

INFORMATION BULLETIN
March 2018

IN CUSTODY NO CONTACT ORDERS

INTRODUCTION

The purpose of this Information Bulletin is to inform anti-violence workers and others who support victims/survivors about the availability (and limitations) of “no contact” orders while the accused/offender is incarcerated.

“No contact” conditions and protection orders are critical tools in reducing risk, harm, and increasing protections for victims/survivors of power based crimes. While “no contact” conditions are quite common when an accused is released on bail, or when an offender is required to serve all or part of a sentence in the community (e.g. when an offender is placed on a probation order), the presence of conditions prohibiting contact while an accused/offender is in the custody of a correctional centre are available, but unfortunately, are less commonly imposed. However, in the absence of such conditions, there are measures which can be taken to prevent unwanted contact from an accused/offender in the custody of a correctional centre.

It is critical for anti-violence workers to be aware of the availability of “no contact” orders while the accused/offender is incarcerated. It is also important for anti-violence workers to know that without such an order in place, the accused/offender cannot be prevented from contacting the victim. Thus, it may be important to proactively advocate for in custody “no contact” orders with other justice system personnel to ensure these important protections are in place for the victims/survivors they support.

RELEVANT TIME PERIODS AND CRIMINAL CODE PROVISIONS

The *Criminal Code* contains provisions for a judge to order that the accused/offender abstain from or be prohibited from communicating with the victim (or any other person) during the period they are in custody:

| Relevant time period | <i>Criminal Code</i> provision preventing contact while in custody |
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| When an accused has been arrested and remanded in custody pending a bail hearing. | 516 (2) A justice who remands an accused to custody under subsection (1) or subsection 515(11) may order that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, except in accordance with any conditions specified in the order that the justice considers necessary. |
| When an accused has had a bail hearing and the judge has made an | 515 (12) A justice who orders that an accused be detained in custody under this section may include in the order a direction that the accused abstain from communicating, directly or indirectly, with |

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| order to detain the accused in custody until with charge(s) is dealt with | any victim, witness or other person identified in the order, except in accordance with such conditions specified in the order as the justice considers necessary. |
| When the offender has been convicted and is sentenced to time in prison. | 743.21 (1) The sentencing judge may issue an order prohibiting the offender from communicating, directly or indirectly, with any victim, witness or other person identified in the order during the custodial period of the sentence, except in accordance with any conditions specified in the order that the sentencing judge considers necessary. |

HOW MAY “NO CONTACT” ORDERS BE ENFORCED?

Where an order under s. 515 (12), s. 516 (2), or s. 743.21 is in place, it is created by Court Services and sent to the Protection Order Registry (POR) for entry. It will show up as a valid order in the POR. The POR is checked by a correctional centre victim notifier when an accused/offender is admitted into a BC correctional centre. When there are valid orders reflected on the POR, the victim notifier will block the victim’s phone number from the Inmate Call Control System (ICCS). Outgoing mail is also checked by the unit’s officer.

Breaches of s.515 (12) and s.516 (2) "no contact" orders may lead to a further charge pursuant to section 145(3) of the *Criminal Code*. Breaches of s. 743.21 “no contact” orders may result in a further charge pursuant to s. 743.21 (2) of the *Criminal Code*.

CONCERNS RELATING TO “NO CONTACT” ORDERS

From the perspective of anti-violence workers, it is important to understand that without an order under s. 515 (12), s. 516 (2), or s. 743.21 in place, correctional centres have no legal authority to prevent the accused/offender from contacting the victim/survivor. However, any person receiving a call from an inmate in a correctional centre can refuse to accept the call and block their telephone number from receiving any future calls. Parties can block their number from receiving calls from any correctional centre by pressing ‘7’ during the call notification, and then pressing ‘3’ to confirm the call block. These two steps are required to complete the call block process.

It is also important that anti-violence workers and victims are aware of some caveats regarding these orders. Section 516 (2) “no contact” orders only remain in effect until the next remand court date.¹ As a result, where an accused is remanded into custody under s. 516 (1) on more than one occasion, a s. 516 (2) “no contact” order needs to be sought each time a s. 516 (1) remand is made and distributed by Court Services to the Protection Order Registry. This is particularly relevant in situations where there are numerous remand court appearances.

Where the sentencing judge does not issue a “no contact” order pursuant to s. 743.21 at the time of sentencing for the custodial portion of the sentence, it will likely be difficult to obtain this

¹ Bill C-75, tabled by the Federal Government, on March 29, 2018, contains a proposed amendment to address the issue of section 516 (2) orders only remaining in effect until the next remand court date.

order after the offender has been sentenced. For this reason, it is important that justice system personnel be aware at the time of sentencing of the need to have a s.743.21 order put in place.

THE IMPORTANCE OF PROACTIVE COMMUNICATION WITH OTHER JUSTICE SYSTEM PERSONNEL

It may be prudent to proactively explore the victim's wishes for a "no contact" order while the accused/offender is in custody and to advocate for those wishes on the victim's behalf with Crown Counsel, as it is Crown Counsel who will have the opportunity to seek a "no contact" order under s. 515 (12), s. 516 (2), or s. 743.21.