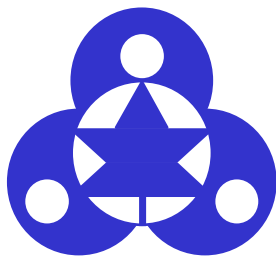


**Enhancing Community Protection in the
Release of the Detained Offender
Inter-jurisdictional & Inter-agency Issues &
Resolutions**



**International Centre for Criminal Law Reform
and Criminal Justice Policy**

**Final Report on the
International Meeting of Experts
Vancouver, British Columbia
June 14th & 15th 2006**



**National Joint Committee
Pacific Region**



**British Columbia Association
of Chiefs of Police**

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**Report on the International Meeting of Experts on Enhancing Community
Protection in the Release of the Detained Offender – Vancouver, June 2006**

(B) Letter of Acknowledgement

**Delegates to the June 14, 15, 2006
Meeting of Experts & Members of
The Criminal Justice Community**

2006 09 09

Delegates,

**Re: Final Report on the International Meeting of Experts on Community
Protection in the Release of the Detained Offender**

The International Centre for Criminal Law Reform and Criminal Justice Policy was pleased to participate in this project with two well established agencies in British Columbia who exemplify the spirit of inter-agency cooperation. In recent years the BC Association of Chiefs of Police and the Pacific Region National Joint Committee have played key leadership roles in enhancing inter-agency cooperation in general and more specifically in relation to the safe release to the community of high risk for harm offenders. The commitment of these two agencies to the two day International Meeting of Experts, as evidenced by NJC Chair Greg Fitch Q.C. and Chief Constable Ben Andersen, Oak Bay Police Department, on behalf of the BC Association of Chiefs of Police is to be commended.

The support for this initiative received from:

- the Police Services Division, BC Public Safety and the Solicitor General;
- the Correctional Service of Canada; and the
- Corrections Directorate, Public Safety and Emergency Preparedness Canada,

is also acknowledged and sincerely appreciated. Special thanks go to Mary Campbell, Director General Corrections & Criminal Justice Directorate, Bob Cormier, Senior Director and Jennifer Walker, Program Development Officer all from Public Safety and Emergency Preparedness Canada. From BC Public Safety and the Solicitor General special thanks goes to Kevin Begg, Assistant Deputy Minister, Policing and Community Safety Branch and Sam MacLeod, Associate Director, Police Services Division.

The members of the Organizing Committee for this meeting are highlighted in this report. You know who you are. Both the collective and individual energy you provided in support of this event is acknowledged. To each, my sincere thanks.

I would be remiss if I did not also acknowledge and thank both the President of the International Centre, Daniel Préfontaine Q.C. and the A/Executive Director, Kathleen Macdonald, for their support and encouragement for this project.

This issue requires ongoing review and scrutiny. The return of the offender at warrant expiry requires both control and support. In this regard the following reference to the Mission document of the Correctional Service of Canada is quite appropriate “support to the extent possible and control to the extent necessary.”

In conclusion, the policies, processes and practices developed and implemented to achieve the required support and control as mentioned requires ongoing review and scrutiny. Consistent with such scrutiny, if gaps are identified it is incumbent on the policy makers and practioners to further review the policies, processes and practices to ensure that we are all breathing life into our collective statement, "community protection is paramount"

This Meeting Report, completed by Yvon Dandurand, University College of the Fraser Valley, is respectfully submitted for review and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "R. E. Brown", with a long horizontal line extending to the right.

R.E. (Bob) Brown
Director, Corrections Programme

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(C) Executive Summary

The return to the community of detained high-risk offenders at the warrant expiry date (WED), without parole supervision, raises some very serious public safety concerns. Because high risk offenders, by definition, pose the greatest threat to public security it is essential that their release and reintegration into the community be monitored closely and supported. Several agencies must become involved in that process and it is imperative that they work closely together in preparing the release of these offenders, setting in place the means to supervise them adequately, supporting their integration in the community, and intervening when necessary. In addition, when offenders are released to a jurisdiction different from the one they are detained in, or when they move from one jurisdiction to another after their release, systems need to be in place to ensure relevant information is provided to the “receiving” jurisdiction.

Considerable progress has been achieved in recent years in facilitating inter-agency cooperation within various jurisdictions, as well as across jurisdictions. A coordinated risk assessment, release planning and community supervision approach is clearly the most effective way to address communities’ needs for safety and security.

With that in mind, the *National Joint Committee of Senior Criminal Justice Officials* (Pacific Region), the *International Centre for Criminal Law Reform and Criminal Justice Policy* and the *British Columbia Association of Chiefs of Police*, organized a two-day meeting of experts in Vancouver to consider some emerging inter-jurisdictional and inter-agency cooperation issues and identify some potential solutions. Their open and frank discussion, sometimes in areas not in particular attendees’ areas of expertise, is reflected in this document and must be considered in that context.

The following three critical partners supported this initiative: Public Safety and Emergency Preparedness Canada; Police Services Division, Provincial Ministry of Public Safety and Solicitor General; and the Correctional Service of Canada (CSC).

One of the main objectives of the meeting was to identify the gaps in the release, support and monitoring process and where possible identify appropriate solutions. Among the areas requiring attention, the meeting identified: a need for greater consistency in the preparation of high risk offenders for their release (including the possibility of negotiating a national protocol between prosecution services and CSC); a need to consider standardizing existing practices (including perhaps the adoption of national norms or protocols) as they relate to the application for a recognizance order under ss. 810.1 or 810.2 of the Criminal Code; a need for a *Criminal Code* amendment to provide for the possibility of longer recognizance orders; the need to clarify, in the face of evolving case law, the nature of the conditions that can legitimately be attached to a recognizance order; and, a need for more research and the systematic identification of best practices in the release and supervision of high risk offenders released at WED.

Where possible solutions were identified, however, it is significant to highlight that consensus on the solution was not always attained.

(D) Introduction

The return to the community of detained high risk offenders released at their warrant expiry date (WED), without parole supervision, raises some very serious public safety concerns. Addressing these concerns requires a proactive, coordinated response on the part of police, prosecutors, corrections officials and various community agencies. Cooperation and good communication among corrections, police and prosecution officials are essential to identify high risk offenders, understand where, how and for whom they may constitute a serious safety risk and take all available measures to protect the community. When they have determined that an offender's presence in the community represents a risk that warrants close supervision of the offender, officials can apply to the court for a recognizance order that will allow them to oversee a court-ordered supervision for a set period of time.

Officials, when there is a fear on reasonable grounds that the offender will commit a serious personal injury offence or an enumerated sexual assault-related offence, can make use of the provisions of sections 810.1 and 810.2 of the *Criminal Code* and seek a court order to compel that individual to enter into a recognizance to keep the peace and be of good behaviour for any period that does not exceed twelve months and to comply with any other reasonable conditions prescribed in the recognizance that the provincial court judge considers desirable for preventing the commission of another serious offence.¹ In order to obtain such an order in a timely manner and ensure that it contains appropriate conditions, it is essential that all the agencies concerned, particularly when they are from different jurisdictions, work closely together and share information effectively and in a timely manner.

Considerable progress has been achieved in recent years in facilitating inter-agency cooperation within various jurisdictions, as well as across jurisdictions. A coordinated risk assessment, release planning and community supervision approach is clearly the most effective way to address communities' needs for safety and security. In February 2005, a Conference was held in Richmond (B.C.) to better understand how best to coordinate the justice system's response to high risk offenders.²

Because high risk offenders, by definition, pose the greatest threat to public security it is essential that their release and reintegration into the community be monitored closely and supported. Several agencies must become involved in that process and it is imperative that they work closely together in preparing for the release of these offenders, setting in place the means to supervise them adequately, supporting their integration in the community, and intervening when necessary. There is an even greater need for cooperation when offenders are released to jurisdictions different from the ones in which they have been detained or when they move from one jurisdiction to another after their release. Different jurisdictions tend to have slightly different practices, procedures and policies. This dictates constant vigilance on the parts of all agencies and officials involved and it suggests that current practices and procedures should be reviewed

¹ See "Legal Framework" section for further commentary on the purpose and limits of conditions available with a s. 810.1 or s. 810.2 order.

² See: Report on the Conference on *Community Protection is Paramount: Coordinating the System's Response to High Risk Offenders*, Richmond, B.C., February 2005.
<http://vancouver.ca/police/justice/documents/Conference2005/ConferenceReport.pdf>

regularly to ensure that they achieve their purpose and are sufficient to protect the public.

With that in mind, the *National Joint Committee of Senior Criminal Justice Officials* (Pacific Region), the *International Centre for Criminal Law Reform and Criminal Justice Policy* and the *British Columbia Association of Chiefs of Police*, organized a two-day meeting of experts in Vancouver to consider some emerging inter-jurisdictional and inter-agency cooperation issues and identify some potential solutions. The two objectives of the meeting were to:

- ❑ heighten awareness of the need for greater inter-jurisdictional and interagency cooperation in relation to the release, support and monitoring of WED offenders and the 810.1/810.2 application process, and,
- ❑ identify gaps in the release, support and monitoring stages and, where possible, identify appropriate solutions

The meeting brought together some forty operational experts representing various justice, law enforcement, corrections and community agencies from all parts of Canada, as well as a representative of the American Probation and Parole Association (see Section H Appendix B for the list of participants). The meeting was structured so as to invite participants to review some case studies³ and to focus in turn on the four main stages of the process at which inter-agency coordination is crucial: (1) coordination and information sharing at the pre-release stage; (2) application for a court order and release; (3) post-release and supervision coordination; and, (4) coordination and cooperation in the event of a breach of the court order and at the subsequent court proceedings (see Section F Appendix A for the meeting agenda).

Participants were able to review some of their achievements of the last several years in coordinating their actions to ensure the safer release of high risk offenders. They noted several areas in which existing practices had been enhanced and considerably strengthened, and it is expected these better practices will lead to the development of appropriate and complementary policies in stakeholder agencies. They also identified issues of concern and areas where current practices could be improved and existing policies reconsidered, such as decision-making on the criteria to decide which jurisdiction should submit an 810.1 or 810.2 application. It is those practices that could be improved that were the object of the discussion and will constitute the focus of the present report. The report does not attempt to summarize the proceedings of the meeting but simply focuses on the main issues identified by the group and the suggestions that were made on how these issues could be addressed. Where possible solutions were identified it is significant to highlight that consensus on the solution was not always attained.

While some action may already have been taken by participants to address these same issues in their own jurisdiction, their suggestions and recommendations are presented here for further consideration during the forthcoming November 2006 national conference on “What Works in the Community’s Integration of High Risk Offenders”, a

³ The Workbook utilized for the two meeting can be found at <http://vancouver.ca/police/justice/documents/200606ReleaseOffenderBorder.pdf>
By October 2006 it will also be available on the International Centre’s website.

forum that will encourage a much more encompassing consideration of the broader issues associated with the community reintegration of high risk offenders.

It should be noted that open and frank discussion was encouraged, and this necessarily resulted in attendees raising issues, asking questions, and making suggestions on matters outside of their areas of particular expertise. Those discussions are reflected in this document, so it is important that, while care has been taken to ensure factual information is provided, certain assertions must be considered in the context of the free-flowing discussion, which was captured by the rapporteur.

(E) Review of Issues

The report is divided into ten short sections. Each section highlights one of the main challenges that exist with respect to interagency and inter-jurisdictional cooperation in protecting communities against the potential threat posed by high risk offenders released from detention at WED. The challenges relate to:

1. The efficient notification of local police authorities of the forthcoming release of high risk offenders
2. The preparation of high risk offenders for their release
3. Timely applications for court orders
4. Determining the conditions that are imposed in a court order
5. The length of the order
6. Community notification through the media
7. The effective supervision of high risk offenders in the community
8. The provision of effective support to high risk offenders in the community
9. Responding to breaches of conditions
10. The need for research and the identification of best practices

1. The Efficient Notification of Local Authorities of the Forthcoming Release of High Risk Offenders

In the CSC Pacific Region the Warrant Expiry Date Release Coordinator currently tracks all the cases that represent the type of threat defined in s. 25 of the *Corrections and Conditional Release Act*. A monthly list is generated of all detained offenders in the region who are within six months of their warrant expiry date. The list is circulated to the coordinator of the High Risk Offenders Identification Program (HROIP)⁴ and the

⁴ The High Risk Offenders Identification Program is a Criminal Justice Program in British Columbia designed to assist Crown Counsel with Dangerous Offender, Long Term Offender Applications, Section 810.1 and 810.2 CCC Recognizance, general sentencing and bail applications. HROIP facilitates information sharing between Crown Counsel, Police, Corrections and Forensic Psychiatric Services. Information includes circumstances from previous convictions or stay of proceedings, Provincial and Federal (CSC) correctional file information concerning previous incarcerations and professional assessments that might have been conducted i.e.: Forensic Psychiatric Services. HROIP maintains a close contact with all justice partners in the sharing of information.

coordinator for Circles of Support and Accountability⁵ (CoSA). Four months prior to warrant expiry, an information package is created containing information about the offender and the risk that they represents (i.e. WED Package). At that point communication is established and the package is distributed to the police agency in the jurisdiction where the offender plans to reside, the relevant parole office, the HROIP coordinator, the High Risk Recognisance Advisory Committee (HRRAC)⁶, and the “810 coordinator” (police based)⁷, depending on the nature of the coordination mechanisms in place in each jurisdiction.

Participants noted the important role played in BC by the CSC WED Coordinator and HRRAC, an interagency committee established in 1999 to review cases of high-risk offenders not under supervision or who are under supervision that is ending. An “810-coordinator” police based position has been established in British Columbia to centralize the processing and monitoring of WED offenders. The coordinator acts as a liaison between corrections, police, and Crown counsel in the writing of 810.1 and 810.2 reports to the court. “Specialization” in the processing of the application by Crown has also been implemented in BC. The mechanisms in place in some provinces to provide effective coordination in preparing the release of high risk offenders appears not to be as well-defined as they are in BC.

The process may vary a little from jurisdiction to jurisdiction, but it would seem that the communication and notification systems in place are working adequately in most of the larger jurisdictions. The main difficulties with the existing system seem to arise at a time closer to the release date, or at the time of the release when the offender changes his release plans and decides at the last minute to go to a jurisdiction where local agencies have not yet been part of the communication/notification network regarding that particular offender. At the time of their release, unless subject to a court order, the offender is free to go wherever they please. Timely and proactive involvement of all key agencies and the appropriate exchange of information are required so as not to defeat the careful planning that took place prior to the release.

- **GAP** It would appear that not all municipal, provincial and possibly territorial jurisdictions or CSC regions dedicate the required resources to this issue.
- **Recommendation** It would appear this issue would be an appropriate Agenda item for the Federal, Provincial, and Territorial Working Group on the High Risk Offender.

2. The Preparation of High Risk Offenders for their Release

The police and corrections officials need to spend time trying to confirm the offender’s release plan and some of the assumptions upon which it rests (e.g., availability of work, support, etc.). Many participants noted how it is clearly in the interest of each community to make sure that an effective program of control/surveillance and assistance is in place

⁵ The Protocol Agreement between CSC Pacific and CoSA can be found as item E-5, page 34 of the previously referenced Workbook.

<http://vancouver.ca/police/justice/documents/200606ReleaseOffenderBorder.pdf>

⁶ The Terms of Reference for HRRAC can be found as item E-4, page 31 of the previously referenced Workbook.

<http://vancouver.ca/police/justice/documents/200606ReleaseOffenderBorder.pdf>

⁷ The 810 Coordinator Position Description can be found as item F, page 48 of the previously referenced Workbook.

for the offender. Corrections, police, and support groups all may play a role in working with the offender to persuade them to participate in the support/control program that is being developed. In the end the order is often a voluntary one.

CSC institutional programs for preparing high risk offenders for their release are an important part of the overall process. Unfortunately, one must take into account the typically limited involvement of high risk offenders in programs that could assist them. Their refusal to engage in treatment programs is often the basis for a decision to seek a post release court order.

Some participants observed that they had noted inconsistencies in the application of CSC detention release policies and that these could create difficulties in coordinating the release of high risk offenders at WED. An example that was given related to different interpretations by the releasing institutions as to what release destination CSC financially support.

- **GAP** It would appear that the inconsistent application of CSC policy can be problematic for other criminal justice components. For other components of the system that have not developed policies or established practices, this could be problematic to the partnering agencies involved.
- **Recommendation** Concerning the very specific issue of the release of the federally incarcerated detained offender an inter-agency committee should be tasked with identifying and standardizing the best practices including the adoption of national norms and protocols.

3. Successful and Timely Applications for Court Orders

The preparation of a report to Crown Counsel for an application for a court order under s. 810.1 or 810.2 is approached differently in different provinces. In Alberta, for example, the police prepare these reports independently, while in British Columbia these reports are often prepared by police as the result of a recommendation by HRRAC.

Participants spent a lot of time discussing the question of which jurisdiction should proceed with an application for a s. 810.1 or 810.2 court order, i.e., the jurisdiction in which the offender is detained or from which they will be released, or the destination jurisdiction, i.e. the jurisdiction to which the offender is planning to go upon release. Some participants were of the view that the application should be made by the former jurisdiction, the one where the offender is being detained, since the application best takes place before the offender's release and that jurisdiction is best suited to proceed efficiently and successfully with the application. Others suggested that it should be the responsibility of the jurisdiction in which the offender was going to reside that should be responsible. A third option was also presented. The jurisdiction where the offender is detained obtains the order and upon arrival at the release destination the order is varied.

Others have argued that the case law and policies and practices are sufficiently different in each province to warrant applying for an order in the jurisdiction in which the order is most likely to be enforced. They also argued that developing an agreement with the offender and ensuring that the right conditions are defined and imposed is something that the "receiving" jurisdiction is best able to do. Some would argue that, in fact, this process of reaching a voluntary agreement (when possible) with the offender and a clear understanding of what is in the order and how it will be supervised constitutes the first and most important step in developing an effective support and supervision relationship

with the offender. This is why, for example, the Calgary police will routinely fly to another jurisdiction to interview offenders planning to return to its city at WED. In their view, it is very important for the police to have a chance to interview the offender and to verify his release plan. Consensus was not reached as others argued that this could be done by the “holding” jurisdiction.

At present, if CSC knows the offender’s release destination their transportation is paid for and they are released. The destination could also be the place where the last index offence was committed. Many participants questioned the wisdom of going through an extensive process to identify, track and identify certain offenders as high risk offenders only to release them soon thereafter and allow them to travel unsupervised and unaccompanied across the country. The problem they argued could be solved if CSC agreed to transfer the offender to an institution in close proximity to their release destination prior to their release. CSC noted very significant challenges involved in such a practice, including when the offender does not declare a release destination or there is a last minute change in the plan.

There are cases where an application for a court order will take place after the offender has been released, sometimes after a parole or statutory release revocation. Ideally, however, the whole process should be completed before the offender is released. The question is also complicated by the fact that offenders are free to go to the community of their choice at the time of the WED release unless bound by a court ordered residence condition imposed prior to release. Offenders can complicate matters, sometimes on purpose, by frequently changing their release plans. They can also change their mind at the last minute. If, for example, an offender is released in jurisdiction “A” on the basis that they will be going by them self to jurisdiction “B”, there currently is no way to ensure that the offender acts according to their declared plan. If, at the last minute, the offender decides to proceed to jurisdiction “C”, there is nothing that jurisdiction “A” or “B” can do about it, and clearly jurisdiction “C” will be ill prepared to receive the offender. It was also noted that there may be a disproportionate impact on communities with federal institutions nearby.

Participants noted that the Heads of Prosecutions at a recent national meeting suggested that a national protocol could be developed and agreed to with CSC. Some of the participants agreed to form a small working group to delineate some of the options that could be considered at the national level to standardize existing practices with respect to the process of applying for court orders under s. 810.1 and s. 810.2.

- **GAP** It is acknowledged that provinces and territories may have different policies in place. It was felt however that a national protocol with CSC that identified certain mutually agreed to core responsibilities would be beneficial. A small committee of the delegates from this meeting agreed to prepare an options paper in relation to this inter-jurisdictional issue.
- **Recommendation** Key government departments involved in the release of an offender and initiating and processing a court order under s. 810.1 and s. 810.2 review the Options Paper upon completion.

No matter which solution is adopted in order to improve inter-jurisdictional cooperation in preparing for the release of a high risk offender and seeking a court order to ensure his/her supervision, there are resource issues that should not be ignored. For instance,

whether one is paying for the travel costs of offenders or officials in order to tighten up the process, there can be significant costs associated with that process. Some participants suggested that these resource issues are relatively small given the importance of protecting a community against the risk of serious and violent recidivism. It was argued that “one should not put a price on community safety”, particularly when the danger is so real and imminent where high risk offenders are concerned.

- **GAP** Not all involved jurisdictions appear to be sufficiently funding the activities that are required to meet the collective mandate of community protection.
- **Recommendation** It would appear this issue would be an appropriate Agenda item for the Federal, Provincial, and Territorial Working Group on the High Risk Offender.

At the national level, there is apparently no data on just how many high risk offenders are moving across jurisdictions. The total number of these offenders is likely to be small. However, collecting such data⁸ would be useful for future planning purposes and for addressing any inter-jurisdictional cooperation issues that may arise in the future.

- **GAP** Data collection is insufficient.
- **Recommendation** A national entity be identified and tasked with the development, implementation and maintenance of a national data base concerning the pre and post release of federally incarcerated detained offenders.

At another level, and irrespective of which jurisdiction applies for a court order, an application is more likely to be granted when proper attention is given to collecting the evidence that needs to be presented to the court in support with a rationale behind the various conditions that are being proposed. Sometimes an expert report can also be useful. The case law around the kind of conditions that can legitimately be imposed as part of a s. 810.1 or 810.2 order is still evolving and it differs from province to province. The evidence must take care to relate the nature of the specific conditions that are proposed to the risks involved. This typically involves evidence of previous offences and offending patterns, admissions, and risk assessments.

The notion of designating a specialized prosecutor or team of prosecutors to proceed with these applications appears to be a popular one, at least in larger jurisdictions where the number of applications per year justifies such an approach. In any event, sufficient training of prosecutors involved in processing such applications must be ensured.

- **GAP** With the number of offenders involved in this process being relatively small not all criminal justice practitioners are knowledgeable in this area.
- **Recommendation** An issue specific training module should be developed for the various components of the system and made available to their respective training personnel.

⁸ Specific data that would be beneficial is highlighted further in Issue 10 found on Page 19 of this report.

Many participants were aware of the fact that there are some concerns about the evolving case law around the question of the test that should be applied by the court before imposing a s. 810.1 or 810.2 order. Recent cases seem to have referred to the need for an “imminent danger” test, not unlike what is found in matters of civil commitments. Although some participants were of the view that the test was perhaps an inappropriate one for these high risk offenders, others noted that such a strong and clear test is perhaps what is required under the Charter.

Finally, some participants noted that there are cases where a high risk offender is released from a foreign institution, most likely in the United States, to come into Canada. At present, there is no systematic way for local authorities to become aware of these situations. It is difficult, however, to know just how frequently these situations occur.

- **GAP** The lack of information concerning high risk offenders being released from another country to Canada or visiting is problematic.
- **Recommendation** An inter-agency committee be established including the Canadian Border Service to review this “gap” and if necessary identify possible next steps.

4. Determining the Conditions to be Stipulated in a Court Order

All participants agreed that the goal is to ensure that any given s. 810.1 or 810.2 court order includes a list of reasonable, defensible, practical and enforceable conditions. Participants were given a list of examples of conditions that could be attached to a recognizance order. The list had been developed by BC Corrections and HRRAC and can be adapted to fit the circumstances of individual cases.⁹ It contains examples of standard conditions as well as conditions relating to: substance abuse, mental health, weapons restrictions, prohibition of certain contacts, area restrictions, curfew, pornography, and the use of motor vehicles.

It is clear that the case law with respect to the kind of conditions that can be attached to an order under ss. 810.1 and 810.2 is still evolving. In addition, it is not consistent across the country, in terms of the range of conditions various provincial courts of appeal have deemed constitutionally valid. As a result, the conditions that are or can be imposed as part of a court order under ss. 810.1 or 810.2 may be different in each province.

In *R. v. Stonechild*, the Saskatchewan Court of Appeal held that there must be a nexus between the condition(s) imposed under s. 810.1 and the prevention of an enumerated offence.¹⁰

In *Noble v. Teale (Homolka)*, the court held that conditions imposed pursuant to s. 810.2 must relate to the specific conditions set out in the section, namely, a prohibition on possession of a weapon as is expressly provided in s. 810.2(5), and to the obligation to report to corrections or police authorities as is expressly provided by s. 810.2(6). The court indicated that conditions such as no contact with persons who have a criminal

⁹ The list can be found as item E-6, page 39 of the previously referenced Workbook.
<http://vancouver.ca/police/justice/documents/200606ReleaseOffenderBorder.pdf>

¹⁰ *R v. Stonechild* [1999] S.J. No. 811 (Sask C.A.)

record for violent crime, who were accomplices or associates of the offender in the commission of earlier crimes, or were victims of the offender's earlier crime, are all impermissible as none of these conditions relate to the two specified conditions set out in ss. 810.2(5) and (6). A prohibition relating to controlled substances would also be impermissible.

In *R. v. J. (D.)*, the Newfoundland Superior Court found that ss. 810.1(3) does not provide a judge with the authority to require a person subject to a recognizance order to accept counselling or follow a course of treatment (i.e., drug therapy); and if it did, that it would be contrary to the Charter.¹¹ Participants noted that in practice, imposing a condition that offenders undertake some counselling is rarely problematic, although it is true that such a condition tends to be imposed mostly in voluntary cases where the offender is not challenging the application for a court order.

In *R. v. Goodwin*, the BC Court of Appeal suggested that a condition under s. 810.2 may require a defendant to take medications.¹² On the other hand, the Supreme Court of Canada is currently considering the Deacon case where the issue is whether the National Parole Board can impose a condition to take certain medication. This decision could have implications as well for conditions imposed as part of a s. 810.1 or s. 810.2 order.

There have been court decisions (e.g., *Shoker* and *Payne*) where it has been held that imposing a sobriety condition that requires a drug test is not permissible. One of these decisions is currently before the Supreme Court of Canada. Some participants, however, noted that when the condition is part of a voluntary court order – one that has not been contested by the offender – including that condition in the court order is usually not a problem.

Conditions related to a prohibition to go to certain places are routinely used. However, it was noted that they are not as useful as a “no contact” order for the protection of victims because they entail revealing the victims' whereabouts.

Participants noted that imposing a condition of “no-contact” with people with a criminal record may at first seem appealing. It, however, usually creates additional difficulties for the offender and can compromise their social reintegration. For example, imposing such a condition can prevent an offender from relying on a family member for support, or it may make it very difficult for the offender to find a place of residence (e.g., hostel, etc.).

In some provinces, a condition that the offender is to live in a designated area is routinely added to the court order. Participants noted that this is not always beneficial and can push offenders to live or remain in areas where they are placing themselves at higher risk of recidivism.

5. The Length of the Order

Participants agreed that the first year after the release of a high risk offender and the quality of the supervision and support that the offender receives during that time are crucial to their adaptation to living in the community. However, some participants

¹¹ *R. v. J. (D.)* 9 W.C.B. (2d) 145 (Nfld. S.C.)

¹² *R. v. Goodwin* [2002] BCCA 513

suggested that there would be some merit in amending the *Criminal Code* to provide for a longer court order, perhaps two years, instead of requiring the Crown to apply for a new order.

At present a new application can be made when an order has expired or is about to expire. It may be more difficult at this time to secure the cooperation of the individual. Also, it seems that at the time of a second application, the initial and sometime precarious adaptation of some offenders to the community during the first year after their release can be mistaken by the court for an absence of imminent danger. The fact that an offender has abided by the conditions of a court order for a whole year does not necessarily mean that the factors that make them a high risk have changed at all. Participants noted that the Federal, Provincial, and Territorial Working Group on High Risk Offenders may recommend a *Criminal Code* amendment to allow for two-year court orders under ss. 810.1 and 810.2.

6. Community Notification and Relations with Information Media

Participants discussed the question of community notification of the release of high risk offenders. It is, they noted, a matter generally governed by provincial freedom of information and privacy legislation. However, in communities policed by the RCMP federal privacy legislation would apply. Some participants were of the view that such a notification simply adds pressure on the offender, particularly in a small community, and compromises their adaptation to the community and increases their risk of recidivism. They claimed that the benefits of notification were exaggerated and that there was indeed very little credible evidence that it had a beneficial impact on preventing recidivism or protecting the community. Some participants questioned whether proceeding with community notification is not, for many agencies, simply an attempt to limit any future legal or political liability, while others pointed out the legal and ethical responsibility of police to warn the public about matters affecting public safety, and the “Jane Doe” case in Toronto was provided as an example. Some participants suggested that public notification should perhaps be reserved for cases where offenders do not want to cooperate with the authorities. The threat of public notification could in fact provide some leverage to persuade offenders to cooperate with the authorities and submit themselves to supervision.

Participants also noted the importance of coordinating their interactions with the media, particularly in the cases of high profile offenders. Above all, agencies should avoid criticizing each other about how they deal with high risk offenders. Issues should be identified and addressed through cooperation and communication not through complaints to the media. Maintaining the confidence of the public in the processes that are in place is part of the whole community safety agenda.

7. Effective Supervision of High Risk Offenders in the Community

All participants emphasized that communications between agencies is crucial to the success of the supervision and reintegration of the high risk offender into the community. Many also noted that communication within a given agency should not be taken for granted either (e.g., between officers in a special squad or team and regular line officers). While barriers to exchanging information between jurisdictions and agencies exist, a reasonable and timely exchange of information can be and is increasingly being achieved. Inter-agency protocols and agreements can help clarify the reasonable expectations that these agencies and their personnel can have of each other.

Police forces have learned that proactive, intelligence-based approaches to forming crime-prevention partnerships with other agencies in the community can be applied to the problem of the release of high risk offenders and yield some long-term crime reduction benefits.¹³

The use of specialized observation teams, where resources allow it, is clearly an important element of effective supervision. In British Columbia, the Integrated Sexual Predator Observation Team (ISPOT) is a full-time, 10-person mobile surveillance unit consisting of officers from municipal police forces and the RCMP from across the province. The team has a method for assessing the risk posed by offenders and for prioritizing its own surveillance efforts. Team members are trained to do everything from the surveillance and offender interrogation to witness interviews, follow-up investigations and preparation of reports to Crown counsel. Part of the success of ISPOT is due to its sharing of information and working closely together with both corrections officials and Crown prosecutors. In BC, the police based 810 coordinator also provides for effective liaison between agencies involved in the supervision of high risk offenders.

In BC, the work of ISPOT and others is facilitated by the Integrated Sexual Predator Intelligence Network (ISPIN). Through that initiative, information is gathered from sources including CSC, BC Corrections, police reports, Crown counsel, the Violent Crime Linkage Analysis System (ViCLAS), among others, and placed into the ISPIN data bank. This information can be shared and used by the police to better understand the nature of an offender's background and criminal behaviour. Other information is also provided, such as potential contacts, locations, and personal identifiers that can assist in tracking and locating individuals who are unlawfully at large or suspected of committing additional crimes.

The use of coordinated management teams for high risk offenders also offers some promising results. For example, a three-year pilot project in Surrey and Vancouver, "CHROME"¹⁴, a BC Corrections funded initiative is currently being implemented and evaluated. It focuses on enhancing partnerships between police officers, psychologists and community stakeholders to provide assistance and supervision to high risk offenders who are subject to recognizance orders. Participants noted that an integrated approach to offender support and supervision allows the authorities to intervene when there are obvious signs of deterioration in the situation, but before another serious offence is committed.

It was noted that the supervision of the court orders under ss. 810.1 and 810.2. varies from province to province and territory. In BC it is the responsibility of BC Corrections while in Alberta it is the responsibility of the police agency where the offender resides. At times where an offender is applying to move to another jurisdiction or to visit a family member in another area, there is an acute need for close cooperation between all the agencies involved.

¹³ For a review of some community-based police strategies in this area, one can consult LaVigne, N. G., Solomon, A.L. Solomon, K. A. BeckMan, and K. Dedel (2006). *Prisoner Reentry and Community Policing: Strategies for Enhancing Public Safety*, Washington (D.C.): Urban Institute – Justice Policy Centre, March 2006. <http://www.urban.org>

¹⁴ CHROME can be found as item E-9, page 47 of the previously referenced Workbook. <http://vancouver.ca/police/justice/documents/200606ReleaseOffenderBorder.pdf>

According to some participants, the question of electronic monitoring of offenders under a court order should perhaps be considered, although one should be careful not to inadvertently create a false expectation that someone is actually monitoring the movement of offenders at all times and is in a position to intervene whenever there is a breach of a court-imposed condition.

8. Providing Effective Support to High Risk Offenders in the Community

Past experience would seem to indicate that the greatest risk of reoffending is during the first six months following the offender's release into the community. At the time of their releases, high risk offenders face a number of difficult challenges relating to housing, employability, family relationships, various forms of social rejection and ostracism, substance abuse, health and mental health concerns. The support they receive at that stage will sometimes determine whether they can successfully adapt to life in the community.

Participants noted the important role played in the support and supervision of high risk offenders by community organizations such as CoSA¹⁵. CoSA, funded by the Correctional Service of Canada, is a national network of community based groups of professionally supported volunteers. The goal of such organizations is to enhance the safety of their communities by supporting released offenders while holding them accountable for their behaviour. In the Pacific Region, a protocol was developed between CSC and CoSA to facilitate the sharing of information and closer collaboration, with a central function being assigned to a CoSA Regional Coordinator.

The supervision and support offered by Coordinated High Risk Offender Management Teams (CHROME) and various wrap-around integrated services models, such as the one in Winnipeg, can influence choices made by high risk offenders, particularly during the first six months following their release. Participants highlighted the need for more funding for organizations such as CoSA and programs such as CHROME.

Some participants noted that many offenders see a police offer of assistance as sincere and genuine. Many offenders perceive the police officers they deal with as helpful. Many offenders are in fact relying on the police for their own protection.

Offenders often encounter difficulties obtaining the prescription drugs they need. There are some unresolved issues about the funding available for these prescription drugs. The issue is of course particularly significant when taking these prescription drugs is in fact a condition of the offender's court order.

Finding suitable housing for high risk offenders is often a huge issue. The alternative is to let these offenders live in highly unsuitable places where their chances of recidivism are increased. The lack of suitable accommodation for released offenders in the community can lead to a situation where released offenders are concentrated in the most problematic parts of that community, often crime-ridden, lacking in services and without support systems. It may be that this high concentration of high risk offenders in some neighbourhoods presents an opportunity for geographically-based strategic efforts

¹⁵ Further information and CoSA evaluations and research can be found at the following CSC website.

http://www.csc-scc.gc.ca/text/prgrm/chap/pro06-3b_e.shtml

to support offenders in their reintegration into the community (e.g. enhanced services and supervision in certain places).

Finally, participants emphasized that the lack of adequate mental health services for these high risk offenders is a concern in most communities across the country.

- **GAP** Supportive resources and services for the WED offender are insufficient to meet their and the community needs in a number of critical areas.
- **Recommendation** It would appear this issue would be an appropriate Agenda item for the Federal, Provincial, and Territorial Working Group on the High Risk Offender.

9. Responding to Breaches of Conditions

Participants seem to agree that the National Flagging System for High Risk Violent Offenders is working well to help ensure that prosecutors are able to consider the risk represented by certain high risk and dangerous individuals. The system operates nationwide and utilizes the Canadian Police Information Centre (CPIC). It ensures that, in cases where a prosecutor has indicated that an offender represents a high risk to the community, other prosecutors are alerted to that fact before making important prosecutorial decisions, including decisions in relation to a 810.1 or 810.2 recognizance, or applications under Part XXIV of the *Criminal Code* relating to dangerous offenders and long term offenders.

In the case of a breach of conditions, volunteers from CoSA who are working with the offender are trained to report the matter to the police. Their cooperation is crucial to the success of the investigation that follows. Volunteers must be advised about the possibility of over-identification with the offender and must remain aware of the need to protect the community. On the other hand, there are cases where the police appear to have an interest in detecting a breach of the conditions of the court order as soon as possible, so that a high risk offender can be removed from the community.

The maximum penalty provided by the Criminal Code for a breach of a condition attached to a 810.1 or 810.2 order is two years imprisonment. Participants appeared to agree that this maximum punishment was sufficient. In some cases, the offender can also be prosecuted for a related offence (e.g., illegal possession of a weapon). However, some participants were concerned that charges for breaches of conditions by offenders under a recognizance order do not always lead to serious consequences being imposed by the courts. Some of these proceedings are stayed by Crown counsel prior to a hearing. Others lead to a sentence of “time served”. However, there are no statistics available on these decisions and there is insufficient data on the numbers, characteristics and outcomes of s. 810.1 and 810.2 applications. It was noted that during court proceedings relating to a breach of conditions of a recognizance, a report by an expert who can testify to the significance of the breach in relation to the offender’s criminal patterns and offence cycle can be very useful.

- **GAP** Data collection is insufficient.

- **Recommendation** A national entity be identified and tasked with the development, implementation and maintenance of a national data base concerning the pre and post release of federally incarcerated detained offenders.

Participants reviewed their own experiences in terms of inter-jurisdictional cooperation in cases where offenders breached the conditions of their recognizance orders. They noted that the order is enforceable anywhere in Canada and that, in such circumstances, effective cooperation was mainly a matter of ensuring good communications between jurisdictions. They were not aware of cases where this had been an issue.

The question was raised of whether guidelines for the police, prosecutors, or support agencies should be developed on how to deal with situations where conditions are breached or are suspected to have been breached by a high risk offender.

- **GAP** With the numbers offenders involved in this process being relatively small not all criminal justice practitioners are knowledgeable in this area.
- **Recommendation** An issue specific training module should be developed for the various components of the system and made available to their respective training personnel.

10. The Need for Research and the Identification of Best Practices

Participants believed that the discussions that took place during the meeting could be used as a starting point for defining a research agenda in this area. They noted that systematic research on the issues as well as on best practices is still lacking in Canada.

- **GAP** Research and evidenced based practices in relation to this profile of offender is limited and maybe non existent.
- **Recommendation** A national entity be identified and tasked with the development and implementation of an applicable research agenda.

The consensus was that national data should be gathered and disseminated on a number of questions, including: the number of high risk offenders released at WED; where they are released from and the community to which they are released; the number and nature of applications made for a s. 810.1 or s. 810.2 order, both successful and unsuccessful; data on the conditions that are being attached to recognizance orders; data on second or subsequent applications for a court order once an order has expired; data on the movement across jurisdictions of high risk offenders under a recognizance order; data on breaches of recognizance order conditions; and data on court decisions with respect to a breach of a condition of a recognizance order.

- **GAP** Data collection is insufficient.
- **Recommendation** A national entity be identified and tasked with the development, implementation and maintenance of a national data base concerning the pre and post release of federally incarcerated detained offenders.

Participants also suggested that a systematic assessment of current policies, procedures and practices should be conducted, and that in determining what are the most effective strategies in managing high risk offenders in the community, an evidence based approach must be taken.

Finally, participants perceived a need for greater exchanges of information (case law, tools, procedures, guidelines, protocols, and best practices) and expertise among agencies and jurisdictions. They suggest that is a task that the National Joint Committee of Senior Criminal Justice Officials could perhaps facilitate by bringing together a national interagency meeting of officials.

- **GAP** A vehicle for the exchange of non offender based information is not available to all the “partners” involved in the process.
- **Recommendation** An agency to act as a “clearing house” of relevant information and best practices be identified and resourced accordingly.
- **Recommendation** The National Joint Committee of Senior Criminal Justice Officials continue to receive support for the leadership that they have shown in respect of this critical issue.

Rapporteur
Yvon Dandurand
September 2006.

(F) Appendix A

**Enhancing Community Protection in the Release of the Detained Offender
Inter-Jurisdictional and Interagency Issues and Solution
Meeting of Experts
Agenda**

Day One - Wednesday June 14, 2006

Noon to 13:00 hrs	Registration	
13:00 hrs to 13:15 hrs	Welcome & Opening Remarks	R.E. Bob Brown Director Corrections Programme ICCLR&CJP Greg Fitch, Chair Pacific Region NJC Chief Constable Andersen BC Association of Chiefs of Police Dan Préfontaine, President ICCLR&CJP
13:15 hrs to 13:30 hrs	Four Critical Stages – An Introduction	R.E. Bob Brown
13:30 hrs to 14:10 hrs	Pre Release Coordination ¹⁶	Ron Hurt ¹⁷ Manager High Risk Offenders Program Criminal Justice Branch
14:10 hrs to 14:50 hrs	Court Process & Application	Roger Cutler, Crown Counsel Criminal Justice Branch
14:50 hrs to 15:10 hrs	Health Break	
15:10 hrs to 15:50 hrs	Post Release Coordination	Andrew McWhinnie Western Region Coordinator Circles of Support & Accountability
15:50 hrs to 16:25 hrs	Breach & Court Proceedings	Doug LePard Deputy Chief Constable Vancouver Police Department
16.25 hrs to 16:30 hrs	Closing Remarks	R.E. Bob Brown

¹⁶ Delegates will be assigned to one of four groups and rotate through the Four Critical Stages.

¹⁷ The Facilitators for the Four Stages will remain constant and not rotate with the delegate groups.

**Report on the International Meeting of Experts on Enhancing Community
Protection in the Release of the Detained Offender – Vancouver, June 2006**

	19:00 hrs to 21:00 hrs	Delegate Dinner
19:00 hrs. to 19:10	Welcoming Remarks	Teal Maedel, Immediate Past Chair Pacific Region NJC
20:15 hrs. to 20:45 hrs	Inter-Agency Cooperation: A System Necessity	Mary Campbell, Director General Corrections Directorate, PSEPC
20:45 hrs to 21:00 hrs	Closing Remarks Day One	Dan Prefontaine, President ICCLR&CJP

Day Two - Thursday June 15, 2006

08:30 hrs to 09:00 hrs	Coffee & Tea	
09:00 hrs to 10:30 hrs	Four Stages Feedback & Discussion	Facilitators: R.E. Bob Brown Greg Fitch, Teal Maedel & Doug LePard
10:30 hrs. to 10:45 hrs	Health Break	
10:45 hrs to 11:45 hrs	Four Stages Feedback & Discussion	Continued
12:00 hrs to 12:45 hrs	Delegate Lunch	
12:45 hrs to 13:00 hrs	Police and Crown "Centralization"	Chief Constable Ian Mackenzie Abbotsford Police Department Melissa Gillespie, Fraser Valley Regional Crown, Criminal Justice Branch
13:00 hrs to 13:45 hrs	Community Safety – <u>Control</u> : Gaps & Answers	Facilitator: Chief Constable Ben Andersen Dean Sinclair Senior Crown Prosecutor Regina, Saskatchewan Detective Wendy Leaver Sex Crimes Unit Toronto Police Services Shelly Pylypiak, Project Officer RCMP "E" Division, Behavioural Sciences Group & Correctional Service of Canada

**Report on the International Meeting of Experts on Enhancing Community
Protection in the Release of the Detained Offender – Vancouver, June 2006**

13:45 hrs to 14:45 hrs	Community Safety – <u>Support:</u> Gaps & Answers	Facilitator: Teal Maedel, Psychologist Vancouver Parole Andrew McWhinnie Western Region Coordinator Circles of Support & Accountability Jamie Billingham, CHROME Program Coordinator Phoenix Society Dr. Lawrence Ellerby Forensic Psychological Services Winnipeg, Manitoba Former CoSA Core Member
14:45 hrs to 15:00 hrs	Health Break	
15:00 hrs to 15:45 hrs	An International Perspective	Gary Hinzman, Incoming President, American Probation and Parole Association
15:45 hrs to 16:00 hrs	Closing Remarks	Deputy Chief Constable Doug LePard & Pacific Region Vice Chair NJC

(G) Appendix B

Feedback Report

All participants received the attached feedback sheet. Fifteen participants responded and submitted their forms. The following is a summary of the responses.

Quality and usefulness of documentation and background material

All the respondents felt that the background materials that had been circulated in advance of the meeting and at the meeting were excellent and very helpful. Many said the materials provided good legal references for them. Other mentioned it was good to have had the materials in advance of the meeting. Several respondents liked the case study approach as it provided a real context for discussion on the gaps and was right on track in terms of the issues requiring discussion and solutions. Most found it helpful to have the same material provided as well at the meeting and perhaps mention of that could have been made to save participants from bringing a copy with them.

There was a suggestion that more tabs could have been used to make finding the various documents easier and another suggestion was to omit the use of the word “whore” and replace it with “prostitute” or “sex worker” to be more appropriate. Another suggestion was that it would have been useful to have a biographical note on the speakers.

Organization of meeting

Two out of 15 respondents said that the meeting was outstanding. Nine respondents said it was very well organized. Most said it was very relevant to the issues they faced at work. Several people mentioned that the meeting was well structured and the location was good. They also mentioned that the number of participants was conducive to a good discussion and that the pace of the discussion was good. A few respondents mentioned that there was insufficient time to fully develop ideas but several mentioned that the meeting flowed well and that it was well thought out and everyone had a chance to speak.

A couple of respondents would have preferred a slightly different approach to the breakout groups so that each group could have discussed the various stages of release chronologically rather than backwards. One person mentioned that having a sound amplification system would have improved communication. Another respondent mentioned that the dinner service was slow.

Opportunities for participants to contribute ideas and suggestions

Most respondents commented positively on the many opportunities the meeting afforded for making suggestions and sharing ideas and thoughts. Discussion was very interesting, but there could have been more time devoted to inter-jurisdictional issues discussions. Some respondents especially liked the table group idea as it was

conducive to sharing ideas. Participants were encouraged to contribute even if people did not always agree. One participant mentioned that discussion was respectful and that was very appreciated.

One respondent said the opportunities could have been better and one commented that there ought to have been more time for feedback session relating to the jurisdiction of 810 applications. One respondent commented that there was insufficient time for questions.

Quality and relevance of discussion

Overall the respondents felt that the quality and relevance of discussion were excellent. Most felt they learned from the presence of other jurisdictions and officials from other parts of the criminal justice system. One respondent said that, even though people disagreed on how to reach the common goal, it can only get better by more communication and discussions like this. One respondent would have preferred some basic statistics and description of the 'status quo' and how many cases were being handled by each jurisdiction. One respondent commented that the dinner speaker and closing speaker were both informative and challenged participants to deal with the issues.

Perceived importance/usefulness of recommendations coming out of meeting

Overall the respondents felt that the recommendations coming out of the meeting were useful and important. Several highlighted the importance of the specific recommendation to establish a working group/national think tank to work on a policy options paper on who does the application, which would impact legislation and those in authority. One respondent commented that it was important to follow up on the issues raised at the meeting and expand the discussion across the country and have similar discussions at the national level.

Other comments (quotes)

- A tremendous learning experience
- I leave with the hope that changes are in the works
- Thanks to Bob for all the hard work.
- I'm very honoured to have been invited.
- Congratulations to the ICCLS, NJC and BCACP for taking this on.
- Well done. We need more dialogue to protect the public.
- It was a very interesting conference. Thanks.
- Would have been nice to have some online pre and post meeting discussions.
- Excellent seminar. The organizers ought to be congratulated on a job well done.
- Another day would have been useful although it would have been more time.
- Acoustics of the room were poor – loud buzzing from back of room.
- Meeting site and arrangements good but in the meeting room it was hard to hear or see other people due to the post.
- One of the best facilitated meetings I've attended as far as staying on topic and on time. Well done!
- Use the NJC regionally and nationally to consult further on the 810 issue.

(H) Appendix C

Organizing Committee	
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R.E. Bob BROWN , Director Corrections Program International Centre for Criminal Law Reform and Criminal Justice Policy Past Chair Pacific Region NJC	Deputy Chief Constable Doug LEPARD Vancouver Police Department Vice-Chair, Pacific Region NJC
Vivienne CHIN , Associate, International Centre for Criminal Law Reform and Criminal Justice Policy	Teal MAEDEL , Psychologist Vancouver Parole District Office, CSC Immediate Past Chair Pacific Region NJC
Roger CUTLER , Crown Counsel Criminal Justice Branch, British Columbia	Dr. Matt LOGAN RCMP “E” Division Behavioural Sciences Group
Steve HOWELL , Deputy Provincial Director Community Corrections, British Columbia	Andrew MCWHINNIE Circles of Support & Accountability
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