



Policy:

Sexual Offences Against Adults

Policy Code:

SEX 1

Effective Date:

March 1, 2018

Cross-references:

ALT 1 CHA 1 CHI 1
DAN 1 VIC 1 VUL 1
YOU 1.4

General Principles

This policy sets out the guidelines for sexual offences against adults; for offences involving children, see the policy *Children and Vulnerable Youth – Crimes Against* (CHI 1).

In cases where the evidentiary test under the policy *Charge Assessment Guidelines* (CHA 1) is met, it will generally be in the public interest to prosecute sexual offences.

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 there is a substantial likelihood of conviction and, if so, whether prosecution is required in the public interest. This cannot be determined solely by the wishes of the complainant.

Crown Counsel and administrative staff should comply with the policy *Victims of Crime – Providing Assistance and Information to* (VIC 1) and, where applicable, the policy *Vulnerable Victims and Witnesses – Adults* (VUL 1) to ensure all victims of sexual offences are aware of available specialized victims’ services.

Alternatives to Prosecution

The policy *Alternative Measures for Adult Offenders* (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 may be 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
- the accused has no apparent history of violence or 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 *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)*.

Conditions of Bail or Recognizance to Protect the Complainant of Sexual Crimes

Crown Counsel should consider seeking a warrant whenever it is necessary to protect the victim or other potential victims by seeking a detention order or appropriate conditions of release. This prevents the accused from interfering with the integrity of the prosecution or committing further offences against the victim or other potential victims.

Where an accused is detained or remanded in custody, Crown Counsel should consider seeking 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, witness, or other person.

Where an accused has been arrested and released by the police, Crown Counsel should review the release documents to ensure there are adequate, enforceable conditions in place to protect the victim and the public. If necessary, Crown Counsel should apply for an amendment of the conditions under sections 499(4) or 503(2.3) of the *Criminal Code* at the earliest opportunity, which may require seeking a warrant under section 512.

Where a decision is made not to lay a charge, a stay of proceedings is entered, or there is an acquittal, Crown Counsel should consider whether the safety of a victim or any other person requires an application for a recognizance under section 810 or section 810.2 of the *Criminal Code*, which can include supervision conditions administered by the Corrections Branch.

When speaking to bail, Crown Counsel should communicate all relevant risk factors to the court to ensure protection of the public.

Preparation for Hearing

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

- early identification and assignment of the case
- wherever possible, assignment to Crown Counsel who has received specialized training
- early identification and notice to the victim of accommodations available under the *Criminal Code*
- vertical prosecution – every effort should be made to have these cases handled by the same Crown Counsel as long as a positive rapport has developed with the victim, until final disposition at trial
- scheduling to ensure that the case moves expeditiously through the criminal justice system

Crown Counsel should consider applying, at the first instance, for an order under section 486.4 directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted 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 inform the complainant or witness about the following accommodations that may be available under sections 486 to 486.4 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 witness 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 restricting publication of information that could identify the victim or witness (section 486.4) 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 one of the orders listed above whenever appropriate, taking into account all relevant factors, including whether the witness requests an accommodation.

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

Where a victim or witness may have difficulty communicating evidence because of a mental or physical disability, Crown Counsel should attempt to determine in the early stages of the prosecution whether presentation of evidence by videotape is appropriate, as provided by section 715.2 of the *Criminal Code* and, if necessary, request the police to obtain a video statement. Under this section, a recorded videotaped statement of a victim or witness may be admitted in evidence where the victim or witness testifies and adopts the contents of the video recording.

When dealing with victims reluctant to participate in the criminal process, Crown Counsel should attempt to maintain communication with the victim, ascertain the reasons for the reluctance to testify and develop strategies to address concerns. For a sexual assault complainant, a criminal trial is very challenging. Crown Counsel should make known to victims, any victim services programs or agencies known to Crown Counsel which may be able to assist the victim.

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.

Section 718.2 of the *Criminal Code* provides that the abuse of a spouse and abuse by a person in a position of trust or authority are aggravating factors 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, or sexual offender treatment program.

Crown Counsel should consider the policy *Dangerous Offender and Long-Term Offender Applications* (DAN 1) where appropriate.

Breach of Court Orders

As a breach of a court order is an identified risk factor for re-offending, Crown Counsel should consider laying charges for breaches of bail and probation. Also, applications for revocation of bail and of conditional sentence orders should be considered.