

Probation Breach Criteria

Report and Recommendations Executive Summary



**Manitoba Corrections, Manitoba Prosecutions Services
Royal Canadian Mounted Police, Winnipeg Police Services**

Overview

Probation Orders are imposed by the courts and include conditions by which the offender is to abide. The orders are supervised by Probation Officers, whose role is to assist the probationer with maintaining compliance with the order, help them to deal with other issues in their life, and when necessary to breach those offenders and charge them with failure to comply. It is important to note that Probation Services operates as an independent entity from Prosecutions and the Police in the enforcement of court orders.

It is also important to understand that a breach of probation is different from a breach of parole. A breach of probation does not result in the offender instantly going to jail. A breach of probation is in fact a new charge under the Criminal Code. This is an important distinction because it means that prior to proceeding with a breach, Probation Officers need to ensure that specific evidentiary requirements are met so that a conviction for the charge of breaching the probation order can be obtained in court. If a conviction is obtained, the penalty imposed by the court may be time in jail, but it might also be another term of probation.

Discretion, or to put it another way, the exercise of judgment, is integral to the operations of every part of the justice system. Police Officers may give a warning instead of laying a charge. Prosecutions may stay a charge and divert an individual to a community program. Judges may give an absolute or conditional discharge to a person, instead of a fine or jail time and Probation Officers may decide that measures other than the laying of a criminal charge are more appropriate to deal with non-compliance of a court ordered condition.

Enforcement is a joint process involving interdependent agencies including, Probation, Courts, Law Enforcement (Winnipeg Police Services (WPS), Royal Canadian Mounted Police (RCMP) etc.) and Prosecutions services. The exercise of professional judgment exists at every stage of the process and is inherent in the criminal justice system as a whole. The elimination of professional judgment in one element of the criminal justice process would not mean that discretion had been removed.

Legislative Authority

Probation Services must abide by the following legislative requirements when considering a breach:

- Section 733.1 (1) of the Criminal Code of Canada sets out the standard of proof for breaches of probation orders. An offender who is bound by a probation order and who, without reasonable excuse, fails or refuses to comply with that order is guilty of (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or (b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding eighteen months, or to a fine not exceeding two thousand dollars, or both.
- Section 137 of the Youth Criminal Justice Act - Failure to comply with sentence or dispositions – Every person who is subject to a youth sentenceand who wilfully fails or refuses to comply with that sentence, surcharge or disposition is guilty of an offence punishable on summary conviction.
- Section 20 of the Correctional Services Act - Failure to comply with probation order - Where an offender under supervision fails to comply with any term or condition of a probation order, the correctional officer who is responsible for the supervision shall, in accordance with policies established by the commissioner, exercise discretion in determining whether to proceed under section 733.1 of the Criminal Code (Canada).

Interprovincial Review

The Committee members reviewed other provinces policies related to non-compliance and supervision and discovered that each jurisdiction utilizes policy guidelines and professional judgment to determine when to proceed with a breach. By and large, each jurisdiction requires that Probation Officers review a number of factors, including but not limited to, the potential of an immediate risk to the victim, public safety concerns, risk assessment rating, sentence type, criminal history, history of breaches/violation(s), warnings for previous non-compliance provided, programs and services in place, nature of the violation and compliance with other conditions.

In other provinces, supervision standards are most frequently based on the offender's level of risk to re-offend (and in some jurisdictions the sentence and/or offence type). Frequency of contact and the intensity of interventions by Probation Services increase in accordance with the individual's risk level.

The Committee concluded that Manitoba's Community Corrections, adult and youth non-compliance policies and procedures and supervision policies are in alignment with other jurisdictions. In fact, Manitoba's non-compliance policy may be somewhat more stringent, especially for youth as most policies in other jurisdictions provide the direction to do everything possible prior to breaching, whereas Manitoba's breach guidelines provide a numbered threshold that limits the use of professional judgment in many situations.

Breach Process

Whenever a Probation Officer determines that they will proceed to address non-compliance formally, they prepare paperwork to assist with the formation of reasonable grounds (to lay the information to substantiate the charge) including, circumstances of the alleged breach, public safety concerns, indications of any remedial measures or warnings, recommendation as to whether the breach charge is to be done by way of summons or warrant and recommendations as to the possible disposition. The information is sworn in front of a Justice of the Peace, the charge proceeds by way of summons or warrant for the offender and the breach charge proceeds as would any other criminal charge.

In the absence of formal arrangements that exist between law enforcement and Probation Services for specialized units (e.g. Winnipeg Auto Theft Suppression Strategy (WATTS) and Criminal Organization High Risk Offender Unit (COHROU)), once the Warrant for Arrest is placed on CPIC, local law enforcement may not actively pursue the apprehension of the individual. The RCMP assigns Warrants for Arrest to officers (and they are prioritized accordingly within their caseloads) however, the WPS does not assign Warrants for Arrest to individual officers and most often, warrants are executed when offenders otherwise come to the attention of the police on an unrelated manner.

When warrants are not executed until the accused is arrested on new matters, many breach charges are stayed as part of plea bargain arrangements when the individuals plead guilty to the more serious offences. Often there are multiple breaches arising from the offence itself and, when combined with their involvement for failing to follow their probation orders, it can lead to the situation where many of the fail to comply charges are stayed as they have become duplicitous or overtaken by more recent criminal involvement. In other situations where the alleged breach is not deemed to be serious, the charges may be stayed under Prosecutions services public interest criteria.

Recommendations

As a result of the review, the Committee recommends the following strategies for consideration:

- Manitoba Corrections works with partners in the community including the WPS, the RCMP and Prosecutions throughout the province to target resources to the offenders who pose the highest risk and to improve early identification of non-compliance.
- Manitoba Corrections continues to support the cooperative strategies that supervise the highest risk offenders in Winnipeg (e.g. WATSS, COHROU, Spotlight and the Gang Response and Suppression Plan).
- Senior officials from Manitoba Justice, the WPS and the RCMP meet to consider the advisability and feasibility of creating a warrant enforcement unit to target very high risk offenders who are in breach status across the province.

The Committee would also like to note that they believe that providing quarterly reports on the number of charges laid by Probation Officers for non-compliance with a court order would not provide information to the public that would be an accurate reflection of public safety. The Committee has come to this conclusion for the following reasons:

- a charge is an unproven allegation; the fact that a charge has been laid does not provide information on the outcome of the charge;
- reporting only the number of charges without providing additional context would make it impossible for the reader to understand what any variability in numbers should be attributed to. For example, the profile of offenders in the community, the conduct of offenders, the creation of specialty units, specialized enforcement projects etc. may all impact the numbers of charges being laid over time;
- there is no basis to suggest what an acceptable rate of laying charges related to non-compliance should be as each decision is made on a case by case basis; and,
- information provided without an explanation may be interpreted very differently. Should the reported numbers be increasing, decreasing or staying the same over time? It is unclear which result would represent movement in the right direction.