

LEGAL NOTICE NO. 325

REPUBLIC OF TRINIDAD AND TOBAGO

THE ADMINISTRATION OF JUSTICE (ELECTRONIC MONITORING) ACT, 2012

RULES

MADE BY THE RULES COMMITTEE UNDER SECTION 78(A) OF THE SUPREME COURT OF JUDICATURE ACT; SECTION 25A OF THE ADMINISTRATION OF JUSTICE (ELECTRONIC MONITORING) ACT, 2012 AND SUBJECT TO NEGATIVE RESOLUTION OF PARLIAMENT

THE ADMINISTRATION OF JUSTICE (ELECTRONIC MONITORING) RULES, 2020

1. Citation and Commencement

1.1 These Rules may be cited as the Administration of Justice (Electronic Monitoring) Rules, 2020.

1.2 These Rules shall come into force on 21st September, 2020.

2. Interpretation

2.1 In these Rules, unless the context otherwise requires—

“Act” means the Administration of Justice (Electronic Monitoring) Act, 2012;

“applicant” means a person who makes an application under section 10, 10A or 13 of the Act, and includes in the case of a child, the parent, guardian or person with responsibility for the child;

“authorised officer” means the Director of Electronic Monitoring or any officer of the Electronic Monitoring Unit duly authorized by him in accordance with the Act;

“Court” means a Judge, Master, District Court Judge, Magistrate, Registrar, Senior Magistracy Registrar and Clerk of the Court, Magistracy Registrar and Clerk of the Court as applicable;

“court office” means—

(a) the place where documents are to be filed and includes a registry or sub-registry; and

(b) the place where work of a formal or administrative nature is to be dealt with by members of court staff;

“Director of Electronic Monitoring” includes an officer of the Electronic Monitoring Unit duly authorised by the Director in accordance with the Act;

“electronic monitoring” means the use of electronic or telecommunication systems to assist in the supervision of an individual;

“electronic monitoring order” means any order of the Court made pursuant to sections 10, 10A, 13 or 16 of the Act for electronic monitoring;

“filing” in relation to a document, means delivering it or sending it to the appropriate court office including by electronic means and shall not be complete until the document is received at that office;

“monitored person” means a person, respondent, child or applicant who may be subjected to electronic monitoring pursuant to a court order, a lawful condition of pardon, instructions from a competent authority or an application by a person under section 13 of the Act.

“protection device” means a small portable device which generates audible and visual indication signals received from the radio frequency tag physically attached to a monitored person;

“Protection Order” means an order made pursuant to section 5 of the Domestic Violence Act, Chap. 45:56;

“section 13 application” means an application to the Court pursuant to section 13 of the Act which is not related to any ongoing proceedings before the Court.

3. When these Rules apply

3.1 These Rules, unless otherwise provided, shall apply in criminal cases, in proceedings under the Act and the Domestic Violence Act, Chapter 45:56, in the High Court and the Summary Courts.

3.2 Where these Rules are silent, the Family Proceedings Rules, 1998, the Criminal Procedure Rules, 2016, the Children Court Rules, 2018 and any amendments where relevant, shall apply.

4. Electronic monitoring orders under section 10 of Act

4.1 An application for an electronic monitoring order may be made by a party to a matter to which these Rules apply, either orally or in such manner as the Court may otherwise direct, at—

- (a) a hearing of an application for bail (including an application for variation or revocation of bail);
- (b) a sentencing hearing;
- (c) a hearing at which a Protection Order may be made or varied;
- (d) a hearing for the alleged breach of a Protection Order; or
- (e) the hearing of any other application which in its discretion the Court considers appropriate.

4.2 Notwithstanding Rule 4.1, the Court may make an electronic monitoring order without an application at any of the hearings enumerated in Rule 4.1.

4.3 Where an application is made under Rule 4.1 or Rule 4.2 by someone other than the intended monitored person, the Court shall—

- (a) inform the intended monitored person of the nature of the application and of an electronic monitoring order; and
- (b) inquire of the intended monitored person whether they consent to the Court making an electronic monitoring order,

provided that sub rule (b) shall not apply in respect of an offence under section 20 of the Domestic Violence Act, Chap 45:56.

4.4 Where an application is made under Rule 4.1 (c) and (d), by someone other than the intended monitored person, the Court—

- (a) may inquire of the applicant whether they consent to be issued with a protection device; and
- (b) where the applicant consents, require the applicant to complete the prescribed form indicating that they understand the purpose of the device and accepts responsibility for its proper use and care.

4.5 An intended monitored person may consent to an electronic monitoring order by oral statement without oath to the Court, or in such other manner as the Court may direct, where necessary.

4.6 Where an application is made under Rule 4.1, the court office shall notify the Director of Electronic Monitoring and any other person or authority that the Court determines is to receive such notice.

4.7 Where an application for an electronic monitoring order is made, the Court must either—

- (a) deal with the application immediately; or
- (b) where the intended monitored person has been charged with or convicted of a criminal offence, adjourn the application, in which event, the Court must immediately consider and determine whether or not the intended monitored person shall be remanded in custody pending the determination of the application.

4.8 Where under Rule 4.7 the Court finds that the intended monitored person should not be remanded in custody pending the determination of the application, the Court shall grant bail on such terms as it thinks fit.

4.9 The Court may, at the hearing of an application under this Part give such other directions for the further hearing and determination of the application.

4.10 When determining whether to make an electronic monitoring order, the Court must consider the following:

- (a) the nature of any offence for which the intended monitored person is convicted;
- (b) the safety of any person involved in or affected by the proceedings;
- (c) the financial capability of the intended monitored person or in the case of a child, the parent, guardian or person with responsibility for the child, to pay for the use of the electronic monitoring device;
- (d) the physical and mental health of the intended monitored person;
- (e) whether the intended monitored person consents to the electronic monitoring order;
- (f) the age of the intended monitored person;
- (g) the nature of the premises on which the intended monitored person is to reside and be monitored;
- (h) the criminal record of the intended monitored person;
- (i) any detrimental effect a custodial remand or sentence may have on the physical, mental, psychological or social well-being of the intended monitored person or of any other person;

- (j) any other conditions to be imposed by the Court concurrently with an order for electronic monitoring; and
- (k) any other order the Court may make which will otherwise satisfy the interests of justice.

5. Section 13 applications

5.1 A section 13 application must be—

- (a) made in writing in the form contained in the Schedule to these Rules and described as “Form 1”;
- (b) signed by the applicant;
- (c) filed at the relevant court office of the High Court or a Summary Court; and
- (d) served electronically by the applicant on the Director of Electronic Monitoring and on such other person or authority as the Court may direct.

5.2 A section 13 application must state the reasons why the applicant is seeking such an order.

5.3 The Director of Electronic Monitoring shall, within seven (7) days of service of a section 13 application, file a notice indicating—

- (a) consent to the application; or
- (b) objection to the application and the grounds for same.

5.4 Where the Director of Electronic Monitoring consents to a section 13 application, the Court may make an order without a hearing.

5.5 Where the Director of Electronic Monitoring objects to a section 13 application, or where the Court directs that a hearing is appropriate, the court office shall fix a date for the hearing of the application and shall notify the applicant, the intended monitored person and the Director of Electronic Monitoring of the said hearing.

5.6 Where a hearing is fixed pursuant to Rule 5.5, the Director of Electronic Monitoring shall, no later than fourteen (14) days prior to the date of hearing, file an affidavit in response to the section 13 application.

5.7 The Court may, upon considering a section 13 application—

- (a) require the Director of Electronic Monitoring to provide a report to the Court;

(b) require any other person or authority served with the application to provide a report or any other relevant information to the Court; or

(c) give such other directions as are necessary for the management or conduct of the proceedings.

5.8 Any report requested by the Court under Rule 5.7 must be filed electronically with the Registrar of the Supreme Court or the Senior Magistracy Registrar and Clerk of the Court or the Magistracy Registrar and Clerk of the Court, as the case may be.

5.9 When determining a section 13 application, the Court must consider the following:

(a) the safety of any person affected by the application;

(b) the financial capability of the intended monitored person or in the case of a child, the parent, guardian or person with responsibility for the child, to pay for the electronic monitoring device;

(c) the physical and mental health of the intended monitored person;

(d) the age of the intended monitored person;

(e) whether there are good and sufficient reasons for the intended monitored person to be fitted with an electronic monitoring device;

(f) the nature of the premises on which the intended monitored person is to reside and be monitored; and

(g) the contents of any report submitted by the Director of Electronic Monitoring or by any other person or authority directed by the Court.

5.10 The Court may give directions for the manner of submission of any evidence or argument.

6. Assessment of financial capability and payment for device

6.1 On assessing the financial capability of an intended monitored person, or in the case of a child, the parent, guardian or person with responsibility for the child, to pay for an electronic monitoring device, the Court may consider—

(a) employment status and history;

(b) future earnings potential;

(c) assets, liabilities and net worth;

- (d) monthly income and expenses;
- (e) testimonials from persons or institutions attesting to character or financial stability;
- (f) the financial capability of a person with responsibility for or who financially supports the intended monitored person;
- (g) any surety or guarantee provided by a person or institution approved by the Court; and
- (h) the contents of any report submitted by the Director of Electronic Monitoring or by any other person or authority directed by the Court.

6.2 Where the Court is satisfied that the intended monitored person cannot pay the total cost of the electronic monitoring device, the Court may direct that the intended monitored person pay a specified part or no part of the cost.

6.3 The Court may direct that the cost be paid forthwith or upon such terms and conditions as the Court may specify.

7. Provision of Reports to the Court

7.1 Upon receipt of a report, the Court may—

- (a) direct the authorised officer or other person or authority to provide a written supplement to the report where further information is necessary; or
- (b) order the authorised officer or other person or authority to appear in Court to be examined under oath on the contents of the report, or to otherwise provide any necessary clarification.

7.2 A copy of any report submitted to the Court must be disclosed to—

- (a) the prosecution (where applicable);
- (b) the intended monitored person or his Attorney-at-law; and
- (c) in the case of a child, his parent or guardian or the person with responsibility for the child.

7.3 The Court may further direct that any person or authority directed to submit a report forward a copy of such report to the Director of Electronic Monitoring.

8. Terms of the order

8.1 An electronic monitoring order may be in the form set out in the Schedule to these Rules.

8.2 The Court shall explain to a child, as well as the parent, guardian or person with responsibility for the child, the meaning and effect of the order, as well as the effect of non-compliance with it.

9. Notification of order

9.1 Where an order is made for electronic monitoring, the Court shall cause a copy of the order or its decision to be served by electronic means on—

- (a) the intended monitored person or the applicant;
- (b) where the intended monitored person is a child, the parent, guardian or person with responsibility for the child;
- (c) the Director of the Electronic Monitoring Unit;
- (d) the police officer(s) in charge of the station(s) located nearest to the area where the intended monitored person resides and works;
- (e) any unit established by the Trinidad and Tobago Police Service to treat with domestic violence matters;
- (f) the police officer(s) in charge of the station(s) located nearest to the area where any relevant person connected with the proceedings resides and works;
- (g) where relevant, the Probation or Child Probation Office; and
- (h) any other party the Court in its discretion considers it necessary to inform.

9.2 Notwithstanding Rule 9.1, the Court may serve an order by any other means on—

- (a) the intended monitored person;
- (b) the applicant, where the applicant is not the intended monitored person; and
- (c) where the intended monitored person is a child, the parent, guardian or person with responsibility for the child.

10. Variation/Suspension/Revocation of Orders

10.1. The following persons may make an application to vary, revoke or suspend an order:

- (a) an intended monitored person;
- (b) an applicant, where the applicant is not the intended monitored person;
- (c) the Director of Public Prosecutions;
- (d) where the intended monitored person is a child, the parent, guardian or person with responsibility for the child; or
- (e) an authorised officer.

10.2. An application to vary, revoke or suspend an order for electronic monitoring must be made by notice in Form 3 as contained in the Schedule.

11. General

11.1. The written notification required under section 19 (2A) of the Act shall include changes or proposed changes not limited to—

- (a) the address at which the monitored person resides;
- (b) a list of elements which may compromise the integrity of electronic monitoring equipment;
- (c) the place of work of the monitored person;
- (d) the financial capability of the monitored person or in the case of a child who is a monitored person, the financial capability of the parent, guardian or person with responsibility for the child to pay for the use of the electronic monitoring device; and
- (e) any new physical or mental conditions of the monitored person.

11.2. The authorised officer must file any written notification under this Part at the relevant court office.

11.3. The Court may disclose the contents of the notification received in this Part to any other person or authority that it considers in its discretion, necessary in the interests of justice.

SCHEDULE

FORM 1

SECTION 13 APPLICATION FOR ELECTRONIC MONITORING

REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE/
IN THE *** MAGISTRATES COURT
(DIVISION)**

Case No:

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
13 OF THE ADMINISTRATION OF JUSTICE (ELECTRONIC
MONITORING) ACT, 2012**

BETWEEN

.....

Applicant/Complainant

And

.....

Child/Respondent

Notice of Application

TAKE NOTICE that I, *(insert name and address of applicant/organization)*, hereby apply to the Court for an order granting approval for an electronic monitoring device to be fitted on *(insert name of person to be monitored)* pursuant to section 13 of the Administration of Justice (Electronic Monitoring) Act, 2012 for the following reasons:

(briefly state the reasons for making this application and where applicable, the relationship of the applicant to the person to be monitored)

Dated this day of, 20.....

.....
Applicant/Attorney-at-Law

FORM 2

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE/
IN THE *** MAGISTRATES COURT
(DIVISION)

Case No:

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
13 OF THE ADMINISTRATION OF JUSTICE (ELECTRONIC
MONITORING) ACT, 2012

BETWEEN

.....

Applicant/Complainant

And

.....

Child/Respondent

ORDER

Before Judge/Master/Magistrate/District Court Judge

Dated

UPON READING

- 1) The Application for an Order for Electronic Monitoring dated
and filed
- 2) The Report filed by the Director of the Electronic Monitoring Unit
dated ; and
- 3) (Any other such Report as requested by the Court as provided for under
section 10 (8A) of the Act).

AND UPON HEARING (enter the appearances of the parties present).

AND UPON THE COURT having:

1. Determined that electronic monitoring is appropriate in the circumstances of this case; and
2. Assessed and determined that the monitored person is financially capable/incapable of making full/partial payment of the cost for the use of the electronic monitoring device.

THIS COURT ORDERS that:

1. The monitored person shall be monitored through the use of an electronic monitoring device for the period commencing (mm/dd/yyyy) and ending (mm/dd/yyyy).
2. The monitored person shall reside at (address).
3. The monitored person shall be permitted to enter the following zones on the following days and times:
 - a. (Inclusion Zones and times to be identified).
4. The monitored person shall be prohibited from entering the following zones on the following days and times:
 - a. (Exclusion Zones and times to be identified).
5. The monitored person shall:
 - a. (Any other provisions that are specific to this Case e.g. reporting conditions at the station, refraining from verbally and physically abusing the applicant).

THIS COURT ALSO ORDERS that the monitored person or Parent/Guardian/Person with Responsibility for the monitored person, shall pay to the Registrar of the Supreme Court/Senior Magistracy Registrar and Clerk of the Court/Magistracy Registrar and Clerk of the Court the sum of (\$..... per month commencing the (dd/mm/yyyy) and ending on the (dd/mm/yyyy)) or (\$..... as a onetime payment on or before the (dd/mm/yy));

OR

THIS COURT ALSO ORDERS that no fees are payable by the monitored person or the parent or guardian or person with responsibility for the monitored person, for use of the electronic monitoring device.

THE COURT FURTHER ORDERS that:

1. The monitored person shall not engage in any act which constitutes an offence under this Act; and
2. Failure by the monitored person to comply with any of the terms of this Order will result in the monitored person being liable to such penalty, as the Court deems appropriate pursuant to Part IV of the Act.

.....
Registrar/
Senior Magistracy Registrar and Clerk of the Court/
Magistracy Registrar and Clerk of the Court

To: Applicant/Defendant/Respondent/Parent/Guardian/Person with
Responsibility
Address

And To: Director of the Electronic Monitoring Unit
Address

And To: Police Complainant
Station Attached

And To: The Office of the Director of Public Prosecutions
Address

And To: Attorneys
Address

And To: Any other party as directed by the Court
Address

And To: Applicant for a Protection Order
Address

FORM 3

APPLICATION FOR VARIATION, SUSPENSION OR REVOCATION OF ELECTRONIC MONITORING ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE/ IN THE *** MAGISTRATES COURT (DIVISION)

Case No:

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 13 OF THE ADMINISTRATION OF JUSTICE (ELECTRONIC MONITORING) ACT, 2012

BETWEEN

.....

Applicant/Complainant

And

.....

Child/Respondent

Application for Variation/Revocation/Suspension of Electronic Monitoring Order

I,hereby apply for a variation/ revocation/ suspension of the Order made against on the day of 20..., by the Court (a copy of which is attached to the said application).

I ask for a revocation/variation/suspension of the Order in the following terms: (state reasons for applying for a variation/revocation/suspension of the order)

[An affidavit in support accompanies this application.]

Dated this day of, 20.....

..... Applicant/Attorney-at-Law

Dated this 20th day of September 2020.

I. ARCHIE
Chief Justice

C. PEMBERTON
Justice of Appeal

C. BROWNE-ANTOINE
Puisne Judge

F. AL-RAWI
Attorney General

A. FITZPATRICK s.c.
Attorney-at-law

S. INDARSINGH
Attorney-at-law

K. OLIVERIE STUART
Registrar (Ag.)