

# **BAIL PICKLIST**

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## 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*, including changes to the language used when making release orders following bail hearings, as well as feedback from judges and appellate rulings on the wording of some 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.

This picklist may be used in all B.C. Provincial Court locations, but local variations of “Red Zone” conditions are available for Vancouver, Victoria, Surrey, and Kelowna, in a separate document.

PUBLICATION BAN 517 Accused: Mandatory Crown: Discretionary		The evidence taken, the information given, or the representations made, and the reasons given or to be given by this court must not be published or broadcast or transmitted in any way until (a) if a preliminary inquiry is held, the accused is discharged or, (b) if the accused is tried or ordered to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.
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<p>RELEASE ORDER S 515(2)(a-d)<sup>1</sup></p>		<p><b>You are released on a release order:</b></p> <p><b>1. No Security</b> Without any financial obligation;</p> <p><b>2. Promise to Pay</b> On your promise to pay \$___ if you fail to comply with a condition of this order;</p> <p><b>3. Cash Deposit</b> With a deposit by you of \$___;</p> <p><b>4. Cash Deposit and Promise to Pay</b> With a total financial obligation of \$___ with a deposit by you of \$___ and your promise to pay an additional \$___ if you fail to comply with a condition of this order;</p> <p><b>5. Surety Promise to Pay or Deposit</b> With a surety(ies) (who promises to pay / will deposit) \$___;</p> <p><b>6. Named Surety<sup>2</sup> Promise to Pay or Deposit</b> With a surety(ies) in the name of [Name and DOB<sup>3</sup>], (who promises to pay / will deposit) \$___;</p> <p><b>7. Surety Promise to Pay or Deposit, and Accused Promise to Pay</b> With a total financial obligation of \$___ with a surety(ies) (who promises to pay / will deposit) \$___ and your promise to pay an additional \$___ if you fail to comply with a condition of this order;</p> <p><b>8. Named Surety Promise to Pay or Deposit, and Accused Promise to Pay</b> With a total financial obligation of \$___ with surety(ies) in the name of [Name and DOB] (who promises to pay / will deposit) \$___, and your promise to pay an additional \$___ if you fail to comply with a condition of this order.</p>
<p>SURETY DECLARATION WAIVER<sup>4</sup> S 515.1(2)</p> <p>The Crown can consent to the waiver.</p>		<p>I am waiving the requirement of a surety declaration form because:</p> <ol style="list-style-type: none"> <li>1. The [name of surety] cannot reasonably provide a declaration in the circumstances;</li> <li>2. I have received sufficient information of the kind that would be set out in a declaration to evaluate whether they are suitable to act as a surety for the accused, and;</li> <li>3. They have acknowledged that they have received sufficient information with respect to the matters referred to in paragraphs (1)(e) to (g) to accept the role and responsibilities of a surety.</li> </ol>

RELEASE ORDER NOT ORDINARILY A RESIDENT S 515(2)(e) <sup>5</sup> Not Mandatory	200 Km radius or non res = Deposit plus Surety	Because you are not ordinarily resident in this province or do not ordinarily reside within 200 kilometres of the place in which you are in custody, you are released on a total financial obligation of \$___ with a deposit by you of \$___;  This release order is subject to the following additional financial obligations (can choose from options 4-8 above to arrive at total).
RETURN DATE		Your next appearance will be on (date and time) in courtroom ___ by video.
REMAND IF BAIL REQUIRES PERFECTION		If you are unable to satisfy the requirements of your bail order before your next court appearance, you will appear by video on (date and time) in courtroom _____.
WEAPONS PROHIBITION NOT REQUIRED S 515(4.1)		A weapons prohibition is not necessary for the interest of your safety, or the safety and security of the victim, or any other person for the following reasons:
CONSIDERATION OF VICTIMS' SAFETY S 515(13) <sup>6</sup>		I have considered the safety and security of every victim of the offence in making this order.
NON- COMMUNICATION IN CUSTODY <sup>7</sup> REMAND		Pursuant to section 516(2), you must have no contact or communication directly or indirectly with [name] except through a lawyer.
NON- COMMUNICATION IN CUSTODY DETENTION		Pursuant to section 515(12), you must have no contact or communication directly or indirectly with [name] except through a lawyer.

**No Contact and No Go**

KPBGB <sup>8</sup>	1001	You must keep the peace and be of good behaviour.
NO CONTACT <sup>9</sup>	1002	You must have no contact or communication, directly or indirectly, with [name].  <u>The exceptions are as follows:</u>
	1002-A	a. Through (writing; email or text; telephone; online banking; [name]) for the sole purpose of _____. <sup>10</sup>
	1002-B	b. For the sole purpose of arranging and picking up and dropping off your children for parenting time, and paying child support.
	1002-C	c. As allowed by a family or child protection order made by a judge or master who has been given a copy of this bail order. <sup>11</sup> You must immediately file a copy of this order in any family or child protection proceeding in which you are a party or become a party.
	1002-D	d. During one attendance, with a peace officer (or [name]) to get your belongings.
	1002-E	e. Through or in the immediate presence of [name] (but only after they have been informed by your bail supervisor of this order and any criminal record). <sup>12</sup>

	10002-F 1002-G 1002-H 1002-I 1002-J 1002-K	<p>f. If you are sober and have no alcohol, intoxicating substance or drugs in your body<sup>13</sup>, except with a medical prescription.</p> <p>g. Only if [name] is sober. If they become intoxicated<sup>14</sup> in your presence, you must leave their presence immediately and not return to their presence until they contact you and satisfy you that they are sober.</p> <p>h. Through or in the immediate presence of a lawyer who has been given a copy of this bail order.</p> <p>i. Through or in the immediate presence of one or more of the following professionals, after he or she has been given a copy of this bail order: counsellor, family justice counsellor, or mediator.</p> <p>j. In a public place (in the presence of [name] / when other adults are present).</p> <p>k. Through court documents served by a third party, and during scheduled court appearances or case conferences but only with a sheriff present unless a master or judge waives this requirement.</p>
LEAVE ON DEMAND <sup>15</sup>	1002-1	You must not have any contact or communication with [name] except with their prior consent. You must immediately stop all contact and communication with [name] and leave their presence upon their request or upon the request of a peace officer. If a request is made, you must have no further contact, or communication with [name] without an order of this court.
NO SOCIAL MEDIA POSTS	1003	You must not distribute, publish, post, or make publicly available in any way, information, including comments and images, which refer to or depict [name].
REMOVE POSTS	1003-1	Within 24 hours of your release from custody, you must take all necessary steps to remove from any network, including the internet, any website, social media page, or posting which you have created, maintained, or contributed to, which contains any words, or images which refer to or depict [name].
NON-ASSOCIATION <sup>16</sup> Not a Protection Registry Condition	1004 1004-A 1004-B	<p>You must have no contact or communication directly or indirectly with [name of co-accused].</p> <p><u>The exceptions are as follows:</u></p> <p>a. During scheduled court appearances.</p> <p>b. Through or in the immediate presence of a lawyer who has been given a copy of this bail order and only to prepare your defence.</p>
NO GO	1005-1 1005-2 1005-A	<p>You must not go to (or be within ___ metres<sup>17</sup> of):</p> <p>1. Any place where [name] lives, works, attends school, or worships, or happens to be. If you see them, you must leave their presence immediately without any words or gestures.</p> <p>2. [address].<sup>18</sup></p> <p><u>The exceptions are as follows:</u></p> <p>a. Once to get your belongings, and only in the presence of a peace officer (or [name]).</p>

	1005-B	b. For picking up and dropping off your children for parenting time (you must remain inside your vehicle during all pickups and drop-offs). <sup>19</sup>
	1005-C	c. As allowed by a family or child protection order made by a master or a judge who has been given a copy of this bail order. You must immediately file a copy of this bail order in any family or child protection proceeding in which you are a party or become a party.
	1005-D	d. In the immediate presence of [name], for the sole purpose of _____.
	1005-E	e. If you are sober and do not have any alcohol, intoxicating substances or drugs in your body or your immediate possession, except with a medical prescription.
	1005-F	f. Only if [name] is sober. If they become intoxicated in your presence you must leave their presence immediately and not return to their presence until they contact you and satisfy you that they are sober.
	1005-G	g. While in a moving vehicle on your way to some other place for the sole purpose of _____.
NO GO COMPLAINANT	1006	You must not be any place where [name] happens to be. If you see them, you must leave the place immediately without any words or gestures.

### Reporting, Fingerprinting, and Attendance at Court

REPORT <sup>20</sup>	1101	You must report in person to the bail supervisor at _____ by 3:00 PM <sup>21</sup> today (date and time), and after that, you must report as directed by the bail supervisor.
REPORT ONCE <sup>22</sup>	1102	You must report in person to a bail supervisor at _____ by 3:00 PM today (date and time).
REPORT BY PHONE <sup>23</sup>	1103	You must report by telephone to a bail supervisor at (address and telephone) by 3:00 PM today (date and time). If the office is closed, you must continue calling daily during regular business hours until you have spoken to a bail supervisor and received further direction to report. After that, you must report as directed by the bail supervisor.
REPORTING IF BAIL REQUIRES PERFECTION <sup>24</sup>	1104	You must report in person to the bail supervisor at _____ within (two business days) after your release from custody, unless you have obtained before your release, written permission from your bail supervisor to report elsewhere or within a different time frame. After that, you must report as directed by the bail supervisor.
REPORT AFTER DETENTION <sup>25</sup>	1105	If you are arrested, detained or serve a sentence for another offence, you must report to your bail supervisor within two business days of your release from custody, or completion of the sentence.
FINGERPRINTING	1106	For the purpose of the <i>Identification of Criminals Act</i> , you must attend at the _____ police station on _____ at _____ am/pm to have fingerprints and photographs taken.
PERSONAL ATTENDANCE	1107	You must personally attend each court appearance unless this court excuses you.

## Address, Curfew, Electronic Supervision, and Carry Permission

ADDRESS <sup>26</sup> No change without consent	1201	When first reporting to the bail supervisor, you must provide them with the address where you live and your phone number. You must not change your address or phone number without prior written permission from your bail supervisor.
ADDRESS <sup>27</sup> No change without notice	1202	When first reporting to the bail supervisor, you must provide them with the address where you live and your phone number. You must not change your address or phone number without notifying your bail supervisor in writing (at least ___ days) in advance of any change.
ADDRESS AS APPROVED <sup>28</sup>	1203	You must live at an address approved in advance by your bail supervisor and provide your bail supervisor with your phone number. You must not change your address or phone number without prior written permission from your bail supervisor.
ADDRESS	1204  1204-A	You must live at _____ (surety/treatment facility/ recovery home) and provide your bail supervisor with your phone number. You must not change your address or phone number without prior written permission from your bail supervisor.  a. If you are evicted or expelled from the place where you are living, you must tell your bail supervisor immediately. If the office is closed, you must contact your bail supervisor immediately when the office opens on the next business day.
OBEY RULES OF THE HOME <sup>29</sup>	1205	You must obey the rules of your (residence/treatment facility/recovery home), as long as the rules do not conflict with the terms of this order or the directions of your bail supervisor. If there is a conflict, you must tell your bail supervisor about the conflict immediately.
NOT LEAVE BC	1206	You must not leave British Columbia unless you have the written permission of your bail supervisor. You must carry the written permission, which can be in electronic format, with you at all times if you are outside the province.
NOT GO BORDER	1206-1	You must not be within ___ metres of the United States' border unless you have the written permission of your bail supervisor. You must carry the written permission, which can be in an electronic format, with you at all times.
SURRENDER TRAVEL DOCUMENTS AS A CONDITION OF RELEASE	1207	Before you can be released from custody you must arrange for the surrender all of your travel documents, including any passport, Nexus card, travel visa or enhanced driver's licence <sup>30</sup> to a peace officer at [police station], and you must not obtain any further travel documents.
SURRENDER TRAVEL DOCS  ACCOMPANYING POLICE OFFICER	1208	Immediately after your release from custody, you must:  1. Attend [police station], and provide a peace officer with a copy of this order; and  2. Arrange with the peace officer to go with you to collect all travel documents in your possession, including any passport, Nexus card, travel visa, or enhanced driver's licence; and

		3. Surrender all of the documents to the peace officer and not obtain any further travel documents.
CURFEW	1209-1	<ol style="list-style-type: none"> <li>1. You must obey a curfew by being inside your residence at ADDRESS (or on its lot), between TIME1 and TIME2, every day.</li> <li>2. You must present yourself immediately at the door to your residence or answer the phone when any peace officer or bail supervisor attends or calls to check on you during the curfew.</li> <li>3. You may be away from your residence during the curfew with the prior written permission of your bail supervisor. Such permission is to be given only for employment or other compelling reasons. You must carry the permission, which can be in electronic format, with you when you are outside your residence.</li> </ol>
Curfew Option 1	1209-1-A	<p>You may also be away from your residence during the curfew hours:</p> <ol style="list-style-type: none"> <li>a. while at, or going directly to, or returning directly from a healthcare facility because of a medical emergency. If asked, you must provide your bail supervisor with proof of your attendance at the facility.</li> <li>b. in the immediate presence of [name] but only with prior written permission of your bail supervisor.</li> </ol>
Curfew Option 2	1209-1-B	During your period of home confinement, you must not permit anyone to visit your residence except _____.
HOUSE ARREST <sup>31</sup>	1209-2	<ol style="list-style-type: none"> <li>1. You must obey house arrest by being inside your residence at [address],<sup>32</sup> (or on its lot), between [time 1] and [time 2] (or 24 hours a day), every day.</li> <li>2. You must present yourself immediately at the door to your residence or answer the phone when any peace officer or bail supervisor attends or calls to check on you during the house arrest.</li> <li>3. You may be away from your residence during the house arrest with the written permission of your bail supervisor. Such permission is to be given only for employment or other compelling reasons.<sup>33</sup> You must carry the permission, which can be in electronic format, with you when you are outside your residence.</li> </ol> <p><u>Optional:</u></p>
House Arrest Option 1	1209-2-A	<p>You may also be away from your residence during the house arrest hours:</p> <ol style="list-style-type: none"> <li>a. while at, or going directly to, or returning directly from a healthcare facility because of a medical emergency. If asked, you must provide your bail supervisor with proof of your attendance at the facility.</li> <li>b. in the immediate presence of _____ but only with the prior written permission of your bail supervisor.<sup>34</sup></li> </ol>

House Arrest Option 2	1209-2-B	During your period of home confinement, you must not permit anyone to visit your residence except _____.
CHANGES IN EMPLOYMENT / RELATIONSHIP STATUS	1212	You must provide your bail supervisor with the details of your (employment or intimate relationship) status. You must inform your bail supervisor within two business days of any change in your (employment or intimate relationship) status.
ELECTRONIC SUPERVISION <sup>35</sup> A technical suitability report is required.	1213 1213-A 1213-B 1213-C	You must comply with the electronic supervision agreement, including the wearing of and care for the electronic supervision equipment. a. You will not be released from custody until you have been fitted with the electronic supervision equipment. b. You will only be released into the care of _____ who will take you directly to the bail supervisors' office at _____ to be fitted with the electronic supervision equipment. c. You must immediately go to the bail supervisors' office at _____ to be fitted with the electronic supervision equipment.
CARRY COPY	1214 1214-A 1214-B	If you are given permission from your bail supervisor, you must carry it with you in paper or electronic format when you are doing or possessing something that requires permission. You must show the permission, along with a copy of this order, to a peace officer who: a. requests to see it; b. who stops you, for any reason. <sup>36</sup>

### No Go Address and Red Zone

NO GO ADDRESS <sup>37</sup> Not a Protection Registry Condition	1301 1301-A	You must not go to (or be within ___ metres of) [address]. <u>The exceptions are as follows:</u> a. While in a moving vehicle on your way to some other place (for the sole purpose of travelling to and from ___.)
RED ZONE <sup>38</sup>  BANISHMENT <sup>39</sup>  Red Zone / Banishment Exceptions	1302-1 1302-2 1302-A 1302-B	You must not be in the area of _____, BC bounded by _____ on the East, _____ on the West, _____ on the North and _____ on the South. <u>Or</u> You must not be within a ___ kilometre radius of [city]. <sup>40</sup> <u>The exceptions are as follows:</u> a. With the prior written permission of the bail supervisor. Such permission is to be given only for compelling reasons. You must carry the permission, which can be in an electronic format, with you at all times when you are in the prohibited area b. To attend (scheduled court appearances, or appointments with the police, your bail supervisor, lawyer or doctor, pharmacy, social services, other: _____). You must provide your bail supervisor with written notice ( ___ days) in advance of your attendance within the prohibited area.

	1302-C	c. While in a moving vehicle on your way to some other place (for the sole purpose of travelling to and from ____).
	1302-D	d. Once in the presence of a peace officer (or [name]) to get your belongings.
	1302-E	e. Once on [date and time] to get your belongings and only if [name] is not present during your attendance.
	1302-F	f. In the immediate presence of [name].
	1302-G	g. Only between [time and date].

**No Go and No Contact with Minors**

NO GO PARKS OR SCHOOLS	1303	You must not go to any public park, public swimming area, community centre, or theatre where persons under the age of ____ years are present or can reasonably be expected to be present, or a daycare centre, school ground, or playground.  <u>The exceptions are as follows:</u>
	1303-A	a. with the prior written permission of the bail supervisor. Such permission is to be given only for compelling reasons. You must carry the permission, which can be in an electronic format, with you at all times when you are in the prohibited area.
	1303-B	b. in the immediate presence of [name] (and only after they have been told by your bail supervisor about this order, your charges, and any criminal record).
	1303-C 1303-D	c. in the immediate presence of your surety. d. in the immediate presence of [name].
NO CONTACT MINORS	1304	You must not have any contact or communication, directly or indirectly, or be in the presence of any person under the age of ____.  <u>The exceptions are as follows:</u>
	1304-A	a. With the prior written permission of the bail supervisor. Such permission is to be given only for compelling reasons. You must carry the permission, which can be in electronic format, with you at all times.
	1304-B	b. In the immediate presence of [name], (and only after they have been told by your bail supervisor about this order, your charges, and any criminal record).
	1304-C	c. In the immediate presence of your surety.
	1304-D	d. In the immediate presence of [name].
	1304-E 1304-F	e. If it is your child. f. In the immediate presence of the child's guardian(s).
ACTIVITIES WITH CHILDREN	1305	You must not engage in volunteer work or employment that would bring you in contact with persons under the age of ____ years without the prior written permission of your bail supervisor. You must carry the permission, which can be in electronic format, with you at all times when you are engaged in the activity.
ELTON HUBBS Relationships with children	1306	You must not enter into or continue any dating relationship, or marriage, or common-law relationship with any person who has children under the age of ____, or who has the care of or access to children under that age, until you have identified to your bail supervisor the person with whom you are in, or propose to enter, a relationship, and your bail

		supervisor has informed that person of this order (and your history as described in your criminal record).
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### Stalking, Sex Crimes and Voyeurism

PROVIDE CELL NUMBER AND VEHICLE INFORMATION	1309	You must provide the bail supervisor with: <ol style="list-style-type: none"> <li>1. The carrier information and phone number of any mobile device you possess;</li> <li>2. The make, model, colour and licence plate numbers of any vehicle that you drive. You must not drive any vehicle other than those for which you have provided this information to your bail supervisor.</li> <li>3. Upon the request of a peace officer, you must give them access to any cell phone you have in your possession so they can verify compliance with this condition</li> </ol>
NO SOCIAL MEDIA POSTS	1003	You must not distribute, publish, post, or publicly make available in any way, information, including comments and images, which refer to or depict [name].
REMOVE POSTINGS	1003-1	Within 24 hours of your release from custody you must take all reasonable steps to remove from any network, including the internet, any website, social media page, or other posts which you have created, maintained, or contributed to, that contains any words or images which refer to or depict[name]
CHANGES IN EMPLOYMENT / RELATIONSHIP STATUS	1212	You must provide your bail supervisor with the details of your (employment or intimate relationship) status. You must inform your bail supervisor within two business days of any change in your (employment or intimate relationship) status.
VOYEURISM	1310	You must not possess any device capable of recording images.

### Drugs and Alcohol

NO ALCOHOL OR DRUGS <sup>41</sup>	1401	You must not possess or consume alcohol, drugs or any other intoxicating substance, except with a medical prescription.
NO ALCOHOL	1401-1	You must not possess or consume alcohol.
NO DRUGS	1401-2	You must not possess or consume drugs except with a medical prescription.
NO ALCOHOL Except While Inside Residence	1402	You must not possess or consume alcohol, except while inside your residence, or while transporting it sealed directly to your residence. You must not be intoxicated <sup>42</sup> in any public place (any place except inside your residence).
NO GO LIQUOR OUTLETS <sup>43</sup>	1403	You must not enter any liquor store, beer and wine store, bar, pub, lounge, nightclub, beer garden or any other business from which minors are prohibited at any time by the terms of a liquor licence.
DRUG PARA <sup>44</sup>	1406	You must not possess drug paraphernalia that is suitable for the sale or consumption of drugs that have not been prescribed for you.
	1406-A	<p><u>The exceptions are as follows:</u></p> <ol style="list-style-type: none"> <li>a. When you are at government-authorized overdose prevention or safe consumption sites.</li> </ol>

## Counselling, Treatment, Rogers Order, Release of Info

COUNSELLING <sup>45</sup>	1501  1501-A 1501-B	Having consented in court, you must attend, participate in and complete any intake, assessment, counselling or education program as directed by your bail supervisor. This may include counselling or programming for: <sup>46</sup>  a. alcohol or drug addiction;  b. mental health. <sup>47</sup>
TREATMENT <sup>48</sup>	1502  1502-A 1502-B	Having consented in court, you must attend, participate in and complete any intake, assessment, program, treatment or a full-time live-in treatment program as directed by your bail supervisor. This may include, programming or treatment for:  a. alcohol or drug addiction;  b. psychiatric and psychological health.;
FORENSIC SERVICES	1503	Having consented in court, you must attend for a psychiatric intake, assessment, or treatment program through Forensic Psychiatric Services as directed by your bail supervisor.
PRIVATE PROGRAMS AND TREATMENT FACILITIES	1504	Having consented in court, you must attend, participate in, and complete _____ program. You must follow all the rules of the program as long as the rules do not conflict with this order or the directions of your bail supervisor. If they do conflict, you must tell your bail supervisor immediately. Upon completion of the program, you must provide proof to your bail supervisor.
REPORT AFTER EXPULSION	1506	If you are expelled or remove yourself from the (recovery home/treatment centre/program), you must tell your bail supervisor immediately. If the office is closed, you must contact your bail supervisor immediately when the office opens on the next business day.
PRIVATE PROGRAMS AND TREATMENT FACILITIES	1504	Having consented in court, you must attend, participate in, and complete _____ program. You must follow all the rules of the program as long as the rules do not conflict with this order or the directions of your bail supervisor. If they do conflict, you must tell your bail supervisor immediately. Upon completion of the program, you must provide proof to your bail supervisor.
REPORT AFTER EXPULSION	1506	If you are expelled or remove yourself from the (recovery home/treatment centre/program), you must tell your bail supervisor immediately. If the office is closed, you must contact your bail supervisor immediately when the office opens on the next business day.
RELEASE INTO CARE OF PRIVATE FACILITY	1505	<ol style="list-style-type: none"> <li>1. You will be released only to (a representative of the facility third party).</li> <li>2. You must report (in person / by telephone) to a bail supervisor at (address and telephone number of the Community Corrections Office closest to the facility) within the first business day of your admission to the (facility), and after that report as directed by your bail supervisor.</li> <li>3. You must live at the (facility) located at (address) or any other location associated with that (facility) unless</li> </ol>

		<p>you are given written permission by your bail supervisor to live elsewhere.</p> <ol style="list-style-type: none"> <li>4. You must not leave the (facility) unless you are in the immediate presence of a staff member of the (facility) or you have the written permission of your bail supervisor. Such permission is to be given only for compelling reasons.</li> <li>5. You must follow the rules of the (facility), as long as they do not conflict with the terms of this order. If there is a conflict, you must tell your bail supervisor about the conflict immediately.</li> <li>6. You must not possess or consume any alcohol, drugs or any other intoxicating substance except with a medical prescription.</li> <li>7. You must attend, participate in and complete any programs to which you are directed by the (facility).</li> <li>8. If you are expelled from the (facility) or remove yourself from the program, you must tell your bail supervisor immediately. If the office is closed, you must contact your bail supervisor immediately when the office opens on the next business day.</li> </ol> <p><b>For the clerk The Warrant of Remand and Warrant of Committal:</b></p> <p>The accused will be transported as soon as practicable to a provincial corrections facility located nearest to the (facility) for release to a representative of the (facility). The (facility) must be notified at [telephone] upon the arrival of the accused at the corrections facility.</p> <p>The accused's next appearance will be on [date and time] in courtroom _____.</p> <p>I am also directing the clerk to prepare a spring order requiring the accused to make an interim appearance by video in (2-7 business days) to determine whether they have been released. If the accused has been released, the court registry will cancel the spring order and video appearance.</p>
<p>ROGERS ORDER<sup>49</sup></p>	<p>1507</p>	<p>Having consented in court, you must do the following:</p> <ol style="list-style-type: none"> <li>1. Report to Forensic Psychiatric Services or elsewhere for any intake, assessment, counselling or treatment as directed by your bail supervisor.</li> <li>2. Attend all scheduled appointments with the professionals in charge of your mental health care.</li> <li>3. Take all medications and medical treatment prescribed to you by those professionals.</li> <li>4. Provide your bail supervisor with the names, addresses, and phone numbers of those professionals.</li> <li>5. Give those professionals a copy of this order.</li> <li>6. If you decide not to follow these directions, you must immediately report that fact to your bail supervisor.</li> </ol> <p>You have consented in court to those professionals notifying your bail supervisor if you fail to attend for an appointment or refuse to take the prescribed treatment or medication.</p>
<p>ROGERS ORDER</p>	<p>1507-1</p>	<p>Having consented in court, you must do the following:</p> <ol style="list-style-type: none"> <li>1. Attend all scheduled appointments with your doctor</li> </ol>



<p>While possessing any device</p>	<p>1601-2-A 1601-2-B 1601-2-C 1601-2-D 1601-2-E  1601-2-F   1601-2-G</p>	<p>_____;</p> <p>b. you must be in the immediate presence of _____;</p> <p>c. you must be in the immediate presence of a person approved of in writing by your bail supervisor;</p> <p>d. you must have the prior written permission of your bail supervisor;</p> <p>e. you must only access the internet for the sole purpose of paying bills, banking, searching or applying for employment, searching for books at a public library, or communicating with a government agency;</p> <p>f. you must only use a computer or other device that is owned and controlled by your employer other than yourself. The device must be used in the course of your employment, and with the permission of your employer, and only after the employer has confirmed with your bail supervisor that she or he has read a copy of this order;</p> <p>g. you must use it only for purposes directly and immediately related to your employment.</p>
<p>RESTRICTED INTERNET OR NETWORK<sup>53</sup>  Alternative</p>	<p>1601-3</p>	<p>You must not access any computer network including the internet to:</p> <ol style="list-style-type: none"> <li>1. access any content that violates the law;</li> <li>2. access, directly or indirectly, or maintain any personal profile on any social media sites, social networks, internet discussion forums or chat rooms;</li> <li>3. communicate or attempt to communicate with any person you know to be or who reasonably appears or represents themselves to be under the age of _____ years, unless they are members of your family.</li> <li>4. upon the request of a peace officer, you must give them access to any device in your possession that is capable of accessing the internet or any computer network so they can verify compliance with this condition.</li> </ol>
<p>NO NETWORK OR INTERNET</p>	<p>1601-4</p>	<ol style="list-style-type: none"> <li>1. You must not access any computer network including the internet or possess any device capable of accessing the internet.</li> <li>2. Upon the request of a peace officer, you must give them access to any device in your possession that is capable of accessing the internet or any computer network so they can verify compliance with this condition.</li> </ol>
<p>NO ISP CONTRACT</p>	<p>1603</p>	<p>You must not enter into an agreement with any internet service provider.</p>

## Trafficking and Drug Production

<p>ONE CELL PHONE</p> <p>Exceptions</p> <p>Give access on request</p>	<p>1606</p> <p>1606-A</p> <p>1606-B</p> <p>1606-C</p> <p>1606-D</p> <p>1606-E</p> <p>1606-F</p>	<p>You must not possess or use any mobile communication device.</p> <p><u>The exceptions are as follows:</u></p> <p>a. You may possess one cell phone that has only one phone number and is registered in your name.</p> <p>b. You can only use the cell phone for contacting your bail supervisor, spouse or children, lawyer, for lawful employment, or in an emergency.</p> <p>c. You must not use a pay as you go service, or possess more than one SIM card for the phone that is registered in your name.</p> <p>d. You must provide your bail supervisor with the cell phone number and service provider and not change it without the prior written permission of your bail supervisor. A peace officer may obtain the number from your bail supervisor.</p> <p>e. You must keep a history of and not delete your call and text usage.</p> <p>f. And upon the request of a peace officer, you must give them access to any cell phone in your possession so they can verify compliance with this condition.</p>
<p>NO CELL PHONE<sup>54</sup></p>	<p>1607</p>	<p>You must not possess or use a cell phone or any other device capable of accessing any cellular or computer network including the internet. Upon the request of a peace officer, you must give them access to any cell phone in your possession so they can verify compliance with this condition.</p>
<p>NO RENTALS</p>	<p>1608</p>	<p>You must not enter any rental vehicle.</p>
<p>GROW OP Marijuana Production</p>	<p>1609-1</p>	<p>You must not possess any marijuana (except with a medical prescription), metal halide lights, light bulbs of more than 250 watts, sodium vapour lights, ballasts, capacitors, light timers or diesel generators.</p>
<p>DRUG LAB Synthetic Drugs Production</p>	<p>1609-2</p>	<p>You must not possess any equipment or ingredients used in the production or preparation of any illegal drugs including but not limited to, heating mantles, beakers, round bottom flasks, glass condensing columns, and reaction flasks of a volume exceeding 500 ml. You must not possess red phosphorous, iodine crystals or tincture of iodine, muriatic acid, ether, acetone, sodium thiosulfate, hypo phosphorous acid, lye, lithium, more than 2 litres of drain cleaner, or more than 3 grams of either ephedrine and/or pseudoephedrine.</p>
<p>DRUG PARA<sup>55</sup></p>	<p>1406</p> <p>1406-A</p>	<p>You must not possess drug paraphernalia that is suitable for the sale or consumption of drugs that have not been prescribed for you.</p> <p><u>The exceptions are as follows:</u></p> <p>a. While you are at government-authorized overdose prevention or safe consumption sites.</p>



	1616-B	b. while at work, or going directly to and from work. If asked, you must provide your bail supervisor with the details of your location and hours of employment;
	1616-C	c. with the prior written permission of your bail supervisor. You must carry the permission, which may be in electronic format, when you possess knives outside your residence.

## Tools and Disguises

BREAK-IN TOOLS	1617	You must not possess any tools or instruments capable of use for criminal activity, including (pry bars, screwdrivers, bump keys, bolt cutters, pliers, blow torches, grinders, night vision goggles, slim jims, lockpicks).  <u>The exceptions are as follows:</u>
	1617-A	a. while on your property;
	1617-B	b. while at work, or going directly to and from work. If asked, you must provide your bail supervisor with the details of your location and hours of employment;
	1617-C	c. with the prior written permission of your bail supervisor. You must carry the permission, which may be in electronic format, when you possess any of these items outside your residence.
KEYS	1618	You must not possess any keys except for vehicles, or for places you are allowed to access.
DISGUISES	1628	You must not use or possess anything intended to enable you to mask or disguise your face, including but not limited to a balaclava.
ARSON No Incendiary Devices	1629	You must not possess any incendiary device, flammable product or explosive substance, including but not limited to, lighters, matches, jerry cans, fire accelerants, and fireworks, except with the prior written permission of your bail supervisor. You must carry the permission, which may be in electronic format, when you possess any of these items outside your residence.
GRAFFITI <sup>61</sup> No Paints or Pens	1630	You must not possess any paint, dye, acid, paintbrushes, spray paint cans, or large marking pens outside your residence, except with the prior written permission of your bail supervisor. You must carry the permission, which may be in electronic format, when you possess any of these items outside your residence.

## Commercial Crimes

CREDIT CARDS AND IDENTIFICATION	1619	You must not possess any identification documents, including credit cards, debit cards, cheques, negotiable instruments, driver's licences, birth certificates, social insurance cards, mail, invoices, or bills other than ones in your name.  <u>The exceptions are as follows:</u>
	1619-A	a. items lawfully issued in the names of your immediate family members; <u>or</u>
	1619-B	b. for purposes immediately and directly related to your employment.

ACCOUNT INFORMATION ELECTRONIC DATA	1620	You must not possess any account information, credit or debit card data or any electronic storage medium, including any credit or identification card with a data strip or security chip, that contains personal information other than your account information or data.
	1620-A	<u>The exceptions are as follows:</u> a. account information or data lawfully issued in the names of your immediate family members; <u>or</u>
	1620-B	b. for purposes immediately and directly related to your employment.
IDENTITY THEFT EQUIPMENT	1620-1	You must not possess any equipment or material, including scanners, card laminators, magnetic strip encoders, embossers, or blank plastic credit, debit or bank cards as defined in section 321 of the <i>Criminal Code</i> .
NO WORKING IN PRIVATE RESIDENCE	1622	You must not engage in any employment that requires you to enter another person's private residence unless you have the prior written permission of your bail supervisor. You must carry the permission, which may be in electronic format, when engaged in such employment.
NO PAWNING	1632	You must not sell, or give anything as security for money borrowed, to a pawnbroker.

## Vehicles

NO GO DRIVER'S SEAT Except for work	1624-1	1. You must not occupy the driver's seat of any motor vehicle.
	1624-A	<u>The exceptions are as follows:</u> a. While at work or going directly to or from work. If asked, you must provide your bail supervisor with the details of your employment including the hours and location.
	1624-B	b. When going directly to or returning directly from a healthcare facility because of a medical emergency. If asked, you must provide your bail supervisor with proof of your attendance at the facility.
	1624-C	c. With the prior written permission of your bail supervisor. You must carry the permission, which may be in electronic format, when occupying the driver's seat of a motor vehicle.
	1624-2	2. You must immediately provide a copy of any written permission from your bail supervisor, which may be in electronic format, to any peace officer who finds you in the driver's seat of a motor vehicle.
NO GO DRIVER'S SEAT With Alco/THC	1625	You must not occupy the driver's seat of any motor vehicle with any alcohol (or THC) in your body.
NO GO VEHICLE Without the owner's permission	1626	1. You must not enter any motor vehicle, other than public transportation unless the registered owner is present in the vehicle, or you have in your immediate possession the prior written permission, which may be in electronic format, of the registered owner or your employer to be in the vehicle.  2. You must immediately provide a copy of this order, which may be in electronic format, to any peace officer who finds you in a vehicle.

NO GO PARKING LOTS	1627	You must not loiter in any parkade, parking lot, vehicle dealership lot, or property where the primary business is the repair, sale or rental of vehicles or trailers.
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## Detention and Remand Orders

DETENTION		You are detained in custody on (primary, secondary and tertiary grounds) for the following reasons:
VICTIM'S SAFETY		I have considered the safety and security of every victim of the offence when making this order.
RETURN DATE IN CUSTODY		Your next appearance will be on [date and time] in courtroom ____ by video.
NO CONTACT IN CUSTODY <sup>62</sup> REMAND		Pursuant to section 516(2), you must have no contact or communication directly or indirectly with [name] except through a lawyer.
NO CONTACT IN CUSTODY DETENTION		Pursuant to section 515(12), you must have no contact or communication directly or indirectly with [name] except through a lawyer.
ADJOURNMENTS 3 DAY REMAND <sup>63</sup>		Pursuant to section 516(1), you are remanded in custody to appear by video on [date and time].
6 DAY REMAND S 503(3) <sup>64</sup>		I am satisfied that you have been arrested without a warrant for an indictable offence alleged to have been committed in the Province of _____.  I am also satisfied that you are the person who is alleged to have committed the offence.  You are remanded in custody to await execution of the warrant for your arrest. If the warrant is not executed by [date], you must be released.
SECTION 469 OFFENCE		Pursuant to section 515(11) you are detained in custody until you appear before a superior court judge of this province.

## Reverse Onus Sections

<p>REVERSE ONUS</p> <p>S 515(6)</p> <p>Only the common reverse onus sections are listed.</p>	<p><b><u>Any Indictable While on Release For Another Indictable</u></b></p> <p>(a)(i) an indictable offence that is alleged to have been committed while at large after being released in respect of another indictable offence.<sup>65</sup></p> <p><b><u>Specific Indictable Organized Crime Offences</u></b></p> <p>(a)(ii) that is an offence under section 467.11, 467.111, 467.12 or 467.13, or a serious offence alleged to have been committed for the benefit of, at the direction of, or in association with, a criminal org.</p> <p><b><u>Indictable Offence of Trafficking, Importing or Exporting Firearms</u></b></p> <p>(a)(vi) that is an offence under section 99, 100 or 103.</p> <p><b><u>Specific Indictable Violent Offence Committed with a Firearm</u></b></p> <p>(a)(vii) an indictable offence that is an offence under section 244 or 244-2, or an offence under section 239, 272 or 273, subsection 279(1) or section 279-1, 344 or 346 that is alleged to have been committed with a firearm.</p> <p><b><u>Indictable Offence Committed with Firearm or Prohibited Weapons While on Weapons Prohibition</u></b></p> <p>(a)(viii) an indictable offence that is alleged to involve, or whose subject-matter is alleged to be, a firearm, ..., and that is alleged to have been committed while the accused was under a prohibition order;</p> <p><b><u>Indictable Offence and Not an Ordinary Resident of Canada</u></b></p> <p>(b) with an indictable offence, and is not ordinarily resident in Cdn.</p> <p><b><u>Offence of Intimate Partner Violence with a Prior</u></b></p> <p>(b-1) with an offence in the commission of which violence was allegedly used, threatened or attempted against their intimate partner, and the accused has been previously convicted of an offence in the commission of which violence was used, threatened or attempted against any intimate partner of theirs.</p> <p><b><u>Breach of Release Order, Appearance Notice, Undertaking, Summons, or Failing to Attend Court</u></b></p> <p>(c) with an offence under any of subsections 145(2) to (5) that is alleged to have been committed while they were at large after being released in respect of another offence.<sup>66</sup></p> <p><b><u>Trafficking, Importing, Exporting and Production Drugs</u></b></p> <p>(d) with an offence punishable by imprisonment for life under ss 5 to 7 of the CDSA</p> <p><b><u>After Revocation of Bail – s 524(4)</u></b></p> <p><b><u>Breach of a Conditional Sentence Order – s 742.6(2)</u></b></p> <p><b><u>469 Offences – s 522(2)<sup>67</sup></u></b></p>
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## Bail Revocation

BAIL REVOCATION  S 524(2)	<p><b><u>Contravened or about to Contravene Process</u></b></p> <p>(a) the accused has contravened or had been about to contravene the summons, appearance notice, undertaking or release order;</p> <p><b><u>Committed Indictable Offence While Subject to Process</u></b></p> <p>(b) there are reasonable grounds to believe that the accused has committed an indictable offence while being subject to the summons, appearance notice, undertaking or release order.</p>
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## Judicial Referral Hearing

JUDICIAL REFERRAL HEARING <sup>68</sup>  S 523.1	<p>I am satisfied that the accused failed to comply with a (summons, appearance notice, undertaking or release order or to attend court as required) and that the failure did not cause a victim physical or emotional harm, property damage or economic loss. I am also satisfied for the following reasons that it is appropriate to:</p> <p>(a) take no action;</p> <p>(b) cancel any other summons, appearance notice, undertaking or release order in respect of the accused and, as the case may be,</p> <p>(i) make a release order under section 515, or</p> <p>(ii) if the prosecutor shows cause why the detention of the accused in custody is justified under subsection 515(10), make an order that the accused be detained in custody; or</p> <p>(c) remand the accused to custody for the purposes of the <i>Identification of Criminals Act</i>.</p> <p>Pursuant to section 523.1(4) I am dismissing the charge that is the subject of this hearing.</p>
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## Grounds for Detention

<p> <b>FOUNDATIONS FOR DETENTION</b>                       S 515(10)                 </p>	<p><b>Primary Ground – Attendance in Court</b></p> <p>(a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;</p> <p><b>Secondary Ground – Protection of the Public</b></p> <p>(b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and</p> <p><b>Tertiary Ground – Maintain Confidence in Admin of Justice</b></p> <p>(c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including:</p> <ul style="list-style-type: none"> <li>(i) the apparent strength of the prosecution's case,</li> <li>(ii) the gravity of the offence,</li> <li>(iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and</li> <li>(iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.</li> </ul>
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<sup>1</sup> Judges must impose the least onerous form of bail that can satisfy the primary, secondary or tertiary grounds. This means the starting point is a release order without any financial obligations or conditions. The most onerous is a cash deposit. Cash bail is considered more onerous than surety bail. Before imposing cash bail, even a promise to pay, judges must be satisfied the accused has the ability to pay. *R v Antic*, 2017 SCC 27; Section 515

<sup>2</sup> Pursuant to section 515.1(1) before justice names a surety, the surety must file a surety declaration form. The requirement can be waived if the criteria in section 515.1(2) is met.

<sup>3</sup> Form 11 of the release order requires the date of birth of the surety.

<sup>4</sup> Pursuant to section 515.1(2) before a justice names a surety the surety must file a surety declaration form. The Crown can consent to the waiver of the form. The justice can also waive the requirement if the justice is satisfied that (i) the person cannot reasonably provide a declaration in the circumstances; (ii) the judge, justice or court has received sufficient information of the kind that would be set out in a declaration to evaluate whether the person is suitable to act as a surety for the accused, and; (iii) the person has acknowledged that they have received sufficient information with respect to the matters referred to in paragraphs (1)(e) to (g) to accept the role and responsibilities of a surety.

<sup>5</sup> Section 515(2)(e) is not mandatory when a person resides outside of the province or the 200 kilometre radius; it is merely an option.

<sup>6</sup> Section 515(13) requires judges to consider the safety and security of the victim and witness and make a statement that they have done so.

<sup>7</sup> Section 516(3) provides that an order made under subsection (2) remains in force, (a) until it is varied or revoked; (b) until an order in respect of the accused is made under section 515; (c) until the accused is acquitted of the offence, if applicable; or (d) until the time the accused is sentenced, if applicable.

<sup>8</sup> Unlike section 810 peace bonds, probation and conditional sentence orders, keep the peace is not a compulsory term. Judges disagree on whether this term is appropriate in a bail order. *R v SK*, [1998] SJ No 863 (PC)

<sup>9</sup> The picklist does not include the exception “except with the permission of your bail supervisor, probation officer or conditional sentence supervisor”. When judges delegate the function of approving the third party to Community Corrections, they are not authorized to do any background checks on the party being proposed. Without background checks, most officers are reluctant to accept the liability that flows from approving a third party. *D.H. (guardian ad litem of) v British Columbia*, 2008 BCCA 222, provides a good example of why Community Corrections is reluctant to accept this delegation. But see *R v Power*, 2010 BCCA 21, where the court did delegate this power and *R v S(NP)*, 2014 BCPC 199,

where the court held that Community Corrections could not refuse the delegation by the court. When Parliament made non-contact conditions compulsory on probation and conditional sentence orders, and restricted the court's ability to make exceptions, it signaled how important and serious they perceive this responsibility, and for those reasons it should not be delegated lightly.

<sup>10</sup> This exception can be used to permit support payments, arranging access to children, etc.

<sup>11</sup> Criminal court is usually the best forum to address exceptions because the prosecutor is present and there are often other considerations than just the best interest of the child. It can also take a very long time for the parties to get before a family court judge.

<sup>12</sup> When judges delegate the function of approving the third party to Community Corrections, Community Corrections are not authorized to do any background checks on the party being proposed. Without background checks, most officers are reluctant to approve third parties. But see *R v S(NP)*, 2014 BCPC 199, where the court held that Community Corrections could not refuse the delegation by the court.

<sup>13</sup> The phrase "drugs in your body" was chosen over alternatives such as under the influence or no consumption within x hours because the former is easier to understand and enforce. Similar wording is used by Parliament in the *Criminal Code*.

<sup>14</sup> Intoxication was chosen over phrases like "under the influence" because these often require greater reliance on the subjective opinion of the observer, while intoxication is more easily identified. There is a distinction between impairment and intoxication. In *R v Andrew*, [1994] BCJ No 1456 (CA), the court explains that impairment may not be obvious to an observer while intoxication always is identifiable.

<sup>15</sup> The leave on demand condition should be used sparingly and only when the judge is satisfied that there is no power imbalance between the parties. The degree of security the condition provides can sometimes be misguided or illusory. In the past, the condition provided for a return with the permission of representative of Community Corrections however, because of the risks involved Community Corrections will not grant permission and will encourage the accused to return to court. Police are also reluctant to become involved. It would also be inappropriate to delegate this function to other third parties. Having the person return to court allows the parties to make submissions about whether the condition remains appropriate.

<sup>16</sup> If a judge is prohibiting a person from associating with a certain group or category of people the condition should not be impermissibly vague or overbroad. In *R v Kirton*, 2007 MBCA 38, a probation term prohibiting the accused from associating or communicating directly or indirectly with any person known to him to be a member or associate of a gang including the Hells Angels was found to be vague and uncertain to be enforceable and therefore unreasonable. In *R v Shoker*, 2006 SCC 44, the Court observed that a judge could order an offender not to associate with his drinking buddies to ensure better compliance with an abstention clause and thereby facilitate the offender's rehabilitation and protect society.

<sup>17</sup> Metres was chosen over blocks because it is less ambiguous and in some rural locations blocks do not exist.

<sup>18</sup> Exercise caution when specifying the address of the complainant; it might not be known to the accused. If you do specify an address always consider including the wording in (a) to address any moves before the order ends.

<sup>19</sup> A justice can specify where the pick-up or drop-off will occur. For example: You must not enter the residence of [name] (unless you are expressly invited and then only for the sole purpose of picking up or dropping of your child). The child must be picked up or dropped off at the (front entrance/curbside) of the residence. You must not leave until the child is safely inside the residence.

<sup>20</sup> Because a justice must give primary consideration to imposing the least onerous conditions, careful consideration must be given to whether a reporting condition is necessary to satisfy one of the grounds of detention in the case of bail, or necessary as part of a probation order. Reporting is compulsory on a conditional sentence. Reporting can be difficult and complicated for homeless people who do not have transportation, or live in rural areas, or even lack of access to a calendar. Reporting will usually be necessary when the accused is a flight risk, requires monitoring for drug use, needs support, is involved in programming, or needs to complete community service work or pay restitution.

<sup>21</sup> Reporting by 3 PM was chosen as the default for the following reasons: there is a clear, definitive time by which the accused must report; many Community Corrections offices close at 4 pm, and it can be challenging to process multiple intakes at the last minute, and it provides some latitude for accused who appear late. In the case of conditional sentences, the *Criminal Code* provides that the offender report within 72 hours. All of the judicial partners felt 72 hours was too long of a gap for a person serving a jail sentence in the community to report.

<sup>22</sup> The *Criminal Code* requires judges to exercise restraint when imposing conditions. It will normally not be necessary for the person to report merely to have the order read and explained; this occurs both in court and by the releasing justice. However, in exceptional circumstances it might. Nor is it appropriate to require the individual to report to assist the prosecution in being able to establish identity through a Community Corrections in the event of a breach. When people are ordered to report to Community Corrections a file must be generated, even if they are only required to report once.

<sup>23</sup> Reporting by phone can be very problematic and difficult for Community Corrections to monitor; however, in some rural locations, it will be necessary.

<sup>24</sup> Two business days was chosen as the default because it provides a sufficient time to travel from any institution to any Community Corrections office in the province. *Black's Law* defines a business day as a work day during the week and not weekends.

<sup>25</sup> This condition assists the accused and Community Corrections in getting reporting back on track following an interruption by detention. It also assists Community Corrections in supervising the accused's behaviour in the community.

<sup>26</sup> When a residence condition is imposed, Community Corrections prefers this option because it ensures timely notice and all the information they require.

<sup>27</sup> If the accused is not a flight risk, and there are no protection concerns, maintaining a residence might not be necessary, or in the case of the homeless, impossible. If the condition is necessary, know that the condition does not require the accused to spend every night in the residence. If this is the goal, the justice should consider a curfew condition.

<sup>28</sup> The condition requiring the accused to reside in a residence approved by Community Corrections should be used sparingly. It is usually reserved for sexual or violent offenders, especially those with other protective conditions such as "no contact under 16" as it allows Community Corrections to determine suitability and to direct the client not to live in places which may be inappropriate or put others at risk by them living there. When used, Community Corrections policy requires assessment of the suitability of the residence within 48 hours. It can also require them to notify other residents in the building if common areas are shared with children. The condition is usually reserved for those who pose a serious risk and is usually accompanied by a curfew condition to ensure the accused is in the same residence each night. In *R v Duguay*, 2019 BCCA 53, despite the delegation, the court upheld the lawfulness of this condition. When imposing this

condition ensure that either the conditions of the order, or the nature of the charge identify the criteria Community Corrections should be using in their assessment.

<sup>29</sup> The condition requiring the accused to “Obey the rules of the home” should be used sparingly and only when the rules can be clearly defined, like the rules at a treatment centre. *R v Thompson*, 2003 BCCA 183; *R v Schneider*, 2019 BCCA 310

<sup>30</sup> When an enhanced driver’s licence is surrendered, the accused can obtain a regular driver’s licence.

<sup>31</sup> Curfews should be used sparingly in bail and probation orders but are commonplace in conditional sentences.

<sup>32</sup> If there are privacy concerns regarding where the accused will be living, consideration should be given to whether or not the address should be specified in the order.

<sup>33</sup> A justice is not required to delineate all the different exceptions for the curfew because Community Corrections policy requires them to consider allowing the accused to be outside the residence to shop, work, exercise and worship.

<sup>34</sup> Do not impose this exception if the condition is being electronically supervised.

<sup>35</sup> Community Correction has the ability to electronically supervise an accused with a GPS bracelet, they can also geo fence certain areas to alert authorities when the accused enters a prohibited area like a park. Before imposing electronic supervision, a justice must order and review a Technical Suitability Report. The reports generally take 14 days to prepare. All the conditions must be compatible to supervise electronically.

<sup>36</sup> The requirement that the accused provide a copy of the order and permission without being asked was imposed in *R v Caza*, 2005 BCCA 318; *R v Caron*, 2013 BCCA 475; *R v Sidhu*, 2015 ABCA 308; and *R v Schneider*, 2019 BCCA 310. The condition includes electronic format so the accused can carry on his or her cellphone.

<sup>37</sup> The authors of the pick list purposely have moved away from the term residence to make the wording more inclusive to those who live a transient lifestyle.

<sup>38</sup> Red zone conditions should be used sparingly. In the report *Red Zones and other Spatial Conditions of Release Imposed on Marginalized People in Vancouver*, the authors explain how destabilizing these types of conditions can be on the marginalized people in our communities.

<sup>39</sup> JUSTIN does not have the ability to load Google Maps, and without this ability, police who are asked to enforce the order cannot access the map. Community Corrections will sometimes assist the accused and provide him or her with a map, but it cannot be part of the order.

<sup>40</sup> Banishment conditions should be used sparingly; it is rarely appropriate to foist one community’s problem onto another. *R v Etifier*, 2009 BCCA 292

<sup>41</sup> Caution is urged in the use of the abstinence condition. Note the consideration of abstinence clauses in *R v Omeasoo* 2013 ABPC 328 at paras 41-44. There does not have to be alcohol involved in the predicate offence before a court can impose an abstinence clause. Also see *R. v. Patrick*, 2016 BCCA 232. It is often important to prohibit the use of both alcohol and drugs. Alcohol use can trigger a recovering drug addict’s return to drug use. Additionally, substance-dependent defendants may substitute alcohol for their drug of choice. In *R v Isbister*, 2019 BCCA 135, despite some serious criminogenic factors, the court in obiter observed that the imposition of the no alcohol condition was likely improper. However, in *R v Joy*, 2011 BCCA 189 the court upheld the use of the condition. In *R v Shoker*, 2006 SCC 44, the court upheld the use of the condition in the context of probation and conditional sentence orders. The court made the following observation: The fact that Parliament has specifically addressed alcohol and drugs under s. 732-1(3)(c) — and also in ss. 732-1(3)(g-1) and 732-1(3)(g-2) — is certainly a relevant factor but, in my respectful view, it does not preclude the imposition of “other” alcohol and drug-related “reasonable conditions” under the residual clause. Any number of additional conditions aimed at ensuring that the probationer comply with the abstention condition can be imposed. Indeed, the prescription against the possession of alcohol and drugs found in Condition 9 is one example. Similarly, a sentencing judge could prescribe that the offender not enter any premises where alcohol is sold or served; that he not associate with his favourite drinking buddies; or that he obey a curfew.

<sup>42</sup> “Intoxicated” has been said to mean drunk to “such a marked degree that the person is a danger to himself or others or is causing a disturbance.” *R v Wallace* 1998 CanLII 6701 (BC SC)

<sup>43</sup> The British Columbia Court of Appeal in *R v Joy*, 2011 BCCA 189 considered as the way to properly word this condition.

<sup>44</sup> A justice should carefully consider whether prohibiting the accused from possessing drug paraphernalia is appropriate because it can encourage the accused to share needles, etc. which can present serious health risks.

<sup>45</sup> Before imposing a condition requiring to attend counselling on a bail order the accused must consent. Community Corrections will not direct the accused on bail to go to counselling but will arrange it at the bail stage. Consent is not required for counselling as a term of probation but consent is required for treatment. Concerning conditional sentences, consent is not required for counselling or treatment. In the context of bail, treatment or counselling might be the only way to satisfy the secondary ground. In *R v Meyers*, 2019 SCC 18, the court said that when a treatment plan is proposed, judges should give it very careful consideration, even at the bail stage. In *The Law of Bail in Canada, 3rd Ed.* Trotter J. opines at p 6-38 that coerced treatment in the context of bail may be justified. He states, “If it is not appropriate to require the accused (against his or her will) to comply with conditions requiring medical treatment, judges may find themselves in situations where the absence of this type of condition raises a serious apprehension that further offences may be committed by the accused. As Justice Trotter points out, “consent can usually be obtained when the accused is provided with the two options”. The Supreme Court of Canada in *R v Proulx*, 2000 SCC 5, also considered the issue of consent as it related to an offender consenting to a treatment condition of probation. The court states: “In practice, however, this difference is not very significant, since it is unlikely that an offender faced with the choice between imprisonment and a suspended sentence with treatment as a condition of probation would refuse to consent to treatment.” Counselling and treatment have been separated in their own conditions. Treatment is different than counselling as it has a more serious on the accused or offender’s rights. To ensure the parties are making the distinction, and not improperly delegating treatment options the conditions have been separated. See *R v Duguay*, 2019 BCCA 53

<sup>46</sup> Since consent is required on bail it is important for the accused to know what type of counselling is required? In addition, the choices for the types of counselling are fewer because the presumption of innocence still applies at the bail stage. Likewise if treatment is being considered, the consent of the accused is required for it to be part of a bail or probation order. Consent for treatment is not required when it is imposed as a term of a conditional sentence order. When imposing counselling as part of a probation order or conditional sentence order, the presumption of innocence does not apply and the range for the type of counselling is much broader. Community Corrections encourages judges not to specify the type of counselling in the order. By not specifying, it allows their officers to conduct proper assessments before deciding what type of counselling is required and which type requires priority. In addition not all core programming will be available during the life of a probation order in a particular community. By specifying it, false expectations can be created

If the programming is not available, the officers will make reasonable efforts to find counselling in the community that can address the concerns.

<sup>47</sup> In the context of bail, because the accused is presumed innocent, judges should specifically delineate what type of counselling or treatment is being consented to.

<sup>48</sup> For bail and probation orders, the accused's consent must be obtained before a court can require him or her to attend treatment. Consent is not required when it is imposed in a conditional sentence order. Also, see endnote associated with the counselling provision.

<sup>49</sup> The wording of this condition is a modified version of the one found in *R v Rogers*, 1990 CanLII 432 (BCCA) also see *R v MGD*, [2013] OJ No 2025 (SC); *R v Moola*, 2008 SKCA 70.

<sup>50</sup> Similar orders were imposed in *R v Keswick*, [1991] BCJ No 2414 (CA); *R v Osborne*, 2007 BCSC 1840.

<sup>51</sup> A complete ban on the use of computers, cell phones and accessing the internet should be rare because they are all so important for daily living.

<sup>52</sup> This wording is consistent with the obiter comments in *R v Goddard*, 2019 BCCA 164

<sup>53</sup> Similar wording was found in *R v Brar*, 2016 ONCA 724 and *R v Perron*, 2015 QCCA 601.

<sup>54</sup> A complete ban on the use of computers, cell phones and accessing the internet should be rare because they are all so important for daily living.

<sup>55</sup> Caution is urged when imposing this condition. When imposed on addicts it can lead to the sharing of needles, etc. which can pose serious health risks.

<sup>56</sup> Justices need to assess whether all or only some of the listed items need to be specifically named in the order.

<sup>57</sup> Section 515(4-1) provides that for bail, judges 'shall' consider this condition when the accused is charged with a certain categories of offences, the most common being, offences where violence was used, threatened or attempted, criminal harassment, and offences that involve or are the subject matter of the items listed. The imposition of the condition is rebuttable if a justice is satisfied that it is not required in the interest of the safety of the accused, the victim of the offence, or any other person. The committee felt that referring the accused to another source like the *Criminal Code* to interpret the section was less than ideal because few will have a *Code* or know how to access. Depending on the circumstances judges may choose to include some or all of the items mentioned. However, section 515 is very specific on what must be included for bail.

<sup>58</sup> The surrender of these documents is important because an accused who retains a physical licence may be able to purchase rifles or shotguns. The closure of the long gun registry eliminated the requirement for vendors to register the sale of long guns, which in turn removed the requirement to check the validity of the licence presented.

<sup>59</sup> We considered using the wording "any place," but it would include places like any store where guns are sold.

<sup>60</sup> The surrender firearms condition requires the accused to contact police and arrange for the surrender of the firearms to avoid the accused walking up to the police station with firearms.

<sup>61</sup> One might also consider a no-go except while in a moving motor vehicle or no loitering at places that graffiti artists frequent like certain neighbourhoods, bridges, or highway overpasses.

<sup>62</sup> Section 516(3) provides that an order made under subsection (2) remains in force, (a) until it is varied or revoked;(b) until an order in respect of the accused is made under section 515; (c) until the accused is acquitted of the offence, if applicable; or (d) until the time the accused is sentenced, if applicable.

<sup>63</sup> Upon application by the Crown, a justice may adjourn a bail hearing for up to a maximum of 3 clear days. An adjournment should not be longer than is, necessary to satisfy the reason for the adjournment. Section 27(1) of the *Federal Interpretation Act* states clear days means the first and last day are not counted. Meaning 3 clear days from Monday would be Friday. [s 515(11)] Sundays and holidays are not counted. [s 35 *Federal Interpretation Act*] A justice may grant more than one section 516 adjournment. A 3 clear day rule does not apply when the justice adjourns a s 469 matter.

<sup>64</sup> A 6-day remand pursuant s 503 (b)(i) refers to straight and not clear days. Section 27(2) of the *Federal Interpretation Act* states that the first day is excluded but not the last. Meaning a 6 day remand from Monday would be the following Monday because Sundays and holidays are not counted [s 35(1) *Federal Interpretation Act*].

<sup>65</sup> Judges disagree on whether an offence remains indictable after an election by the Crown to proceed summarily. In *R v. Romanchych*, 2018 BCCA 26, appears to stand for the proposition that they do not.

<sup>66</sup> There is no requirement that the lead charge be indictable for this subsection to apply.

<sup>67</sup> Supreme Court has exclusive jurisdiction over all s 469 offences.

<sup>68</sup> The judicial referral hearing can only occur with the consent of the Crown.