

# A Guide to Stern Warnings

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## I. INTRODUCTION

Have you been informed by the authorities that you have been issued a “stern warning in lieu of prosecution”? Run-ins with the law can be frightening. However, one should not lose too much sleep over a stern warning. This article hopes to shed some light on what is a stern warning, the legal effects of a stern warning, whether you should disclose that you have received a stern warning, and how it may affect your employment prospects.

## II. DISCUSSION

### A. *What is a stern warning?*

A stern warning may be issued in writing or verbally by law enforcement agencies such as the Singapore Police Force (“the Police”) and the Immigration and Checkpoint Authority, and is usually issued after the relevant authority completes its investigations.<sup>1</sup>

Stern warnings have been issued for a wide variety of crimes. In 2021, stern warnings have been issued for verbally abusing a security officer,<sup>2</sup> abetting criminal trespass by filming a friend doing a backflip in the rhinoceros enclosure at the Singapore Zoo,<sup>3</sup> and lying about one’s sexual history resulting in the donation of HIV-positive blood.<sup>4</sup> Over the circuit breaker period in 2020, over 3100 stern warnings were issued to members of the public who did not comply

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<sup>1</sup> *Wham Kwok Han Jolovan v Attorney-General* [2015] SGHC 324, at [9].

<sup>2</sup> Navene Elangovan, “Stiffer penalties proposed for people who abuse security officers; offenders could face up to a year’s jail, fine for harassment”, *Today* (13 September 2021). <<https://www.todayonline.com/singapore/stiffer-penalties-proposed-those-who-abuse-security-officers>> (accessed 19 September 2021).

<sup>3</sup> Eleanor Katharine Yeo, “19-year-old who did backflip in Singapore Zoo rhino enclosure to be charged with criminal trespass” *The Straits Times* (11 July 2021) <<https://www.straitstimes.com/singapore/courts-crime/19-year-old-to-be-charged-with-criminal-trespass-into-singapore-zoo-enclosure>> (accessed 19 September 2021).

<sup>4</sup> Amir Hussain, “HIV-positive man who donated blood during circuit breaker given stern warning”, *Yahoo! News* (12 March 2021) <<https://sg.news.yahoo.com/hiv-positive-man-donated-blood-circuit-breaker-stern-warning-095902710.html>> (accessed 19 September 2021).

with elevated safe distancing measures.<sup>5</sup> More prominently, a stern warning was issued to Member of Parliament Raeesah Khan during the 2020 elections for online comments that promoted enmity between different groups on the grounds of religion or race.<sup>6</sup>

As one may gather from the above examples, stern warnings are typically issued for “low-level” crimes and/or to first-time offenders. A “high likelihood of rehabilitation” and remorse,<sup>7</sup> and the age and medical history of the offender are other factors that have led the Police and Attorney-General’s Chambers (“AGC”) to issue a stern warning in lieu of prosecution.<sup>8</sup>

### ***B. What is the difference between a stern warning and a conditional stern warning?***

There are two types of stern warnings – a stern warning and a conditional stern warning.

The conditional stern warning, like the stern warning, is informational in nature and informs the recipient that s/he has committed an offence that may not be viewed with leniency should s/he subsequently reoffend.<sup>9</sup> However, the recipient of a conditional stern warning should be very careful not to reoffend in the next 12 months as it would be the authority’s intention to proceed to charge the offender for the offence he was warned about, in addition to any fresh offence committed.<sup>10</sup> Other conditions the authorities can impose include having the individual submit to psychiatric treatment for a stipulated period of time.<sup>11</sup>

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<sup>5</sup> Ministry of Sustainability and the Environment website <<https://www.mse.gov.sg/resource-room/category/2020-04-10-press-release-on-failure-to-comply-with-elevated-safe-distancing-measures/>> (accessed 19 September 2021).

<sup>6</sup> “Police issue ‘stern warning’ to Workers’ Party MP Raeesah Khan over online comments on race, religion”, *Channel News Asia* (17 September 2020) <<https://www.channelnewsasia.com/singapore/raeesah-khan-workers-party-police-investigation-stern-warning-594051>> (accessed 19 September 2021).

<sup>7</sup> “NUS peeping tom given conditional warning as he was assessed to have ‘high likelihood of rehabilitation’: Police”, *Today* (23 April 2019) <<https://www.todayonline.com/singapore/nus-peeping-tom-given-conditional-warning-he-was-assessed-have-high-likelihood>> (accessed 19 September 2021).

<sup>8</sup> Jalelah Abu Baker, “Police warnings issued based on discretion of authorities, lawyers say”, *Channel News Asia* (22 April 2019) <<https://www.channelnewsasia.com/singapore/police-warnings-issued-based-discretion-authorities-lawyers-say-887746>> (accessed 19 September 2021).

<sup>9</sup> *GCO v Public Prosecutor* [2019] 3 SLR 1402 (“*GCO*”), at [71].

<sup>10</sup> *Ibid.*

<sup>11</sup> Attorney-General’s Chambers website <[https://www.agc.gov.sg/docs/default-source/newsroom-documents/1-mitigating-factors\\_early-guilty-plea-and-show-of-remorse](https://www.agc.gov.sg/docs/default-source/newsroom-documents/1-mitigating-factors_early-guilty-plea-and-show-of-remorse)> (accessed 19 September 2021).

### ***C. What is the difference between a stern warning and prosecution?***

Being prosecuted in court would see one charged with a crime, attending court, and facing the possibility of punishment<sup>12</sup> (such as a jail term, fine, caning, or capital punishment etc)<sup>13</sup>. In contrast, the legal rights, interests or liabilities of a person issued a stern warning remain unaffected.<sup>14</sup> An individual issued a stern warning is not required to take further action in relation to the stern warning and it is the end of criminal proceedings.

### ***D. What is the legal effect of a stern warning?***

In a landmark decision regarding stern warnings, the Judge in *Wham Jolovan v Attorney-General* [2015]<sup>15</sup> stated that the stern warning is “nothing more than a warning” and is “a communication to its recipient” that subsequent criminal conduct may not be shown leniency and the individual may be prosecuted for it.<sup>16</sup> In effect, it is a reminder to the offender to be mindful of their behaviour going forward.<sup>17</sup>

The courts have also emphasised that a stern warning is not a legally binding pronouncement of guilt or to be treated as a finding of past criminal activity.<sup>18</sup> In other words, the stern warning is not a criminal record. Further, in the event an individual re-offends and is prosecuted, the stern warning should not affect or aggravate any sentence the court hands down.<sup>19</sup>

### ***E. Can I dispute a stern warning?***

A recipient of a stern warning is entitled to challenge the warning.<sup>20</sup> In order to do so, it has been suggested by the Court in *Wham Jolovan* that the recipient send a letter to the relevant

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<sup>12</sup> Singapore Courts website <<https://beta.judiciary.gov.sg/criminal/charged-with-crime>> (accessed 19 September 2021).

<sup>13</sup> Singapore Courts website <<https://beta.judiciary.gov.sg/criminal/types-sentences>> (accessed 19 September 2021).

<sup>14</sup> *Supra* n 1, at [3].

<sup>15</sup> *Supra* n 1.

<sup>16</sup> *Id.*, at [33].

<sup>17</sup> *Supra* n 11.

<sup>18</sup> *Supra* n 1, at [34].

<sup>19</sup> *Teo Seng Tiong v Public Prosecutor* [2021] SGCA 65), at [88], and *GCO v Public Prosecutor* [2019] 3 SLR 1402, at [78].

<sup>20</sup> *Supra* n 1, at [34].

authority to dispute that s/he has committed an offence and that the warning is inappropriate.<sup>21</sup> It is suggested that the letter clearly explain the circumstances in which the stern warning was issued to show how no offence was committed.

***F. Will a stern warning affect my employment prospects? Am I legally obliged to disclose receipt of a stern warning to my prospective employer?***

According to the Personal Data Protection Act 2012<sup>22</sup> (“PDPA”) which governs the collection, use and disclosure of personal data by organisations, an employer in Singapore can ask for any information that a reasonable person would consider appropriate in the circumstances.<sup>23</sup>

It is standard practice for many employers in Singapore<sup>24</sup> and overseas<sup>25</sup> to ask prospective employees if they have a criminal record and/or if they have been convicted in a court of law. However, as noted in the discussion above, a stern warning is NOT a conviction, and therefore is not part of a criminal record kept under the Registration of Criminals Act.<sup>26</sup> Thus, individuals should answer “No” when asked if one has a conviction or criminal record if they have only received a stern warning.

Nonetheless, as the PDPA is couched in rather broad terms that allow organisations to collect personal data “that a reasonable person would consider appropriate in the circumstances”,<sup>27</sup> one could possibly find themselves in the unusual situation of being asked about stern warnings received. The Tripartite Guidelines on Fair Employment Practices also suggest that this is allowed as long as an employer can explain clearly how the criteria is relevant to assessing the applicant’s suitability for a job.<sup>28</sup> Nevertheless, there is no law compelling prospective employees to reveal any prior stern warnings received. Media reports about employers

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<sup>21</sup> *Ibid.*

<sup>22</sup> Personal Data Protection Act 2012 (No 26/2012).

<sup>23</sup> *Id.*, s 18(a).

<sup>24</sup> Ng Jun Sen, “Explainer: The evolution of S’pore’s approach to rehabilitating ex-offenders, expunging some criminal records”, *Today* (published 11 February 2021, updated 10 March 2021) <<https://www.todayonline.com/singapore/explainer-evolution-spores-approach-rehabilitating-ex-offenders-expunging-some-criminal>> (accessed 10 January 2021).

<sup>25</sup> Roy Maurer, “Nearly Half of Employers Continue to Ask About Criminal History on Job Applications”, *The Society for Human Resource Management* (23 August 2017) <<https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/ban-the-box-criminal-history-job-applications.aspx>> (accessed 10 January 2022).

<sup>26</sup> Registration of Criminals Act (Cap 268, Rev Ed 1985), s 4.

<sup>27</sup> *Supra* n 23.

<sup>28</sup> Tripartite Alliance website <<https://www.tal.sg/files/tripartite-guidelines.pdf>> (accessed 19 September 2021).

demanding prospective employees disclose their last-drawn pay<sup>29</sup> also suggest that employers have no legal power to compel prospective employees to disclose information if there is no business need to.

***G. What if I am asked if I have received a stern warning in a job interview?***

It has been established above that there is no legal obligation to disclose any stern warning an individual has received. While records of stern warnings issued are kept by the Police, this is not accessible by the general public<sup>30</sup> which should allay fears that a prospective employer might have access to such information.

However, one might want to consider if non-disclosure when asked by an employer would lead to more harm than good. One should be aware that choosing non-disclosure could arouse suspicions, and could also be a lost opportunity to clarify the circumstances in which the stern warning was received and/or any misgivings the employer might have.

***H. Should I be worried about the police sharing my records with other government agencies?***

It is unclear how long a stern warning remains in police records, which has led to concerns about how such records are shared and used by the authorities.<sup>31</sup>

While it is theoretically possible for the Police to share any records maintained with other government departments or even private bodies,<sup>32</sup> whether this is actually done ultimately remains speculation in the absence of any legislation for stern warnings. This is in contrast to criminal records which have regulations governing their use in the Registration of Criminals Act.<sup>33</sup>

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<sup>29</sup> Rachel Phua, “Employers cannot insist job seekers declare last-drawn pay, 'practical approach' should be taken: Josephine Teo”, *Channel News Asia* ( 4 June 2020) <<https://www.channelnewsasia.com/singapore/jobseekers-declare-last-drawn-pay-employers-cannot-insist-648041>> (accessed 19 September 2021).

<sup>30</sup> Tan Hee Joek, “Beware of the Stern Warning” [2013] <<https://v1.lawgazette.com.sg/2013-09/843.htm>> (accessed 19 September 2021).

<sup>31</sup> *Supra* n 29.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Supra* n 24.

In this instance, recipients of stern warnings seeking employment with government departments might want to take comfort that it is not standard practice for employers to enquire about stern warnings received, and in the fact that a stern warning is not a legal pronouncement of guilt or finding of past criminal activity.<sup>34</sup>

### **III. CONCLUSION**

In summary, the effect of a stern warning is to warn the offender that one has committed a crime and may not be shown the same leniency should they re-offend. Recipients of a stern warning should be aware of any conditions that are attached to the stern warning and endeavour to fulfil those conditions or remain crime-free to avoid prosecution. However, individuals who feel that they have been wrongly issued a stern warning are free to dispute that s/he has committed an offence.

Recipients of stern warnings only do not have a criminal record or conviction as stern warnings are not registrable under the Registration of Criminals Act. While it would be unusual for employers to ask about stern warnings received during the hiring process, individuals are reminded that they are not legally obliged to disclose such information. It is suggested that any disclosure or non-disclosure should be weighed with its pros and cons in mind.

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<sup>34</sup> *Supra* n 1, at [34].