

Policy:

Children and Vulnerable Youth – Crimes Against

Policy Code:

CHI 1

Effective Date:

March 1, 2018

Cross-references:

[ALT 1](#) [CHA 1](#) [DIR 1](#)
[VIC 1](#) [YOU 1.4](#)

General Principles

It is well established that child and youth victims and witnesses may require different treatment than adults in the courtroom setting. The Supreme Court has stated:

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 (R v L (DO), [1993] 4 SCR 419).

Prosecution of physical, sexual, and exploitative crimes against children and vulnerable youth should be pursued whenever the evidentiary test under the policy *Charge Assessment Guidelines* ([CHA 1](#)) is met. Any decision not to proceed for reasons, other than sufficiency of evidence, must be approved by a Regional Crown Counsel, Director, or their respective deputy and the reasons for the decision recorded.

Notwithstanding the above paragraph, where a young person, as defined under the *Youth Criminal Justice Act*, is alleged to have committed child pornography (section 163.1) and publication of intimate images without consent (section 162.1) and the evidentiary test is met for either offence, Crown Counsel should consult with a Regional Crown Counsel, Director, or their respective deputy as to any appropriate charge(s).

Under the *Crown Counsel Act*, Crown Counsel are responsible for the decision to prosecute. The charge assessment policy requires Crown Counsel to examine the case at each stage of the prosecution and decide whether the case should proceed. This cannot be determined solely by the wishes of the child or youth victim or their parents or guardians.

All child and youth victims and witnesses should be advised of available specialized victims' services either directly or through their caregiver. [VictimLink BC](#) provides information about local victim services programs.

Administrative Procedures

Administrative Crown Counsel should ensure that the procedures in their offices provide for:

- early identification and assignment of the case
- wherever possible, assignment of the case to Crown Counsel who has received specialized training
- the consideration of publication bans regarding the victim's identity available under sections 486.4 and 486.5 of the *Criminal Code*.
- early identification and notice to the victim of accommodations available under sections 486 to 486.31 and 486.7 of the *Criminal Code*
- vertical prosecution – every effort should be made to have these cases handled by the same Crown Counsel from beginning to end. As long as a positive rapport has developed with the child or youth, that Crown Counsel should remain with the case until final disposition
- priority in scheduling to ensure that the case moves expeditiously through the criminal justice system

Alternative Measures

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.

For further information, see *Alternative Measures for Adult Offenders* (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).

Applications for Recognizances

Where there is a decision not to lay a charge or to direct a stay of proceedings or where there is an acquittal, Crown Counsel should consider whether the safety of the victim or other persons at risk, including potential victims generally, requires an application for a recognizance under sections 810, 810.1, or 810.2 of the *Criminal Code*, which can include supervision and counselling conditions administered by the Corrections Branch.

Prosecutions – Early Considerations

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

Where appropriate, Crown Counsel should consider identifying child and youth victims in an Information or Indictment by their initials as opposed to by their given names.

Crown Counsel should consider applying, at the first opportunity, 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.

In rare cases, where 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 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. Utilization of such a procedure does not preclude the child or youth witness from having to testify.

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 the applicability of the *Direct Indictment* (DIR 1) policy.

In any case in which a procedural or investigative barrier arises (such as locating a witness, arranging for translation of file materials, etc.) which may adversely affect the prosecution, Crown Counsel should ensure that the file is reviewed by the Administrative Crown Counsel, or another senior Crown Counsel, to address the issue in a timely manner.

Conditions of Bail or Recognizance to Protect Child and Youth Victims and Witnesses

A warrant should be sought whenever it is necessary to protect the victim, child or youth or other potential victims by seeking a detention order or conditions of release. This prevents the accused from interfering with the integrity of the prosecution or committing further offences against the victim or other children or youths.

Where an accused is held in custody and presents a danger to the victim, a witness or other children or youths, Crown Counsel should consider seeking a detention order along with a “no contact” order pursuant to section 515(12) or 516(2) of the *Criminal Code* requiring the accused, while in custody, to abstain from communicating, directly or indirectly, with the victim.

Where an accused has been arrested and then released by the police on a promise to appear or recognizance with conditions, Crown Counsel should review the conditions to ensure that they are adequate to protect the victim and the public, and are enforceable. If necessary, Crown Counsel should request a warrant and an amendment of the conditions under sections 499(4), 503(2.3) or 512 of the *Criminal Code*.

Crown Counsel should consider asking the court to impose preventative conditions of release which are appropriate in the particular circumstances of the case, 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 the offence is of a sexual or violent nature, relevant risk factors should be communicated to the court to ensure protection of the public.

Preparing for and Conducting the Hearing

Crown Counsel with conduct of the file should determine as early as practicable whether publication bans regarding the victim’s identity, available under sections 486.4 and 486.5 of the *Criminal Code* are necessary.

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 assigned conduct of the file should identify at the earliest stage in the prosecution, as practicable, witnesses that may require accommodations available under sections 486 to 486.31 and 486.7 of the *Criminal Code*.

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

- for the exclusion of the public or witness out of public view (section 486(1))
- for a support person (section 486.1)
- for the child or youth 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 an 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)

Crown Counsel should make an application for an order where appropriate, taking into account all relevant factors, including whether the witness requests an accommodation.

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

Crown Counsel should bear in mind that the social worker and parent or guardian need information about the criminal proceedings in order to effectively protect and support the child or youth. 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 722 of the *Criminal Code*, 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.

Section 718.01 of the *Criminal Code* provides that when a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

Section 718.2(a)(ii.1) of the *Criminal Code* provides that evidence that the offender, in committing the offence, abused a person under the age of eighteen years is an aggravating factor on sentencing and section 718.2(a)(iii.1) provides that evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim is an aggravating factor on sentencing. Any aggravating factors should be brought to the attention of the court.

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 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 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 (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.

It is anticipated that the police will make a report where required. If this report is not noted in the file, Crown Counsel should confirm that police have made a report; if the police have not reported, or Crown cannot make that determination, 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.

Prosecutions for Breach of Protective Intervention Orders (section 28) and Restraining Orders by Persons who Procure Children to Engage in Prostitution (section 98)

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.

The Child Protection Social Worker responsible for the child should be notified of the conditions of release and provided with a copy of the conditions as soon as possible. Crown Counsel should not consent to the amendment or deletion of any conditions without prior consultation with the Child Protection Social Worker and the supervising probation officer, if one is assigned.

Effective March 18, 2013, the CFCSA offence and penalty provisions in sections 102(1)(a) and (e), (1.1) and (2) were repealed. As a result, breaches of these restraining and protective intervention orders where the order is made on or after March 18, 2013 are only enforceable through section 127 of the *Criminal Code*. Crown Counsel are responsible for the prosecution of breaches of these orders. The police are responsible for the investigation of offences and may submit Reports to Crown Counsel. Before approving a charge, Crown Counsel should ensure that a copy of the order is attached to the Report to Crown Counsel and that, if the order was obtained *ex parte*, it can be proven that the accused was served with a copy of the order before the alleged offence.