

# COMMUNITY NOTIFICATION OF HIGH RISK SEX OFFENDERS: THE MANITOBA MODEL

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On Sunday, 18 September 1994, 12 year old Sarah Dawn Kelly went for a walk in her hometown of The Pas, Manitoba. Sarah failed to return home and her whereabouts remained unknown despite a three-day intensive search involving police and 1500 town residents. Her body was located by the police only after a deal was worked out with lawyers for the primary suspect, Robert Bliss Arthurson. The Crown arranged for Arthurson to divulge the location of the body in exchange for a second degree murder conviction.

In the subsequent inquest, it became clear that authorities had feared that Arthurson would kill a teenaged girl — as he had promised in a call to a crisis line one year earlier — and that the public should have been told about the danger he represented. In particular, probation officials and the RCMP in The Pas felt handcuffed and unable to warn the public about their fears that Arthurson might act on his fantasies and urges to sexually assault and kill a young person.

This murder, and several other high profile cases in other provinces, brought to the forefront the clash between offender's rights and the rights of victims and communities. The public began demanding greater accountability from the criminal justice system. This demand was not confined to any particular jurisdiction or discipline, but was voiced across Canada and encompassed all components of the justice system. An element of this call for accountability was a demand that authorities alert the public when dangerous offenders are released from institutions or when they are sentenced to probation and are living in the community.

In response to these demands, governments across Canada began to design and implement new measures aimed at managing high-risk and dangerous offenders. These initiatives have included legislative proposals, including steps aimed at improving the Dangerous Offender provisions in the *Criminal Code*<sup>1</sup> and proposals for long-term supervision of dangerous offenders. Other initiatives have centred on programs aimed at increasing public safety including the National Flagging System, an enhanced program based on the Canadian Police Intelligence Computer (CPIC). This system is designed to flag dangerous offenders who, on subsequent offences, may be prosecuted under the Dangerous Offender provisions of the *Criminal Code*.

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<sup>1</sup>The Dangerous Offender provisions are contained in ss. 752-761 (*Criminal Code*, R.S.C. 1985, c. C-34).

A new strategy for public notification of the release of high-risk and dangerous offenders was unveiled in February, 1995 when the Government of Manitoba announced the formation of the Community Notification Advisory Committee (the Committee). The Committee was the first of its kind in Canada. It was created specifically to provide law enforcement agencies with advice on whether to notify the public about sex offenders who pose a risk to the community. Its mandate was to determine when the privacy rights of the individual should be secondary to the community's need to know about individuals who are judged to be dangerous. Since 1995, a number of other jurisdictions have developed or are now completing similar notification programs based on protocols, new legislation or the disclosure provisions contained in federal and provincial privacy legislation.

## **History**

Initially, a Working Group was formed to examine the concept of public notification and to develop recommendations for the Department of Justice with respect to implementing such a process. The Working Group consisted of representatives from the Royal Canadian Mounted Police, Winnipeg Police Service, the Federal Ministry of the Solicitor General, Manitoba Health, prosecutors, policy officials and civil counsel from Manitoba Justice. Similar working groups had also been established in British Columbia and Ontario to address the same issue.

The Working Group canvassed other Canadian jurisdictions and reviewed the experiences of various American states with respect to community notification and the management of sex offenders. Based on these consultations, the Working Group completed a draft Protocol which was reviewed and approved by each agency represented in the Working Group. The Protocol was officially launched on 8 February 1995 by the Attorney General of Manitoba and the commanding officers of the Royal Canadian Mounted Police, Winnipeg Police Service and the Brandon Police Service.

## **The Manitoba Model**

The Manitoba model centres on a multidisciplinary committee advising police if, when and how to notify the public or specific individuals or groups about the release or presence of high risk sex offenders. Referrals can originate from the community, local police detachments, or federal and provincial correctional agencies. The Committee may recommend full public notification, targeted notification, no notification and/or alternative strategies. This process for the handling of cases is set out in Figure 1 below.

The overall objective of the Program is to enhance public protection through the release of specific information about a sex offender to the public or to targeted individuals, groups or communities. The Program consists of four key elements:

- i) the establishment of an advisory Committee to review cases and provide police with recommendations on notification;
- ii) the development of detailed information packages by correctional authorities and police;
- iii) the use of lead police agencies to initiate or respond to referrals; and,
- iv) the program Protocol to guide the work of the Committee.<sup>2</sup>

The Committee is chaired by a Winnipeg lawyer appointed by Manitoba's Attorney General, and consists of the following individuals:

- a member of each of the major police services within Manitoba:
  - the Royal Canadian Mounted Police;
  - the City of Winnipeg Police; and
  - the Brandon Police Service;
- a representative of both the Correctional Services of Canada and the Corrections Division of Manitoba Justice;
- a medical or therapeutic practitioner;
- a representative of Prosecutions and/or Legal Services of Manitoba Justice; and
- such other representatives as the Minister of Justice (Manitoba) deems appropriate.<sup>3</sup>

The Correctional Services of Canada and Manitoba Corrections provide relevant correctional information to police regarding offenders who the police plan to refer to the Committee. Where possible, each agency strives to compile the most complete information about the offender in advance of his release from a correctional facility.

The program uses the concept of a "lead police agency" to refer to the police service that will be making the referral to the Committee. This is typically the police service which has jurisdiction over the community to which the offender is returning or in which he or she is currently residing. This will be the same police service that will consider the Committee's recommendations and whether to implement them.

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<sup>2</sup>Manitoba, *Release of High Risk Sexual Offender Information Protocol* (Winnipeg: Department of Justice, 1995).

<sup>3</sup>*Ibid.* at 6.

The Protocol governs the operations of the Committee and outlines the criteria for referrals, the factors to be considered in assessing whether to recommend notification and other issues relating to the purpose, mandate and membership of the Committee.

### **Application of the Protocol**

The Protocol was developed to provide guidelines on the types of cases to be referred to the Committee. It also outlines the steps to be taken once a referral is made by police regarding a sexual offender believed to pose a danger to the community. This determination is based on whether an offender's "presence in the community generates a reasonable apprehension of harm".<sup>4</sup> Factors to be considered by the Committee include the following:

- the circumstances of the convictions, including offence history and patterns;
- any breaches of probation or parole;
- participation in past or current treatment programs;
- relevant psychiatric, psychological and social assessments;
- planned activities (including access to potential victims);
- employment history or prospects; and
- interpersonal relationships and supports.<sup>5</sup>

The Protocol is designed to deal exclusively with offenders with at least one prior conviction for a sexual offence under the *Criminal Code of Canada* and who are residing in or returning to Manitoba. Individuals referred to the Committee may be:

- on probation;
- on parole;
- on warrant expiry from a federal correctional institution;
- under the terms and conditions of a recognizance; or
- under no form of correctional or court supervision or reporting requirements.

With respect to offenders who are released on parole, the Protocol acknowledges that although the Committee is not bound by a decision of the federal parole authorities respecting the risk posed by an offender who is granted parole, "it is expected that, in the absence of new evidence or exceptional circumstance, the Committee will give due weight to a decision respecting parole."<sup>6</sup> Thus, while the Committee is not automatically reviewing or "second guessing" the work of parole

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<sup>4</sup>*Ibid.* at 1-2.

<sup>5</sup>*Ibid.* at 2.

<sup>6</sup>*Ibid.*

officials, the Protocol does provide the Committee with the opportunity to review the cases of individuals on parole who may still present a "reasonable apprehension of harm".

The Protocol requires that correctional officials provide timely notice to police and the Committee of the pending release of an offender who meets the criteria of the Protocol. In such cases, correctional authorities are required to prepare an information package containing information relevant to the Committee's task of determining whether the community or specific individuals or groups should be notified. The Committee scrutinizes all such material carefully for evidence that there is a reasonable apprehension of harm to a person or persons in the community. If necessary, CSC/Corrections are contacted and a request is made for supporting data or corroboration of the evidence of risk. CSC/Corrections will comply with reasonable requests for further and better particulars and will engage in direct consultation regarding material in the information package.

The Protocol also directs the Committee to review other relevant information including:

- prior proceedings or police contacts in order to appreciate what type of analyses and reports have been done on the offender in the past, what judges have said in the course of prior sentencing, and the perspectives of police agencies which have investigated or had substantial contact with the inmate in the past;
- the characteristics and attributes of potential victims in order to appreciate the degree of risk within a particular community and whether it can be localized in any fashion;
- relevant psychological, social and psychiatric assessments (Reports included in the information package are not disclosed verbatim, either in whole or in part, but the diagnoses or conclusions may be referred to or paraphrased in the course of public notification);
- any written submissions from the offender; and
- any victim impact statements.

### **Offender Submissions to the Committee**

The Protocol requires that the lead police agency make every effort to alert the offender that a referral to the Committee has taken place. In practice, offenders are normally provided with a written notice of the referral and a copy of the notification Protocol. Where possible, this information is provided directly to the offender, permitting him to ask questions of either police or correctional staff about the process. While the offender does not appear in person before the Committee, the Protocol allows for offenders and/or advocates to make written submissions to the Committee regarding any issues they feel should be considered by the Committee.

Such factors include the offender's involvement and progress in treatment, supports available in the community and/or the anticipated impact of a notification on the offender.

### **Committee Options**

The Protocol requires that the Committee carefully consider all options once the materials regarding an offender have been reviewed. Specifically, the Protocol states that:

The Advisory Committee is to assess not only the appropriate form(s) of information disclosures, but whether disclosure is advisable at all under the circumstances. It is to examine the full spectrum of possible operational responses in order to determine which is most appropriate. It is to consider the proportionality of the response to the apprehended risk, along with such matters as the individual privacy interests of the offender, the risks associated with public alarms, and so on.<sup>7</sup>

In general, the Committee carefully canvasses alternatives to full public disclosure and whether the alternatives would meet the objective of enhancing public protection. Notification is only recommended when circumstances warrant.

The Committee has the following options for recommendations to the lead police agency:

- **Full Public Notification:** The Committee can recommend that the lead police agency issue an alert regarding the offender to the public and, if necessary, to other specific organizations such as schools and women's shelters. The Committee's recommendation would include the offender's recent picture, his physical description and the text of the recommended warning. Background information about the offender will usually be included with the recommendation, along with a warning to the public not to take any vigilante action against the offender.
- **Targeted Notification:** The Committee can recommend that the lead police agency notify targeted individuals, groups or communities. The latter usually consists of communities located close to one another or communities known to be frequented by the offender.
- **No Notification:** The Committee can recommend that no notification be issued based on the information provided by the police and correctional authorities.

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<sup>7</sup>*Ibid.* at 8-9.

- Other Measures: In addition to, or in place of a notification, the Committee may recommend that police and correctional officials take other measures regarding the offender. This could include police pursuing a recognizance under s. 810.1 of the *Criminal Code* prohibiting the offender from having contact with persons under fourteen years of age,<sup>8</sup> conducting surveillance on the offender or suspending a recommendation while the offender is in active treatment.<sup>9</sup>

Where possible, the final decision by the lead police agency to accept or reject the committee's decision is communicated to the offender. Exceptions to this practice are made when the offender cannot be located or if alerting the offender in advance of a disclosure would increase the risk to the public or specific individuals.

The Committee can recommend that the notification include a warning that it is being issued to enable members of the public to take suitable personal preventative measures and not to embark upon any form of vigilantism or other unreasonable conduct directed at the offender. So far there have been no reported incidents of inappropriate conduct by members of the public. In some instances after notification, the media have searched out certain offenders who have permitted themselves to be interviewed, thereby increasing the extent of the notification.

### **Program Examples and Statistics**

A total of forty-four cases have been referred to the Committee from June 1995 to February 1997. The following case summaries are examples of cases referred to the Committee where some type of notification was recommended.

- An offender was out of custody at the time of referral. His offences occurred in Winnipeg and Thompson with victims being females within the 13-26 age range. He primarily committed sexual offences while intoxicated, using excessive physical violence to gain victim compliance. All offences involved forced intercourse with the most violent incident involving one victim being severely punched and kicked, then thrown out of an apartment and down the stairs in the nude.
- An offender was released from custody and was residing in Winnipeg at the time of the referral. His victims were women within the 21-33 age range and the offences occurred in Brandon and Winnipeg. The first incident involved a prostitute who the offender forcibly confined by impersonating a police

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<sup>8</sup>*Supra* note 1.

<sup>9</sup>*Supra* note 2 at n3.

officer. No sexual activity occurred in this case as the victim was able to escape. The second incident involved a woman who was abducted by the offender after a night at a bar. The victim was sexually assaulted by the offender numerous times including oral, vaginal and anal intercourse. A firearm was present and was used to get the victim's compliance throughout the entire assault.

- An offender was out of custody and on supervised probation at the time of the referral. His offences involved a 14 year old female and were perpetrated over a 17 month period. On numerous occasions the offender would invite the victim to his apartment and offer her cigarettes, liquor and drugs. They would watch pornographic tapes and, while the victim was under the influence, the offender would have her masturbate him, would have vaginal and anal intercourse with her, and would fondle her breasts and vagina.

The referral sources of the 44 cases reviewed by the Committee were as follows:

**Table 1**  
Referral Sources

<b>Referral Source</b>	<b>Frequency</b>
RCMP	21
Winnipeg Police Service	21
Brandon Police Service	2
<b>Total</b>	<b>44</b>



The nature of recommendations made by the Committee were as follows:

**Table 2**  
Committee Recommendations

<b>Decision</b>	<b>Frequency</b>
Full Notification	7
Targeted Notification	23
No Notification	9
Withdrawn/Postponed	5
<b>Total</b>	<b>44</b>

### **Discussion**

While it is still in its early stages of development, the reaction to the Committee's work generally has been positive. Parents, schools, victim advocacy groups, police and even some treatment providers have all pointed to the need and importance of community notification. For these people the benefits of having an informed community able to take appropriate steps to protect itself greatly outweigh the privacy concerns of the offender. They argue that the information given in notifications is a matter of public record namely, what offences an individual has committed, when these offences were committed, and what punishment was given.

The detractors of public notification point out the absence of empirical data to prove its efficacy. Further, many offender's advocates and defence counsel suggest that offenders may commit more offences out of desperation or anger, or they may simply "go underground" and stop treatment following public notification. Another important issue often expressed is that the offender is suffering an additional "punishment" by having his privacy violated.

While implementation of notification programs is occurring in nearly all jurisdictions, the debate about their efficacy and role in the Canadian criminal justice system is in its infancy. The most accurate characterization that can be made about notification at this time is that it is at an experimental state in its development. Notification programs, while crafted on the basis of the best available information, have been launched on a policy foundation. For this reason, it is imperative that the

evaluation of notification initiatives take place to determine its impact on offenders, victims, the community and the justice and related social service systems.

In Manitoba, the Committee has formally endorsed the recommendation of the presiding Judge in the Sarah Kelly Inquest that the Community Notification Program be evaluated. The initial work on the design framework has begun and initial findings are expected in the next year.

In addition, the Committee is currently conducting an in-depth study of the cases referred to it since the inception of the program. The study, to be completed by June 1997, will identify such variables as the types of offenders referred to the Committee, the relationship between offenders and their victims, the type and extent of their criminal records and their status at the time of referral (e.g. on probation, parole, warrant expiry).

### **Summary**

The Community Notification Advisory Committee in Manitoba was established in February 1995 to provide police with recommendations on whether to inform the public or specific individuals about high-risk sexual offenders. The Committee has reviewed forty-four cases since its inception, with the majority of recommendations involving some form of targeted notification. Numerous provinces and territories have either established or are now completing developmental work on notification programs based on new legislation, protocols, or provisions of existing privacy legislation. While the program is still in its infancy, such measures need to be subjected to independent evaluations to determine both their usefulness and impact on offenders, victims, the community and the criminal justice system.

**Figure 1**  
**Community Notification Process**

