



Western Australia

Family Violence Legislation Reform (COVID-19 Response) Act 2020

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Family Violence Legislation Reform (COVID-19 Response) Act 2020

No. 13 of 2020

An Act to amend the following Acts in response to the COVID-19 pandemic —

- **the *Sentencing Act 1995*; and**
- **the *Sentence Administration Act 2003*; and**
- **the *Bail Act 1982*; and**
- **the *Restraining Orders Act 1997*.**

[Assented to 6 April 2020]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Family Violence Legislation Reform (COVID-19 Response) Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

Part 2 — *Sentencing Act 1995* amended

3. Act amended

This Part amends the *Sentencing Act 1995*.

4. Section 4 amended

In section 4(1) insert in alphabetical order:

approved electronic monitoring device means —

- (a) an electronic monitoring device that has been approved by the CEO (corrections); and
- (b) any equipment, wires or other items associated with a device under paragraph (a);

5. Section 33H amended

In section 33H(10):

- (a) delete “offender —” and insert:

offender to do 1 or both of the following —

- (b) delete paragraphs (a) and (b) and insert:
 - (a) wear an approved electronic monitoring device;
 - (b) permit the installation of an approved electronic monitoring device at the place where the offender resides.

6. Section 72 amended

In section 72:

- (a) in paragraph (c) delete “75.” and insert:

75;

- (b) after paragraph (c) insert:

- (d) an electronic monitoring requirement under section 76A.

7. Section 75 amended

In section 75(10):

- (a) in paragraph (a) delete “any device; or” and insert:

an approved electronic monitoring device; or

- (b) in paragraph (b) delete “any device or equipment” and insert:

an approved electronic monitoring device

8. Section 76A inserted

At the end of Part 10 insert:

76A. Electronic monitoring requirement

- (1) The purpose of electronic monitoring under this section is to enable the location of an offender to be monitored where the offender presents a high risk to —

- (a) a person; or

- (b) a group of persons; or
 - (c) the community more generally.
- (2) If a court considers that electronic monitoring should occur in a particular case, the court may impose a requirement (an *electronic monitoring requirement*) under this section.
 - (3) If an electronic monitoring requirement is imposed, a CCO may do 1 or both of the following —
 - (a) direct the offender to wear an approved electronic monitoring device;
 - (b) direct the offender to permit the installation of an approved electronic monitoring device at the place where the offender resides or, if the offender does not have a place of residence, at any other place specified by the CCO.
 - (4) The term of an electronic monitoring requirement must be set by the court when it imposes the requirement.
 - (5) An electronic monitoring requirement ceases to be in force when its term ends, or when the ISO ceases to be in force, whichever happens first.
 - (6) This section does not apply to an offender who, at the time of sentencing, is under 18 years of age.

9. Section 84 amended

- (1) In section 84 delete “CSI” and insert:
 - (1) CSI

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(2) At the end of section 84 insert:

(2) CSI may also contain an electronic monitoring requirement under section 84CA as a primary requirement.

10. Section 84C amended

In section 84C(10):

(a) in paragraph (a) delete “any device; or” and insert:

an approved electronic monitoring device; or

(b) in paragraph (b) delete “any device or equipment” and insert:

an approved electronic monitoring device

11. Section 84CA inserted

At the end of Part 12 Division 1 insert:

84CA. Electronic monitoring requirement

(1) The purpose of electronic monitoring under this section is to enable the location of an offender to be monitored where the offender presents a high risk to —

(a) a person; or

(b) a group of persons; or

(c) the community more generally.

(2) If a court considers that electronic monitoring should occur in a particular case, the court may impose a

requirement (an *electronic monitoring requirement*) under this section.

- (3) An electronic monitoring requirement may be imposed only if the court has received a report from the CEO (corrections) about the suitability of electronic monitoring in the particular case.
- (4) If an electronic monitoring requirement is imposed, a CCO may do 1 or both of the following —
 - (a) direct the offender to wear an approved electronic monitoring device;
 - (b) direct the offender to permit the installation of an approved electronic monitoring device at the place where the offender resides or, if the offender does not have a place of residence, at any other place specified by the CCO.
- (5) An electronic monitoring requirement ceases to be in force when the suspension period ends.

12. Section 147A inserted

After section 147 insert:

147A. Monitoring requirements: additional provisions

- (1) A CCO may give any reasonable direction to an offender as is necessary for the proper administration of a requirement imposed on the offender by or under this Act in relation to an electronic monitoring device.
- (2) A CCO may suspend the electronic monitoring of an offender under this Act —
 - (a) while satisfied that it is not practicable to subject the offender to electronic monitoring; or

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- (b) while satisfied that it is not necessary for the person to be subject to electronic monitoring.

13. Schedule 1A amended

In Schedule 1A Part 2 clause 7 delete “s. 61(1),” and insert:

s. 61(1), (1A),

Part 3 — *Sentence Administration Act 2003* amended

14. Act amended

This Part amends the *Sentence Administration Act 2003*.

15. Section 4 amended

In section 4(2) insert in alphabetical order:

approved electronic monitoring device means —

- (a) an electronic monitoring device that has been approved by the CEO; and
- (b) any equipment, wires or other items associated with a device under paragraph (a);

16. Section 30 amended

In section 30:

- (a) in paragraph (c) delete “any device for monitoring purposes;” and insert:

an approved electronic monitoring device;

- (b) in paragraph (d) delete “any device or equipment at the place where the prisoner resides for monitoring purposes;” and insert:

an approved electronic monitoring device at the place where the prisoner resides;

- (c) delete paragraph (e)(i) and (ii) and insert:

- (i) wear an approved electronic monitoring device; or

- (ii) permit the installation of an approved electronic monitoring device at the place where the prisoner resides;

17. Section 57 amended

In section 57(2):

- (a) in paragraph (a) delete “any device for monitoring purposes;” and insert:

an approved electronic monitoring device; or

- (b) in paragraph (b) delete “any device or equipment at the place where the prisoner resides for monitoring purposes.” and insert:

an approved electronic monitoring device at the place where the prisoner resides.

18. Section 74G amended

In section 74G:

- (a) in paragraph (c) delete “any device for monitoring purposes;” and insert:

an approved electronic monitoring device;

- (b) in paragraph (d) delete “any device or equipment at the place where the offender resides for monitoring purposes;” and insert:

an approved electronic monitoring device at the place where the offender resides;

- (c) delete paragraph (e)(i) and (ii) and insert:
- (i) wear an approved electronic monitoring device; or
 - (ii) permit the installation of an approved electronic monitoring device at the place where the offender resides;

19. Section 118 amended

- (1) In section 118(1) delete the definition of *monitoring equipment* and insert:

monitoring equipment means any device or equipment (and any related wiring or other item) that is —

- (a) designed or intended to keep a person under surveillance or to monitor a person's movements; and
- (b) required to be worn by a person, or to be installed at a place, under this Act, the *Sentencing Act 1995* or the *Bail Act 1982*.

- (2) After section 118(1) insert:

- (1A) The CEO may give a person who is, or who has been, the subject of a direction or order to wear monitoring equipment a direction to be available at a specified place and time in order to surrender or deliver the monitoring equipment to the CEO.

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- (3) In section 118(2) delete “equipment to the CEO within a set” and insert:

monitoring equipment to the CEO within a specified

- (4) Delete section 118(3) and insert:

- (3) A person who, without reasonable excuse, fails to comply with, or contravenes, a direction given under subsection (1A) or (2) commits an offence.

Penalty for this subsection: a fine of \$12 000 or imprisonment for 12 months.

- (5) In section 118(4) before “equipment.” insert:

monitoring

- (6) At the end of section 118(5) insert:

Penalty for this subsection: a fine of \$12 000 or imprisonment for 12 months.

- (7) Delete section 118(6) and insert:

- (6) A person who, without reasonable excuse, removes or interferes with, or interferes with the operation of, any monitoring equipment in such a way as to prevent or impede monitoring of a person’s location, commits an offence.

Penalty for this subsection: a fine of \$12 000 or imprisonment for 12 months.

- (8) At the end of section 118(7) insert:

Penalty for this subsection: a fine of \$12 000 or imprisonment for 12 months.

- (9) At the end of section 118 delete the Penalty.

20. Schedule 2 amended

In Schedule 2 paragraph (k) delete “61(1)” and insert:

61(1), (1A)

Part 4 — *Bail Act 1982* amended

21. Act amended

This Part amends the *Bail Act 1982*.

22. Section 3 amended

In section 3(1) insert in alphabetical order:

approved electronic monitoring device means —

- (a) an electronic monitoring device that has been approved by the CEO (corrections); and
- (b) any equipment, wires or other items associated with a device under paragraph (a);

23. Section 16A amended

Delete section 16A(3).

24. Section 24A amended

In section 24A(4) delete the passage that begins with “condition,” and ends with “condition.” and insert:

condition, the officer must —

- (a) include in the report a recommendation as to whether or not the accused is suitable for electronic monitoring while the accused is subject to the home detention condition; and
- (b) annex to the report, and provide to the accused or the accused’s solicitor or counsel, a list of those conditions in rules made under section 50L that may be applied to the accused by the CEO (corrections) while the accused is subject to the home detention condition.

25. Section 50K deleted

Delete section 50K.

26. Section 50L amended

In section 50L(1):

(a) in paragraph (a) delete “any device;” and insert:

an approved electronic monitoring device;

(b) in paragraph (b) delete “any device or equipment” and insert:

an approved electronic monitoring device

27. Section 66E inserted

After section 66D insert:

66E. Retrieving monitoring equipment

The *Sentence Administration Act 2003* section 118 applies if, under this Act, any approved electronic monitoring device has been required to be worn by a person, or has been installed at a place, in connection with keeping an accused under surveillance or to monitor an accused.

28. Schedule 1 Part D clause 3 amended

(1) After Schedule 1 Part D clause 3(3)(c) insert:

(ca) if relevant, comply with any direction under subclause (4); and

- (2) After Schedule 1 Part D clause 3(3) insert:
- (4) A judicial officer who imposes a home detention condition under this clause may, if a community corrections officer under section 24A(4)(a) recommends that the accused is suitable for electronic monitoring, direct that the accused, while subject to a home detention condition —
- (a) be subject to electronic monitoring under subclause (5) so as to allow the location of the accused to be monitored; and
 - (b) be under the supervision of a community corrections officer and comply with the directions of the community corrections officer under subclause (5).
- (5) For the purpose of the electronic monitoring of an accused, a community corrections officer may do any or all of the following —
- (a) direct the accused to wear an approved electronic monitoring device; and
 - (b) direct the accused to permit the installation of an approved electronic monitoring device at the place where the accused is to remain; and
 - (c) give any other reasonable direction to the accused necessary for the proper administration of the electronic monitoring of the accused.
- (6) A community corrections officer may suspend the electronic monitoring of an accused subject to direction under subclause (4) —
- (a) while satisfied that it is not practicable to subject the accused to electronic monitoring; or
 - (b) while satisfied that it is not necessary for the accused to be subject to electronic monitoring.

- (7) A requirement that an accused subject to a home detention condition while on bail wear an electronic monitoring device cannot apply to a person who is under 18 years of age.

Part 5 — Restraining Orders Act 1997 amended

29. Act amended

This Part amends the *Restraining Orders Act 1997*.

30. Section 3 amended

In section 3(1) insert in alphabetical order:

affidavit includes an electronic declaration made in accordance with the rules of court;

Public Advocate means the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1990*;

31. Section 9 replaced

Delete section 9 and insert:

9. Fixing a hearing

The rules of court may make provision for —

- (a) fixing, selecting or arranging a day, time and place for a hearing; and
- (b) requiring a person to attend a hearing; and
- (c) preparing, or arranging for the preparation of, a summons in the prescribed form; and
- (d) causing a summons to be served on a person; and
- (e) notifying all other parties of the hearing.

32. Section 10 amended

Delete section 10(1) and (1a) and insert:

- (1) A restraining order may be prepared in a manner authorised under the rules of court and the rules may make provision for —
- (a) serving the respondent's copy and the respondent's endorsement copy (if 1 is required to be served) of the order on the person who is bound by the order; and
 - (b) delivering the applicant's copy of the order to —
 - (i) the person seeking to be protected by the order; or
 - (ii) the parent or guardian of that person, if the parent or guardian made the application for the order on behalf of that person;
- and
- (c) delivering the police copy of the order to the Commissioner of Police; and
 - (d) placing the court copy of the order on the court's records.
- (1A) If a restraining order is taken to have been served under section 55(3a), the respondent's copy and the respondent's endorsement copy are not required to be served under rules of court made under subsection (1)(a) but are to be —
- (a) delivered to the respondent; and
 - (b) if rules of court make provision for delivery under paragraph (a) — delivered in accordance with those rules.

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33. Section 16 amended

In section 16(4)(c) delete “cancelled or expires; or” and insert:

cancelled; or

34. Section 24A amended

(1) In section 24A(1) delete “in person”.

(2) In section 24A(2):

(a) in paragraph (b) delete “person.” and insert:

person; or

(b) after paragraph (b) insert:

(c) if the regulations so provide, by a person acting on behalf of another person in circumstances prescribed by the regulations for the purposes of this paragraph.

(3) After section 24A(2) insert:

(2A) In connection with the operation of subsections (1) and (2) —

(a) an application by a police officer under subsection (1)(b) is taken to have been made in the name of the Commissioner of Police; and

(b) an application by a child welfare officer under subsection (2)(a) will be taken to have been made in the name of the CEO (child welfare); and

- (c) an application by a guardian under subsection (2)(b) will be taken to have been made in the name of the Public Advocate; and
- (d) if the regulations so provide, an application by a person under subsection (2)(c) will, in circumstances prescribed by the regulations, be taken to have been made in the name of an officer or authority prescribed by the regulations.

- (4) In section 24A(3) delete “made in person is to be made in the prescribed form” and insert:

is to be made in accordance with the rules of court (using, if the rules of court so require, the prescribed form)

35. Section 25 amended

- (1) In section 25(1) delete “in person”.
- (2) In section 25(3) delete “made in person is to be made in the prescribed form” and insert:

is to be made in accordance with the rules of court (using, if the rules of court so require, the prescribed form)

36. Section 26 amended

- (1) In section 26(2) delete “the registrar is to fix a hearing for that purpose.” and insert:

a hearing for that purpose must be fixed in accordance with the rules of court.

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- (2) In section 26(3) delete “the registrar is to fix a hearing and summons the respondent to the hearing.” and insert:

a hearing must be fixed, and a summons served on the respondent, in accordance with the rules of court.

37. Section 55 amended

Delete section 55(1)(c) and insert:

- (c) substituted service is allowed under section 60.

38. Section 59 amended

- (1) In section 59(2) delete “applicant” and insert:

applicant, and in the case of an application under section 24A(1)(b) or (2), the person on whose behalf the application was made,

- (2) After section 59(2) insert:

- (3) A notification under subsection (2) may be given in such manner as the registrar thinks fit, including, if authorised by the person who is to receive the notification, by email, text message to a mobile phone number or some other form of electronic communication using contact details provided by the person.

39. Section 60 amended

Delete section 60(1) to (2) and insert:

- (1) Substituted service of a document may occur by order of a court if the court is satisfied that a person is deliberately avoiding being served with the document.
- (1A) Substituted service of an FVRO may also occur —
 - (a) by order of a court if —
 - (i) the court is satisfied that personal service or service by post is impracticable for any reason (including that the person to be served does not have a fixed address or is located at a place that is too remote to reasonably permit personal service or service by post); or
 - (ii) the court is satisfied that the person to be served is likely to avoid personal service or service by post; or
 - (iii) the court considers that substituted service is necessary, appropriate or advisable in the circumstances of the particular case (including that any delay in service is likely to put at risk the safety of the person seeking to be protected);
 - or
 - (b) if a person attempting to serve the order has failed to achieve personal service after taking the steps prescribed by the regulations (including on the basis that substituted service may only occur with the approval of a person of a prescribed class or holding a prescribed office).

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- (2) A document is served by substituted service if the person serving it —
 - (a) takes such steps as a court directs to bring the document to the attention of the person being served; or
 - (b) in a case where subsection (1A)(b) applies, takes the steps prescribed by the regulations.

40. Section 61 amended

- (1) Delete section 61(1) and insert:

- (1) A person who is bound by an FVRO and who breaches that order commits an offence.

Penalty for this subsection: a fine of \$10 000 or imprisonment for 2 years, or both.

- (1A) A person who is bound by a VRO and who breaches that order commits an offence.

Penalty for this subsection: a fine of \$10 000 or imprisonment for 2 years, or both.

- (2) In section 61(2a) in the Penalty delete “\$6 000” and insert:

a fine of \$10 000

- (3) After section 61(5) insert:

- (6) A prosecution for an offence under subsection (1), (1A) or (2a) must be commenced within 2 years after the day on which the offence is alleged to have been committed.

41. Section 63 amended

(1) After section 63(3) insert:

(3AA) To avoid doubt, a court acting under subsection (2) or (3) may make a restraining order in the absence of the person against whom the order is made if the court is satisfied that the order should be made in the circumstances.

(2) In section 63(4):

(a) in paragraph (b) delete “case; and” and insert:

case.

(b) delete paragraph (c).

(3) In section 63(4AB)(d) delete “section 10G(2)” and insert:

section 10G

(4) In section 63(4a) delete “subsection (4b)” and insert:

subsection (4B)

(5) Delete section 63(4b) and insert:

(4B) A restraining order made by a court under subsection (2) or (3) will be an interim restraining order if —

(a) the person who would be bound by the order objects to it being made and the court considers

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that the order should be an interim order in the
circumstances; or

- (b) the person against whom the order is made is
not present when the order is made.

- (6) In section 63(4c) delete “subsection 4(b)” and insert:

subsection (4B)(a)



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