



Policy: Bail Breaches		
Policy Code: BAI 1.1	Effective Date: March 1, 2018	Cross-references: CHA 1

A principled charge assessment decision on every Report to Crown Counsel alleging a breach of bail under section 145(2) to (5.1) of the *Criminal Code* is essential in order to maintain the integrity of the criminal justice system, ensure the attendance of the accused in court, and protect the public.

In addition to the guidance provided by *Charge Assessment Guidelines* ([CHA 1](#)), Crown Counsel should consider all relevant factors, including:

- the nature of the substantive charge which gave rise to the bail order
- the nature of the breach in relation to the risk posed by the accused
- whether detention or more restrictive bail conditions should be sought

Protecting the public is the paramount concern when breaches of bail may be a threat to public safety. In such cases, charge assessment decisions should be made without delay.

Where the Substantive Charge was Laid at a Location Other than the Location of the Alleged Breach and No New Substantive Charge is Alleged

Decision-Making Responsibility

Where the alleged breach has occurred at a location in the province (breach location), other than where the original substantive charge was laid (originating location), and there is no new substantive charge alleged in respect of the act or omission constituting the alleged breach, Crown Counsel at the originating location has the responsibility for making the charge assessment decision and for determining where the charge should be laid according to the following two-step process.

1. The Charge Assessment Decision

Crown Counsel at the originating location should make a principled charge assessment decision based on all the circumstances in a timely fashion and determine whether a charge and warrant, a section 524 warrant for a bail review, or no further action is appropriate.

2. Determining the Location of the Prosecution

When Crown Counsel at the originating location has determined that a charge should be laid, they should decide whether their location or the breach location will best facilitate the proper administration of justice based on all of the circumstances.

Where one or more of the following circumstances exist, it would normally be in the best interest of the proper administration of justice to lay the breach charge at the originating location:

- the nexus of the breach to the original charge (for example, where the breach allegation involves the same parties as the substantive charge)
- maintaining confidence in the administration of justice: the original charge has a high local profile, there is a history of non-compliance with the bail order, the accused resides and continues to be supervised in the originating location, or the breach allegation causes a particular public safety concern for the originating location
- close proximity of locations (for example, where witnesses will not be unduly inconvenienced by the trial location)

Where the following circumstance exists, it would normally be in the best interest of the proper administration of justice to lay the breach charge at the breach location:

- witness safety: in the interest of public safety, there is a need to separate the accused from the originating community or from victims and witnesses related to the substantive offence

In all cases, Crown Counsel should also assess the relative cost and inconvenience of having witnesses attend court, as well as the availability of video technology and any certificate provisions to reduce the need for witnesses to travel.

Where the Substantive Charge was Laid at a Location Other than the Location of the Alleged Breach and a New Substantive Charge is Alleged

When a new substantive charge is laid at the breach location in relation to an act which also constitutes the alleged breach, Crown Counsel at the breach location has the responsibility for making the charge assessment decision for the breach and for determining the best

interest of the proper administration of justice as outlined above. In such cases, the balance of considerations generally favours a prosecution of the alleged breach at the breach location.

General

Judicial Process for Swearing an Information in Provincial Court for Offences at Other Locations

The Provincial Court currently has in place a direction that any Information alleging the commission of an offence in a location other than the place where the Information is to be sworn, should be referred to the local Administrative Judge in chambers. Subject to local judicial practice, where Crown Counsel has determined that the originating location for a breach prosecution is in the best interest of the proper administration of justice, they should request the Justice of the Peace to refer the matter to the regional Administrative Judge or designate for swearing.

If the Regional Administrative Judge or his or her designate declines to have the Information sworn, the Regional Crown Counsel, Director, or their respective deputy should be notified and, unless otherwise directed, Crown Counsel should follow the steps necessary to have the breach charge sworn at the breach location.

Communication

Where, as a result of communications between offices on a particular matter, consensus is not reached as to the location which will best facilitate the proper administration of justice, the issue must be resolved by discussion between the respective Administrative Crown Counsel or, if necessary, between the respective Regional or Deputy Regional Crown Counsel.

When Crown Counsel is Not Available

When Crown Counsel with decision-making responsibility is not available to make one or more of the decisions described in this policy and time is of the essence, Crown Counsel at the other location should make those decisions as outlined within this policy.