



***EXTRAORDINARY***

**OFFICIAL GAZETTE**

**THE BAHAMAS**

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# PENAL CODE (ELECTRONIC MONITORING) RULES, 2010

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# MINISTRY OF NATIONAL SECURITY

S.I. No. 140 of 2010

## PENAL CODE ACT

(CHAPTER 84)

### PENAL CODE (ELECTRONIC MONITORING) RULES, 2010

The Minister, in exercise of the powers conferred by sections 126(2) and (3) and section 127(2) of the Penal Code Act, Chapter 84, makes the following Rules —

#### 1. Citation.

These Rules may be cited as the Penal Code (Electronic Monitoring) Rules, 2010.

#### 2. Interpretation.

In these Rules —

“Act” means the Penal Code Act<sup>1</sup>;

“Administrator” means the person charged with responsibility for the day to day operations of the Electronic Monitoring Unit;

“device” means an electronic monitoring device placed on an individual to monitor the movements of that individual;

“Minister” means the Minister responsible for National Security;

“Unit” means the Electronic Monitoring Unit.

#### 3. Application of Rules.

These Rules shall govern the process of electronic monitoring of a person in accordance with section 126 of the Penal Code.

#### 4. Establishment of the Electronic Monitoring Unit.

(1) There is hereby established a unit to be known as “the Electronic Monitoring Unit” which shall consist of personnel of the Ministry of National Security and such other public officers as the Minister considers necessary.

(2) The Minister shall appoint an Administrator, who shall be charged with the responsibility of the day to day operations of the Unit.

#### 5. Functions of the Electronic Monitoring Unit.

(1) The functions of the Unit shall be —

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<sup>1</sup>Ch. 84.

- (a) to implement and maintain an electronic monitoring system in The Bahamas which will enable monitoring the movement of individuals subjected to electronic monitoring by the court;
  - (b) to ensure that an historic record of all electronic monitoring spatial data is maintained including any technological equipment necessary to read and display such information;
  - (c) to provide technical assistance when necessary;
  - (d) to improve information technology and electronic monitoring literacy within the Ministry of National Security and to advance electronic monitoring awareness; and
  - (e) to provide training when necessary.
- (2) In carrying out its functions, the Unit may secure and use geospatial data provided to it by the Bahamas National Geographic Information Systems (BNGIS) Unit, the Department of Lands & Surveys or any other governmental or non-governmental agency, and the Unit shall adhere to the respective agency's terms and conditions for use of their respective geospatial datasets.
- (3) The Unit must comply with the contents of any order issued by the court.

**6. Minister may enter into contract to carry out functions of unit.**

- (1) The Minister may, after consultation with the Attorney-General, enter into a contract with a company (hereinafter referred to as the “service provider”) to perform any one or more of the functions of the Unit, provided that the service provider —
- (a) has knowledge and experience in surveillance and security services;
  - (b) is able to provide services twenty-four hours a day, seven days a week to monitor and initiate action on information received; and
  - (c) has facilities that allow for continuous contact and communication with the Unit.
- (2) A contract entered into pursuant to paragraph (1) shall specify all of the terms and conditions that will govern the service to be provided.
- (3) The service provider shall —
- (a) ensure that all personnel employed or recruited by the service provider are suitable and satisfy all security checks;
  - (b) comply with the provisions of these Rules and the contents of any order issued by the court;
  - (c) cooperate with the Unit in monitoring the whereabouts of an individual;
  - (d) not, at any time, subcontract any of its functions.

**7. Imposition of electronic monitoring on a person convicted of an offence.**

- (1) Pursuant to subsection (1)(b) of section 126 of the Act, where a person is convicted of any offence punishable with imprisonment for a period of three years or upwards, the court may, on the application by the person and with the consent of the Crown, order that the person, in lieu of any part of the term of imprisonment determined by the court, be subject to electronic monitoring.
- (2) Pursuant to subsection (2) of section 126 of the Act, where a person is convicted of any offence punishable with imprisonment for a period of three years or less, the court may order that the person, in lieu of imprisonment or any part thereof, be subject to electronic monitoring.

**8. Imposition of electronic monitoring as a condition of bail.**

The court may, if it thinks fit, at the request of the prosecution, order that a person who has been granted bail in respect of any offence punishable with imprisonment for a period of three years or upwards, as a condition of bail, be subject to electronic monitoring in accordance with section 126(3) of the Act.

**9. Fitting of device.**

- (1) Every individual who is subjected to electronic monitoring shall wear a device on the right ankle and, where for medical or other satisfactory reason this is not practical, such other place as may be authorized by the Administrator.
- (2) Where the court makes an order for a convicted person to be subject to electronic monitoring in accordance with subsection (1)(b) or (2) of section 126 of the Act, the device shall be fitted on that individual on the premises of Her Majesty's Prison.
- (3) Where the court makes an order for a person to be subject to electronic monitoring as a condition of bail in accordance with section 126(3) of the Act, the device shall be fitted on that individual at a police station designated by the Unit.
- (4) The placement of a device on an individual pursuant to this rule shall take place within twenty-four hours of the court making the order.

**10. Explanation of fitting process.**

- (1) The Administrator shall ensure that prior to the fitting of a device on an individual, the process shall be verbally explained to the individual by the person fitting the device.

- (2) The person responsible for explaining the process to the individual, shall clearly explain how the monitoring device should be maintained and the consequences for tampering with the device.
- (3) An individual on whom the device is fitted shall be given the opportunity to ask any question regarding the fitting, maintenance or tampering of the device.
- (4) The individual on whom the device is fitted shall sign a declaration stating that he understands the process explained to him and he agrees to abide by the rules, a copy of which shall be provided to him in writing.

**11. Testing of monitoring device to be performed.**

- (1) Prior to the fitting of a device on an individual, the Administrator shall cause a complete range set and test to be done to ensure the accuracy and efficiency of the device.
- (2) Any flaw detected with a device shall be brought to the attention of the Administrator and another device shall be placed on the individual.

**12. Register to be kept.**

- (1) The Unit shall maintain a register of persons who are fitted with devices.
- (2) The following details shall be included in the register in respect of every individual fitted with a device —
  - (a) the name and assumed names, if any;
  - (b) a detailed home address;
  - (c) all telephone contacts;
  - (d) an emergency telephone contact and address for a next of kin;
  - (e) details of any offences for which the individual has been convicted;
  - (f) documentation evidencing any pre-existing condition(s) suffered by the individual;
  - (g) a list of any pets or other element(s) which may pose a real or potential danger to the officer assigned to the individual; and
  - (h) a list of all of the individual's commitments such as employment and children and the addresses for same.
- (3) Subject to subsection (4), only the Unit shall have access to the register.
- (4) The Minister may, if he is satisfied that it is in the interest of justice to do so authorize the Administrator to permit a person to have access to information contained in the register in respect of a specific individual.

**13. Reporting in after fitting of the monitoring device.**

- (1) Every individual fitted with a device shall report in at such place and times as is directed to do so.
- (2) A photograph shall be taken of an individual fitted with a device every six months at the stipulated place where that person is required to report in.
- (3) An officer may be assigned to an individual fitted with a device to randomly visit that individual until the expiration of the time specified in the order.
- (4) An officer assigned to an individual shall be made aware of all the information obtained from the individual pursuant to rule 12.
- (5) Every visit made by an officer on an individual shall be recorded in detail and placed on that individual's file.

**14. Curfew and boundaries.**

- (1) An individual may be given a curfew as to the time when he should be in doors at his home address.
- (2) In addition to the restriction imposed under paragraph (1), an individual may be prohibited or restricted in his travel routes.
- (3) A person who violates this rule shall notify the Administrator of his reasons for so doing and such person may be exempted from any consequences that may be imposed in accordance with paragraph (4).
- (4) A person who violates this rule without good reasons shall be cautioned and may —
  - (a) be ordered to serve the remainder of his sentence in prison; or
  - (b) be restricted to indoors at his home address for the remainder of his sentence.
- (5) Where an individual is required to serve the remainder of his sentence in prison, an order from the court must first be obtained.

**15. Temporary removal of device.**

- (1) A device is to be worn by an individual throughout that individual's sentence.
- (2) It shall be unlawful for a person who is required to wear a device in accordance with rule 7 or 8 to intentionally remove or allow any unauthorized person to remove the device.
- (3) Where an emergency arises that necessitates the temporary removal of a device, such removal may be approved by the Administrator if in his

opinion he is satisfied as to the reasons specified for the temporary removal.

- (4) The reasons for removal of a device shall be documented in detail and a report placed on that individual's file.
- (5) The person responsible for fitting the device shall be responsible for the removal of the device and in the event that the person responsible for removing the device is not available, then the Administrator shall appoint another officer for the purpose of the temporary removal of the device.
- (6) Once removed, the device should be properly stored and clearly identified until reattachment to the person.

#### **16. Tampering of equipment.**

- (1) It shall be unlawful for any individual who is required to wear a device in accordance with rule 7 or 8, to intentionally tamper or interfere with or allow any unauthorized person to tamper or interfere with the device.
- (2) If a device indicates that there has been some form of tampering, the individual shall be contacted immediately to determine his reason for tampering with the device and shall be required to show evidence justifying his so doing.
- (3) Where in the opinion of the Administrator the reason given by the individual for the tampering of the device is satisfactory or constituted an emergency, then no action shall be taken.
- (4) Where in the opinion of the Administrator the reasons given by the individual is unsatisfactory, the individual may be subjected to any of the consequences that may be imposed under rule 14(4).
- (5) Where it is considered necessary, the device should be fully examined to ensure that there is no associated possible equipment fault.

#### **17. Exceptions to consequences for violations.**

- (1) Any person who violates any of the provisions of rules 14, 15 or 16 may be excepted from the consequences that may be imposed where the person can satisfy the Administrator that —
  - (a) an emergency arose which necessitated the violation;
  - (b) the excuse for so doing is reasonable;
- (2) For the purposes of this rule and rules 15 and 16, an emergency exists when —
  - (a) an accident occurs which may require the removal of the device for medical reasons;
  - (b) the device has caused or is causing serious or harmful effects;



- (c) the individual may need overseas assistance and be required to travel; or
  - (d) any other circumstances that exist that renders it necessary in the opinion of the Administrator for —
    - (i) the breach of the curfew or boundaries; or
    - (ii) the removal of the device.
- (3) Notwithstanding that no action may be taken against the individual, a detailed report of the reasons given for violation shall be placed on the individual's file and where applicable, supported by a report from a medical practitioner.

**18. Confidentiality.**

- (1) Any person who obtains any information as a result of his connection with the Unit or service provider, shall not disclose that information to any person except so far as it is required or permitted under this Act or any written law.
- (2) Any person who communicates any information in breach of paragraph (1) commits an offence and shall be liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

**19. Costs recovery.**

Where damage or loss is caused due to the tampering with a device, by or at the instance of the individual fitted with the, the cost of replacing the device shall be borne by the individual on whom the device was fitted.

**Dated the 14<sup>th</sup> day of December, 2010.**

**SIGNED**  
**ORVILLE (TOMMY) TURNQUEST**  
**Minister Responsible for National Security**