

TASMANIA

**SENTENCING AMENDMENT (BREACHES OF
HOME DETENTION ORDERS) BILL 2023**

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**SENTENCING AMENDMENT (BREACHES OF
HOME DETENTION ORDERS) BILL 2023**

*(Brought in by the Minister for Corrections and
Rehabilitation, the Honourable Elise Nicole Archer)*

A BILL FOR

An Act to amend the *Sentencing Act 1997*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Sentencing Amendment (Breaches of Home Detention Orders) Act 2023*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Sentencing Act 1997** is referred to as the Principal Act.

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4. Section 42AD amended (Core conditions of home detention order)

Section 42AD(1)(h) of the Principal Act is amended as follows:

- (a) by inserting in subparagraph (i) “, without reasonable excuse,” after “not”;
- (b) by inserting the following subparagraph after subparagraph (i):
 - (ia) the offender must not knowingly permit, without reasonable excuse, another person to tamper with, damage or disable any device used for the purpose of the electronic monitoring; and

5. Section 42AH amended (Applications to vary or cancel home detention orders)

Section 42AH of the Principal Act is amended by inserting after subsection (2A) the following subsections:

- (2B) Despite subsection (1), an offender, or any appropriate person referred to in subsection (2)(b) or (c), may make an oral application under this section to a court of petty sessions, the Supreme Court or the Court of Criminal Appeal if –

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- (a) the offender is appearing before the court; and
 - (b) the court considers the oral application appropriate in the circumstances.
- (2C) After receiving an oral application under subsection (2B), the court may direct the applicant to provide the other parties to the application with the grounds, for the oral application, in writing.
- (2D) If an application is made, in accordance with subsection (2B), to a court that is not the court that imposed the home detention order, the court may –
 - (a) deal with the application under this section; or
 - (b) adjourn the proceedings to the court that made the order and either grant the offender bail or remand the offender in custody.
- (2E) If proceedings for an application under this section are adjourned to a court under subsection (2D)(b), a reference in this section to the court to which the application is made is taken, on and after the adjournment, to be a reference to the court to where the proceedings were so adjourned.

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6. Section 42AI amended (Breach of condition of home detention orders)

Section 42AI of the Principal Act is amended by inserting after subsection (2A) the following subsections:

- (2B) Despite subsection (1), an applicant may make an oral application under this section, in respect of a home detention order, to a court of petty sessions, the Supreme Court or the Court of Criminal Appeal if –
 - (a) the offender, to whom the home detention order relates, is appearing before the court; and
 - (b) the court considers the oral application appropriate in the circumstances.
- (2C) After receiving an oral application under subsection (2B), the court may direct the applicant to provide the other parties to the application with the grounds, for the oral application, in writing.
- (2D) If an application is made, in accordance with subsection (2B), to a court that is not the court that imposed the home detention order, the court may –
 - (a) deal with the application under this section; or

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- (b) adjourn the proceedings to the court that made the order and either grant the offender bail or remand the offender in custody.

- (2E) If proceedings for an application under this section are adjourned to a court under subsection (2D)(b), a reference in this section to the court to which the application is made is taken, on and after the adjournment, to be a reference to the court to where the proceedings were so adjourned.

7. Section 42AKA inserted

After section 42AK of the Principal Act, the following section is inserted in Part 5A:

42AKA. Offence relating to electronic monitoring devices

- (1) A person who is required to submit to electronic monitoring as part of a home detention order must not, without reasonable excuse –
 - (a) tamper with, damage or disable any device used for the purpose of the electronic monitoring; or
 - (b) knowingly permit another person to tamper with, damage or disable any device used for the purpose of the electronic monitoring.

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Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (2) A person must not, without reasonable excuse, tamper with, damage or disable any device used for the purpose of the electronic monitoring of another person in accordance with a home detention order.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

8. Section 42AL amended (Power of arrest)

Section 42AL of the Principal Act is amended as follows:

- (a) by omitting subsection (3) and substituting the following subsection:

(3) A court, a magistrate or a justice may issue a warrant to arrest an offender to whom a home detention order relates if the court, magistrate or justice believes on reasonable grounds that the offender has breached, is breaching, or is about to breach, a condition of the order.

- (b) by omitting from subsection (3A) “made by a court of petty sessions”;

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- (c) by inserting in subsection (3A)(a) “a court,” after “before”;
- (d) by omitting paragraph (b) from subsection (3A) and substituting the following paragraph:
 - (b) the court, magistrate or justice may –
 - (i) remand the offender in custody, or admit the offender to bail, to appear, at a time specified by the court, magistrate or justice, before a court so that the application under this Part or the breach of the condition of the home detention order, in relation to which the warrant was issued, may be dealt with; or
 - (ii) if the warrant was issued in respect of the breach of the home detention order, remand the offender in custody, or admit the offender to bail, and adjourn the proceedings to the court that made the order.

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9. Repeal of Act

This Act is repealed on the first anniversary of the day on which this Act commenced.