

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

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Western Australia

LEGISLATIVE COUNCIL

**Family Violence Legislation Reform (COVID-19
Response) Bill 2020**

A Bill for

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

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

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

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

2. Commencement

This Act comes into operation as follows —

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

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Part 2 — Sentencing Act 1995 amended

3. Act amended

This Part amends the *Sentencing Act 1995*.

4. Section 4 amended

In section 4(1) insert in alphabetical order:

approved electronic monitoring device means —

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

5. Section 33H amended

In section 33H(10):

- (a) delete “offender —” and insert:

offender to do 1 or both of the following —

- (b) delete paragraphs (a) and (b) and insert:

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

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1 **6. Section 72 amended**

2 In section 72:

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

4

5 75;

6

7 (b) after paragraph (c) insert:

8

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

11

12 **7. Section 75 amended**

13 In section 75(10):

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

15

16 an approved electronic monitoring device; or

17

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

20

21 an approved electronic monitoring device

22

23 **8. Section 76A inserted**

24 At the end of Part 10 insert:

25

26 **76A. Electronic monitoring requirement**

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

30 (a) a person; or

- 1 (b) a group of persons; or
2 (c) the community more generally.
- 3 (2) If a court considers that electronic monitoring should
4 occur in a particular case, the court may impose a
5 requirement (an *electronic monitoring requirement*)
6 under this section.
- 7 (3) If an electronic monitoring requirement is imposed, a
8 CCO may do 1 or both of the following —
- 9 (a) direct the offender to wear an approved
10 electronic monitoring device;
- 11 (b) direct the offender to permit the installation of
12 an approved electronic monitoring device at the
13 place where the offender resides or, if the
14 offender does not have a place of residence, at
15 any other place specified by the CCO.
- 16 (4) The term of an electronic monitoring requirement must
17 be set by the court when it imposes the requirement.
- 18 (5) An electronic monitoring requirement ceases to be in
19 force when its term ends, or when the ISO ceases to be
20 in force, whichever happens first.
- 21 (6) This section does not apply to an offender who, at the
22 time of sentencing, is under 18 years of age.
23

24 **9. Section 84 amended**

- 25 (1) In section 84 delete “CSI” and insert:
26
- 27 (1) CSI
28

s. 10

1 (2) At the end of section 84 insert:
2

3 (2) CSI may also contain an electronic monitoring
4 requirement under section 84CA as a primary
5 requirement.
6

7 **10. Section 84C amended**

8 In section 84C(10):

9 (a) in paragraph (a) delete “any device; or” and insert:
10

11 an approved electronic monitoring device; or
12

13 (b) in paragraph (b) delete “any device or equipment” and
14 insert:
15

16 an approved electronic monitoring device
17

18 **11. Section 84CA inserted**

19 At the end of Part 12 Division 1 insert:
20

21 **84CA. Electronic monitoring requirement**

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

25 (a) a person; or

26 (b) a group of persons; or

27 (c) the community more generally.

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

- 1 requirement (an *electronic monitoring requirement*)
2 under this section.
- 3 (3) An electronic monitoring requirement may be imposed
4 only if the court has received a report from the CEO
5 (corrections) about the suitability of electronic
6 monitoring in the particular case.
- 7 (4) If an electronic monitoring requirement is imposed, a
8 CCO may do 1 or both of the following —
- 9 (a) direct the offender to wear an approved
10 electronic monitoring device;
- 11 (b) direct the offender to permit the installation of
12 an approved electronic monitoring device at the
13 place where the offender resides or, if the
14 offender does not have a place of residence, at
15 any other place specified by the CCO.
- 16 (5) An electronic monitoring requirement ceases to be in
17 force when the suspension period ends.
18

19 **12. Section 147A inserted**

20 After section 147 insert:
21

22 **147A. Monitoring requirements: additional provisions**

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

s. 13

1 (b) while satisfied that it is not necessary for the
2 person to be subject to electronic monitoring.
3

4 **13. Schedule 1A amended**

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

6

7 s. 61(1), (1A)
8

1 **Part 3 — Sentence Administration Act 2003 amended**

2 **14. Act amended**

3 This Part amends the *Sentence Administration Act 2003*.

4 **15. Section 4 amended**

5 In section 4(2) insert in alphabetical order:

6

7 *approved electronic monitoring device* means —

- 8 (a) an electronic monitoring device that has been
9 approved by the CEO; and
10 (b) any equipment, wires or other items associated
11 with a device under paragraph (a);
12

13 **16. Section 30 amended**

14 In section 30:

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

17

18 an approved electronic monitoring device;

19

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

23

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

26

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

28

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

30

s. 17

- 1 (ii) permit the installation of an approved
- 2 electronic monitoring device at the
- 3 place where the prisoner resides;
- 4

5 **17. Section 57 amended**

6 In section 57(2):

- 7 (a) in paragraph (a) delete “any device for monitoring
- 8 purposes;” and insert:
- 9

10 an approved electronic monitoring device; or

- 11
- 12 (b) in paragraph (b) delete “any device or equipment at the
- 13 place where the prisoner resides for monitoring
- 14 purposes.” and insert:
- 15

16 an approved electronic monitoring device at the place

17 where the prisoner resides.

18

19 **18. Section 74G amended**

20 In section 74G:

- 21 (a) in paragraph (c) delete “any device for monitoring
- 22 purposes;” and insert:
- 23

24 an approved electronic monitoring device;

- 25
- 26 (b) in paragraph (d) delete “any device or equipment at the
- 27 place where the offender resides for monitoring
- 28 purposes;” and insert:
- 29

30 an approved electronic monitoring device at the place

31 where the offender resides;

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

- (i) wear an approved electronic monitoring device; or
- (ii) permit the installation of an approved electronic monitoring device at the place where the offender resides;

19. Section 118 amended

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

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

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

(2) After section 118(1) insert:

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

s. 19

- 1 (3) In section 118(2) delete “equipment to the CEO within a set”
2 and insert:
3
4 monitoring equipment to the CEO within a specified
5
6 (4) Delete section 118(3) and insert:
7
8 (3) A person who, without reasonable excuse, fails to
9 comply with, or contravenes, a direction given under
10 subsection (1A) or (2) commits an offence.
11 Penalty for this subsection: a fine of \$12 000 or
12 imprisonment for 12 months.
13
14 (5) In section 118(4) before “equipment.” insert:
15
16 monitoring
17
18 (6) At the end of section 118(5) insert:
19
20 Penalty for this subsection: a fine of \$12 000 or
21 imprisonment for 12 months.
22
23 (7) Delete section 118(6) and insert:
24
25 (6) A person who, without reasonable excuse, removes or
26 interferes with, or interferes with the operation of, any
27 monitoring equipment in such a way as to prevent or
28 impede monitoring of a person’s location, commits an
29 offence.
30 Penalty for this subsection: a fine of \$12 000 or
31 imprisonment for 12 months.
32

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

2

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

5

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

7 **20. Schedule 2 amended**

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

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10 61(1), (1A)

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Part 4 — *Bail Act 1982* amended

21. Act amended

This Part amends the *Bail Act 1982*.

22. Section 3 amended

In section 3(1) insert in alphabetical order:

approved electronic monitoring device means —

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

23. Section 16A amended

Delete section 16A(3).

24. Section 24A amended

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

condition, the officer must —

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

1 **25. Section 50K deleted**

2 Delete section 50K.

3 **26. Section 50L amended**

4 In section 50L(1):

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

6

7 an approved electronic monitoring device;

8

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

11

12 an approved electronic monitoring device

13

14 **27. Section 66E inserted**

15 After section 66D insert:

16

17 **66E. Retrieving monitoring equipment**

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

24

25 **28. Schedule 1 Part D clause 3 amended**

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

27

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

30

s. 28

- 1 (2) After Schedule 1 Part D clause 3(3) insert:
2
- 3 (4) A judicial officer who imposes a home detention condition
4 under this clause may, if a community corrections officer
5 under section 24A(4)(a) recommends that the accused is
6 suitable for electronic monitoring, direct that the accused,
7 while subject to a home detention condition —
- 8 (a) be subject to electronic monitoring under
9 subclause (5) so as to allow the location of the
10 accused to be monitored; and
- 11 (b) be under the supervision of a community
12 corrections officer and comply with the directions
13 of the community corrections officer under
14 subclause (5).
- 15 (5) For the purpose of the electronic monitoring of an accused,
16 a community corrections officer may do any or all of the
17 following —
- 18 (a) direct the accused to wear an approved electronic
19 monitoring device; and
- 20 (b) direct the accused to permit the installation of an
21 approved electronic monitoring device at the place
22 where the accused is to remain; and
- 23 (c) give any other reasonable direction to the accused
24 necessary for the proper administration of the
25 electronic monitoring of the accused.
- 26 (6) A community corrections officer may suspend the electronic
27 monitoring of an accused subject to direction under
28 subclause (4) —
- 29 (a) while satisfied that it is not practicable to subject
30 the accused to electronic monitoring; or
- 31 (b) while satisfied that it is not necessary for the
32 accused to be subject to electronic monitoring.

- 1 (7) A requirement that an accused subject to a home detention
2 condition while on bail wear an electronic monitoring
3 device cannot apply to a person who is under 18 years of
4 age.
5

1 **Part 5 — Restraining Orders Act 1997 amended**

2 **29. Act amended**

3 This Part amends the *Restraining Orders Act 1997*.

4 **30. Section 3 amended**

5 In section 3(1) insert in alphabetical order:

6

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

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

12

13 **31. Section 9 replaced**

14 Delete section 9 and insert:

15

16 **9. Fixing a hearing**

17 The rules of court may make provision for —

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

26

1 **32. Section 10 amended**

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

3

4 (1) A restraining order may be prepared in a manner
5 authorised under the rules of court and the rules may
6 make provision for —

7 (a) serving the respondent's copy and the
8 respondent's endorsement copy (if 1 is required
9 to be served) of the order on the person who is
10 bound by the order; and

11 (b) delivering the applicant's copy of the order
12 to —

13 (i) the person seeking to be protected by
14 the order; or

15 (ii) the parent or guardian of that person, if
16 the parent or guardian made the
17 application for the order on behalf of
18 that person;

19 and

20 (c) delivering the police copy of the order to the
21 Commissioner of Police; and

22 (d) placing the court copy of the order on the
23 court's records.

24 (1A) If a restraining order is taken to have been served under
25 section 55(3a), the respondent's copy and the
26 respondent's endorsement copy are not required to be
27 served under rules of court made under
28 subsection (1)(a) but are to be —

29 (a) delivered to the respondent; and

30 (b) if rules of court make provision for delivery
31 under paragraph (a) — delivered in accordance
32 with those rules.
33

s. 33

1 **33. Section 16 amended**

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

3

4 cancelled; or

5

6 **34. Section 24A amended**

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

8 (2) In section 24A(2):

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

10

11 person; or

12

13 (b) after paragraph (b) insert:

14

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

19

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

21

22 (2A) In connection with the operation of subsections (1)
23 and (2) —

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

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

- 1 (c) an application by a guardian under
2 subsection (2)(b) will be taken to have been
3 made in the name of the Public Advocate; and
4 (d) if the regulations so provide, an application by
5 a person under subsection (2)(c) will, in
6 circumstances prescribed by the regulations, be
7 taken to have been made in the name of an
8 officer or authority prescribed by the
9 regulations.
10

- 11 (4) In section 24A(3) delete “made in person is to be made in the
12 prescribed form” and insert:
13

14 is to be made in accordance with the rules of court (using, if the
15 rules of court so require, the prescribed form)
16

17 **35. Section 25 amended**

- 18 (1) In section 25(1) delete “in person”.
19 (2) In section 25(3) delete “made in person is to be made in the
20 prescribed form” and insert:
21

22 is to be made in accordance with the rules of court (using, if the
23 rules of court so require, the prescribed form)
24

25 **36. Section 26 amended**

- 26 (1) In section 26(2) delete “the registrar is to fix a hearing for that
27 purpose.” and insert:
28

29 a hearing for that purpose must be fixed in accordance with the
30 rules of court.
31

s. 37

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

3

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

6

7 **37. Section 55 amended**

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

9

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

11

12 **38. Section 59 amended**

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

14

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

18

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

20

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

28

1 **39. Section 60 amended**

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

3

4 (1) Substituted service of a document may occur by order
5 of a court if the court is satisfied that a person is
6 deliberately avoiding being served with the document.

7 (1A) Substituted service of an FVRO may also occur —

8 (a) by order of a court if —

9 (i) the court is satisfied that personal
10 service or service by post is
11 impracticable for any reason (including
12 that the person to be served does not
13 have a fixed address or is located at a
14 place that is too remote to reasonably
15 permit personal service or service by
16 post); or

17 (ii) the court is satisfied that the person to
18 be served is likely to avoid personal
19 service or service by post; or

20 (iii) the court considers that substituted
21 service is necessary, appropriate or
22 advisable in the circumstances of the
23 particular case (including that any delay
24 in service is likely to put at risk the
25 safety of the person seeking to be
26 protected);

27 or

28 (b) if a person attempting to serve the order has
29 failed to achieve personal service after taking
30 the steps prescribed by the regulations
31 (including on the basis that substituted service
32 may only occur with the approval of a person of
33 a prescribed class or holding a prescribed
34 office).

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- 1 (2) A document is served by substituted service if the
2 person serving it —
3 (a) takes such steps as a court directs to bring the
4 document to the attention of the person being
5 served; or
6 (b) in a case where subsection (1A)(b) applies,
7 takes the steps prescribed by the regulations.
8

9 **40. Section 61 amended**

- 10 (1) Delete section 61(1) and insert:
11

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

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

16 (1A) A person who is bound by a VRO and who breaches
17 that order commits an offence.

18 Penalty for this subsection: a fine of \$10 000 or
19 imprisonment for 2 years, or both.
20

- 21 (2) In section 61(2a) in the Penalty delete “\$6 000” and insert:
22

23 a fine of \$10 000
24

- 25 (3) After section 61(5) insert:
26

27 (6) A prosecution for an offence under subsection (1), (1A)
28 or (2a) must be commenced within 2 years after the
29 day on which the offence is alleged to have been
30 committed.
31

1 **41. Section 63 amended**

2 (1) After section 63(3) insert:

3

4 (3AA) To avoid doubt, a court acting under subsection (2) or
5 (3) may make a restraining order in the absence of the
6 person against whom the order is made if the court is
7 satisfied that the order should be made in the
8 circumstances.

9

10 (2) In section 63(4):

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

12

13 case.

14

15 (b) delete paragraph (c).

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

17

18 section 10G

19

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

21

22 subsection (4B)

23

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

25

26 (4B) A restraining order made by a court under
27 subsection (2) or (3) will be an interim restraining
28 order if —

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

s. 41

1 that the order should be an interim order in the
2 circumstances; or
3 (b) the person against whom the order is made is
4 not present when the order is made.
5

6 (6) In section 63(4c) delete “subsection 4(b)” and insert:
7

8 subsection (4B)(a)
9

10

=====