

Policy:

Child Victims and Witnesses

Policy Code:

CHI 1

Effective Date:

May 20, 2022

Cross-references:

ALT 1 CHA 1 IPV 1
REC 1 VIC 1 VUL 1
YOU 1.4

To protect the rights of child victims and witnesses, Crown Counsel may need to treat them differently from adults. The Supreme Court has confirmed that:

Canadian society has a vested interest in the enforcement of criminal law in a manner that is both fair to the accused and sensitive to the needs of those who participate as witnesses. In particular, children may have to be treated differently by the criminal justice system in order that it may provide them with the protections to which they are rightly entitled and which they deserve.¹

This policy applies to all prosecutions under the *Criminal Code* and the *Youth Criminal Justice Act* that involve a child victim or witness. In this policy, “child” means a person under the age of eighteen years.

Under the *Crown Counsel Act*, Crown Counsel are responsible for the decision to commence or continue a prosecution. The decision may be informed but must not be determined solely by the wishes of the child victim or their parents or guardians.

Crown Counsel should prosecute offences involving the physical, sexual, or psychological harm to or exploitation of children whenever the evidentiary test under the policy *Charge Assessment Guidelines* ([CHA 1](#)) is met. Any decision not to prosecute such offences, for reasons other than sufficiency of evidence, must be approved by a Regional Crown Counsel, Director, or their respective deputy.

Notwithstanding the preceding paragraph, where a young person is alleged to have committed a child pornography offence (section 163.1) or the publication of intimate images without consent (section 162.1) and the evidentiary test is met, Crown Counsel should consult with a Regional Crown Counsel, Director, or their respective deputy before approving any charge(s).

¹ *R v L (DO)*, [1993] 4 SCR 419

The *Victims of Crime* ([VIC 1](#)) policy also applies to child victims, who should be advised of available specialized victims' services either directly or through their caregiver.

[VictimLink BC](#) provides information about local victim services programs.

Child victims and witnesses may also qualify as vulnerable victims and witnesses pursuant to the *Vulnerable Victims and Witnesses* ([VUL 1](#)) policy. If so, Crown Counsel should follow the guidance outlined in that policy.

Administrative Procedures

For all cases involving child victims or witnesses, Administrative Crown Counsel should ensure that the procedures in their offices provide for:

- early identification and assignment of the case
- early identification and notice to the victim of accommodations available under sections 486 to 486.31 and 486.7 of the *Criminal Code*
- wherever possible, assignment of the case to Crown Counsel who has received specialized training
- every reasonable effort being made to have these cases handled by the same Crown Counsel and administrative staff from beginning to end of the case, so long as Crown Counsel has established a reasonably positive rapport with the child
- priority in scheduling to ensure that the case moves expeditiously through the criminal justice system

Where a procedural or investigative barrier arises which may adversely affect the prosecution, Crown Counsel should work with police and victim services and, if necessary, senior police management and Administrative Crown Counsel to address such barriers in a timely manner.

Alternatives to Prosecutions – Alternative Measures/Extrajudicial Measures (EJM)

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.

Applications for Recognizances

When Crown Counsel decides not to approve a charge, or decides to direct a stay of proceedings, or where there is an acquittal, Crown Counsel should consider whether to make an application for a recognizance pursuant to the *Recognizances and Peace Bonds* ([REC 1](#)) policy, to ensure the safety of the victim or others. A recognizance can include supervision and counselling conditions administered by BC Corrections or the Ministry of Children and Family Development.

Prosecutions – Early Considerations

Charge assessment decisions should be made in a timely manner, mindful that delay may particularly increase the emotional stress of child victims or witnesses and may weaken their resolve or ability to effectively participate in the criminal justice process.

Crown Counsel should identify child victims in an Information or indictment by their initials as opposed to by their given names.

Crown Counsel should consider applying, at the first instance, including when the charge is laid, for an order under section 486.4 or 486.5 of the *Criminal Code*, directing that the identity of any victim or witness and any information that could disclose the identity of the victim or witness shall not be published in any document or broadcast in any way.

When appropriate, Crown Counsel may also consider applying for an order under section 486.31 of the *Criminal Code*, directing that any information that could identify a witness not be disclosed in the course of the proceedings, or an order under section 486.7 of the *Criminal Code*, to protect the security of a victim or witness. Prior to making such an application, Crown Counsel should consult with a Regional Crown Counsel, Director, or their respective deputy.

Crown Counsel should consider whether presentation of evidence by videotape, as provided by section 715.1 of the *Criminal Code*, is appropriate.

In cases where there is a significant danger of harm, either psychological or physical, to a victim or witness, and it is reasonable to believe that they would be adversely affected if required to participate in multiple judicial proceedings, Crown Counsel should consider seeking consent to proceed by direct indictment.

Bail

Crown Counsel should request a warrant whenever it is necessary to seek a detention order or conditions of release to protect a child victim or witness or other potential victims. When an accused is remanded in custody, Crown Counsel should consider seeking a “no contact” order regarding the victim, witness, other appropriate person pursuant to section 515(12) or 516(2) of the *Criminal Code*.

Where the offence is of a sexual or violent nature, relevant risk factors should be communicated to the court to ensure protection of the public.

Crown Counsel should consider whether preventative conditions of release may be appropriate, such as conditions prohibiting the accused from being in the presence of children under 16, subject to appropriate supervision exceptions, or conditions similar to those outlined in section 161 of the *Criminal Code*. Where appropriate, Crown Counsel should request that such conditions be imposed upon the accused.

Preparing for and Conducting the Hearing

Sections 13 and 19 of the *Canadian Victims Bill of Rights* provide that every victim has the right to request testimonial aids when appearing as a witness in proceedings relating to an offence, through the mechanisms provided by law.

Crown Counsel with conduct of the file should, as early as reasonably possible in the prosecution, identify any witnesses who may require accommodations available under sections 486 to 486.31 and 486.7 of the *Criminal Code*.

Crown Counsel should inform the child witness and their parent or guardian that the following accommodations may be available under sections 486 to 486.31 and 486.7 of the *Criminal Code*:

- for the exclusion of the public or to screen the witness from public view (section 486(1))
- for a support person or, subject to availability, a courtroom dog (sections 486.1 and 486.7)
- for the child to give testimony from a different room or behind a screen or other device (section 486.2)

- for cross examination by appointed counsel (where the accused is unrepresented) (section 486.3)
- for the non-disclosure of a witness' identity (section 486.31)
- for any other order that the court determines is necessary to protect the security of a witness and is otherwise in the interest of the proper administration of justice (section 486.7)

Taking into account all relevant factors, including whether the witness requests an accommodation, Crown Counsel should apply for any accommodations under sections 486 to 486.31 and 486.7 that may be appropriate in the circumstances.

When dealing with victims who are reluctant to participate in the criminal process, Crown Counsel should attempt to ascertain the reasons for their reluctance to testify and attempt to develop strategies to address the reluctance. Crown Counsel should make known to victims and their parents or guardians any victim services programs, Indigenous programs, or agencies Crown Counsel believe may be able to assist the victim.

Crown Counsel should bear in mind that the child's social worker and parent or guardian need information about the criminal proceedings in order to effectively protect and support the child victim or witness. Therefore, the social worker and parent or guardian should be advised of any charges laid, conditions of release, adjournment, change of plea, or stay of proceedings, and that Crown Counsel is available to provide appropriate information about the case.

Sentencing

Victims should be given the opportunity to provide a victim impact statement and information pursuant to section 4 of the [Victims of Crime Act](#), and sections 15 and 19 of the [Canadian Victims Bill of Rights](#).

Crown Counsel should consider whether a restitution order is appropriate under section 738 or 739 of the *Criminal Code* and take reasonable steps to provide victims with an opportunity to indicate whether they are seeking restitution for their losses and damages.

Crown Counsel should bring to the attention of the court any of the following *Criminal Code* provisions that may apply:

- when a court imposes a sentence for an offence that involves the abuse of a child victim, the court must give primary consideration to the objectives of denunciation and deterrence (section 718.01)
- the abuse of a child and abuse by a person in a position of trust or authority are aggravating factors on sentencing (section 718.2)

- a court that imposes a sentence in respect of an offence that involved the abuse of an intimate partner must consider the increased vulnerability of female persons who are victims, giving particular attention to the circumstances of Indigenous female victims (section 718.201)
- in cases involving the abuse of a person who is vulnerable because of personal circumstances, including because the person is Indigenous and female, the court must give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence, (section 718.04)

In dealing with an offence where the child victim is either an intimate partner, or the child of an intimate partner, Crown Counsel should refer to the *Intimate Partner Violence (IPV 1)* policy.

Where community supervision is appropriate, Crown Counsel should seek conditions which will protect the victim. They may include a “no contact” and reporting requirement, as well as successful completion of an assaultive behaviour, parenting, or sexual offender treatment program.

Where the offender is convicted of a sexual offence, including child pornography involving a child who is under 16, and where it is necessary to protect the public, Crown Counsel should apply for an order prohibiting the offender from such of the acts listed in section 161 of the *Criminal Code*, as may be appropriate.

Child, Family and Community Service Act

Duty to Report

Section 14 of the *Child, Family and Community Service Act* (CFCSA) requires (among other things) that every person who has reason to believe that a child has been or is likely to be physically, or emotionally harmed or sexually abused or exploited, by the child’s parent or guardian (as defined), to promptly report the matter to a child welfare worker delegated to assess reports in the Ministry of Children and Family Development or delegated Aboriginal agency.

The police will generally make the report to the Ministry of Children and Family Development or delegated Aboriginal agency where that is required. If this is not apparent on the file, Crown Counsel should confirm that police have made the report. If not, Crown Counsel must make the report themselves.

Even when the police have made a report, where Crown Counsel receive additional information, not contained in the Report to Crown Counsel, that gives them reason to believe that a child needs protection as defined by the Act, they are required by law to make a report.

Breaches of Protective Intervention Orders and Restraining Orders

Sections 28 and 98 of the CFCSA allow for the director to seek a protective intervention order (section 28) or a restraining order (section 98) for a six-month period with possible extension. These orders can prohibit contact between a child and others including, in the case of section 98, anyone who might encourage that child to engage in prostitution.

Breaches of these restraining and protective intervention orders may be prosecuted under section 127 of the *Criminal Code*. Crown Counsel with conduct of such prosecutions should provide a copy of any release order to the responsible child protection social worker as soon as possible and should consult the social worker and bail supervisor before any amendment or deletion of the conditions.

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 (First Nations, Métis, and Inuit), 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.² The rates of victimization of Indigenous persons, especially for Indigenous women and girls, are also significantly higher than those for non-Indigenous persons.³

The continuing consequences of colonialism for Indigenous persons in Canada provide the necessary context for any charge assessment involving an Indigenous person as a victim or potential accused. These consequences “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.”⁴ Where the accused or victim identifies as an Indigenous person, Crown Counsel should refer to CHA 1 for guidance.

As further stated by the Supreme Court of Canada:

“There is no denying that Indigenous people — and in particular Indigenous women, girls, and sex workers — have endured serious injustices, including high rates of sexual violence against women. ... [O]ur criminal justice system and all participants within it should take

² *R v Ipeelee*, 2012 SCC 13

³ *Victimization of Aboriginal People in Canada, 2014*, Statistics Canada, 2016

⁴ *Ewert v Canada*, 2018 SCC 30 at paras 57 and 58

reasonable steps to address systemic biases, prejudices, and stereotypes against Indigenous persons — and in particular Indigenous women and sex workers — head-on.”⁵

Crown Counsel should recognize that there is a strong public interest in favour of prosecution in cases involving Indigenous women or girls as victims.

5 *R v Barton*, 2019 SCC 33 at paras 198 and 200