

POLICY AND PRACTICE MEMORANDUM

SUBJECT: ALTERNATIVE MEASURES - ADULT

POLICY

When holding an accused person accountable for crimes, the goal of the criminal justice system is to protect society, foster respect for the law, and strive toward a just, peaceful, and safe society. That is to be done through achieving many objectives, including denunciation, deterrence, rehabilitation, reparations for and acknowledgement of harm done, and by promoting a sense of responsibility in an accused. Which objectives need to be addressed, and with what emphasis, varies from case to case.

Those goals and objectives are regularly achieved through sentencing after a formal finding of guilt; however, in many instances that traditional process is not required. The same things can often be achieved, or even better achieved, by pursuing an alternative measure: referral to a restorative justice program and the discontinuance of the prosecution upon the accused's successful participation in such a program.

Alternative Measures programs provide adults who are accused of committing a *Criminal Code* offence an opportunity to make reparation to victims and their community. These programs seek to promote a greater sense of responsibility in an accused and by doing so, reduce recidivism. In addition to being structured and publicly accountable, these programs are sensitive to cultural diversity. In particular, restorative justice better reflects the historical approach used by First Nations and Metis communities to resolve conflicts and community issues. As the needs and community resources of jurisdictions vary, there is no standard program model. Instead, local programs will reflect the needs and conditions of the communities they serve.

The Ministry of Justice and the Attorney General in Saskatchewan endorses restorative justice programs and encourages and supports Public Prosecutions in making referrals to local Alternative Measures programs.

Public Prosecutions will, therefore, assess cases received from police to determine whether it may be appropriate for a referral to an Alternative Measures program.

PRACTICE MEMORANDUM

THE REFERRAL TO ALTERNATIVE MEASURES

A referral to an alternative measures program can be made by the police prior to the formal charge being laid (pre-charge referral) or by a Crown Prosecutor after a charge is laid.

In either case, the eligibility criteria set out below must be met, the offence must not be expressly excluded by the criteria set out in this policy and the Crown Prosecutor must approve the referral to Alternative Measures.

SCOPE OF ALTERNATIVE MEASURES PROGRAMS

There are many kinds of restorative justice programs funded by the Saskatchewan Ministry of Justice. These programs have been established in most communities throughout Saskatchewan and are administered by local agencies authorized by the Attorney General for the purposes of receiving and resolving alternative measures referrals. Successful referrals to alternative measures programs replace traditional criminal justice system prosecutions while holding offenders accountable for their actions.

Pre-Charge Alternative Measures Referrals

These referrals are made by police as an alternative to charges being laid. If a police officer wishes to make a pre-charge referral to alternative measures, prior approval for the referral must be given by a Crown Prosecutor.

The eligibility criteria must be met; the offence must not be expressly excluded by the criteria set out in this policy and the Crown Prosecutor must approve the referral to Alternative Measures. This requirement exists because, if the alternative measures referral is unsuccessful, a traditional prosecution can still be commenced.

Post Charge Alternative Measures Referrals

These programs are instituted as an alternative to the formal criminal court process. They offer alternative means of resolving criminal matters that do not require formal adjudication in the courts. In Saskatchewan, once the accused has successfully completed the requirements of the Alternative Measures program, and the prosecutor has received confirmation for the agency of that fact, the charge that was referred to alternative measures is to be dismissed by the Court in accordance with subsection 717(4) of the *Criminal Code*.

1. ELIGIBILITY CRITERIA

a. Statutory Conditions (Section 717 of the *Criminal Code*)

- i. Either during or following contact with the police, the accused must accept responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;
- ii. The prosecution of the offence is not in any way barred by law; and
- iii. There must, in the opinion of the Crown, be sufficient evidence to proceed with the prosecution of the offence.

b. Policy Conditions (set by the Attorney General)

In general, the accused:

- i. Must not have been diverted to alternative measures more than twice in the last year. Where a prosecutor is of the opinion that the unique circumstances of the accused or the offence would warrant a referral to Alternative Measure more than twice in one year, prior approval of the Regional Crown Prosecutor is required;
- ii. Must not have failed alternative measures in the prior six months; and
- iii. Must not have a substantial criminal record for similar offences.

c. Victim Participation and Consultation

Given our obligations to keep victims informed, where feasible, they should be contacted to advise of the decision to refer a case to Alternative Measures. Victim participation in alternative measures is encouraged, but is not a pre-requisite for a referral to be made except in victim-offender mediation, community justice conferences or family group conferencing. If a victim is unwilling or unable to participate, the Alternative Measures workers may facilitate the victim's perspective being shared through a surrogate or other representative. Ultimately the decision to make a referral rests with the prosecutor after balancing all of the considerations mentioned in this policy.

2. EXCLUSIONARY CRITERIA

a. Excluded Offences

The following offences are **not** eligible for referral to Alternative Measures or may have limited access to Alternative Measures programs:

- i. Offences involving the use or threatened use of a weapon where the Crown proceeds by indictment;
- ii. Any offence involving the use or threatened use of bladed weapons, firearms, or any restricted or prohibited weapons;
- iii. Offences involving violence against any person where the Crown proceeds by indictment;

- iv. Any offence involving sexual violence against children (persons under 18) or the sexual exploitation of children (including sexual assault, sexual interference, luring, child pornography offences and procurement);
 - v. Any offences involving non-sexual violence against children under 18 years of age committed by a person in trust or authority towards that child unless express approval has first been obtained by the Regional Crown and the alternative measures agency involved (see discussion below);
 - vi. Offences involving spousal/partner violence;
For the purposes of this policy, spousal/partner violence includes:
“acts or threats of physical or sexual assault or criminal harassment committed against one person by another person with whom they have presently or previously had an intimate relationship, regardless of whether they are legally married or living together at the time of the assault or threat”
 - vii. Offences involving sexual assault where the Crown proceeds by indictment;
 - viii. Perjury;
 - ix. Criminal organization offences;
 - x. *Criminal Code* driving offences;
 - xi. Federal offences other than *Criminal Code* offences unless specifically authorized by the federal Minister of Justice. The availability of alternative measures for these offences is determined by Justice Canada.
- b. Other exclusionary criteria**
- i. The accused refuses to participate;
 - ii. The Crown, in its discretion, does not think that the accused or the offence is suitable for alternative measures, or
 - iii. The agency administering the program does not think that the accused or the offence is suitable for alternative measures.

3. PRESUMPTIVE REFERRAL CRITERIA

- a. All criminal cases, with the exception of s. 469 offences or offences that do not qualify for consideration for Alternative Measures (see exclusionary criteria set out above) will be reviewed by a Prosecutor.
- b. Where it is not contrary to the exclusionary criteria set out above, and particularly section 2(b), all offences regarding property crimes under \$5000, including theft, possession of stolen property, fraud, and forged documents will be considered appropriate for Alternative Measures unless a prosecutor is of the opinion that such a referral would bring the administration of justice or an Alternative Measures program into disrepute having given consideration to, but not limited to, the factors set out in section 4 below.

4. ADDITIONAL FACTORS TO CONSIDER BEFORE REFERRING A CASE TO ALTERNATIVE MEASURES

Crown Prosecutors are encouraged to refer appropriate cases to alternative measures programs unless, as noted above, the offence is not eligible for referral. A decision to refer a case to Alternative Measures is an exercise of Crown discretion. To fairly and consistently exercise this discretion, Prosecutors should consider the following factors:

1. The seriousness or triviality of the alleged offence;
2. Significant mitigating or aggravating circumstances;
3. The age, intelligence, and physical or mental health or infirmity of the persons involved;
4. The circumstances and needs of the accused;
5. The victim's attitude and interests;
6. The likely effect of a prosecution on public order and morale or on public confidence in the administration of justice;
7. The availability and appropriateness of alternatives to a traditional prosecution;
8. The prevalence of the alleged offence in the community and the need for general and specific deterrence;
9. Whether the offence is a breach of trust or motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor;
10. Whether the consequences of a prosecution or conviction would be disproportionately harsh or oppressive;
11. Whether there is a need for the victim, accused and/or community to experience healing; and
12. Whether it would otherwise be in the public interest to refer the matter to alternative measures.

THE CRIMINAL RECORD OF THE ACCUSED

The fact that an accused person has a lengthy criminal record does not, in itself, preclude his/her eligibility to participate in alternative measures. It is important to consider not only the general nature of the prior offences but also the specific nature of them.

Example: An accused has a very lengthy criminal record spanning 15 years for various property-related offences, some of which were recent. His current offences are a common assault on his neighbor and a mischief charge arising from the same incident. The Crown elected to proceed summarily. In this case, it may be appropriate to refer the matter to alternative measures as a means of enabling the accused and the victim to resolve their conflict.

Conversely, the accused might have a record consisting of relatively few convictions with gaps between the convictions. The offences might, however, involve the same or similar specific patterns of offending.

Example: An accused has a record consisting of only one prior conviction for theft over \$5,000 and one conviction for forgery. The offences span 12 years and there is a significant gap between the convictions, with nothing in the previous six years. Upon further investigation, the prosecutor discovers that both of the prior convictions related to what amount to breaches of trust and the victims were employers for whom she worked. The current charge is one of theft under from an employee with whom she was working at the time. Although the policy conditions as set by the Attorney General would not necessarily exclude the accused from being referred to alternative measures, it may not be in the public interest to do so.

CONSULTATION WITH THE POLICE

The decision to make a referral to an Alternative Measures program rests with the prosecutor after balancing all of the considerations set out above. It is not practical to consult with police on every case that is being considered for referral to Alternative Measures. Where possible, the prosecutor should consult with the local police agency responsible for the investigation. Occasionally, the police have additional information about an accused or the offence that can better inform the decision to make a referral or not. For example, the police may be investigating the accused for other, more serious, crimes or the accused may have been referred by the police (pre-charge) to alternative measures on a prior occasion for the same type of offence. Regardless of the opinion of the police in terms of the referral, the decision to make a referral rests with the prosecutor after balancing all of the considerations mentioned above.

In addition, there are some cases that will require that extra step. In particular, where there are cases that involve police officers as victims (ex. assault P.O., resist arrest) as the police may have additional information that may assist in making the referral decision or the prosecutor may have additional information to assist the police in understanding the reasons for the referral.

5. DOMESTIC VIOLENCE (PARTNER ABUSE)

Domestic violence cases cannot be referred to Alternative Measures programs. At this time, the Alternative Measures Programs in Saskatchewan do not have the resources or capacity to handle the counseling services and other programs that are necessary in dealing with this kind of offender.

In cases where there is no physical violence or threats of violence, and where there is only property damage of a minor nature, it may be appropriate to refer the charge to Alternative Measures programs. In such a case, a referral to Alternative Measures must be made cautiously and only in cases where restitution is the only appropriate redress. Any such referral to

Alternative Measures must have the prior approval of the Regional Crown (see policy on [Domestic Violence \(Partner Abuse\)](#)).

6. NON-SEXUAL VIOLENCE AGAINST CHILDREN BY PERSONS IN POSITIONS OF TRUST OR AUTHORITY

Generally, it is not appropriate to refer cases involving child abuse. Child protection concerns are paramount in these types of cases and often Social Services is involved to ensure that additional resources and agencies can be accessed to address these concerns. Simply put, these types of offenders usually have additional issues that go far beyond the capacity of most alternative measures agencies.

There are cases, however, in which alternative measures may be the most appropriate vehicle that can be used to resolve conflict in a family where the victim is an older child who may not, in the legal sense, be a child “in need of protection.” These will generally be cases in which there is an isolated incident of “assaultive behavior” and no history of child protection concerns. The following are examples of cases in which alternative measures might prove beneficial:

Example #1 - a 16-year-old girl and her mother are involved in an argument as a result of the teen not obeying the curfew. The daughter begins yelling and becomes belligerent toward the mother who slaps her and pushes her down on the chair. The family has never been involved with Social Services or the police in relation to concerns of neglect or violence.

Example #2 – a 14-year-old boy with a history of acting out has been defiant with his parents. His father caught the boy drinking in the park with some friends and he grabbed the boy to take him home. The boy struggled with his father and when they arrived home, the boy started swearing at his father in front of the two younger siblings. The father grabbed the boy again and, in an effort to stop his tirade, dragged him to his room, pushed him on the floor and closed the door. The conflict ended but the boy had bruises on his arm that were noticed by the teacher a few days later. The family has never been involved with the police or with Social Services and by all accounts, this is the first time anything like this had happened. Everyone in the family, including the boy, wants counselling.

If the alternative measures agency believes they can work with families and involve appropriate dispute resolution mechanisms, they will approve the referral unless there is some other reason they think a referral is not appropriate.

If a Crown Prosecutor wishes to refer a matter that involves an assault on a child by a person in a position of trust or authority, the Regional Crown must give his/her prior approval for the referral.

ALTERNATIVE MEASURES REFERRAL PACKAGES

Disclosure of Prosecution File to Alternative Measures Agency

In order for the alternative measures staff to determine the most appropriate process to utilize, it will be necessary for them to have information from prosecution files. Generally, the following information should be provided to the Alternative Measures workers:

Victim Impact Statements (if available at the time of the referral). If there is something particular in the VIS that is sensitive and/or not relevant, the prosecutor can edit a copy of the VIS and send the revised copy of the VIS to the worker. It should be noted that in many cases throughout the province, the VIS's are not on the Crown file at the time that the file is referred to Alternative Measures. Sometimes the VIS comes in several weeks or months after the first appearance.

Police Reports or Summaries. In some cases, the Prosecutor Information Sheet (from RCMP files) will contain sufficient information for Alternative Measures agencies to be able to assess how best to resolve the conflict. In other cases, however, it may be necessary to provide a copy of the police report if there is insufficient information in the summaries. If the police report contains sensitive information that is not relevant for the purposes of alternative measures, the prosecutor should exercise discretion and edit the copy of the police report before providing it to the worker.

Statements. Often there is significant information in the complainant or witness statements that is not contained in either the police report or the summaries. Prosecutors should generally provide copies of statements to the alternative measures worker unless, in the prosecutor's opinion, it would be inappropriate to do so. If the prosecutor declines to provide the actual statement, and the police report is deficient, then a detailed summary of the acts complained of and anything else that may be relevant for the purposes of alternative measures should be prepared and provided to the worker.

Discussion and consultation with the local Alternative Measures Program is encouraged to ensure they are receiving the information that best assists them in achieving a meaningful outcome in the alternative measures process.

ALTERNATIVE MEASURES PROCESSES AND OPTIONS

Upon receiving the referral, alternative measures providers draw upon their training, experience, knowledge about the referral, and the views of the individuals involved to determine the appropriate measure or process. When appropriate, the process may be adapted to suit the circumstances of the case and the individuals.

Some of the processes or options that are commonly used to resolve referrals include:

- Victim-offender mediation;

- Community justice forum;
- Community justice conference;
- Family group conference;
- Accountability conference (this is a process in which the accused person meets with a facilitator to discuss the causes and consequences of their behavior and how to address the harm caused);
- Referral to a specialized program such as life skills, crime prevention, restitution or Stoplift;
- Referral for counseling or treatment programs (such as drug/alcohol, health, mental health, or social service agencies);
- Participation in Aboriginal cultural activities; or
- Other processes that are reasonable in light of the needs and interests of the persons involved and the availability of programs or resources within the agency administering the program and the community.

CASE OUTCOMES

Alternative measures programs can enable the persons involved to develop creative solutions that meet their needs and address the harm caused by the offence within the framework of the law. Once the matter is referred to alternative measures, the agency will usually advise the Crown of the date the matter is to next be spoken to in court. This will be a significant length of time to allow the accused to fulfill his/her obligations in the program.

While there are many possible types of resolutions or outcomes resulting from the alternative measures process, some common ones include:

- An apology;
- Restitution or compensation in cash or kind;
- Donation to a charity;
- Personal service work for the victim;
- Community service work;
- Participation in a specialized program or counseling sessions;
- Participation in public education activities, such as writing essays or making presentations in schools;
- Other agreements that are reasonable in light of the needs and interests of the persons involved, the seriousness of the offence, and the circumstances of the case; or
- Some combination of the above.

If an accused successfully fulfills the requirements of the alternative measures program, the alternative measure worker must notify the Crown prosecutor's office of this fact. The alternative measures worker must also inform the Crown as to the particular process or measure utilized. Upon receipt of confirmation that the program was completed, the prosecutor shall

notify the court and the charge will be dismissed in accordance with subsection 717(4) of the *Criminal Code*.

FAILURE TO COMPLETE ALTERNATIVE MEASURES PROGRAM

If the accused referred to the program fails to complete the program agreed on, the matter will be remitted back to the Crown prosecutor's office. The prosecutor may then choose to proceed with the prosecution in the conventional manner (i.e., by setting it down for trial) or refer it back to the alternative measures agency for completion, if appropriate. In making this determination, the prosecutor should re-assess the factors that were considered in making the referral in the first instance but also consider:

- the reason for non-completion;
- the extent to which the offender has participated in the program;
- whether the offender has been charged with other offences in the intervening time;
- the probable outcome in the event of a finding of guilt;
- the length of time that has elapsed since the offence date;
- the wishes of the victim; and
- the need to maintain public confidence in the administration of justice.

Sometimes, a "second chance" at completing the program can be beneficial for all parties. For example, an accused obligated to pay restitution may have lost employment after successfully making several payments. If, by the adjourned date, the accused is able to once again make payments, it may be appropriate to allow the offender back into the program.

RATIONALE

Alternative Measures programs are endorsed by the Attorney General for Saskatchewan as a means to effect conflict resolution in cases where it is appropriate not to invoke the judicial procedures set out in the *Criminal Code*. This policy and practice memorandum is intended to be a guide for the principles governing the provision of alternative measures as proscribed for in s. 717 of the *Criminal Code*.

CROSS-REFERENCES

[Domestic Violence \(Partner Abuse\)](#)

Updated November 2021