

THE CHILD SEX OFFENDER REGISTER BILL

(No. of 2020)

Explanatory Memorandum

The purpose of this Bill is to establish, with a view to reducing and preventing the risk of sexual offences against children, a Child Sex Offender Register, to be known as the CSO Register.

2. The CSO Register will assist in –
 - (a) monitoring and tracking persons in the community who have been found guilty of committing sexual offences against children; and
 - (b) detecting and investigating sexual offences against children.

3. In addition, the Commissioner of Police will be empowered, in the interest of public safety, to disclose personal information of persons who have been found guilty of committing sexual offences against children to another Government agency and foreign agencies for the purposes of –
 - (a) monitoring the whereabouts of those offenders;
 - (b) verifying personal information reported by those offenders;
 - (c) managing the risk that those offenders may commit further sexual offences against children; and
 - (d) managing any risk or threat to public safety.

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*Minister of Gender Equality and
Family Welfare*

09 November 2020

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A BILL

To establish a Child Sex Offender (CSO) Register with a view to reducing and preventing the risk of sexual offences against children

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Child Sex Offender Register Act 2020.

2. Interpretation

In this Act –

“authorised officer” means an officer authorised as such by the Commissioner of Police;

“child” means a person under the age of 18;

“class 1 offence” means a class 1 offence specified in the Schedule;

“class 2 offence” means a class 2 offence specified in the Schedule;

“class 3 offence” means a class 3 offence specified in the Schedule;

“corresponding qualifying offence” means an offence under the law of a foreign jurisdiction which is similar to a qualifying offence;

“corresponding registrable offender” means a person referred as such under section 7;

“CSO Register” means the CSO Register referred to in section 3;

“initial report” means a report –

(a) referred to in section 10; and

(b) in such form as may be prescribed;

“Minister” means the Minister to whom responsibility for the subject of child development is assigned;

“periodic report” means a report –

- (a) referred to in section 11; and
- (b) in such form as may be prescribed;

“personal information”, in respect of a registrable offender, means the information set out in section 8;

“qualifying offence” means an offence specified in the Schedule;

“registrable offender” means a person referred as such under section 6;

“reporting period” means the period during which a registrable offender shall comply with reporting obligations.

PART II – CHILD SEX OFFENDER REGISTER

3. CSO Register

(1) There shall be, for the purpose of reducing and preventing the risk of sexual offences against children, a Child Sex Offender Register, to be known as the CSO Register.

(2) The CSO Register shall assist in –

- (a) monitoring and tracking persons in the community who have been found guilty of committing sexual offences against children; and
- (b) detecting and investigating sexual offences against children.

4. Management of CSO Register

(1) The CSO Register shall be kept and managed by the Commissioner of Police.

(2) No person, other than an authorised officer, shall have access to the CSO Register or any part of the CSO Register.

(3) The Commissioner of Police shall issue guidelines in relation to access to information in the CSO Register to ensure that authorised officers may have access to the CSO Register for the purpose of –

- (a) preventing, detecting, investigating and prosecuting qualifying offences;
- (b) monitoring registrable offenders in the community;

- (c) public safety.

5. Information in CSO Register

The CSO Register shall, in respect of every registrable offender, contain the following information –

- (a) the registrable offender's name and other identifying particulars;
- (b) details of each qualifying offence of which the registrable offender has been convicted;
- (c) the date on which the registrable offender was sentenced for any qualifying offence;
- (d) the date on which the registrable offender ceased to be in custody in respect of a qualifying offence;
- (e) the personal information of the registrable offender; and
- (f) such other information as the Commissioner of Police considers necessary.

PART III – CHILD SEX OFFENDERS

6. Registrable offender

(1) Subject to subsection (2), a registrable offender is a person who is, in respect of a qualifying offence –

- (a) sentenced to a term of imprisonment; or
- (b) sentenced to a non-custodial sentence.

(2) (a) No person shall be a registrable offender where, at the time he was convicted for a qualifying offence, he was under the age of 18.

(b) Notwithstanding the fact that the person referred to in paragraph (a) is not a registrable offender, the information required under section 5 shall, in respect of that person, be recorded in the CSO Register.

(3) A person shall cease to be a registrable offender where the conviction in respect of the qualifying offence is quashed by a Court.

7. Corresponding registrable offender

(1) A corresponding registrable offender is a person who has, as a consequence of a conviction in a foreign jurisdiction for a corresponding qualifying offence –

- (a) been sentenced to a term of imprisonment; or
- (b) been sentenced to a non-custodial sentence.

(2) A corresponding registrable offender who resides in Mauritius or enters Mauritius shall, for the purposes of this Act, be a registrable offender and all provisions relating to a registrable offender shall apply to the corresponding registrable offender with such modifications and adaptations as may be necessary.

8. Personal information of registrable offender

For the purposes of this Act, the personal information to be reported by a registrable offender shall consist of the following information –

- (a) his name, together with any other name by which he is, or has previously been, known;
- (b) his date of birth and a copy of his National Identity Card;
- (c) the address of each of the premises at which he resides or, where he does not reside at any particular premises, the name of each of the localities in which he may be found;
- (d) the name, sex and date of birth of each child who resides in the same household as him;
- (e) in respect of each child who resides in the same household as him, the name of the person who is entrusted with the care and upbringing of each child;
- (f) his postal address for service of notices and documents under this Act;
- (g) in case he is working –
 - (i) the nature of his work;
 - (ii) the name of his employer, if any; and

- (iii) the address of each of the premises at which the offender works or, where he does not work at any particular premises, the name of each of the localities where he works;
- (h) details of his affiliation with any club or organisation which involves children in its activities;
- (i) the make, model, colour and registration number of any means of transport owned by, or driven by, the offender;
- (j) details of any scar or permanent distinguishing marks which he has;
- (k) his passport number, place of issue and date of expiry of the passport;
- (l) his phone number, both landline and mobile, and the phone number at his workplace;
- (m) such other information as the Commissioner of Police considers necessary.

PART IV – REPORTING OBLIGATIONS

Sub-Part A – Notification to Registrable Offenders

9. Notification of reporting obligations

- (1) The Commissioner of Police shall –
 - (a) as soon as practicable but not later than 2 days after a registrable offender is sentenced to a non-custodial sentence;
 - (b) at least 2 days before a registrable offender is released from custody; or
 - (c) as soon as a corresponding registrable offender enters into Mauritius,

give written notice, in such form as may be prescribed, to the offender of his reporting obligations under this Act.

(2) Where a registrable offender is to be released from custody, the Commissioner of Prisons shall, not less than 30 days before the date of the offender's release, inform the Commissioner of Police of the date on which the offender will be released.

(3) Any written notice given under this section shall be accompanied by a copy of the initial report that the registrable offender is required to make under section 10.

Sub-Part B – Mandatory Requirement to Make Report

10. Initial report

(1) A registrable offender shall make an initial report to the Commissioner of Police of all his personal information –

- (a) not later than such date as the Commissioner of Police may specify in the written notice given under section 9(1)(a), being a date which is not later than 7 days after the offender is served with the notice;
- (b) not later than such date as the Commissioner of Police may specify in the written notice given under section 9(1)(b), being a date which is not later than 7 days after the offender is released from custody.

(2) A corresponding registrable offender shall, after being served with a written notice under section 9(1)(c), forthwith make an initial report to the Commissioner of Police of all his personal information.

11. Periodic report

(1) A registrable offender shall, until his reporting period ends, make periodic reports in every year to the Commissioner of Police of all his personal information –

- (a) starting in the first year, not later than 3 months after the date on which the offender makes his initial report; and
- (b) for subsequent years, not later than 12 months after the date on which the offender makes his last periodic report.

(2) Where a registrable offender is in custody since he last reported his personal information under this section, he shall, not later than 7 days after being released from custody, make another periodic report, which shall include the details of his conviction.

12. Travel plans to be reported

(1) Where a registrable offender intends to travel outside Mauritius, he shall, at least 48 hours before travelling, report the intended travel to the Commissioner of Police and shall provide the following details –

- (a) the date on which the offender intends to travel outside Mauritius;
- (b) if the offender intends to return to Mauritius, the date on which the offender intends to return;
- (c) if the offender does not intend to return to Mauritius, a statement of that intention.

(2) Where a registrable offender decides not to leave Mauritius, he shall report his change of intention to the Commissioner of Police not later than 48 hours after deciding not to leave.

13. Requirement to report return to Mauritius

Where a registrable offender returns to Mauritius, he shall, not later than 48 hours after his return –

- (a) report his return to the Commissioner of Police; and
- (b) present his passport to the Commissioner of Police for inspection.

14. Requirement to report changes to personal information

(1) Subject to subsection (2), a registrable offender shall report any change in his personal information to the Commissioner of Police not later than 48 hours after the change occurs.

(2) A registrable offender who has reported a change of residential address in the course of reporting travel plans under section 12 shall not be required to report that same information for the purpose of subsection (1).

Sub-Part C – Manner to Submit Report

15. Where and how report submitted

(1) A report by a registrable offender shall be submitted at such place as the Commissioner of Police may determine.

(2) Subject to subsection (3), a registrable offender shall attend in person to submit any report required to be made under this Act.

(3) Where a registrable offender has a disability which makes it impossible or impracticable for him to make or submit a report in person, any parent, guardian or carer, or other person nominated by the offender shall make or submit the report on behalf of the offender.

16. Receipt of information to be acknowledged

(1) As soon as practicable after receiving a report from a registrable offender, the police officer receiving the report shall acknowledge receipt of the report.

(2) The acknowledgement shall be in writing, shall be given to the registrable offender and shall include –

- (a) the name and signature of the police officer who received the report;
- (b) the date and time when, and the place where, the report was received;
- (c) a copy of the information which was reported; and
- (d) a copy of the record of any agreement made under subsection (4).

(3) Where a report is not made or submitted in person, the police officer who received the report shall, as soon as practicable –

- (a) give the person making or submitting the report a unique reference number; and
- (b) record that number on the relevant registrable offender's file and on the acknowledgement.

(4) The Commissioner of Police may make an agreement with the registrable offender as to the manner in which any reference number or acknowledgement required to be given under this section may be given.

(5) The Commissioner of Police shall ensure that –

- (a) there is a method of recording an agreement made under subsection (4); and
- (b) except with the written consent of the registrable offender, any reference number or acknowledgement required to be given under this section is given in accordance with the agreement while the agreement remains in force.

(6) The Commissioner of Police shall ensure that a copy of every acknowledgement is retained.

Sub-Part D – Duration of Reporting Period

17. Reporting period

(1) A registrable offender shall continue to comply with the reporting obligations imposed under this Act for –

- (a) 8 years, where the offender has been sentenced to a non-custodial sentence for a qualifying offence;
- (b) 8 years, where the offender has been sentenced to a term of imprisonment for a class 1 offence;
- (c) 15 years, where the offender has been sentenced to a term of imprisonment for a class 2 offence; or
- (d) the remainder of the offender's life, where the offender has been sentenced to a term of imprisonment for a class 3 offence.

(2) Subsection (1) shall apply to a corresponding registrable offender –

- (a) as if the corresponding qualifying offence was the qualifying offence; or
- (b) in the case of an offender who has been sentenced to a non-custodial sentence for the corresponding qualifying offence, as if the offender had been sentenced to a non-custodial sentence for a qualifying offence.

(3) For the purpose of calculating the duration of a registrable offender's reporting period, the period shall begin –

- (a) when the offender ceases to be in custody in relation to the qualifying offence of which he was convicted; or
- (b) in the case of an offender who is sentenced to a non-custodial sentence in relation to a qualifying offence, when the offender was convicted of that offence.

(4) A registrable offender shall remain on the CSO Register for the duration of his reporting period, including any period during which his reporting obligations are suspended pursuant to section 18.

(5) Where a registrable offender has reporting obligations in respect of more than one qualifying offence or qualifying corresponding offence, the

reporting periods for each of those offences shall run cumulatively, not concurrently.

Sub-Part E – Suspension of Reporting Obligations

18. Suspension of reporting obligations

(1) A registrable offender's reporting obligations shall be suspended for any period during which –

- (a) he is in custody for more than 7 days;
- (b) he is outside Mauritius;
- (c) the Commissioner of Police has suspended the offender's reporting obligations under subsection (2).

(2) The Commissioner of Police may, on his own initiative or on the application of the offender, suspend the reporting obligations of a registrable offender where the Commissioner of Police is satisfied, on reasonable grounds –

- (a) that the offender does not pose a risk to the lives or safety of a child, or of children generally; and
- (b) that the offender has a terminal illness or a significant cognitive or physical impairment which makes it difficult or impossible for the offender to fulfil his reporting obligations.

(3) The Commissioner shall, as soon as is reasonably practicable, give the registrable offender written notice of a decision made under subsection (2) –

- (a) to suspend the offender's reporting obligations; or
- (b) to reject an application to suspend the offender's reporting obligations.

(4) A suspension granted under subsection (2) shall take effect when the Commissioner of Police gives the notice to the registrable offender.

(5) Any period during which a registrable offender's reporting obligations are suspended under subsection (1) shall not be taken into account for the purpose of calculating when the offender's reporting period ends.

(6) A registrable offender whose reporting obligations are suspended shall not make any periodic report while the suspension is in force.

19. Revocation of suspension by Commissioner of Police

(1) The Commissioner of Police may, at any time, revoke a suspension granted under section 18 where he believes, on reasonable grounds –

- (a) that the registrable offender poses, or may pose, a risk to the life or safety of a child; or
- (b) that the offender no longer has an illness or impairment that makes it difficult or impossible for the offender to fulfil his reporting obligations.

(2) Where the Commissioner of Police revokes a suspension, he shall give the registrable offender written notice of the revocation as soon as is reasonably practicable.

(3) A revocation shall take effect when the Commissioner of Police gives written notice to the registrable offender.

PART V – ACCESS TO CSO REGISTER AND INFORMATION SHARING

20. Information sharing between Government agencies

Notwithstanding any other enactment, the Commissioner of Police may, in the interest of public safety, disclose personal information of a registrable offender to another Government agency for the purposes of –

- (a) monitoring the whereabouts of the offender;
- (b) verifying personal information reported by the offender;
- (c) managing the risk that the offender may commit further sexual offences against children;
- (d) managing any risk or threat to public safety.

21. Disclosure of personal information to corresponding overseas agency

Notwithstanding any other enactment, the Commissioner of Police may disclose the personal information of a registrable offender to a corresponding overseas agency for the purpose of informing that agency of the offender's intention to travel to that agency's jurisdiction.

22. Disclosure of personal information to parent, guardian, carer and teacher of child

Notwithstanding any other enactment, the Commissioner of Police may disclose personal information of a registrable offender to the parent, guardian, carer or teacher of a particular child where the Commissioner believes, on reasonable grounds, that the registrable offender poses a threat to the life, welfare, or safety of that child.

PART VI – MISCELLANEOUS

23. Confidentiality

(1) No person shall use or disclose any matter which comes to his knowledge in the discharge of his functions under this Act, except –

- (a) for the purposes of this Act; or
- (b) where he is so required by a Court or under any enactment.

(2) Any person who, without lawful excuse, contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

24. Offences

(1) A registrable offender who fails, without reasonable excuse, to comply with any of his reporting obligations under this Act shall commit an offence and shall, on conviction, be liable to a fine of not less than 10,000 rupees and not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

(2) A registrable offender who provides information which he knows to be false or misleading in any material particular shall commit an offence and shall, on conviction, be liable to a fine of not less than 10,000 rupees and not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

(3) Any person who otherwise contravenes this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

25. Regulations

- (1) The Minister may make regulations for the purpose of this Act.
- (2) Any regulations made under subsection (1) may provide –

- (a) for anything that may be prescribed under this Act;
- (b) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

(3) The Attorney-General may, after consultation with the Minister, amend the Schedule.

26. Consequential amendment

The Data Protection Act 2017 is amended, in section 3, by adding the following new subsection –

- (8) This Act shall not apply to the sharing of personal information under the Child Sex Offender Register Act 2020.

27. Transitional provisions

(1) Subject to this section, this Act shall apply to every person who is, on or after the commencement of this Act, convicted for a qualifying offence.

(2) This Act shall apply to every person who is, on the commencement of this Act, already serving a term of imprisonment for a qualifying offence.

(3) This Act shall apply to every corresponding registrable offender, irrespective of whether the offender has been convicted for the corresponding qualifying offence prior to the commencement of this Act.

28. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE

[Section 2]

QUALIFYING OFFENCES

CLASS 1 OFFENCES

1. Sexual intercourse with minor under the age of 16 – section 249(4) of Criminal Code (where the age gap between the offender and the child is less than 5 years)
2. Sexual harassment of child – section 254(1) of Criminal Code

CLASS 2 OFFENCES

1. Causing, inciting or allowing child to be sexually abused – section 19 of Children's Act 2020
2. Child prostitution – section 20(1) of Children's Act 2020
3. Causing child to have access to brothel – section 20(2) of Children's Act 2020
4. Child pornography – section 21 of Children's Act
5. Child grooming – section 22 of Children's Act
6. Attempt upon chastity upon child under the age of 12 – section 249(3) of Criminal Code
7. Attempt upon chastity upon specified person being a child – section 249(5)(b) of Criminal Code
8. Sexual intercourse with minor under the age of 16 – section 249(4) of Criminal Code (where the age gap between the offender and the child is 5 years or more but less than 20 years)
9. Using information and communication service where the victim is a child – section 46(ha) or (h) of the Information and Communication Technologies Act

CLASS 3 OFFENCES

1. Rape of child – section 249(1) of Criminal Code
2. Sexual intercourse with minor under the age of 16 – section 249(4) of Criminal Code (where the age gap between the offender and the child is 20 years or above)

3. Sexual intercourse with mentally handicapped child – section 249(4) of Criminal Code
 4. Sexual intercourse with specified person being a child – section 249(5)(a) of Criminal Code
 5. Sodomy upon child – section 250(1) of Criminal Code
 6. Child trafficking – section 11(1)(a), (2)(b) or (4) of the Combatting of Trafficking in Persons Act
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