

Crimes (Sentence Administration) Good Behaviour Order Breach Guideline 2023

Notifiable instrument NI2023–619

made under the

Crimes (Sentence Administration) Act 2005, s 102 (Good behaviour—breach of good behaviour obligation)

1 Name of instrument

This instrument is the *Crimes (Sentence Administration) Good Behaviour Order Breach Guideline 2023*.

2 Commencement

This instrument commences on the day after its notification day.

3 Policy

I make the attached *Good Behaviour Order Breach Guideline*.

Jennifer McNeill
Acting Director-General
28 September 2023



GUIDELINE	Good Behaviour Order Breach Guideline
GUIDELINE NO.	C36.1
SCOPE	Community Operations

PURPOSE

To provide instruction to a Community Corrections Officer (CCO) or Case Manager (CM) if they believe on reasonable grounds that an offender has breached any of their Good Behaviour Order obligations as per s102 of the *Crimes (Sentence Administration) Act 2005*.

In accordance with s102 of the *Crimes (Sentence Administration) Act 2005* this guideline sets out:

- a) The matters a CCO or CM must consider before warning an offender before warning an offender (sections 3 and 4);
- b) Procedures about how and when a CCO or CM may warn an offender (sections 1, 4 and 6); and
- c) The circumstances in which a CCO or CM must report a reportable breach to the sentencing court (sections 2 and 5).

The Breaches of Good Behaviour Orders Policy is to be read in conjunction with this guideline and provides the overarching principles and context to support this guideline.

PROCEDURES

1. Initial responses to non-compliance

- 1.1. Each instance of non-compliance by an offender must be considered as a potential breach of good behaviour obligations, and only then can an assessment be made to decide whether discretion may be exercised to warn the offender.
- 1.2. Following any instance of non-compliance, the CCO/CM must attempt to contact the offender within 48 hours or two (2) business days to discuss and establish the reason/s for the non-compliance.
- 1.3. The CCO/CM must consider all possible and appropriate methods of establishing contact with the offender, including the use of identified support persons. For example, a text message may be sent to the offender, particularly where it is uncommon for that person to answer phone calls.
- 1.4. Where phone or other attempts at contact has been unsuccessful, the CCO/CM will send an SMS message and an express post letter to the offender directing them to report for supervision with this Service, noting a date and time within a one (1) week timeframe.

- 1.5. For high-risk offenders, particularly those who may represent a physical risk to the safety of victims or the broader community, the CCO/CM must consider a more urgent response.
- 1.6. Following any instance of non-compliance where the offender is under good behaviour obligations for any offence, the CCO/CM must consider any information provided to them by another justice agency when exercising their obligations under this procedure at sections 2 and 3.
- 1.7. Following any instance of non-compliance where the offender is under good behaviour obligations arising from an offence(s) against the person, the CCO/CM must contact the ACT Victims Register Unit to confirm whether there is a registered victim of the offender. If there is a registered victim of the offender, the CCO/CM must consider any information provided to them when exercising their obligations under this procedure at sections 2 and 3.

2. Exclusionary criteria – when discretion cannot be exercised

- 2.1. A CCO/CM must notify the sentencing Court if they believe on reasonable grounds that an offender has breached their good behaviour obligation(s), except in those circumstances where discretion may be applied to warn the offender.
- 2.2. A CCO/CM cannot exercise discretion to issue a warning to an offender for a reportable breach where an offender satisfies any of the following criteria:
 - a. has been charged with another offence
 - b. has already been issued with two (2) discretionary warnings or has been reported to the sentencing court for any reportable breaches within the past eight (8) weeks of the current non-compliance
 - c. has already been issued with one (1) breach warning within the first eight (8) weeks of the commencement of their Good Behaviour Order
 - d. is unable to be contacted after five (5) working days
 - e. refuses to acknowledge the reported non-compliance, including declining to sign breach warning documentation.
- 2.3. For an offender under good behaviour obligations arising from a Domestic Family Violence (DFV) or Sexual Violence (SV) offence, a CCO/CM cannot exercise discretion to issue a warning to them where the offender has, for an obligation requiring engagement with a behaviour change program or similar, accumulated three (3) absences from that program.

3. Factors to consider in assessing non-compliance and the use of warning discretion

- 3.1. If the exclusionary criteria at section 2 do not apply to an offender's reportable breach, a CCO/CM may consider whether to exercise a discretion to warn the offender about that breach in accordance with the *Crimes (Sentence Administration) Act 2005*.
- 3.2. When considering non-compliance of good behaviour obligations (including of a Community Service Work (CSW) condition), CCOs/CMs must consider the following criteria in determining whether to exercise discretion to provide a warning to offenders. These factors include:
 - a. **Exclusion criteria:** discretion cannot be exercised when the exclusion criteria outlined at section 2 are satisfied

- b. **Forensic history:** the offender's forensic history and nature and circumstances of their current offences. Discretion might not be applied for an offender with a long history of **violence**-related criminal offences and other reported harmful behaviours, including DFV and SV. Conversely, discretion might be reasonably applied for a person with a long history of relatively minor offences
- c. **Risk-level:** including the offender's general risk of re-offending behaviour as identified in the Level of Service Inventory-Revised (LSI-R), and any other available offence-specific **risk** assessments (e.g., Static-99R for sexual offending). Discretion might not be applied in cases for an offender who is assessed as high risk for general or specific offending behaviour, particularly those offences which have greater likelihood to cause physical and/or psychological harm to others
- d. **Victim safety:** of current or previous victims, particularly the likelihood that any victim of the offender and/or the victim's family or other associates, will be subject to violence or harassment by the offender. Discretion might not be applied in cases for an offender who have current or previous offences relating to DFV or SV
- e. **Compliance history under the order:** the offender's history and general pattern of compliance. A much higher threshold for discretion must be applied in cases for an offender who has only recently commenced supervision and has not established any clear pattern of compliance or for an offender who has established a poor pattern of previous compliance. If an offender has attended CSW consistently as directed and then fails to attend on one occasion, this may weigh in favour of exercising discretion. Conversely, non-compliance of an obligation is more likely to be reported as a breach for an offender who fails to attend for CSW days with a history of poor attendance
- f. **Previous discretionary actions taken:** in relation to any prior non-compliance under the order. Discretion might not be used for an offender where discretionary measures have already been exercised in regard to previous non-compliance. This is particularly relevant in the DFV and SV context, where repeated patterns of 'minor' non-compliance, may represent a significant risk indicator for ongoing violence against victims
- g. **Offender behaviour patterns:** what this kind of behaviour has meant for the offender in the past (i.e., if the behaviour might lead to more serious offending or an escalation of risk), and if applicable, what this behaviour has meant for victim and/or community safety. A much higher threshold for discretion must be applied in cases for an offender who records a positive test result for drug use where their drug use has been identified as a significant criminogenic risk factor in their previous offending behaviour
- h. **Protective measures:** what measures could be put in place to manage the offender's behaviour and promote offender accountability (e.g., interventions and programs; containment strategies such as non-association and place restriction; or alternate contact mechanisms)

- i. **Vary conditions:** whether a request to vary a condition may eliminate the need for a breach report (e.g., removing a condition for residential rehabilitation if other appropriate case management strategies can be put into place such as attendance at a day program with increased supervision requirements). This can be done by applying to amend with the sentencing court for consideration.
 - j. **Reasonable justification:** evidence or reasonable justification for non-compliance has been provided and accepted (e.g., medical certificate provided as evidence of ill health)
 - k. **Reengagement:** the ability to contact the offender and schedule a further appointment. For example, where an offender fails to attend an appointment, CCOs/CMs should make reasonable attempts to contact the offender via phone or mail to direct them to attend a further appointment. However, if no contact information or contact methods are available for the offender or any support persons, and the offender cannot be contacted within the required timeframe, then a breach action must be initiated.
- 3.3. In considering the factors at section 3.2, a CCO/CM must:
- a. contact the ACT Victims Register Unit to confirm whether there is a registered victim of the offender. If there is a registered victim of the offender, the CCO/CM must consider any information provided to them when exercising their obligations as relevant to the factors at section 3.2, and
 - b. consider any other information provided to them by any other justice agency about the offender as relevant to the factors at section 3.2.
- 3.4. In relation to good behaviour obligations arising specifically from a DFV or SV offence in addition to the factors at section 3.2, a CCO/CM must also consider:
- a. whether the offender is, or has been, the respondent to a protection order
 - b. if the offender has good behaviour obligations to engage in behaviour change programs, to seek and consider information from the relevant behaviour change program about the offender and their level of engagement with the program
 - c. the level of risk to a victim and/or the community that the act of non-compliance might pose in the specific case. For example, one instance of non-attendance in relation to an offender known to be at risk of engaging in DFV may be a significant risk indicator for further violence to a victim
 - d. if information that may indicate an escalation of risk of harm to a victim and/or the community, including information relating to offender behaviour patterns described at section 3.2(g) should hold more importance than usual
 - e. any other information provided to them by another justice agency about the offender as relevant to the factors at section 3.2.

4. Possible courses of action in responding to non-compliance

- 4.1. If the offender has engaged in conduct which constitutes an offence, or the offender's conduct falls within the exclusion criteria at section 2, the offender has breached their good behaviour obligations and CCO/CM discretion cannot be exercised.

- 4.2. CCOs/CMs are required to report such breaches to the sentencing court, if not already brought to its attention (e.g., a CCO/CM may be advised of an offence committed in another jurisdiction).
- 4.3. With the exception of those circumstances described above at 4.1, if the CCO/CM believes on reasonable grounds that an offender has breached any of their good behaviour obligations (a 'reportable breach'), the CCO/CM may take one of the following actions:
 - a. report the reportable breach to the sentencing court (see requirements under section 5 below) or
 - b. warn the offender about the reportable breach, and that further reportable breaches may be reported to the sentencing court (see requirements under section 6 below).
- 4.4. If a CCO/CM does not form a reasonable belief that the offender has breached their good behaviour obligations, neither a report to the sentencing court nor a warning for a reportable breach should be made. This decision must be documented, including the rationale for the decision. For example, this may be applied to an offender who does not attend their scheduled supervision session but provides a medical certificate.
- 4.5. If the CCO/CM wishes to either report a breach to the sentencing court (section 5) or provide a warning to the offender (section 6), they must discuss the proposed action and seek approval from their respective Team Leader (TL) before proceeding, and this discussion/decision must be case noted by the CCO/CM.
- 4.6. Regardless of course of action, CCOs/CMs and TLs must have considered potential risks to victims, particularly noting that:
 - a. CCOs/CMs must not contact victims of DFV and/or SV to actively seek views around decisions to report a breach to the sentencing court or provide a warning to the relevant perpetrator unless ACTCS has prior consent of the victim to do so. This is to mitigate safety risks for victims and minimise potential coercion of victims by perpetrators.
 - b. Victims of crime (including DFV and SV victims) can provide information in confidence to CCOs/CMs around non-compliance with good behaviour obligations or any other concerns they may have in relation to an offender.
 - c. CCOs/CMs must use all available information to determine risks to victims and potential impacts on the broader community. This includes but is not limited to:
 - information contained within the offender record management system (i.e., CORIS)
 - the Community Operations Victim Liaison Officer
 - ACT Victims Register
 - ACT Family Violence Safety Action Program or
 - use of the ACT DFV Risk Assessment Framework which is a tool available to assist in the assessment of safety in such matters.

- 4.7. Both the CCO/CM and TL must consider the factors as described above at 2, 3.2-3.4 and 4.6 as part of the decision made, as well as the Framework for Decision-making in a High-risk Environment ([Attachment 1](#)).

5. Reporting a breach to the sentencing court

- 5.1. Following the decision to report a breach to the court, the CCO/CM must prepare an 'Alleged Breach of Good Behaviour Order' (Breach) report using the specific [Good Behaviour Order Breach Reporting Template](#) as found in the offender record management system (i.e., CORIS).
- 5.2. As per s102 (4) of the [Crimes \(Sentence Administration\) Act 2005](#) a report to the sentencing court must:
- a. be recorded in writing and
 - b. include the grounds for believing there has been a breach and in addition
 - c. include a summary of any reportable breach for which the offender has previously been warned and an explanation of why the warning was given.
- 5.3. CCOs/CMs should also refer to the [Good Behaviour Order Community Instruction](#) which outlines the details required to be provided in the Breach report.
- 5.4. Breach reports must be accurate and prepared chronologically, outlining all instances of non-compliance, directions given, any reasonable adjustments made to support compliance and any attempts to address the non-compliance with the offender, including past warnings that may have been exercised and the reasons why a warning was given.
- 5.5. Breach reports may also include a recommendation to the court regarding the outcome the CCO/CM is seeking (e.g., a formal warning, extending the order length, removing/altering/adding an order condition, etc).
- 5.6. All Breach reports must be reviewed and approved by a TL before submission to the sentencing court.
- 5.7. Breach reports must be submitted to the sentencing court within two (2) business days of the determination to report the breach.
- 5.8. CCOs/CMs may be required to appear before the sentencing court in relation to an alleged breach report.
- 5.9. The Court Duty Officer for Community Operations will also appear on days where breach matters are heard to provide any additional information since the breach report was submitted.
- 5.10. It is the responsibility of the Court to determine if the reported breach has occurred and decide the appropriate action.

6. Providing a warning to an offender

- 6.1. Only after consideration has been given to this guideline, particularly 2, 3.2-3.4, 4.6 and 4.7, should a CCO/CM and TL consider providing a warning to an offender for a reportable breach of their good behaviour obligations, rather than reporting the breach to the sentencing court.
- 6.2. As per s102 (3) of the [Crimes \(Sentence Administration\) Act 2005](#), other than for a reportable breach the conduct of which could constitute an offence, the corrections officer:

- a. need not report the reportable breach to the sentencing court and
 - b. may instead warn the offender about the reportable breach, and that further reportable breaches may be reported to the sentencing court.
- 6.3. Following the decision to provide a warning to the offender for a reportable breach, the CCO/CM must prepare a Breach Warning report using the specific Good Behaviour Order Breach Warning Template as found in the offender record management system (i.e., CORIS).
- 6.4. As per s102 (4) of the Crimes (Sentence Administration) Act 2005 this warning must:
 - a. be recorded in writing and
 - b. include the grounds for believing there has been a breach and
 - c. comply with this guideline.
- 6.5. CCOs/CMs should also refer to the Good Behaviour Order Community Instruction which outlines the details required to be provided in the Breach Warning report.
- 6.6. Breach Warning reports must be accurate and prepared chronologically, outlining the non-compliance, directions given, any reasonable adjustments made to support compliance and any attempts to address the non-compliance with the offender, the reasons why a warning was given and reference to any past warnings that may have been exercised.
- 6.7. All Breach Warning reports must be reviewed and approved by a TL before being provided to the offender.
- 6.8. Breach Warnings must be provided verbally and in writing to the offender and, at the offender's request, to any known support persons as soon as possible following the decision to provide a warning.
- 6.9. The CCO/CM must not give an offender information obtained by, or in relation to, a victim of the offender as a part of the Breach Warning.
- 6.10. Both the verbal and written Breach Warning report must advise the offender that further reportable breaches may be reported to the sentencing court.
- 6.11. The offender must verbally agree and sign the Breach Warning report to provide evidence that the offender has agreed the circumstances of the non-compliance as described and accepted responsibility for this non-compliance. If the offender refuses to verbally agree and/or sign the Breach Warning report, a Breach Report will be submitted to the sentencing court to determine if the Breach has occurred.

7. Quality assurance

- 7.1. TLs are responsible for reviewing CCO/CM caseloads at least every two (2) months for quality assurance purposes to help ensure this guideline is applied appropriately. This could include the TL taking further action (e.g., issuing a warning, submitting breach) as considered appropriate based on the outcome of their review.

8. Case studies

Case Study 1: Failure to attend scheduled appointment

An offender fails to report for their scheduled appointment which could be considered a breach of their good behaviour obligations. The CCO decides to call the offender and advise them they have missed the appointment and the need to attend the following day. The CCO does this because although the offender is poor at keeping specific appointments due to their level of disorganisation, they are otherwise reliable in reporting regularly. The CCO expects they will turn up within a day or two and deliberately scheduled the appointment early in the week in anticipation of this. The CCO is aware that for this offender, the main goals of supervision (e.g., addressing substance misuse, supporting to find more suitable accommodation) will be impacted if they focus excessively on exact reporting times and has made reasonable adjustments around this. Furthermore, the offender's criminal history has been characterised by burglary and drug-related offences with no history of violent behaviour. Hence, the CCO forms the reasonable belief that discretion around this non-compliance is appropriate and in consultation with their TL, decides to take no further action in regard to this observed non-compliance except to document the decision.

Case Study 2: Detection of alcohol in drug-test

An offender has a specific condition in their Good Behaviour Order not to consume alcohol or illicit substances. The offender attends their scheduled supervision appointment and is then given a random drug-test which a confirmatory laboratory test later reveals is positive for alcohol. The CM forms the reasonable belief that the offender has breached their good behaviour obligations, because they have violated the condition that they not consume alcohol or illicit drugs.

The CM calls the offender to discuss the positive drug-test. The offender states they 'slipped up' recently as they were feeling stressed from work and highlights that they have minimised their other drug use, including amphetamines, and asks for consideration of discretion in this context.

The CM also notes that the offender's Good Behaviour Order relates to driving under the influence and although their licence was suspended, they still have access to their motor

vehicle. The offender also has a history of domestic violence against their partner with whom they still live.

Whilst the CM acknowledges that the offender has made significant gains in regard to minimising their substance use, the CM is also concerned that alcohol and drug use is a significant risk factor for re-offending, including DFV.

The offender's partner has also previously identified that alcohol use has been a risk factor for further escalation in violence. The CM forms the reasonable belief that the offender has breached the conditions of their order and in consultation with their TL, decides to submit a breach report to the sentencing court. In the interim the CM also works with the offender to get further support around their alcohol use. The CM speaks to the Community Operations Victim Liaison Officer to liaise with the offender's partner and supporting agencies to ensure appropriate safety planning is in place.

Case Study 3: Failure to attend office appointments.

An Aboriginal offender is a single father of young children. He struggles financially on parenting payments and has minimal assets. His mother is frail and lives interstate, and he does not have other family support. He does not own a car, cannot drive and lives in an area of the ACT with minimal public transport. He was placed on a suspended sentence with a Good Behaviour Order. He has previously asked for phone or house drop-in appointments to accommodate his care requirements as well as his lack of transportation. He has previously been breached for failure to report in person to the Community Operations office. The CCO is reluctant to see the offender at home due to safety concerns relating to previous behaviour and offences. The CCO discusses the case with the Cultural Engagement Officer who suggests that the offender may be suitable for an alternative (and culturally supported) reporting site and organises transport to the alternative reporting site through an Aboriginal organisation. The offender attends the alternative reporting site with the transport services and other supports in place.

RELATED DOCUMENTS

- Crimes (Sentence Administration) Act 2005
- Crimes (Sentencing) Act 2005

- Breaches of Good Behaviour Orders Policy
- Case Note Policy
- Human Rights Act 2004
- Good Behaviour Order Breach Warning Template 2023
- Good Behaviour Order Breach Reporting Template 2023

Narelle Pamplin
A/g Commissioner
ACT Corrective Services
28 September 2023

Document details

Criteria	Details
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Compliance:	This guideline reflects the requirements of the <i>Corrections Management (Policy Framework) Policy 2020</i>

Version Control			
Version no.	Date	Description	Author
V1	August 23	First Issued	B Aloisi

ATTACHMENT 1: Decision-Making Framework

Table 1. Framework for decision-making (replicated from Corrective Services NSW Community Corrections Officer Handbook)

Outcomes	<p>What outcome are you trying to achieve?</p> <p>What is more important; what happens now, or what happens in the long term?</p> <p>What aspect of the outcome is meaningful, and what is just procedure?</p>
Information available	<p>What information do you have to base your decision on?</p> <p>What information is necessary to make an informed judgement?</p> <p>How reliable is that information?</p> <p>If key information is not known, what is a likely worst case scenario?</p>
Policy and Legislation	<p>What are the requirements of policy and legislation?</p> <p>Is there a strict requirement, or some flexibility?</p> <p>Are you relying on 'the way things have always been done', or sure your knowledge is current and up to date?</p>
Risks	<p>What are you most uncertain about, and what would the consequences be?</p> <p>To the community?</p> <p>To the offender?</p> <p>To the organisation?</p> <p>To yourself / other staff?</p> <p>Now, and in the future?</p>
Action	<p>What course of action best balances all of the relevant risks?</p> <p>Addressing one risk can mean exacerbating another; consider what the priorities are.</p> <p>Use of limited resources; focus on the most important risks.</p> <p>Does a quick fix now mean a worse problem later on, or the same problem coming back?</p>
Alternatives	<p>What would a different decision mean?</p> <p>What is the most likely outcome of doing it differently?</p> <p>Is there a better option?</p> <p>What would be the most likely outcome of doing nothing at all?</p>
Justification	<p>Could you justify the decision later on if you had to?</p> <p>If the outcome was positive?</p> <p>Even if the outcome was negative?</p> <p>Are the major issues documented?</p> <p>Would you be comfortable giving evidence in court if needed?</p>