


Chapter:	Probation Orders	Classification:	Public Document
Subject:	Breach of Probation Order (Adult)		
For:	Community Corrections	 Authorized by Executive Director	

1. Policy

1.1 An individual under the supervision of Community Corrections who, without reasonable excuse, fails or refuses to comply with the terms of their probation order may be subject to a charge of breach of probation in accordance with Section 733.1(1) of the *Criminal Code* (CC).

2. Definitions

2.1 **Information:** Refers to an official criminal charge/allegation (see Court Information NS Form Mar 03).

2.2 **Justice of the Peace:** Refers to an individual appointed as a justice of the peace in accordance with the *Justice of the Peace Act* who can swear to an Information.

3. General Guidelines for Breach of Probation

3.1 A breach of probation charge may be initiated to enforce a probation order.


3.2 The following factors will be considered in the assessment of probation condition breaches

- 3.2.1 the condition breached is clearly defined in the probation order
- 3.2.2 the alleged breach is not a trivial one
- 3.2.3 there is an absence of reasonable excuse for the failure or refusal to comply.
- 3.2.4 if referral to the Nova Scotia Restorative Justice Program (NSRJP) is appropriate

3.3 Where the probation officer determines a breach of probation is appropriate, the breach will be filed with the court within 12 months of the breach in accordance with Section 786(2) CC.

3.4 All case activity, decisions, amendments and notifications, etc. related to the breach will be documented on decision on the Justice Enterprise Information Network (JEIN) under Offender Case Management (OCM).

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4. Subsequent Offences

4.1 Where the breach of probation results from the commission of a subsequent offence by the individual, the breach of probation process will be initiated by the police agency involved.

5. Spousal/Intimate Partner Violence

5.1 If the case has been designated High risk for Domestic Violence, a form 2 will be completed in accordance with Policy and Procedure, Subject No. 30.01.00 HRDV Case Coordination.

6. Federal Statutes

6.1 In all cases where offences against federal statutes were committed after the individual was placed on probation, a breach of probation will be laid in accordance with Section 733.1(1) CC. If exceptional circumstances exist that mitigate against a breach of probation charge, the probation officer will discuss with the federal Crown Attorney.

7. Intermittent Sentences

7.1 A charge of breach of probation pertaining to an individual who is serving intermittent sentence may be laid if the breach occurred at a time when the offender was not confined to the facility.


8. Transfers in and Courtesy Supervision

8.1 Breach charges pertaining to individuals from other provincial jurisdictions may be initiated in Nova Scotia only where formal transfer proceedings have been undertaken and the Province of Nova Scotia has the jurisdiction to hear the case.

8.2 Individuals who are under courtesy supervision from another province may not be charged with breach of probation in the Province of Nova Scotia.

8.3 For cases that are under courtesy supervision and if circumstances warrant, the probation officer will request or initiate transfer proceedings of

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the case from the other jurisdiction before proceeding with a breach of probation.

9. Court Jurisdiction

9.1 All charges of breach of probation will be brought before the Provincial Court regardless of whether the probation order was issued by a higher court.

10. Preparation of Information and Crown Brief


- 10.1 Prior to initiating a breach of probation, the probation officer will
- 10.1.1 review the case to determine if a referral to the NSRJP is appropriate
 - 10.1.2 if a referral to NSRJP is not appropriate, contact the Crown Attorney to determine if a breach of probation should proceed

10.2 Where the Crown Attorney agrees a breach of probation should occur, the probation officer will prepare an information form alleging the breach of probation (*see Court Information NS Form Mar 03*) worded as follows:

"On (or between) *[date(s) of breach]* at *[place of breach]* did, while bound by a probation order, made by *[court and judge making the probation order]* on *[date of probation order]* did without reasonable excuse fail (or refuse) to comply with such order, to wit: *[state the conditions which were breached]*, contrary to section 733.1(1) of the *Criminal Code*."

- 10.3 An information may be sworn to by any probation officer, regardless of whether they are the supervising probation officer, provided there are reasonable and probable grounds to believe that an offence of breach of probation has occurred.
- 10.4 In some areas of the Province, breaches of probation are completed by the local police agency rather than the probation officer. Where the police agency is prepared to accept this role, this practice is acceptable.
- 10.5 A crown sheet (see form: 18.06.00 - A) will be prepared by the probation officer.

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- 10.6 The probation officer will
 - 10.6.1 swear the Information before a justice of the peace or clerk of the court (see Court Information NS Form Mar 03)
 - 10.6.2 provide the sworn Information to the clerk of the court if sworn before a justice of the peace
 - 10.6.3 request a certified true copy of the sworn information from the clerk of the court for disclosure purposes
 - 10.6.4 request the clerk of the court provide an arraignment date
 - 10.6.5 prepare a summons for service to the offender (see Court Summons NS Form Feb 02)

- 10.7 The probation officer will ensure the summons is delivered to the appropriate police agency in their area for service.

- 10.8 In locations where local police agencies do not serve the summons, the probation officer will ensure
 - 10.8.1 it is delivered to the Sheriff's Office for service
 - 10.8.2 notice of proof of service or attempts to serve the summons is requested from the police or sheriffs, as appropriate

11. Documentation Provided to Crown Attorney

- 11.1 The probation officer will ensure that the following documentation is provided to the crown attorney
 - 11.1.1 certified true copy of the original Information
 - 11.1.2 certified true copy of the original probation order
 - 11.1.3 crown sheet
 - 11.1.4 list of witnesses identifying testimony that can be provided
 - 11.1.5 Notice to Tender Business Records, in accordance with section 28(1) of the *Canada Evidence Act*; (see form: 18.06.00 - B.)
 - 11.1.6 Affidavits of Proof of Service where appropriate (see Court Summons NS Form Feb 02)
 - 11.1.7 any other information

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12. Full Disclosure

12.1 The probation officer will provide all documents requested by the crown attorney for disclosure purposes.

13. Arraignment and Trial

13.1 If the individual pleads guilty, the crown attorney will supply the court with details provided in the crown sheet.

13.2 The probation officer will attend the arraignment hearing and bring sufficient documentation to respond to any questions by the judge, crown attorney or defence counsel.

13.3 If the court requests the preparation of a presentence report prior to sentencing, the report will be prepared by the supervising probation officer.

13.4 If the individual pleads not guilty, a trial date will be set by the Court and the probation officer may be subpoenaed to appear as a witness and will be prepared to provide evidence as required.

13.5 In areas where subpoenas are not prepared by the Public Prosecution Service and where local police agencies do not serve subpoenas for Correctional Services cases, the crown attorney will inform the probation officer of the trial date and request that the witnesses be subpoenaed for the required date and courtroom.

13.6 The probation officer will complete the Subpoena to Witness (see Court Subpoena to Witness NS Form Aug 02) for each witness and ensure it is delivered to the appropriate police or sheriff's office for service.

14. Decision Not to Proceed with a Breach Charge

14.1 If the crown attorney does not agree to proceed with the charge of breach of probation, the probation officer will note on the decision on JEIN under OCM.

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