

EXTENDED SUPERVISION ORDERS - VICTORIA

INTRODUCTION:

This paper will cover the characteristics of the Victorian Extended Supervision Orders under the legislative authority of *The Serious Sex Offenders Monitoring Act 2005, Section 16(2)* and briefly discuss the challenges of supervising such orders.

CHARACTERISTICS OF ORDER:

The general purpose of this legislation is to provide a basis for the continued supervision of serious sex offenders beyond their end of sentence date.

The Serious Sex Offenders Monitoring Act 2005 provides for the enhanced protection of the community by requiring eligible offenders who served custodial sentences to be subject to on-going supervision post-release. extended supervision orders (ESO) are granted by courts however supervised by the Adult Parole Board. They are designed to ensure the community is adequately protected by monitoring an offender; and to promote the on-going rehabilitation, care and treatment of such offenders.

These orders can be granted whilst the prisoner is in custody or whilst a parolee is subject to a parole order for commencement post release or post the expiry of parole. Offenders eligible for an extended supervision order are those sentenced to a period of imprisonment for sexual crimes involving children, child pornography, and procurement of children for sexual exploitation, abduction of children and a range of commonwealth crimes involving children. These Orders may also be granted where an offender is sentenced to imprisonment for attempting to, or conspiracy or incitement to commit offences of this nature.

Extended supervision orders may be granted for periods up to 15 years.

Corrections Victoria may apply to a court for an extended supervision order if, on the basis of a psychological/psychiatric report a prisoner/parolee is considered to be high risk of committing further offences in a like or more serious manner, whilst in the community without supervision. Applications are made to the court that sentenced the offender, unless the original court was the magistrates court. In this instance, the application is made to the county court.

Where an application is made by the department for such an order, the offender may be legally represented and may provide independent psychological or psychiatric assessment Reports which are filed with the court and provide to the department.

A court will make an ESO when it is satisfied that an offender represents a high probability of further offending if released unsupervised to the community and the onus of proof rests with Corrections Victoria. If the assessment reports provided by the department conflict with those provided by the offender, the court may require either party to obtain further reports in order to clarify any matters of concern and validate reason for the application. Further either party may file a Notice of Intention to Dispute the whole or any part of an assessment report. The author of the report may also be subject to cross-examination prior to the court considering the content of report in its deliberation.

Once an order is made, a copy must be forwarded to the Adult Parole Board.

The following summarises the requirements of extended supervision orders. An ESO must contain information as follows -

- Name of Offender
- Date Order made
- Date Order commences
- Period of Order
- Conditions of Order
- Latest date for first review of Order, and
- Maximum intervals between subsequent reviews

An ESO can be replaced by another ESO, such that the period and conditions of the initial ESO are replaced by the period and conditions of the subsequent order. A subsequent order can be made for up to 15 years irrespective of the lapsed period of the initial order.

If an ESO is made whilst a prisoner is in custody, it will commence on the day s/he is released. If an ESO is made in respect of a person not in custody then it will commence on the date specified on the order.

In addition to the mandatory Conditions of an ESO contained in s15 (3) *Serious Sex Offenders Monitoring Act 2005*, a court may give additional directions or instructions as to -

- Where an offender is to reside;
- Times at which the offender must be at home (curfews);
- Places or areas that the offender must not visit or may only visit at certain times;
- Treatment or rehabilitation programs or activities that the offender must attend and participate in;
- The types of employment in which the offender must not engage;
- Community activities in which the offender must not engage;
- Persons or classes of person with whom the offender must not have contact;
- Forms of monitoring (including electronic monitoring) of compliance with the extended supervision order to which the offender must submit;
- Personal examinations by a medical expert for which the offender must attend for the purpose of the board being provided a report by the expert to assist it in determining the need for, or form of, any instructions or direction under this section.

Corrections Victoria or the adult parole board may add or vary any instruction or direction at any time. The board must ensure offenders receive a copy of any variation to their order.

An extended supervision order expires at the end of the period of operation or when revoked by a court, or if it is replaced by another ESO, or if the offender is taken into custody indefinitely.

An ESO will be suspended if the offender is taken into either police custody or prison or is detained in an approved mental health facility/hospital or service. The ESO then recommences when the offender is returned to the community and the suspended period is not to be counted in calculating the period that still exists on the order.

ESOs must be reviewed by the relevant court no later than 3 years after the granting of the order, and at a minimum of 3 yearly intervals thereafter. Usually the order will specify the review interval periods. The purpose of these reviews is for the court to consider whether the offender should remain on the ESO. In the interim, the offender may him/herself request the court for a review of the order.

If an offender requests a review, s/he must advise the Corrections Victoria, submit an assessment report which is filed with the court and a copy is given to the offender.

When reviewing an order the court must revoke the order unless it is *'satisfied to a high degree of probability that the offender is likely to commit a relevant offence if in the community and not subject to the Extended Supervision Order'* (s 21 (1)). Once again the Corrections Victoria carries the onus of proof and either party may file a Notice of Intention to Dispute a Report filed for the purpose of a review.

Corrections Victoria can also request an application to a court to renew an ESO. This renewal may occur whilst the order is current or after it has expired. If the department is not satisfied with any of the court's rulings in regards to an ESO, it may appeal to the Victorian Court of Appeal.

If an offender fails to comply with any ESO Conditions, s/ he commits an indictable offence, Corrections Victoria may proceed with a file to charge. A 14 day notice must be given to the offender outlining the departments intention to file a charge. A maximum of 5 years imprisonment can be imposed if the charge is proven.

A summons to answer the charge or a warrant of apprehension may be made at any magistrates court. If the ESO was made by the County or Supreme Court, that court may grant a summary hearing of the indictable offence.

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The Victorian scheme of extended supervision orders set out in the Serious Sex Offenders Monitoring Act 2005(Vic) commenced on 26th May 2005, with the main purpose of the ESO being to enhance community protection.

As at the 1st of September 2006, Ten (10) Extended Supervision Orders have been granted by the courts. Nine of these are still in place, with one being suspended due to the person's reoffending and subsequent return to custody. Only a minority of offenders have contested the application for an extended supervision order in court - most have been made by consent. The conditions that have been made under Extended Supervision Orders include curfews, outings only under escort, not to use or access the internet, not to visit public parks or be within 500metres of a school between certain times.

It is difficult at this early stage of the extended supervision scheme to predict numbers receiving ESO's in the future.

The conditions that can be imposed in extended supervision orders can contain highly restrictive conditions which can limit offenders' opportunities for normal day-to-day interaction. Offenders who have completed parole and are subsequently placed on an extended supervision order may find the conditions more onerous than their parole conditions.

THE CHALLENGES:

On the 12th of July 2006, an individual who was paroled in June 2006 after serving a 10 year maximum sentence appeared in the Victorian Supreme Court asking for a review of the conditions of his ESO Order. He wanted a review of his strict parole supervision order, saying it is harsher than jail itself. In his affidavit he claimed that the parole board had implemented restrictions that were " far more onerous " than whilst living in prison.

A Supreme Court Judge grants the supervision order, but the parole board sets its terms. The offenders barrister said that his client had initially not opposed being subject to the order, believing it could not be any harder than his prison term.

His Honour said he thought the application was misconceived and should be directed towards the parole board. He informed the offender that after only a month of abiding by the conditions, there was not much evidence upon which to conduct a review.

As mentioned earlier, the introduction of the Serious Sexual Offenders Monitoring Act 2005(Vic), was introduced to reduce the probability of certain offenders committing further offences when they were released from custody. This aim was to be achieved through supervision and treatment of those individuals in the community through the extended supervision order.

Notably, it is the potential for offending and not actual offending that leads to the application of the legislation.

It is without doubt, extraordinary legislation and should only be imposed in clear and compelling cases.

It has long been a principle of our legal system that once a sentence is served, an offender can expect to be released into the community to continue with their lives.

Serious sex offenders devastate the lives of victims and alter their lives forever. What of an offender who has committed very serious offences, who shows no remorse and refuses to undergo treatment whilst in jail ? What if they make it clear they see nothing wrong with the crimes they committed, and indicate they intend to offend again with the same catastrophic consequences ?

What is the responsible thing to do in those circumstances ?

Does part of the answer lie in the introduction of a continued detention scheme ? In May of this year the Victorian Attorney-General, the Hon Rob Hulls, MP, has asked the Sentencing Advisory Council to advise on the merits of introducing legislation to allow the continued detention in prison of offenders who are at the end of their sentence, but who are considered to pose a serious danger to the community.

Queensland, Western Australia and New South Wales have introduced continued detention schemes for serious sex offenders.

Council Chair Professor Arie Freiberg said :

" The ethical, moral and legal questions that these schemes raise are extremely complex and go right to the heart of the principles on which our criminal justice system is based. Few people would disagree that there are a small minority of convicted offenders who may continue to pose a danger to the community on their release from prison. But the challenge is to find the most effective and humane way to manage that risk, and in a way that the community will accept. "

However, unlike New South Wales, Queensland and Western Australia, there is no power in Victoria to detain offenders in prison beyond the end of their sentence.

Accommodation In The Community - High Risk Sex Offenders

Without doubt, one of the most difficult tasks that face post detention workers of serious sex offenders, is the critical issue of housing upon release.

Although it is the prisoner who bears the primary responsibility for locating his residence, Victoria is fortunate to have the assistance of the Australian Community Support Organisation (ACSO) who actively seek out appropriate accommodation for offenders in conjunction with the Office of Housing.

Staff from Corrections Victoria who work with high risk sex offenders on extended supervision orders understand the serious concerns and ramifications of sex offender residential placement. Paramount of these concerns is the safety of children and maintaining the appropriate distance between the offender and children, which includes where young people are present or can reasonably be expected to be present, such as daycare centres, schoolgrounds, playgrounds, public parks and community centres.

Some sex offenders are socially isolated and do not have family support in the community. Other offenders might have offended within their family

which in most cases would make it inappropriate to send them back to live with family members.

Some municipalities have begun to discuss within local council the adoption of local laws that prohibit the presence of sex offenders in their community. Should these eventuate it would make it almost impossible for suitable housing and safe placement of high risk sex offenders.

The lack of safe, stable residence for high risk sex offenders places the community at risk. Homeless sex offenders cannot be effectively tracked and monitored by home detention staff or parole officers and local law enforcement. Communities and victims are unaware of their location and presence, which adds to the uncertainty that offenders are being supervised.

Consistent and fair standards for housing high risk sex offenders will not only aid in their placement, supervision, treatment, and monitoring - it will also provide victims and communities with confidence that the various arms of justice are working together in a collaborative fashion in order to insure public safety.

In Victoria, an investigation into how the use of transitional housing may be able to provide an effective means of providing hard-to-place offenders within the community, which will limit the chances of an high risk sex offender becoming homeless, should be instituted.

Communication & Community Education :

The release and community placement of high risk sex offenders can generate fear, misunderstanding and a feeling of the community being placed under threat. On many occasions this is fanned by the media, and numerous radio "shock jocks". However, the public has an expectation they will be informed about the release and relocation of high risk sex offenders, without the hype and drama.

Community members and public safety is best served by the dissemination of timely, accurate and comprehensive information from criminal justice agencies and law enforcement bodies. In addition, community education creates a framework, which assists community members in understanding the particular risk an individual offender might pose.

Education is also an important tool that helps community members understand the resources and strategies, which will promote public safety

and include the community as potential stakeholders in creating effective offender management strategies. Community education can also include information on various aspects of parole supervision, and home detention procedures.

There are many ways that high risk sex offender information can be shared with the community including web sites, notice flyers, door to door visits and community meetings. Local police should make the determination about which approach will effectively inform the community about the potential risk that an offender poses, and will assist the community in identifying appropriate precautions and resources.

Community education can also be used to inform the public on pending and recently enacted legislation (EG: Victorian Sentencing Advisory Council- Issues paper requiring submissions from the public).

It is only through a thoroughly informed public that true community safety can be achieved.

CONCLUSION :

The introduction of extended supervision orders, and the *Serious Sex Offenders Monitoring Act 2005*, provides for challenges in supervising serious sex offenders post prison release. As noted in this paper, these orders can be challenged by the offenders at court either prior or during their imposition. There are many questions that require deliberation and notably require answers in order to ensure safer communities while assisting the reintegration of such offenders post prison release. With the Sentencing Advisory Committee considering current options of sentencing it may also encourage public discussion and public debate in order to establish a more sound foundation in supervising serious sex offenders in the future, while the organisation can enhance the processes required to ensure that the supervision of serious sex offenders in the 21st Century will continue to be scrutinised and therefore provide provisions for enhanced intervention with the public and law enforcement support.

