

Preventative Recognizances: Conditions for High-Risk Persons

A court may impose conditions that restrict the movements and behaviour of persons who present a high risk for committing criminal offences while they are residing in the community. These orders are known as “preventative recognizances” and they can be imposed under the *Criminal Code* when a court is satisfied that there are reasonable grounds to fear a person will commit either:

- a sexual offence against a child under the age of sixteen (section 810.1); or
- a serious personal injury offence against any person (section 810.2).

Crown Counsel can apply to a court for the recognizance, and if the court agrees, it will impose a recognizance containing conditions that must be followed for a period of up to one year (up to two years if the person has a prior related conviction).

Both of these sections of the *Criminal Code* are preventative, not punitive, so they do not allow the court to incarcerate the person. It is not essential for an individual to have a criminal record in order for a court to impose a recognizance. However, there must be a provable evidentiary basis in support of the Crown’s application.

There are three common scenarios in which an application may be brought to the court for a preventative recognizance.

End of Prison Sentence

Offenders must be released at the end of the jail sentence that was imposed by a court as a sentence for the crime they committed. There is no legal authority to hold a convicted offender in custody once the offender’s prison sentence has expired.

When an offender is about to complete his or her full sentence, but continues to represent a serious risk to public safety, the correctional service may send a report to the police outlining the concerns.

The police will consider the report and determine whether a reasonable fear exists. If so, the police may decide to submit a Report to Crown Counsel (RCC) recommending a preventative recognizance. Crown Counsel will review the report and determine if there are grounds for an application.

End of Supervision in the Community

Correctional authorities have no authority at law to supervise an offender, who is residing in the community on conditions, after the end of the sentence imposed by the court.

When an offender's probation order, conditional sentence order, long-term supervision order or existing preventative recognizance is about to expire, the offender's community supervisor or the police may submit a RCC to Crown Counsel where there are concerns that the person may commit a serious offence. Crown Counsel will review the RCC and determine if there are grounds to apply for a preventative recognizance.

Individuals Who are Not Subject to a Sentence

The police may receive information about potential offences committed by someone who is residing in the community, and is not subject to a sentence or already existing recognizance. Police may investigate and determine that the person has not committed a criminal offence or there is insufficient evidence to support a criminal prosecution. However, where there are reasonable grounds to fear that the person may commit an offence in the future, the police may submit a RCC to Crown Counsel recommending a recognizance be sought.

Application for a Recognizance

Crown Counsel reviews the RCC and decides whether the evidence supports a reasonable likelihood that a recognizance would be imposed by a court. If so, Crown Counsel will approve an Information under either section 810.1 or 810.2 of the *Criminal Code*. This process will initiate court proceedings and bring the person to court.

Judicial Interim Release (Bail)

Where a defendant does not consent to enter into the proposed recognizance, a bail hearing will be held. In most cases the person will be released on conditions that are designed to ensure that he or she keeps the peace and is of good behaviour. A date will be scheduled for the court to hear the application for a recognizance.

Legal Test for a Preventative Recognizance

In order to impose a section 810.1 recognizance, the court must be satisfied that there are reasonable grounds to fear that the defendant will commit a sexual offence against a person less than 16 years of age. For a section 810.2 recognizance, there must be reasonable grounds to fear that the person may commit a serious personal injury offence. The term "reasonable grounds" in both sections means that the apprehension that the individual will commit one of these offences is objectively established by reliable evidence, and would cause a reasonable person to conclude that the individual is likely to commit one of these offences.¹ The

likelihood of the feared event happening and the nature and seriousness of the anticipated harm are factors that may be considered by the court.²

Conditions That May Be Imposed

Depending on the particular circumstances of the risk posed by the defendant, if a court determines that the legal basis for a preventative recognizance has been made out, the court may impose conditions relating to:

- residence;
- curfew;
- electronic monitoring;
- reporting to a probation officer and police;
- no contact with persons or classes of persons (e.g.: prior victims; anyone under 16 years of age; sex trade workers);
- report relationships to authorities (e.g.: intimate partners; guardians of children);
- not possessing (e.g.: weapons, alcohol, drugs, pornography, personal computer or devices capable of accessing internet); and
- restrictions on movement (e.g.: not attend liquor stores, public places where persons under 16 likely present, sex trade areas).

Breach of Recognizance

When an allegation is made that the defendant violated a term of a recognizance, Crown Counsel may approve a breach charge pursuant to section 811. If found guilty, the court can impose a sentence of up to two years imprisonment where the Crown has proceeded by indictment, or six months if the Crown has proceeded summarily.

National Coordination of High-Risk Offenders

There is national coordination and tracking of high-risk offenders who may pose a significant risk to the community. In British Columbia, high-risk offenders are identified to the High-Risk Offenders Identification Program (HROIP), which then gathers and maintains information concerning the offender's criminal history for future use by Crown Counsel. HROIP participates in a national program that facilitates information sharing between prosecution services across Canada. Correction authorities and police also share information with HROIP to ensure that persons identified as high-risk are tracked throughout the justice

system. This ensures that whenever an identified offender relocates, all of the relevant background information can be made available to Crown Counsel, to assist with:

- bail hearings for any new offences;
- sentencing hearings for any new or outstanding offences, including applications for a dangerous or long-term offender designation; and
- preventative recognizances, where appropriate.

Information regarding dangerous offender and long-term offender designations is available here:

[CJB Information Sheet – Dangerous Offenders and Long-Term Offenders](#)

Information regarding high-risk offenders is available here:

[CJB Info Sheet – High-Risk Offenders](#)

Further information about high-risk offenders in Canada is available here:

www.publicsafety.gc.ca/cnt/rsrscs/pblctns/hghrsk-ffndrs-hndb/index-en.aspx

¹ *R v Budreo*, [2000] OJ 72 (CA) at para 51-53.

² *R v DCH*, 2011 BCPC 443 at para 81.