

ANCILLARY ORDERS

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I. INTRODUCTORY STATEMENT

This picklist is a revision of one produced in 2017. Developed through a process of wide collaboration within the B.C. justice system, it reflects recent amendments to the *Criminal Code* as well as feedback from judges and any appellate rulings on the wording of conditions in the original version. However, the headings and numbering scheme will be familiar to users of the previous version as they have not changed.

While notes containing references to legal requirements have been added to this picklist for convenience, they do not bind judges and judicial justices who always have discretion in deciding how the law should be applied. They may or may not choose to use the picklist wording.

II. SENTENCING

Absolute Discharge

On Information ___ and Count ___, I am granting you an absolute discharge.

Conditional Discharge

On Information ___ and Count ___, I am granting you a conditional discharge, and I am placing you on probation for ___ months.

Suspended Sentence

On Information ___ and Count ___, I am suspending the passing of sentence and placing you on probation for ___ months.

Fine¹

I am sentencing you on Information ___ and Count ___ to a fine of \$___. It must be paid today (or other date). If you require further time to pay the fine, you must apply in writing to ask the Court for an extension.

Conditional Sentence Order

I am sentencing you on Information ___ and Count ___ to ___ (days or months) of imprisonment to be served in the community in the form of a conditional sentence with the following conditions:

Jail Sentence Without Pre-Sentence Credit

I am sentencing you on Information ___ and Count ___ to ___ days of imprisonment on Count ___. (If multiple counts indicate whether it is consecutive or concurrent to other sentences)

Jail Sentence With Pre-Sentence Credit

<p>Pre-Sentence Custody² s. 719(3.3) s. 719(3.3) requires all of this to be stated on the record.</p>	<ol style="list-style-type: none"> 1. The term of imprisonment I would have imposed before granting any credit is ___ days. 2. The actual time spent in custody is ___ days. 3. I am granting you credit at a rate of ___. 4. The total credit I am granting ___ days. 5. The sentence imposed is ___.³
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Victim Surcharge

Criminal Code Offences Committed on or after June 21, 2019	
<p>Victim Surcharge s. 737(1) s. 737(2)(a) 30% of any fine imposed, or s.737(2)(b) If no fine is imposed:</p> <ul style="list-style-type: none"> • \$100 for each summary offence; • \$200 for each indictable offence. 	<p>You must pay a victim surcharge in the amount of \$___ to the Clerk of the Court. It must be paid: ⁴</p> <ol style="list-style-type: none"> a. within 60 days (no fine or jail imposed); b. the same due date as fine (if a fine is imposed); or c. within 60 days of expiry of warrant of committal or two years, whichever is sooner (continuous jail is imposed);⁵ d. with the consent of the Crown, having heard your application for an extension for time to pay, it must be paid by [date].⁶

<p>s. 737(3) The Court can order a surcharge above the specified amount.</p>	<p>If you require further time to pay the surcharge, you must apply in writing to ask the Court for an extension.</p>
<p>Surcharge Exemption for Undue Hardship⁷ Reasons Required</p> <p>Upon application by the offender or the Court's motion.</p> <p>Imprisonment alone does not constitute undue hardship per s. 738(2.3)</p>	<p>Pursuant to section 737(2.1) of the <i>Criminal Code</i>, I am satisfied:</p> <ol style="list-style-type: none"> because of your precarious financial circumstances (the result of unemployment, homelessness, lack of assets, or significant financial obligations towards dependents) the surcharge would cause an undue hardship to you; or the surcharge is disproportionate to the gravity of the offence or the degree of your responsibility; <p>I order you to pay:</p> <ol style="list-style-type: none"> No surcharge(s). Reduced surcharge(s) in the amount of \$_____. Surcharges in the amount of \$_____ but only on the following Counts _____. There are no surcharges on the remaining counts.
<p>Fine or Surcharge Paid Out of Money Seized s. 734(6)</p>	<p>Under section 734(6) of the <i>Criminal Code</i>, I am satisfied that you are the owner of the money found in your possession when you were arrested, and I order that the victim surcharge be paid out of that money.</p>

Firearms / Weapons Prohibition

<p>Mandatory Weapons Prohibition</p> <p>s. 109 – 1st Offence</p> <ul style="list-style-type: none"> indictable, max 10 yrs or more and violence used, threatened or attempted indictable, violence used, threatened or attempted intimate partner/child/co-resident enumerated firearms offences enumerated drug offences enumerated weapons offences while subject to prohibition already 	<p>Pursuant to section 109 of the <i>Criminal Code</i>, you are prohibited from possessing:</p> <ol style="list-style-type: none"> any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition and explosive substance for a period of (1st offence: min 10) years⁸ from today (or following your release from prison), and any prohibited firearm or restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.
<p>Mandatory Weapons Prohibition</p> <p>s. 109 – 2nd Offence</p> <p>2nd or subsequent offence with s. 727 Notice Life⁹</p>	<p>Pursuant to section 109(3) of the <i>Criminal Code</i>, you are prohibited from possessing any firearm, cross-bow, restricted or prohibited weapon, prohibited device, ammunition, and explosive substance for life.</p>
<p>Discretionary Weapons Prohibition¹⁰</p> <p>s. 110</p> <p>The maximum is life for offences against an intimate partner or partner's child or co-resident otherwise maximum is 10 years.</p> <p>Reasons required if not ordered</p>	<p>Pursuant to section 110 of the <i>Criminal Code</i>, you are prohibited from possessing any firearm, cross-bow, restricted or prohibited weapon, prohibited device, ammunition, or explosive substance for _____ years from today (or following your release from prison).</p>
<p>Surrender Firearm</p> <p>s. 114</p>	<p>Pursuant to section 114 of the <i>Criminal Code</i>, you must immediately¹¹ (by 3:00 PM today; or any other reasonable period) go to the _____ police station and present a copy of this order for the purpose of accompanying a police officer to the place of all firearms, cross-bows, restricted or prohibited weapons, prohibited devices, ammunition or explosive substances, possessed by you or through</p>

	another person, and to the location of any related authorizations, licenses or registration certificates, and surrender all such items to that police officer.
Transfer Firearms	<p>Within 90 days of the entry of this order, the firearms, cross-bows, restricted weapons, and/or ammunition may be collected by an individual or business who/which possesses the necessary licences, authorizations and registration certificates and who are not otherwise prohibited from possessing the items and to whom you have transferred legal ownership of the firearms, cross-bows, restricted weapons, and ammunition to individuals or businesses.</p> <p>If no one, including any legal transferees of the items, takes possession of the items within 90 days of the entry of this order, the items are forfeited to Her Majesty.</p>
Sustenance Or Employment Exemption s. 113¹²	<p>I authorize the Chief Firearms Officer or the Registrar of Firearms to issue an authorization, a licence or a registration certificate to [Name of the Offender] for (sustenance or employment) purposes with the following terms and conditions:</p> <ol style="list-style-type: none"> a. the firearm or ammunition may only be possessed on the way to and from and in the course of a legal hunt; b. the firearm or ammunition may only be possessed on the way to and from and in the course of your employment; c. you must not possess the firearm or ammunition if you are intoxicated.

DNA

<p>DNA Order¹³ s. 487.051¹⁴</p> <p>Primary: Mandatory¹⁵ and does not require an application by the Crown.</p> <p>Secondary: Discretionary and requires an application by the Crown (reasons must be given¹⁶).</p>	<p>Primary: Count _____ on Information _____ is a primary designated offence. Pursuant to section 487.051(1) of the <i>Criminal Code</i>, I authorize the taking of samples of bodily substances from you.</p> <p>Secondary: Count _____ on Information _____ is a secondary designated offence. After considering the factors set out in section 487.051(3) of the <i>Criminal Code</i>, I am satisfied that it is (is not) in the best interest of the administration of justice to authorize the taking of samples of bodily substances from you.¹⁷</p> <p>Non-Custody: You must attend at the _____ police station in _____, BC on _____ at _____¹⁸ and submit to the taking of the samples. This order is valid until executed.</p> <p>Custody: The samples will be taken from you while you are in custody and you must submit to the taking of the samples.</p>
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Driving Prohibition

<p>Motor Vehicle Act s.98 Discretionary</p>	<p>Pursuant to section 98 of the <i>Motor Vehicle Act</i>, you are prohibited from driving any motor vehicle on any highway or industrial road in the Province of British Columbia for _____.</p> <p>The prohibition:</p> <ol style="list-style-type: none"> 1. takes effect immediately,
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	<p>2. continues for the full day of each day of the prohibition, and</p> <p>3. continues for consecutive days.¹⁹</p>
Criminal Code for Offences Committed on or before December 17, 2018	
<p>Impaired Driving or Refusal Simpliter s. 259(1) Mandatory</p>	<p>Pursuant to section 259 (1) of the <i>Criminal Code</i>, you are prohibited from driving any motor vehicle on any street, road, highway or other public place for a period of _____. (Plus period of imprisonment imposed on that count)²⁰.</p> <p>a. 1st offence: range 1-3 yrs. (plus period of imprisonment).</p> <p>b. 2nd offence with s. 727 notice: range 2-5 yrs. (plus period of imprisonment).</p> <p>c. Subsequent offence with s. 727 notice: minimum 3 yrs. (plus period of imprisonment).</p>
<p>Other Criminal Driving Offences Except Street Racing s. 259(2) Discretionary</p>	<p>Pursuant to section 259(2) of the <i>Criminal Code</i>, you are prohibited from operating any motor vehicle on any street, road, highway or other public place in Canada for a period of _____. (Plus period of imprisonment imposed on that count).</p> <p>a. If sentenced to life: no min or max (plus period of imprisonment).</p> <p>a1. If liable to life: no min or max (plus period of imprisonment).</p> <p>b. If liable to 5 yrs. to less than life: max 10 yrs. (plus period of imprisonment).</p> <p>c. All others: max 3 yrs. (plus period of imprisonment).</p>
Criminal Code for Offences Committed on or after December 18, 2018	
<p>Impaired Driving or Refusal Simpliter s. 320.24(1) Mandatory</p> <p><small>Prohibition can be consecutive s.320.24(9) if the new offence is committed while the offender is already prohibited</small></p>	<p>Pursuant to section 320.24(1) of the <i>Criminal Code</i>, you are prohibited from operating any motor vehicle on any street, road, highway or other public place in Canada for a period of _____. (Plus period of imprisonment imposed on that count.)</p> <p>a. 1st offence: 1-3 yrs. (plus period of imprisonment).</p> <p>b. 2nd offence with s. 727 notice: 2-10 yrs. (plus period of imprisonment).</p> <p>c. Subsequent offence with s. 727 notice: minimum 3 yrs. (plus period of imprisonment).</p>
<p>Impaired Driving Low BDC (THC 2ng>5ng) 320.24(3) Discretionary</p>	<p>Pursuant to section 320.24(4) of the <i>Criminal Code</i>, you are prohibited from operating any motor vehicle on any street, road, highway or other public place in Canada for a period of _____. (Plus period of imprisonment imposed on that count).</p> <p>a. Max 12 months (plus period of imprisonment).</p>

<p>Other Criminal Driving Offences s. 320.24(5) Discretionary</p>	<p>Pursuant to sections 320.24(1) of the <i>Criminal Code</i>, you are prohibited from operating any motor vehicle on any street, road, highway or other public place in Canada for a period of _____. (Plus period of imprisonment imposed on that count).</p> <p>a. If liable to life: no max (plus period of imprisonment). b. If liable to 5 years but less than life: 0-10 yrs. (plus period of imprisonment). c. All others: 0-3 yrs. (plus period of imprisonment).</p>										
<table border="1"> <thead> <tr> <th>Offence</th> <th>Max</th> </tr> </thead> <tbody> <tr> <td>Indictable: Impaired Driving or Refusal</td> <td>10 years</td> </tr> <tr> <td>Dangerous Driving, Fail to Stop, Flight from Police, and Driving While Disqualified</td> <td>Summary: 2 yr less one day Indictable: 10 yr</td> </tr> <tr> <td>Dangerous, Impaired, Over 80, Refusal, Failing to Stop: and Bodily harm</td> <td>Summary: 2 yr less one day Indictable: 14 yr</td> </tr> <tr> <td>Dangerous, Impaired, Over 80, Refusal, Failing to Stop: and Death</td> <td>Life</td> </tr> </tbody> </table>	Offence	Max	Indictable: Impaired Driving or Refusal	10 years	Dangerous Driving, Fail to Stop, Flight from Police, and Driving While Disqualified	Summary: 2 yr less one day Indictable: 10 yr	Dangerous, Impaired, Over 80, Refusal, Failing to Stop: and Bodily harm	Summary: 2 yr less one day Indictable: 14 yr	Dangerous, Impaired, Over 80, Refusal, Failing to Stop: and Death	Life	
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Fine Payment Out of Money Seized

<p>Fine Paid Out Of Money Seized s. 734(6) Discretionary</p>	<p>Pursuant to section 734(6) of the <i>Criminal Code</i>, I am satisfied that you are the owner of the money found in your possession when you were arrested, and I order that the fine be paid out of that money.</p>
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Restitution

<p>Restitution-Stand Alone s. 738 Discretionary <small>Must consider and if denied must give reasons s. 737.1(5).</small></p>	<p>Pursuant to section 738 of the <i>Criminal Code</i>, I order that you pay restitution in the amount of \$_____ to the Clerk of the Court for the benefit of _____ by [date] (or installments according to the following payment schedule).²¹</p>
<p>Restitution Paid Out Of Money Seized s. 741(2) Discretionary</p>	<p>Pursuant to section 741(2) of the <i>Criminal Code</i>, I am satisfied that you are the owner of the money found in your possession when you were arrested, and I order that the restitution pursuant to section 738 be paid out of that money.</p>

Delayed Parole

<p>Delayed Parole s. 743.6(1) <small>Where sentence is two years or more for enumerated indictable offences.</small></p>	<p>Pursuant to section 743.6(1) of the <i>Criminal Code</i>, having regard to the circumstances of the offence and the character and circumstances of the offender, I am satisfied that the expression of (society's denunciation or the objectives of specific or general deterrence) require that you must serve [1/2 of the sentence of imprisonment or ten years whichever is less] before you may be released on full parole.</p>
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Forfeiture²²

<p>Further Detention of Things Seized s. 490(9.1) Discretionary</p>	<p>Pursuant to section 490(9.1) of the <i>Criminal Code</i>, I am satisfied that the continued detention of the thing might reasonably be required for a purpose mentioned in s. 490(1-4) of the <i>Code</i> and that that it is also in the interest of justice to order its continued detention until _____.</p>
<p>Unlawful To Possess Or Owner Unknown s. 490(9) <small>Refer to section to determine if mandatory or discretionary.</small></p>	<p>Pursuant to section 490(9) of the <i>Criminal Code</i>, I am satisfied that it is unlawful to possess [list property] or that the owner of the property is unknown and I order that the property be forfeited to Her Majesty in right of (The Province of BC or Canada), to be disposed or otherwise dealt with at the direction of the Attorney General.²³</p>
<p>Offence Related Property s. 490.1 (1) Mandatory (2) Discretionary</p>	<p>Pursuant to section 490.1 of the <i>Criminal Code</i>, I am satisfied:</p> <ol style="list-style-type: none"> 1. on a balance of probabilities that the following offence-related property: [list property is related to the commission of the indictable offence which I have [convicted or discharged you under section 730]; <u>Or</u> 2. beyond a reasonable doubt that the following property is offence-related property: [list property] other than as described in (1), and <p>I order that it be forfeited to Her Majesty in right of:</p> <ul style="list-style-type: none"> • (In the case where the prosecution is conducted by the province) the Province of BC to be disposed of or otherwise dealt with by the Attorney General; <u>Or</u> • (In any other case) Canada to be disposed of or otherwise dealt with by the designated member of the Queen’s Privy Council for Canada.
<p>Return or Forfeiture of Property Obtained by Crime s. 491.1 Mandatory</p>	<p>Pursuant to section 491.1 of the <i>Criminal Code</i>, after the trial of this offence, I am satisfied that an offence has been committed and that the following property was obtained by the commission of the offence: [list property]. The property is before the Court and is not required as evidence in any other proceedings. I order:</p> <ol style="list-style-type: none"> a. the property be returned to [name], the lawful owner or person lawfully entitled to possession of the property; <u>Or</u> b. that because the lawful owner or person lawfully entitled to possession of the property is unknown, that it be forfeited to Her Majesty to be disposed of or otherwise dealt with at the direction of the Attorney General.
<p>Drug Offence Related Property s. 16 CDSA (1) mandatory (2) discretionary</p>	<p>Pursuant to section 16 of the <i>Controlled Drugs and Substances Act</i>, I am satisfied:</p> <ol style="list-style-type: none"> 1. on a balance of probabilities, that the following non-chemical offence-related property: [list property] is related to the commission of a designated substance offence of which I have convicted/discharged you; <u>Or</u>

	<p>2. beyond a reasonable doubt, that the following non-chemical property is offence-related property: [list property] as described in (1), and</p> <p>I order that it be forfeited to Her Majesty in right of:</p> <ul style="list-style-type: none"> • (In the case where the prosecution is conducted by the province) the Province of BC to be disposed of or otherwise dealt with at the direction of the Attorney General; <u>Or</u> • (In any other case) Canada to be disposed of or otherwise dealt with at the direction of a designated member of the Queen's Privy Council for Canada.
<p>Firearms or Weapons Used In Offence s. 491(1)(a) Mandatory</p>	<p>Pursuant to section 491(1)(a) of the <i>Criminal Code</i>, I am satisfied that (weapon, firearm, ammunition, explosive) was used in the commission of an offence and I order that it be forfeited to Her Majesty to be disposed of or otherwise dealt with at the direction of the Attorney General.</p>
<p>Firearms or Weapons Subject Matter of The Offence s. 491(1)(b) Mandatory</p>	<p>Pursuant to section 491(1)(b) of the <i>Criminal Code</i>, I am satisfied that the offence you committed involved, or the subject matter of the offence was (a firearm, a cross-bow, a prohibited or restricted weapon, a prohibited device, ammunition, or an explosive substance), and I order that it be forfeited to Her Majesty to be disposed of or otherwise dealt with at the direction of the Attorney General.</p>
<p>Intimate Image Distribution, Child Pornography and Child Luring s. 164.2(1) Discretionary</p>	<p>Pursuant to section 164.2(1) of the <i>Criminal Code</i>, following your conviction under section (162.1,163.1, 172.1, 172.2) I am satisfied on a balance of probabilities that [list property]:</p> <ul style="list-style-type: none"> • was used in the commission of the offence; and • is your property [or the property of another person who was a party to the offence or was transferred to (name) in circumstances that give rise to an inference that it was transferred to avoid forfeiture], <p>And I order it forfeited to Her Majesty to be disposed of at the direction of the Attorney General.</p>
<p>Obscene Material and Recordings s. 164(4)</p>	<p>Pursuant to section 164(4), I am satisfied on the balance of probabilities that the (publication, representation, written material, or recording) seized pursuant to s. 164(1) is: (obscene, child pornography, a voyeuristic recording, an intimate image or an advertisement of sexual services) and I order it forfeited to Her Majesty in right of the Province of BC²⁴ to be disposed of at the direction of the Attorney General.</p>

Sex Offender Identification Registration Act (SOIRA)

<p>Sex Offender Registry ss. 490.012 and 490.013(2.1)</p> <p>(1) mandatory (for usual sexual type offences)</p> <p>(2) mandatory only on the application of the prosecutor for attempts and for a</p>	<p>a. Pursuant to section 490.012 of the <i>Criminal Code</i>, you are required to comply with the <i>Sex Offender Information Registration Act</i> for (10 / 20 years / life).²⁵</p> <p>b. You have been found guilty of more than one designated offence and pursuant to section</p>
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broader range of offences including unexpected things like harassment and B&E	490.013(2.1) you are required to comply with the <i>Sex Offender Information Registration Act</i> for life. ²⁶
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Section 161 Prohibition

<p>Section 161 Prohibition ²⁷ Discretionary (Max Life)</p>	<p>Pursuant to section 161 of the <i>Criminal Code</i>, you are prohibited for ___ years (life or any shorter duration desirable) commencing: (today or on the date you are released from prison) from:</p> <ul style="list-style-type: none"> a. attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground or community centre; a1. being within two kilometers (or any other distance specified) of any residence, school or workplace (or other specified place) of [Victim Name]; b. seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer, in a capacity that involves a position of trust or authority towards persons under the age of 16; c. having contact or communicating by any means with a person who is under the age of 16 years; d. using the Internet or other digital network. <p>Except in the following circumstances: ²⁸</p> <ul style="list-style-type: none"> i. in the presence of (under the supervision of) a person approved in writing by the Court, your probation officer, (your conditional sentence supervisor), your parole officer, or the person to whom you are reporting under the <i>Sex Offender Information Registration Act</i>. You must carry a copy of the written permission with you. ii. lawful employment, with the nature of your employment being approved in advance in writing by the Court, your probation officer, (your conditional sentence supervisor), your parole officer, or the person to whom you are reporting under the <i>Sex Offender Information Registration Act</i>. You must carry a copy of the written permission with you. iii. as approved in advance in writing by the Court, your probation officer, (your conditional sentence supervisor), your parole officer, or the person to whom you are reporting under the <i>Sex Offender Information Registration Act</i>. You must carry a copy of the written permission with you. iv. you may access the internet but not access any illegal content, communicate with persons under the age of ___ other than immediate family members, or access any social media. v. you may access the internet but not: <ul style="list-style-type: none"> • any content that violates the law, or • access directly or indirectly any social media sites, social network, internet discussion
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	forum or chat room, or maintain a personal profile, on any such service.
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Intimate Image Distributor - Internet Use Prohibition

<p>Intimate Image Distributor²⁹ s.162.2 Discretionary (Max Life)</p>	<p>Pursuant to section 162.2 of the <i>Criminal Code</i>, you are prohibited for (any appropriate period including any period of imprisonment) from using the internet or any digital network.</p> <p>Except in the following circumstances:</p> <ol style="list-style-type: none"> i. in the presence of (under the supervision of) a person approved in writing by the Court, the warden of your prison, your probation officer, (your conditional sentence supervisor), your parole officer, or the person to whom you are reporting under the <i>Sex Offender Information Registration Act</i>. You must carry a copy of the written permission with you. ii. lawful employment, with the nature of your employment being approved in advance in writing by the Court, your probation officer, (your conditional sentence supervisor), your parole officer, or the person to whom you are reporting under the <i>Sex Offender Information Registration Act</i>. You must carry a copy of the written permission with you. iii. as approved in advance in writing by the Court, your warden, your probation officer, (your conditional sentence supervisor), your parole officer, or the person to whom you are reporting under the <i>Sex Offender Information Registration Act</i>. You must carry a copy of the written permission with you. iv. you may access the internet but not access any illegal content, communicate with persons under the age of __ other than immediate family members, or access any social media. v. you may access the internet but not: <ul style="list-style-type: none"> • any content that violates the law, or • access directly or indirectly any social media sites, social network, internet discussion forum or chat room, or maintain a personal profile, on any such service.
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Animal Cruelty

<p>Animal Possession Prohibition³⁰ s. 447.1(1)(a) 1st offence: Discretionary (Max Life) Second: Mandatory with Notice (Min 5 years)</p>	<p>Pursuant to section 447.1(1)(a) of the <i>Criminal Code</i>, you are prohibited from owning, having custody or control of, or residing in the same premise as an animal or bird for [years].</p>
<p>Restitution for Care of Animals</p>	<p>Pursuant to section 447.1(1)(b) of the <i>Criminal Code</i> you must pay (Name of Organization) \$_____ for the</p>

s. 447.1(1)(b)	past care of the animal(s). The money is payable through the Clerk of the Court for the benefit (Name of Organization) by [date].
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Fraud – Employment Prohibition

Employment Prohibition ³¹ s. 380.2(1) Discretionary (Max Life)	Pursuant to section 380.2(1) of the <i>Criminal Code</i> you are prohibited for [years] from seeking, obtaining, or continuing any employment; or becoming a volunteer in any capacity that involves having authority over the real property, money or valuable security of another person.
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III. GENERAL PROCEDURAL OR PRELIMINARY MATTERS

Pre-Sentence Report

Pre-Sentence Report ³² s. 721 Discretionary	Upon the request of (the: Crown or Offender; Court’s own motion), I am directing the preparation of a pre-sentence report (including a): <ul style="list-style-type: none"> a. Psychological and/or Psychiatric component³³ (to assist in assessing: risk; the degree of culpability; type of programming and treatment requirements);³⁴ b. Gladue component.³⁵
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No Communication While in Custody

No Communication While In Custody ³⁶	<p>Accused Remanded in Custody: The Warrant for Remand shall be endorsed with the following order: Pursuant to section 516(2) of the <i>Criminal Code</i>, you must have no contact or communication with [name(s)] while you are in custody except through a lawyer.</p> <p>Accused Detained in Custody: The Warrant for Committal shall be endorsed with the following order: Pursuant to section 515(12) of the <i>Criminal Code</i>, you must have no contact or communication with [name(s)] while you are in custody except through a lawyer:</p> <p>Accused Sentenced to Jail: The Warrant for Committal shall be endorsed with the following order: Pursuant to section 743.21(1) of the <i>Criminal Code</i>, you must have no contact or communication with [name(s)] while you are in custody (consider whether any exception is necessary).</p>
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Appointment of Counsel

Appointment of Counsel Witness is U-18 ³⁷ Presumptive - s. 486.3(1)	Pursuant to section 486.3(1) of the <i>Criminal Code</i> , having found that the witness, [name], is under the age of 18 years and that the proper administration of justice does not require the accused to personally cross-examine the witness, I appoint counsel to conduct the cross-examination of the witness.
Appointment of Counsel Witness is O-18 ³⁸ For criminal harassment, and sexual assault	Pursuant to section 486.3(2) of the <i>Criminal Code</i> , I am satisfied that: <ul style="list-style-type: none"> • it is necessary to obtain a full and candid account from the witness of the acts complained of; or

<p>s.486.3(2) Presumptive</p>	<ul style="list-style-type: none"> • it is otherwise in the interest of the proper administration of justice. <p>Therefore, I order that the accused not personally cross-examine the witness, and I appoint counsel to conduct the cross-examination of the witness.</p>
<p>Appointment of Counsel for Fitness s. 672.24 (Mandatory)</p>	<p>Pursuant to section 672.24(1) of the <i>Criminal Code</i>, I have reasonable grounds to believe that the accused is unfit to stand trial and is not represented by counsel, and I appoint counsel to represent the accused.</p>

Publication Bans

<p>Bail Hearing s. 517(1) Mandatory: Accused Discretionary: Crown³⁹</p>	<p>On application of (accused, prosecutor or court's own motion) pursuant to section 517(1) of the <i>Criminal Code</i>:</p> <ul style="list-style-type: none"> • the evidence taken, • the information given, or • the representations made and • the reasons given or to be given by this Court <p>must not be published, broadcast or transmitted in any way until (a) if a preliminary inquiry is held, the accused is discharged or, (b) if the accused is tried or ordered to stand trial, the trial is ended.</p>
<p>Preliminary Inquiry⁴⁰ s. 539 Mandatory: Accused⁴¹ Discretionary: Crown⁴²</p>	<p>On application of (accused or prosecutor) pursuant to section 539 of the <i>Criminal Code</i>, information relating to the evidence taken at the preliminary inquiry must not be published, broadcast or transmitted in any way until the trial is ended.</p>
<p>Sex Offences and Extortion U-18⁴³ s. 486.4(2) Mandatory to inform and (if requested) to order</p>	<p>On application of (prosecutor, victim, witness or court's own motion) pursuant to section 486.4(2) of the <i>Criminal Code</i>, any information that could identify the (witness/victim) [name] in these proceedings must not be published, broadcast, or transmitted in any way. This publication ban applies indefinitely unless otherwise ordered.</p>
<p>Sex Offences O-18⁴⁴ and Extortion s. 486.4(1) Discretionary</p>	<p>On application of (prosecutor, victim, witness or court's own motion) pursuant to section 486.4(1) of the <i>Criminal Code</i>, any information that could identify the (witness / victim) [name] in these proceedings must not be published, broadcast, or transmitted in any way. This publication ban applies indefinitely unless otherwise ordered.</p>
<p>Non-Sex Offences U-18⁴⁵ s. 486.4(2.2) Mandatory to inform and (if requested) to order</p>	<p>On application of (prosecutor, victim, witness or court's own motion) pursuant to section 486.4(2.2) of the <i>Criminal Code</i>, any information that could identify the (witness / victim) [name] in these proceedings must not be published, broadcast or transmitted in any way. This publication ban applies indefinitely unless otherwise ordered.</p>
<p>Any Offence O-18</p>	<p>On application of (prosecutor, victim, witness or court's own motion) pursuant to section 486.5(1) of the <i>Criminal Code</i>, I am of the opinion that it is in the interest of the proper administration of justice to make the following</p>

<p>s. 486.5(1) Discretionary ⁴⁶</p>	<p>order, and I order that any information that could identify the (witness/victim) [name] in these proceedings must not be published, broadcast or transmitted in any way. This publication ban applies indefinitely unless otherwise ordered.</p>
<p>Non-Disclosure of Witness Identity (Informant or Under-Cover Operator) s. 486.31(1) Discretionary</p>	<p>On application of (prosecutor or witness) pursuant to section 486.31(1) of the <i>Criminal Code</i>, I am of the opinion that it is in the interest of the proper administration of justice to order, and I order that any information that could identify the witness [name] in these proceedings must not be disclosed in the course of these proceedings. This publication ban applies indefinitely unless otherwise ordered.</p>
<p>Sexual History and Record Production Applications s. 276(2) or 278.93 Mandatory unless otherwise ordered:</p> <ul style="list-style-type: none"> • for decision under s. 278.93(4): after considering complainant's privacy/interests of justice • for s. 278.94(4) determination and reasons, unless determination that evidence is admissible or considering complainant's privacy/interests of justice 	<p>Pursuant to section 278.95 of the <i>Criminal Code</i>:</p> <ul style="list-style-type: none"> • the contents of the application made under section 278.93, • the evidence taken, • the information given, or • the representations made <p>at an application made under section 278.93 or at a hearing under section 278.94, and</p> <ul style="list-style-type: none"> • the decision, and • the reasons provided under subsection 278.94(4) by this Court <p>must not be published, broadcast or transmitted in any way until (a) if a preliminary inquiry is held, the accused is discharged or, (b) if the accused is tried or ordered to stand trial, the trial is ended.</p>
<p>Child Pornography s. 486.4(3) Mandatory</p>	<p>Pursuant to section 486.4(3) of the <i>Criminal Code</i>, any information that could identify a witness who is under the age of 18 years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of s. 163.1, must not be published, broadcast or transmitted in any way. This publication ban applies indefinitely unless otherwise ordered.</p>
<p>Justice System Participant s. 486.(5)(2) Discretionary</p>	<p>On application of (prosecutor or justice system participant) pursuant to section 486.(5)(2) of the <i>Criminal Code</i>, any information that could identify [Name], a justice system participant in these proceedings must not be published in any document, broadcast or transmitted in any way. This publication ban applies indefinitely unless otherwise ordered.</p>
<p>Common Law Ban Pre-trials or co-accused proceeding separately</p>	<p>Pursuant to the Court's jurisdiction to manage and protect the integrity of the Court process, the evidence taken, the information given, or the representations made and the reasons given by this Court in this hearing must not be published, broadcast or transmitted in any way before the accused (co-accused's trial) has ended.⁴⁷</p>

Exclusion of the Public and In Camera

<p>Exclusion of the Public – General s. 486(1)⁴⁸</p>	<p>Pursuant to section 486(1) of the <i>Criminal Code</i>, I am satisfied that the exclusion of (all members of the public / specific person) for (entirety/specific portion) of these proceedings is necessary for the (interest of public morals; the maintenance of order; the proper administration of justice; to prevent injury to international relations or national defence or national security).</p>
<p>Applications Concerning Sexual History or Record Production s. 278.93/94 Mandatory</p>	<p>Pursuant to section 278 (.93 whether to hear application or .94 the actual hearing) of the <i>Criminal Code</i>, the public is excluded from this hearing to determine (whether to hear the application or the admissibility of evidence).</p>
<p>Application for Further Detention of Thing Seized and Sealing Order s. 490(9)</p>	<p>Pursuant to section 487.3 of the <i>Criminal Code</i>, the public is excluded from the hearing to determine whether a further detention order of things seized will be made.</p>

Sealing Order

<p>Sealing Order for Application for Further Detention of Thing Seized s. 487.3</p>	<p>On application made by the prosecutor for an order to pursuant to section 487.3 of the <i>Criminal Code</i> to prohibit access to and the disclosure of all records relating to the application for Further Detention of Things Seized, I am satisfied that the ends of justice would be subverted by access and disclosure because it would:</p> <ul style="list-style-type: none"> a. compromise the identity of a confidential informant; or b. compromise the nature and extent of an ongoing investigation; or c. endanger a person engaged in particular intelligence-gathering technique and thereby prejudice future investigations in which similar techniques would be used; or d. prejudice the interest of an innocent person; or e. other: _____. <p>These reasons outweigh the importance of access to the information.</p> <p>I order that:</p> <ol style="list-style-type: none"> 1. All records, including any recordings of this application not be accessed and disclosed to any interested party or member of the public until [date]. 2. The material filed in support of this application be placed in a sealed packet and kept in a secure place within the Court Registry at [location] until [date]. 3. Any party may apply to the Justice or Judge who made the order or a Judge of the Court to set aside or vary this order, on three (3) clear days notice being given to the Attorney General of British Columbia, Crown Counsel,
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December 16, 2019

	or an agent for the Attorney General of Canada.
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Fitness or NCRMD Assessment

Fitness or NCRMD Assessment ⁴⁹

s. 672.11

Assessment order pre-empts bail s. 672.17
⁵⁰. If protective conditions are required ensure they are in the assessment order.

I have reasonable grounds to believe that evidence of the mental condition of [name], who has been charged with _____, may be necessary to determine:

Fitness

- a. whether s/he is unfit to stand trial;

Criminal Responsibility

- b. whether s/he, at the time of the commission of the alleged offence, suffered from a mental disorder so as to exempt them from criminal responsibility by virtue of section 16(1) of the *Criminal Code*;

Type of Disposition

- c. (if a verdict of unfit to stand trial or a verdict of not criminally responsible on account of a mental disorder has been rendered in respect of the accused) the appropriate disposition to be made in respect of the accused under the *Criminal Code*; OR

Appropriateness of a Stay

- d. (if a verdict of unfit to stand trial has been rendered in respect of the accused) whether the Court should order a stay of proceedings under section 672.851 of the *Criminal Code*.

I therefore order an assessment of the mental condition of the accused to be conducted:

- a. in custody by the Forensic Psychiatric Services Commission and I (recommend / order) that it occur at the Forensic Psychiatric Hospital;⁵¹
- b. not in custody at the Forensic Psychiatric Services Commission with the following conditions:⁵²

This order is to be in force for a total of ___ days⁵³ including travelling time, during which time the accused is to remain:

- a. in custody. (During the travel time, the accused can be held at a correctional centre while awaiting transfer to the location of the assessment and back to court.⁵⁴); Or
- b. out of custody on the following conditions:
1. You must report in person to the bail supervisor at _____ by 3:00 PM today (date and time), and after that, you must report as directed by the bail supervisor.
 2. At the direction of the bail supervisor, you must attend at the Forensic Psychiatric Services Commission.
 3. Other (consider if appropriate to include protective conditions).

Adjourn for completion of the report. If the accused is in custody, ensure that the next appearance is by video.

<p>Extension of Assessment Order s.672.15 No extension can exceed 30 days, and the period of the initial order together with all extensions shall not exceed 60 days.⁵⁵</p>	<p>Pursuant to section 672.15 of the <i>Criminal Code</i>, I am satisfied that an extension of the assessment order is necessary to complete the assessment and I order it extended for (<u>max 30</u>) days.</p>
<p>Appointment of Counsel Fitness Issue s. 672.24(1) Mandatory</p>	<p>There are reasonable grounds to believe that the accused is unfit to stand trial and because s/he is not represented by counsel, I order that [name] be represented by counsel pursuant to section 672.24 of the <i>Criminal Code</i>.</p>
<p>Publication Bans (common law)⁵⁶ Fitness or NCRMD Disposition Hearing</p>	<p>The evidence taken, information given, representations made, assessments received and the reasons given by this Court must not be published, broadcast or transmitted in any way before (a) the accused (co-accused name) is discharged at a preliminary inquiry or, (b) the accused's trial is ended.</p>
<p>Fit and Fragile – Hospital Pending Completion of the Trial s.672.29</p>	<p>Pursuant to section 672.29 of the <i>Criminal Code</i>, the accused is fit to stand trial and I order that the accused be held in custody at the Forensic Psychiatric Hospital⁵⁷ until completion of the trial or until further court order, as there are reasonable grounds to believe that if s/he is released that s/he will become unfit to stand trial.</p>
<p>Unfit or NCRMD Deferred Disposition with Current JIR Order s. 672.46(1)</p>	<p>The accused has been found (unfit to stand trial / not criminally responsible on account of a mental disorder), and their disposition hearing is deferred to the British Columbia Review Board.</p> <p>Pursuant to section 672.46(1) of the <i>Criminal Code</i>, I order that the current (form of judicial release / detention order) remain in force until the Review Board makes a disposition.</p>
<p>Unfit or NCRMD Deferred Disposition but Vacate Previous JIR Order s. 672.46(2)⁵⁸</p>	<p>The accused has been found (unfit to stand trial / not criminally responsible on account of a mental disorder), and their disposition hearing is deferred to the British Columbia Review Board.</p> <p>Pursuant to section 672.46(2) of the <i>Criminal Code</i>, I find that cause has been shown that the current form of judicial interim release be vacated and replaced with:</p> <ol style="list-style-type: none"> a. The following form of release with the following conditions: <ol style="list-style-type: none"> 1. You must report in person to the bail supervisor at [address] by 3:00 PM today (date and time), and after that, you must report as directed by the bail supervisor. 2. You must report to the Review Board as directed by the bail supervisor. <u>Or</u> b. An order that the accused be detained in hospital pending the disposition by the Review Board.
<p>Unfit - Court Disposition⁵⁹ s. 672.54(1)⁶⁰</p>	<p>Pursuant to s.672.54(1) of the <i>Criminal Code</i>, I make the following disposition:</p> <p>[Name] having been found unfit to stand trial and taking into consideration the safety of the public; the mental condition of the accused, the reintegration of the</p>

	<p>accused into society and any other needs of the accused:</p> <p>a. I discharge [name] subject to the following conditions: _____; <u>Or</u></p> <p>b. I detain [name] in a hospital, subject to the following conditions: _____.</p>
<p>NCRMD Court Disposition⁶¹ s. 672.54(1)⁶²</p>	<p>Pursuant to s. 672. 54(1) of the <i>Criminal Code</i>, I make the following disposition:</p> <p>[name] having been found not criminally responsible on account of a mental disorder and taking into consideration the safety of the public; the mental condition of the accused, the reintegration of the accused into society and any other needs of the accused I find that :</p> <p>a. S/he is not a significant threat to the safety of the public and is discharged absolutely; <u>Or</u></p> <p>b. S/he is a significant threat to the safety of the public but that threat can be safely managed in the community pursuant to conditions and is discharged on the following conditions: _____; <u>Or</u></p> <p>c. S/he is a significant threat to the safety of the public and that threat cannot be safely managed in the community and is detained in custody in a hospital, subject to the following conditions: _____.</p>

IV. EVIDENCE AT TRIAL OR PRELIMINARY INQUIRY

Exclusion of Witnesses

<p>Exclusion of Witnesses s. 537 (Prelim) Common law (Trial)</p>	<p>All of the witnesses, in this case (except name) are to be excluded from the courtroom until called. If you are being called as a witness, you must leave the courtroom at this time and remain available to come to the courtroom when required. While waiting to be called, you must not discuss the evidence with any witness who has previously testified (or will be testifying).</p>
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Statements to Accused at Preliminary Inquiry

<p>Self-Rep at Preliminary Hearing s. 541(2-4)⁶³ MANDATORY</p> <p>If the accused says anything in answer to the charge, the answer must be taken down in writing and signed by the justice and kept with the evidence of the witnesses and dealt with by this part.</p>	<p>Do you wish to say anything in answer to these charges or to any other charges which might have arisen from the evidence led by the prosecution? You are not obliged to say anything, but whatever you do say may be given in evidence against you at your trial. You should not make any confession or admission of guilt because of any promise or threat made to you, but if you do make any statement it may be given in evidence against you at your trial, in spite of the promise or threat. Do you wish to call any witnesses?</p>
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Committal or Discharge at a Preliminary Hearing

<p>Committal / Discharge s. 548</p>	<p>a. I am satisfied that there is sufficient evidence upon which a reasonable jury properly instructed could convict you of the offence(s) charged (or any other indictable offence in respect of the same transaction), and I order you to stand trial on the counts set out in Information _____ (and/or on the following counts if the test for additional counts in respect of the same transaction is made out).</p> <p>b. I am satisfied that no reasonable jury properly instructed could convict you of the offences charged or any other indictable offence in respect of the same transaction, and I discharge you on Information _____.</p>
<p>Consent Committal⁶⁴ s. 549</p>	<p>With the consent of the accused and the prosecutor, I am ordering the accused to stand trial on the count(s) set out in Information _____.</p>
<p>Waiver of Preliminary Hearing s. 536(4.3)</p>	<p>You have chosen not to proceed with a preliminary inquiry. You will appear in courtroom _____ of the Supreme Court of British Columbia at [location] at [date and time] to fix a trial date.</p>

¹ The failure to pay previous fines can be consideration in determining whether the imposition of another fine can adequately meet the objectives and principles of sentencing. Part of the consideration must include a determination whether the accused was financially able to meet their previous fine obligations. Each court registry has a fine payment clerk who can, usually within a few minutes, obtain a detailed summary of unpaid fines. [R v Mellstrom, 1975 CanLII 1270 \(ABCA\)](#); [R v Wells](#), [2003] OJ No 2025 (CJ); [Canada v Stacey](#), [2012] NJ No 289 (PC); [R v Karau, 2015 ONCJ 81](#); [R v Kennedy, 2011 NLTD 96](#)

² In [R. v. Louie, 2015 BCCA 109](#), the sentencing judge erred in calculating the number of days. The British Columbia Court of Appeal corrected the error but in doing so added, “To be clear, it is the responsibility of counsel, not the sentencing judge, to do the necessary arithmetic.” Despite this, it is always good to double check counsel’s math. A helpful site for doing so is called [Time and Date.com](#). At the site you type in each date and it calculates the days. Siri can also do this calculation for you.

³ A sentence of time served is not a sentence that is available in the *Criminal Code*. If a judge does not intend to impose any additional jail time, the appropriate disposition is one day in jail. [s. 719\(3.3\)](#); [R. v. Coutu, 1997 CanLII 3879 \(BCCA\)](#); [R. v. Mizen, 2009 BCCA 253](#); [R. v. Lea, 2010 MBCA 37](#). If you are imposing a federal sentence and there happens to be a leap year, it is important to account for the extra day when stating the sentence in days when imposing a two-year sentence. Failing to do so will result in the sentence being interpreted as two years less one day (provincial sentence).

⁴ In BC, the [Criminal Code Victim Surcharge Regulation](#) sets out when victim surcharge is due. The victim surcharge is due at the same time that any fine imposed is payable. If no fine is imposed, but the offender is sentenced to a term of continuous custody, the victim surcharge is due within two months after the expiry of the warrant of committal or within two years, whichever is earlier. If no fine is imposed, and no term of continuous custody is imposed, the victim surcharge is payable within two months after the date of sentencing.

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⁶ With the consent of the Crown, and application to extend time to pay can be made before the expiration of the 60 days. This means it could happen the same day as the imposition of the surcharge. The extension must be reasonable. Giving the offender five years to pay an order to circumvent the legislation is not appropriate.

⁷ Either upon application by the offender or the Court’s own motion, the Court can because of the offender’s precarious financial circumstances, waive the surcharge on some or all counts, but must state reasons for doing so.

⁸ Ten years is the minimum term of the [section 109](#) prohibition order.

⁹ The Crown must serve the offender with notice to seek greater punishment if they want to rely on the mandatory section. However, judges always have the discretion to impose a lifetime prohibition if the circumstances justify it without notice being served.

¹⁰ [Section 110](#) of the *Criminal Code* provides that the Court must consider whether it is desirable to make an order prohibiting the person from possessing firearms. Brief reasons must be given.

¹¹ Immediate attendance at the police station reduces the risk of the offender accessing the firearms. Requiring the offender to make arrangements with the police eliminates the risk created when an offender approaches a police station in possession of firearms.

¹² [Section 113](#) of the *Criminal Code* allows the Court to authorize the Chief Firearms Officer to issue a licence if s/he concludes the offender needs to hunt for sustenance, or if a firearms prohibition would effectively bar the offender from employment in the only vocation open to him or her. In [R. v. Conley, 2010 BCSC 1092](#) at para 39, the Court said [section 113](#) was not intended for the relief of part-time hunters, or cultural or social hunters.

¹³ DNA orders are provided for in [section 487.051](#). At least with mandatory orders the British Columbia and Ontario Courts of Appeal have held that if an offender has already given a DNA sample on prior occasion it is not a factor to consider at the time of making the order but rather when taking the sample. See: [R. v. Thomas, 2009 BCCA 233](#); [R. v. Wagner, 2009 ONCA 588](#).

¹⁴ For a more thorough discussion on the topic of DNA orders, see the *DNA Handbook* on the National Justice Institute's website.

¹⁵ DNA for primary designated offences is mandatory unless the accused establishes that it would be "grossly disproportionate".

¹⁶ Although rarely the subject of an appeal, the court in [R. v. Ward, 2007 NBCA 62](#), held that the failure to give reasons is a reversible error.

¹⁷ DNA for secondary designated offences can only be ordered if the Crown applies for an order and the Court is satisfied that it is in the best interests of the administration of justice to make the order. [Section 487.051\(2\)](#). Section 487.051(3) sets out a non-exhaustive list of factors the Court shall consider:

- 1) the person's criminal record;
- 2) whether they were previously found not criminally responsible on account of a mental disorder for a designated offence;
- 3) the nature of the offence;
- 4) the circumstances surrounding commission of the offence; and
- 5) the impact such an order would have on the person's privacy and security of the person.

Most appellate courts have held that in the vast majority of cases, it is in the best interests of the administration of justice to make the order for secondary designated offences. In [R. v. Hendry, 2011 CanLii 21688](#), the Ontario Court of Appeal stated, "On balance, I would expect that in the vast majority of cases it would be in the best interests of the administration of justice to make the orders. This follows simply from the nature of the privacy and security of the person interests involved, the important purposes served by the legislation and, in general, the usefulness of DNA evidence in exonerating the innocent and solving crimes in a myriad of situations."

¹⁸ The court clerk has the dates and times that all police stations take samples.

¹⁹ Section 98(4) of the *Motor Vehicle Act* requires this wording in the order.

²⁰ See [R. v. Bansal, 2017 BCCA 93](#) at paras 42 & 43: "in light of [Lacasse](#), it is now important that sentencing courts articulate the two components of a driving prohibition both in the sentence pronounced and in the documents issued to record and give effect to a prohibition. If that is done, then both the offender and those responsible for implementing and enforcing prohibitions will be readily able to determine when a prohibition begins and when it ends." So say: years prohibition plus the ____ year period of imprisonment imposed on that count.

²¹ [Section 739.2](#) provides that in making the order, the judge must order when the payment is due by or set out the payment scheme. [Section 739.1](#) provides that the offender's ability to pay does not prevent the Court from making an order under section 738.

²² Some sections specify the province, others are simply Her Majesty, and yet others have Province/Canada choice.

²³ Section 2 defines Attorney General so that it includes the Solicitor General, and thus the police. Police are bound by federal regulations with respect to disposal.

²⁴ Some sections specify the province, others are simply Her Majesty, and yet others have Province/Canada choice.

²⁵ [Section 490.013\(1\)](#) specifies the periods:

- If Crown proceeded summarily, or maximum term of imprisonment is up to and including five years: applies for 10 years.
- If maximum term is up to and including 14 years: applies for 20 years.
- If maximum term is life: applies for life.

²⁶ A lifetime order is required if the offender is convicted of multiple designated sexual offenses or was the subject of a previous SOIRA order. See [section 490.013\(2.1\)](#)

²⁷ Pursuant to [section 161\(2\)](#), the prohibition can be for life or for any shorter duration the Court considers desirable. In [R. v. K.R.J., 2016 SCC 31](#), the Court describes the serious implications of prohibiting a person from accessing the internet; the importance of carefully tailoring these types of orders to the circumstances of the case; and not imposing these types of orders simply as a matter of course.

First: The test for imposition is whether the Court is satisfied that the specific term of the order is a reasonable attempt to minimize the risk the offender poses to children. This analysis is case specific and there must be an evidentiary basis upon which to draw this conclusion.

Second: The principles of denunciation, deterrence and public safety must take precedence over other recognized objectives of sentencing. However, the need to recognize does not mean they trump all other sentencing concerns (see [R. v. Branton, 2013 NfldCA 61](#) at paras 24 & 25) nor must they lead to a

prohibition that would unduly prevent a first time offender from making serious rehabilitative efforts (see [R. v. Perron, 2015 CQCCA 601](#) and [R. v. Brar, 2016 ONCA 724](#)). However, while the imposition of such an order is a considerable interference on offender's liberty, where the order is necessary to protect children it must be made (see [R. v. L.C., 2018 ONCA 311](#)). In [R. v. Athey, 2017 BCCA 350](#), the offender pled guilty to possession, and the making child pornography, and sexual interference. The Court reduced a 20 year s. 161(1)(d) to 10 yrs and modified the order to permit the offender to use the internet for if his employer required it and only during working hours.

Third: Section 161 orders are predominantly protective in the purposes (see *R. v. KRJ*, supra, and *R. v. Brar*, supra). Finally, the orders are discretionary and flexible, allowing courts to craft conditions to address specific issues. While a related record and psychological assessment are relevant, neither is a precondition to a s.161 order (see [R. v. Miller, 2017 NLCA 22](#)).

²⁸ Since section 161 orders can extend beyond the duration of a probation order it is usually necessary to delegate to others the ability to authorize exceptions for the accused. Similar wording was imposed in [R. v. McIntyre, 2016 BCCA 465](#)

²⁹ This section was enacted on March 9, 2015. [Section 162.2\(2\)](#) provides that the order can be for any period the Court considers appropriate. Prohibiting offender while in prison can be problematic because a computer is often their only link to the outside world.

³⁰ [Section 447.1\(1\)](#) the prohibition order can be for any period the Court considers appropriate.

³¹ [Section 380.2\(2\)](#) provides that the order can be for any period the Court considers appropriate.

³² Generally, pre-sentence reports take four weeks to prepare when the offender is in custody and six to eight weeks when they are not. The ordering of these reports are discretionary and counsel should tell the Court why a report is necessary and whether any reports have been prepared in the past.

³³ There is no authority for judges to order a stand-alone psychiatric or psychological report. In BC, judges derive their authority get this information by ordering it as a component of a pre-sentence report. Forensic Services prefers that judges not choose between a psychiatric or psychological report, but instead leave it to their discretion which type of report will best address the needs of the court. In some cases, it will be one or the other or both. If the accused objects to the psychological/psychiatric component, then the Court must consider if a psychological/psychiatric assessment would assist in crafting an appropriate sentence (see [R. v. Blackwell, 2007 BCSC 1486](#)).

³⁴ Judges do not have jurisdiction to order a stand-alone psychological, or psychiatric report. The Court derives its authority to obtain this type of information under section 721 and for this reason it must be ordered as a component of a pre-sentence report. Forensic Psychiatric Services also recommend that judges order both and let their service decide which would be more helpful for the Court.

³⁵ In BC, judges can order pre-sentence reports with Gladue components. These are different than Gladue reports and usually less in depth. There is no mechanism for judges to order stand-alone Gladue reports in BC. Instead, counsel can request an adjournment for the preparation of such a report, and will liaise with Legal Services to get the funding and the report completed.

³⁶ [Section 515\(12\)](#); [Section 516\(2\)](#); [Section 743.21\(1\)](#)

³⁷ [Section 486.3\(1\)](#) makes order mandatory unless justice is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination.

³⁸ [Section 486.3\(2\)](#) the factors to consider are set-out in [section 486.3\(3\)](#)

³⁹ When the order is discretionary the factors for the Court to consider are the same as those that apply to a common law ban. Those factors were set out in [Dagenais v. CBC, \[1994\] 3 SCR 835](#): (a) such a ban is necessary in order to prevent a real and substantial risk to the fairness of the trial, because reasonably available alternative measures will not prevent the risk, and (b) the salutary effects of the publication ban outweigh the deleterious effects to the free expression of those affected by the ban. Although any risks must be well grounded in evidence, the Court in [CBC v. New Brunswick \(AG\), \[1996\] 3 SCR 480](#), held that in some cases in which the facts are not in dispute the statement of counsel will be sufficient.

⁴⁰ If an order is not made banning publication, section 542 provides that any confessions or admissions tendered at the preliminary hearing cannot be published or broadcast until the accused is discharged or his or her trial has ended.

⁴¹ If the accused is self-represented, the judge must inform the accused of his or her right to apply for a publication ban. Section 539(2).

⁴² Supra, footnote 30

⁴³ Also includes extortion, human trafficking and kidnapping type offences.

⁴⁴ Also includes extortion, human trafficking and kidnapping type offences.

⁴⁵ [Section 486.4\(2.2\)](#) a judge must inform the victim of his or her right to make the application pursuant to [section 486.4\(2\)](#).

⁴⁶ [Section 486.5\(7\)](#) identifies the factors to consider.

⁴⁷ Only a justice "presiding" at a preliminary hearing can make a publication ban pursuant to section 537. Sometimes judges who will not be presiding at the preliminary hearing will be called upon to handle different applications and hearings, for example a pre-trial hearing. Since there is no statutory authority to order a ban without being the preliminary hearing judge, some judges have concluded that a Provincial Court judge has inherent jurisdiction to manage and preserve the integrity of the Court's process and can make an order banning publication pursuant to the common law. The factors to be considered are the same as those set out in footnote 30. See: [CBC v. Alberta Provincial Court Judge, 2010 ABQB 148](#) at para. 22, Other situations where a common law ban might be required is where one accused pleads guilty but the other not. [R. v. McClintic, 2010 ONSC 2944](#); or where trials are proceeding against co-accused at different times *R. v. G(JP)*, [1996] OJ No 5427; *Re Church of Scientology v The Queen No. 6*, [1986] OJ No. 3068 (SC) per Watt J. at paras. 58-59

⁴⁸ [Section 486\(2\)](#) provides that the proper administration of justice includes safeguarding the interests of a witness under the age of 18 or justice system participant. When the accused is charged with an enumerated sexual offence, and the justice does not make an order, s/he must give reasons.

⁴⁹ For a more thorough discussion on the topic of assessment orders see the *Mentally Disordered Offenders Handbook* on the National Judicial Institute's website.

⁵⁰ Section 672.17 states: "During the period that an assessment order made by a Court in respect of an accused charged with an offence is in force, no order for the interim release or detention of the accused may be made by virtue of Part XVI or section 679 in respect of that offence or an included offence."

⁵¹⁵¹ Judges disagree on whether or not the court has the authority to direct that an assessment occur in a place other than in a psychiatric hospital, and furthermore, whether the person can be detained in a correctional facility pending an available bed at the facility. In [R v M, 2019 NSPC 30](#), the judge concluded that there is no authority to detain the accused outside of a hospital setting. Section 672.1 defines hospital for the purposes of an assessment as those designated by the Minister of Health for this purpose. On the other hand, there are only a finite number of beds at the designated Forensic Psychiatric Hospital in BC, and it can be challenging for Corrections to move an individual straight to the hospital following an order. Forensics prefers that judges recommend that the assessment occur at the hospital but not direct it. They undertake to do what they can to accommodate the recommendation but sometimes the assessment can be done more quickly at the correctional centre thereby minimizing the need to seek extensions and keep the accused in custody longer than is necessary. Some Correctional Centres also have psychiatric wings where individuals can be placed pending the assessment. Judges need to familiarize themselves with the local nuances. For example, an assessment at the forensics hospital will usually entail four days of transport from places like Prince George which can provide some challenges for someone who is mentally ill. Forensics is exploring the use of video conferencing to assist in conducting more timely assessments.

⁵² [Section 672.17](#) states that an assessment order takes precedence over an interim release order. If the Court is satisfied that an out-patient assessment is appropriate, the Court should include conditions requiring the accused to report to ensure community corrections can get him or her to the assessment location. Other conditions necessary for the protection of the public can also be included in the assessment order.

⁵³ [Section 672.14](#) provides that a fitness order can be no more than five days, excluding holiday and travel time, unless accused and prosecutor agree to a longer period not exceeding 30 days. In reality, outside of the lower mainland more than five days will be required for most orders. However, with the use of video, sometimes the order can be done more quickly. Judges should familiarize themselves with the practice in their area. It is especially important that the time in custody be minimized to the extent possible when considering issues like fitness. If it is drug induced, the person could become well within a few days. A very helpful resource is the forensic liaison program which can help vet those individuals who are in need of an assessment versus those who only need to detox or resume proper medication. The same section provides that an NCRMD assessment order cannot exceed 30 days. [Section 672.15](#) provides that a Court can extend the time period but the new period and initial period cannot exceed 60 days.

⁵⁴ Judges disagree whether jurisdiction exists to make this order. Ideally, all assessments are to be done in the hospital but bed space can sometimes make this impossible. Outside of the lower mainland, immediate transfers to the hospital can be challenging for Corrections, and inevitably, there will be some wait times.

⁵⁵ Extension orders can be helpful when the assessment is for fitness. Often when extension are requested, the extension allows the person with the assistance of medication and treatment to become fit.

⁵⁶ [R. v. The Star Phoenix, 2003 SKQB 2](#) - fair trial rights of co accused considered in publication ban.

⁵⁷ Hospital is defined in section 672.1 as a hospital designated by the Minister of Health for the custody of an accused from whom a placement decision has been made. Therefore, unless as designated hospital is nearby, this might not be a workable solution.

⁵⁸ If the accused has been remanded in custody without having had a bail hearing, his/her custodial status will need to be addressed. In that case, most often an order that the accused be detained in custody at the Forensic Psychiatric Hospital pending disposition by the BC Review Board should be made.

⁵⁹ It will be rare that the Court proceeds with a disposition hearing. Sometimes the psychiatrist will recommend the Court proceed with disposition and the conditions that should be ordered. Otherwise unless the offence is very minor, the Court will defer disposition.

⁶⁰ When imposing a conditional discharge, the Court will likely be provided with the appropriate conditions in the psychiatric reports but should include a condition that the accused report to the Forensic Outpatient Clinic for assessment, treatment to which they consent, and counseling.

⁶¹ Section 672. 45(1) sets out that the court may on its own motion and shall on application of the accused or Crown hold a disposition hearing. Section 672. 45(2) sets out that the Court shall hold the disposition if it is satisfied that it can readily do so and that a disposition should be made without delay. It should be noted that despite this wording, the majority of disposition hearings will be deferred to the Review Board because they have the experience and knowledge base to do so.

⁶² When imposing a conditional discharge, the Court will likely be provided with the appropriate conditions in the psychiatric reports but should include a condition that the accused report to the Forensic Outpatient Clinic for assessment, treatment to which they consent, and counseling.

⁶³ Where the accused who is not represented by counsel says anything in answer to the address made by the justice pursuant to subsection (2), the answer shall be taken down in writing and shall be signed by the justice and kept with the evidence of the witnesses and dealt with in accordance with this Part.

⁶⁴ The parties can consent to a committal at any stage of the preliminary hearing.