FAMILY VIOLENCE LEGISLATION REFORM BILL 2024
EXPLANATORY MEMORANDUM

General Effect of the Bill

This Bill focusses on mandating the use of electronic monitoring in respect of certain family violence perpetrators. In addition, there are a range of amendments aimed at enhancing the operation and effectiveness of electronic monitoring in Western Australia.

The effect of this Bill is that where an eligible person is being considered for a relevant order by a judicial officer, a court or the Prisoners Review Board, they are to be subject to a mandatory electronic monitoring condition, unless exceptional circumstances exist.

The Bill also enhances the sharing of electronic monitoring information with the Western Australian Police.

General explanation of which people are captured by the new mandatory electronic monitoring provisions

To define the cohorts within the scope of this Bill, the term 'family violence offence' in the *Bail Act 1982* (WA), the *Sentence Administration Act 2003* (WA) and the *Sentencing Act 1995* (WA) has been modified. Provisions that rely on the current term will be consequentially amended.

The current definition of 'family violence offence' references:

(a) an offence against the *Restraining Orders Act 1997* (WA) section 61(1) or (1A); or
(b) an offence against *The Criminal Code* (WA) 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.

This current definition will be renamed 'family violence offence (category B)'. A 'family violence offence (category A)' is the same as family violence offence (category B) but excludes the offences in paragraph (a).

There are three cohorts captured under this Bill in respect of bail orders, certain sentencing orders, early release orders and post sentence supervision orders.

Cohort	Description of Cohort
A	The person is subject to a family violence restraining order (FVRO) and is subsequently accused or convicted of a family violence offence (category A) committed against a person protected by the FVRO.
B	The person is subject to a serial family violence offender declaration and is accused or convicted of a family violence offence (category B).
C	The person is released from prison under an early release order or a PSSO for a family violence offence (category A) and is subject to an FVRO.

Exceptional Circumstances

The requirement to impose electronic monitoring will not apply if the court or the Prisoners Review Board is satisfied that exceptional circumstances exist.

Finding exceptional circumstances is a very high threshold and would be determined on a case-by-case basis. The Bill does not define, restrict or provide statutory guidance as to what constitutes exceptional circumstances; Courts and the Prisoners Review Board are well versed at interpreting and applying such provisions.

Part 1 — Preliminary

1. Short title

This clause provides that this is the *Family Violence Legislation Reform Act 2024*.

2. Commencement

Paragraph (a) provides that Part 1 comes into operation when the Act receives the Royal Assent (assent day).

Paragraph (b) provides that Part 4, except section 38, commences on a date that is dependent on when Schedule 1 to the *Criminal Law (Mental Impairment) Act 2023* (WA) comes into operation. The *Criminal Law (Mental Impairment) Act 2023* (WA) received the Royal Assent on 13 April 2023 but only Part 1 is in operation and the remainder of the Act will come into operation on a date set by proclamation.

Subparagraph (i) accounts for the situation where the *Criminal Law (Mental Impairment) Act 2023* (WA) comes into operation on or before the assent day of this Act by providing that Part 4, except section 38, commences on the day after the Royal Assent.

Subparagraph (ii) accounts for the situation where Schedule 1 to the *Criminal Law (Mental Impairment) Act 2023* (WA) comes into operation after the assent day by providing that Part 4, except section 38, commences immediately thereafter.

Paragraph (c) provides that Part 5, Part 6 (except sections 43, 44 and 45) and Part 10 come into operation on the day after the Royal Assent. This commencement provision allows certain amendments to come into immediate operation.

See clauses 38 and 57 for more information about this provision.

Paragraph (d) provides that for the rest of the Act, different provisions may come into operation on different days, through proclamation.

Part 2 — *Bail Act 1982* amended

3. Act amended

This clause provides that Part 2 amends the *Bail Act 1982* (WA) (Bail Act).

4. Section 3 amended

Subclause (1) deletes the definition of ***family violence offence*** in section 3(1) because this will be replaced by new terms and corresponding definitions in the specific sections of the Bail Act where the new terms will be used.

Subclause (2) inserts a new term, ***electronic monitoring condition***, into section 3(1) of the Bail Act, which means an electronic monitoring condition that is imposed under Schedule 1 Part E clause 1 under a grant of bail.

Part E is a new Part inserted into Schedule 1 (by clause 33) which deals with conditions that must be imposed on a grant of bail for particular accused persons, as distinct from Part D which deals with conditions that may be imposed on a grant of bail.

Subclause (3) provides that four new offences – offences against proposed sections 50M(1) or (2) and 50V(1) and (2) – that will be created by this Bill are serious offences for the purposes of the Bail Act, by inserting them into the definition of ***serious offence*** in section 3(1). These new offences deal with the —

a. failure to wear an approved electronic monitoring device;
b. failure to permit the installation of an approved electronic monitoring device at the place where the prisoner resides;
c. failure to charge the approved monitoring device so as to ensure the device is at all times operational; and
d. entry into an exclusion zone without reasonable excuse.

5. Section 6 amended

Section 6 sets out the arresting police officer's duty to consider bail.

Because of the introduction of a new clause 3G into Schedule 1 Part C (inserted by clause 30 of this Bill), which deals with bail in cases of family violence involving an accused who is bound by a family violence restraining order, it is necessary to amend

section 6 to include reference to the new clause 3G as a provision which affects the operation of the duty to consider bail.

6. Section 7 amended

Section 7 deals with the consideration of bail by a court.

Because of the insertion of a new clause 3G into Schedule 1 Part C, which deals with bail in cases of family violence involving an accused who is bound by a family violence restraining order (clause 30), it is necessary to amend section 7 to include reference to the new clause 3G.

In addition, the heading to section 7 is amended to read **Court to consider bail for unconvicted accused**.

7. Section 9 amended

Section 9 deals with the deferral of a bail decision until more information is obtained.

Because of the insertion of proposed section 24B by this Bill, which allows a judicial officer to request that a community corrections officer make a list of conditions in rules made under section 50U that may be applied to the accused, it is necessary to insert a reference to section 24B in section 9(1)(b).

8. Section 11 amended

Section 11 deals with the accused's rights following a grant of bail.

Because of the insertion of proposed section 50Q by this Bill, which allows the CEO (corrections) to revoke bail, it is necessary to insert a reference to section 50Q in section 11(1)(e).

9. Section 13 replaced

Section 13 sets out who has jurisdiction to grant bail.

This clause proposes to replace the existing section 13 with a new provision that deals with the jurisdiction to grant bail as well as how that jurisdiction is to be exercised.

Proposed section 13(1) confirms that the circumstances in which a judicial officer may grant bail are set out in Schedule 1 Part A, and that the exercise of the power to grant bail must be exercised in accordance with Part III of the Bail Act as well as Schedule 1 Parts B, C, D and E.

Except for the inclusion of a reference to proposed Schedule 1 Part E which deals with conditions that must be imposed on a grant of bail for particular accused persons, proposed section 13(1) reflects current section 13(1).

Proposed section 13(2) replicates current section 13(2) with an additional reference to Schedule 1 Part D clause 3, which deals with a home detention condition under a grant of bail.

Proposed section 13(3) is modelled on proposed section 13(2) and is required because of the insertion of Schedule 1 Part E clause 1, which deals with an electronic monitoring condition under a grant of bail (see clause 33).

The effect of new sections 13(2) and (3) is that only a judicial officer (other than a justice) can impose a home detention condition or an electronic monitoring condition under a grant of bail. A police officer or other authorised officer do not have jurisdiction to impose such a condition.

10. Section 17AA inserted

This clause inserts a new section 17AA which deals with conditions on bail that must be imposed and is necessary to give effect to the policy of subjecting certain family and domestic violence offenders to electronic monitoring conditions on a grant of bail. It is not appropriate to amend section 17 because that section deals with conditions on bail that may be imposed.

Proposed section 17AA provides that a judicial officer must impose an electronic monitoring condition on a grant of bail under Schedule 1 Part E clause 1 in relation to certain accused persons.

11. Section 24A amended

This clause inserts a new subsection (5) into section 24A.

The purpose of this new subsection is to confirm that the report prepared by a community corrections officer need not include a recommendation as to whether the accused is suitable for electronic monitoring under a home detention condition in relation to persons under Schedule 1 Part C clause 3F(1) or 3G(1).

Schedule 1 Part C clauses 3F(1) and 3G(1) deal with persons within the scope of this reform who are required to be subject to an electronic monitoring condition (except in exceptional circumstances). Given that the accused would almost certainly be subject to an electronic monitoring condition, there is little value in requiring a recommendation regarding suitability of electronic monitoring.

12. Section 24B inserted

This clause inserts new section 24B which accounts for situations where bail is granted with a mandatory electronic monitoring condition, as required by Schedule 1 Part C clauses 3F(4A) and (4B) and 3G(4) and (5).

Ordinarily, in respect of a home detention condition under a grant of bail, or orders imposed at sentencing which include electronic monitoring, a report would be prepared by a community corrections officer. Here, because the imposition of an electronic monitoring condition is mandatory, the report by a community corrections officer would not always be necessary.

Notwithstanding, proposed section 24B(1) allows a judicial officer who is required to consider bail for a person who must be subject to an electronic monitoring requirement the option to request a list of conditions in rules made under proposed section 50U (see clause 21) that may be applied to the accused by the CEO (corrections) while the accused is subject to the electronic monitoring condition.

Proposed section 24B(2) provides that if such a list is requested, a community corrections officer must prepare a list as soon as practicable and provide copies to the judicial officer, the accused or the accused's solicitor or counsel.

13. Section 26 amended

Section 26 relates to the record of bail decision and reasons.

Because of the insertion of a new clause 3G into Schedule 1 Part C, which deals with bail in cases of family violence involving an accused who is bound by a family violence restraining order (clause 30), it is necessary to amend section 26(2)(aa) to include reference to the new clause 3G.

In addition, amendments are made to sections 26(1) and (2)(b) to remove reference to gender-specific language by replacing the terms ‘he’ and ‘him’ with ‘the officer or justice’ or ‘the judicial officer’, as the case requires, in accordance with current drafting conventions.

One further amendment is made in subparagraph (2)(c) to replace the words “therefor shall” with the words “for the decision must”, to update the language of the Bail Act.

14. Section 27A amended

This clause amends section 27A to insert a requirement upon a judicial officer who grants bail subject to an electronic monitoring condition to provide a copy of the bail record form and the bail undertaking to the CEO (corrections). This is so that the CEO (corrections) can ensure the electronic monitoring condition can be properly administered and managed by community corrections officers in the Department of Justice.

This clause also changes the word ‘shall’ to ‘must’, which reflects current drafting conventions.

In addition, the heading to section 27A is amended 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

Section 28 deals with when a bail undertaking is required and the nature of a bail undertaking.

Subclauses (1) and (2)(a) amend references to gender-specific language in sections 28(1) and (2)(a) by replacing the term ‘he’ with ‘the accused’, in accordance with current drafting conventions.

Subclause (2)(b), amongst other things, replaces current section 28(2)(c) with a new paragraph that amends references to gender-specific language in section 28(2)(c) by removing ‘he’ and ‘him’ and replacing them with ‘the accused’, in accordance with current drafting conventions.

In addition, current section 28(2)(d) is replaced by a paragraph that removes gender-specific language by replacing ‘he’ with ‘the accused’, replaces the outdated terms ‘which’ and ‘pursuant to’ with ‘that’ and ‘under’, and updates the reference to Schedule 1 Part D clause 3, in accordance with current drafting conventions.

Finally, a new section 28(2)(e) is inserted, modelled on section 28(2)(d), to refer to the new electronic monitoring condition in Schedule 1 Part E clause 1, and to make this form part of the bail undertaking that the accused must enter into, if granted bail.

Subclause (2)(c) also amends the last line in section 28(2) to clarify that the reference to clause 1 is a reference to clause 1 of Part D.

In addition, the heading to section 13 is amended to read **Nature of bail undertaking and when required**.

16. Section 31A amended

Section 31A deals with amending the conditions on bail during a trial.

This clause replaces current section 31A(2)(c) with a new paragraph that allows a judicial officer to add an electronic monitoring condition by inserting a reference to Schedule 1 Part D clause 2 or 3, or Schedule 1 Part E clause 1.

In addition, the heading to section 31A is amended to read **Amending conditions on bail during trial**.

17. Section 46 amended

Section 46 deals with a surety's power to arrest an accused where there are reasonable grounds to believe that the accused is not complying with their bail undertaking or that the accused has breached their bail undertaking.

This clause amends section 46(1)(a) by inserting a new subparagraph (iv) which refers to the new electronic monitoring condition in section 28(2)(e) (inserted by clause 16 of the Bill), thereby empowering the surety to arrest the accused if they are not complying with, or have breached, that condition.

18. Section 50A replaced

Current section 50A of the Bail Act sets out the power of the CEO (corrections). This provision will be relocated to proposed new section 66H (inserted by clause 26).

New section 50A inserted by this clause replaces the current provision with a new clause that clarifies the application of Part VIA in relation to home detention conditions (including electronic monitoring imposed as part of that condition, imposed under Schedule 1 Part D clause 3) only.

To avoid doubt, paragraph (b) of proposed new section 50A provides that the part does not apply to an electronic monitoring condition imposed under Schedule 1 Part E clause 1.

19. Section 50E amended

This clause makes a minor amendment to current section 50E, which deals with the substitution of a different place of detention and conditions by the CEO (corrections) in relation to a home detention condition.

In practice, the CEO (corrections) does the things stated in paragraphs (a) and (b) either in combination or in isolation, as the case requires. Inserting the word 'or' at the end of paragraph (a) makes it clear that these provisions are disjunctive.

This drafting style is replicated in proposed section 50P (see clause 22).

20. Section 50G amended

Section 50G sets out the procedure following an arrest after revocation of bail under section 50F.

This clause deletes section 50G(1) and inserts four new subsections.

Proposed new subsections (1) and (1A) replicate current subsection (1), but breaks it into two subsections for ease of reading.

Proposed new subsections (1B) and (1C) are inserted to address the uncertainty as to who the "appropriate judicial officer" to hear the matter is where an accused has been committed from the Magistrates Court to the District Court, but has not yet appeared before that court. Proposed subsections (1B) and (1C) are modelled on current section 54A which deals with a similar situation where an accused is required to show cause as to why bail should not be varied or revoked in certain circumstances. This amendment makes it clear that the appropriate judicial officer is that of the court that made the committal order.

21. Section 50M inserted

Part VIA deals with the administration of home detention conditions.

Proposed new section 50M makes it an offence to fail to comply with the new directions inserted into Schedule 1 Part D clause 3(5) (by clause 32(4)(c) of the Bill) in relation to charging the approved electronic monitoring device to ensure it remains operational, and not entering an exclusion zone.

Failure to comply with these directions compromises the ability to monitor the accused's whereabouts and is a threat to the safety and wellbeing of a victim. The offences in new section 50M will also be considered serious offences for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA) (see clause 36). This allows police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

The penalties for the new offences in section 50M are imprisonment for 3 years and a fine of $36,000, which is consistent with the penalty in section 118(6) of the *Sentence Administration Act 2003* (WA), which deals with a person who, without reasonable excuse, damages, removes or interferes with, the operation of, any monitoring equipment in such a way as to prevent or impede monitoring of a person's location.

Section 21(2) of the *Criminal Procedure Act 2004* (WA) provides that a prosecution for a simple offence must be commenced within 12 months after the date on which the offence was allegedly committed, unless another written law provides otherwise or the person consents. Proposed section 50M(3) overrides this restriction by expressly providing that a prosecution for an offence against section 50M(1) or (2) may be commenced at any time.

Proposed new subsection 50M(4) provides that a court may order the accused, if convicted, to pay a sum towards the costs and expenses of the accused's apprehension following commission of an offence against section 50M(1) or (2). Proposed section 50M(5) confirms that an order to pay costs and expenses associated with apprehension is in addition to any penalty imposed by the court.

Because clause 58 inserts a new evidentiary provision for proceedings for an offence against sections 50M(1) or (2), a note is inserted at the end of section 50M to direct the reader to that provision which is located at section 118A of the *Sentence Administration Act 2003* (WA).

22. Part 6B inserted

This clause inserts new Part 6B into the Bail Act.

Proposed Part 6B is aligned with provisions in current Part VIA which are applicable to electronic monitoring.

Proposed section 50N is modelled on proposed section 50A and confirms that Part 6B governs the administration of an electronic monitoring condition imposed under Schedule 1 Part E clause 1.

Proposed section 50O is modelled on current section 50D, which sets out the power of members of the Police Force. New section 50O allows members of the Police Force to ascertain whether an accused is complying with an electronic monitoring condition by requiring the accused to produce a copy of the bail undertaking, as well as any notice given by the CEO (corrections) which specify a different place where the approved electronic monitoring device is to be installed. Failure to comply with a

requirement to produce such documents is an offence punishable by a fine of up to $2,000.

Proposed section 50P is modelled on section 50E. This provision is aimed at providing the CEO (corrections) with power to substitute a place where an approved electronic monitoring device is required to be installed for the purpose of facilitating electronic monitoring of the accused.

While the judicial officer granting bail would specify a place under a grant of bail where an approved electronic monitoring device is to be installed, paragraph (a) of proposed section 50P accounts for situations where the accused, for example, moves house or changes their living arrangements. This may occur for a range of reasons, such as the sale of a house, the end of a rental agreement, or the place becoming no longer suitable, and avoids the need to bring the accused before a judicial officer to adjust the grant of bail to reflect the new place where the approved electronic monitoring device is installed.

Proposed paragraph 50P(b) allows the CEO (corrections) to require the accused to comply with conditions contained in a report that was provided to a judicial officer by a community corrections officer which the accused may be subject to.

However, unlike a home detention condition which may be imposed at the discretion of a judicial officer following consideration of a suitability report, electronic monitoring must be imposed unless exceptional circumstances exist. In the absence of a suitability report, the judicial officer may choose to request more information prior to granting bail under sections 9, 24, 24A or 24B.

Proposed section 50Q is modelled on current section 50F. This new provision allows the CEO (corrections), in their absolute discretion, to revoke bail and issue a warrant directed to all members of the Police Force to have the accused arrested and brought before an appropriate judicial officer. The judicial officer may then remand the accused in custody to appear at the time and place specified, or grant fresh bail.

The exercise of this power would be used in cases where the accused fails to comply with the bail undertaking or conditions attached to the grant of bail. To ensure transparency, the CEO (corrections) is required to provide written reasons for the

revocation of bail, unless the CEO (corrections) is of the opinion that it would be in the interests of the accused or any other person, or the public, to withhold those reasons.

Proposed section 50R is modelled on current section 50G. This provision requires that an accused who is arrested under a warrant issued by the CEO (corrections) must be brought before a judicial officer for bail to be considered, in light of the revocation.

However, if the accused was arrested within 24 hours of when they are required to appear in accordance with the bail undertaking, they may be held in custody and brought before a judicial officer at that time.

Proposed section 50R also provides that where an accused has been committed from the Magistrates Court to the District Court, but has not yet appeared, that the "appropriate judicial officer" is of the court that made the committal order.

In dealing with the accused, a judicial officer may remand the accused in custody until they are required to appear, or grant fresh bail.

Proposed section 50S is modelled on current section 50H. This provision makes it clear that no duty of procedural fairness or other natural justice measures apply when the CEO exercises a power under proposed Part 6B.

Bail comes with conditions that the accused must comply with, and given that the failure to comply with those conditions could put a victim or the community at risk, the CEO (corrections) must be empowered to act summarily.

To strike an appropriate balance between victim safety and the rights of the accused, safeguard have been put in place to mitigate the abrogation of natural justice which may lead to arbitrary decisions or decisions which involve an abuse of power. These include the requirement for the CEO (corrections) to provide reasons for decisions, and provision for the prompt appearance of the accused before a judicial officer so an application for bail, or the circumstances that gave rise to the revocation of bail, may be considered.

Proposed section 50T is modelled on current section 50J. This provision allows the CEO (corrections) to delegate, either specifically or generally, the powers or duties conferred under this Part, other than the power of delegation. This is to enable officers

of the Department of Justice other than the CEO (corrections) to perform the power or duty promptly as required.

Proposed section 50U is modelled on current section 50L. This provision allows the CEO (corrections) to make rules, which are to be approved by the Minister, to ensure the accused complies with electronic monitoring conditions.

Rules are considered an appropriate mechanism for regulating compliance as they can be enacted by the CEO (corrections) in timely fashion for the proper management of accused persons who are subject to electronic monitoring.

To avoid doubt, subsection (3) expressly provides that sections 41 and 42 of the *Interpretation Act 1984* (WA) do not apply to these rules. Sections 41 and 42 require publication in the *Government Gazette* and the requirement to be laid before each House of Parliament..

Proposed new 50V makes it an offence to fail to comply with the new directions contained in proposed Schedule 1 Part E Clause 1(5) (see clause 32) that deal with the accused —

a. wearing an approved electronic monitoring device;
b. permitting the installation of an approved electronic monitoring device at the place where the prisoner resides or, if the accused does not have a place of residence, at any other place specified by the community corrections officer;
c. charging the approved monitoring device so as to ensure the device is at all times operational;
d. not entering an exclusion zone.

Failure to comply with these directions compromises the ability to monitor the accused's whereabouts and is a threat to the safety and wellbeing of a victim. As such, the offences in proposed 50V will be considered serious offences for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA) (see clause 36). This means allows police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

The offences are punishable by imprisonment for 3 years and a fine of $36,000 which is consistent with the new penalty in section 118(6) of the *Sentence Administration Act 2003* (WA), which deals with a person who, without reasonable excuse, damages, 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.

Section 21(2) of the *Criminal Procedure Act 2004* (WA) provides that a prosecution for a simple offence must be commenced within 12 months after the date on which the offence was allegedly committed, unless another written law provides otherwise or the person consents. Proposed section 50V(3) overrides this restriction by expressly providing that a prosecution for an offence against section 50V(1) or (2) may be commenced at any time.

Proposed section 50V(4) provides that a court may order the accused, if convicted, to pay a sum towards the costs and expenses of the accused's apprehension following commission of an offence against section 50V(1) or (2). Proposed section 50V(5) provides that an order to pay costs and expenses associated with apprehension is in addition to any penalty imposed by the court.

Also, because clause 58 inserts a new evidentiary provision for proceedings for an offence against section 50V, a note is inserted at the end of section 50V to direct the reader to proposed new section 118A of the Sentence Administration Act.

23. Section 54 amended

Part VII deals with the enforcement of bail undertakings and section 54 deals with situations where the bailed accused may be required to appear before a judicial officer to show cause as to why a variation or revocation of bail should not occur.

This clause inserts a new subparagraph (iv) into section 54(1)(a) to account for a breach of an electronic monitoring condition under the grant of bail.

24. Section 55 amended

Section 55 sets out the options that are available to a judicial officer if satisfied that —

a. the accused is not likely to appear at the time and place specified, or if they fail to appear, to appear as soon as practicable thereafter;
b. the accused is, has, or is likely to be, in breach of a condition of the bail undertaking imposed under Schedule 1 Part D Clause 2;
c. the accused is, or has been, in breach of a home detention condition; or
d. any of the grounds in section 54(1)(b) have been established.

This clause inserts a new subparagraph (bb) into section 55(1) to provide for a breach of an electronic monitoring condition under the grant of bail.

In addition, this clause amends references to gender-specific and outdated language in section 55 by replacing the terms ‘he’, ‘his’ and ‘shall’ with ‘the accused’, ‘the accused’s’, ‘the judicial officer’ and ‘must’, as the context requires, in accordance with current drafting conventions.

In addition, the heading to section 55 is amended to read **Judicial officer may revoke bail of accused before court under s. 54**.

25. Section 66C amended

Section 66C deals with the protection of terrorist intelligence information in bail proceedings.

This clause inserts references to proposed new section 24B in section 66C(1)(c), which allows a judicial officer to request that a community corrections officer make a list of conditions in rules made under section 50U that may be applied to the accused.

26. Sections 66F to 66H inserted

Proposed section 66F deals with the disclosure of electronic monitoring information to allow the sharing of electronic monitoring data between the Department of Justice and the Western Australia Police Force.

Officers of the Department of Justice currently supervise persons who are electronically monitored in the community. To enhance victim safety, this Bill will allow

police to arrest, without warrant, persons who breach an electronic monitoring requirement in certain ways and commence a prosecution.

To ensure police can apprehend persons suspected of breaching an electronic monitoring requirement, investigate the suspected offence and commence a prosecution in an expeditious manner, this clause inserts new provisions to facilitate access by the Police to electronic monitoring information held by the Department of Justice.

Proposed section 66F(1) defines ***electronic monitoring information*** to mean orders, directions, requirements or conditions (collectively referred to as ***EM orders***) about electronic monitoring under the Bail Act, as well as any information that relates to EM orders, including, for example, information about the movements of persons subject to EM orders.

Subsection (1) also provides for the new term, ***relevant employee***, which means a person employed in the department designated as the Police Service. The term 'relevant employee' is used in this provision to allow public servants who work in the Western Australia Police Force to access and use the electronic monitoring information in support of their police officer colleagues.

Proposed subsections 66F(2) provides that the CEO (corrections) may disclose any electronic monitoring information to a police officer or relevant employee. The police officer or relevant employee may use the electronic monitoring information in the performance of <u>any</u> of their functions. It is intended that the electronic monitoring information may be used by police to investigate any matter, including matters that are not connected to the prevention of family violence

Proposed subsection 66F(3) is intended to allow the CEO (corrections) the ability to share electronic monitoring information in any manner or format that is appropriate, including by allowing direct access to Department of Justice operational systems or databases.

Proposed section 66F(5) requires the CEO (corrections) to establish procedures for making electronic monitoring information available to the Western Australia Police Force.

Proposed section 66G provides that the disclosure of electronic monitoring information under section 66F is not subject to any civil or criminal liability, or considered a breach of confidentiality, or considered a breach of professional ethics, standards or conduct, provided the disclosure is made in good faith.

Proposed section 66H replicates current section 50A, which deals with the powers of the CEO (corrections).

27. Schedule 1 amended

This clause amends the reference to the sections of the Act to which Schedule 1 applies by inserting a reference to section 17AA.

28. Schedule 1 Part C clause 1 amended

This clause amends Schedule 1 Part C clause 1 to include reference to new clause 3G, which deals with bail in cases of family violence involving an accused who is bound by a family violence restraining order (inserted by clause 30 of this Bill).

29. Schedule 1 Part C clause 3F amended

Schedule 1 Part C clause 3F deals with bail in cases of family violence offences involving serial family violence offenders.

Schedule 1 Part C clause 3F(2) creates a presumption against bail by providing that bail is to be refused unless the judicial officer is satisfied there are exceptional reasons why the accused should not be kept in custody. This is the default position.

In the event that the judicial officer is satisfied that exceptional reasons exist for the granting of bail, Schedule 1 Part C clause 3F(4) provides that consideration must be given to imposing a home detention condition that includes electronic monitoring.

Te cohort captured by Schedule 1 Part C clause 3F is to be subject to electronic monitoring if granted bail. To achieve this objective, subclause (1) inserts a new subclause (1A) into clause 3F.

Clause 29 of the Bill inserts new subclause 3F(1A), which provides for the term ***family violence offence (category B)***. This new term has the same meaning as ‘family

violence offence' currently in section 3(1) of the Bail Act (which will be deleted by clause 4(1) of the Bill).

Subclauses (2), (3) and (4) amend current references to 'family violence offence' to 'family violence offence (category B)' in Schedule 1 Part C clauses 3F(1), (2) and (3).

Subclause (5) then inserts two new subclauses after Schedule 1 Part C clause 3F(4).

Proposed subclause 3F(4A) provides that where bail is granted with a home detention condition, an electronic monitoring condition must also be imposed under Schedule 1 Part D clause 3(4A) (inserted by clause 32 of the Bill), unless the judicial officer is satisfied there are exceptional circumstances.

Proposed subclause 3F(4B) provides that where bail is granted without a home detention condition, an electronic monitoring condition must be imposed under Schedule 1 Part E clause 1 (inserted by clause 33 of the Bill), unless the judicial officer is satisfied there are exceptional circumstances.

Subclause (6) amends Schedule 1 Part C clause 3F(6) to delete the words "considered the imposition of" and replace it with "imposed" to reflect the removal of the discretion whether to impose electronic monitoring.

This subclause should be read together with clause 63 of the Bill, which amends section 33HA of the *Sentencing Act 1995* (WA) to require the imposition of electronic monitoring under a pre-sentence order.

In addition, the heading to Schedule 1 Part C clause 3F is amended to read **Bail in cases of family violence offence (category B) involving serial family violence offender**.

30. Schedule 1 Part C clause 3G inserted

This clause inserts new clause 3G, which is modelled on clause 3F, into Schedule 1 Part C to address persons bound by a family violence restraining order who commit a 'family violence offence (category A)' offence against a person protected by that order.

Proposed subclause 3G(1) sets out the circumstances in which it applies.

Proposed subclause (2) inserts two terms – ***family violence offence (category A)*** and ***family violence restraining order***.

The difference between 'family violence offence (category A)' and 'family violence offence (category B) is that the former does not include a breach of a family violence restraining order or a breach of a violence restraining order.

The term ***family violence restraining order*** has the same meaning as the term in section 3(1) of the *Restraining Orders Act 1997* (WA).

Proposed subclause (3) provides that where Schedule 1 Part C clause 3G applies, bail can only be granted by a judicial officer, other than a justice.

Proposed subclause (4) provides that where bail is granted with a home detention condition, an electronic monitoring condition must also be imposed under Schedule 1 Part D clause 3(4A) (inserted by clause 32 of the Bill), unless the judicial officer is satisfied there are exceptional circumstances.

Proposed subclause (5) provides that where bail is granted without a home detention condition, an electronic monitoring condition must be imposed under Schedule 1 Part E clause 1 (inserted by clause 33 of the Bill), unless the judicial officer is satisfied there are exceptional circumstances.

Proposed subclause (6) confirms that where bail is granted in a particular case under Schedule 1 Part C clause 3G(3), bail may continue on the same terms and conditions for any subsequent appearance in that case.

Proposed subclause (7) provides that Schedule 1 Part C clause 3G does not apply where the court has imposed an electronic monitoring requirement under section 33HA of the *Sentencing Act 1995* (WA). This is to avoid conflict with that provision (as amended by clause 63 of this Bill) which requires the imposition of electronic monitoring under a pre-sentence order.

31. Schedule 1 Part C clause 4 amended

Because of the insertion of a new clause 3G into Schedule 1 Part C, which deals with bail in cases of family violence involving an accused who is bound by a family violence

restraining order (clause 30), it is necessary to amend Schedule 1 Part C clause 4 to include reference to the new clause 3G.

32. Schedule 1 Part D clause 3 amended

Schedule 1 Part D deals with conditions which may be imposed on a grant of bail, and clause 3 makes provision for a home detention condition.

Subclause (1)(a) makes a minor amendment to current drafting to make it clear that home detention can be imposed on a 17-year-old

Subclause (1)(b) amends reference to gender-specific language in Schedule 1 Part D clause 3(2)(a) by replacing the term ‘his’ with ‘the accused’s’, in accordance with contemporary drafting conventions.

Subclause (2) amends clause 3(4) to confirm that persons who are dealt with under Schedule 1 Part C clause 3F(1) or 3G(1) are not subject to this clause; rather, they are dealt with under proposed subclause (4A) which provides that if a home detention is imposed, an electronic monitoring condition must also be imposed and that the accused is to be under the supervision of a community corrections officer and comply with any directions given by that officer under clause 3(5).

Proposed subclause (4B) provides that an electronic monitoring condition does not apply if the judicial officer is satisfied there are exceptional circumstances.

Subclause (4) inserts two new directions into Schedule 1 Part D clause 3(5) which support the enforcement of electronic monitoring by community corrections officers and police.

The new directions allow a community corrections officer to direct an offender to charge the electronic monitoring device they are directed to wear to ensure the device is always operational and to require that the offender not enter an ‘exclusion zone’.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose of monitoring the whereabouts of the offender.

An exclusion zone is a protected area specific to a victim or other persons – it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone, which is intended to protect the safety and wellbeing of a victim.

33. Schedule 1 Part E inserted

Schedule 1 deals with the jurisdiction as to bail and related matters.

This clause gives effect to the policy of mandating certain family violence offenders to electronic monitoring by inserting new Part E into Schedule 1, which makes provision for conditions that must be imposed on a grant of bail, as opposed to conditions that may be imposed under Schedule 1 Part D.

Proposed clauses 1(1) and (2) provide that if bail is granted under Schedule 1 Part C clause 3F or proposed clause 3G – the provisions of the Bail Act that deal with the two cohorts affected by this reform (i.e. a person who is subject to a family violence restraining order and is accused or convicted of a family violence offence committed against a person protected by the family violence restraining order, or a person who is a serial family violence offender who is accused or convicted of a family violence offence) – then an electronic monitoring condition must be imposed as a condition of bail, unless there are exceptional circumstances.

Proposed clause 1(3) provides that while the accused is on bail, they must be subject to electronic monitoring and be under the supervision of a community corrections officer and comply with directions given by the officer.

Proposed clause 1(4) sets out the powers of a community corrections officer. A community corrections officer may —

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 prisoner 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 monitoring device so as to ensure the device is at all times operational;
d. direct the accused not to enter an exclusion zone;
e. give any other reasonable direction that is necessary to properly electronically monitor the accused.

Proposed clause 1(5) allows a community corrections officer to suspend electronic monitoring if the community corrections officer is satisfied that it is not practicable to subject the accused to electronic monitoring or that it is not necessary for the accused to be subject to electronic monitoring.

In practice, a community corrections officer cannot, of their own volition, suspend electronic monitoring – this is governed by Department of Justice policy which requires approval of an Assistant Commissioner before electronic monitoring is suspended.

There are some legitimate examples of why electronic monitoring would be suspended; these include medical procedures, emergencies or lack of coverage in remote areas.

Other considerations may include where the accused is changing their place of residence, which may warrant the suspension of electronic monitoring pending installation at the new premises. Similarly, if an electronic monitoring device is installed at the accused's place of employment and the accused subsequently ceases employment, the community corrections officer may suspend electronic monitoring.

Proposed clause 1(6) provides that the purpose of electronic monitoring is to enable the location of the accused to be monitored.

Proposed clause 1(7) reflects the position that children under the age of 18 are not to be subject to electronic monitoring.

34. Schedule 2 amended

A ***serious offence*** is defined in section 3(1) and includes an offence described in Schedule 2. Commission of a serious offence affects consideration for bail in the manner set out in section 16A and Schedule 1 Part C clause 3A.

In short, Schedule 1 Part C clause 3A provides that if a person commits a serious offence while on bail, or while subject to an early release order (i.e. a parole order or a re-entry release order), bail must be refused unless the judicial officer or authorised officer (as the case may be) is satisfied there are exceptional reasons why the accused should not be kept in custody – this is what is referred to as a presumption against bail.

This clause amends Schedule 2 by inserting the new offences created by this Bill, as well as the offence at section 118(6) of the *Sentence Administration Act 2003* (WA), as serious offences for the purposes of enlivening the presumption against bail. These offences include:

***Sentence Administration Act 2003* (WA)**	
Failure to comply with requirement about approved electronic monitoring device	Sections 30(2), 57(3), 74G(2)
Failure to comply with requirement about not entering area of the State	Sections 30(3), 57(4), 74G(3)
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	Section 118(6)
***Sentencing Act 1995* (WA)**	
Failure to comply with order about approved electronic monitoring device	Sections 33H(10A), 75(10A), 84C(10A)
Failure to comply with order about not entering area of the State	Sections 33H(10B), 75(10B), 84C(10B)
Failure to comply with direction about approved electronic monitoring device	Sections 33HA(5A), 67A(6A), 76A(3A), 84CA(4A)
Failure to comply with direction about not entering area of the State	Sections 33HA(5B), 67A(6B), 76A(3B), 84CA(4B)

Part 3 — *Criminal Investigation Act 2006* amended

35. Act amended

This clause provides that Part 3 amends the *Criminal Investigation Act 2006* (WA).

36. Section 128 amended

The power to arrest a person who is accused of, or has committed, an offence is ordinarily exercised pursuant to a warrant issued by a court. However, the *Criminal Investigation Act 2006* (WA) confers powers on a police officer or public officer to

arrest, without a warrant, in specified circumstances, such as in respect of a 'serious offence' as defined in section 128(1).

The ability to arrest without a warrant evinces an intent to protect victims, including victims of family violence, by abrogating the requirement to obtain a warrant to arrest. This clause proposes to amend section 128(1) by inserting a range of offences created by this Bill, and deeming them to be serious offences, to allow police to arrest a suspect without a warrant.

The offences defined as serious offences for the purposes of section 128(1) are those offences where a person subject to an electronic monitoring direction, order or requirement, does not comply with certain directions, orders or requirements, which include:

a. The following offences under the *Bail Act 1982* (WA):
    i. Sections 50M(1) or (2);
    ii. Sections 50V(1) or (2).
b. The following offences under the *High Risk Serious Offenders Act 2020* (WA):
    i. Section 80(1).
c. The following offences under the *Sentence Administration Act 2003* (WA):
    i. Sections 30(2) or (3);
    ii. Sections 57(3) or (4);
    iii. Sections 74G(2) or (3);
    iv. Section 118(6).
d. The following offences under the *Sentencing Act 1995* (WA):
    i. Sections 33H(10A) or (10B);
    ii. Sections 33HA(5A) or (5B);
    iii. Sections 67A(6A) or (6B);
    iv. Sections 75(10A) or (10B);
    v. Sections 76A(3A) or (3B);
    vi. Sections 84C(10A) or (10B);
    vii. Sections 84CA(4A) or (4B).

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

37. Act amended

This clause provides that Part 4 amends the *Criminal Law (Mental Impairment) Act 2023* (WA).

38. Section 403 deleted

This clause deletes section 403 of the *Criminal Law (Mental Impairment) Act 2023* (WA).

This is required if this Bill is enacted prior to the commencement of section 403 of the *Criminal Law (Mental Impairment) Act 2023* (WA). This is because section 403 of the *Criminal Law (Mental Impairment) Act 2023* (WA) and clause 57 of this Bill both seek to amend section 98 of the *Sentence Administration Act 2003* (WA).

If this Bill commences prior to the *Criminal Law (Mental Impairment) Act 2023* (WA):

a. this clause and clause 57(2) would be commenced by proclamation at a time when the *Criminal Law (Mental Impairment) Act 2023* (WA) is ready to commence;
b. clause 57(1) would be commenced by proclamation;
c. clause 57(3) would never be commenced.

If the *Criminal Law (Mental Impairment) Act 2023* (WA) commences prior to this Bill:

a. this clause and clause 57(1) and (2) would never be commenced; and
b. clause 57(3) would be commenced by proclamation.

39. Schedule 1 amended

The offence at section 300(1) of *The Criminal Code* was introduced by the *Family Violence Legislation Reform Act 2020* (WA).

This clause inserts the offence at section 300(1) of *The Criminal Code* into Schedule 1 Division 1 Subdivision 3 to the *Criminal Law (Mental Impairment) Act 2023* (WA) to make it an offence for which a custody order may be made under that Act.

This ensures the Schedule to the *Criminal Law (Mental Impairment) Act 2023* (WA) mirrors the Schedule to the *High Risk Serious Offenders Act 2020* (WA).

Part 5 — *Criminal Law (Mentally Impaired Accused) Act 1996* amended

40. Act amended

This clause provides that Part 5 amends the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA).

41. Schedule 1 amended

The offence at section 300(1) of *The Criminal Code* was introduced by the *Family Violence Legislation Reform Act 2020* (WA).

This clause inserts the offence at section 300(1) of *The Criminal Code* into Schedule 1 to the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) to make it an offence for which a custody order must be made under that Act.

This ensures the Schedule to the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) mirrors the Schedule to the *High Risk Serious Offenders Act 2020* (WA).

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

42. Act amended

This clause provides that Part 6 amends the *High Risk Serious Offenders Act 2020* (WA).

43. Section 31 amended

Section 31 of the *High Risk Serious Offenders Act 2020* (WA) deals with electronic monitoring conditions under a restriction order.

This clause inserts two new directions into section 31(3) which provide for greater enforcement of electronic monitoring by community corrections officers and police.

The new directions allow a community corrections officer to direct an offender to charge the electronic monitoring device they are directed to wear to ensure the device is always operational and to require that the offender not enter an 'exclusion zone'.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose of monitoring the whereabouts of the offender.

An exclusion zone is a protected area specific to a victim or other persons – it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone as it protects the safety and wellbeing of a victim.

Failure to comply with these directions compromises the ability to monitor the offender's whereabouts and is a threat to the safety and wellbeing of a victim. The rationale for enshrining these directions in law is so that the existing offence under section 80 can apply. In turn, the offence at section 80 will be deemed a serious offence (under clause 36 of this Bill) for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA), which will allow police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

44. Section 80 amended

This clause seeks to amend the penalty for contravening supervision order in section 80(1) of the *High Risk Serious Offenders Act 2020* (WA) to make it consistent with the penalties throughout this Bill.

To this end, the current penalty of imprisonment for three years is amended to imprisonment for three years and a fine of $36,000.

45. Section 81A inserted

Proposed section 81A is a new evidentiary provision that is modelled on section 70 of the *Road Traffic Act 1974* (WA).

At present, in proceedings for electronic monitoring offences, a community corrections officer will have to attend court and give oral evidence about certain matters. It is

intended that evidence in respect of those matters be able to be given in writing, as opposed to verbally and in person.

Proposed section 81A seeks to allow the CEO or a community corrections officer to give a certificate, in the approved form, that certifies relevant matters (as defined) or any document attached to the certificate, as evidence.

This does not, in any way, undermine an accused's right to present their own evidence; it simply allows the CEO or a community corrections officer to give evidence about certain matters in relation to electronic monitoring equipment in writing, as opposed to appearing in court

46. Schedule 1 amended

The offence at section 300(1) of *The Criminal Code* was introduced by the *Family Violence Legislation Reform Act 2020* (WA).

This clause inserts the offence at section 300(1) of *The Criminal Code* into Schedule 1 Division 1 Subdivision 3 to the *High Risk Serious Offenders Act 2020* (WA) to make it a serious offence for the purpose of consideration for a restriction order under that Act and for the purpose of consideration for a post sentence supervision order under Part 5A of the *Sentence Administration Act 2003* (WA).

Part 7 — *Restraining Orders Act 1997* amended

47. Act amended

This clause provides that Part 7 amends the *Restraining Orders Act 1997* (WA).

48. Section 5A amended

Section 5A defines the term ***family violence***.

This clause amends the definition of family violence to include reference to patterns of behaviour that constitute coercive control.

While coercive and controlling behaviour is already provided as a form of family violence, this amendment seeks to better capture the contemporary understanding

that coercive control is a pattern of conduct perpetrated over time which has the effect of creating and maintaining power and dominance over another person.

Part 8 — *Sentence Administration Act 2003* amended

49. Act amended

This clause provides that Part 8 amends the *Sentence Administration Act 2003* (WA).

50. Section 4 amended

Subclause (1) deletes the definition of ***family violence offence*** in section 4(2) because this will be replaced by new terms and corresponding definitions in the specific sections of the *Sentence Administration Act 2003* (WA) where the new terms will be used.

Proposed subclause (2) inserts three new terms – ***family violence offence (category A)***, ***family violence offence (category B)*** and ***family violence restraining order***. These terms are consistent with those introduced to the Bail Act.

The term ***family violence offence (category A)*** is the same as the current definition of family violence offence, except that it excludes references to offences against the *Restraining Orders Act 1997* (WA) (in paragraph (a) of the current definition of 'family violence offence). This is because it is not intended that a breach of a family violence restraining order or a breach of a violence restraining order should, in and of itself, make a person subject to an electronic monitoring condition.

The term ***family violence offence (category B)*** is the same as the current definition of family violence offence because serial family violence offenders will be held to a higher level of accountability through the inclusion of breaches of family violence restraining orders and violence restraining orders.

This clause inserts a new term, ***family violence restraining order***, into section 4(2) of the *Sentence Administration Act 2003* (WA) and provides that the term has the same meaning as the term in section 3(1) of the *Restraining Orders Act 1997* (WA).

This term is inserted because a person who is bound by a family violence restraining order is to be subject to electronic monitoring under a parole order, re-entry release

order or a post sentence supervision order under the *Sentence Administration Act 2003* (WA).

By virtue of the meaning of family violence restraining order in the *Restraining Orders Act 1997* (WA), this term does not exclude interim family violence restraining orders.

51. Section 30 amended

Section 30 of the *Sentence Administration Act 2003* (WA) deals with additional requirements that may be imposed under a parole order.

Subclause (1)(b) inserts two new requirements which provide for greater enforcement of electronic monitoring by community corrections officers and police.

The new requirements allow the CEO to direct a prisoner to charge the electronic monitoring device they are directed to wear to ensure the device is always operational and to require that the prisoner not enter an 'exclusion zone'.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose of monitoring the whereabouts of the prisoner.

An exclusion zone is a protected area specific to a victim or another person – it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone as it protects the safety and wellbeing of a victim.

Failure to comply with these requirements compromises the ability to monitor the prisoner's whereabouts and is a threat to the safety and wellbeing of a victim. The rationale for enshrining these directions in law is so that a new offence can be created where a breach of such directions is deemed a serious offence for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA). This will allow police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

Subclause (1)(c) makes it clear that the Prisoners Review Board may imposes curfew and place restriction requirements. It also clarifies that any curfew requirement cannot exceed 12 hours in any 24-hour period.

Subclause (2) deletes current section 30(2) and inserts six new subsections. Section 30(2) is deleted because it confers a discretion whether to impose an electronic monitoring requirement, which is contrary to the intent of the reform to mandate the imposition of an electronic monitoring requirement.

Proposed sections 30(2) and (3) insert new offence provisions that deal with the following directions that may be imposed under sections 30(1)(c), (d) or (e) —

a. failure to wear an approved electronic monitoring device;
b. failure to permit the installation of an approved electronic monitoring device at the place where the prisoner resides;
c. failure to charge the approved monitoring device so as to ensure the device is at all times operational; and
d. without reasonable excuse, enter an exclusion zone.

Currently, conduct of this nature can only be dealt with by way of suspension (by the CEO or the Prisoners Review Board) or cancellation (by the Prisoners Review Board) of the parole order and the power to suspend or cancel the parole order is discretionary. If suspension or cancellation occurs, the warrant of commitment that relates to the sentence of imprisonment is activated[1] and, while a warrant may be issued,[2] this amendment is intended to allow police to intervene and arrest the suspect, without warrant. Where the parole order is suspended or cancelled, the prisoner is then liable to resume serving the fixed term in custody.

The offences are punishable by imprisonment for 3 years and a fine of $36,000. This penalty is consistent with that in section 118(6), which deals with a person who, without reasonable excuse, damages, 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.

Proposed section 30(4) sets out the cohorts for whom an electronic monitoring requirement under proposed section 30(7) must be imposed unless there are exceptional circumstances. Proposed section 30(7) also includes a reference to the

[1] Under section 70(1) of the *Sentence Administration Act 2003* (WA).
[2] Under section 70(2) of the *Sentence Administration Act 2003* (WA).

Governor to account for parole orders made in respect of prisoners servicing terms of life or indefinite imprisonment.

For the sake of clarity, the two cohorts in respect of whom an electronic monitoring requirement must be imposed are:

a. A prisoner serving a sentence of imprisonment for a family violence offence (category B) who is also a serial family violence offender.
b. A prisoner serving a sentence of imprisonment for a family violence offence (category A) who is also bound by a family violence restraining order.

Proposed sections 30(5) and (6) are modelled on equivalent provisions in the *High Risk Serious Offenders Act 2020* (WA)[3] and the *Sentence Administration Act 2003* (WA)[4] to clarify that the affected cohorts will be subject to this reform, regardless of the order of terms of service during a term of imprisonment. This is to ensure that offenders serving multiple fixed terms of imprisonment are subject to this reform as long as they have served a fixed term for a family violence offence (category A) or a fixed term for a family violence offence (category B).

Section 4(2) of the *Sentence Administration Act 2003* (WA) defines the terms ***family violence offence (category A)***, ***family violence offence (category B)*** and ***serial family violence offender***. (see clause 50).

In addition, the heading to section 30 is amended to read **Additional requirements for parole order**.

52. Section 57 amended

Section 57 of the *Sentence Administration Act 2003* (WA) deals with additional requirements that may be imposed under a re-entry release order.

This clause deletes sections 57(2) and (3) and inserts seven new subsections.

Section 57(2) is deleted and replaced with a similar provision that includes two additional requirements to require the prisoner to charge the electronic monitoring

[3] See definition of ***serious offender under custodial sentence*** in section 3.
[4] See definition of ***prisoner*** in section 74A.

device they are directed to wear to ensure the device is always operational and to require that the prisoner not enter an ‘exclusion zone’.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose of monitoring the whereabouts of the prisoner.

An exclusion zone is a protected area specific to a victim or another person – it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone as it protects the safety and wellbeing of a victim.

Failure to comply with these requirements compromises the ability to monitor the prisoner’s whereabouts and is a threat to the safety and wellbeing of a victim. The rationale for enshrining these directions in law is so that a new offence can be created where a breach of such direction is deemed a serious offence for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA). The effect of this is that police can arrest a suspect without warrant in the interests of victim safety and wellbeing.

Two further requirements are inserted as paragraphs (e) and (f) in section 57(2) to expressly provide for a curfew and place restriction requirement. It also clarifies that any curfew requirement cannot exceed 12 hours in any 24-hour period.

Section 57(2) retains a discretion to impose an electronic monitoring requirement because the Prisoners Review Board may wish to impose such a requirement in respect of prisoners outside the scope of this reform.

Proposed sections 57(3) and (4) insert new offence provisions that deal with the following requirements under section 57(2) —

a. failure to wear an approved electronic monitoring device;
b. failure to permit the installation of an approved electronic monitoring device at the place where the prisoner resides;
c. failure to charge the approved monitoring device so as to ensure the device is at all times operational; and
d. without reasonable excuse, enter an exclusion zone.

Currently, conduct of this nature can only be dealt with by way of suspension (by the CEO or the Prisoners Review Board) or cancellation (by the Prisoners Review Board) of the parole order and the power to suspend or cancel the parole order is discretionary. If suspension or cancellation occurs, the warrant of commitment that relates to the sentence of imprisonment is activated[5] and, while a warrant may be issued,[6] this amendment is intended to allow police to intervene and arrest the suspect, without warrant. Where the parole order is suspended or cancelled, the prisoner is then liable to resume serving the fixed term in custody.

The offences are punishable by imprisonment for 3 years and a fine of $36,000 which is consistent with the penalty in section 118(6), which deals with a person who, without reasonable excuse, damages, 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.

Proposed section 57(5) sets out the cohorts for whom an electronic monitoring requirement must be imposed under proposed section 57(8) unless there are exceptional circumstances.

For the sake of clarity, the two cohorts in respect of whom an electronic monitoring requirement must be imposed are:

a. A prisoner serving a sentence of imprisonment for a family violence offence (category B) who is also a serial family violence offender.
b. A prisoner serving a sentence of imprisonment for a family violence offence (category A) who is also bound by a family violence restraining order.

Proposed sections 57(6) and (7) are modelled on equivalent provisions in the *High Risk Serious Offenders Act 2020* (WA)[7] and the *Sentence Administration Act 2003* (WA)[8] to clarify that the affected cohorts will be subject to this reform, regardless of the order of terms of service during a term of imprisonment. This is to ensure that offenders serving multiple fixed terms of imprisonment are subject to this reform as

[5] Under section 70(1) of the *Sentence Administration Act 2003* (WA).
[6] Under section 70(2) of the *Sentence Administration Act 2003* (WA).
[7] See definition of ***serious offender under custodial sentence*** in section 3.
[8] See definition of ***prisoner*** in section 74A.

long as they have served a fixed term for a family violence offence (category A) or a fixed term for a family violence offence (category B).

Section 4(2) of the *Sentence Administration Act 2003* (WA) defines the terms ***family violence offence (category A)***, ***family violence offence (category B)*** and ***serial family violence offender***. (see clause 50).

53. Section 74G amended

Section 74G of the *Sentence Administration Act 2003* (WA) deals with additional requirements that may be imposed under a post sentence supervision order.

Subclause (1)(b) inserts two new requirements into section 74G(1)(e) which provide for greater enforcement of electronic monitoring by community corrections officers and police.

The new requirements allow the CEO to direct a supervised offender to charge the electronic monitoring device they are directed to wear to ensure the device is always operational and to require that the supervised offender not enter an 'exclusion zone'.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose of monitoring the whereabouts of the supervised offender.

An exclusion zone is a protected area specific to a victim or another person– it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone as it protects the safety and wellbeing of a victim.

Failure to comply with these requirements compromises the ability to monitor the supervised offender's whereabouts and is a threat to the safety and wellbeing of a victim. The rationale for enshrining these directions in law is so that a new offence can be created where a breach of such direction is deemed a serious offence for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA), which will allow police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

Subclause (1)(c) inserts two new requirements in response to a request from the Prisoners Review Board. Although the Prisoners Review Board imposes curfew and place restriction requirements, there is a degree of contrivance, given the absence of express provisions. This amendment makes express provision for a curfew and place restriction requirement. It also clarifies that any curfew requirement cannot exceed 12 hours in any 24-hour period.

Subclause (2) deletes current section 74G(2) and inserts four new subsections. Section 74G(2) is deleted because it confers a discretion whether to impose an electronic monitoring requirement, whereas Government policy is to require the imposition of an electronic monitoring requirement.

Proposed sections 74G(2) and (3) insert new offence provisions that deal with the following directions that the CEO may impose under section 74G(1)(e) —

a. failure to wear an approved electronic monitoring device;
b. failure to permit the installation of an approved electronic monitoring device at the place where the supervised offender resides;
c. failure to charge the approved monitoring device so as to ensure the device is at all times operational; and
d. without reasonable excuse, enter an exclusion zone.

Currently, conduct of this nature can only be dealt with as a breach of the post sentence supervision order, which constitutes an offence under section 74L of the *Sentence Administration Act 2003* (WA). The procedure for dealing with that breach is the same as a simple offence. This amendment is intended to allow police to intervene and arrest the suspect, without warrant.

The offences are punishable by imprisonment for 3 years and a fine of $36,000 which is consistent with the new penalty in section 118(6), which deals with a person who, without reasonable excuse, damages, 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.

Proposed section 74G(4) sets out the cohorts for whom an electronic monitoring requirement under proposed section 74G(5) must be imposed unless there are exceptional circumstances.

For the sake of clarity, the two cohorts in respect of whom an electronic monitoring requirement must be imposed are:

a. A prisoner serving a sentence of imprisonment for a family violence offence (category B) who is also a serial family violence offender.
b. A prisoner serving a sentence of imprisonment for a family violence offence (category A) who is also bound by a family violence restraining order.

Section 4(2) of the *Sentence Administration Act 2003* (WA) defines the terms ***family violence offence (category A)***, ***family violence offence (category B)*** and ***serial family violence offender***. (see clause 50).

54. Section 95 amended

Section 95 of the *Sentence Administration Act 2003* (WA) deals with delegation by the CEO and provides that the CEO may delegate to any person any power or duty of the CEO.

This clause inserts a reference to section 66F of the *Bail Act 1982* (WA) which deals with disclosing electronic monitoring information. The effect of this amendment is that the CEO may delegate the powers conferred on them in relation to the disclosure of electronic monitoring information to another officer of the Department of Justice.

55. Section 97DA inserted

Proposed section 97DA deals with the disclosure of electronic monitoring information to allow the sharing of electronic monitoring data between the Department of Justice and the Western Australia Police Force.

Officers of the Department of Justice supervise persons who are electronically monitored in the community and this Bill proposes to allow police to arrest, without warrant, persons who breach an electronic monitoring requirement in certain ways and commence a prosecution.

To ensure police can apprehend persons suspected of breaching an electronic monitoring requirement, investigate the suspected offence and commence a prosecution in an expeditious manner, it is necessary to enact provisions to facilitate direct access by Police to electronic monitoring information held by the Department of Justice.

Proposed section 97DA(1) defines ***electronic monitoring information*** to mean orders, directions or requirements (collectively referred to as ***EM orders***) about electronic monitoring under the *High Risk Serious Offenders Act 2020* (WA), the *Sentence Administration Act 2003* (WA) or the *Sentencing Act 1995* (WA), as well as any information that relates to EM orders, including, for example, information about the movements of persons subject to EM orders.

Subsection (1) also provides for the new term, ***relevant employee***, which means a person employed in the department designated as the Police Service. The term 'relevant employee' is used in this provision to allow public servants who work in the Western Australia Police Force to access and use the electronic monitoring information in support of their police officer colleagues.

Proposed subsections 97DA(2) and (4) make provision for the CEO to disclose electronic monitoring information to the Western Australia Police Force to perform any policing function. It is intended that electronic monitoring information may be used by police to investigate matters that are not connected to the prevention of family violence. For example, the electronic monitoring information could be used to assist in an investigation of unrelated offences against persons who are not victims of family violence.

Proposed subsection 97DA(3) is intended to allow the CEO the ability to share electronic monitoring information in any manner or format that is appropriate, including by allowing direct access to Department of Justice operational systems or databases.

Proposed section 97DA(5) requires the CEO to establish procedures for making electronic monitoring information available to the Western Australia Police Force.

56. Section 97E amended

This clause amends sections 97E(1) and (2) to extend the protections contained in section 97E to proposed section 97DA.

The effect is that the disclosure of electronic monitoring information under section 97DA is not to be subject to any civil or criminal liability, considered a breach of confidentiality or considered a breach of professional ethics, standards or conduct, provided the disclosure is made in good faith.

In addition, the heading to section 97E is amended to read **Disclosure under s. 97A, 97B, 97C, 97D and 97DA not subject to other laws and effect of disclosure**.

57. Section 98 amended

Amendments in this clause are necessary because there are provisions in the *Criminal Law (Mental Impairment) Act 2023* (WA) that have not commenced. In particular, section 403 of the *Criminal Law (Mental Impairment) Act 2023* (WA) and this clause both seek to amend section 98 of the *Sentence Administration Act 2003* (WA). On that basis, this Bill must account for which provisions come into operation first and ensure the necessary amendments are enacted in section 98.

It is intended that when the *Criminal Law (Mental Impairment) Act 2023* (WA) and this Bill are both in operation, section 98(1) of the *Sentence Administration Act 2003* (WA) should read:

> **98. Appointment**
>
> (1) The staff, including community corrections officers, needed for the purposes of this Act, the *Sentencing Act 1995*, the *Criminal Law (Mental Impairment) Act 2023* and the *Bail Act 1982* Parts VIA and 6B —

To achieve this, it is intended that:

a. If this Bill commences prior to the *Criminal Law (Mental Impairment) Act 2023* (WA):
    i. Clause 38 and subclause 57(1) would be commenced by proclamation when the *Criminal Law (Mental Impairment) Act 2023* (WA) comes into operation. This will ensure the amendment in section 403 of the *Criminal Law (Mental Impairment) Act 2023* (WA) is given effect.
    ii. Subclause 57(2) would be commenced by proclamation. This will ensure section 98(1) of the *Sentence Administration Act 2003* (WA) will operate as required for the purposes of this Bill by including the reference to Part 6B of the *Bail Act 1982* (WA).
    iii. Subclause 57(3) would never be commenced because this is a contingency for subclause 57(2), which will have already taken effect.

b. If the *Criminal Law (Mental Impairment) Act 2023* (WA) comes into operation prior to this Bill, clause 38 and subclauses 57(1) and (2) would not be commenced. Only subclause 57(3) would be commenced by proclamation to ensure that section 98(1) of the *Sentence Administration Act 2003* (WA) operates as intended for the purposes of this Bill by including the reference to Part 6B of the *Bail Act 1982* (WA).

58. Section 118A inserted

Proposed section 118A is a new evidentiary provision that is modelled on section 70 of the *Road Traffic Act 1974* (WA).

Ordinarily, in proceedings for electronic monitoring offences, a community corrections officer will attend court and give oral evidence about certain matters. It is intended that evidence in respect of those matters be able to be given in writing, as opposed to verbally and in person.

Proposed section 118A seeks to allow the CEO or a community corrections officer to give a certificate, in the approved form, that certifies relevant matters (as defined) or any document attached to the certificate, as evidence.

This does not, in any way, undermine an accused's right to present their own evidence; it simply allows the CEO or a community corrections officer to give evidence about

certain matters in relation to electronic monitoring equipment in writing, as opposed to appearing in court.

59. Part 11 Division 3 inserted

Part 11 of the *Sentence Administration Act 2003* (WA) deals with transitional and validation provisions.

This clause inserts a new Division 3 into Part 11 which deals with **Provisions for the *Family Violence Legislation Reform Act 2024***.

Because reports may be prepared by the Prisoners Review Board in respect of prisoners generally (under section 12) or Schedule 3 prisoners (under section 12A), or by the CEO in respect of parole consideration (under section 17), re-entry release order applications (under section 51) or post sentence supervision order consideration (under section 74C), such reports will not address considerations introduced by this Bill, including:

- charging the approved electronic monitoring device;
- not to enter an exclusion zone;
- a curfew requirement;
- a place restriction requirement.

Reports prepared by the Prisoners Review Board or the CEO are a precondition to the exercise of the power of the Governor or the Prisoners Review Board to make parole orders, re-entry release orders and post sentence supervision orders. Therefore, such reports need to address the release considerations (for a parole order or a re-entry release order) or the PSSO considerations (for a post sentence supervision order).

However, as reports by the Prisoners Review Board or the CEO will not address the release considerations and PSSO considerations until the new requirements commence, proposed sections 131 to 134 allow the Prisoners Review Board or the CEO to amend or supplement the original report that was prepared to address the considerations introduced by this Bill. Any amended or supplementary report is taken to be an original report.

Finally, because a prisoner applies for a re-entry release order, it is possible that an application may be made prior to commencement day. In this regard, proposed section 135 provides that such an application is taken to be made under section 57, as amended by this Bill.

Part 9 — *Sentencing Act 1995* amended

60. Act amended

This clause provides that Part 8 amends the *Sentencing Act 1995* (WA).

61. Section 4 amended

Subclause (1) deletes the definition of ***family violence offence*** in section 4(1) because this will be replaced by new terms and corresponding definitions in the specific sections of the *Sentencing Act 1995* (WA) where the new terms will be used.

Proposed subclause (2) inserts three new terms – ***family violence offence (category A)***, ***family violence offence (category B)*** and ***family violence restraining order***.

To ensure the correct cohorts are captured by this reform, the current term 'family violence offence' will be deleted and replaced with two categories – category A and category B.

The term ***family violence offence (category A)*** is the same as the current definition of family violence offence, except that it excludes the definition in paragraph (a) which references offences against the *Restraining Orders Act 1997.* This is because it is not intended that a breach of a family violence restraining order or a breach of a violence restraining order should, in and of itself, make a person subject to an electronic monitoring condition.

The term ***family violence offence (category B)*** is the same as the current definition of family violence offence because serial family violence offenders will be held to a

higher level of accountability through the inclusion of breaches of family violence restraining orders and violence restraining orders.

This clause inserts a new term, ***family violence restraining order***, into section 4(1) of the *Sentencing Act 1995* (WA) and provides that the term has the same meaning as the term in section 3(1) of the *Restraining Orders Act 1997* (WA).

This term is inserted because a person who is bound by a family violence restraining order will be subject to electronic monitoring under a pre-sentence order, a community based order, an intensive supervision order and a conditional suspended imprisonment order under the *Sentencing Act 1995* (WA).

62. Section 33H amended

Section 33H deals with a curfew requirement under a pre-sentence order. Under a curfew requirement, an offender must submit to surveillance or monitoring as ordered by a speciality court or a community corrections officer.

Subclause (1) inserts two new measures which provide for greater enforcement of surveillance and monitoring by community corrections officers and police and allows a speciality court or community corrections officer to order an offender to do one or more of these measures.

The new measures allow a speciality court or community corrections officer to order an offender to charge the electronic monitoring device they are ordered to wear to ensure the device is always operational and to order that the offender not enter an ‘exclusion zone’.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose to allow for surveillance and monitoring of the offender – in this context by ensuring the movements of the offender are restricted during periods when there is a high risk of the offender offending.

An exclusion zone is a protected area specific to a victim or other person – it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone as it protects the safety and wellbeing of a victim.

Failure to comply with these measures compromises the ability to monitor the offender's compliance with the curfew requirement and is a threat to the safety and wellbeing of a victim. The rationale for enshrining these orders in law is so that a new offence can be created where a breach of such order is a serious offence for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA). This will allow police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

Subclause (2) inserts new offence provisions that deal with the following orders that a speciality court or community corrections officer may give under section 33H(10) —

a. failure to wear an approved electronic monitoring device;
b. failure to permit the installation of an approved electronic monitoring device at the place where the prisoner resides;
c. failure to charge the approved monitoring device so as to ensure the device is at all times operational; and
d. without reasonable excuse, enter an exclusion zone.

Currently, conduct of this nature can only be dealt with by way of breach, with the CEO issuing a warrant to bring the offender before a court and the court then dealing with the breach. This amendment is intended to allow police to intervene and arrest the suspect, without warrant. While the suspect, if charged, may be considered for bail, the court that deals with the charge can either confirm, amend or cancel the pre-sentence order and sentence the offender for the offence for which the pre-sentence order was imposed.

The offences are punishable by imprisonment for 3 years and a fine of $36,000 which is consistent with the penalty in section 118(6) of the *Sentence Administration Act 2003* (WA), which deals with a person who, without reasonable excuse, damages, 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.

Also, because clause 58 inserts a new evidentiary provision for proceedings for an offence against section 33H(10A) or (10B), subclause (3) inserts a note after section 33H(15) to direct the reader to that provision located at section 118A of the *Sentence Administration Act 2003* (WA).

63. Section 33HA amended

Section 33HA deals with electronic monitoring under a pre-sentence order.

Subclause 63(1) deletes sections 33HA(1) to (4) and inserts four new subsections.

Proposed section 33HA(1) confirms the situations where section 33HA applies. This is where the offence for which the pre-sentence order is imposed is:

a. a family violence offence (category A) and the offender is bound by a family violence restraining order and a person against whom the offence was committed was protected by the family violence restraining order; or
b. a family violence offence (category B) and the offender is a serial family violence offender.

Section 4(1) of the *Sentencing Act 1995* (WA) defines the terms ***family violence offence (category A)***, ***family violence offence (category B)*** and ***serial family violence offender***. (see clause 61).

Proposed section 33HA(2) addresses an issue raised in *The State of Western Australia v Williams* [2022] WASCA 105 (Williams). It clarifies that even if the serial family violence declaration is made at the time of conviction, the offender is liable to the effects of the declaration in the same proceedings – i.e. that they be made subject to electronic monitoring.

Proposed section 33HA(3) sets out the cohorts for whom an electronic monitoring requirement under section 33HA must be imposed unless there are exceptional circumstances.

Proposed section 33HA(4) sets out the purpose of electronic monitoring, which is to enable the location of the offender to be monitored.

Subclause (2) amends section 33HA(5) by inserting two new measures which provide for greater enforcement of electronic monitoring by community corrections officers and police and allows a community corrections officer to order an offender to do one or more of these measures.

The new measures allow a community corrections officer to direct an offender to charge the electronic monitoring device they are directed to wear to ensure the device is always operational and to order that the offender not enter an 'exclusion zone'.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose of monitoring the whereabouts of the offender.

An exclusion zone is a protected area specific to a victim or other person – it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone as it protects the safety and wellbeing of a victim.

Failure to comply with these measures compromises the ability to monitor the offender's whereabouts and is a threat to the safety and wellbeing of a victim. The rationale for enshrining these directions in law is so that a new offence can be created where a breach of such directions is a serious offence for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA). This will allow police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

In subclause (3), proposed sections 33HA(5A) and (5B) insert new offence provisions that deal with the following directions under section 33HA(5) —

a. failure to wear an approved electronic monitoring device;
b. failure to permit the installation of an approved electronic monitoring device at the place where the prisoner resides;
c. failure to charge the approved monitoring device so as to ensure the device is at all times operational; and
d. without reasonable excuse, enter an exclusion zone.

Currently, conduct of this nature can only be dealt with by way of breach, with the CEO issuing a warrant to bring the offender before a court and the court then dealing with the breach. This amendment is intended to allow police to intervene and arrest the suspect, without warrant. While the suspect, if charged, may be considered for bail, the court that deals with the charge can either confirm, amend or cancel the pre-sentence order and sentence the offender for the offence for which the pre-sentence order was imposed.

The offences are punishable by imprisonment for 3 years and a fine of $36,000 which is consistent with the penalty in section 118(6) of the *Sentence Administration Act 2003* (WA), which deals with a person who, without reasonable excuse, damages, 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.

Also, because clause 58 inserts a new evidentiary provision for proceedings for an offence against section 33HA(5A) or (5B), subclause (4) inserts a note after section 33HA(7) to direct the reader to that provision, located at section 118A of the *Sentence Administration Act 2003* (WA).

64. Section 67A amended

Section 67A deals with electronic monitoring under a community based order.

Subclause (1) deletes current sections 67A(1) to (5) and inserts four new subsections.

Proposed new section 67A(1) provides that section 67A applies where the offence for which the community based order is imposed is:

a. a family violence offence (category A) and the offender is bound by a family violence restraining order and a person against whom the offence was committed was protected by that family violence restraining order; or
b. a family violence offence (category B) and the offender is a serial family violence offender.

Section 4(1) of the *Sentencing Act 1995* (WA) defines the terms ***family violence offence (category A)***, ***family violence offence (category B)*** and ***serial family violence offender***. (see clause 61).

Proposed section 67A(2) addresses an issue raised in *The State of Western Australia v Williams* [2022] WASCA 105 (Williams). It clarifies that even if the serial family violence declaration is made at the time of conviction, the offender is liable to the effects of the declaration in the same proceedings – i.e. that they be made subject to an electronic monitoring requirement.

Proposed section 67A(3) provides that where section 67A applies, an electronic monitoring requirement must be imposed unless the court is satisfied that there are exceptional circumstances.

Proposed section 67A(4) sets out the purpose of electronic monitoring, which is to enable the location of the offender to be monitored.

Subclause (2) amends section 67A(6) by inserting two new directions which provide for greater enforcement of electronic monitoring by community corrections officers and police and allows a community corrections officer to give one or more of these four orders in respect of an offender.

The new directions allow a community corrections officer to direct an offender to charge the electronic monitoring device they are directed to wear to ensure the device is always operational and to order that the offender not enter an 'exclusion zone'.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose of monitoring the whereabouts of the offender.

An exclusion zone is a protected area specific to a victim or other person – it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone as it protects the safety and wellbeing of a victim.

Failure to comply with these directions compromises the ability to monitor the offender's whereabouts and is a threat to the safety and wellbeing of a victim. The rationale for enshrining these directions in law is so that a new offence can be created where a breach of such direction is a serious offence for the purposes of section 128

of the *Criminal Investigation Act 2006* (WA). This will allow police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

In subclause (3), proposed sections 67A(6A) and (6B) insert new offence provisions that deal with the following requirements under section 67A(6) —

a. failure to wear an approved electronic monitoring device;
b. failure to permit the installation of an approved electronic monitoring device at the place where the prisoner resides;
c. failure to charge the approved monitoring device so as to ensure the device is at all times operational; and
d. without reasonable excuse, enter an exclusion zone.

Currently, conduct of this nature can only be dealt with as a breach of the community based order, which constitutes an offence under Part 18 Division 4 of the *Sentencing Act 1995* (WA). The procedure for dealing with that breach is the same as a simple offence. This amendment is intended to allow police to intervene and arrest the suspect, without warrant. While the suspect, if charged, may be considered for bail, the court that deals with the charge can either confirm, amend or cancel the community based order and sentence the offender for the offence for which the community based order was imposed as if it had just convicted the offender of that offence.

The offences are punishable by imprisonment for 3 years and a fine of $36,000 which is consistent with the penalty in section 118(6) of the *Sentence Administration Act 2003* (WA), which deals with a person who, without reasonable excuse, damages, 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.

Also, because clause 58 inserts a new evidentiary provision for proceedings for an offence against section 67A(6A) or (6B), subclause (4) inserts a note after section 67A(8) to direct the reader to that provision located at section 118A of the *Sentence Administration Act 2003* (WA).

65. Section 75 amended

Section 75 deals with a curfew requirement under an intensive supervision order. Under a curfew requirement, an offender must submit to surveillance or monitoring as ordered by a community corrections officer.

Subclause (1) inserts two new measures which provide for greater enforcement of surveillance and monitoring by community corrections officers and police and allows a community corrections officer to order an offender to do one or more of these measures.

The new measures allow a community corrections officer to order an offender to charge the electronic monitoring device they are ordered to wear to ensure the device is always operational and to order that the offender not enter an 'exclusion zone'.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose to allow for surveillance and monitoring of the offender – in this context by ensuring the movements of the offender are restricted during periods when there is a high risk of the offender offending.

An exclusion zone is a protected area specific to a victim or other person – it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone as it protects the safety and wellbeing of a victim.

Failure to comply with these orders compromises the ability to monitor the offender's compliance with the curfew requirement and is a threat to the safety and wellbeing of a victim. The rationale for enshrining these orders in law is so that a new offence can be created where a breach of such order is a serious offence for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA). This will allow police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

Subclause (2) inserts new offence provisions that deal with the following orders that a community corrections officer may give under section 75(10) —

a. failure to wear an approved electronic monitoring device;

b. failure to permit the installation of an approved electronic monitoring device at the place where the prisoner resides;
c. failure to charge the approved monitoring device so as to ensure the device is at all times operational; and
d. without reasonable excuse, enter an exclusion zone.

Currently, conduct of this nature can only be dealt with as a breach of the intensive supervision order, which constitutes an offence under Part 18 Division 4 of the *Sentencing Act 1995* (WA). The procedure for dealing with that breach is the same as a simple offence. This amendment is intended to allow police to intervene and arrest the suspect, without warrant. While the suspect, if charged, may be considered for bail, the court that deals with the charge can either confirm, amend or cancel the intensive supervision order and sentence the offender for the offence for which the intensive supervision order was imposed as if it had just convicted the offender of that offence.

The offences are punishable by imprisonment for 3 years and a fine of $36,000 which is consistent with the penalty in section 118(6) of the *Sentence Administration Act 2003* (WA), which deals with a person who, without reasonable excuse, damages, 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.

Also, because clause 58 inserts a new evidentiary provision for proceedings for an offence against section 75(10A) or (10B), subclause (3) inserts a note after section 75(15) to direct the reader to that provision located at section 118A of the *Sentence Administration Act 2003* (WA).

66. Section 76A amended

Section 76A deals with electronic monitoring requirement under an intensive supervision order.

Subclause (1) deletes sections 76A(1) and (1A).

Section 76A(1) is replaced by a redrafted provision to confirm the purpose of electronic monitoring, depending on the type of offender. New paragraph (a) essentially

replicates current section 76A(1). New paragraph (b) sets out the purpose of electronic monitoring in respect of the cohorts captured by this reform, which is to enable the location of the offender to be monitored.

Subclause (2) amends section 76A(2) to preserve the status quo, in that an electronic monitoring requirement will remain an option in all cases where an intensive supervision order is imposed, but excludes cases where electronic monitoring must be imposed under proposed section 76A(2C).

Subclause (3) inserts proposed section 76A(2A) which sets out the situations where section 76A(2C) applies, which is where the offence for which the intensive supervision order is imposed is:

a. a family violence offence (category A) and the offender is bound by a family violence restraining order and a person against whom the offence was committed was protected by the family violence restraining order; or
b. a family violence offence (category B) and the offender is a serial family violence offender.

Section 4(1) of the *Sentencing Act 1995* (WA) defines the terms ***family violence offence (category A)***, ***family violence offence (category B)*** and ***serial family violence offender***. (see clause 61).

Proposed section 76A(2B) addresses an issue raised in *The State of Western Australia v Williams* [2022] WASCA 105 (Williams). It clarifies that even if the serial family violence declaration is made at the time of conviction, the offender is liable to the effects of the declaration in the same proceedings – i.e. that they be made subject to electronic monitoring.

Proposed section 76A(2C) provides that where section 76A(2A) applies, an electronic monitoring requirement must be imposed unless there are exceptional circumstances.

Subclause (4) amends section 76A(3) by inserting two new directions which provide for greater enforcement of electronic monitoring by community corrections officers and police and allows a community corrections officer to give one or more of these four orders in respect of an offender.

The new directions allow a community corrections officer to direct an offender to charge the electronic monitoring device they are directed to wear to ensure the device is always operational and to order that the offender not enter an 'exclusion zone'.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose of monitoring the whereabouts of the offender.

An exclusion zone is a protected area specific to a victim or other person – it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone as it protects the safety and wellbeing of a victim.

Failure to comply with these directions compromises the ability to monitor the offender's whereabouts and is a threat to the safety and wellbeing of a victim. The rationale for enshrining these directions in law is so that a new offence can be created where a breach of such direction is deemed a serious offence for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA), which will allow police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

Subclause (5) inserts proposed sections 76A(3A) and (3B) which insert new offence provisions that deal with the following requirements under section 76A(3) —

a. failure to wear an approved electronic monitoring device;
b. failure to permit the installation of an approved electronic monitoring device at the place where the prisoner resides;
c. failure to charge the approved monitoring device so as to ensure the device is at all times operational; and
d. without reasonable excuse, enter an exclusion zone.

Currently, conduct of this nature can only be dealt with as a breach of the intensive supervision, which constitutes an offence under Part 18 Division 4 of the *Sentencing Act 1995* (WA). The procedure for dealing with that breach is the same as a simple offence. This amendment is intended to allow police to intervene and arrest the suspect, without warrant. While the suspect, if charged, may be considered for bail, the court that deals with the charge can either confirm, amend or cancel the intensive

supervision order and sentence the offender for the offence for which the intensive supervision order was imposed as if it had just convicted the offender of that offence.

The offences are punishable by imprisonment for 3 years and a fine of $36,000 which is consistent with the penalty in section 118(6) of the *Sentence Administration Act 2003* (WA), which deals with a person who, without reasonable excuse, damages, 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.

Also, because clause 58 inserts a new evidentiary provision for proceedings for an offence against section 76A(3A) or (3B), subclause (6) inserts a note after section 76A(6) to direct the reader to that provision located at section 118A of the *Sentence Administration Act 2003* (WA).

67. Section 84C amended

Section 84C deals with a curfew requirement under a conditional suspended imprisonment order. Under a curfew requirement, an offender must submit to surveillance or monitoring as ordered by a community corrections officer.

Subclause (1) inserts two new measures which provide for greater enforcement of surveillance and monitoring by community corrections officers and police and allows a speciality court or community corrections officer to order an offender to do one or more of these measures.

The new measures allow a speciality court or community corrections officer to order an offender to charge the electronic monitoring device they are ordered to wear to ensure the device is always operational and to order that the offender not enter an 'exclusion zone'.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose to allow for surveillance and monitoring of the offender – in this context by ensuring the movements of the offender are restricted during periods when there is a high risk of the offender offending.

An exclusion zone is a protected area specific to a victim or other person – it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone as it protects the safety and wellbeing of a victim.

Failure to comply with these orders compromises the ability to monitor the offender's compliance with the curfew requirement and is a threat to the safety and wellbeing of a victim. The rationale for enshrining these orders in law is so that a new offence can be created where a breach of such order is deemed a serious offence for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA), which will allow police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

Subclause (2) inserts new offence provisions that deal with the following orders that a community corrections officer may give under section 84C(10) —

a. failure to wear an approved electronic monitoring device;
b. failure to permit the installation of an approved electronic monitoring device at the place where the prisoner resides;
c. failure to charge the approved monitoring device so as to ensure the device is at all times operational; and
d. without reasonable excuse, enter an exclusion zone.

Currently, conduct of this nature can only be dealt with by breach of the conditional suspended imprisonment order, which constitutes an offence under section 84J of the *Sentencing Act 1995* (WA). The procedure for dealing with a breach is the same as a simple offence. This amendment is intended to allow police to intervene and arrest the suspect, without warrant. While the suspect, if charged, may be considered for bail, the court that deals with the charge can either confirm, amend or cancel the intensive supervision order and sentence the offender for the offence for which the community based order was imposed as if it had just convicted the offender of that offence.

The offences are punishable by imprisonment for 3 years and a fine of $36,000 which is consistent with the penalty in section 118(6) of the *Sentence Administration Act 2003* (WA), which deals with a person who, without reasonable excuse, damages, 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.

Also, because clause 58 inserts a new evidentiary provision for proceedings for an offence against section 84C(10A) or (10B), subclause (3) inserts a note after section 84C(15) to direct the reader to that provision located at section 118A of the *Sentence Administration Act 2003* (WA).

68. Section 84CA amended

Section 84CA deals with electronic monitoring requirement under a conditional suspended imprisonment order.

Subclause (1) deletes sections 84CA(1) and (1A).

Section 84CA(1) is replaced by a redrafted provision to confirm the purpose of electronic monitoring, depending on the type of offender. Paragraph (a) preserves the status quo, whereas paragraph (b) sets out the purpose of electronic monitoring in respect of the cohorts captured by this reform, which is to enable the location of the offender to be monitored.

Subclause (2) amends section 84CA(2) to preserve the status quo, in that an electronic monitoring requirement will remain an option in all cases where a conditional suspended imprisonment order is imposed but excludes cases where electronic monitoring must be imposed under proposed section 84CA(3C).

Subclause (3) amends section 84CA(3) to provide that the requirement to consider a report about the suitability of electronic monitoring in a particular case does not apply to cases where an electronic monitoring requirement must be imposed. In other cases where an electronic monitoring requirement is not mandatory, it will still be a requirement for the court to consider a report about the suitability of electronic monitoring.

Subclause (4) inserts proposed section 84CA(3A) which provides that section 84CA(3C) applies where the offence for which the conditional suspended imprisonment order is imposed is:

a. a family violence offence (category A) and the offender is bound by a family violence restraining order and a person against whom the offence was committed was protected by the family violence restraining order; or

b. a family violence offence (category B) and the offender is a serial family violence offender.

Section 4(1) of the *Sentencing Act 1995* (WA) defines the terms ***family violence offence (category A)***, ***family violence offence (category B)*** and ***serial family violence offender***. (see clause 61).

Proposed section 84CA(3B) addresses an issue raised in *The State of Western Australia v Williams* [2022] WASCA 105 (Williams). It clarifies that even if the serial family violence declaration is made at the time of conviction, the offender is liable to the effects of the declaration in the same proceedings – i.e. that they be made subject to electronic monitoring.

Proposed section 84CA(3C) provides that where section 84CA(3A) applies, an electronic monitoring requirement must be imposed unless there are exceptional circumstances.

Subclause (5) amends section 84CA(4) by inserting two new directions which provide for greater enforcement of electronic monitoring by community corrections officers and police and allows a community corrections officer to give one or more of these four orders in respect of an offender.

The new directions allow a community corrections officer to direct an offender to charge the electronic monitoring device they are directed to wear to ensure the device is always operational and to order that the offender not enter an ‘exclusion zone’.

Failure to charge an electronic monitoring device risks the in-built battery going flat, thereby rendering the device ineffective and undermining its purpose of monitoring the whereabouts of the offender.

An exclusion zone is a protected area specific to a victim or other person – it could be a place of residence, place of employment or other place frequented by a victim. A person subject to electronic monitoring is not to enter an exclusion zone as it protects the safety and wellbeing of a victim.

Failure to comply with these directions compromises the ability to monitor the offender’s whereabouts and is a threat to the safety and wellbeing of a victim. The

rationale for enshrining these directions in law is so that a new offence can be created where a breach of such direction is a serious offence for the purposes of section 128 of the *Criminal Investigation Act 2006* (WA). This will allow police to arrest a suspect without warrant in the interests of victim safety and wellbeing.

Subclause (6) inserts proposed sections 84CA(4A) and (4B) which insert new offence provisions that deal with the following requirements under section 84CA(4) —

a. failure to wear an approved electronic monitoring device;
b. failure to permit the installation of an approved electronic monitoring device at the place where the prisoner resides;
c. failure to charge the approved monitoring device so as to ensure the device is at all times operational; and
d. without reasonable excuse, enter an exclusion zone.

Currently, conduct of this nature can only be dealt with by breach of the conditional suspended imprisonment order, which constitutes an offence under section 84J of the *Sentencing Act 1995* (WA). The procedure for dealing with a breach is the same as a simple offence. This amendment is intended to allow police to intervene and arrest the suspect, without warrant. While the suspect, if charged, may be considered for bail, the court that deals with the charge can either confirm, amend or cancel the intensive supervision order and sentence the offender for the offence for which the community based order was imposed as if it had just convicted the offender of that offence.

The offences are punishable by imprisonment for 3 years and a fine of $36,000 which is consistent with the new penalty in section 118(6) of the *Sentence Administration Act 2003* (WA), which deals with a person who, without reasonable excuse, damages, 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.

Also, because clause 58 inserts a new evidentiary provision for proceedings for an offence against section 84CA(4A) or (4B), subclause (7) inserts a note after section 84CA(5) to direct the reader to that new provision, located at section 118A of the *Sentence Administration Act 2003* (WA).

69. Section 84J amended

Section 84J of the *Sentencing Act 1995* (WA) deals with breaches of a requirement under a sentence of conditional suspended imprisonment.

This clause provides that a breach of a requirement under section 84CA(4), including the new directions inserted by this Bill, are not to be treated as a breach offence; rather, they are to be treated as an offence under the relevant offence provisions inserted by this Bill. This is to ensure that the offender is liable to the increased penalty provided for in this Bill, and not the lower penalty associated with other breaches of conditions.

70. Section 97A amended

The decision in *The State of Western Australia v Williams* [2022] WASCA 105 (Williams) raises two issues where a court makes a serial family violence offender declaration:

- That the consequences for the offender are prospective only and that such a declaration only affects the offender's rights in the future and only where other future events occur.
- That the requirement that courts sentencing a serial family violence offender for family violence offences must have regard to imposing electronic monitoring, or the requirement to declare such offences as serious offences for the purposes of section 97A of the *Sentencing Act 1995* (WA) – which enlivens consideration for a post sentence supervision order under Part 5A of the *Sentence Administration Act 2003* (WA) or orders under the *High Risk Serious Offenders Act 2003* (WA) – only applies to future sentencing proceedings.

While section 97A(6) of the *Sentencing Act 1995* (WA) appears to operate without issue in cases where an offender has previously been declared a serial family violence offender, Williams indicates there is difficulty making the declaration in the same proceedings that the offender is declared a serial family violence offender.

This clause resolves the difficulty in Williams by amending section 97A(6) to clarify that a declaration under section 97A can be made at the time of the offender's conviction or by another court.

The heading to section 97A is also amended to read **Declaration of serious offence for purposes of *High Risk Serious Offenders Act 2020* and *Sentence Administration Act 2003* Part 5A** to better reflect that it applies to both Acts.

71. Section 124D amended

Because the current definition of ***family violence offence*** has been amended by clause 61, it is necessary to consequentially amend references to that term so that it reflects the equivalent term introduced by this Bill – i.e. ***family violence offence (category B)***.

Amendments are made to paragraphs (a) and (b) in the definition of ***prescribed offence***.

72. Section 124E amended

Because the current definition of ***family violence offence*** has been amended by clause 61, it is necessary to consequentially amend references to that term so that it reflects the equivalent term introduced by this Bill – i.e. ***family violence offence (category B)***.

Amendments are made to sections 124E(1), (4)(a) and (6)(b)(i).

73. Section 131 amended

Section 131 of the *Sentencing Act 1995* (WA) deals with breaches of a requirement under a conditional release order or a community order.

While conditional release orders are not relevant for the purposes of this Bill, community orders (which are defined in section 4(1) to mean community based orders or intensive supervision orders) are.

This clause provides that a breach of a requirement of a community order under sections 67A(6), 75(10) and 76A(3), including the new directions inserted by this Bill, are not to be treated as breach offences; rather, they are to be treated as offences under the relevant offence provisions inserted by this Bill. This is to ensure that the offender is liable to the increased penalty provided for in this Bill, and not the lower penalty associated with other breaches of conditions.

74. Schedule 1A amended

Schedule 1A to the *Sentencing Act 1995* (WA) deals with relevant indictable and simple offences for purposes of Part 2 Division 2A – Sentencing where declared criminal organisations involved.

Since the new offence at section 50O(2) of the Bail Act, mirrors the offence at section 50D(2) (see clause 21), it is appropriate that it be inserted into Schedule 1A.

Part 10 — Other Acts amended

75. Various references to Part 2 amended

This clause makes various minor amendments which were overlooked when Part 2A was inserted into the *Restraining Orders Act 1997* (WA).

The reference to Part 2 is deleted and replaced with the correct reference to Part 2A as follows:

- In the *Cross-border Justice Act 2008* (WA), in the definition of ***WA police order*** in section 48.
- In the *Restraining Orders Act 1997* (WA):
    - In the definition of ***police order*** in section 3(1).
    - In section 7A(e).