

BREACHING AN FVRO

This fact sheet will help you understand:

- ◆ what might happen if you are the person bound by a family violence restraining order (FVRO) and you don't follow the rules in the order, and
- ◆ what might happen if you are bound by a conduct agreement order (CAO) or police order, because the law says breaching one of these orders is the same as breaching an FVRO.

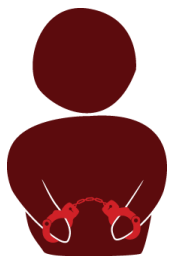
What is a breach of an FVRO?

FVROs have restrictions or rules that you must follow. If you do something that is not allowed by one of the rules, you are not following the FVRO. This is called breaching the FVRO.



It is a criminal offence to breach an FVRO. The penalty for breaching an FVRO can include jail, especially if you have breached restraining orders, including police orders, before.

What might the police do if you breach an FVRO?



If there is enough evidence, the police might arrest you and charge you with breaching the FVRO. You must then go to court.

If you are charged with breaching an FVRO, you will usually be kept in custody by police until you go to court. You might be able to apply for bail in court.



Before you are let out on bail, the court has to think about whether you might breach the order again or put the person protected's safety or welfare at risk if you get out on bail.

The person protected might tell the court how they feel about you getting bail and what they want to happen. It might be hard to show the court that you can follow bail rules if you haven't followed the FVRO rules.

What can the court do if you are guilty of breaching an FVRO?



If you are guilty of breaching an FVRO, you will be given a punishment by the court. The highest possible penalty for breaching an FVRO or police order is 2 years' imprisonment or a \$10,000 fine or both.



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The penalty that you get will depend on all the circumstances of your case. If there were kids around or involved when you breached the FVRO, this is more serious, and the court might give you a higher penalty.

If you have breached an FVRO, a violence restraining order, or police order more than once in the last 2 years, you might be treated as a repeat offender. In that case, the court must give you a punishment that includes a term of suspended or immediate imprisonment, unless it would be clearly unjust to do so.

You might ask to go to counselling through a family violence program before you are given a penalty by the court, to show that you are sorry and will not breach the FVRO again.



If you are convicted of a 'family violence offence', like breaching an FVRO, and you have previously committed family violence offences, you may be declared a Serial Family Violence Offender by a court. This will be on your criminal record and has big consequences for you. For example, it will make it harder for you to get bail if you get into new trouble. Make sure you get legal advice if you are in this situation, to find out exactly how this declaration will affect you.

What if the person protected helps you breach the FVRO?

The person protected might let you breach the FVRO or help or encourage you to breach it. Even so, the person protected might tell police that you have not followed the order, and you can still be charged with breaching the FVRO.

The person protected is not committing a criminal offence if they allow, help or encourage you to breach the order.



However, the court may change or even stop the FVRO if it decides that the person protected helped or encouraged you to breach it. This might be done when the court is giving you your punishment for breaching the FVRO, or you can come to court at a different time and ask the court to change or stop the order.

The person protected will get a chance to have a say about the FVRO being changed or stopped.

What defences or excuses are there for breaching an FVRO?

If you can show that what you did was allowed under the rules of the order, then you have a defence, or excuse, to a charge of breaching an FVRO. If you think you have a defence, you should get legal advice before you enter your plea to the charge.

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There are some things that you can always do, even when you have an FVRO against you that stops you from contacting the person protected. You can always:

- ◆ use a family dispute resolution or mediation service
- ◆ communicate through a lawyer or ALSWA court officer
- ◆ follow instructions from a child protection worker from the Department of Communities
- ◆ go to a court hearing as a party or witness, or
- ◆ do what an ordinary person would do in an emergency.



It is not a defence for you to say that the person protected allowed, helped or encouraged you to breach the FVRO. However, this might be taken into account by the court when deciding the punishment to give you for the charge of breaching the FVRO. It might also be a reason for the order to be changed or stopped by the court.

How do I make sure I don't breach an FVRO



The FVRO contains the rules you must follow. It is important to carefully read and understand these rules to make sure you know what you can and cannot do. For example, the FVRO might stop you from contacting the person protected but allow you to send the protected person text messages about your kids.



Read the order carefully. Get legal advice if you are not sure what you are allowed to do under the order.

