

Victoria Police Manual – Procedures and Guidelines

Sentencing orders

Source Policy

These Procedures and Guidelines support and must be read in conjunction with the following:

- Sentencing Act 1991
- Drugs Poisons and Controlled Substances Act 1981
- Children, Youth and Families Act 2005
- VPM Court processes

Application

Procedures and Guidelines are provided to support the interpretation and application of rules and responsibilities. They include recommended good practices and assessment tools to help employees make lawful, ethical and professional decisions. Employees should use the **Professional and ethical standards** to inform the decisions they make to support interpretation of Procedures and Guidelines.

Procedures and Guidelines are not mandatory requirements on their own. However, where rules and responsibilities state that employees must have regard to Procedures and Guidelines, the Procedures and Guidelines must be used to help make decisions in support of the rules.

Procedures and Guidelines

1. Contravention of a Suspended (Imprisonment) Sentencing Order

1.1 *Legislation*

See ss. 83 AB, 83AG, 83AH, 83AI, 83AJ & 83AR of the *Sentencing Act 1991*.

1.2 *Informant responsibilities*

For offences punishable by imprisonment committed during the operational period of a suspended sentence:

- do not make reference to the alleged contravention of the suspended sentence during a taped interview for the second or subsequent offence.
- if the subsequent charge is to be heard in the Magistrates Court, in most circumstances the police prosecutor will file a charge of contravene a suspended sentence (s.83AB(1), *Sentencing Act*) which will be listed by the court registrar and heard after the subsequent offence has been found proven.
- include details of the contravention of a suspended sentence order at the conclusion of the summary relating to the subsequent offence.
- if available, obtain the original brief of evidence or a copy of the Summary of Charges [Form L20].
- in circumstances where the prosecutor has not filed a charge on behalf of the informant, the informant should charge the offender with the offence of contravention of a suspended sentence (s.83AB(1), *Sentencing Act*).
- a charge can only be listed after the accused has been found guilty of the contravening offence.
- Wording of offence:

“On (date) the (location) Magistrates’ Court imposed a sentence of imprisonment on the accused for the offence of (offence). This sentence of imprisonment commenced on (date), was for (duration) and was suspended for (duration). On (date) the accused was found guilty of the offence of (offence), an offence punishable by imprisonment, committed on (date), this constitutes a contravention of the original suspended sentence of imprisonment.”
- ensure that all documents are attached to and form part of the brief for the subsequent offence
- a proceeding for a contravention of suspended sentence is to be commenced within 6 months of the accused being found guilty of the later offence
- a proceeding for a contravention of a suspended sentence is not to be commenced more than 2 years after the order ceases to be in force.
- the informant is responsible for the warrant and any follow up if a warrant is issued in relation to the contravention of suspended sentence charge.

1.3 **Transfer of proceedings**

When an offender has contravened a sentence from a higher court by an offence that is heard in the Magistrates Court:

- charge the offender with the offence of contravention of a suspended sentence (s.83AB(1), *Sentencing Act*) by way of charge and summons or charge and warrant
- a charge can only be listed after the accused has been found guilty of the contravening offence
- attach a Transfer of Proceeding [Form 1421] to the charge and summons or charge and warrant and provide to clerk at Magistrates court for authorising when getting the charge and summons or charge and warrant issued
- return the executed warrant or affidavit of service to the higher court, along with the issued Transfer of Proceedings [Form 1421].

2. **Contravention of an Order for Release on Adjournment**

2.1 **Legislation**

- See ss. 83AC, 83AG, 83AH, 83AI, 83AJ & 83AT of the *Sentencing Act*.
- See s.76(1) of the *Drugs Poisons and Controlled Substances Act 1981*.

2.2 **Contravention by conviction – informant's responsibilities**

A person released on an adjourned sentencing order on condition that they be of good behaviour fails to comply with that condition if they commit another offence during the adjournment period. Where this occurs the informant is to:

- interview the person to ascertain that the contravention was committed without reasonable excuse. Generally, this interview should not form part of the interview for the second or subsequent offence
- obtain a Notice to Admit [Form 283] signed by the defendant, admitting identity and receipt of the original adjournment order where the defendant fails or refuses to admit the facts, witnesses must be called to prove these facts
- where appropriate, charge the offender with the offence of contravention of order for release on adjournment under section 83AC, *Sentencing Act*. This charge should be commenced at the same time and in the same manner and listed at the same proper venue of the court as the charges for the second or subsequent offences

- list the contravention offence last in numeric sequence and on a separate Continuation of Charges [Form 404]
- obtain a certified court extract from the court that imposed the adjourned sentencing order
- if available, obtain the original brief of evidence or a copy of the Form L20, for the information of the prosecutor on the hearing of the breach charge
- attach all documents relevant to the contravention offence to the brief for the second or subsequent offence.

3. Contravention of a conditional adjourned sentencing order

Where a police member is notified or becomes aware of any person failing to comply with any conditions of an adjourned sentencing order, interview the person and prepare a brief of evidence in the same manner as required for contravening a suspended sentencing order above.

4. Contravention of a community correction order

4.1 *Legislation*

See ss. 83AD, 83AG, 83AH, 83AI, 83AJ, & 83AS of the *Sentencing Act 1991*.

4.2 *LEAP Warning Flags*

A LEAP Warning Flag will be created automatically from information provided by Corrections Victoria persons subject to CCO conditions. The specific conditions for CCOs will be listed in the Warning Flag. CCO conditions will also appear in the LEAP Criminal History. These flags are updated daily to ensure accuracy and relevance of information.

4.3 *Reporting CCO contraventions*

Contravening a CCO is an offence. Corrections Victoria is the enforcement agency for CCOs and is to be notified of CCO contraventions as follows:

- Where a person is found in circumstances that constitute a CCO contravention and there are no other offences, members are to submit a Field Contact Report [Form L19] by the end of the shift
- Where a person has been arrested for other offence/s and placed through the attendance register, Corrections Victoria will automatically be notified of any CCO contraventions.

4.4 ***Urgent notification***

If the circumstances of the contravention and the person's history of behaviour increase the urgency of reporting, members may notify Corrections Victoria directly. A Form L19 is to be submitted at the end of the shift.

4.5 ***Initiating proceedings***

- Members should generally not initiate proceedings for contraventions, as action will be taken by Corrections Victoria upon receiving reports from Victoria Police. However, a member may initiate proceedings where they assess that the contravention presents a risk of further offending or harm and there is no other option available for dealing with the offender i.e. charging with a separate offence or applying for intervention order.
- Consult a supervising sergeant to determine if police should initiate proceedings themselves.
- There is no specific arrest power contained in the Act, however s.458, *Crimes Act*, may be used where the continuation of offending is considered a significant risk to public safety.
- When proceedings are initiated by police:
 - members should proceed by way of summons where possible and inform Corrections Victoria of their intention by submitting a Form L19 and selecting the CCO-ITS tick box on the form
 - if the person is arrested and placed through the attendance register there is no requirement to complete a Form L19 as Corrections Victoria is automatically notified.
- Where proceedings are initiated by police, charge the offender with the offence of contravention of a CCO under s.83AD(1), *Sentencing Act 1991*:
 - wording of offence:

“The accused at (place) on (date) failed without reasonable excuse to comply with a condition of a community correction order, imposed at (location) Magistrates’ Court on (date), namely (breach).”
 - obtain a certified court extract from the court that imposed the community correction order
 - if available, obtain the original brief of evidence or a copy of the Summary of Charges [Form L20], for the information of the prosecutor on the hearing of the contravention
 - ensure that all documents are attached to and form part of the brief.

4.6 Timeframes for proceedings

- Proceedings for a contravention of community correction order are to be commenced within 6 months of the accused being found guilty of the later offence.
- A proceeding for a contravention of community correction order is not to be commenced more than 2 years after the order ceases to be in force.

5. Procedure for a breach of a Children's Court order

5.1 Breaches of bond/undertaking

Where a child has committed an offence which breaches a bond or undertaking, adopt the following procedure:

- Complete a Notice to appear before the Court, Criminal Division. These can be obtained from the Court
- include in the brief for the breaching offence:
 - details of the breach on the summary of offence for the attention of the prosecutor;
 - the notice to appear before the Court, Criminal Division; and
 - a copy of the summary of offence for the offence which attracted the bond/undertaking
- Upon a finding of guilt for the breaching offence, the prosecutor may seek the Court's direction to serve the notice so that the breach can be heard.

5.2 Other orders

For orders such as a youth attendance order or youth training order, DHS are responsible for taking proceedings for breaches under the *Children, Youth and Families Act 2005*. Notify the child's Probation Officer or appropriate DHS Regional Office when a breach is detected.

6. Parole

6.1 LEAP Warning Flags

A LEAP Warning Flag will be created automatically from information provided by Corrections Victoria on Adult Parolees. The specific conditions for parole will be listed in the Warning Flag. These flags are updated daily to ensure accuracy and relevance of information.

6.2 Breach of parole

- Breach of a prescribed term or condition of parole is an offence.

- Where a parolee is found in circumstances that breach a prescribed term or condition of parole, where possible, members will arrest on each occasion and comply with **CCI 06/14 Parole**.

7. Alcohol exclusion orders – *Sentencing Act*

7.1 *When alcohol exclusion orders can be issued*

- A court can issue an alcohol exclusion if a conviction is recorded against a person for a relevant offence and the court is satisfied on the balance of probabilities that:
 - at the time of the relevant offence the offender was intoxicated; and
 - the offender's intoxication significantly contributed to the commission of the relevant offence; and
 - the offender is not, or has not been, the subject of a previous alcohol exclusion order in relation to the circumstances that gave rise to the relevant offence (s.89DE *Sentencing Act*).
- If a court makes an alcohol exclusion order, it must not, for the duration of the order:
 - make an exclusion order under Part 8A of the *Liquor Control Reform Act* (except an order under section 148I(2)(a)); or
 - attach an alcohol exclusion condition as a condition of a community corrections order.
- A relevant offence is defined in s.89DC *Sentencing Act* and includes murder, manslaughter, indictable assaults, threats and sex related offences.

7.2 *Effect of exclusion order*

- An alcohol exclusion order prohibits an offender from:
 - entering or remaining in any licensed premises characterised as a nightclub, bar, restaurant, café, reception centre or function centre; and
 - entering or remaining in the location of any major event; and
 - entering or remaining in a bar area of any licensed premises to which the above do not apply; and
 - consuming or attempting to consume any liquor in any licensed premises to the above do not apply.
- The duration of an alcohol exclusion order is 2 years.

7.3 *Applying for an exclusion order*

- A member or the Director of Public Prosecutions may apply to court for an alcohol exclusion order. If a member or the Director of Public Prosecutions does not apply for an alcohol exclusion order, the court on its own motion may make an alcohol exclusion order.

- Where a relevant offence is committed and the offender's intoxication is a contributing factor the informant is to:
 - include in the summary that alcohol was a contributing factor in the commission of the offence
 - complete a Notice of Application for an Alcohol Exclusion Order [Form 1443]
 - serve a copy of the Form 1443 on the defendant when the corresponding charges are served and then file a copy with the completed affidavit of service with the court
 - attach a copy of the Form 1443 and a copy of the completed affidavit of service to the brief of evidence for attention of the prosecutor.
- The prerequisite offence must have been committed on or after 1 September 2014 to be included in the application.
- The prosecutor will make the application upon a finding of guilt.

7.4 Commencement of order and location of order

- An alcohol exclusion order takes effect:
 - if the person is not serving a custodial sentence for another offence and the order has not been made in combination with a custodial sentence, at the time the order is made; or
 - if the person is serving a custodial sentence for another offence at the time the order is made or the order has been made in combination with a custodial sentence, on the person's release from prison.
- When a person is made subject to an exclusion order a 'person warning flag' will be created automatically in LEAP.
- The full conditions for an exclusion order can be found in the person's criminal history.

7.5 Release from police cells

- Prior to a prisoner being released from a police cell, members are to check if the prisoner is subject to an alcohol exclusion order. If LEAP indicates that the prisoner is subject to an order and the comments in the warning flag do not indicate a commencement date, the releasing member is to notify Police Enquiry and Data Sharing Department (PEDSD) by emailing PBEA: POLICE ENQUIRIES SERVICE-RSD-MGR advising the person has been released from police custody. PEDSD will amend the person warning flag and include the commencement date.

7.6 Offences

- Breach of an alcohol exclusion order is a summary offence (s.89DF(1) and (2)).

- Where members detect a breach of an exclusion order they are to submit LEAP reports and prepare a brief for hearing in the usual manner.
- The following LEAP codes apply:
 - 527AP Enter place in contravention of order
 - 527AQ Remain in place in contravention of order
 - 527AR Attempt to enter place in contravention of order
 - 527AS Attempt to remain in place in contravention of order
 - 527AT Consume liquor in place in contravention of order
 - 527AU Attempt to liquor in place liquor in contravention of order

7.7 Variation of alcohol exclusion order

- A member or the person who the order applies may make an application to the issuing court for a variation of an alcohol exclusion order.

If the variation is granted, the court will specify the date on which the varied order takes effect.

8. Supplying of police brief of evidence on breach of orders

Office of Correctional Services or DHS may request information from police briefs of evidence to assist in breach proceedings. Send a copy of the relevant Brief Head [Form 208A] and summary of charges.

9. Notifying Centrelink

An investigating member may notify Centrelink about a person who is unlawfully at liberty, such as a person who has breached a sentencing order. To notify Centrelink, please email to Intelligence.NSO@humanservices.gov.au.

Further Advice and Information

For further advice and assistance regarding these Procedures and Guidelines, contact your supervisor or the local Prosecutions Unit.

Update history

Date of first issue	22/02/10	
Date updated	Summary of change	Force File number
26/9/11	Updated instructions for investigating members who may notify Centrelink of a person who is unlawfully at liberty	053692/08
16/1/12	Updated instructions to reflect changes made by the <i>Sentencing Amendment (Community Correction Reform)</i>	070796/12

	Act 2011, which include replacing Community Based Orders with Community Correction Orders	
16/7/12	Updated instructions to reflect changes to the process of filing a subsequent charge and a charge of contravene a suspended sentence within the Magistrates Court	070796/12
7/01/13	Sections 4 and 6 updated re: reporting a Community Corrections Order contravention and breach of parole. Incorporates CCI 2/12, which is now cancelled	070796/12
8/07/13	Updated at section 6.3 regarding breach of parole	077750
1/07/14	Update to reflect amendments to <i>Corrections Act 1981</i> which provide new offence, powers and procedures for breach of parole	081948
01/09/14	Updated to include alcohol exclusion orders (section 7)	FF 087665
25/05/15	Revised instructions re Centrelink notifications	053692/08
21/10/19	Instrument names updated to reflect amended court processes policy.	FF-139297
12/09/2023	Administrative amendment to reflect name change from RSD to PEDSD.	FF-229744