


Chapter:	Probation Orders	Classification:	Public Document
Subject:	Wilful Failure to Comply – Youth Probation and Other Non-Custodial Orders		
For:	Entire Division	Authorized by Executive Director 	

1. Policy

- 1.1 Correctional Services is responsible for the enforcement of non-custodial sentences imposed on young persons (YP). Non-custodial sentences are
- 1.1.1 conditional discharge
 - 1.1.2 fine
 - 1.1.3 compensation
 - 1.1.4 restitution
 - 1.1.5 compensation in kind or by personal service
 - 1.1.6 community service order
 - 1.1.7 mandatory prohibition order
 - 1.1.8 probation
 - 1.1.9 ancillary conditions
- 1.2 It is the policy of Correctional Services that any YP under supervision who wilfully fails or refuses to comply with the terms of their non-custodial sentence is to be held accountable and may be referred to Restorative Justice or charged for wilful failure to comply.


2. Authority

- 2.1 The youth justice court may order that a YP serve a non-custodial sentence pursuant to section 19(1)(c) to (k) of the Youth Justice Act (YJA), sections 42(2)(c) to (k) or (s) and 53(2) of the Youth Criminal Justice Act (YCJA).
- 2.2 Wilful failure to comply with the conditions of a non-custodial order is punishable on summary conviction, in accordance with Section 23 YJA and Section 137 of the YCJA.
- 2.3 Probation officers may lay failure to comply charges pursuant to section 137 YCJA with respect to a mandatory prohibition order made pursuant to section 42(2)(j) and 51(1) YCJA.

3. Statute of Limitations

- 3.1 A charge contrary to section 137 YCJA, is required to be laid within twelve months following the date of the violation, in accordance with Section 721(2) and 786(2) of the *Criminal Code of Canada* (CC).

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4. Guidelines for Charges of Failure to Comply

- 4.1 Probation officers will consider the following factors when assessing situations where a YP appears to have failed to comply with probation or other non-custodial sentences
- 4.1.1 the failure to comply is clearly defined in the order of the court
 - 4.1.2 in accordance with Section 137 of the YCJA, consider a Referral to Restorative Justice, and
 - 4.1.3 the failure or refusal to comply is wilful
- 4.2 Probation officers will lay failure to comply charges pursuant to section 137 YCJA, in all cases where the YP is charged with new offences, pursuant to CC or other federal statues, after the YP was placed on probation.
- 4.3 When the probation officer believes there are exceptional circumstances that mitigate against a charge pursuant to section 137 YCJA, the probation officer will seek the permission of the senior probation officer to forego filing the failure to comply charge. This is to be clearly documented on the Justice Enterprise Information Network (JEIN), on the YP's Offender Case Management (OCM) file.


5. Guideline for Charges When the Sentence is a Fine

- 5.1 Where the non-custodial sentence is a fine, failure to comply charges will commence only:
- 5.1.1 upon receipt of written notification from the clerk of the court that the YP has failed to comply with the order, and
 - 5.1.2 that the YP has been notified accordingly.
- 5.2 If the YP is 18 years of age or over at the time of the failure to comply, the charge will be laid in provincial court.

6. Young Persons from Other Jurisdictions

- 6.1 Wilful failure to comply charges pertaining to YPs from other provincial jurisdictions may only be initiated where formal transfer proceedings have been undertaken and the Province of Nova Scotia has jurisdiction to hear the case.

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6.2 YPs who are under courtesy supervision from another province may not be charged with failure to comply in the Province of Nova Scotia.

7. Preparation

7.1 An Information may be sworn to by any probation officer, regardless of whether it is the probation officer who is actively supervising the case, if there are reasonable and probable grounds to ensure that an offence of wilful failure to comply has occurred.

7.2 When the decision to proceed with a breach/failure to comply charge is made, the probation officer must prepare a crown brief/sheet and information using draft wording as follows:

“On [or between] ____, [date] at ____ [place], did, while bound by an order pursuant to section ____, of the Youth Criminal Justice Act, made by [full title of the court and judge making the order] on [date of order] did wilfully fail/refuse to comply with such order, to wit: [conditions which were violated], contrary to section 137 of the Youth Criminal Justice Act.”

7.3 Following consultation with the crown attorney, where the crown attorney supports the charge, the probation officer will prepare the required information in the approved form, see https://www.courts.ns.ca/Provincial_Court/NSPC_youth_court_forms.htm of Nova Scotia Youth (NSY) Form: Information.

7.4 The probation officer will also prepare:


7.4.1 a notice to parents/guardian(s) in the approved form, see https://www.courts.ns.ca/Provincial_Court/NSPC_youth_court_for_ms.htm for NSY Form: Notice to Parent or Other Person, and

7.4.2 a summons for the YP in the approved form, see https://www.courts.ns.ca/Provincial_Court/NSPC_youth_court_for_ms.htm for NSY Form: Summons to Young Person.

7.5 The probation officer will swear to the Information before a staff justice of the peace, court clerk or a youth justice court judge and will provide the clerk of the court with the Notice to Parent form.

7.6 The probation officer will ensure

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- 7.6.1 a summons is directed to the YP and appropriate police agency or sheriff
- 7.6.2 a notice is directed to the parent(s)/guardian(s) of the YP
- 7.6.3 an arraignment date is set

7.7 If the Crown Attorney does not agree to proceed with the charge of failure to comply, a notation to this effect will be documented on JEIN, on the YP's Offender Case Management (OCM) file.

8. Full Disclosure

- 8.1 Where an Information has been laid against a YP, the youth has the right to full disclosure of all statements, documents and evidence pertaining to the case. The probation officer will
 - 8.1.1 request advice from the Crown Attorney as to which documents should be made available to the Crown for disclosure purposes, and
 - 8.1.2 provide all documents requested by the Crown Attorney for purposes of disclosure

9. Arraignment

- 9.1 The probation officer will
 - 9.1.1 attend the arraignment hearing
 - 9.1.2 bring appropriate documentation to court to respond to any questions which may be raised by the judge, Crown Attorney or defense counsel

10. Court Hearing

- 10.1 The probation officer who swore to the Information will
 - 10.1.1 attend court
 - 10.1.2 be prepared to provide evidence as required by the court
 - 10.1.3 be able to identify the YP who has been charged with failure to comply.
- 10.2 If identification cannot be made, the probation officer will ensure, to the extent possible, another probation officer who can provide identification is available in court.

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