



Section 810

Recognizance

The Criminal Code of Canada allows a judge or justice of the peace to require you to enter into a recognizance (like a peace bond) if there are reasons to believe you will commit certain serious crimes.

Being on a section 810 recognizance is like being on probation. This booklet explains the 810 process, what your rights are and how to get legal help.

What is a section 810 recognizance?

The *Criminal Code* allows “any person” who has reasonable grounds to fear that you will commit a sexual offence against a child under the age of 16 or a serious personal injury offence against any person to start 810 proceedings against you.

Sexual offences against a child under the age of 16 are defined in section 810.1 of the *Criminal Code*.¹ Serious personal injury offences (s 810.2) are defined in section 752 of the *Criminal Code*, but generally refer to serious offences that involve violence, offences which cause serious psychological harm, or sexual offences (810.2).²

1 s 810.1 of the Criminal Code of Canada, RSC 1985, c C-46 [Criminal Code] (sexual offences against children)

“Any person who fears on reasonable grounds that another person will commit an offence under section 151 or 152, subsection 153(1), section 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1 or 172.2, subsection 173(2), section 271, 272, 273 or 279.011, subsection 279.02(2) or 279.03(2), section 280 or 281 or subsection 286.1(2), 286.2(2) or 286.3(2), in respect of one or more persons who are under the age of 16 years, may lay an information before a provincial court judge, whether or not the person or persons in respect of whom it is feared that the offence will be committed are named.”

2 s 810.2 of the Criminal Code (serious personal injury offences)

Any person who fears on reasonable grounds that another person will commit a serious personal injury offence, as that expression is defined in section 752, may, with the consent of the Attorney General, lay an information before a provincial court judge, whether or not the person or persons in respect of whom it is feared that the offence will be committed are named.

If the Court finds that there are reasonable grounds to fear that you will commit either of these two types of offences, it will order you to enter into a section 810 recognizance. This is similar to probation. It is an agreement by you to keep the peace and be of good behaviour (commit no other offences), and to be subject to supervision and conditions for a maximum of 2 years. If you breach these conditions or commit another offence, you could face a criminal conviction, jail time, probation time, and/or a large fine.

The Referral

In British Columbia, a person who thinks that you are a high risk to offend violently or sexually can report their opinion to the High Risk Offender Identification Program (HROIP), the RCMP

s 752 of the Criminal Code (definition of serious personal injury offence)

“Serious personal injury offence” means:

(a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving

(i) the use or attempted use of violence against another person, or

(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person,

and for which the offender may be sentenced to imprisonment for ten years or more, or

(b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

Behavioural Sciences Group (BSG) or the police department closest to where you live (or are being released).

Referrals can be made by any person and at any time. The notification might come from a probation officer, a community member, a police officer or from the Correctional Service of Canada when you are coming to the end of a sentence in federal custody. People can also be referred when parole is ending, when a period of probation ends or a period of custody in a provincial institution is coming to an end.

Although referrals can happen at any time, most happen when someone is detained to warrant expiry while serving a federal sentence. If you have been detained to warrant expiry and have committed one or more sexual offences or serious personal injury offences, it is likely that you will be considered for an 810 order.

Most 810 proceedings begin when an Institutional Parole Officer (IPO) or other correctional official notifies the HRIOP, the RCMP BSG and the local police department that the detained prisoner is approaching his or her warrant expiry date. Normally they will do this about 90 days before your release or the end of your period of supervision.

Your file is then reviewed by the High Risk Recognizance Advisory Committee (HRRAC). The HRRAC will consider many factors, including:

- your past acts, including criminal convictions;
- which programs and treatment you have received; and
- recent psychiatric and psychological assessments.

If the HRRAC thinks that you are a high risk to offend either violently or sexually, it will complete the application process and send the file to Crown Counsel.

Crown Counsel

The local Provincial Crown (the “Crown”) must get the approval of the Attorney General to proceed on an 810.2 (fear of serious personal injury offence). The Crown must get approval from the Regional Crown to proceed on an 810.1 (fear of sexual offence against a child).

If the Attorney General or Regional Crown approves the 810 application, it returns the file to the Crown. The Crown makes an application to a Provincial Court judge for a Warrant and a Spring Order to bring you to court. The Judge issues the Warrant for your arrest and Spring Order to bring you to court. The Crown is supposed to send a letter to you to advise you of the process.

The 810 coordinator (a police officer) will often try to interview you and provide you with information about the process. He or she might try to convince you to agree to enter into the 810 recognizance.

You do not have to consent to this interview and you do not have to agree to the recognizance.

The Court Process

You will likely be brought into court before your warrant expiry date. You will be given the option of either entering into the recognizance or setting it for hearing.

Getting Legal Help

When deciding whether to enter into the 810 recognizance, it is a good idea to speak with a lawyer. There are a number of factors that should be considered, such as the strength of the case against you, your personal circumstances, and the risks to you. If you enter into the recognizance and then breach one of the imposed conditions, you could face a criminal conviction, jail time, probation time, and/or a large fine.

If you do not have your own lawyer, Duty Counsel will be at the courthouse and might be able to advise you about the 810 process. Duty Counsel will also be able to assist you in court for the bail hearing or if you want to enter into the recognizance.

If you decide not to willingly enter into the recognizance, you will have a bail hearing. Crown will consent to your release on bail but will ask the judge to impose conditions. You or your lawyer (or Duty Counsel) can tell the judge if you agree to certain conditions or why some conditions that the Crown wants are not appropriate. **You do not have to consent to these conditions.** It will be up to the judge who hears the bail application to decide what conditions

are necessary. It is important that you have a criminal lawyer to help you understand your rights in this process.

The Crown might ask the judge to impose conditions on your bail, including conditions relating to residency, weapons, and contact with children or previous victims of offences. The Crown may ask for a curfew and a condition that you not drink alcohol or take non-prescribed drugs.

If there are psychological or psychiatric assessments in your correctional file, the Crown will likely have them. The Crown will consider things like the details of your present and past convictions to decide which conditions they will ask the judge to impose.

The Crown will also likely ask the judge to order you to report to a bail supervisor *and* to the police 810 coordinator.

The Hearing

If you do not want to enter the recognizance, you can set a hearing date. At the hearing, the Crown will have to prove that there are reasonable grounds to fear you will commit one of the listed offences. If you decide that you want to have a hearing, you might remain on bail for a considerable period of time (often many months) until your hearing date.

The hearing itself can take several days. The Crown must prove to the judge that there are reasonable grounds to fear that you will commit either a sexual offence against a person under the age of 16 (810.1), or a serious personal injury offence (810.2). The Crown only needs to prove this on a “balance of probabilities”. This is a lower standard than “beyond a reasonable doubt” (the standard in a criminal trial) and is easier to prove.

At the hearing, the Crown will give the court evidence about your past acts, rehabilitation and treatment, and recent psychiatric or psychological assessments. The Crown will likely call as witnesses IPOs, other correctional officers, and psychiatrists and psychologists who have assessed you.

You or your lawyer will be able to question these witnesses and also call your own witnesses.

If the judge finds at the end of the hearing that there are reasonable grounds to fear that you will commit either a serious personal injury offence against any person, or a sexual offence against a child, the judge will order you to enter into a recognizance. This is not a criminal conviction. However, it can lead to a criminal conviction if you breach the conditions of the recognizance.

If the judge orders you to enter an 810 recognizance and you refuse, the judge can order you to serve a prison term of up to 12 months.³

The 810 Recognizance

If the court decides there are “reasonable grounds” after a hearing, the judge will order you to enter into the recognizance and will decide how long that recognizance will be.

The recognizance is usually for a period of up to 12 months, but if you have a previous conviction for one of the relevant offences, the judge may order that you enter into a recognizance of up to two

3 *Criminal Code*, ss 810.1(3.1), 810.2(4).

years.⁴ After that time, the recognizance could only be renewed if another hearing is held to show that there are still reasonable grounds to fear that you will commit one of the listed offences.

The Provincial Court judge may add “any reasonable conditions” to the recognizance that the judge thinks will ensure your “good conduct”.

Conditions can include:

- that you participate in a treatment program;
- that you wear an electronic monitoring device (but only if the Attorney General requests this);
- that you are restricted to a particular geographic area unless you have written permission from a provincial court judge to leave that area;
- that you have a curfew or be under house arrest;
- that you not consume alcohol or drugs;
- that you provide urine samples when requested;
- that you not be allowed to have weapons; and
- that you report to probation services or the police.⁵

In addition, if a recognizance is ordered because there is a fear that you will commit a sexual offence against a child, the conditions can include:

4 *Criminal Code*, ss 810.1(3), (3.01), 810.2(3), 810.2(3.01).

5 *Criminal Code*, s 810.1(3.02), (3.05), 810.2(4.1), (6).

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- that you are prohibited from doing anything that would bring you into contact with people under 16, including using a computer to communicate with people under 16;
 - that you are not allowed to attend any public park, public swimming area, daycare centre, school ground or playground; and
 - that you cannot communicate with specific people named in the recognizance.⁶

You or your lawyer may want to ask the judge to modify the conditions so that they are not overly limiting. For example, if the Crown recommends that you not be allowed to communicate with people under the age of 16, but you have a 14 year old son with whom you wish to communicate, you could ask the judge to allow you contact with your son, or to allow you contact with children as long as you are supervised by a particular person. Similarly, you could ask the judge to allow you to use the internet under certain conditions, rather than to prevent you from using the internet at all.

The Crown regularly asks for a condition that you participate in assessments. It is a good idea to seek legal advice about this sort of condition because it could make it easier for the Crown to seek another 810 recognizance in the future.

You or your lawyer can try to convince the judge not to impose certain conditions. **Even if you agree to enter into the recognizance, you do not have to agree to the conditions that the Crown requests.** You can explain why the conditions are not reasonable or necessary, and the **judge will decide** which conditions to require of you.

6 *Criminal Code*, s 810.1(3.02)(a-b.1).

Breaches of 810 Recognizances

If you fail to comply with the conditions of the recognizance, you can be charged with a “breach of recognizance” and receive a criminal conviction if found guilty.

The Crown in British Columbia treats breaches of 810 recognizances⁷ and breaches of bail on 810 recognizances⁸ very seriously. The Crown almost always proceeds by indictment on these breaches. This means they can ask the judge to sentence you to up to two years in jail for a breach of bail, and up to four years in jail for a breach of 810 recognizance. The judge can also impose probation for up to three years.

The Crown in British Columbia usually asks the judge for sentences over three months for a first breach. If there are more breaches, they will likely ask for longer and longer jail periods. It is not unusual for the Crown to ask for sentences of 12 months or more in jail depending on the number and nature of breaches. The Crown might also ask for a period of probation (for up to 3 years) to follow the jail term.

The Crown will ask that all of the conditions of the original 810 be a part of the probation period. This means that if you breach a one year 810 recognizance, you might end up on those same conditions for another 3 years.

It is important to consider the consequences of a breach when deciding whether or not to agree to enter into an 810.1 or 810.2 recognizance.

7 *Criminal Code*, s 811.

8 *Criminal Code*, s 145.

Legal Aid Coverage

Legal aid might provide coverage for the 810 applications described in this booklet. However, they usually do not provide coverage for ordinary peace bonds. If you are approaching your warrant expiry date (or your parole or probation is ending) and you are told that section 810 proceedings are being started against you, contact Legal Aid.

When speaking with Legal Aid, make sure that you tell them you are seeking coverage for an 810 order under either section 810.01, 810.011, 810.02, 810.1 or 810.2.

If you are accused of breaching your bail before your 810 hearing, or you are accused of breaching an 810 recognizance, Legal Aid will often cover the charge.

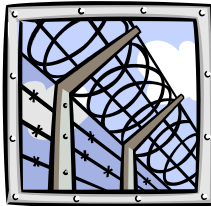
Prisoners' Legal Services

Unfortunately, Prisoners' Legal Services is not funded to provide legal representation for 810 issues. If you want to apply for counsel, you can contact Legal Aid at 1-866-577-5245.

If you are a prisoner in British Columbia, you can contact Prisoners' Legal Services for advice or assistance with issues that affect your liberty or about health care or human rights issues. For assistance from Prisoners' Legal Services, you must have a referral from the Legal Services Society.

Contact their call centre at 1-888-839-8889. Once you have a referral, you can call Prisoners' Legal Services directly at or 1-866-577-5245.

This publication contains general information only. Each situation is unique. Law and policy can also change. If you have a legal problem, contact Prisoners' Legal Services or a lawyer.



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