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MEMORANDUM TO: All Chiefs of Police and
Commissioner Thomas Carrique
Chairs, Police Services Boards

FROM: Marc Bedard
Assistant Deputy Minister
Public Safety Division and Public Safety Training Division

SUBJECT: **Bill C-75 changes to s.145 of the Criminal Code**

DATE OF ISSUE:	March 4, 2020
CLASSIFICATION:	General Information
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Further to All Chiefs Memo 19-0052, I am sharing further information from the Ministry of the Attorney General's Criminal Law Division regarding Bill C-75, including renumbering of the *Criminal Code of Canada* and advice on appropriate charges depending on the timing of an alleged breach/failure and release order.

Please review the attachment memo from Assistant Deputy Attorney General Susan Kyle for further information. As always, you are encouraged to reach out to your local Crown office if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Marc Bedard".

Marc Bedard
Assistant Deputy Minister
Public Safety Division and Public Safety Training Division

Attachments

**Ministry of the
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MEMORANDUM TO: Marc Bedard
Assistant Deputy Minister
Public Safety Division and Public Safety Training
Division Ministry of the Solicitor General

FROM: Susan Kyle
Assistant Deputy Attorney General
Criminal Law Division - Ministry of the Attorney
General

DATE: February 20, 2020

SUBJECT: **Section 145 of the *Criminal Code* – Renumbering
and Charging Advice (as a result of Bill C-75)**

This memorandum addresses the renumbering of Section 145 of the *Criminal Code* as a result of the amendments in *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts* (formerly known as Bill C-75) (Bill C-75), and includes advice on the appropriate charge depending on when the release order was made and when the alleged breach or failure occurred. This memorandum can be shared with police services.

Introduction

On June 21, 2019, Bill C-75 received Royal Assent. Bill C-75 was created in response to a number of Supreme Court of Canada decisions, including *R. v. Antic*, 2017 SCC 27 (*Antic*), the leading decision on judicial interim release. The *Criminal Code* underwent significant amendments, including Part XVI: Compelling Appearance of an Accused Before a Justice and Interim Release. Release-related terminology was

updated, and attempts were made to simplify and modernize the provisions related to police and judicial interim release. As a result of the amendments made to Part XVI, section 145 of the *Criminal Code* was renumbered and updated to reflect the revised terminology. These amendments came into force on December 18, 2019.

Section 145 of the *Criminal Code* was renumbered as follows:

Old Provision		NEW Provision
145 (1)	Escape from lawful custody or being at large	145 (1)
(2)(a)	Fail to appear court – judicial release order	(2)(a)
(2)(b)	Fail to appear court – judicial order to appear at next appearance date	(2)(b)
Was not in an enumerated paragraph	Fail to surrender in accordance with order of the court	(2)(c)
(4) summons; (5) appearance notice	Fail to appear at court or for fingerprints (appearance notice or summons)	(3)
(5) police recognizance; (5.1) police undertaking	Failure to comply with undertaking	(4)(a)
Was not in an enumerated paragraph	Fail to appear court or for fingerprints (undertaking)	(4)(b)
(3)	Fail to comply with a judicial release order	(5)(a)
(3)	Fail to comply with judicial non-communication order (515(12), (516(2), 522(2.1)	(5)(b)

By virtue of the transitional provisions included in Bill C-75, all release orders entered into by an accused before December 18, 2019, are deemed to be the equivalent form of release on and after December 18, 2019. This includes forms of police release and judicial interim release. As a result, where an accused is alleged to have violated a condition of release or has failed to comply or appear on or after December 18, 2019, charges should be laid under the new section.

The following chart identifies equivalent forms of release before and after December 18, 2019:

Original Form of Release (before December 18, 2019)	Deemed Form of Release (on or after December 18, 2019)
Summons [Form 6]	Summons [Form 6] *no change
Appearance Notice [Form 9]	Appearance Notice [Form 9] *no change
Promise to Appear [Form 10]	Appearance Notice [Form 9]
Undertaking to Peace Officer or Officer in Charge (ss. 499 or 503(2.1)) [Form 11.1]	Undertaking [Form 10]
Recognizance entered into before Peace Officer or Officer in Charge (ss. 498 or 499) [Form 11]	Undertaking [Form 10]
Undertaking given to judge or justice (ss. 503(3.1), 515, 522, 524, 525, 679, 683, 816, 832) [Form 12]	Release Order [Form 11]
Recognizance entered into before a judge or justice (ss. 503(3.1), 515, 522, 524, 525, 679, 683, 816, 832) [Form 32]	Release Order [Form 11]

Charging Advice

Failure to Comply

If a person is on a **recognizance of bail or an undertaking issued by a Justice** of the Peace or Judge that was entered into before December 18, 2019, that form of release is deemed to be a “**release order**” on and after December 18, 2019. Therefore, if an accused is alleged to have violated a condition of that release on or after December 18, 2019, the charge should be laid under the new section 145(5)(a): failure to comply with release order (and not the old section 145(3): failure to comply with undertaking or recognizance).

If a person was released on an **undertaking to an officer in charge** that was entered into before December 18, 2019, that form of release is deemed to be an “**undertaking**” on and after December 18, 2019. Therefore, if an accused is alleged to have violated a condition of that release on or after December 18, 2019, the charge should be laid under the new section 145(4)(a): failure to comply with undertaking (and not the old section of 145(5.1): failure to comply with undertaking).

Failure to Appear

If a person was served with a **summons** that was issued before December 18, 2019, it will still be referred to as a **summons** on and after December 18, 2019. If an accused

is alleged to have failed to appear in court on or after December 18, 2019 in accordance with that order, the charge should be laid under the new section of 145(3) (and not the old section of 145(4)).

If a person was named in an **appearance notice** or a **promise to appear** that has been confirmed by a justice before December 18, 2019, these forms of release are deemed to be an **“appearance notice”** on and after December 18, 2019. Therefore, if an accused is alleged to have failed to appear in court on or after December 18, 2019 in accordance with that order, the charge should be laid under the new section of 145(3) (and not the old section of 145(5)).

If a person was released on a **recognizance to an officer in charge or other peace officer** that was entered into before December 18, 2019, that form of release is deemed to be an **“undertaking”** on and after December 18, 2019. Therefore, if an accused is alleged to have failed to appear in court or for prints on or after December 18, 2019, the charge should be laid under the new section 145(4)(b) (and not the old section of 145(5)).

If a person is on a **recognizance of bail or an undertaking issued by a Justice** of the Peace or Judge that was entered into before December 18, 2019, that form of release is deemed to be a **“release order”** on and after December 18, 2019. Therefore, if an accused is alleged to have failed to appear in court on or after December 18, 2019, the charge should be laid under section 145(2). This is the same section as before December 18, 2019, although the wording has been updated.

Charge Wording

Long Form Charge Wording

Due to the assortment of IT systems used by Ontario’s police services and the data tracking needs of other entities, section numbers for all offences should now be included in the wording of the charge. **Section numbers must always refer to the offence-creating provision and must not refer to penalty-creating provisions.** Only references to offence-creating provisions will satisfy the data collection and reporting needs of police services, the courts, Statistics Canada, and other entities. To ensure proper sections are cited, the attached chart has been prepared, showing the updated charge wording for section 145 of the *Criminal Code*.

Charges should use the specific wording provided. Wording should not be modified, except in cases where multiple breaches of the same release order on the same date are alleged. In those cases, officers *may* further particularize each count by adding the words “to wit” followed by the wording of the conditions alleged to have been breached.

This charge wording is being shared with Ontario police services to ensure consistency across the province, and to minimize the likelihood of litigation surrounding the wording of the charges. In particular, third-party applications that

supply charge wording for these offences may have to be manually overridden if they do not accord with the supplied charge wording. Informations that do not use the charge wording provided may have to be re-sworn to comport with this wording. Serious defects in wording provided by third-party applications have been detected in some cases.

Short Form Charge Wording

The attached chart also includes revised short form wording. Strict compliance with the suggested short form wording is not required. It is provided here in response to those services or entities that have requested it.

We would ask that you encourage Chiefs of Police and Detachment Commanders to reach out to their local Crown Attorneys with any questions.

I trust this information will assist you.

Sincerely,

A handwritten signature in black ink, appearing to be 'Susan Kyle', with a large, stylized initial 'S' and 'K'.

Susan Kyle
Assistant Deputy Attorney General
Criminal Law Division - Ministry of the Attorney General

Attachment: chart for short form wording of s.145 charges

Charge Wording for new Section 145 Offences under Bill C-75
(effective December 18, 2019)

Section Number and Short Form Wording	Long Form Wording
Section 145(1) – Escape Lawful Custody or Unlawfully at Large	Escape lawful custody: ...did escape from lawful custody, contrary to section 145(1) of the Criminal Code. Unlawfully at large: ...was, before the expiration of a term of imprisonment to which they were sentenced, at large without lawful excuse, contrary to s. 145(1) of the Criminal Code.
Section 145(2)(a) – Fail to Attend Court while on Release Order	Fail to attend court – release order ...did, being at large on a release order, fail to attend court in accordance with the release order, contrary to section 145(2)(a) of the Criminal Code.
Section 145(2)(b) – Fail to Attend Court after having Appeared	Fail to attend court – having appeared ...did, having appeared before a court, justice or judge, fail to subsequently attend court as required by the court, justice or judge, contrary to s. 145(2)(b) of the Criminal Code.
Section 145(2)(c) – Fail to Surrender as per Court Order	Fail to surrender – court order ...did fail to surrender themselves in accordance with an order of the court, of a justice or of a judge, contrary to section 145(2)(c) of the Criminal Code.

Charge Wording for new Section 145 Offences under Bill C-75
(effective December 18, 2019)

Section Number and Short Form Wording	Long Form Wording
<p>Section 145(3) – Fail to Comply with Appearance Notice or Summons to Attend for Fingerprinting or Court</p>	<p>Fail to comply with appearance notice or summons – fingerprinting</p> <p>...did, being named in an appearance notice that has been confirmed by a justice under section 508 of the Criminal Code, or having been served with a summons, did fail to appear at the time and place stated in the notice or summons for the purposes of the Identification of Criminals Act, contrary to s. 145(3) of the Criminal Code.</p> <p>Fail to comply with appearance notice or summons – court</p> <p>...did, being named in an appearance notice that has been confirmed by a justice under section 508 of the Criminal Code, or having been served with a summons, did fail to attend court in accordance with the notice or summons, contrary to s. 145(3) of the Criminal Code.</p>
<p>Section 145(4)(a) – Fail to comply with Undertaking</p>	<p>Fail to comply with undertaking</p> <p>...did, being at large on an undertaking, fail to comply with a condition of that undertaking, contrary to section 145(4)(a) of the Criminal Code.</p>
<p>Section 145(4)(b) – Fail to Attend for fingerprints or court as per undertaking</p>	<p>Fail to comply with undertaking – fingerprints</p> <p>...did, being at large on an undertaking that has been confirmed by a justice under section 508 of the Criminal Code, fail to appear at the time and place stated in the undertaking for the purposes of the Identification of Criminals Act, contrary to section 145(4)(b) of the Criminal Code.</p>

Charge Wording for new Section 145 Offences under Bill C-75
(effective December 18, 2019)

Section Number and Short Form Wording	Long Form Wording
Section 145(4)(b) – Fail to Attend for fingerprints or court as per undertaking	Fail to comply with undertaking – court ...did, being at large on an undertaking that has been confirmed by a justice under section 508 of the Criminal Code, fail to attend court in accordance with the undertaking, contrary to section 145(4)(b) of the Criminal Code.
Section 145(5)(a) – Failure to comply with release order (other than to attend court)	Fail to comply with release order – other than to attend court ...did, being at large on a release order, fail to comply with a condition of that release order other than a condition to attend court, contrary to section 145(5)(a) of the Criminal Code.
Section 145(5)(b) – fail to comply with an order under ss. 515(12), 516(2), or 522(2.1)	Fail to comply with non-communication order ...did, while bound to comply with an order under sections 515(12), 516(2) or 522(2.1) of the Criminal Code, fail to comply with that order, contrary to section 145(5)(b) of the Criminal Code.