

ALTERNATIVE SENTENCING (BREACH PROCEEDINGS) RULES

These Rules are issued by the Chief Justice to provide a uniform mode of commencing breach proceedings before the courts of the Turks and Caicos Islands.

AUTHORITY: The Rules are issued pursuant to section 16(2)(a) of the Supreme Court Ordinance and s. 150 of the Magistrate's Court Ordinance.

WHEREAS section 16(2)(a) of the Supreme Court Ordinance vests in the Chief Justice, the power to make rules for regulating the practice and procedure in the Supreme Court, the execution of the process of the Supreme Court, the practice and procedure to be observed by officers of the Supreme Court, and any business within the jurisdiction of the Court; and the Chief Magistrate is empowered under section 150 of the Magistrate's Court Ordinance to make rules for the efficient running of the Magistrate's Courts.

Now therefore these Rules are provided to ensure a uniform procedure for the invocation of the courts' jurisdiction in respect of the breach of orders requiring supervision.

1. **DURATION:** These Rules shall be in force from 15th November, 2021 until they are, varied, revoked or replaced by the Chief Justice.

DEFINITION:

"Court" means the Supreme Court and or the Magistrates' Court.

"Responsible Officer" means the person directly in charge of supervision of a person subject to the court's order, and includes the supervisor of such person.

COMMENCING BREACH PROCEEDINGS

1. Every person responsible for the enforcement of orders available to a court under the Alternative Sentencing Ordinance 2019, shall ensure that their duties are carried out with diligence and utmost care, and that the outcome is timely, proportionate, defensible, reasonable and promotes effective risk management and the rehabilitation of offenders.
2. Where a person subject to any of the orders available to a court under the Alternative Sentencing Ordinance 2019, breaches the order or in any manner,

whether wholly or in part fails to comply with the order, the Responsible Officer shall explore ways to address the issue, including, but not limited to:

- i. notifying the offender of the potential for breach proceedings within two clear days of the alleged breach occurring.
 - ii. allow up to three days for the offender to produce evidence to show that the failure was reasonable.
 - iii. if no reasonable explanation is proffered, the said officer may either issue a warning or prepare a complete and accurate report as the case requires.
3. Breach proceedings may not generally be commenced against an offender unless the offender fails to comply with the court's order on at least two separate occasions within a twelve-month period.
- Provided that breach proceedings may be commenced against an offender if the incident is of such seriousness that the Responsible Officer determines that a report ought to be made to the court.
4. Where the Responsible Officer is satisfied that the conditions in paragraph 3 are met he shall take steps to commence breach proceedings without delay.
5. Breach proceedings shall commence with the filing of an application at the Registry of the Supreme Court or with the Clerk of the Magistrate's Court.
6. The application may be filed by the Responsible Officer or by counsel.

THE APPLICATION

7. The application to be filed must be accompanied with the following:
- i. a breach report sworn by the Responsible Officer before a Justice of the Peace.
 - ii. a statement that there is urgency involved where there is a significant risk to public safety.

THE BREACH REPORT

8. A Breach Report shall be sworn before a Justice of the Peace and shall contain the following information where applicable:
1. the case summary and any other papers deemed relevant to the Prosecution, other than the case file.

2. copies of the relevant court order(s) or the notification of the sentence of the court.
3. details of previous failures to comply with the current order(s) or sentence of the court.
4. details of any relevant activity by the Responsible Officer to promote compliance such as instructions, warning notice letters, texts, phone messages, home visits.
5. details of any action taken by the Responsible Officer to improve the offender's compliance with the plan.
6. any relevant information from other agencies providing any service to the offender as part of the plan.
7. indications of any increase in risk of serious harm arising from the failure by the offender to comply with the sentence of the court.

ADMINISTRATIVE ARRANGEMENTS

9. The Registrar or Clerk of the Magistrate's Court (as the case may be), shall cause a summons to issue no later than two days after the application is filed.
10. Service of the summons shall be effected along with accompanying documents by the Police without delay, and in any event, not more than three days of the filing of the process, or in the case of urgency, not more than thirty-six hours of the filing of the process.
11. The Registrar/ Clerk of Court (as the case may be) shall assign a hearing date which shall be no more than five days of the date of filing, or three days in cases of urgency.

THE HEARING

12. On the return date, the court may set directions at the first hearing or proceed to deal with the matter:
 1. the Responsible Officer or counsel shall present the evidence of breach before the court
 2. the offender shall be given the opportunity to cross examine the witnesses and make representations to the court, either by himself or by counsel.

RELEVANT EVIDENCE

13. The relevant evidence for the breach of a probation order or order for suspended sentence shall include:

1. Documentary evidence of the Responsible Officer
2. Testimony from the Responsible Officer.
3. Testimony and evidence presented by the offender.

CONSIDERATIONS

14. Before the court shall make an order in respect of a proven breach of its orders requiring supervision, it may have regard to any of the following:

1. Submissions by a Prosecutor,
2. Submissions by the defence attorney.
3. Proposals or recommendations from:
 - i. the Responsible Officer.
 - ii. Police report or statement(s) of any new offence which allegations constitute a breach and any new conviction.

15. SANCTIONS

Where the breach is in respect of:

- i. a probation order or order of suspended sentence, the court shall deal with the matter in accordance with section 39 of the Alternative Sentencing Ordinance 2019,
- ii. a conditional sentence order, the court shall deal with it in accordance with s. 22 of the Alternative Sentencing Order 2019.
- iii. A suspended sentence supervision order, the court shall deal with the breach in accordance with s. 26 of the Alternative Sentencing Ordinance 2019.
- iv. in breaches of other orders, the court may make orders as it deems fit.

16. OFFENCES THAT CONSTITUTE VIOLATIONS

Failure to abide by specific court order within the time frame set by the court, offences considered to be serious by the Responsible Officer, and repeated minor infractions may constitute breaches, but in every case, the following conduct by persons subject to the court's orders shall be deemed to be breaches of the court's orders for being inconsistent therewith:

- i. violation of any laws (exceptions are ticketed traffic offences).
- ii. violent conduct or the commission of assault.
- iii. possession, control, or use of any firearm, imitation firearms, explosives, or weapons defined as per the ordinances.
- iv. sale, possession, continued or problematic abuse, transportation, or distribution of any illegal substances or any other offence related to controlled substances.
- v. conduct that poses a threat to the safety of the community or to an individual, including any threats and or harassment of any complainant or witness that assisted in the prosecution of the offender.
- vi. the commission of a similar offence.

17. OTHER CIRCUMSTANCES

1. A report of breach of the court's order may also be made to the court, where:
 - i. the offender's whereabouts are unknown, or
 - ii. the offender has been unavailable for contact for three days, or
 - iii. reliable information has been received indicating that the offender is likely to or is making preparation to abscond.

ABSCONDING OFFENDER

18. The court shall issue a warrant which shall be executed without delay for an offender who having been served with a summons to appear before the court, fails to appear.
19. The court may also issue a warrant, where the Responsible Officer provides a sworn statement of the offender's conduct that leads him to the reasonable conclusion that he is evading service or execution of the warrant.
20. Where a warrant is issued but the offender cannot be located within five days of the warrant's issue, the matter shall be reported to the court.
21. Where the court is satisfied that the offender has evaded service of the order as well as the execution warrant of arrest, it may proceed to deal with the matter in accordance with the applicable provision of the Alternative Sentencing Ordinance 2019.

REPEATED BREACHES

22. Where an offender against whom the court makes an order for breach of its order continues to commit further breaches, the Responsible Officer shall provide a breach report duly sworn before a Justice of the Peace.
23. The breach report produced under rule 22, shall be filed at the Registry of the Supreme Court or before the Clerk of the Magistrate's Court (as the case may be) for it to be placed before the court without the need for a further application.
24. The court shall issue a warrant for the offender's arrest.
25. The offender shall be dealt with in accordance with the provisions of the Alternative Sentencing Ordinance as applicable.

Issued this 10th day of November 2021

BY

M.M. Agyemang

Chief Justice

In Conjunction with

J Hatmin

Chief Magistrate