

Policy:

Alternatives to Prosecutions – Adults

Policy Code:

ALT 1

Effective Date:

February 1, 2023

Cross-references:

[CHA 1](#) [CHI 1](#) [CRI 1](#)
[FIR 1](#) [HAT 1](#) [IMP 1](#)
[IPV 1](#) [SEX 1](#) [VUL 1](#)

In many cases, alternatives to prosecution can appropriately and effectively address harm done to the community and victim(s), while still allowing offenders to be rehabilitated and accept responsibility for their criminal conduct. Subject to the guidance below concerning specific offences, before approving a criminal charge, Crown Counsel should consider every reasonable alternative to prosecution for every potential accused person. This includes a person who has been previously referred for or dealt with through an alternative to prosecution, or one who has been previously convicted of a criminal offence. In doing so, Crown Counsel should pay particular attention to the circumstances of Indigenous persons (First Nations, Métis, and Inuit).

Alternative Measures

“Alternative measures” are programs authorized under section 717 of the *Criminal Code*, and may include Indigenous justice programs, restorative justice programs, family group conferencing, community accountability panels, and victim/offender reconciliation processes. Under these programs, an accused person accepts responsibility for the alleged criminal conduct, and agrees to participate in and complete a course of action as an alternative to a criminal prosecution.

Referrals for alternative measures must be made to BC Corrections, to an agency contracted by BC Corrections, or by direct referral to an agency under a Memorandum of Understanding (MOU) between the BC Prosecution Service and that agency.

Prior to referring an accused person for alternative measures, Crown Counsel must be satisfied there is a substantial likelihood of conviction.

Crown Counsel must consider whether alternative measures would be appropriate, having regard to the needs of the accused person and the interests of society and the victim, and recognizing that there is a strong public interest in favour of prosecution in cases involving Indigenous women and girls as victims.

Crown Counsel should adopt a principled and flexible approach in their consideration of alternative measures, bearing in mind that referral for an assessment of the suitability of alternative measures does not obligate Crown Counsel to approve the recommended program. This approach recognizes that it is sometimes difficult to determine the suitability of alternative measures without obtaining an assessment from an alternative measures program.

Notwithstanding the above:

- the following offences must not be considered for alternative measures:
 - first- or second-degree murder
 - conspiracy to commit murder
 - attempted murder
 - aggravated sexual assault
 - hostage taking
 - kidnapping
 - any indictable offence a legal ingredient of which includes the use of a firearm, imitation firearm, ammunition, or explosive substance
 - use of a firearm, imitation firearm, ammunition, or explosive substance while attempting to commit an indictable offence, or during flight after committing or attempting to commit an indictable offence
- the following offences may only be considered for alternative measures in exceptional circumstances and require the prior approval of a Regional Crown Counsel or Director and the consent of the Assistant Deputy Attorney General before any referral for, or resort to, alternative measures:
 - manslaughter
 - criminal negligence causing death
 - any other offence for which causing death is a legal ingredient of the offence

- the following offences require the prior approval of a Regional Crown Counsel, Director, or their respective deputy, before any referral for or resort to alternative measures:
 - aggravated assault
 - arson
 - breaking and entering a dwelling house
 - child abduction in contravention of a custody order or without a custody order
 - child pornography
 - criminal negligence causing bodily harm
 - crimes against children and vulnerable youth (*Child Victims and Witnesses* ([CHI 1](#)) – Appendix A)
 - crimes against a vulnerable victim for which the *Vulnerable Victims and Witnesses* ([VUL 1](#)) policy applies, including “serious personal injury” offences as set out in section 752 of the *Criminal Code*, as well as those involving significant risk of harm whether physical, sexual, psychological, or exploitive in nature
 - criminal harassment (*Criminal Harassment* ([CRI 1](#)) – Appendix A)
 - driving offences under the *Criminal Code*, including impaired driving, driving with excessive blood/alcohol concentrations, and failing to comply with demands under the part of the *Criminal Code* dealing with impaired driving offences (*Impaired Driving Offences* ([IMP 1](#)) – Appendix A)
 - extortion
 - possession of a loaded restricted or prohibited firearm, or unloaded with ammunition, contrary to section 95 of the *Criminal Code* (*Firearms* ([FIR 1](#)) – Appendix A)
 - importing, exporting, transferring, or trafficking firearms or related items contrary to sections 99-104 of the *Criminal Code* ([FIR 1](#) – Appendix A)
 - making a firearm automatic, contrary to section 102 of the *Criminal Code* ([FIR 1](#) – Appendix A)
 - breach of a weapons prohibition, contrary to section 117.01 of the *Criminal Code* ([FIR 1](#) – Appendix A)
 - hate-motivated and hate propaganda offences (*Hate Crimes* ([HAT 1](#)) – Appendix A)

- offences involving a fatality which are not listed above
- offences not listed above for which there are mandatory minimum terms of imprisonment
- property offences involving a breach of trust
- robbery
- sexual assault offences contrary to section 272, not involving use of a firearm (using a weapon, causing bodily harm, choking, etc.) (*Sexual Offences – Adult Victims (SEX 1)* – Appendix A)

For *Intimate Partner Violence (IPV 1)* matters – specific criteria apply (Appendix A).

Process

Subject to any safety concerns or other policy directions (e.g., *Intimate Partner Violence (IPV 1)*), Crown Counsel should complete the process of referral to alternative measures before approving an Information; and, only approve an Information if an alternative measures plan is not proceeded with.

When an Information has already been sworn, upon successful completion of an alternative measures program, Crown Counsel should withdraw the charges or enter a stay of proceedings.

At any point throughout the life of a prosecution file, Crown Counsel may reassess an earlier determination that the public interest required a prosecution if they become satisfied it would not be contrary to the public interest to make a referral for alternative measures. However, Crown Counsel must consider adverse consequences to victims and witnesses of making an alternative measures referral close to or on the scheduled trial date.

Failure to Comply

The use of alternative measures is not a bar to a subsequent prosecution, particularly when the accused fails to comply with the terms and conditions of the alternative measures plan. However, Crown Counsel should bear in mind the provisions of section 717(4)(b) of the *Criminal Code*, which empower the court to dismiss a charge after partial compliance with the terms and conditions of the alternative measures.

Caution Letters

In cases involving minor offences, a caution letter may be appropriate to address the public interest, taking into account the circumstances of the person alleged to have committed the offence and the community in which the offence was committed. A sample caution letter is attached as Appendix B.

Indigenous Persons

Numerous government commissions and reports, as well as the judgments of the Supreme Court of Canada, have recognized that discrimination experienced by Indigenous persons, whether as a result of overtly racist attitudes or culturally-inappropriate practices, extends to all parts of the criminal justice system.

The history of colonialism, displacement, and residential schools in Canada has translated into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and higher levels of incarceration for Indigenous persons.¹ The rates of victimization of Indigenous persons, especially for Indigenous women and girls, are also significantly higher than those for non-Indigenous persons.²

The continuing consequences of colonialism for Indigenous persons in Canada “must be remedied by accounting for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views.”³

Indigenous Accused Persons

As noted in *Charge Assessment Guidelines* ([CHA 1](#)), at an early stage in the charge assessment process, Crown Counsel should try to determine whether the accused or victim identifies as an Indigenous person and, therefore, whether public interest considerations specific to Indigenous persons apply. To make this determination Crown Counsel should refer to any information contained within the Report to Crown Counsel or otherwise readily available to them.

The well-documented, long-standing, and pervasive discrimination Indigenous persons have suffered in all parts of the criminal justice system makes it particularly important for Crown Counsel to consider every reasonable alternative to prosecution before approving a criminal charge against an Indigenous person. In particular, Crown Counsel should bear in mind:

- the need to reduce overrepresentation of Indigenous persons as accused within the criminal justice system, particularly when factors such as those discussed in *R v Gladue*⁴ have played a part in the Indigenous person coming into contact with the criminal justice system

1 *R v Ipeelee*, 2012 SCC 13

2 *Victimization of Aboriginal People in Canada, 2014*, Statistics Canada, 2016

3 *Ewert v Canada*, 2018 SCC 30 at paras 57 and 58; *R v Barton*, 2019 SCC 33 at paras 198-200; also [BC First Nations Justice Strategy](#), February 2020

4 *R v Gladue*, [1999] 1 SCR 688

- whether bias, racism, or systemic discrimination played a part in the accused coming into contact with the criminal justice system

If there is a reasonable possibility that the public interest could be satisfied by referring an Indigenous accused person for alternative measures, Crown Counsel should do so. This is true even if the Indigenous person has been previously referred for or dealt with by alternative measures or has been previously convicted of a criminal offence and sentenced, including to a sentence of imprisonment. Whenever the public interest could reasonably be satisfied by resorting to alternative measures in relation to an Indigenous accused person, Crown Counsel should pursue that option, even if prosecution would be an equally reasonable option.

When available, Crown Counsel should utilize a traditional or culturally-based Indigenous program for an alternative measures referral in relation to an Indigenous accused person.

Indigenous Victims

In considering the use of alternative measures in a case involving an Indigenous victim, Crown Counsel should bear in mind the overrepresentation of Indigenous women and girls as victims of violent offences, which is a public interest factor that weighs in favour of prosecution.

APPENDIX A

Seven separate BCPS policies address the use of alternative measures as follows:

Child Victims and Witnesses

Child Victims and Witnesses ([CHI 1](#)) provides that:

Referrals of adult accused to alternative measures are subject to the guidance in the Alternatives to Prosecutions – Adults ([ALT 1](#)) policy. Referrals of young persons to extrajudicial measures (EJM) are subject to the guidance in the Youth Criminal Justice Act - Extrajudicial Measures ([YOU 1.4](#)) policy.

These policies provide that offences involving the physical, sexual, or psychological harm to or exploitation of children may be referred for alternative measures/EJM only with the prior approval of a Regional Crown Counsel, Director, or their respective deputy and only if the following conditions are met:

- the victim has been consulted and the victim's views considered*
- the victim has been made aware of available victim assistance programs*
- there is no apparent history of violence or sexual offences*
- the offence is not of such a serious nature as to threaten the safety of the community*

While an alternative measures/EJM referral may be considered at any stage of the proceeding, Crown Counsel should consider whether it is advisable to approve a charge and have conditions of release in place, including no contact with the child, before making the referral.

Criminal Harassment

Criminal Harassment ([CRI 1](#)) provides that:

For criminal harassment offences, the approval of a Regional Crown Counsel, Director, or their respective deputy is required before any referral of a person for alternative measures consideration and 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. No case of criminal harassment should be considered for alternative measures without consultation with the victim.

Firearms

Firearms ([FIR 1](#)) provides that:

For the purposes of alternative measures, Crown Counsel should consider the factors set out in Alternatives to Prosecutions – Adults (ALT 1).

Alternative measures must not be considered for the following offences:

- *any indictable offence a legal ingredient of which includes the use of a firearm, imitation firearm, ammunition, or explosive substance*
- *use of a firearm, imitation firearm, ammunition, or explosive substance while attempting to commit an indictable offence, or during flight after committing or attempting to commit an indictable offence*

For persons charged with the Criminal Code offences listed below, referrals for or resort to alternative measures should not occur unless exceptional circumstances are present and Crown Counsel has received the prior approval of a Regional Crown Counsel, Director, or their respective deputy:

- *possession of a loaded restricted or prohibited firearm, or unloaded with ammunition (section 95)*
- *importing, exporting, transferring, or trafficking firearms or related items (sections 99-104)*
- *making a firearm automatic (section 102)*
- *breach of a weapons prohibition (section 117.01)*

Hate Crimes

Hate Crimes ([HAT 1](#)) provides that:

For adults and young persons, the policies Alternatives to Prosecutions – Adults (ALT 1) and Youth Criminal Justice Act – Extrajudicial Measures (YOU 1.4) apply to all hate crimes. Hate crime 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 a Regional Crown Counsel, Director, or their respective deputy. In addition, for hate crimes, such approvals should be given only if the following conditions are met:

- *identifiable individual victims should be consulted and their wishes considered*
- *the accused should have no history of related offences or violence*

- *the accused should accept responsibility for the act or omission that forms the basis of the alleged offence*
- *the offence must not have been of such a serious nature as to threaten the safety of the community*

Impaired Driving Prosecutions

Impaired Driving Prosecutions ([IMP 1](#)) provides:

For impaired driving offences, the approval of a Regional Crown Counsel, Director, or their respective deputy 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 (Alternatives to Prosecution - Adults (ALT 1)).

Intimate Partner Violence

Intimate Partner Violence ([IPV 1](#)) provides that:

In appropriate circumstances, alternative measures may be considered if the most important objectives of prosecution in an intimate partner violence case can still be achieved (Alternatives to Prosecutions - Adults (ALT 1)).

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

- *there is no significant physical injury*
- *there is no previous history of intimate partner violence*
- *Crown Counsel has no reasonable grounds to believe there is a significant risk of further intimate partner violence offences, taking into account relevant risk factors, and any risk assessment information provided by BC Corrections*
- *the use of alternative measures is not contrary to the public interest*

It is important to note that BC Corrections program aimed specifically at intimate partner violence offenders, entitled the “Respectful Relationships Program,” is not available on an alternative measures referral (Appendix A).

While an alternative measures referral may be considered at any stage of the proceeding, Crown Counsel should consider approving a charge and having conditions of release in place before making the referral.

Sexual Assaults – Adult Victims (SEX 1)

Sexual Assaults – Adult Victims ([SEX 1](#)) provides that:

In appropriate cases, an alternative to prosecution may be considered. For adult accused, Crown Counsel should refer to Alternatives to Prosecutions – Adults ([ALT 1](#)) policy. For guidance on extrajudicial measures for accused young persons, Crown Counsel should refer to the Youth Criminal Justice Act – Extrajudicial Measures ([YOU 1.4](#)) policy.

An alternative to prosecution should only be approved if the following conditions are met:

- *the victim has been consulted and their views have been considered*
- *the accused's risk to reoffend can be managed through the use of the alternative to a prosecution*
- *it would not be contrary to the public interest*

An alternative to prosecution would generally be contrary to the public interest for sexual offences involving an abuse of a position of trust, power, or authority.

Crown Counsel considering an alternative to prosecution for a sexual assault should refer the matter to BC Corrections (adult accused) or the Ministry of Children and Family Development (youth accused) and request a risk assessment. Before making the referral, Crown Counsel should consider whether it is necessary or appropriate to approve a charge first, so that protective conditions may be imposed, including an order of no contact with the victim.

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 BC Prosecution Service'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