by the proposed legislation may result in the reporting register becoming factually inaccurate and tokenistic. It may be preferable to focus attention on and monitor those offenders who represent a substantial risk to the community rather than take a blanket approach. A difficulty with a blanket approach is that resources are inappropriately utilised due to high risk offenders being given the same priority as low risk and no risk offenders. This enhances the potential for high risk offenders to 'slip through the cracks'.*[15]

Among the Committee's recommendations flowing from its investigation of the Bill, and the issues surrounding it, were:

- that the provisions of the Bill be carefully considered in light of the existing provisions of the Criminal Law Amendment Act 1945, particularly s 19 (Recommendation 9) (para 4.3.3.7), and
- that further consideration be given to those submissions supporting retention of s 19 of the Criminal Law Amendment Act 1945 (Qld) as opposed to the blanket reporting provisions in the Bill (Recommendation 32) (para 4.4.1)

The Criminal Law (Sex Offenders Reporting) Bill lapsed when Parliament was dissolved on 19 May 1998.

4. THE PROPOSED LEGISLATION

4.1 CHANGES TO S 19

Clause 4 of the Criminal Law Amendment Bill 1999 amends s 19 of the Criminal Law Amendment Act 1945 to include the requirement that an offender subject to a reporting order must, upon release from custody, report his or her current name (as well as his or her address - ie the requirement under the existing legislation).

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[15] Submission No. 18.

Thereafter, an offender to whom a reporting order applies must also report any change of name (as well as any change of address, as currently required).

Clause 4 also omits s 19(5), so that if a rehabilitation period is capable of running in relation to a conviction for which a reporting order has been made, then the fact that that period has expired will no longer mean that the requirement to report will expire.

4.2 CHANGES TO S 20

Clause 5 amends s 20 of the existing Act by replacing the Attorney-General with the Queensland Community Corrections Board (QCCB) as the body which will be empowered to release information under the disclosure provisions of s 20.

Under the proposed changes, the QCCB will be able to release information on application only: **proposed new s 20(1A)**. Either a police officer, a corrective services officer, or a person claiming to have a legitimate and sufficient interest in having the information may make an application: **proposed new s 20(1A)**.

The Board will be able to give out the following information:

- the fact that someone is subject to a s 19 reporting order[16]: **proposed new s 20(1)(a)**
- details of any offence of a sexual nature of which the person has been convicted[17]: **proposed new s 20(1)(b)** (it will be immaterial whether or not the conviction was the conviction for which the order was made, whether the conviction was recorded before or after the order, or whether the offence for which the conviction was recorded was committed before or after the order: **proposed new s 20(1D)**).
- "*any other relevant information*" about that person: **proposed new s 20(1)(c)** (eg the offender's address, any change of name, and his or her modus operandi[18]).

The information which can be released by the QCCB may be given to a person nominated in the application, provided the Board is satisfied that that person has a legitimate and sufficient interest in having the information: **proposed new s 20(1B)(a)**. The Board may also give the information to other persons identified

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16 This information is already able to be disclosed under the existing legislation.

17 This information is already able to be disclosed under the existing legislation.

18 Criminal Law Amendment Bill 1999 (Qld), Second Reading Speech, Hon MJ Foley MLA, *Queensland Parliamentary Debates*, 25 August 1999, pp 3476-3478, at p 3477.

by the Board, when considering the application, as having a legitimate and sufficient interest in having the information: **proposed new s 20(1B)(b)**. The information may be released on conditions the Board considers appropriate: **proposed new s 20(1C)**. As explained in the Second Reading Speech:

> *The board may decide, for example, that a school principal should have the information released to him or her, but it will also retain the power to release the information subject to terms and conditions, breach of which will remain a summary offence.*
>
> *Therefore, a school principal, or anyone else, to whom the board releases the information will be able to make management arrangements as they see fit to deal with the consequences of receiving the information, but they will not have a power or duty to pass it on without the express approval of the board.*[19]

4.2.1 Transitional Provision

Under **proposed new s 23(1)** (a transitional provision inserted by **Clause 7**), it will be immaterial, for the purpose of **proposed new s 20**:

- whether the order to which an offender is subject was made before or after the commencement of cl 5 of the Criminal Law Amendment Bill 1999 (ie the clause which amends s 20)
- whether the conviction mentioned in s 20(1)(b) was recorded before or after the commencement of cl 5 of the Criminal Law Amendment Bill 1999
- whether the offence for which the conviction mentioned in s 20(1)(b) was recorded was committed before or after the commencement of cl 5 of the Criminal Law Amendment Bill 1999.

4.3 PROPOSED NEW S 22

Clause 6 inserts a **proposed new s 22** into the Criminal Law Amendment Act. Under **proposed new s 22 (1)** and **(2)**, where a rehabilitation period is capable of running under the Criminal Law (Rehabilitation of Offenders) Act in relation to a conviction mentioned in s 19(1), its expiration will have no effect on:

- the power to make a reporting order
- the effect of the order
- an offender's obligation to comply with the order, or
- the provision of information under s 20 because the offender is subject to a reporting order.

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[19] Criminal Law Amendment Bill 1999 (Qld), Second Reading Speech, p 3477.

Furthermore, under **proposed new s 22(3)** and **(4)**, where a rehabilitation period is capable of running in relation to a conviction for a sexual offence mentioned in s 20(1)(b), its expiration will have no effect on the provision of information under s 20 about convictions for sexual offences other than the offence which led to a s 19(1) reporting order being made.

4.3.1 Transitional provision

For **proposed new s 22**, it will be immaterial whether the reporting order was made, or the conviction for which the order was made was recorded, or the offence for which a conviction was recorded, was committed before or after the commencement of cl 6 (the provision which inserts proposed new s 22): **proposed new s 23(2)**.

4.4 CORRECTIVE SERVICES ACT AMENDED

Clause 9 of the Bill amends s 139 of the Corrective Services Act by extending the power of the Minister for Police and Corrective Services to issue the QCCB with guidelines for exercising its powers and discharging its functions under another Act (eg the Criminal Law Amendment Act). The purpose of this amendment is to enable the Minister for Police and Corrective Services to issue ministerial guidelines similar to those issued for parole decisions.[20]

5. A COMPARATIVE SURVEY

5.1 OVERSEAS REGISTRATION AND/OR NOTIFICATION MODELS

5.1.1 The United States

In October 1994, the New Jersey legislature, responding to public pressure created by the murder of seven-year old Megan Kanka by a neighbour with two previous convictions for sex offences, passed legislation providing for the registration of released sex offenders and community notification of their presence within the community.

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[20] Criminal Law Amendment Bill 1999 (Qld), Second Reading Speech, p 3477-8.

Under the New Jersey statute[21] which has come to be known as Megan's Law, county prosecutors classify released sex offenders according to their risk status. In accordance with guidelines prepared pursuant to the legislation:

- for a Tier 1 or low-risk offender, only law enforcement agencies within the community into which the offender is to be released are provided with warnings
- for a Tier 2 or moderate risk offender, school and community organisations must also be notified
- for a Tier 3 or high-risk offender, notice, by distributing flyers and mailings, is to be given to the entire community, in addition to notice to law enforcement agencies and school and community organisations.[22]

Under the 1996 federal *Megan's Law* amendment to the *Jacob Wetterling Act*, all American states are required to enact legislation which allows public access to, or dissemination of information about, persons required to register where that is necessary to protect the public (or forfeit 10% of their federal crime control grant). The requirements set down by the amendment to the Jacob Wetterling Act are baseline requirements which do not preclude the states from imposing extra or more stringent requirements, for example, by establishing a registration system that covers a broader class of sex offenders than those identified in the Jacob Wetterling Act, requires offenders to verify their address at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period than that specified in the Jacob Wetterling Act.[23]

5.1.2 United Kingdom

In the United Kingdom, Part 1 of the *Sex Offenders Act 1997* requires prescribed categories of sex offenders to notify the police of their name and home address within 14 days of their conviction or the commencement of the legislation. Subsequent changes of name and address must also be notified within 14 days. Persons subject to the legislation must also advise police of any address in the United Kingdom where the person has stayed for a period or periods totalling 14

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21 *Registration and Notification of Release of Certain Offenders Act 1994* (US).

22 'Megan's Law: Community notification of the release of sex offenders: Introduction', *Criminal Justice Ethics*, 14(2), Summer/Fall 1995, pp 3-4.

23 US. Department of Justice. Office of the Attorney-General, 'Proposed Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act', File last updated 4 April 1997: http:www.usdoj.gov/vawo/jwguid2.htm; Alexander D Brooks, 'Megan's Law: Constitutionality and Policy', *Criminal Justice Ethics*, 15(1), Winter/Spring 1996, pp 56-66.

days in any 12 months. The period of time for which an offender must provide notification details depends upon the sentence which has been imposed. For example, an indefinite period of notification is imposed upon offenders sentenced to a term of imprisonment of 30 months or more. Sentences of six months imprisonment or less are subject to the notification requirements for a period of seven years.[24]

During the parliamentary debates prior to the passage of the legislation, it was anticipated that the information collected would be stored on the police national computer database and thus instantly accessible to all police forces and by the National Criminal Intelligence Service. The Act makes no reference to the disclosure of the information required to be notified. However, during the debates on the legislation, the Association of Chief Police Officers expressed the view that, to maintain maximum flexibility in the arrangements for exchange and use of information, the most effective option would be a Home Office Circular. Under guidelines issued by the Home Office in August 1997, and reflecting current practice, communities will only be notified of the presence of sex offenders in exceptional circumstances and a decision to name an offender must be "*justified on the basis of the likelihood of the harm which non-disclosure might otherwise cause*".[25]

The disclosure of sensitive information by police has also been considered by the courts in *R v Chief Constable for the North Wales Police and Others: ex parte AB and Another* (1997) 3 WLR 724.

In that case, a married couple, who had been released from prison after serving lengthy sentences for serious sexual offences against children, moved to a caravan park. Local police, having received a police report from the area where the applicants had served their sentences became concerned that the couple would be present at the site during the Easter holidays when a large number of children would be there. A police officer sought to persuade the couple to move from the site before the holiday period, warning them that if they did not the site owner would be informed of their record. In accordance with a policy document formulated by the local police authority to address the risk of convicted paedophiles reoffending, information acquired by the police about such offenders might be released only on a "need to know" basis to protect a potential victim and only after specific consideration of the particular case and with the agreement of senior officers and advisors. Pursuant to the policy, since the applicants had remained on the site, a police officer, after discussion with senior officers, showed the site owner

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[24] Cathy Cobley, 'Keeping track of sex offenders - Part 1 of the Sex Offenders Act 1997', *Modern Law Review*, September 1997, pp 690-699 at pp 692-4.

[25] Cobley, pp 696-8.

material from the local press about their convictions. The site owner told the couple to move on and they complied. Subsequently, the couple sought judicial review by way of declarations that the policy and the decision to inform the site owner were unlawful, that in implementing the policy the police might be disclosing confidential information about the applicants and that the applicants' rights were infringed under the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Secretary of State and the National Association for the Care and Resettlement of Offenders (NACRO) were joined as parties to the proceedings.

In the course of the case, the Secretary of State submitted, with the support of the North Wales Police (NWP) and NACRO, that a policy adopted by the police to guide its conduct in such situations should observe the following principles:

- There is a general presumption against the disclosure of information, based upon a recognition of the potentially serious effect on the ability of an offender to live a normal life, the risk of violence to the offender, and the risk that disclosure may drive an offender underground.
- There is a strong public interest in ensuring that police are able to disclose information about offenders where that is necessary for the prevention or detection of crime, or for the protection of young or other vulnerable individuals.
- 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. In making such an assessment, the police should normally consult other relevant agencies such as social services and the probation service.

The couple's application was dismissed by the two-member court of the Queen's Bench Division, comprising Lord Bingham of Cornhill CJ and Buxton J. In the course of his judgment, Lord Bingham said:

> *I accept the first of these principles as an important and necessary principle underlying such a policy. When, in the course of performing its public duties, a public body (such as a police force) comes into possession of information relating to a member of the public, being information not generally available and potentially damaging to that member of the public if disclosed, the body ought not to disclose such information save for the purpose of and to the extent necessary for performance of its public duty or enabling some other public body to perform its public duty. This principle would not prevent the police making factual statements concerning police operations, even if such statements involved a report that an individual had been arrested or charged, but it would prevent the disclosure of damaging information about individuals acquired by the police in the course of their operations unless there was a specific public justification for such disclosure. This principle does not in my view rest on the existence of a duty of confidence owed by the public body to the member of the public, although it might well be that such a duty of confidence might in certain circumstances arise. The principle, as I think,*

rests on a fundamental rule of good public administration, which the law must recognise and if necessary enforce.

It is, however, plain that the general rule against disclosure is not absolute. The police have a job to do. That is why they exist. …

It seems to me to follow that if the police, having obtained information about an individual which it would be damaging to that individual to disclose, and which should not be disclosed without some public justification, consider in the exercise of a careful and bona fide judgment that it is desirable or necessary in the public interest to make disclosure, whether for the purpose of preventing crime or alerting members of the public to an apprehended danger, it is proper for them to make such limited disclosure as is judged necessary to achieve that purpose.

I regard the third principle set out above also as being necessary and important. It would plainly be objectionable if a police force were to adopt a blanket policy of disseminating information about previous offenders regardless of the facts of the individual case or the nature of the previous offending or the risk of further offending. While it is permissible for a public body to formulate rules governing its general approach to the exercise of a discretion … , it is essential that such rules should be sufficiently flexible to take account of particular or unusual circumstances, and in a situation such as the present, where the potential damage to the individual and the potential harm to members of the community are so great and so obvious, it could never be acceptable if decisions were made without very close regard being paid to the particular facts of the case. The consultation of other agencies, assuming that time permits, is a valuable safeguard against partial or ill-considered conclusions".[26]

5.2 AUSTRALIA

5.2.1 New South Wales

In its *Final Report on The Paedophile Inquiry*, issued in August 1997, the Royal Commission into the New South Wales Police Service (the Wood Royal Commission) rejected the introduction of legislation providing for registration and community notification along the lines of the much publicised American Megan's Law (see Section 5.1.1). Instead, the Commission supported "… *a more controlled and co-ordinated system for the storage and release upon a needs basis of information concerning convicted or suspected paedophiles*".[27]

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[26] Per Lord Bingham of Cornhill CJ at pp 732-33.

[27] New South Wales. Royal Commission into the New South Wales Police Service (Wood Royal Commission), *Final Report Volume V: The Paedophile Inquiry*, August 1997, p 1226.

Accordingly, the Commission recommended, inter alia,:

- that consideration be given to introducing a system for the compulsory registration with the Police Service of all convicted child sex offenders, to be accompanied by requirements for:
  - changes of name and address to be notified, and for
  - verification of the register,

  after consultation with the Police Service, the Office of the Director of Public Prosecutions, Corrective Services, the Privacy Committee and other interested parties. [28]
- that encouragement be given to the establishment of a National Index of Intelligence about paedophile offenders for use by law enforcement agencies, through the agency of the Australian Bureau of Criminal Intelligence, and
- that the Police Service be empowered to give a warning to relevant government departments, agencies and community groups relating to the presence of a person convicted or seriously suspected of child sexual assault offences, subject to guidelines to be established in consultation with the Privacy Committee, where reasonable grounds exist for the fear that that person may place a child or children in the immediate neighbourhood of the offender in serious risk of sexual abuse. The Wood Royal Commission supported the adoption of guidelines of the kind adopted by the North Wales Police and considered in *R v Chief Constable for the North Wales Police and Others: ex parte AB and Another* (1997) 3 WLR 724 (see above), stating that :

  > *The release of warnings on a case by case basis, and in response to a genuine threat, is far preferable to the Megan's law approach … it would normally be appropriate to inform the paedophile in advance as to the proposed release of such warning, so that he could voluntarily move away from a high risk situation, or withdraw any application for paid or voluntary work that might place him in close proximity to children.*
  >
  > *… it would be appropriate to provide suitable statutory protection from civil liability in relation to the provision of a warning within these guidelines*.[29]

Following the recommendations of the Wood Royal Commission, and community concerns following the release of John Lewthwaite, paroled after 25 years for the stabbing murder of five-year old Nicole Hanns, both the NSW Government and Opposition have announced plans to introduce legislation to address community concerns about child sex offenders released from custody.

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[28] Wood Royal Commission, pp 1248-9.

[29] Wood Royal Commission, paras 18.151 - 152.

Under proposals announced by the NSW Government, convicted paedophiles would be required to notify police of changes of name, address, employment and car registration. The information required to be notified would form part of a national database and available only to police. Offenders would face a $5500 fine or two years' jail if they failed to notify police as required.[30] Police Minister, Mr Whelan, is reported as saying that the legislation proposed by the Government would give police " *the power, where they feel that a child's safety is in danger, to notify the community of that person's location*"[31].

Opposition Leader Mrs Chikrovski had called for a modified version of the American Megan's law. Under the Opposition proposals, legislation was being drafted to enable local police to tell pre-schools and schools if an offender moved into their community. Mrs Chikarovski is reported as saying *"I think it's appropriate that there is a system in place which notifies affected community groups. But not a general public notification."* In the article she also proposed that the families of victims to be told where an offender was moving to and of their future movements. *"Offenders know where the victims live so victims should know where an offender is living"*, she said.[32]

5.2.2 Other Queensland Developments

A report from the Queensland Crime Commission, which has a standing reference on paedophilia, is expected to be released in early December 1999.

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30 Damien Murphy, 'New plan to protect children', *Sydney Morning Herald*, 6 March 1999, p 2; Linda Doherty, 'Where freed pedophiles live: new laws will tell', *Sydney Morning Herald*, 25 June 1999.

31 Doherty, SMH, 25 June 1999.

32 Rachel Morris, 'Plea to keep track of child murderers', *Daily Telegraph*, 24 June 1999, p 2.

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APPENDIX A – NEWSPAPER COMMENT

Title The price of vigilance (Paedophilia).

Author+ Gibson, Rachel

Source AGE

DATE ISSUE 09/08/99

Page 1

"If they prey on children, they can't defend themselves. They give up their right to live within society safely ... I don't wish any harm on anybody, but what these people have got to understand is that their behaviour isn't going to be tolerated.".

Stephen Riley is much like any other parent. He wants his child to be safe from harm. Last week, he and his wife Niobi did something few would defend but perhaps many would privately empathise with.

Concerned that police had decided not to investigate a neighbour they believed had exposed himself to a local child, the Rileys took matters into their own hands, dropping leaflets into the letterboxes of more than a thousand nearby homes.

"Public Warning," the leaflets read. "The man with the little dog from (street deleted) has molested a child."

Within days, the story had been picked up by the media and the man and his sister had been exposed on national television.

The man, who was convicted and sentenced for a minor sexual offence eight years ago, had become a pariah in his local community.

The police, civil libertarians, and even some neighbours were appalled. The incident has echoes of another recent episode in New South Wales, in which a convicted child killer, released from prison after 25 years, was hounded from his home by an angry and hysterical mob.

It has revived, once again, an anguished public debate over whether the community's right to know should ever override an individual's right to privacy and a life free from persecution.

It is a subject that arouses deep emotions. Many would argue rationally for the right of people who have paid for their crimes, no matter how horrible, to live their lives in peace. But what if such a person is their next-door neighbour?

"You have this dichotomy where people say you've got to protect the rights of the individual, as long as they don't live in my street," says forensic psychologist Tim Watson Munroe.

The issue is made even more complex when the person has been convicted of sexual offences against children. Child sex offenders are notoriously difficult to treat and have a high rate of reoffending.

One Canadian study, conducted in 1988, found that the reoffend rate over a 10year period for untreated offenders who had molested nonfamilial children was 42.9per cent.

For offenders who had received treatment, the rate dropped considerably, but it was still 17.9per cent for those who had molested girls and 13.3per cent for those who had molested boys.

It is estimated that about 2per cent of men have a tendency towards sexual activity with children.

But, very often, offenders will harm numerous victims before they are caught.

“What we’re dealing with ... is a very strong emotional and sexual drive, and for many that can override the deterrent effect of jail,” says forensic psychologist Ian Joblin.

“I’d be the last person to say `he’s done his time in jail and got out so don’t worry about it’ because the reoffending rate is so high.”

For a convicted child molester to live for many years in the community without any sign of reoffending, is also no guarantee that they will not interfere with a child again.

According to Dr Bill Glaser, consultant psychiatrist to a sex offenders treatment program in Melbourne, the longer a person with a previous history of child sexual offences stays out of trouble, the more likely it is that they will eventually reoffend.

It is not surprising then that many people in the community feel that they should have a right to know if a convicted child molester comes to live among them.

In the United States, public outrage over the rape and murder in 1994 of a little girl by a convicted paedophile living in her street led to the introduction of laws in many states requiring authorities to inform residents if a serious sex offender moves into their neighbourhood.

A limited version of the law, known as Megan’s Law, already exists in Queensland, and the New South Wales Government has recently signalled an intention to introduce something similar.

Under the Queensland law, serious sex offenders are required to report their whereabouts to police within 48 hours after being released from prison.

Information about the person may then be released, at the discretion of the Attorney General, to people in the community deemed to have a legitimate interest.

The Rileys, who are former members of a community group called Movement Against Kindred Offenders that seeks to “out” convicted paedophiles, believe similar laws should be introduced everywhere.

“I’ve got a pretty good understanding of Megan’s Law,” says Stephen Riley.

“I think it’s one of the greatest things that ever came out of civilisation in terms of policing crimes against children.”.

Riley, who has a two year old son, says there can be no forgiveness for someone who has molested a child, no matter how severe the punishment they have endured.

If a child must live with the consequences of their abuse for the rest of their lives, why shouldn’t the offender, he argues.

But civil libertarians believe that the sort of vigilante action the Rileys have engaged in, which is encouraged by

provisions such as Megan's Law, is inherently dangerous.

The wrong person may become the target, or alternatively, a person who is known and monitored by the police may be forced to disappear.

There can also be enormous costs for the alleged offender and his family.

"Outing a person in the street does not guarantee the safety of your child, but it comes at a great price to somebody who is effectively convicted without any of the procedural protections that exist for the benefit of all of us," says Greg Connellan, vicepresident of Liberty Victoria.

"Potentially the person who is accused could well be killed. "Some people in the community react quite violently and almost irrationally to these things.".

There is also the risk that exposure and harassment of child molesters released back into the community could backfire, tragically. Practitioners who work with child molesters agree that an increase in feelings of anxiety, stress, depression and despair can actually increase the likelihood of someone reoffending.

The person might feel they have no choice but to change their name or move away to an area where no one knows them and where they are less likely to have contact with the support structures they need.

Forensic psychologist Liz Bigelow, who ran the sex offenders program at Pentridge Prison between 1992 and 1995, believes measures such as Megan's Law, or paedophile databases, which enable people to find out who their neighbours are, can be harmful because they encourage parents to believe that if they just know who to avoid, their children will be safe.

"Most child molesters are not known to the law, so one of the downsides (of outing convicted child molesters) is that it gives the community a false sense of security in that they think they know who all the paedophiles are," she says.

"They know only a very small percentage of them."

Another point frequently overlooked is that most child sexual abuse is committed by people known to the child, not strangers.

Bigelow, like most of her colleagues in the field, believes the most effective way for parents to protect their children is to apply general principles around care and safety at all times.

Says Dr Glaser: "It would be nice to ... say the problem isn't as bad as we think. The problem is bad ... We're dealing with a very realistic public safety issue. But let's see if we can adopt a sensible approach, without going so far overboard that we actually make the situation worse."

Title Where freed pedophiles live: new laws will tell

Author+ Doherty, Linda

Source Sydney Morning Herald

Date Issue 25/06/99

Page 1

Both the State Government and Opposition are proposing laws to ease community concerns about freed pedophiles or child killers following the uproar over the release of John Lewthwaite.

But the Premier ruled out legislation similar to Megan's Law in the United States - which requires police to inform residents within a five-kilometre radius of a pedophile living in their neighbourhood.

The Minister for Police, Mr Whelan, however, appeared to contradict the Government position when he said the planned law would mean "the community generally will be notified".

Mr Whelan said a bill would be introduced into Parliament later this year requiring convicted child sex offenders to notify police when they changed their name, address, employment or vehicle registration.

This pedophile register, announced by Mr Carr during the election campaign, would be part of a national database and available only to police.

Mr Whelan said the planned legislation would give police "the power, where they feel that a child's safety is in danger, to notify the community of that person's location".

"The community who were affected by the crime will be notified and the community generally will be notified, so that we don't have a repetition of someone being moved, who has a record, near a school.".

Mr Lewthwaite, who murdered five-year-old Nicole Hanns in 1974, was released from Long Bay Jail on Monday but moved from an address in Waterloo, opposite a school, on Wednesday after residents attacked the house.

Mr Whelan said he also expected police to use the discretionary powers they already had to notify "appropriate bodies" of any risk to a child.

This was despite concerns by the Police Commissioner, Mr Peter Ryan, about police being responsible for the movements of freed child killers and pedophiles.

Mr Ryan said police did not inform the community of the presence of such people and he questioned "whether or not that would be the right thing to do under the circumstances".

The Opposition Leader, Mrs Chikarovski, meanwhile, will introduce a private member's bill, "Nicole's Law", next week that would give police the power to inform victims of crime, schools, pre-schools and child care centres that a pedophile or child killer had moved into their area.

She said the bill, named after Nicole Hanns, would allow carers to make security arrangements but "would avoid vigilante problems".

Mr Whelan said the Opposition bill was similar to Megan's Law while the Government wanted "community consultation".

Title But what about the children's freedom.

Author+ Bretag, Tracey

Source Australian

Date Issue 24/06/99

Page 11

On Monday, infamous child killer John Lewthwaite was released from jail after serving 25 years for the brutal murder of five-year-old Nicole Hanns.

In 1974, Lewthwaite was a 19-year-old petty criminal who had spent two years fantasising about abducting and raping Nicole's then nine-year-old brother.

When Lewthwaite broke into the house and Nicole awoke, he stabbed her 17 times.

Despite conflicting psychological assessments, Lewthwaite has been judged "less likely to commit a crime than a man walking down the street" by prisoners' rights group Justice Action.

In fact, Lewthwaite's "prolonged" incarceration has engendered a whole support team of people who have worked for many years to secure his release.

On Tuesday, he moved into a house in the inner Sydney suburb of Waterloo, and was immediately surrounded by the media and local residents.

Despite assurances from NSW Corrective Services Commissioner Leo Keliher that Lewthwaite is subject to the strictest parole conditions imposed in NSW, including living with a prison-approved counsellor, Waterloo residents believed that their children were unsafe.

A group of self-appointed vigilantes kept Lewthwaite under siege, screaming obscenities, throwing rocks, broken tiles and eggs, shaking the window grilles and using a hose to blast water into the house, before he was eventually moved to another location yesterday by authorities who feared for his safety.

Of prime concern to the residents was that Lewthwaite was housed just a short distance from Our Lady of Mt Carmel primary school.

Coinciding with Lewthwaite's release from prison, and the consequent public agitation, has been a furore in the US over adaptations of Megan's Law, initially introduced in 1996 after seven-year-old Megan Kanka was raped and murdered by a sex offender who had moved into the house across the street from her home.

Megan's Law allows for the dissemination of information concerning sex offenders to the community.

In 1996, the circulation of such information was restricted to badly printed leaflets with barely recognisable photos, half-heartedly slapped on to telegraph poles.

Technology has come a long way in just three short years. The names, faces and addresses of released violent sex offenders can now be posted and regularly updated on the Internet.

Many people see such a move not only as an infringement of the ex- offenders' civil liberties but as detrimental to their rehabilitation and integration back into society.

Having served their mandatory terms, ex-offenders understandably want to get on with their lives without public scrutiny.

In some States in the US, using the Internet to fulfil Megan's Law has been ruled illegal. Like many people, I feel a certain amount of unease with the idea that an ex-offender could be doubly punished in such a way.

But I firmly believe that raping, sodomising, abusing, mutilating and murdering children are crimes of a particular nature. They represent a fundamental lack of respect for the most vulnerable members of society.

Crimes against children do long-term damage, not just to the children and their families but to those children's children and to society at large.

Viciously stabbing a five-year-old until the knife snaps (as Lewthwaite did) is a heinous crime. I have grave concerns that the perpetrator of such an act is able to be "rehabilitated".

Will 25 years in the company of other rapists, paedophiles and murderers provide the intense therapy necessary to reprogram this person's distorted view of sexuality?

According to various reports, Lewthwaite underwent hundreds of hours of counselling and psychological assessment before his release. Apparently the 44-year-old man has nothing in common with the sex-obsessed, paedophilic 19-year-old.

I'd like to believe that Lewthwaite has changed and that his strict parole conditions will be adequate protection for the children in his neighbourhood.

Nevertheless, I empathise with the residents of Waterloo who believe that they had to take justice into their hands.

Faith in human nature and in the system would be cold comfort to any parent if their child were abused or killed by a recently released paedophile.

It seems to me that, for all our talk about "the needs of children", little is done to safeguard them. Parents are left with the overwhelming and sometimes impossible task of trying to nurture, protect and instruct their children while paradoxically encouraging them to be independent and to forge relationships of their own.

While authorities and citizens in the US debate over whether posting information on the Internet is an infringement of ex-offenders' civil liberties, Australia has yet to implement any law to safeguard children in their own neighbourhoods.

If we are serious about protecting children, we should incorporate community vigilance, including the dissemination of information, into a package of long-term rehabilitation for child sex offenders.

Unfortunately for Lewthwaite, the absence of a law such as Megan's Law (which incorporates responsibilities for residents not to harass ex-offenders), meant that fearful parents in Waterloo felt unsupported and powerless.

Their anxiety translated into further acts of violence, which can only be detrimental to the whole community.

An equivalent of Megan's Law would not give local residents the right to harass or torment ex-criminals. It would however, empower citizens to instigate strategies of their own, such as walking children to and from school and teaching them strict safety procedures, so that the freedom and safety of everyone in the neighbourhood is ensured.

Title Paedophile back in jail for defying megan law.

Author+ Vale, Byron; Greber, Jacob

Source Courier Mail

Date Issue 09/06/99

Page 5

A convicted child sex offender is back in custody after failing to tell police of his whereabouts in the first test of Queensland's version of Megan's law.

The 36-year-old man failed to comply with a court order to report his address to police within 48 hours of being released from jail and within 48 hours of any subsequent change of address over the next 7 1/2 years.

His appearance in the Brisbane Magistrates Court came as a political row erupted over his case.

The man, from Yeronga in southern Brisbane, was jailed for two years in October 1997 after being convicted of wilfully exposing a child to an indecent act.

He was released from Lotus Glen jail in Mareeba on March 7. It is alleged he did not contact Cairns police with his address after release or contact police in Brisbane when he moved to Yeronga.

He was charged yesterday with failing to comply with a court order and was remanded in custody to next month.

The convicted sex offender was charged under section 19 of the Criminal Law Amendments Act of 1945-89, described as Queensland's equivalent to Megan's Law in the United States.

Megan's Law, was named after Megan Kanka, 7, who was raped and murdered by a neighbour and convicted paedophile. It identifies convicted sex offenders to communities on the prisoner's release.

Police received written authorisation from Attorney-General Matt Foley to proceed with the prosecution on Monday. Mr Foley must give authorisation under the legislation.

The Borbidge government triggered the law in 1997 which, effectively, gives an attorney-general the power to provide neighbours or community groups with information about paedophiles released from jail.

It comes into force only if a court places an order on a paedophile at the time of sentencing requiring them to inform police of their whereabouts.

Police Minister Tom Barton told State Parliament yesterday that police were unaware of the man's obligation to report because the previous government failed to develop procedures to administer the law.

But Opposition police spokesman Mike Horan accused the Government of "blundering" its handling of the law and allowing a paedophile to walk from prison without reporting to police.

"This paedophile was the first to be released who was subject to the special naming order. Mr Barton must answer why prison authorities did not communicate with police," Mr Horan said.

"He must explain why there was no communication between the prisons and the police - particularly as he is Minister for both."

Queensland's version of the law was introduced in 1989 but remained unused until 1997 when the attorney-general Denver Beanland ordered Crown prosecutors to seek its use in sentencing.

Mr Barton said after police became aware of the man's missed obligations they sought his arrest.

Police also have taken the precaution of alerting the Education Department about his likely whereabouts.

"Unfortunately the total absence of procedures has meant that police were unaware of the requirement for this person to report to them," Mr Barton said.

He said Corrective Services had been ordered to develop a system to record paedophiles released under the law.

Mr Foley said the Director of Public Prosecutions Royce Miller was seeking reporting orders in at least 24 child sex cases before the courts.

Title Audit ordered into use of Megan's law.

Author+ Greber, Jacob

Keim, Tony

Source Courier Mail

Date Issue 14/05/99

Page 5

Director of Public Prosecutions Royce Miller has ordered a detailed audit of the use by Crown prosecutors of a forgotten Queensland version of the United States' "Megan's Law".

Megan's Law, named after a young girl who was murdered, forces released paedophiles to inform police of their whereabouts.

A memo to prosecutors from Mr Miller, QC, seeks data on how many times an obscure Criminal Law provision has been used against paedophiles, and in which cases it failed.

The law, passed by State Parliament in 1989 and largely forgotten since, gives the Attorney-General almost unfettered powers to inform neighbours, schools and communities of the whereabouts of released child molesters.

The move comes after an Ipswich judge yesterday used the law in sentencing against a first-time child sex offender on an Immediate Release Order.

Former Coalition attorney-general Denver Beanland "triggered" the long-dormant law in 1997, when he directed Mr Miller to use the law in prosecutions.

Civil libertarians and prisoner's advocates have been stunned by the law, which has been used against at least 11 child sex offenders since being "rediscovered" by Mr Beanland.

Council of Civil Liberties spokesman Terry O'Gorman said the law was "mind-stoppingly drastic". He said it allowed a politician to impose conditions on the life of a released paedophile, including details of "other sexual offences".

"It's just extraordinary," he said. "Leaving it to a politician rather than a court to decide who has a legitimate interest in knowing where a released sex offender lives is totally unacceptable".

Mr O'Gorman said the law was introduced in 1989 against a background of ignorance about its consequences.

He said the Criminal Law Amendment Bill of 1989 was so large that many controversial features were passed without proper public debate.

"Clearly this provision (section 20) was missed in the public debate and was missed I dare say by prosecutors. I don't think anyone realised it was there," he said. "And this was long before the concept of the Megan's law was even known."

The memo was sent to prosecutors surveying them about their use of the provision and the cases in which it has been rejected. The move follows yesterday's decision by a District Court judge to compel a first-time sex offender to inform police on allow police of his residential details for the next three years.

Ipswich Acting Judge Leanne Clare yesterday ordered a 58-year-old sex offender, with no previous criminal history, to notify police of his address for

three years despite being convicted of a minor sexual assault.

Judge Clare was told the man had touched a 10-year-old boy's genitals, from the outside of his pants, for a matter of seconds before the boy pushed him away.

The man was sentenced to six months' jail, but released immediately on an Intensive Correction Order and ordered to notify police of his address within 48 hours.

Defence counsel Charles Clark said the man had no criminal history and there was nothing to suggest he was likely to sexually assault other children.

However, Judge Clare ruled there was a risk he could reoffend and under Section 19 of the Queensland Criminal Law Amendments Act (1989) ordered he inform of police of where he is living at all times for a period of three years.

Brisbane Prisoners' Legal Service solicitor Karen Fletcher said yesterday any move by prosecutors and the judiciary to force all child sex offenders to report their address to police was an "over reaction" to a serious issue.

"Everybody seems to be over reacting to the situation at the moment," she said.

Attorney-General Matt Foley was unable to comment last night.

Title Cut the fears with proper sex crime treatment.

Author+ FLETCHER, KAREN

Source Courier Mail

Date Issue 11/05/99

Page 17

A 13-year-old girl is walking home from school with two friends. A police officer approaches them and gives them a leaflet.

“I’m afraid I have some bad news, girls,” he says. “A convicted paedophile has just moved into this street. His photograph is on this leaflet along with some information about his offences. I can’t tell you which house he lives in because we are concerned that someone may attack him or his property but it is my job to let everyone in the area know he is here.”.

The girls stare at the photograph and the list of sexual assaults, fear and shock on their white faces.

“What does this mean?” one asks. “Do we have to move?”

This scenario is a reality in many parts of the United States, and Queensland is only one of several Australian jurisdictions in which it is being considered as our community searches desperately for a way to stop violent sex offences against children.

In Queensland, I would argue, we have reached the stage where the Government, the police and the corrections system no longer are prepared to take responsibility for reducing the risk posed by convicted sex offenders, and see their only option as placing that responsibility on the communities in which these former prisoners resettle.

The only proven way to reduce the risk posed by convicted sex offenders is to provide them with intensive psycho-educational treatment while in prison, to continue that treatment on their release and to supervise them closely as they move back into the community. A range of international studies has put re-offending rates for sexual offenders at between 15 and 43 percent.

Research by the English Chief Inspector of Probation in 1998 indicated that post-release supervision of sex offenders significantly reduces this re-offending rate.

The report on this research states that “93 percent of offenders in the supervision samples and 96 percent in the hostels sample showed no evidence of being re-convicted for sexual or other violent offences during the course of supervision or residence.”

A1996 British Home Office research project on a sample of sex offenders on probation also found that the proportion of those participating in seven community-based treatment programmes who were re-convicted of a sexual offence was about half of those on probation without a treatment programme: 5 percent as against 9 percent.

In Queensland prisons there are more than 700 prisoners convicted of sexual offences.

Between June 1996 and last April, fewer than 90 prisoners undertook the Sexual Offenders Treatment Programme simply because sufficient resources were not being made available to run it. There is

even less chance of accessing treatment while on community release.

The Prisoners Legal Service is constantly trying to get its clients on to the programme but the waiting list can be up to 10 years.

Many offenders complete their sentence before they get treatment. They are then released, unsupervised, at the end of their sentence because the parole board is understandably reluctant to take responsibility for releasing them to supervision such as home detention or parole.

I recently received a letter from a convicted sex offender (a man who, as a child, was the victim of violent sexual abuse by his father for many years) who is soon to complete a sentence of nearly eight years.

He has repeatedly been refused parole or any supervised reintegration order and at a recent meeting with sentence management staff he asked whether they could refer him to a community treatment or support programme on his release.

He was advised that if he felt he needed psychiatric help he should see a local GP.

“Feeling alone is (one of) my biggest triggers (to offending behaviour),” he writes.

“I will be put out the gates with $2 in my pocket and nowhere to go, no one to help me and that scares me so much I have sat in my room and cried at the thought of leaving jail.

Rehabilitation should be still there for people like me who want it and need it.”

Contrary to popular perception, most sexual offences against children are committed in the home by a man the child is related to, or knows and trusts.

Do we notify all children that they should be afraid of the men in their own families?

Notifying the women and children who live in the street where this man makes his home means that every day they will be looking for him.

Is it really fair that women and children should be made to feel this kind of fear when the risk could be significantly reduced by adequately funding residential treatment and supervision?.

Karen Fletcher is the co-ordinator of the Prisoners Legal Service Inc.

Neighbours may be told of paedophiles living next door.

Source Courier Mail

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Pages 1

CONVICTED paedophiles moving to a new community would be publicly identified under a proposal being considered by the Queensland Crime Commission.

Crime Commissioner Tim Carmody confirmed last night he was examining a version of the "Megan's Law" legislation passed in the United States. Mr Carmody said the proposal was part of a wide-ranging review of paedophilia which would culminate in a community discussion paper to be released in July.

"One of the things being looked at is the benefits of public notification of convicted sex offenders so that the public can be better informed and make decisions based on that information," he said.

Mr Carmody said there was often a strong feeling in smaller communities that such information should be available.

"People are entitled to know who is among them," he said. "But we have to balance that with civil liberties considerations."

Mr Carmody conceded the move could cause more problems in some cases and create resentment among people trying to rehabilitate themselves. He said the commission would look at all aspects of the proposal, including where such names would be published and who would have access to the information.

The State Government is treading warily on the issue but will examine the discussion paper. Attorney-General Matt Foley said a number of problems had surfaced with a similar proposal put up by former member for Whitsunday Lorraine Bird.

But Opposition police spokesman Mike Horan said the move had merit. He said from a parent's point of view the loss of a child would be harder to bear if the criminal had a previous history which they could have been aware of.

Mr Horan said there would be civil libertarian concerns. "But we have to start giving more support and more credence to people who are the victims," he said.

Mr Borbidge said the Coalition was always happy to support sensible laws that toughen penalties. But Labor's "political decision" to vote down truth-in-sentencing laws gave the Government little credibility in the law and order debate.

"It is difficult for Labor MPs to justify why they voted against sending rapists to jail for their full term," he said.

Mrs Bird's proposed legislation would have required convicted sex offenders to register with the police when they moved to an area.

It also would have allowed the Police Commissioner to keep a sex offenders registrar. The Legal Constitutional and Administrative Review Committee raised concerns about the Bird plan including whether the law should cover a person of unsound mind. The committee also noted there were international declarations, conventions and covenants on the question of a register for child sex offenders.