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CRIMINAL JUSTICE BRANCH, MINISTRY OF JUSTICE  
**CROWN COUNSEL POLICY MANUAL**

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ARCS/ORCS FILE NUMBER: <b>57660-01</b>	EFFECTIVE DATE: <b>February 25, 2015</b>	POLICY CODE: <b>SEX 3</b>
SUBJECT: <b>Sexual Services: Purchase of and Related Offences</b>		CROSS-REFERENCE: <b>ALT 1 CHA 1 CHI 1 VUL 1</b>

### **POLICY**

In **Bill C-36**, which came into force on December 6, 2014, Parliament established a new approach to criminalizing prostitution-related activities. It amended the *Criminal Code* to include new offences and penalties for the commercialization of sexual services. This legislation was enacted in response to a decision by the Supreme Court of Canada that certain provisions of the previously existing legislative scheme were unconstitutional (*Canada (Attorney General) v Bedford*, 2013 SCC 72).

Parliament has declared that these provisions are intended to discourage, denounce and prohibit the exploitation of prostitutes. They are intended to deter customers, through criminal sanctions, from purchasing sexual services without, for the most part, prohibiting prostitutes from selling sexual services. They revise offences related to the exploitation of prostitutes in the areas of trafficking in persons, receiving a material benefit from prostitution and procuring. In addition, they prohibit certain advertising related to sexual services.

The provisions are also designed to further protect children from involvement in, and exposure to, such activities. They establish higher maximum penalties and mandatory minimum penalties when the offences relate to children.

Given Parliament's approach to criminalizing prostitution-related activities, and in particular its consideration of the exploitive nature of prostitution, charges relating to these offences should be approved whenever a Report to Crown Counsel is submitted to the Criminal Justice Branch and the standard set out in the Branch's Charge Assessment Guidelines (CHA 1) is met.

While each charge assessment will involve an individual assessment of the circumstances of the particular case, both in determining whether the evidentiary test and the public interest tests are met, Crown Counsel do not require a different set of public interest considerations for these offences beyond those already delineated in CHA 1. Public interest factors in favour of prosecution which may be particularly applicable in specific cases under these provisions include:

- the victim was a vulnerable person, including children;
- the alleged offender has relevant previous convictions or alternative measures;
- the offence, although not serious in itself, is widespread in the area where it was committed;
- the offence was committed for the benefit of, at the direction of, or in association with, a criminal organization.

Where Crown Counsel determine that prostitution-related charges are required in the public interest and the evidentiary test under policy CHA 1 is met with regard to a particular circumstance that would result in a higher mandatory minimum penalty, Crown Counsel should charge the offence or allege the circumstance that would engage the higher mandatory minimum sentence. Any decision not to proceed in that manner, for reasons other than sufficiency of evidence, should only be made in exceptional circumstances and the reasons for the decision recorded.

#### Crimes Against Children and Vulnerable Youth (CHI 1)

Consistent with the Children and Vulnerable Youth – Crimes Against policy (CHI 1), taking into account the paramount need to protect children, when the evidentiary test under CHA 1 is met with regard to a charge involving a person under the age of 18, Crown Counsel should proceed with a charge under that section and thereby engage the mandatory minimum sentence. Any decision not to proceed in that manner for reasons other than sufficiency of evidence must be approved by a Regional Crown Counsel, Director, or their respective Deputies and reasons for the decision recorded.

#### Prohibition on Communicating to Sell Sexual Services in Specified Public Places Associated with Children

Prostitutes are not prohibited from selling their own sexual services or from communicating in public for that purpose, except as provided for by section 213(1.1) of the *Criminal Code*. This subsection prohibits prostitutes from communicating to sell sexual services in certain public places associated with children. Specifically, it prohibits “offering or providing sexual services for consideration - in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre.” The prohibited act is a summary conviction offence with a maximum penalty of 6 months imprisonment.

This prohibition aims to protect youths from prostitution-related activities and associated dangers such as increased traffic, discarded needles, recruitment of young persons, and firearms or other weapons carried by enforcers.

### “Bawdy House” Situations

The *Criminal Code*'s “bawdy house” provision no longer refers to acts of prostitution. However, Crown Counsel should consider whether the offences of purchasing sexual services (section 286.1), receiving a material benefit from prostitution (section 286.2), including in the context of a commercial enterprise, or procuring (section 286.3), may be applicable to the same activities.

### Advertising an Offer to Provide Sexual Services for Consideration

Section 286.4 prohibits anyone from knowingly advertising an offer to provide sexual services for consideration.

Crown Counsel conducting charge assessments for this offence may consider the sexualized content of the advertising, any evidence that third parties other than a prostitute were involved in funding or placing an advertisement, and any evidence that a paper or electronic publisher may have been a party to the offence within the meaning of section 21 of the *Criminal Code*.

Given the complexity of the evidentiary requirements for proof of this offence, issues surrounding the possible interpretation and scope of the provision as it applies to advertisers and publishers, and possible *Charter* implications, charge assessment decisions for offences under this section should be made by a Regional Crown Counsel, Director, or their respective Deputies.

### Alternative Measures

The Alternative Measures for Adult Offenders policy (ALT 1) applies to prostitution-related offences. Except where an offence is expressly excluded from alternative measures consideration by ALT 1 or another Branch policy, alternative measures should be considered for all cases in which the successful completion of an alternative measures program can achieve the most important objectives of a court prosecution.

However, for offences against children and vulnerable youth, or offences with a mandatory minimum term of imprisonment, alternative measures may only be considered with the prior approval of a Regional Crown Counsel, Director or their respective Deputies and such approval will only be granted in exceptional circumstances, where the use of alternative measures is not inconsistent with the protection of society.

### Vulnerable Victims and Witnesses

Given Parliament's specific concerns about the exploitation inherent in prostitution, the risks of violence posed to those who engage in it, and the disproportionate impact it has on women

and children, in prosecutions under these provisions, Crown Counsel should specifically consider the impact on witnesses or victims who are children or vulnerable persons.

As noted in the Vulnerable Victims and Witnesses – Adult policy (VUL 1), “persons engaged in prostitution *may* be particularly vulnerable due to an individualized climate of violence, exploitation and degradation.”

Further, as delineated in Children and Vulnerable Youth – Crimes Against policy (CHI 1) and VUL 1, in cases where a child, vulnerable youth or vulnerable adult is a witness or victim, special considerations generally apply with regard to office procedures, testimonial accommodations, bail conditions for the accused, communications with the witness or victim, available supports, and related matters.