



**SOUTH COAST BRITISH COLUMBIA  
TRANSPORTATION AUTHORITY  
POLICE SERVICE**

## **CIVIL COURT ORDERS**

Effective Date: September 11, 2006

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### **POLICY**

1. South Coast British Columbia Transportation Authority Police Service (SCBCTAPS) Members will, in most instances, restrict their involvement in civil matters to prevent a breach of the peace. Exceptions will occur in family matters where a Court has made a Custody, Access or Restraining Order.

### **REASONS FOR POLICY**

2. To ensure Members understand their limited role in civil disputes, as well as their responsibilities in regards to certain types of Court Orders.

### **PROCEDURES**

#### **CUSTODY, ACCESS AND RESTRAINING ORDERS**

3. Pursuant to s. 128 of the Family Relations Act, a person commits an offence by refusing or neglecting, without lawful excuse, to comply with various types of Court Orders made under the Family Relations Act.
4. When a Court Order is produced, Members will proceed under this policy.
5. When a custody, access or restraining Order is produced, Members will:
  1. notify a Supervisor to attend, and
  2. establish whether reasonable and probable grounds exist to believe that the Order produced is both valid and enforceable by examining the Order for markings as detailed in sections 6 to 8 below and, if required, by contacting the Protection Order Registry (POR) by telephone. The Registry can fax a copy of the Order.
    - a. The Operations Communication Centre (OCC) and Watch Commander have access to the POR's confidential telephone number.

#### **BC Supreme Court Order**

6. If the Order is from BC Supreme Court, the Order must have the following markings:
  1. a stamp mark bearing the BC Coat of Arms and the wording "Supreme Court of British Columbia",

2. a BC Court Registry stamp bearing the date and registry number,
3. an ORIGINAL (no photocopy) stamp mark certifying the document as a true document; the date of certification and an original signature must also be present, and
4. the signature of a Judge, District Registrar or Deputy District Registrar.

### **Provincial Court (Family Division) Order**

7. If the Order is from Provincial Court (Family Division), the Order must have the following markings:
  1. a stamp mark bearing the words "Provincial Court of British Columbia, Entered",
  2. a court file number and date,
  3. an ORIGINAL (no photocopy) stamp mark certifying the copy as a true copy; and an original signature must be present, and
  4. the signature of a Judge, District Registrar or Deputy District Registrar.

### **Out-Of-Province Court Order**

8. If the Order is an out-of-province Court Order, then for it to be enforceable in BC, it must be registered with a BC Court. The out-of-province Court Order must have the same 4 markings as a BC Supreme Court Order. Out-of-province Orders registered at the Provincial Court level will have the same 4 markings as on a BC Provincial Court Order.

### **Order - Validity**

9. When a non-certified copy of the order is produced, the Member will confirm the validity of the Order by phoning the POR.
10. When an Order is produced and Members are not satisfied that it is valid or enforceable, the Members will confirm its validity by phoning the POR.

**Note:** *A confidential phone number is available for all on-duty police officers, which can be obtained from the OCC or Watch Commander. The POR is a confidential database of protection Orders issued by the BC Courts. Only police officers in the course of their duties have the authority to request information.*

1. When a Member contacts the POR about a particular protection Order, the Member must be prepared to provide the following type of information:
  - a. the Member's name and phone number,
  - b. the name of the person holding the protection Order,
  - c. if known, the names of any other people protected under the Order and the name and location of the Court responsible for issuing the Order, and
  - d. the location of the current investigation.

With the required information, the Registry staff will be then able to confirm immediately whether the protection Order exists and whether it is valid. The staff will also fax the Member a copy of the Order on request.

11. In the event that a Member is not able to confirm the validity of the Order by visual examination or through the POR, the Member will not enforce the Order, and will advise the holder of the Order of the circumstances that prevent its enforcement. The Member will inform the complainant they may pursue the matter themselves or through their family lawyer.

### **Valid Custody Order – Interference With/Access To**

12. A Member who is able to confirm the validity of the Order and who believes that a person is interfering with the custody of or access to a child in contravention of that Order, will:
  1. call POR to confirm most recent Order,
  2. attempt to determine which parent/guardian is entitled to custody according to the terms of that Order. (If there is ANY dispute as to which parent/guardian is entitled to custody, a supervisor WILL be requested to attend), and
  3. return the child to the rightful parent/guardian unless there is reason to believe that the child is in immediate danger.
13. Where the Order contains a clause directing the police officer to arrest the person violating the Order, Members will arrest a person they find violating the Order and deliver that person to the Court that issued the Order. The arresting Member will submit a General Occurrence (GO) report describing the breach.
14. Where the Order does not contain an arrest clause, but the Member believes the offending parent/guardian is committing an offence under s. 128 of the Family Relations Act, by interfering with the lawful custody of, or access to, a child, contrary to the valid custody Order, the Member will arrest the offending parent/guardian only in the following circumstances:
  1. if the offending parent/guardian has not provided the investigating Member with a reasonable excuse for breaching the Order, and
  2. if the breach is more than merely technical in nature (for example, do not arrest if the breach involved returning the child an hour late), and
  3. the investigating Member finds the suspect committing the offence, OR
  4. the facts of the case suggest an ongoing concern for the safety of the children in the hands of the offending parent/guardian, OR
  5. if any other aggravating factors exist, such as the offending parent/guardian not being co-operative and force being necessary to effect the return of the child.
15. If, after evaluating the circumstances above, it is not considered appropriate to arrest the offending parent/guardian, Members will advise the complainant to contact their own lawyer for advice/action. Members will submit a detailed GO report justifying their actions.
16. When a suspect does not co-operate in returning the child to the rightful parent/guardian, Members may enter and search any place including a dwelling house to locate a child only in the following circumstances:

1. the custody Order states that the Order is made in accordance with s. 36(1) of the Family Relations Act, and
2. the custody Order empowers a peace officer to enter and search any place to locate a child, and
3. the Member has reasonable and probable grounds to believe that the child is in that place, OR
4. the Member has reason to believe that the child's health or safety is in immediate danger and a person denies the police officer access to the child or no one is available to provide access. In this case the contents or validity of the Order are no longer important. The Member will take charge of the child pursuant to s. 27 of the Child, Family and Community Service Act.

## ENFORCEMENT PROCEDURES

17. In enforcing the provisions of a Civil Court Order, Members will:

1. notify a Supervisor to attend,
2. make detailed notes on the following:
  - a. date of the Order,
  - b. the jurisdiction of the Court Registry, the date registered, and the registry number,
  - c. other relevant Court markings on the Order that establish the Order is valid and enforceable in BC (see above for more information on the relevant court markings that should be present),
3. confirm with the complainant that the Order produced is the most recent and valid Order,
4. ask the complainant if it is known the suspect is aware of the Order,
5. take the Court Order in hand and confront the suspect,
6. explain to the suspect that the police are required to carry out the directives in the Order,
7. allow the suspect the opportunity to produce any amended Orders,

**NOTE:** *In the event that more than one apparently valid Order is produced, the Order registered on the latest date will take precedence. However, in some situations a subsequent Order will only vary part of the previous Order. In these cases, the portions of the first Order that have not been amended are still valid.*

8. verify the Order in every case by phoning the POR for confirmation.

## Supervisor

18. The Supervisor in attendance will ensure that the actions of the Member are appropriate and in accordance with this policy. In the event of a controversial or unusual incident, the Watch Commander will be consulted. The Watch Commander will contact the appropriate Crown Counsel if necessary.

## Enforcement of Civil Court Orders – No “Arrest Clause”

19. Where the Member has reasonable grounds to believe that the Court Order is valid and has been breached, but the Court Order does not contain an arrest clause, the Member will take enforcement action as follows:

1. In the first instance, consider proceeding by way of a new criminal charge (e.g., criminal harassment, assault, or threatening) if there is evidence to support the charge; seek appropriate bail conditions including a no-contact Order, if applicable. Alternatively, consider an application for an s. 810 Criminal Code of Canada (CCC) peace bond.
2. If there is no evidence to support a new criminal charge, confirm if either of the following conditions exist:
  - a. the breach of the Court Order was more than merely technical in nature and was not inadvertent, and the suspect has not provided the investigating Member with a reasonable and/or lawful excuse for the violation, or
  - b. the circumstances of the case suggest that the complainant appears to be at some risk from the suspect and/or there is a history of violence in the relationship.
3. If either subsection 2(a) or 2(b) applies, and the suspect was not found committing, submit a GO report to Crown requesting a warrant under s. 128 of the Family Relations Act and "walk the report" through to ensure prompt action.

**NOTE:** *If submitting a report to Crown Counsel requesting a warrant, the investigator must include in the report information on the relevant history of the relationship, evidence of past violence or threats of violence, potential of violence, and any other risks to the complainant, in order to assist the Crown in the charge approval process; in addition, the investigator must include the suspect's account of events, if possible.*

4. If either subsection 2(a) or 2(b) applies, and the suspect was found committing, Members will arrest the suspect for committing an offence under s. 128 of the Family Relations Act, provided arrest is required in order to satisfy public interest and court appearance as outlined in s. 495(2) CCC. If public interest and court appearance are satisfied without arrest, proceed by way of an appearance notice or promise to appear. Members should consider the use of Form 11.1 with applicable conditions when releasing suspect.
5. If conditions in subsections 2(a) and 2(b) do not apply (i.e., breach is only technical and no potential for violence), Members will inform the complainant that no police action is being taken and they have the option to pursue the matter on their own or through their lawyer. Members will submit a GO report detailing the circumstances of the incident and the reasons for their actions.

**Enforcement of Civil Court Orders – With “Arrest Clause”**

20. Where the investigating Member has reasonable grounds to believe that the Court Order is valid and has been breached, and the Court Order contains an arrest clause permitting a police officer to arrest upon breach of the Order, the Member will take enforcement action as follows:
1. If the suspect is found committing the Member will:
    - a. arrest the suspect as per the arrest clause on the Order,
    - b. lodge the accused in a police jail for transportation by sheriffs to the Court issuing the Order,
    - c. submit as soon as possible, and in any event before completion of the tour of duty, a GO report detailing the circumstances of the breach and action taken, and
    - d. give a copy of the Court Order to the officer in charge of the jurisdictional police jail.
  
  6. If the suspect is not found committing and there are reasonable and probable grounds to believe that the Order has been breached, the Member will:
    - a. fully investigate, making every reasonable effort to locate and arrest the suspect as per the arrest clause on the Order,
    - b. if the suspect is in another jurisdiction then notify a Supervisor, and
      - i. contact the JPD and determine whether to continue the investigation in consultation with the JPD;
    - c. in all instances where the suspect cannot be located and a breach has occurred, the Member will consider whether a charge under s.128 of the Family Relations Act is appropriate in the circumstances, considering the criteria listed in subsections 2(a) and 2(b) above (i.e., breach is not merely technical in nature, or there is a potential for violence).
  
  7. If, after considering subsection 6(c) charges under the Family Relations Act are appropriate, Members will:
    - a. submit a GO report to Crown Counsel, requesting a warrant pursuant to s. 128 Family Relations Act and/or consider a s. 810 CCC peace bond,
    - b. include in the GO report to Crown Counsel information on the relevant history of the relationship, evidence of past violence or threats of violence, potential for violence, or any other risks for the complainant, in order to assist the Crown in the charge approval process,
    - c. include the suspect's account of events in the report, if possible,
    - d. articulate the potential risk to the victim to justify Crown invoking the warrant process for breaches of Civil Court Orders,
    - e. state in the report to Crown Counsel that the warrant is being requested because the suspect cannot be located, and
    - f. ensure the warrant request is immediately processed (by "walking the report through") and entered on CPIC. A Member who is unable to do this due to shift or time restraints will pass it on to the next shift's Supervisor for completion.

**Technical/Inadvertent Breaches**

21. Members will submit a GO report but not request a charge in the following circumstances:
1. there are no reasonable and probable grounds to believe that the accused was aware of the Order prior to the offence occurring,
  2. an Order is produced and Members do not consider it to be valid and enforceable, or
  3. the violation of the Order appears to be inadvertent or unintentional.
22. If the breach is purely technical in nature (e.g., bringing children back 10 minutes late) and there are no other mitigating circumstances, Members will advise the complainant that no action is being taken by the police and the option to contact their own lawyer for further action. Members must document their reasons to justify not proceeding with charges.

**New Charges**

23. In all instances (found committing, not found committing, suspect located, or not located) Members will also consider laying any new criminal charges that may have occurred along with the breach, such as assault or mischief.

**Child Custody**

24. For instances involving child custody and access issues refer to the above for additional guidance.
25. The Supervisor in attendance will ensure that the actions of the Member are appropriate. In the event of controversial or unusual incidents, the Watch Commander will be consulted and, if necessary, contact the appropriate Crown Counsel. Unusual situations include foreign court orders where the provisions of s. 282 CCC or International Conventions apply.