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CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL  
**CROWN COUNSEL POLICY MANUAL**

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ARCS/ORCS FILE NUMBER: <b>55360-00</b>	EFFECTIVE DATE: <b>October 12, 2010</b>	POLICY CODE: <b>ALT 1</b>
SUBJECT: <b>Alternative Measures for Adult Offenders</b>		CROSS-REFERENCE: <b>ABD 1 CHA 1 CHI 1 CRI 1 FIR 1 HAT 1 MOT 1 SEX 1 SPO 1 PRO 1 YOU 1.4 Practice Bulletin</b>

**POLICY**

Alternative measures should be considered for any case where the successful completion of an alternative measures program can achieve the most important objectives of a court prosecution.

The Criminal Justice Branch supports the use of alternative measures programs, and recognizes that they can be the most appropriate and effective way to address harm done to the community and to allow offenders to be rehabilitated and accept responsibility for their criminal conduct. This specifically includes programs authorized under section 717 of the *Criminal Code* which are based on restorative justice principles, such as family group conferencing, community accountability panels, aboriginal justice programs and victim/offender reconciliation processes. The Branch also supports other restorative justice programs which do not involve the alternative measures process.

The Branch supports the use of alternative measures programs which recognize the circumstances of aboriginal offenders.

Prior to recommending alternative measures, Crown Counsel must be satisfied that there is a substantial likelihood of conviction.

The application of this policy is a continuing one. Notwithstanding an initial determination that alternative measures are not suitable, upon receipt of new information it may be appropriate to reassess the decision regarding alternative measures.

Section 717(1) of the *Criminal Code* provides that: *Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:*

*(b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim*

The overriding principle is that, except where an offence is expressly excluded from alternative measures consideration by this or another Branch policy, alternative measures should be considered for all cases in which the successful completion of an alternative measures program can achieve the most important objectives of a court prosecution.

The most important objectives of a court prosecution will vary with each case, based on its facts. Where, for example, a court prosecution is intended to result in the separation of a violent offender from society by a period of imprisonment or in the imposition of court-supervised probation programs, alternative measures will likely be unsuitable. On the other hand, where the most important objectives are to promote a sense of responsibility in the offender and to obtain an acknowledgement of the harm done to victims, alternative measures will likely be able to achieve these objectives.

Crown Counsel should adopt a principled and flexible approach to the determination of this issue and should consider all of the available alternative measures programs which can achieve the most important objectives of a court prosecution in a particular case. Crown Counsel should also bear in mind that referral for an assessment of the suitability of alternative measures does not obligate Crown Counsel to approve the recommended program if it turns out to be unsuitable and that it is sometimes difficult to determine the suitability of alternative measures without obtaining an assessment.

The guidelines below are intended to assist Crown Counsel in deciding whether to refer a person for alternative measures consideration and whether to approve specific alternative measures recommended in an Alternative Measures Report:

- Where the case involves crimes against children and vulnerable youth, criminal harassment, hate motivated or hate propaganda offences, sexual offences against adults or spousal violence, Crown Counsel should consider the specific guidelines on alternative measures which are provided in the Branch policies on those topics. See Appendix A for the applicable guidelines.
- Alternative measures should not ordinarily be considered where:
  - the accused is on probation or is serving a term of imprisonment, whether in the community or in a correctional facility
  - the accused has recently participated in alternative measures or has recently been convicted of similar offences

- **Having applied the principles outlined above, if the use of alternative measures might be appropriate but there are continuing concerns about whether a referral may be inconsistent with the protection of society or inappropriate having regard to the interests of society and of the victim, Crown Counsel should consult Regional or Deputy Regional Crown Counsel before a decision is made.**
  
- **The following offences must not be considered for alternative measures:**
  - **first and second degree murder**
  - **conspiracy to commit murder**
  - **attempted murder**
  - **manslaughter**
  - **criminal negligence causing death**
  - **any other offence for which causing death is a legal ingredient of the offence**
  - **aggravated assault or aggravated sexual assault**
  - **criminal negligence causing bodily harm**
  - **discharging a firearm with intent**
  - **hostage taking**
  - **kidnapping**
  - **using a firearm in the commission of any indictable offence for which there is a minimum sentence, including section 85 of the *Criminal Code* or any of the following:**
    - **Criminal negligence causing death (section 220)**
    - **Manslaughter (section 236)**
    - **Attempted murder (section 239)**
    - **Discharging a firearm with intent (section 244)**
    - **Sexual assault with a weapon (section 272)**
    - **Aggravated sexual assault (section 273(2))**
    - **Kidnapping (section 279(1))**
    - **Hostage taking (section 279.1(2))**
    - **Robbery (section 344)**
    - **Extortion (section 346(1.1))**
  
- **For the following offences, the approval of Regional or Deputy Regional Crown Counsel is required before any referral of a person for alternative measures consideration and also before the use of specific alternative measures recommended in an Alternative Measures Report. Such approvals may be granted only where exceptional circumstances exist so that the use of alternative measures is not inconsistent with the protection of society.**
  - **arson**
  - **breaking and entering a dwelling house**

- **child abduction in contravention of a custody order or without a custody order**
- **child pornography**
- **crimes against children and vulnerable youth (see policy CHI 1 for specific referral criteria)**
- **criminal harassment (see policy CRI 1 for specific referral criteria)**
- **driving offences under the *Criminal Code*, including impaired driving, driving over 80 milligrams, fail to comply with demand**
- **extortion**
- **hate motivated and hate propaganda offences (see policy HAT 1 for specific referral criteria)**
- **offences involving a fatality which are not listed above**
- **property offences involving a breach of trust**
- **robbery**
- **sexual offences against adults (see policy SEX 1 for specific referral criteria)**
- **any other offence for which there is a mandatory minimum term of imprisonment**

### **Failure to Comply**

Under Section 717(4) of the *Criminal Code*, the original offence can be prosecuted if there is total or substantial failure to comply with the intrinsic conditions of the alternative measures process. Prosecutors should bear in mind the public interest factors in the policy on Charge Assessment Guidelines (CHA 1) when considering whether or not to proceed with charges for the original offence, particularly in circumstances where there has been partial compliance (see section 717(4)(b) of the *Criminal Code*).

### **Caution Letters**

A caution letter may be in the public interest for minor offences, taking into account factors such as the nature of the offender and the community where the offence was committed. A sample caution letter is attached as Appendix B.

### **DISCUSSION**

When doing a charge assessment and considering alternative measures, the options for Crown Counsel are: no action, a caution letter, an alternative measures referral, or prosecution.

### Referrals

Referrals for alternative measures consideration must be consistent with a program of alternative measures authorized by the Attorney General pursuant to section 717(1)(a) of the *Criminal Code*. Specifically, referrals must be made to the Corrections Branch, to an agency contracted by the Corrections Branch for the purpose of providing alternative measures services (a “Contractor”), or by direct referral to an agency under an MOU between the Criminal Justice Branch and that agency.

An Adult Alternative Measures MOU between the Corrections Branch and the Criminal Justice Branch provides guidelines on the referral process.

### Alternative Measures Report

The Corrections Branch or Contractor will then provide Crown Counsel with a report (the Alternative Measures Form) respecting the person’s suitability for alternative measures. If alternative measures are recommended, the report will include an alternative measures plan. Crown Counsel must ensure that the Alternative Measures Form includes confirmation that the legal pre-conditions have been met. The form should also provide details respecting the suitability of the offender for alternative measures, the victim’s views respecting the use of alternative measures, and any specific alternative measures terms and conditions recommended. It should also confirm that the offender has been advised that the original offence may be prosecuted if there is non-compliance with the terms and conditions of the alternative measures and that, if before the court on a subsequent offence, their alternative measures record may be introduced into evidence or be included in a pre-sentence report (during the time periods allowed by the *Criminal Code*).

### Cases Requiring Offender Programming or Treatment

Subject to the above guidelines, Crown Counsel are responsible for deciding to refer an accused person to a probation officer for screening for alternative measures. At the conclusion of the screening process, the probation officer provides Crown Counsel with a recommendation for or against the use of alternative measures. Crown Counsel then have the discretion to follow or not follow the probation officer’s recommendation.

With respect to screening, Corrections Branch policy states in part, “a referral is always unsuitable if programming or treatment is required.” Programming or treatment includes any kind of ongoing intervention required to correct an offender's thought processes, examples include psychological or psychiatric therapy, anger management programs or substance abuse counselling. Programming or treatment is often required in the rehabilitation of offenders found guilty of sexual or domestic violence offences.

If, despite Corrections Branch policy and a probation officer’s recommendation against the use of alternative measures, Crown Counsel exercise their discretion to proceed with an alternative measures agreement requiring an offender to complete some form of programming or treatment, Corrections Branch will limit their involvement. They will only supervise the offender without

providing any program or treatment resource. In such a case, Crown Counsel should be aware that any program or treatment resource will have to be provided by another agency or a private service.

The Corrections Branch is of the view that alternative measures agreements are inappropriate for implementing offender programs or treatment for the following reasons:

- 1) The agreements are generally too short for programs or treatment to be effective. Common agreement terms such as community service, apologies, essays or restitution are usually completed within 60 days. Programs or treatment would require much more time to modify offender behaviour. In addition, Corrections Branch would require even more time to assess the effectiveness of any such programs or treatment.
- 2) An Alternative Measures agreement is not a good instrument for enforcing compliance of a term that requires a serious commitment from an offender. Offenders may initially agree to programming or treatment to avoid prosecution, but may later become uncooperative and reluctant. Court orders are a better means of enforcing compliance.
- 3) Offenders requiring treatment generally present a greater risk to public safety and an alternative measures agreement may not adequately protect the victim or the public.

## APPENDIX A

Five separate Branch policies address the use of alternative measures as follows:

### Children and Vulnerable Youth – Crimes Against

The policy on Children and Vulnerable Youth – Crimes Against – CHI 1 provides that:

Offences against children and vulnerable youth may be referred for alternative measures and specific alternative measures recommended in an Alternative Measures Report used, only in exceptional circumstances and with the approval of Regional or Deputy Regional Crown Counsel. In all cases, the above approvals should be given only if the following conditions are met:

1. The victim has been consulted and the victim's views considered.
2. The victim has been made aware of available victim assistance programs.
3. There is no apparent history of violence or sexual offences.
4. The offence must not have been of such a serious nature as to threaten the safety or tolerance of the community.

While an alternative measures referral may be considered at any stage of the proceeding, in some cases it may be advisable to approve a charge and have conditions of release in place including no contact with the child or youth before making the referral.

### Criminal Harassment

The policy on Criminal Harassment – CRI 1 provides that:

Criminal harassment often involves persistent behaviour over a period of time, and it causes victims to fear for their safety or the safety of persons known to them. Such offences may be referred for alternative measures and specific alternative measures recommended in an Alternative Measures Report used, only in exceptional circumstances and with the approval of Regional or Deputy Regional Crown Counsel. No case of criminal harassment should be considered for alternative measures without consultation with the victim.

### Hate Motivated Offences and Hate Propaganda

The policy on Hate Motivated Offences and Hate Propaganda – HAT 1 provides that:

Under the policy on Alternative Measures for Adult Offenders – ALT 1, for hate motivated or hate propaganda offences, Regional or Deputy Regional Crown Counsel must approve any referral of a person for alternative measures consideration and also the specific alternative measures recommended in any Alternative Measures Report.

In all cases the above approvals should be given only if the following conditions are met:

1. Identifiable individual victims should be consulted and their wishes considered.
2. The offender should have no history of related offences or violence.
3. The offender should accept responsibility for the act or omission that forms the basis of the alleged offence.
4. The offence must not have been of such a serious nature as to threaten the safety of the community.

### Sexual Offences Against Adults

The policy on Sexual Offences Against Adults -- SEX 1 provides that:

Branch policy ALT 1 provides that offences of aggravated sexual assault and offences involving the use of a firearm in the commission of an indictable offence for which there is a minimum sentence, including sexual assault with a weapon, must not be considered for alternative measures. Other sexual assault offences may be referred for alternative measures and specific alternative measures recommended in an Alternative Measures Report used, only in exceptional circumstances and with the approval of Regional or Deputy Regional Crown Counsel. In all cases, the above approvals should be given if the following conditions are met:

1. The victim has been consulted and the victim's views considered.
2. The victim has been made aware of available victim assistance programs.
3. There is no apparent history of violence or sexual offences.
4. The offence must not have been of such a serious nature as to threaten the safety or tolerance of the community.

While an alternative measures referral may be considered at any stage of the proceeding, in some cases it may be advisable to approve a charge and have conditions of release in place including no contact with the complainant before making the referral.

### Spousal Violence

The policy on Spousal Violence – SPO 1 provides that:

The Branch policy on Charge Assessment Guidelines – CHA 1 states that it is generally in the public interest to proceed with a prosecution where the victim is a vulnerable person such as a spouse. While there will generally be a prosecution for a substantive offence (such as assault) where the evidentiary test is met, alternative measures may be considered if the most important objectives of a prosecution can still be achieved.

The most important objectives of a prosecution will vary with each case based on its facts. For example, where a prosecution is intended to result in separation of a violent offender from society and the victim by a period of imprisonment or imposition of court supervised probation programs, alternative measures will be unsuitable. On the other

hand, where the most important objectives are to promote a sense of responsibility in the offender and to obtain an acknowledgement of the harm done to victims, alternative measures will likely be able to achieve these objectives.

In a spousal violence case, alternative measures should not be considered without careful consideration of the concerns of the victim and should be pursued only if:

- there is no significant physical injury;
- there is no indication of a history of spousal violence;
- taking into account relevant risk factors, such as those outlined under “Discussion” and any risk assessment provided by the Corrections Branch, Crown Counsel has no reason to conclude, based on an objective assessment of the available evidence, that there is a significant risk of further offences which could result in serious harm; and
- the use of alternative measures is not inconsistent with the protection of society.

It is important to note that the Corrections Branch program aimed specifically at spousal violence offenders, entitled “The Relationship Violence Prevention Program”, is not available on an alternative measures referral.

While an alternative measures referral may be considered at any stage of the proceeding, in most cases it may be advisable to approve a charge and have conditions of release in place before making the referral.

**APPENDIX B****CAUTION LETTER**

[Date]

[Name of Accused]

[Address]

[City/Province/PC]

Dear [\_\_\_\_\_]:

**Re :        [Name of Accused]  
              [Offence]  
              [Date of Offence]  
              [Police File Number]**

Our office has received a police report alleging that you have committed the above noted offence(s). We have reviewed the reported circumstances and have decided not to proceed with criminal charges and a prosecution of this matter. However, a copy of this letter will be kept in our office.

In view of this Ministry's responsibility to the public, you must understand that if further reports are received alleging other offences, this letter will be considered in determining whether we proceed with a prosecution.

Yours truly,

[Name]

Crown Counsel