



CRIMINAL JUSTICE BRANCH, MINISTRY OF JUSTICE  
**CROWN COUNSEL POLICY MANUAL**

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**POLICY**

**The Supreme Court of Canada has stated:**

*The gravity, indeed, the tragedy of domestic violence can hardly be overstated. Greater media attention to this phenomenon in recent years has revealed both its prevalence and its horrific impact on women from all walks of life.  
(R. v. Lavallee [1990] 1 SCR 852)*

**Spousal violence has a distinctive dynamic which sets it apart from other crimes:**

- **it is prevalent in all sectors of society;**
- **the physical, emotional, mental and financial effects are long-lasting, and it is costly<sup>1</sup>;**
- **it tends to be repetitive until the cycle of abuse is arrested by an external factor, and risk may increase upon external intervention, e.g. police or court involvement;**
- **a person sustaining physical abuse is often financially and emotionally connected with the offender in such a manner that any sanctions imposed upon the offender may adversely affect the complainant as well; and**
- **the degree of violence can be fatal: one in five homicides in Canada involves the killing of an intimate partner<sup>2</sup>.**

**The Criminal Justice Branch recognizes that spousal violence constitutes a very serious and complex problem requiring a special response which is pro-active, coordinated and vigorous.**

**The Branch recognizes its pivotal role in these cases, and it is committed to working effectively and cooperatively with its justice system partners.**

<sup>1</sup> Statistics Canada – Measuring Violence Against Women – Statistical Trends 2006, p. 34.

<sup>2</sup> Statistics Canada – Measuring Violence Against Women – Statistical Trends 2006, p. 21.

### Application of this Policy

This policy applies to the following:

A spousal violence offence is defined as physical or sexual assault, or the threat of physical or sexual assault, against an intimate partner, defined as a person with whom the offender has, or has had, an ongoing close and personal or intimate relationship, whether or not they are legally married or living together at the time of the assault or threat. While the significant majority of these offences are committed by men against women<sup>3</sup>, for purposes of the application of the law and this policy, the gender or sexual orientation of the accused and the victim are not relevant.

The Criminal Justice Branch classifies all spousal violence cases as “K” files. The Branch also recognizes that the dynamic of violence in intimate relationships can be very complicated and consequently classifies as a “K” file cases involving offences other than physical or sexual assault, such as criminal harassment, threatening or mischief where there is a reasonable basis to conclude that the act was done in order to cause, or did in fact cause fear, trauma, suffering or loss to the intimate partner.

The Branch classifies as “K” files cases where the intimate partner is the target of the criminal action of the accused although not the direct victim, for example, where the accused has committed an offence against someone or something important to the intimate partner such as an assault on the intimate partner’s child or new partner.

The Branch classifies as “K” files cases involving applications for section 810 recognizances relating to the above circumstances.

Finally, the Branch classifies as “K” files cases where charges arise from breaches of the following court orders relating to the above circumstances:

- Orders made on “K” files,
- Restraining orders made under the *Family Relations Act*,
- Protection orders made under the *Family Law Act*, and
- Recognizances made under section 810.

### Charge Assessment

Under the *Crown Counsel Act*, once a Report to Crown Counsel has been received from the police, Crown Counsel are responsible for the decision to prosecute. The policy on Charge Assessment Guidelines (CHA 1) requires Crown Counsel to examine the case at each stage of the prosecution and decide whether there is a substantial likelihood of conviction and, if so, whether a prosecution is required in the public interest. This cannot be determined solely by the victim’s wishes.

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<sup>3</sup> Statistics Canada – Family Violence in Canada: a Statistical Profile 2009, p. 25

The Branch recognizes that, where the evidentiary test is met, it is generally in the public interest to proceed with a prosecution in cases of spousal violence. Policy CHA 1 states that it is generally in the public interest to proceed with a prosecution where the victim is a vulnerable person such as a spouse.

Policy CHA 1 sets out a lower evidentiary test which may have application in certain cases of spousal violence:

Exceptional circumstances may require that a prosecution proceed even though the usual evidentiary test is not satisfied. Exceptional circumstances will most often arise in cases of high-risk violent or dangerous offenders or where public safety concerns are of paramount consideration. In these cases, charging decisions must be approved by Regional or Deputy Regional Crown Counsel and the evidentiary test is whether Crown Counsel is satisfied that there is a reasonable prospect of conviction.

Crown Counsel should bear in mind the dynamics that are often present in matters of spousal violence and recognize that pressure may be exerted on a victim from various sources to avoid cooperating with the prosecution. It is important that Crown Counsel communicate to the complainant that the decision to initiate or discontinue a criminal prosecution lies solely with Crown Counsel, who must make principled decisions based on the availability of evidence and public interest factors.

Crown Counsel should consider laying charges under sections other than the assault provision of the *Criminal Code* where appropriate, for example: criminal harassment, threatening or mischief. Where these offences are part of the dynamic of the spousal violence, as they are often continuing offences the victim may be in a continuing state of fear. The public interest in a prosecution is clear. Where Crown Counsel determine that the witness has been subjected to threats or interference, the matter should be referred back to the police for investigation or re-arrest. Laying appropriate substantive and breach charges is crucial in attempting to address the recurrence of violence or intimidation. See the Branch policy on Criminal Harassment (CRI 1).

As a breach of a court order is an identified risk factor for future violence, it is important for Crown Counsel to consider laying charges, where appropriate, for breaches of bail and probation orders. Generally speaking these charges should proceed, even if the substantive charge has not, especially in situations identified as high risk. Convictions for breaches will affect the kinds of programs that the Corrections Branch can provide, as well as risk assessment on future bail and sentencing hearings.

The *Family Relations Act* and its offence provisions for prosecuting breaches of restraining orders were repealed as of March 18, 2013 and replaced by the *Family Law Act*. The *Family Law Act* specifically maintains in force orders made under the repealed *Family Relations Act*. Breaches of *Family Relations Act* restraining orders will continue to be enforceable under the *Family Relations Act* and the *Offence Act*. Prosecution for breaches of these conditions should be considered where the alleged non-compliance is in regards to a safety related condition.

The replacement legislation, the *Family Law Act*, which creates a new “protection order”, has no such offence provisions. Instead, it relies on section 127 of the *Criminal Code* for prosecuting breaches of its protection orders. Prosecution for breaches of these conditions should be considered where the alleged non-compliance is in regards to a safety related condition.

Crown Counsel should apply the guidance of this policy and the CJB policy on Charge Assessment Guidelines (CHA 1), in considering whether to lay charges in relation to breaches of Court orders issued under either the *Family Relations Act* or the *Family Law Act*.

The safety of the victim and the victim’s family always remains a concern for the Criminal Justice Branch. Therefore, where there is a decision not to lay a charge or where a stay of proceedings becomes appropriate, Crown Counsel should consider whether the safety of a victim or their family requires an application for a recognizance under section 810 of the *Criminal Code*, taking into account the prospective nature of these applications and that the burden of proof is on the balance of probabilities that the accused will cause personal injury to the victim or damage to the property of the victim. Crown Counsel should consider whether a supervision program administered by the Corrections Branch, aimed specifically at spousal violence offenders, entitled “The Relationship Violence Prevention Program”, is appropriate as a condition of the recognizance and should consider the guidelines set out in the Branch policy on Recognizances to Keep the Peace – Section 810 *Criminal Code* (REC 1). A further description of the Corrections program is provided in Appendix A.

In circumstances where it is alleged that there has been mutual violence, mutual recognizances are rarely appropriate, and mutual charges arising out of the same incident should rarely be approved. It is recommended that Crown Counsel exercise great caution and focus on:

- determining who is the principal excessive aggressor (also referred to as the primary or dominant aggressor)
- distinguishing assault from defensive self-protection or consensual fight.

Policy CHA 1 requires Crown Counsel to “record the reasons for any charge assessment decision which differs from the recommendation of the police in the Report to Crown Counsel.”

### Bail

Recognizing the potential risk inherent in spousal violence cases, standardized bail conditions specific to spousal violence have been developed to provide a greater degree of safety for victims. These conditions, “Best Practices and Principles for Conditions of Community Supervision for Domestic Violence”, are attached as Appendix B. The standardized bail conditions should be considered in every case in order to assist Crown Counsel in formulating release conditions where appropriate. Crown Counsel should be particularly mindful of the suggested conditions relating to the possession and surrender of firearms and other weapons.

In formulating a position in regard to bail, Crown Counsel should have particular regard for the safety of victims and other family members, especially children, and must consider all available information regarding the risk presented by the accused. When Crown Counsel has reason to believe that additional relevant information is available, they should request it from the police before making submissions on a bail hearing and ask for a remand if necessary.

An unendorsed warrant should be sought whenever it is necessary to protect the victim or other potential victims by seeking a detention order or conditions of release. If it is likely that the police may have to address the accused's bail or remand into custody with the afterhours Justice Centre, Crown Counsel should provide the police with suggested terms of release, or the reasons to articulate in seeking a remand.

Where an accused has been arrested and then released by the police on a promise to appear or recognizance with conditions, Crown Counsel should review the conditions to ensure that they are adequate to protect the victim and are enforceable. Where Crown Counsel determines the conditions of release are either unenforceable or do not adequately protect the safety of the victim and the victim's family, Crown Counsel should, if necessary, request a warrant and an amendment of the conditions under sections 499(4), 503(2.3) or 512 of the *Criminal Code*.

Where the accused asks for a review of police ordered conditions before the first appearance date, Crown Counsel should contact the police and obtain a Report to Crown Counsel from the police before formulating a position on that request for review.

If the victim requests the removal of a "no contact" bail condition prohibiting contact with the accused, Crown Counsel should seek further information about the history of the relationship between the accused and the victim, and also about the background of the accused, from sources such as the victim, bail supervisor or the police. If there is a history of abuse or indicators that the victim may be at risk, it is generally not appropriate for Crown Counsel to consent to a review of the bail conditions.

The Report to Crown Counsel should contain information on any other court orders affecting the accused, including orders made under the former *Family Relations Act*, the *Family Law Act*, the *Child, Family and Community Service Act* and the *Divorce Act*. These orders may have conditions relating to property entitlement, child custody, access, guardianship, parental responsibilities, parenting time, contact or child welfare. Crown Counsel should provide relevant information concerning those orders to the court in order to minimize possible conflicts with any conditions of release ordered on the bail hearing.

Where Crown Counsel has reason to conclude, based on an objective assessment of the available evidence, that there is a substantial likelihood that the accused will cause severe bodily harm or death to another person, a detention order must be sought, along with a "no contact" order pursuant to section 515(12) or 516(2) of the *Criminal Code* requiring the accused to abstain from communicating, directly or indirectly, with the victim. Where a detention order is not made in such cases, the court must be asked to impose conditions to

protect the victim and other members of the public. Crown Counsel should give immediate consideration to a bail review in consultation with Administrative Crown Counsel.

The cross-Ministry policy on Violence Against Women in Relationships (VAWIR) contains the following two paragraphs about the role of the police in the identification of, and procedure for, cases identified as “highest risk”:

When a responding officer has concerns that a domestic violence case may possibly be highest risk based on their preliminary investigation, they contact their supervisor or a specialized investigator with formal risk assessment training to advise them of their concerns. The supervisor or specialized investigator will decide whether to initiate a B-SAFER risk assessment, and when a case is identified as highest risk by police (whether or not a B-SAFER is initiated) the supervisor or specialized investigator ensures the partners in this protocol are notified.

In highest risk cases, if a B-SAFER risk assessment has been initiated, the Report to Crown Counsel should include investigation details, a summary of the B-SAFER risk assessment findings, victim (and others at risk) safety concerns, child protection concerns, and opinion on risk including recommendations regarding protective conditions or the need for detention. It should also include detailed contact information for the victim, family members and witnesses, and any other relevant information.

See under “Discussion” for a list of the B-SAFER risk factors.

In cases designated by the police as “highest risk”, where Crown Counsel concludes after an objective assessment of all the available evidence that detention is not necessary under the test enunciated above or that any bail conditions recommended by the police are not necessary, Crown Counsel should consult the police before making the final decision on the position that Crown Counsel intends to take at the bail hearing and should ask the police whether there is any further evidence to consider. Where, after such consultation, any disagreement continues, Crown Counsel should consult Regional or Deputy Regional Crown Counsel before making the final decision. Crown Counsel should make written notes on the file outlining the reasoning behind the position taken by Crown Counsel. Crown Counsel should make a reasonable effort to consult the police in all other cases.

In any case designated by the police as “highest risk”, if Crown Counsel has reason to conclude that an alleged breach of a bail condition raises concerns for the safety of any person, Crown Counsel should make an application to revoke bail and seek a detention order. Crown Counsel should consider such applications in any other case where there is an alleged bail breach.

### Protection of Victims

Crown Counsel should have particular regard for the safety of victims and other family members, especially children. Crown Counsel should handle spousal assault matters expeditiously and give priority to charge assessment decisions. Crown Counsel should consider whether it is necessary to request an early trial date.

Section 14 of the *Child, Family and Community Service Act* requires every person who has reason to believe that a child has been or is likely to be physically, or emotionally harmed or sexually abused or exploited, by the child's parent (as defined), to promptly report the matter to a child welfare worker delegated to assess reports in the Ministry of Children and Family Development or Delegated Aboriginal Agency. It is anticipated that the police will make a report where required. Notwithstanding that the police have made a report, where Crown Counsel receive additional information, not contained in the Report to Crown Counsel, that gives them reason to believe that a child needs protection as defined by the Act, they are required by law to make a report (see the Practice Bulletin entitled *Crown Counsel's Duty to Report When a Child is in Need of Protection*).

All victims should be advised of the availability of victims' services.

Crown Counsel should consider the availability of publication bans and testimonial accommodations under sections 486 to 486.5 and 486.7 of the *Criminal Code* (see below under "Reluctant Witnesses").

Timely information should be provided to the victim about any charges laid, release conditions or other developments in the case. Crown Counsel should be mindful of the information requirements of the BC *Victims of Crime Act*, the federal [Canadian Victims Bill of Rights](#) and the Branch policy on Victims of Crime (VIC 1). VIC 1 provides, *inter alia*, "Where there are particular concerns for the safety of the victim or there is a request by the victim for ongoing information, Crown Counsel should take reasonable steps to ensure the victim is notified, either directly by administrative staff or through a victim assistance program, of any changes in the course of the prosecution, any future court dates, and any bail conditions."

In cases designated by the police as "highest risk", Crown Counsel or designated Crown personnel should ensure the victim and police are notified of release, conditions of release and court disposition as soon as possible. This will assist the victim to be in a position to contact the police if necessary. Crown Counsel expect that the police will then notify other justice/child welfare partners as soon as possible unless the agreed practice in the community is for Crown Counsel to do so.

### Preparation for Hearing

Where, after consideration of the relevant risk factors and an objective assessment of the available evidence, Crown Counsel has reason to conclude that there is a significant potential for serious bodily harm or death, Crown Counsel should seek an early trial date whenever possible. Careful consideration should be given to the following whenever practicable:

- increased communication and coordination with the police, victim services, and Ministry of Children and Family Development (MCFD)
- early assignment of trial counsel

- early identification and notice to the victim of any testimonial accommodations that may be available under sections 486 to 486.31 and 486.7 of the *Criminal Code*.

### Reluctant Witnesses

The prosecution of spousal violence cases often involves a reluctant victim or other witness, as complex factors may affect their willingness to co-operate with the criminal justice system. Crown Counsel should be aware that the accused may exert inappropriate influence at any stage of the court process and that victims often minimize the severity, or deny the existence, of violence in the relationship. The involvement of victims' services may assist victims to continue through the court process.

Crown Counsel should try to ascertain the reasons for any reluctance to testify. If a witness has been subjected to threats or interference, Crown Counsel should refer the matter to the police for investigation.

Where Crown Counsel is unable to confirm that the victim will testify, they should consider whether any evidence other than that testimony would meet the charge assessment standard, such as independent corroborative evidence.

Victims should be personally served with a subpoena to testify. Crown Counsel should consider all of the evidence prior to applying for a material witness warrant for a victim who has failed to appear, including the likelihood the victim will testify and the circumstances of the case, including the severity of the alleged abuse and the need to protect children and others. Crown Counsel should consult with Administrative Crown Counsel prior to applying for a material witness warrant.

Sections 13 and 19 of the [\*Canadian Victims Bill of Rights\*](#) provides that every victim has the right to request testimonial aids when appearing as a witness in proceedings relating to the offence, through the mechanisms provided by law.

Crown Counsel should consider whether testimonial accommodations or a publication ban are available under sections 486 to 486.5. See the guidelines in the Branch policy on Sexual Offences (SEX 1). In specific circumstances, the court can make an order for: the exclusion of the public or the witness to be out of the public view (section 486(1)); a support person (section 486.1); the witness to give testimony from a different room or behind a screen or other device (section 486.2); cross examination by appointed counsel (where the accused is unrepresented) (section 486.3); and, publication ban re victim's identity (sections 486.4 and 486.5).

In rare cases, where appropriate, Crown Counsel may also consider applying for an order under section 486.31 of the *Criminal Code*, directing that any information that could identify a witness not be disclosed in the course of the proceedings or an order under 486.7 of the *Criminal Code*, to protect the security of a witness. Prior to making such an application, Crown Counsel should consult with their Regional Crown Counsel, Director or their respective deputy.

### Alternative Measures

The Branch policy on Charge Assessment Guidelines (CHA 1) states that it is generally in the public interest to proceed with a prosecution where the victim is a vulnerable person such as a spouse. While there will generally be a prosecution for a substantive offence (such as assault) where the evidentiary test is met, as described in the Branch policy on Alternative Measures for Adult Offenders (ALT 1), alternative measures may be considered if the most important objectives of a prosecution can still be achieved.

The most important objectives of a prosecution will vary with each case based on its facts. For example, where a prosecution is intended to result in separation of a violent offender from society and the victim by a period of imprisonment or imposition of court supervised probation programs, alternative measures will be unsuitable. On the other hand, where the most important objectives are to promote a sense of responsibility in the offender and to obtain an acknowledgement of the harm done to victims, alternative measures will likely be able to achieve these objectives.

In a spousal violence case, alternative measures should not be considered without careful consideration of the concerns of the victim and should be pursued only if:

- there is no significant physical injury;
- there is no indication of a history of spousal violence;
- taking into account relevant risk factors, such as those outlined under “Discussion” and any risk assessment provided by the Corrections Branch, Crown Counsel has no reason to conclude, based on an objective assessment of the available evidence, that there is a significant risk of further offences which could result in serious harm; and
- the use of alternative measures is not inconsistent with the protection of society.

It is important to note that the Corrections Branch program aimed specifically at spousal violence offenders, entitled “The Relationship Violence Prevention Program”, is not available on an alternative measures referral.

While an alternative measures referral may be considered at any stage of the proceeding, in most cases it may be advisable to approve a charge and have conditions of release in place before making the referral.

### Resolution Discussions

The Branch Policy on Resolution Discussions (RES 1) contains guidelines about providing information to victims and police and about the opportunity for them to express their concerns to Crown Counsel regarding proposed resolution discussions in certain types of cases. Prior to engaging in resolution discussions in spousal violence cases, Crown Counsel should re-familiarize themselves with these guidelines.

## Sentencing

Victims should be given the opportunity to provide victim impact information.

Under section 4 of the *Victims of Crime Act*, Crown Counsel must ensure that every victim is given a reasonable opportunity to have admissible evidence concerning the impact of the offence, as perceived by the victim, presented to the court before sentence is imposed. In addition, sections 15 and 19 of the [Canadian Victims Bill of Rights](#) provide that every victim has the right to present a victim impact statement to the appropriate authorities in the criminal justice system and to have it considered, through the mechanisms provided by law.

Section 718.2 of the *Criminal Code* provides that abuse of one's spouse, common law partner or child is an aggravating factor on sentencing.

Where probation is appropriate, Crown Counsel should seek conditions which will protect the victim. They may include a "no contact" and reporting requirement, as well as successful completion of an assaultive behaviour program.

Crown Counsel should consider the need for the offender to participate in the program offered by the Corrections Branch entitled the "Relationship Violence Prevention Program" (see Appendix A) and request a Pre-Sentence Report if appropriate.

Crown Counsel should consider requesting an order under section 743.21 prohibiting the offender from communicating, directly or indirectly, with any victim or witness during the custodial period of a sentence.

Crown Counsel should consider whether a weapons prohibition is necessary under section 109 or 110 of the *Criminal Code*. Weapons prohibitions should cover the enumerated items in section 109, 110 or 810(3.1) plus imitation firearms.

Crown Counsel should also seek an order under section 114 that a firearms licence be surrendered at the same time that firearms are forfeited under section 115 (where a prohibition order has been made). While section 116 provides for automatic revocation of licenses/registrations upon a prohibition order being made, the fact of a prohibition may take some time to appear on the *electronic registration system*, and the offender should not be in a position to obtain more firearms under the licence pending its surrender.

Crown Counsel should consider whether a restitution order is appropriate under section 738 or 739 of the *Criminal Code* and take reasonable steps to provide victims with an opportunity to indicate whether they are seeking restitution for their losses and damages.

## DISCUSSION

### Recognized Risk Factors (from the B-Safer Risk Assessment Tool)

The risk assessment guidelines look at ten common, recognized factors related to a perpetrator, including whether their history includes relationship problems, serious physical and sexual

violence, other criminal involvement, substance abuse, and employment or financial problems. It also identifies five risk factors related to victim vulnerability.

These risk factors are:

*Intimate Partner Violence (history of intimate partner violence)*

1. Violent acts
2. Violent threats
3. Escalation
4. Violation of court orders
5. Violent attitudes

*Psychosocial Adjustment (risk factors related to the perpetrator's history of psychological and social functioning)*

6. General criminality
7. Intimate relationship problems
8. Employment problems
9. Substance use problems
10. Mental health problems

*Victim Vulnerability Factor*

11. Inconsistent attitude or behaviour.
12. Extreme fear of perpetrator
13. Inadequate support or resources
14. Unsafe living situations
15. Health problems

**APPENDIX A****Corrections Branch Relationship Violence Prevention Program**

The Corrections Branch provides a *Relationship Violence Prevention Program* to sentenced medium and high-risk domestic violence offenders across the province that are court ordered to attend. The program is comprised of two consecutive components: *Respectful Relationships* is a 10 week program delivered by Corrections Branch staff. It is followed by the *Relationship Violence Program*, a 17-week program that is delivered by contracted service providers.

The combined length of *Respectful Relationships* and *Relationship Violence Program* is 27 weeks (approximately 6.5 months). Taking into account program scheduling realities, a minimum one year term of community supervision is recommended to ensure completion of both programs.

## APPENDIX B

### Best Practices and Principles for Community Supervision of Domestic Violence

The dynamics of domestic violence differ significantly from other crimes because:

- The complainant is known in advance;
- The likelihood of repeat violence is common and often predictable; and
- The interactions between the justice system and the complainant are typically more complex.

The recommended categories and conditions of community supervision have been selected to support:

- The necessary protection of complainant(s), their children, and others who may be at risk, including the prevention of further offences, intimidation and harassment;
- Structured orders which are understandable, enforceable and practically achievable relative to the presenting circumstances and risk factors of each individual case;
- Clear wording of conditions which emphasize the obligations and restrictions of the accused/offender; and
- Successful and expeditious enforcement in the event of non-compliance.

These categories and conditions are not exhaustive, but rather are recommended on the basis of best practice principles for managing the risks presented by domestic violence accused/offenders. Because every case of domestic violence has the potential for unique risk factors and circumstances, these conditions may need to be modified in response. When modifying or crafting unique conditions, it is important to carefully consider each condition area and the best practice principles articulated within. Ultimately, these are suggestions, but are not binding on the exercise of discretion of the Crown or the Court, and the Crown is responsible in each case for showing cause why more restrictive bail conditions are justified.

#### **1. General/Statutory Conditions**

These conditions should be considered for inclusion on bail and 810 recognizance orders (already exist as mandatory conditions of probation and conditional sentence orders).

- You shall keep the peace and be of good behaviour.
- You shall appear before the court when required to do so by the court.
- You shall notify the court or the [**bail supervisor/probation officer/conditional sentence supervisor**] in advance of any change of name or address and promptly notify the court or the [**bail supervisor/probation officer/conditional sentence supervisor**] of any change of employment or occupation.
- You shall remain within the province of British Columbia unless given prior written permission by the court or the [**bail supervisor/probation officer/conditional sentence supervisor**].

## 2. Reporting Conditions

The inclusion of conditions requiring supervision of the accused/offender by community corrections are critical for monitoring adherence to court imposed conditions and the management of risk and needs.

- You shall report in person to a bail supervisor at **[address of probation office], [before \_\_\_ am/pm on a date specified by the court/ within two working days after the making of this order]**, and thereafter as and when directed by the bail supervisor. If at any time prior to the expiration of this order, you are arrested, detained or have served a sentence for another offence, you shall report to the bail supervisor within 2 working days of your release from custody.
- You shall report in person to a probation officer at [address of probation office], **[before \_\_\_ am/pm on \_\_\_ a date specified by court/within two working days after the making of this probation order/within two working days of your release from custody/within two working days of the expiration of your conditional sentence order]**, and thereafter as and when directed by the probation officer. If at any time prior to the expiration of this order, you are arrested, detained or have served a sentence for another offence, you shall report to the probation officer within 2 working days of your release from custody.
- You shall report in person to a conditional sentence supervisor at **[address of probation office], [before \_\_\_ am/pm on \_\_\_ a date specified by the court/ within two working days after the making of the conditional sentence order/ within two working days of your release from custody]**, and thereafter as and when directed by the supervisor. If at any time prior to the expiration of this order, you are arrested, detained or have served a sentence for another offence, you shall report to the conditional sentence supervisor within 2 working days of your release from custody.

## 3. Residence Conditions

Residence restrictions should be included on every domestic violence related order.

If there are concerns regarding the risk posed by the accused and a residence cannot be confirmed prior to release, the accused should be viewed as a risk to breach bail and Crown counsel should give serious consideration to seeking a detention order.

In the vast majority of domestic violence cases, the accused will be prevented from returning to the family home. It is critical when crafting residence conditions to request/assist the court to articulate/approve a specific residence *prior to release*, even if temporary, to support clear accountability of the accused and expeditious enforcement in the event of non-compliance.

If a specific residence cannot be identified prior to release, the conditions should provide the community corrections supervisor with residence approval authority.

- You shall reside at **[insert specific address as approved by the court]**, and do not change that residence without the prior written permission of the **[bail supervisor/probation officer/conditional sentence supervisor]**.
- You shall reside at a residence approved of in advance by your **[bail supervisor/probation officer/conditional sentence supervisor]**, and do not change that residence without the prior written permission of your **[bail supervisor/probation officer/conditional sentence supervisor]**.

#### 4. Curfew

Imposition of curfew conditions may be appropriate and an added safeguard depending on the circumstances of the offence and prior history of the accused/offender.

- You shall obey a curfew by being inside your residence between the hours of [\_\_\_\_pm and \_\_\_\_am] each day, except as follows:
  - With the prior written permission of the **[bail supervisor/probation officer/conditional sentence supervisor]**. Such permission is to be given only for compelling personal, family or employment reasons. This written permission is to be carried on your person at all times and is to be provided to a police officer upon demand; or
  - When travelling directly to, or returning directly from, your place of employment, or while in the course of your employment. You shall provide the **[bail supervisor/probation officer/conditional sentence supervisor]** with written proof of your employment if requested to do so.
- You shall remain within your residence at all times, and are not permitted to be outside of your residence, except as follows:
  - Between the hours of [\_\_\_\_ and \_\_\_\_] each day, in order to attend to personal matters; or
  - With the prior written permission of the **[bail supervisor/probation officer/conditional sentence supervisor]**, which is to be carried on your person at all times. Such permission is to be given only for compelling personal, family, or employment reasons; or
  - While in the company of \_\_\_\_\_; or
  - When travelling directly to, or returning directly from, your place of employment, or while in the course of your employment. You shall provide the **[bail supervisor/probation officer/conditional sentence supervisor]** with written proof of your employment if requested to do so.
- You shall present yourself at the door of your residence when any Peace Officer, **[bail supervisor/probation officer/conditional sentence supervisor]** attends there for the purpose of determining your compliance with the curfew/house arrest condition of this Order.

## 5. Area Restrictions

Area restrictions should be considered for inclusion on any domestic violence related order.

- You shall not attend at or be within [**insert specific area radius using the measure of “blocks”**] of [**insert specific address**], or any place you believe to be the residence, school or workplace of [**insert specific names**], except as follows:
  - One attendance in the company of a peace officer for the purpose of retrieving your personal belongings; or
  - Unless in the company of [**insert specific name of authorized third party**] for the purpose of [**insert specific purpose of contact**].
- Not to be in the city/municipality of [**insert name of city/municipality**], except:
  - with the written permission of the [**insert bail supervisor/probation officer/conditional sentence supervisor**], or
  - while on a highway in a moving motor vehicle (identify specific highway or road)
  - if travelling directly to or from or attending a scheduled court appearance, or
  - [**insert other specific purpose(s) approved by the court**].
- You shall not enter the area bounded by \_\_\_\_\_ to the North, \_\_\_\_\_ to the South, \_\_\_\_\_ to the West and \_\_\_\_\_ to the East, in \_\_\_\_\_, British Columbia, except with the written permission of the person supervising this order. You must carry this permission with you and produce it to a peace officer when requested.

## 6. Disclosure Conditions

May be considered for inclusion in a sentenced order for community supervision when the offender has demonstrated a pattern of domestic violence offending.

- You shall immediately advise your [**probation officer/conditional sentence supervisor**] of any romantic/intimate relationship with any person which resembles a marriage, common-law relationship or otherwise involves cohabitation with another person, and refrain from continuing with that relationship until that person has been advised of your criminal history by the [**probation officer/conditional sentence supervisor**].
- You are to immediately advise the [**probation officer/conditional sentence supervisor**] of any romantic/intimate relationship with any person which resembles a marriage, common-law relationship or otherwise involves cohabitation with another person, and consent to that person being informed of your criminal history by the [**probation officer/conditional sentence supervisor**].

## 7. Drug And Alcohol Conditions

Alcohol abuse is a prominent risk factor for domestic violence, is associated with violent recidivism, and may contribute to more severe violence. Abstention conditions should be considered when drugs or alcohol appear to be a factor in the index offence or the offender has a history of drug or alcohol use.

- You shall not possess or consume any alcohol, any non-prescription drugs or any prescription drugs not prescribed for you by a licensed physician or dentist.
- You shall not attend any establishment licensed primarily for selling alcoholic beverages.

## 8. Weapons Conditions

Weapons restrictions should be included on all orders where violence was used, threatened or attempted, consistent with section 515(4.1) of the *Criminal Code*.

Where police are not available to escort the accused directly from custody to the location where weapons are stored, then the first retrieval condition below should be used. Where arrangements can be made to have a police officer accompany the accused from custody to the storage location of any weapons, then the second retrieval condition should be used.

In any situation where police know that the accused possesses firearms, and there are reasonable grounds to believe that it is not desirable in the interests of the safety of the person, or of any other person for the accused to be in possession of firearms, the police should immediately take steps to seize under section 117.04 of the *Criminal Code*, if possible.

- You shall not possess any knives, except:
  - For the immediate preparation and consumption of food;
  - For purposes directly and immediately related to your employment; or
  - Woodworking knives and such woodworking knives are to be possessed only for the purpose of the craft of woodwork, and only to be possessed at the place, specifically [**specify the place and address**] where this craft is carried out.
- You shall not possess any weapon as defined in section 2 of the *Criminal Code*.
- You shall not possess, own or carry any weapon, including but not limited to any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or any imitation weapon or imitation firearm including pellet guns or air guns and replica firearms, and any related authorizations, licenses and registration certificates.
- If you are in possession of, or any person possesses or holds for you on your behalf, any items that this order prohibits you from possessing, you shall, forthwith upon your

release attend at the [**specify police detachment**] police detachment at [**insert address**] and present a copy of this order, for the purpose of an officer from that detachment or another officer accompanying you to the location(s) where any of the said items are kept. Upon attending at the location(s), you shall, in a manner as directed by the police, which may include your facilitating access into the location(s) by the police, such access to be solely for the purpose of your surrendering such items, surrender to the police all items that this order prohibits you from possessing that are in your possession or are in the possession of another person on your behalf, together with any authorizations, licenses or registration certificates for the said items. Except for the purposes of surrendering to the police in accordance with this condition, you must not possess any of the said items and you must not reside in a residence where any other person keeps or stores any such items.

- If you are in possession of, or any person possesses or holds for you on your behalf, any items that this order prohibits you from possessing, you shall, forthwith upon your release, accompany [**insert rank and name of officer pre-arranged by Crown**] to the location(s) where items that this order prohibits you from possessing are kept. Upon attending at the location(s), you shall, in a manner as directed by the police, which may include your facilitating access into the location(s) by the police, such access to be solely for the purpose of your surrendering the said items, surrender to the police all such items, together with any authorizations, licenses or registration certificates for the said items. Except for the purposes of surrendering to the police in accordance with this condition, you must not possess any of the said items and you must not reside in a residence where any other person keeps or stores any such items.

#### **9. No Contact Conditions/Exceptions For Indirect Contact**

Specify the precise names of individuals requiring protection and the specific purpose of any exceptions for indirect contact that may be considered appropriate in the circumstances.

If possible, canvas the accused and the victim for the existence of family court orders/ written separation agreements to minimize unintended conflict between orders.

Section 189 of the *Family Law Act* provides a mechanism for determining priority between protection orders and other *Family Law Act* orders. For the purpose of the section, “protection order” is broadly defined to include a *Family Law Act* protection order, a *Criminal Code* order restricting contact or communication, or an order made by a court in British Columbia or another jurisdiction in Canada that is similar to a *Family Law Act* protection order. Where an order meeting that definition of protection order conflicts with another order in the *Family Law Act*, the other *Family Law Act* order is suspended to the extent it conflicts with the protection order. When there is conflict between a civil and criminal order (e.g. *Family Law Act* protection order and a bail order restricting direct or indirect contact with a spouse by way of a no contact condition) the more restrictive terms are enforced.

- You are to have no contact or communication, directly or indirectly with [**insert the specific names of victim(s), children, family, friends, business associates and others who require protection**].

- You are to have no contact or communication, directly or indirectly with **[insert the specific names of victim(s), children, family, friends, business associates and others who require protection]**, except :
  - Through legal counsel, or a Family Justice Counsellor for the purpose of **[select one or a combination of the following depending on the circumstances]**:
    - Arranging, facilitating or exercising access to your children in accordance with a family court order or written separation agreement;
    - Resolving matters of maintenance, property, custody and access; or
    - Arranging household matters, including finances and child care, during the existence of this order/until the charges are resolved.

### **Recommended Conditions for Inclusion on Warrants of Remand/Detention/Committal**

The *Criminal Code* makes provision for communication restrictions while an accused/offender is in custody pre-trial and post-sentencing. Orders under the following three sections greatly enhance Corrections officers' ability to restrict contact with the victim or other protected parties. Protecting the victim and others from harassment, intimidation and threats, and protecting the integrity of the evidence for trial may depend on restricting the accused's/offender's access to the victim and other witnesses while in jail, especially when the motive to influence the victim and other witnesses is likely to be strong.

#### **General Principles:**

- Exceptions for indirect communication should be carefully considered when the accused is being remanded or detained for alleged offences and contact may be used to threaten or intimidate the protected party.
- Any exceptions should be limited to a purpose specifically set out by the court in appropriate circumstances following an analysis of risk factors and the specific reasons stated for indirect contact. As detention and sentencing orders may be in place for an extended period of time, consideration may be given to indirect communication with the protected party for specified purposes.
- Enforcing non-compliance with the order is greatly enhanced when the communication restrictions and any exceptions are clearly outlined by the court.

#### **1. Section 516(2) – Applicable While The Accused Is Remanded Pending A Bail Hearing**

- Enforcement is initiated pursuant to section 145(3)
- Although the suggested conditions note that they are in effect until further order of the court, Crown must reapply for the section 516(2) order at each and every remand to ensure that the non-communication order remains in effect until such time as a judicial interim release hearing is held and an order is made arising from that hearing.

- You are to have no contact or communication, directly or indirectly with **[insert the specific names of victim(s), children, family, friends, business associates and others who require protection]** until further order of the court.
- You are to have no contact or communication, directly or indirectly with **[insert the specific names of victim(s), children, family, friends, business associates and others who require protection]** until further order of the court, except :
  - Through legal counsel, or a Family Justice Counsellor, for the purpose of **[select one or a combination of the following depending on the circumstances]**:
    - Arranging, facilitating or exercising access to your children in accordance with a family court order or written separation agreement;
    - Resolving matters of maintenance, property, custody and access; or
    - Arranging household matters, including finances and child care, during the existence of this order/until the charges are resolved.

**2. Section 515(12) – Applicable While The Accused Is Detained After A Bail Hearing**

Enforcement is initiated pursuant to section 145(3)

- You are to have no contact or communication, directly or indirectly with **[insert the specific names of victim(s), children, family, friends, business associates and others who require protection]**.

Your are to have no contact or communication, directly or indirectly with **[insert the specific names of victim(s), children, family, friends, business associates and others who require protection]**, except :

  - Through legal counsel, or a Family Justice Counsellor, for the purpose of **[select one or a combination of the following depending on the circumstances]**:
    - Arranging, facilitating or exercising access to your children in accordance with a family court order or written separation agreement;
    - Resolving matters of maintenance, property, custody and access; or
    - Arranging household matters, including finances and child care, during the existence of this order/until the charges are resolved.

**3. Section 743.21(1) – Applicable While The Offender Is Serving A Custody Sentence**

Enforcement is initiated pursuant to section 743.21

- You are to have no contact or communication, directly or indirectly with **[insert the specific names of victim(s), children, family, friends, business associates and others who require protection]**.
- You are to have no contact or communication, directly or indirectly with **[insert the specific names of victim(s), children, family, friends, business associates and others who require protection]**, except:
  - Through legal counsel, or a Family Justice Counsellor, for the purpose of **[select one or a combination of the following depending on the circumstances]**:
    - Arranging, facilitating or exercising access to your children in accordance with a family court order or written separation agreement;
    - Resolving matters of maintenance, property, custody and access; or
    - Arranging household matters, including finances and child-care, during the existence of this order/until the charges are resolved.