



Policy:

Alternatives to Prosecution – Adults

Policy Code:

ALT 1

Effective Date:

January 15, 2021

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
 - discharging a firearm with intent
 - hostage taking
 - kidnapping
 - using a firearm in the commission of any indictable offence for which there is a mandatory minimum term of imprisonment, including section 85 of the *Criminal Code*, or any of the following:
 - sexual assault using a firearm (section 272(2)(a) or (a.1))
 - robbery using a firearm (section 344(1)(a) or (a.1))
 - extortion (section 346(1.1)(a) or (a.1))
- 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 (*Children & Vulnerable Youth - Crimes Against* ([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 – Mandatory Minimum Sentences – Consecutive Sentences – Notice of Greater Penalty* ([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 Against Adults* ([SEX 1](#)) – Appendix A)

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

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.

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

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 where 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
- 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.

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.

Where an Information has already been sworn, upon successful completion of an

4 *R. v Gladue* [1999] 1 S.C.R. 688

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 where 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.

APPENDIX A

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

Children and Vulnerable Youth – Crimes Against

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 a Regional Crown Counsel, Director, or their respective deputy. In all cases, the above approvals should be given 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 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

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 – Mandatory Minimum Sentences – Consecutive Sentences – Notice of Greater Penalty ([FIR 1](#)) provides that:

Under the policy on Alternatives to Prosecution – Adults (ALT 1), alternative measures must not be considered for the offences of discharging a firearm with intent or 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 offences listed in that section.

In addition, for the Criminal Code offences listed below, 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:

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

Approvals of referral for alternative measures may be granted only where exceptional circumstances exist, so that the use of alternative measures is consistent with the protection of society. When exceptional circumstances are relied upon as the basis for making a decision under this policy, the reasons for the decision must be recorded on the file by the assigned Crown Counsel.

Hate Crimes

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

For hate crime 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.

In addition, for hate crimes, such approvals should be given only in exceptional circumstances, and where 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 Prosecution – 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, such as those outlined under “Further Information,” and any risk assessment information provided by the BC Corrections*
- the use of alternative measures is not contrary to the public interest*

It is important to note that the BC Corrections program aimed specifically at intimate partner violence offenders, entitled “The Relationship Violence Prevention Program,” is not available on an alternative measures referral (see 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 Offences Against Adults

Sexual Offences Against Adults ([SEX 1](#)) provides that:

The policy Alternatives to Prosecution – Adults (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 firearm, must not be considered for alternative measures. Sexual assault offences contrary to section 272 not involving use of a firearm (using a weapon, causing bodily harm, choking, etc.) may be considered for alternative measures only in exceptional circumstances and with the prior approval of a Regional Crown Counsel, Director, or their respective deputy. Other sexual assault offences may be considered for alternative measures.

In all cases, alternative measures should only be approved 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*
- the accused has no apparent history of sexual offences*
- an alternative measure is not contrary to the public interest*

While an alternative measures referral may be considered at any stage of the proceeding, in some cases Crown Counsel should consider approving a charge and having conditions of release in place, including no contact with the complainant, before making the referral. For further information, see Alternatives to Prosecution – Adults (ALT 1), Youth Criminal Justice Act – Extrajudicial Measures (YOU 1.4) (for accused young persons), and Victims of Crime – Providing Assistance and Information to (VIC 1).

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