

Ministry of the Solicitor General

Public Safety Division
Public Safety Training Division

25 Grosvenor St.
12th Floor
Toronto ON M7A 2H3

Telephone: (416) 314-3377
Facsimile: (416) 314-4037

Ministère du Solliciteur général

Division de la sécurité publique
Division de la formation en matière
de sécurité publique

25 rue Grosvenor
12^e étage
Toronto ON M7A 2H3

Téléphone: (416) 314-3377
Télécopieur: (416) 314-4037



MEMORANDUM TO: All Chiefs of Police and
Commissioner Thomas Carrique
Chairs, Police Services Boards

FROM: Richard Stubbings
Assistant Deputy Minister
Public Safety Division and Public Safety Training Division

SUBJECT: **Correctional Facilities, Court Administration, and
Policing Functions**

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As part of the effort to contain the spread of COVID-19, I am advising of the following changes to court administration and correctional facilities.

Discretionary Bench Warrants

As a temporary measure in response to the COVID-19 pandemic, the Ministry of the Solicitor General (ministry) will accept bench warrants with discretion province-wide for persons in custody that may not be able to appear in person or in video remand for cases that are before the Ontario Court of Justice.

Chiefs of police should advise policing personnel that a discretionary bench warrant is sufficient to bring an in-custody accused to a correctional facility. If a judicial official does not agree to issue a discretionary bench warrant, then the ministry may not be able to continue the detention of the person in custody. Policing personnel will be notified if this situation arises and will be required to attend the correctional facility to re-arrest the accused upon their release and bring them back before a judicial official on the same charges the next day.

DNA Orders

DNA orders during COVID-19 can continue to be ordered. A pressing objective of the DNA Databank is getting each sample on the DNA Data Bank as quickly as possible. By virtue of the *Criminal Code*, DNA orders shall be executed on the day the order was made, on the date set out in the [Form 5.041](#), or as soon as feasible afterwards. Therefore, all DNA orders are valid until executed. Pursuant to [section 487.056\(5\)](#), DNA orders are enforceable anywhere in Canada.

If an offender is *in-custody*, arrangements may be made to execute the DNA order at the correctional facility. Policing personnel will be permitted to attend the institution to execute these orders.

If a jurisdiction is unable to continue with DNA sampling in the ordinary course for *out-of-custody* offenders, or those in-custody offenders who have received no further incarceration, the court may order the offender, in [Form 5.041](#), to appear for DNA sampling at some convenient date well into the future, to accommodate the expected trajectory of COVID-19 (i.e., perhaps in the fall of 2020). Every [Form 5.041](#) order should have a specified date.

Chief of police must document and monitor unexecuted DNA Orders.

Chiefs of police should keep a list of all orders that are not immediately executed to ensure that they are executed on the future date specified in the [Form 5.041](#). The best way to do this is for the police to create an excel spreadsheet that lists name, date of birth, FPS number, date of order, and date where accused refused to attend. As set out above, the DNA orders remain valid until executed. The spreadsheet will allow police serviced to encourage voluntary sampling once the COVID-19 pandemic has subsided, and to ensure that individuals who do not appear when ordered to do so are accounted for.

Failure to Attend at Future Date

If an offender fails to attend on the future date specified in the [Form 5.041](#) order, policing personnel may proceed by way of summons or a warrant may be issued for the arrest of the offender pursuant to [section 487.0551\(1\)](#). Consideration may also be given to the appropriateness of a failure to comply charge under [section 487.0552\(1\)](#). Once apprehended by policing personnel, the offender's DNA order can be executed forthwith.

Addressing “stale” DNA Orders that have not been executed and for which there is no Form 5.041

If the offender is *in-custody*, the DNA order may be executed at the correctional institution where the offender is held. If the offender is *out-of-custody*, the offender should be given an opportunity to attend for DNA sampling voluntarily. The offender is not required to voluntarily surrender and has the right to consult with counsel for advice. If the offender refuses to voluntarily attend for sampling, or fails to so report, then police are encouraged to consult their local Crown’s office before devising a plan to execute a DNA order in that fashion.

Bail and Parole Conditions - Reporting to a Police Service

Where a condition requiring an individual to report at a prescribed time to a police station or reporting centre has already been imposed on either a bail, probation or parole order, it is recommended that:

- A notice be placed on the door with the phone number to the division/detachment so that the individual can report over the phone.
- The division/detachment should keep a telephone reporting log that includes the name, date and time of those who have reported.

Where the Crown believes public safety requires a reporting term on a release order, it will indicate that reporting must be done by phone to the police division or in-person as directed by the Officer in Charge or their designate.

During this pandemic crisis, in a case where an accused person has failed to comply with a condition of their bail requiring that they sign in at a police station the Crown will screen these charges from a similar lens. In these unprecedented times, the Crown will only prosecute these breaches where there are particularly egregious circumstances.

Verification of Identification for the Purpose of Release

Where an accused is being released to a surety and a condition of the Release Order is that the accused “be with their surety at all times when outside their residence”, the surety will have to attend the police station for the accused to be properly released. Prior to releasing the accused from the police station, the police will need to verify the identity of the surety to ensure that they are the surety named in the Release Order.

I hope this is of assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Stubbings', written in a cursive style.

Richard Stubbings
Assistant Deputy Minister
Public Safety Division and Public Safety Training Division