



Western Australia

Family Violence Legislation Reform Act 2024

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Family Violence Legislation Reform Act 2024

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Western Australia

Family Violence Legislation Reform Act 2024

No. 28 of 2024

An Act to amend —

- the *Bail Act 1982*; and
- the *Criminal Investigation Act 2006*; and
- the *Criminal Law (Mental Impairment) Act 2023*; and
- the *Criminal Law (Mentally Impaired Accused) Act 1996*; and
- the *Cross-border Justice Act 2008*; and
- the *High Risk Serious Offenders Act 2020*; and
- the *Restraining Orders Act 1997*; and
- the *Sentence Administration Act 2003*; and
- the *Sentencing Act 1995*.

[Assented to 17 September 2024]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Family Violence Legislation Reform Act 2024*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 4 (other than section 38) —
 - (i) if the *Criminal Law (Mental Impairment) Act 2023* Schedule 1 comes into operation on or before assent day — on the day after assent day; or
 - (ii) otherwise — immediately after the *Criminal Law (Mental Impairment) Act 2023* Schedule 1 comes into operation;
- (c) Part 5, Part 6 (other than sections 43 to 45) and Part 10 — on the day after assent day;
- (d) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Bail Act 1982* amended

3. Act amended

This Part amends the *Bail Act 1982*.

4. Section 3 amended

- (1) In section 3(1) delete the definition of *family violence offence*.
- (2) In section 3(1) insert in alphabetical order:

electronic monitoring condition means an electronic monitoring condition imposed under Schedule 1 Part E clause 1;

- (3) In section 3(1) in the definition of *designated family relationship*:

- (a) in paragraph (c) delete “other;” and insert:

other; or

- (b) after paragraph (c) insert:

- (d) one of whom is a child who —

- (i) ordinarily resides, or resided, with the other person; or

- (ii) regularly resides or stays, or resided or stayed, with the other person;

or

- (e) one of whom is, or was, a child of whom the other person is a guardian;

s. 5

- (4) In section 3(1) in the definition of *serious offence* paragraph (a) after “section” insert:

50M(1) or (2), 50V(1) or (2) or

5. Section 6 amended

In section 6(2)(b) delete “3D and 3F.” and insert:

3D, 3F and 3G.

6. Section 7 amended

In section 7(5) delete “3E and 3F.” and insert:

3E, 3F and 3G.

Note: The heading to amended section 7 is to read:

Court to consider bail for unconvicted accused

7. Section 9 amended

In section 9(1)(b) delete “24(1) or 24A(1) or (2); or” and insert:

24(1), 24A(1) or (2) or 24B; or

8. Section 11 amended

In section 11(1)(e) after “50F,” insert:

50Q,

9. Section 13 replaced

Delete section 13 and insert:

13. Jurisdiction to grant bail and exercise of jurisdiction

- (1) Jurisdiction to grant bail for any appearance described in the first column of Schedule 1 Part A —
 - (a) is vested in the judicial officer or authorised officer specified in the second column of that Part opposite the appearance described; and
 - (b) must be exercised subject to and in accordance with this Part and Schedule 1 Parts B, C, D and E.
- (2) A home detention condition must not be imposed as a condition of bail except by a judicial officer under Schedule 1 Part D clause 3.
- (3) An electronic monitoring condition must not be imposed as a condition of bail except by a judicial officer under Schedule 1 Part E clause 1.

10. Section 17AA inserted

After section 17 insert:

17AA. Conditions on bail that must be imposed

A judicial officer must impose an electronic monitoring condition as a condition on a grant of bail as required by Schedule 1 Part E clause 1.

s. 11

11. Section 24A amended

After section 24A(4) insert:

- (5) However, subsection (4)(a) does not apply to a report in relation to an accused referred to in Schedule 1 Part C clause 3F(1) or 3G(1).

12. Section 24B inserted

After section 24A insert:

24B. Court may ask community corrections officer to make list of conditions for electronic monitoring condition

- (1) A judicial officer who is called upon to consider a case for bail and who is required to impose an electronic monitoring condition as a condition on a grant of bail may request that a community corrections officer make a list of those conditions in rules made under section 50U that may be applied to the accused by the CEO (corrections) while the accused is subject to the electronic monitoring condition.
- (2) If a list is requested under subsection (1), a community corrections officer must, as soon as is practicable —
 - (a) make a list and give the list to the judicial officer; and
 - (b) give a copy of the list to the accused or the accused's solicitor or counsel.

13. Section 26 amended

- (1) In section 26(1):
- (a) delete “he —” and insert:

the officer or justice —
 - (b) in paragraph (c) delete “him” and insert:

the officer or justice
- (2) In section 26(2):
- (a) in paragraph (aa) delete “3E or 3F” and insert:

3E, 3F or 3G
 - (b) in paragraph (b) delete “him” and insert:

the judicial officer
 - (c) delete “therefor shall” and insert:

for the decision must

14. Section 27A amended

In section 27A delete “shall” and insert:

or an electronic monitoring condition must

s. 15

Note: The heading to amended section 27A is to read:

Papers to be sent to CEO (corrections) in case of bail with home detention condition or electronic monitoring condition

15. Section 28 amended

(1) In section 28(1):

(a) delete “A person” and insert:

An accused

(b) delete “he” and insert:

the accused

(2) In section 28(2):

(a) in paragraph (a) delete “he” and insert:

the accused

(b) delete paragraphs (c) and (d) and insert —

(c) that the accused will comply with such conditions as may be imposed on the accused under Schedule 1 Part D clause 2; and

(d) that the accused will comply with any home detention condition that may be imposed as a condition on a grant of bail to the accused under Schedule 1 Part D clause 3; and

(e) that the accused will comply with any electronic monitoring condition that must be imposed as a condition on a grant of bail to the accused under Schedule 1 Part E clause 1,

- (c) delete “that Part.” and insert:

Part D.

Note: The heading to amended section 28 is to read:

Nature of bail undertaking and when required

16. Section 31A amended

Delete section 31A(2)(c) and insert:

- (c) add any condition to the extent that is —
- (i) authorised by Schedule 1 Part D clause 2 or 3; or
 - (ii) required by Schedule 1 Part E clause 1;

Note: The heading to amended section 31A is to read:

Amending conditions on bail during trial

17. Section 46 amended

In section 46(1):

- (a) in paragraph (a)(iii) delete “28(2)(d);” and insert:

28(2)(d); or

- (b) after paragraph (a)(iii) insert:

- (iv) is, or has been, in breach of an electronic monitoring condition mentioned in section 28(2)(e);

s. 18

18. Section 50A replaced

Delete section 50A and insert:

50A. Application of Part

This Part —

- (a) applies in relation to a home detention condition that includes electronic monitoring; but
- (b) does not apply in relation to an electronic monitoring condition.

19. Section 50E amended

In section 50E(a) delete “remain;” and insert:

remain; or

20. Section 50G amended

Delete section 50G(1) and insert:

- (1) An accused arrested under a warrant issued under section 50F must be taken as soon as is practicable before an appropriate judicial officer.
- (1A) However, if the accused is arrested less than 24 hours before the time at which the accused is due to appear in accordance with the accused’s bail undertaking, the accused must be held in custody and brought before an appropriate judicial officer at that time.

- (1B) Also, subsection (1C) applies if —
- (a) before arrest, the accused had been released on bail following the accused's committal to the District Court or the Supreme Court to be tried (otherwise than for murder) or sentenced or otherwise dealt with; and
 - (b) the accused has not made an appearance in that court on the committal.
- (1C) The accused must be taken as soon as is practicable before a judicial officer who is empowered to exercise jurisdiction in the court in which the committal order was made, instead of before an appropriate judicial officer.

21. Section 50M inserted

At the end of Part VIA insert:

50M. Failure to comply with direction

- (1) An accused given a direction under Schedule 1 Part D clause 3(5)(a), (b) or (ba) must comply with the direction.
Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.
- (2) An accused given a direction under Schedule 1 Part D clause 3(5)(bb) must comply with the direction, unless the accused has a reasonable excuse.
Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.
- (3) A prosecution for an offence against subsection (1) or (2) may be brought at any time.

s. 22

- (4) A court that convicts an accused of an offence against subsection (1) or (2) may order that the accused pay a sum towards the costs and expenses of the accused's apprehension following the failure to comply with the direction for which the accused was convicted.
- (5) An order under subsection (4) may be made in addition to any penalty the court may impose.

Note for this section:

See the *Sentence Administration Act 2003* section 118A for an evidentiary provision for proceedings for an offence against subsection (1) or (2).

22. Part 6B inserted

Before Part VII insert:

Part 6B — Administration of electronic monitoring conditions

50N. Application of Part

This Part applies in relation to an electronic monitoring condition.

50O. Powers of members of Police Force

- (1) For the purpose of ascertaining whether or not an accused is complying with an electronic monitoring condition, a member of the Police Force may require the accused to produce a copy of the accused's bail undertaking and any notice by the CEO (corrections) under section 50P(a) for inspection.
- (2) An accused on whom a requirement is imposed under subsection (1) must comply with the requirement.

Penalty for this subsection: a fine of \$2 000.

50P. CEO (corrections) may substitute different place where device is to be installed and apply conditions

The CEO (corrections) may, at any time, by notice in writing given to an accused granted bail subject to an electronic monitoring condition —

- (a) substitute a different place for the place where an approved electronic monitoring device is required by the electronic monitoring condition to be installed; or
- (b) require the accused to comply with —
 - (i) if a list was given under section 24B(2) — such of the conditions in the list as are specified in the notice; or
 - (ii) otherwise — the conditions specified in the notice.

50Q. CEO (corrections) may revoke bail

- (1) If an electronic monitoring condition has been imposed as a condition on a grant of bail to an accused the CEO (corrections) may, in the CEO's absolute discretion, by instrument signed by the CEO and if practicable given to the accused, revoke the bail.
- (2) Without limiting subsection (1), the power to revoke bail may be exercised if the accused —
 - (a) is not likely to comply with any requirement of the accused's bail undertaking mentioned in section 28(2)(a) or (b); or
 - (b) is, or has been, or is likely to be in breach of any condition of the accused's bail undertaking mentioned in section 28(2)(c).
- (3) Subject to subsection (4), if the CEO (corrections) revokes bail the CEO must include a statement of the

CEO's reasons for the cancellation in the instrument cancelling the bail.

- (4) If the CEO (corrections) is of the opinion that it would be in the interest of the accused or any other person, or the public, to withhold from the accused any or all of the reasons referred to in subsection (3), the CEO may so withhold the reason or reasons.
- (5) If the CEO (corrections) revokes bail, the CEO may, whenever necessary, issue a warrant directed to all members of the Police Force to have the accused arrested and brought before an appropriate judicial officer.

50R. Procedure on arrest after revocation under s. 50Q

- (1) An accused arrested under a warrant issued under section 50Q must be taken as soon as is practicable before an appropriate judicial officer.
- (2) However, if the accused is arrested less than 24 hours before the time at which the accused is due to appear in accordance with the accused's bail undertaking, the accused must be held in custody and brought before an appropriate judicial officer at that time.
- (3) Also, subsection (4) applies if —
 - (a) before arrest, the accused had been released on bail following the accused's committal to the District Court or the Supreme Court to be tried (otherwise than for murder) or sentenced or otherwise dealt with; and
 - (b) the accused has not made an appearance in that court on the committal.
- (4) The accused must be taken as soon as is practicable before a judicial officer who is empowered to exercise jurisdiction in the court in which the committal order

was made, instead of before an appropriate judicial officer.

- (5) The judicial officer before whom an accused appears under this section may —
- (a) remand the accused in custody to appear at the time and place specified, or deemed by section 31(3) to be specified, in the accused's bail undertaking; or
 - (b) grant fresh bail to the accused in accordance with this Act, other than Schedule 1 Part B clause 2.

50S. Rules of natural justice excluded

The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under this Part by the CEO (corrections).

50T. Delegation by CEO (corrections)

The CEO (corrections) may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the CEO, delegate to any person any power or duty under this Part, other than this power of delegation.

50U. Rules for this Part

- (1) The CEO (corrections) may, with the approval of the Minister, make rules for the purposes of this Part which may provide for the manner of ensuring that accused persons are complying with electronic monitoring conditions and for conditions to be applied to accused persons granted bail subject to electronic monitoring conditions.

- (2) Rules made under this section may confer a discretionary authority on any person or class of persons.
- (3) The *Interpretation Act 1984* sections 41 and 42 do not apply to rules made under this section.

50V. Failure to comply with direction

- (1) An accused given a direction under Schedule 1 Part E clause 1(4)(a), (b) or (c) must comply with the direction.
Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.
- (2) An accused given a direction under Schedule 1 Part E clause 1(4)(d) must comply with the direction, unless the accused has a reasonable excuse.
Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.
- (3) A prosecution for an offence against subsection (1) or (2) may be brought at any time.
- (4) A court that convicts an accused of an offence against subsection (1) or (2) may order that the accused pay a sum towards the costs and expenses of the accused's apprehension following the failure to comply with the direction for which the accused was convicted.
- (5) An order under subsection (4) may be made in addition to any penalty that the court may impose.

Note for this section:

See the *Sentence Administration Act 2003* section 118A for an evidentiary provision for proceedings for an offence against subsection (1) or (2).

23. Section 54 amended

In section 54(1):

(a) in paragraph (a)(iii) delete “28(2)(d);” and insert:

28(2)(d); or

(b) after paragraph (a)(iii) insert:

(iv) is, or has been, in breach of an
electronic monitoring condition
mentioned in section 28(2)(e);

or

24. Section 55 amended

(1) In section 55(1):

(a) in paragraph (a) delete “his” and insert:

the accused’s

(b) in paragraph (b) delete “he” and insert:

the accused

(c) in paragraph (b) delete “his” and insert:

the accused’s

(d) in paragraph (ba) delete “he” and insert:

the accused

s. 24

(e) after paragraph (ba) insert:

(bb) the accused is, or has been, in breach of an electronic monitoring condition mentioned in section 28(2)(e); or

(f) delete “he may —” and insert:

the judicial officer may —

(g) in paragraph (d) delete “his” and insert:

the accused’s

(2) In section 55(2):

(a) delete “he shall” and insert:

the judicial officer must

(b) delete “his” and insert:

the accused’s

Note: The heading to amended section 55 is to read:

Judicial officer may revoke bail of accused before court under s. 54

25. Section 66C amended

In section 66C(1):

- (a) in paragraph (c)(ii) delete “24A.” and insert:

24A;

- (b) after paragraph (c)(ii) insert:

- (iii) a list made in accordance with section 24B.

26. Sections 66F to 66H inserted

After section 66E insert:

66F. Disclosing electronic monitoring information

- (1) In this section —

electronic monitoring information means —

- (a) orders, directions, requirements or conditions (*EM orders*) about electronic monitoring under this Act; and
- (b) any information that relates to EM orders, including, for example, information about the movements of persons subject to EM orders;

relevant employee means a person employed in the department designated as the Police Service.

- (2) The CEO (corrections) may disclose electronic monitoring information to a police officer or a relevant employee.
- (3) Without limiting the way in which the CEO (corrections) may disclose electronic monitoring information under subsection (2), the CEO

(corrections) may give police officers and relevant employees access to an electronic database containing electronic monitoring information.

- (4) A police officer or a relevant employee may, for any reasonable purpose in the performance of their functions as a police officer or a relevant employee —
 - (a) access electronic monitoring information disclosed by the CEO (corrections) under subsection (2); and
 - (b) use the electronic monitoring information.
- (5) The CEO (corrections) must establish procedures for the disclosure of electronic monitoring information under this section.

66G. Disclosure under s. 66F not subject to other laws and effect of disclosure

- (1) Information may be disclosed under section 66F despite any written law relating to confidentiality or secrecy.
- (2) If information is disclosed, in good faith, under section 66F —
 - (a) no civil or criminal liability is incurred in respect of the disclosure; and
 - (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
 - (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

66H. Powers of CEO (corrections)

The CEO (corrections) has all of the powers conferred under this Act on a community corrections officer and

may review, vary or rescind a direction given by a community corrections officer.

27. Schedule 1 amended

Delete the reference after the heading to Schedule 1 and insert:

[s. 13, 17 and 17AA]

28. Schedule 1 Part C clause 1 amended

In Schedule 1 Part C clause 1 delete “3E and 3F,” and insert:

3E, 3F and 3G,

29. Schedule 1 Part C clause 3F amended

(1) Before Schedule 1 Part C clause 3F(1) insert:

(1A) In this clause —

family violence offence (category B) means an offence where the offender and the victim are in a designated family relationship with each other at the time of the commission of the offence and the offence is —

- (a) an offence against the *Restraining Orders Act 1997* section 61(1) or (1A); or
- (b) an offence against *The Criminal Code* section 221BD, 279, 280, 281, 283, 292, 293, 294, 297, 298, 300, 301, 304, 313, 317, 317A, 323, 324, 325, 326, 328, 332, 333, 338A, 338B, 338C, 338E or 444.

s. 29

- (2) In Schedule 1 Part C clause 3F(1):
- (a) in paragraph (a) delete “offence; or” and insert:

offence (category B); or
 - (b) in paragraph (b) after “offence” insert:

(category B)
- (3) In Schedule 1 Part C clause 3F(2) after “offence” insert:

(category B)
- (4) In Schedule 1 Part C clause 3F(3) delete “offence,” and insert:

offence (category B),
- (5) After Schedule 1 Part C clause 3F(4) insert:
- (4A) If a judicial officer grants bail under subclause (2) and imposes a home detention condition as a condition on the grant of bail, Part D clause 3(4A) applies.
 - (4B) If a judicial officer grants bail under subclause (2) and does not impose a home detention condition as a condition on the grant of bail, Part E clause 1 applies.
- (6) In Schedule 1 Part C clause 3F(6) delete “considered the imposition of” and insert:

imposed

Note: The heading to amended Schedule 1 Part C clause 3F is to read:

Bail in cases of family violence offence (category B) involving serial family violence offender

30. Schedule 1 Part C clause 3G inserted

After Schedule 1 Part C clause 3F insert:

3G. Bail in cases of family violence offence (category A) involving accused bound by family violence restraining order

- (1) This clause applies if —
- (a) an accused is bound by a family violence restraining order and is in custody —
 - (i) awaiting an appearance in court before conviction for a family violence offence (category A); or
 - (ii) waiting to be sentenced or otherwise dealt with for a family violence offence (category A) of which the accused has been convicted;
- and
- (b) the person against whom the family violence offence (category A) was committed or is alleged to have been committed is protected by the family violence restraining order.

- (2) In subclause (1) —
- family violence offence (category A)*** means an offence where the offender and the victim are in a designated family relationship with each other at the time of the commission of the offence and the offence is an offence against *The Criminal Code* section 221BD, 279, 280, 281, 283, 292, 293, 294, 297, 298, 300, 301, 304, 313, 317, 317A, 323, 324, 325, 326, 328, 332, 333, 338A, 338B, 338C, 338E or 444;

s. 31

family violence restraining order has the meaning given in the *Restraining Orders Act 1997* section 3(1).

- (3) Despite clause 1, 2 or 4 or any other provision of this Act, if this clause applies bail may only be granted by a judicial officer, other than a justice, in whom jurisdiction is vested.
- (4) If a judicial officer grants bail under subclause (3) and imposes a home detention condition as a condition on the grant of bail, Part D clause 3(4A) applies.
- (5) If a judicial officer grants bail under subclause (3) and does not impose a home detention condition as a condition on the grant of bail, Part E clause 1 applies.
- (6) If an accused is granted bail under subclause (3), on any subsequent appearance for bail in the same case a judicial officer may order that bail is to continue on the same terms and conditions.
- (7) This clause does not apply if bail is being granted under the *Sentencing Act 1995* section 33C(6) and the court has imposed an electronic monitoring requirement under section 33HA of that Act.

31. Schedule 1 Part C clause 4 amended

In Schedule 1 Part C clause 4(1) delete “3E and 3F,” and insert:

3E, 3F and 3G,

32. Schedule 1 Part D clause 3 amended

(1) In Schedule 1 Part D clause 3(2):

(a) delete “over the age of 17 years” and insert:

17 or more years of age

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

the accused’s

(2) In Schedule 1 Part D clause 3(4) delete “this clause” and insert:

this clause, other than in relation to an accused referred to in Part C clause 3F(1) or 3G(1),

(3) After Schedule 1 Part D clause 3(4) insert:

(4A) A judicial officer who imposes a home detention condition under this clause must, if the accused is a person referred to in Part C clause 3F(1) or 3G(1), direct that the accused, while subject to the 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).

(4B) Subclause (4A) does not apply if the judicial officer is satisfied there are exceptional circumstances.

(4) In Schedule 1 Part D clause 3(5):

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

device;

s. 33

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

remain;

(c) after paragraph (b) insert:

(ba) direct the accused to charge the approved electronic monitoring device so as to ensure the device is at all times operational;

(bb) direct the accused to not enter 1 or more areas of the State stated in a written notice given to the accused by the community corrections officer;

33. Schedule 1 Part E inserted

At the end of Schedule 1 insert:

Part E — Condition that must be imposed on a grant of bail for particular accused persons

1. Electronic monitoring condition

- (1) This clause applies if a judicial officer grants bail under —
 - (a) Part C clause 3F(2) in the circumstances referred to in Part C clause 3F(4B); or
 - (b) Part C clause 3G(3) in the circumstances referred to in Part C clause 3G(5).
- (2) The judicial officer must impose an electronic monitoring condition as a condition on the grant of bail unless the judicial officer is satisfied there are exceptional circumstances.

- (3) An electronic monitoring condition is a condition that while the accused is on bail the accused —
- (a) be subject to electronic monitoring under subclause (4) 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 (4).
- (4) 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;
 - (b) direct the accused to permit the installation of an approved electronic monitoring device at the place where the accused resides or, if the accused does not have a place of residence, at any other place specified by the community corrections officer;
 - (c) direct the accused to charge the approved electronic monitoring device so as to ensure the device is at all times operational;
 - (d) direct the accused to not enter 1 or more areas of the State stated in a written notice given to the accused by the community corrections officer;
 - (e) give any other reasonable direction to the accused necessary for the proper administration of the electronic monitoring of the accused.
- (5) A community corrections officer may suspend the electronic monitoring of an accused subject to a condition under subclause (2) —
- (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.

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- (6) The purpose of electronic monitoring under this clause is to enable the location of the accused to be monitored.
- (7) This clause does not apply to a person who is under 18 years of age.

34. Schedule 2 amended

After Schedule 2 item 3 insert:

3AA. *Sentence Administration Act 2003*

- | | |
|-----------|---|
| s. 30(2) | Failure to comply with requirement about approved electronic monitoring device |
| s. 30(3) | Failure to comply with requirement about not entering area of the State |
| s. 57(3) | Failure to comply with requirement about approved electronic monitoring device |
| s. 57(4) | Failure to comply with requirement about not entering area of the State |
| s. 74G(2) | Failure to comply with requirement about approved electronic monitoring device |
| s. 74G(3) | Failure to comply with requirement about not entering area of the State |
| s. 118(6) | Damage, remove or interfere with, or interfere with operation of, monitoring equipment in such a way as to prevent or impede monitoring person's location |

3AB. Sentencing Act 1995

- | | |
|-------------|--|
| s. 33H(10A) | Failure to comply with order about approved electronic monitoring device |
| s. 33H(10B) | Failure to comply with order about not entering area of the State |
| s. 33HA(5A) | Failure to comply with direction about approved electronic monitoring device |
| s. 33HA(5B) | Failure to comply with direction about not entering area of the State |
| s. 67A(6A) | Failure to comply with direction about approved electronic monitoring device |
| s. 67A(6B) | Failure to comply with direction about not entering area of the State |
| s. 75(10A) | Failure to comply with order about approved electronic monitoring device |
| s. 75(10B) | Failure to comply with order about not entering area of the State |
| s. 76A(3A) | Failure to comply with direction about approved electronic monitoring device |
| s. 76A(3B) | Failure to comply with direction about not entering area of the State |
| s. 84C(10A) | Failure to comply with order about approved electronic monitoring device |
| s. 84C(10B) | Failure to comply with order about not entering area of the State |

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- | | |
|-------------|--|
| s. 84CA(4A) | Failure to comply with direction about approved electronic monitoring device |
| s. 84CA(4B) | Failure to comply with direction about not entering area of the State |

Part 3 — *Criminal Investigation Act 2006* amended

35. Act amended

This Part amends the *Criminal Investigation Act 2006*.

36. Section 128 amended

In section 128(1) in the definition of *serious offence* after paragraph (c) insert:

- (ca) under the *Bail Act 1982* section 50M(1) or (2) or 50V(1) or (2); or
- (cb) under the *High Risk Serious Offenders Act 2020* section 80(1); or
- (cc) under the *Sentence Administration Act 2003* section 30(2) or (3), 57(3) or (4), 74G(2) or (3) or 118(6); or
- (cd) under the *Sentencing Act 1995* section 33H(10A) or (10B), 33HA(5A) or (5B), 67A(6A) or (6B), 75(10A) or (10B), 76A(3A) or (3B), 84C(10A) or (10B) or 84CA(4A) or (4B); or

**Part 4 — *Criminal Law (Mental Impairment) Act 2023*
amended**

37. Act amended

This Part amends the *Criminal Law (Mental Impairment) Act 2023*.

38. Section 403 deleted

Delete section 403.

39. Schedule 1 amended

In Schedule 1 Division 1 Subdivision 3 after item 14 insert:

14A.	s. 300(1)	Persistent family violence
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**Part 5 — *Criminal Law (Mentally Impaired Accused)*
Act 1996 amended**

40. Act amended

This Part amends the *Criminal Law (Mentally Impaired Accused) Act 1996*.

41. Schedule 1 amended

In Schedule 1 item 1 after the row relating to *The Criminal Code* s. 297 insert:

s. 300(1)

Persistent family violence

**Part 6 — *High Risk Serious Offenders Act 2020*
amended**

42. Act amended

This Part amends the *High Risk Serious Offenders Act 2020*.

43. Section 31 amended

After section 31(3)(b) insert:

- (ba) direct the offender to charge the approved electronic monitoring device so as to ensure the device is at all times operational;
- (bb) direct the offender to not enter 1 or more areas of the State stated in a written notice given to the offender by the community corrections officer;

44. Section 80 amended

In section 80(1) in the Penalty delete “years.” and insert:

years and a fine of \$36 000.

45. Section 81A inserted

After section 81 insert:

81A. Evidentiary provision for proceedings for offences under s. 80 concerning electronic monitoring

- (1) In this section —
approved means approved by the CEO;

relevant instruction means an instruction about electronic monitoring given by a community corrections officer to a person subject to a supervision order;

relevant matter means —

- (a) that a person was subject to a supervision order;
or
- (b) that a specified type of approved electronic monitoring device was used to monitor a person; or
- (c) that a specified approved electronic monitoring device was installed —
 - (i) at a specified place and on a specified date; and
 - (ii) in accordance with the manufacturer's specifications;or
- (d) that on a specified date a specified approved electronic monitoring device was turned on; or
- (e) that during a specified period a specified approved electronic monitoring device was working; or
- (f) that during a specified period a specified system for detecting approved electronic monitoring devices was detecting a specified approved electronic monitoring device; or
- (g) that during a specified period a specified system for detecting approved electronic monitoring devices was receiving location data from a specified approved electronic monitoring device; or
- (h) particulars of communications during a specified period between a specified system for

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detecting approved electronic monitoring devices and a specified approved electronic monitoring device; or

- (i) that on a specified date and at a specified time a specified approved electronic monitoring device stopped working.
- (2) In proceedings for an offence under section 80(1) that concerns electronic monitoring —
 - (a) a certificate in the form approved under section 89 stating a relevant matter and purporting to be signed by the CEO or a community corrections officer is, without proof of any appointment or signature, evidence of the matter stated in the certificate; and
 - (b) a certificate in the form approved under section 89 stating a document attached to the certificate is a copy of a relevant instruction and purporting to be signed by the CEO or a community corrections officer is, without proof of any appointment or signature, evidence of what is stated.
- (3) The copy of the relevant instruction is evidence of what is stated in the relevant instruction.

46. Schedule 1 amended

In Schedule 1 Division 1 Subdivision 3 after item 14 insert:

14A.	s. 300(1)	Persistent family violence
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Part 7 — *Restraining Orders Act 1997* amended

47. Act amended

This Part amends the *Restraining Orders Act 1997*.

48. Section 5A amended

- (1) In section 5A(1)(b) after “behaviour” insert:

or pattern of behaviour

- (2) After section 5A(1) insert:

- (1A) Behaviour or a pattern of behaviour referred to in subsection (1)(b) —

- (a) may occur over a period of time; and
- (b) may be more than 1 act, or a series of acts, that when considered cumulatively coerces or controls the family member or causes the member to be fearful; and
- (c) is to be considered in the context of the relationship between the person and the family member as a whole.

- (3) In section 5A(2):

- (a) after “of behaviour” insert:

or a pattern of behaviour

- (b) in paragraph (l) after “behaviour” insert:

or a pattern of behaviour

Part 8 — Sentence Administration Act 2003 amended

49. Act amended

This Part amends the *Sentence Administration Act 2003*.

50. Section 4 amended

- (1) In section 4(2) delete the definition of *family violence offence*.
- (2) In section 4(2) insert in alphabetical order:

family violence offence (category A) means an offence where the offender and the victim are in a designated family relationship with each other at the time of the commission of the offence and the offence is an offence against *The Criminal Code* section 221BD, 279, 280, 281, 283, 292, 293, 294, 297, 298, 300, 301, 304, 313, 317, 317A, 323, 324, 325, 326, 328, 332, 333, 338A, 338B, 338C, 338E or 444;

family violence offence (category B) means an offence where the offender and the victim are in a designated family relationship with each other at the time of the commission of the offence and the offence is —

- (a) an offence against the *Restraining Orders Act 1997* section 61(1) or (1A); or
- (b) an offence against *The Criminal Code* section 221BD, 279, 280, 281, 283, 292, 293, 294, 297, 298, 300, 301, 304, 313, 317, 317A, 323, 324, 325, 326, 328, 332, 333, 338A, 338B, 338C, 338E or 444;

family violence restraining order has the meaning given in the *Restraining Orders Act 1997* section 3(1);

- (3) In section 4(2) in the definition of *designated family relationship*:
- (a) in paragraph (c) delete “other;” and insert:

other; or
 - (b) after paragraph (c) insert:

(d) one of whom is a child who —
 - (i) ordinarily resides, or resided, with the other person; or
 - (ii) regularly resides or stays, or resided or stayed, with the other person;or
 - (e) one of whom is, or was, a child of whom the other person is a guardian;

51. Section 30 amended

- (1) In section 30(1):
- (a) in paragraph (e)(ii) delete “resides;” and insert:

resides; or
 - (b) after paragraph (e)(ii) insert:
 - (iii) charge the approved electronic monitoring device so as to ensure the device is at all times operational; or
 - (iv) not enter 1 or more areas of the State stated in a written notice given to the prisoner by the CEO;

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(c) after paragraph (i) insert:

- (ia) a curfew requirement that the prisoner must remain at a specified place for a specified period not exceeding 12 hours in any period of 24 hours;
- (ib) a requirement that the prisoner must not frequent or visit a specified place or area;

(2) Delete section 30(2) and insert:

- (2) A person on whom a requirement is imposed under subsection (1)(c), (d) or (e)(i), (ii) or (iii) must comply with the requirement.

Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

- (3) A person on whom a requirement is imposed under subsection (1)(e)(iv) must comply with the requirement, unless the person has a reasonable excuse.

Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

- (4) Subsection (7) applies if the parole order relates to —

(a) a prisoner —

- (i) who has been serving imprisonment for a family violence offence (category A); and
- (ii) who is bound by a family violence restraining order;

or

- (b) a prisoner —
 - (i) who has been serving imprisonment for a family violence offence (category B); and
 - (ii) who is a serial family violence offender.
- (5) In subsection (4)(a)(i) a reference to a prisoner who has been serving imprisonment for a family violence offence (category A) is a reference to a prisoner —
 - (a) who has been serving a fixed term for a family violence offence (category A); or
 - (b) who —
 - (i) has been serving a fixed term for an offence or offences other than a family violence offence (category A); and
 - (ii) has been serving that term at all times since completing a fixed term for a family violence offence (category A).
- (6) In subsection (4)(b)(i) a reference to a prisoner who has been serving imprisonment for a family violence offence (category B) is a reference to a prisoner —
 - (a) who has been serving a fixed term for a family violence offence (category B); or
 - (b) who —
 - (i) has been serving a fixed term for an offence or offences other than a family violence offence (category B); and
 - (ii) has been serving that term at all times since completing a fixed term for a family violence offence (category B).

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- (7) The Board or the Governor (as the case may be) must impose a requirement under subsection (1)(c), (d) or (e), unless the Board or Governor is satisfied there are exceptional circumstances.

Note: The heading to amended section 30 is to read:

Additional requirements for parole order

52. Section 57 amended

Delete section 57(2) and (3) and insert:

- (2) Without limiting subsection (1), additional requirements may include —
- (a) a requirement that the prisoner wear an approved electronic monitoring device; or
 - (b) a requirement that the prisoner permit the installation of an approved electronic monitoring device at the place where the prisoner resides; or
 - (c) a requirement that the prisoner charge the approved electronic monitoring device so as to ensure the device is at all times operational; or
 - (d) a requirement that the prisoner not enter 1 or more areas of the State stated in a written notice given to the prisoner by the Board; or
 - (e) a curfew requirement that the prisoner must remain at a specified place for a specified period not exceeding 12 hours in any period of 24 hours; or
 - (f) a requirement that the prisoner must not frequent or visit a specified place or area.

- (3) A person on whom a requirement is imposed under subsection (2)(a), (b) or (c) must comply with the requirement.
Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.
- (4) A person on whom a requirement is imposed under subsection (2)(d) must comply with the requirement, unless the person has a reasonable excuse.
Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.
- (5) Subsection (8) applies if —
- (a) the prisoner —
 - (i) has been serving imprisonment for a family violence offence (category A); and
 - (ii) is bound by a family violence restraining order;

or

 - (b) the prisoner —
 - (i) has been serving imprisonment for a family violence offence (category B); and
 - (ii) is a serial family violence offender.
- (6) In subsection (5)(a)(i) a reference to a prisoner who has been serving imprisonment for a family violence offence (category A) is a reference to a prisoner —
- (a) who has been serving a fixed term for a family violence offence (category A); or

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- (b) who —
 - (i) has been serving a fixed term for an offence or offences other than a family violence offence (category A); and
 - (ii) has been serving that term at all times since completing a fixed term for a family violence offence (category A).
- (7) In subsection (5)(b)(i) a reference to a prisoner who has been serving imprisonment for a family violence offence (category B) is a reference to a prisoner —
 - (a) who has been serving a fixed term for a family violence offence (category B); or
 - (b) who —
 - (i) has been serving a fixed term for an offence or offences other than a family violence offence (category B); and
 - (ii) has been serving that term at all times since completing a fixed term for a family violence offence (category B).
- (8) The Board must impose a requirement referred to in subsection (2)(a), (b), (c) or (d), unless the Board is satisfied there are exceptional circumstances.

53. Section 74G amended

- (1) In section 74G(1):
 - (a) in paragraph (e)(ii) delete “resides;” and insert:

resides; or

(b) after paragraph (e)(ii) insert:

- (iii) charge the approved electronic monitoring device so as to ensure the device is at all times operational; or
- (iv) not enter 1 or more areas of the State stated in a written notice given to the supervised offender by the CEO;

(c) after paragraph (g) insert:

- (h) a curfew requirement that the supervised offender must remain at a specified place for a specified period not exceeding 12 hours in any period of 24 hours;
- (i) a requirement that the supervised offender must not frequent or visit a specified place or area;

(2) Delete section 74G(2) and insert:

- (2) A person on whom a requirement is imposed under subsection (1)(c), (d), (e)(i), (ii) or (iii) must comply with the requirement.

Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

- (3) A person on whom a requirement is imposed under subsection (1)(e)(iv) must comply with the requirement, unless the person has a reasonable excuse.

Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

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- (4) Subsection (5) applies if —
- (a) the supervised offender —
 - (i) has been serving imprisonment for a family violence offence (category A); and
 - (ii) is bound by a family violence restraining order;
 - or
 - (b) the supervised offender —
 - (i) has been serving imprisonment for a family violence offence (category B); and
 - (ii) is a serial family violence offender.
- (5) The Board must impose a requirement under subsection (1)(c), (d) or (e), unless the Board is satisfied there are exceptional circumstances.

54. Section 95 amended

In section 95(1):

- (a) in paragraph (c) delete “1994.” and insert:

1994;
- (b) after paragraph (c) insert:

 - (d) under the *Bail Act 1982* section 66F.

55. Section 97DA inserted

After section 97D insert:

97DA. Disclosing electronic monitoring information

- (1) In this section —
electronic monitoring information means —
 - (a) orders, directions or requirements (*EM orders*) about electronic monitoring under this Act, the *High Risk Serious Offenders Act 2020* or the *Sentencing Act 1995*; and
 - (b) any information that relates to EM orders, including, for example, information about the movements of persons subject to EM orders;*relevant employee* means a person employed in the department designated as the Police Service.
- (2) The CEO may disclose electronic monitoring information to a police officer or a relevant employee.
- (3) Without limiting the way in which the CEO may disclose electronic monitoring information under subsection (2), the CEO may give police officers and relevant employees access to an electronic database containing electronic monitoring information.
- (4) A police officer or relevant employee may, for any reasonable purpose in the performance of their functions as a police officer or a relevant employee —
 - (a) access electronic monitoring information disclosed by the CEO under subsection (2); and
 - (b) use the electronic monitoring information.
- (5) The CEO must establish procedures for the disclosure of electronic monitoring information under this section.

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56. Section 97E amended

- (1) In section 97E(1) delete “97C or 97D” and insert:

97C, 97D or 97DA

- (2) In section 97E(2) delete “97C or 97D —” and insert:

97C, 97D or 97DA —

Note: The heading to amended section 97E is to read:

Disclosure under s. 97A, 97B, 97C, 97D and 97DA not subject to other laws and effect of disclosure

57. Section 98 amended

- (1) In section 98(1) delete “1995” and insert:

1995, the Criminal Law (Mental Impairment) Act 2023

- (2) In section 98(1) delete “Part VIA of the *Bail Act 1982* —” and insert:

the *Bail Act 1982* Parts VIA and 6B —

- (3) In section 98(1) delete “Part VIA —” and insert:

Parts VIA and 6B —

58. Section 118A inserted

After section 118 insert:

118A. Evidentiary provision for electronic monitoring offences

(1) In this section —

approved form means a form approved by the CEO;

monitoring equipment has the meaning given in section 118(1);

relevant instruction means an instruction given by a CCO to a person who was subject to an order, direction or requirement, the alleged breach of which constitutes the relevant offence in the proceedings;

relevant matter means —

- (a) that a person was subject to an order, direction or requirement, the alleged breach of which constitutes the relevant offence in the proceedings; or
- (b) that a specified type of monitoring equipment was used to monitor a person; or
- (c) that specified monitoring equipment was installed —
 - (i) at a specified place and on a specified date; and
 - (ii) in accordance with the manufacturer's specifications;

or

- (d) that on a specified date specified monitoring equipment was turned on; or
- (e) that during a specified period specified monitoring equipment was working; or

- (f) that during a specified period a specified system for detecting monitoring equipment was detecting specified monitoring equipment; or
- (g) that during a specified period a specified system for detecting monitoring equipment was receiving location data from specified monitoring equipment; or
- (h) particulars of communications during a specified period between a specified system for detecting monitoring equipment and specified monitoring equipment; or
- (i) that on a specified date and at a specified time specified monitoring equipment stopped working;

relevant offence means an offence under —

- (a) section 30(2) or (3), 57(3) or (4), 74G(2) or (3) or 118(6); or
 - (b) the *Bail Act 1982* section 50M(1) or (2) or 50V(1) or (2); or
 - (c) the *Sentencing Act 1995* section 33H(10A) or (10B), 33HA(5A) or (5B), 67A(6A) or (6B), 75(10A) or (10B), 76A(3A) or (3B), 84C(10A) or (10B) or 84CA(4A) or (4B).
- (2) In proceedings for a relevant offence —
- (a) a certificate in the approved form stating a relevant matter and purporting to be signed by the CEO or a CCO is, without proof of any appointment or signature, evidence of the matter stated in the certificate; and
 - (b) a certificate in the approved form stating a document attached to the certificate is a copy of a relevant instruction and purporting to be signed by the CEO or a CCO is, without proof

of any appointment or signature, evidence of what is stated.

- (3) The copy of the relevant instruction is evidence of what is stated in the relevant instruction.

59. Part 11 Division 3 inserted

At the end of Part 11 insert:

Division 3 — Provisions for the *Family Violence Legislation Reform Act 2024*

130. Term used: commencement day

In this Division —

commencement day means the day on which the *Family Violence Legislation Reform Act 2024* section 59 comes into operation.

131. Particular reports given under s. 12 or 12A may be amended or supplemented

- (1) If a report (an *original report*) in respect of a prisoner was given by the Board to the Minister under section 12 or 12A before commencement day —
- (a) the Board may amend the original report to address the likelihood of the prisoner complying with the additional requirements in section 30(1)(e)(iii) or (iv), (ia) or (ib) and give the amended report to the Minister; or
 - (b) the Board may give the Minister a report supplementary to the original report addressing the likelihood of the prisoner complying with the additional requirements in section 30(1)(e)(iii) or (iv), (ia) or (ib).

- (2) An original report amended and given under subsection (1)(a) is taken to have been given by the Board to the Minister as amended when the original report was first given.
- (3) A supplementary report given under subsection (1)(b) is taken to have been given by the Board to the Minister when the original report was given.

132. Particular reports given under s. 17 may be amended or supplemented

- (1) If a report (an *original report*) in respect of a prisoner was given by the CEO to the Board under section 17 before commencement day —
 - (a) the CEO may amend the original report to address the likelihood of the prisoner complying with the additional requirements in section 30(1)(e)(iii) or (iv), (ia) or (ib) and give the amended report to the Board; or
 - (b) the CEO may give the Board a report supplementary to the original report addressing the likelihood of the prisoner complying with the additional requirements in section 30(1)(e)(iii) or (iv), (ia) or (ib).
- (2) An original report amended and given under subsection (1)(a) is taken to have been given by the CEO to the Board as amended when the original report was first given.
- (3) A supplementary report given under subsection (1)(b) is taken to have been given by the CEO to the Board when the original report was given.

133. Particular reports given under s. 51 may be amended or supplemented

- (1) If a report (an *original report*) in respect of a prisoner was given by the CEO to the Board under section 51 before commencement day —
 - (a) the CEO may amend the original report to address the likelihood of the prisoner complying with the additional requirements in section 57(2)(c), (d), (e) or (f) and give the amended report to the Board; or
 - (b) the CEO may give the Board a report supplementary to the original report addressing the likelihood of the prisoner complying with the additional requirements in section 57(2)(c), (d), (e) or (f).
- (2) An original report amended and given under subsection (1)(a) is taken to have been given by the CEO to the Board as amended when the original report was first given.
- (3) A supplementary report given under subsection (1)(b) is taken to have been given by the CEO to the Board when the original report was given.

134. Particular reports given under s. 74C may be amended or supplemented

- (1) If a report (an *original report*) in respect of a prisoner was given by the CEO to the Board under section 74C before commencement day —
 - (a) the CEO may amend the original report to address the likelihood of the prisoner complying with the additional requirements in section 74G(1)(e)(iii) or (iv), (h) or (i) and give the amended report to the Board; or

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- (b) the CEO may give the Board a report supplementary to the original report addressing the likelihood of the prisoner complying with the additional requirements in section 74G(1)(e)(iii) or (iv), (h) or (i).
- (2) An original report amended and given under subsection (1)(a) is taken to have been given by the CEO to the Board as amended when the original report was first given.
- (3) A supplementary report given under subsection (1)(b) is taken to have been given by the CEO to the Board when the original report was given.

135. Application of s. 57 to applications for re-entry release orders

Section 57 as amended by the *Family Violence Legislation Reform Act 2024* section 52 applies in relation to an application for a re-entry release order made but not decided before commencement day.

Part 9 — Sentencing Act 1995 amended

60. Act amended

This Part amends the *Sentencing Act 1995*.

61. Section 4 amended

- (1) In section 4(1) delete the definition of *family violence offence*.
- (2) In section 4(1) insert in alphabetical order:

family violence offence (category A) means an offence where the offender and the victim are in a designated family relationship with each other at the time of the commission of the offence and the offence is an offence against *The Criminal Code* section 221BD, 279, 280, 281, 283, 292, 293, 294, 297, 298, 300, 301, 304, 313, 317, 317A, 323, 324, 325, 326, 328, 332, 333, 338A, 338B, 338C, 338E or 444;

family violence offence (category B) means an offence where the offender and the victim are in a designated family relationship with each other at the time of the commission of the offence and the offence is —

- (a) an offence against the *Restraining Orders Act 1997* section 61(1) or (1A); or
- (b) an offence against *The Criminal Code* section 221BD, 279, 280, 281, 283, 292, 293, 294, 297, 298, 300, 301, 304, 313, 317, 317A, 323, 324, 325, 326, 328, 332, 333, 338A, 338B, 338C, 338E or 444;

family violence restraining order has the meaning given in the *Restraining Orders Act 1997* section 3(1);

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- (3) In section 4(1) in the definition of *designated family relationship*:
- (a) in paragraph (c) delete “other;” and insert:

other; or
 - (b) after paragraph (c) insert:

(d) one of whom is a child who —
 - (i) ordinarily resides, or resided, with the other person; or
 - (ii) regularly resides or stays, or resided or stayed, with the other person;or
 - (e) one of whom is, or was, a child of whom the other person is a guardian;

62. Section 33H amended

- (1) In section 33H(10):
- (a) delete “both” and insert:

more
 - (b) in paragraph (b) delete “resides.” and insert:

resides;

(c) after paragraph (b) insert:

- (c) charge the approved electronic monitoring device so as to ensure the device is at all times operational;
- (d) not enter 1 or more areas of the State stated in a written notice given to the offender by the speciality court or the CCO.

(2) After section 33H(10) insert:

(10A) A person given an order under subsection (10)(a), (b) or (c) must comply with the order.

Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

(10B) A person given an order under subsection (10)(d) must comply with the order, unless the person has a reasonable excuse.

Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

(3) At the end of section 33H(15) insert:

Note for this section:

See the *Sentence Administration Act 2003* section 118A for an evidentiary provision for proceedings for an offence against subsection (10A) or (10B).

63. Section 33HA amended

- (1) Delete section 33HA(1) to (4) and insert:
- (1) This section applies if —
- (a) an offence in respect of which a PSO may apply is a family violence offence (category A) and —
- (i) the offender is bound by a family violence restraining order; and
- (ii) the person against whom the family violence offence (category A) was committed is protected by the family violence restraining order;
- or
- (b) an offence in respect of which a PSO may apply is a family violence offence (category B) and the offender is a serial family violence offender.
- (2) For the purposes of subsection (1)(b), an offender is a serial family violence offender whether the offender was so declared by —
- (a) the court referred to in subsection (3) at the time of the offender's conviction for the family violence offence (category B); or
- (b) another court.
- (3) If this section applies and a court makes a PSO the court must impose a requirement (an ***electronic monitoring requirement***) for electronic monitoring in respect of the offender under this section, unless the court is satisfied there are exceptional circumstances.

- (4) The purpose of electronic monitoring of an offender subject to a PSO is to enable the location of the offender to be monitored.
- (2) In section 33HA(5):
- (a) delete “both” and insert:

more
 - (b) in paragraph (b) delete “CCO.” and insert:

CCO;
 - (c) after paragraph (b) insert:
 - (c) direct the offender to charge the approved electronic monitoring device so as to ensure the device is at all times operational;
 - (d) direct the offender to not enter 1 or more areas of the State stated in a written notice given to the offender by the CCO.
- (3) After section 33HA(5) insert:
- (5A) A person given a direction under subsection (5)(a), (b) or (c) must comply with the direction.
Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.
 - (5B) A person given a direction under subsection (5)(d) must comply with the direction, unless the person has a reasonable excuse.

Penalty for this subsection: imprisonment for 3 years
and a fine of \$36 000.

- (4) At the end of section 33HA(7) insert:

Note for this section:

See the *Sentence Administration Act 2003* section 118A for
an evidentiary provision for proceedings for an offence
against subsection (5A) or (5B).

64. Section 67A amended

- (1) Delete section 67A(1) to (5) and insert:

- (1) This section applies if —

- (a) an offence in respect of which a CBO may
apply is a family violence offence (category A)
and —
- (i) the offender is bound by a family
violence restraining order; and
 - (ii) the person against whom the family
violence offence (category A) was
committed is protected by the family
violence restraining order;

or

- (b) an offence in respect of which a CBO may
apply is a family violence offence (category B)
and the offender is a serial family violence
offender.

- (2) For the purposes of subsection (1)(b), an offender is a serial family violence offender whether the offender was so declared by —
 - (a) the court referred to in subsection (3) at the time of the offender’s conviction for the family violence offence (category B); or
 - (b) another court.
 - (3) If this section applies and a court makes a CBO the court must impose a requirement (an *electronic monitoring requirement*) for electronic monitoring in respect of the offender under this section, unless the court is satisfied there are exceptional circumstances.
 - (4) The purpose of electronic monitoring of an offender subject to a CBO is to enable the location of the offender to be monitored.
- (2) In section 67A(6):
- (a) delete “both” and insert:

more
 - (b) in paragraph (b) delete “CCO.” and insert:

CCO;
 - (c) after paragraph (b) insert:

 - (c) direct the offender to charge the approved electronic monitoring device so as to ensure the device is at all times operational;

- (d) direct the offender to not enter 1 or more areas of the State stated in a written notice given to the offender by the CCO.

- (3) After section 67A(6) insert:

- (6A) A person given a direction under subsection (6)(a), (b) or (c) must comply with the direction.

- Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

- (6B) A person given a direction under subsection (6)(d) must comply with the direction, unless the person has a reasonable excuse.

- Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

- (4) At the end of section 67A(8) insert:

Note for this section:

See the *Sentence Administration Act 2003* section 118A for an evidentiary provision for proceedings for an offence against subsection (6A) or (6B).

65. Section 75 amended

- (1) In section 75(10):

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

- resides; or

(b) after paragraph (b) insert:

- (c) to charge the approved electronic monitoring device so as to ensure the device is at all times operational; or
- (d) to not enter 1 or more areas of the State stated in a written notice given to the offender by the CCO.

(2) After section 75(10) insert:

(10A) A person given an order under subsection (10)(a), (b) or (c) must comply with the order.

Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

(10B) A person given an order under subsection (10)(d) must comply with the order, unless the person has a reasonable excuse.

Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

(3) At the end of section 75(15) insert:

Note for this section:

See the *Sentence Administration Act 2003* section 118A for an evidentiary provision for proceedings for an offence against subsection (10A) or (10B).

66. Section 76A amended

(1) Delete section 76A(1) and (1A) and insert:

- (1) The purpose of electronic monitoring of an offender —
- (a) under subsection (2) is to enable the location of the offender to be monitored where the offender presents a high risk to —
 - (i) a person; or
 - (ii) a group of persons; or
 - (iii) the community more generally;
 - and
 - (b) under subsection (2C) is to enable the location of the offender to be monitored.

(2) In section 76A(2) after “case,” insert:

other than a case referred to in subsection (2A),

(3) After section 76A(2) insert:

- (2A) Subsection (2C) applies if —
- (a) an offence in respect of which an ISO may apply is a family violence offence (category A) and —
 - (i) the offender is bound by a family violence restraining order; and
 - (ii) the person against whom the family violence offence (category A) was

committed is protected by the family
violence restraining order;

or

- (b) an offence in respect of which an ISO may apply is a family violence offence (category B) and the offender is a serial family violence offender.

(2B) For the purposes of subsection (2A)(b), an offender is a serial family violence offender whether the offender was so declared by —

- (a) the court referred to in subsection (2C) at the time of the offender's conviction for the family violence offence (category B); or
- (b) another court.

(2C) If subsection (2A) applies and a court makes an ISO the court must impose a requirement (also an ***electronic monitoring requirement***) for electronic monitoring in respect of the offender under this section, unless the court is satisfied there are exceptional circumstances.

(4) In section 76A(3):

- (a) delete “both” and insert:

more

- (b) in paragraph (b) delete “CCO.” and insert:

CCO;

(c) after paragraph (b) insert:

- (c) direct the offender to charge the approved electronic monitoring device so as to ensure the device is at all times operational;
- (d) direct the offender to not enter 1 or more areas of the State stated in a written notice given to the offender by the CCO.

(5) After section 76A(3) insert:

(3A) A person given a direction under subsection (3)(a), (b) or (c) must comply with the direction.

Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

(3B) A person given a direction subsection (3)(d) must comply with the direction, unless the person has a reasonable excuse.

Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

(6) At the end of section 76A(6) insert:

Note for this section:

See the *Sentence Administration Act 2003* section 118A for an evidentiary provision for proceedings for an offence against subsection (3A) or (3B).

67. Section 84C amended

- (1) In section 84C(10):
- (a) in paragraph (b) delete “lives.” and insert:

lives; or
 - (b) after paragraph (b) insert:

 - (c) to charge the approved electronic monitoring device so as to ensure the device is at all times operational; or
 - (d) to not enter 1 or more areas of the State stated in a written notice given to the offender by the speciality court or the CCO.
- (2) After section 84C(10) insert:
- (10A) A person given an order under subsection (10)(a), (b) or (c) must comply with the order.
Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.
 - (10B) A person given an order under subsection (10)(d) must comply with the order, unless the person has a reasonable excuse.
Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

- (3) At the end of section 84C(15) insert:

Note for this section:

See the *Sentence Administration Act 2003* section 118A for an evidentiary provision for proceedings for an offence against subsection (10A) or (10B).

68. Section 84CA amended

- (1) Delete section 84CA(1) and (1A) and insert:

- (1) The purpose of electronic monitoring of an offender —
- (a) under subsection (2) is to enable the location of the offender to be monitored where the offender presents a high risk to —
 - (i) a person; or
 - (ii) a group of persons; or
 - (iii) the community more generally;
 - and
 - (b) under subsection (3C) is to enable the location of the offender to be monitored.

- (2) In section 84CA(2) after “case,” insert:

other than a case referred to in subsection (3A),

- (3) In section 84CA(3) after “imposed” insert:

under subsection (2)

- (4) After section 84CA(3) insert:
- (3A) Subsection (3C) applies if —
- (a) an offence in respect of which CSI may apply is a family violence offence (category A) and —
 - (i) the offender is bound by a family violence restraining order; and
 - (ii) the person against whom the family violence offence (category A) was committed is protected by the family violence restraining order;
 - or
 - (b) an offence in respect of which CSI may apply is a family violence offence (category B) and the offender is a serial family violence offender.
- (3B) For the purposes of subsection (3A)(b), an offender is a serial family violence offender whether the offender was so declared by —
- (a) the court referred to in subsection (3C) at the time of the offender's conviction for the family violence offence (category B); or
 - (b) another court.
- (3C) If subsection (3A) applies and a court orders CSI the court must impose a requirement (also an ***electronic monitoring requirement***) for electronic monitoring in respect of the offender under this section, unless the court is satisfied there are exceptional circumstances.

- (5) In section 84CA(4):
- (a) delete “both” and insert:

more
 - (b) in paragraph (b) delete “CCO.” and insert:

CCO;
 - (c) after paragraph (b) insert:
 - (c) direct the offender to charge the approved electronic monitoring device so as to ensure the device is at all times operational;
 - (d) direct the offender to not enter 1 or more areas of the State stated in a written notice given to the offender by the CCO.
- (6) After section 84CA(4) insert:
- (4A) A person given a direction under subsection (4)(a), (b) or (c) must comply with the direction.
Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.
 - (4B) A person given a direction under subsection (4)(d) must comply with the direction, unless the person has a reasonable excuse.
Penalty for this subsection: imprisonment for 3 years and a fine of \$36 000.

- (7) At the end of section 84CA(5) insert:

Note for this section:

See the *Sentence Administration Act 2003* section 118A for an evidentiary provision for proceedings for an offence against subsection (4A) or (4B).

69. Section 84J amended

After section 84J(1) insert:

- (1A) Subsection (1) does not apply to breach of a CSI requirement constituted by —
- (a) a failure to comply with an order given under section 84C(10)(a), (b), (c) or (d); or
 - (b) a failure to comply with a direction given under section 84CA(4)(a), (b), (c) or (d).

70. Section 97A amended

In section 97A(6):

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

offence (category B); and
- (b) delete paragraph (c) and insert:
- (c) the offender is a serial family violence offender, whether the offender was so declared by —
 - (i) the court referred to in paragraph (a) at the time of the offender’s conviction for

s. 71

- the offence referred to in that paragraph;
- or
- (ii) another court.

Note: The heading to amended section 97A is to read:

Declaration of serious offence for purposes of *High Risk Serious Offenders Act 2020* and *Sentence Administration Act 2003* Part 5A

71. Section 124D amended

In section 124D in the definition of *prescribed offence* paragraphs (a) and (b) delete “offence; or” and insert:

offence (category B); or

72. Section 124E amended

- (1) In section 124E(1) after “family violence offence” insert:

(category B)

- (2) In section 124E(4)(a) delete “offence;” and insert:

offence (category B);

- (3) In section 124E(6)(b)(i) delete “offence; and” and insert:

offence (category B); and

73. Section 131 amended

After section 131(1) insert:

- (1A) Subsection (1) does not apply to breach of a community order constituted by —
- (a) for a community order that is a CBO — a failure to comply with a direction given under section 67A(6)(a), (b), (c) or (d); or
 - (b) for a community order that is an ISO — a failure to comply with —
 - (i) an order under section 75(10)(a), (b), (c) or (d); or
 - (ii) a direction under section 76A(3)(a), (b), (c) or (d).

74. Schedule 1A amended

In Schedule 1A Part 2 item 2 after the row relating to section 50D(2) insert:

s. 50O(2)	Hindering police officer seeking to ascertain compliance with electronic monitoring condition
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Part 10 — Other Acts amended

75. Various references to Part 2 amended

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Part 2” and insert:

Part 2A

Table

<i>Cross-border Justice Act 2008</i>	s. 48 def. of <i>WA police order</i>
<i>Restraining Orders Act 1997</i>	s. 3(1) def. of <i>police order</i> s. 7A(e)



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