



Policy:

Youth Criminal Justice Act – Extrajudicial Measures

Policy Code:

YOU 1.4

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Cross-references:

CHI 1 CRI 1 FIR 1
HAT 1 SEX 1 VIC 1

General

The BC Prosecution Service supports the use of extrajudicial measures (EJM) programs and recognizes that they can be the most appropriate and effective way to address harm done to the community and to allow young persons to be rehabilitated and accept responsibility for their criminal conduct. This position is consistent with the *Youth Criminal Justice Act* (YCJA), which recognizes the use of alternatives to judicial proceedings.

The BC Prosecution Service supports the use of EJM programs, which recognize the circumstances of Aboriginal young persons.

Definitions

Extrajudicial Measures means measures other than judicial proceedings under the YCJA used to deal with a young person alleged to have committed an offence. EJMs available to Crown Counsel include a Caution letter and an Extrajudicial Sanction (EJS).

An Extrajudicial Sanction is an EJM that is part of a program referred to in section 10 of the YCJA. An EJS is the most common type of EJM used by Crown Counsel.

Availability of Extrajudicial Measures

Prior to using an EJM, Crown Counsel must be satisfied that

- there is a substantial likelihood of conviction
- the prosecution of the offence is not in any way barred by law

The following offences must not be considered for EJMs:

- first- and second-degree murder
- conspiracy to commit murder
- attempted murder
- manslaughter
- criminal negligence causing death
- any other offence for which causing death is a legal ingredient of the offence
- aggravated assault or aggravated sexual assault
- criminal negligence causing bodily harm
- discharging a firearm with intent
- hostage taking
- kidnapping
- 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 following:
 - sexual assault with a weapon (section 272)
 - robbery (section 344)
 - extortion (section 346(1.1))

Where a young person is alleged to have committed one of the offences in the list below, the approval of a Regional Crown Counsel, Director, or their respective deputy is required before they can be considered for an EJM referral and before an EJM plan can be approved:

- arson
- breaking and entering a dwelling house
- child abduction in contravention of a custody order or without a custody order
- child pornography

- crimes against children and vulnerable youth (*Children and Vulnerable Youth – Crimes Against* (CHI 1))
- criminal harassment (*Criminal Harassment* (CRI 1))
- driving offences under the *Criminal Code*, including driving while impaired, driving while over 80 milligrams, and fail to comply with a demand
- extortion
- firearm offences under the *Criminal Code* as follows (*Firearms – Mandatory Minimum Sentences – Consecutive Sentences – Notice of Greater Penalty* (FIR 1)):
 - 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
- hate-motivated and hate-propaganda offences (*Hate Crimes* (HAT 1))
- offences involving a fatality which are not listed above
- property offences involving a breach of trust
- robbery
- sexual offences against adults (*Sexual Offences Against Adults* (SEX 1))
- any other offence for which an adult offender would be subject to a mandatory minimum term of imprisonment

Such approvals may be granted only where exceptional circumstances exist so that the use of an EJM is consistent with the protection of society.

Guidelines for the use of Extrajudicial Measures

In determining that an EJM is an available option, Crown Counsel should be guided by the principle that EJMs should be considered for any case where the successful completion of an EJM program can achieve the most important objectives of a judicial

proceeding, within the context of the principles and objectives of section 3 (Declaration of Principle) and Part 1 (Extrajudicial Measures) of the YCJA.

The most important objectives of a judicial proceeding will vary with each case. Where, for example, a judicial proceeding is intended to result in the separation of a violent young person from society by a period of custody or result in the imposition of a court supervised non-custodial sanction, an EJM will likely be unsuitable. On the other hand, where the most important objectives are to promote a sense of responsibility in the young person and to obtain an acknowledgement of the harm done to victims, an EJM will likely be able to achieve these objectives.

Crown Counsel should adopt a principled and flexible approach to the determination of this issue and should consider all of the available EJM programs.

An EJM should not ordinarily be considered by Crown Counsel where:

- the young person is on an active conditional discharge order, a probation order, an intensive support and supervision program order, a deferred custody and supervision order, a custody and supervision order, or an intensive rehabilitative custody and supervision order (whether in the community or in a correctional facility)
- the young person has recently participated in an EJM or has recently been convicted of a similar offence

Having applied the principles outlined above, if the use of an EJM might be appropriate but there are continuing concerns about whether a referral may be inconsistent with the protection of society or inappropriate having regard to the interests of society and of the victim, Crown Counsel should consult a Regional Crown Counsel, Director, or their respective deputy before a decision is made.

The application of this policy is a continuing one. Notwithstanding an initial determination by Crown Counsel that an EJS is not suitable, Crown Counsel may, at any stage of the proceedings, reassess this decision.

It may be difficult for Crown Counsel to determine whether to approve an EJS for a particular young person without first having a youth probation officer (YPO) provide a recommendation. The fact that a YPO has recommended an EJS does not obligate Crown Counsel to approve the plan.

Section 18 of the YCJA allows for the establishment of a youth justice committee to give advice on the appropriate EJM to be used in respect of a young person. Crown Counsel

should obtain the approval of a Regional Crown Counsel, Director, or their respective deputy before initiating such a committee.

Section 19 of the YCJA provides that a conference may be convened to give advice on an appropriate EJM.

Failure to Comply with an EJS Plan

Where an EJS plan, under section 10 of the YCJA, has been approved and the young person fails to comply with its terms and conditions, Crown Counsel may proceed with a prosecution. However, pursuant to section 10(5), a youth justice court shall dismiss the prosecution if it is satisfied that the young person has totally complied with the terms and conditions of the plan or they may dismiss it if the young person has partially complied.

Legislative Framework

A. General

Part 1 of the YCJA sets out the statutory scheme with respect to EJMs.

In every decision relating to a young person, Crown Counsel should consider the Declaration of Principles set out in section 3 of the YCJA.

When considering using an EJM, Crown Counsel should also consider the Declaration of Principles set out in section 4 of the YCJA and the Objectives set out in section 5 of the YCJA.

B. Extrajudicial Measures Available To Crown Counsel

There are two types of EJMs available to Crown Counsel, cautions and EJSs.

1. Caution

Crown Counsel may administer a caution to a young person for minor offences, which is typically done by Crown Counsel sending a letter.

Before proceeding with an EJS, Crown Counsel should consider whether a young person, who is alleged to have committed a criminal offence, can adequately be dealt with by a caution. In making this determination, Crown Counsel should consider:

- the seriousness of the offence
- the nature and number of previous offences committed by the young person

- any other aggravating and mitigating circumstances

British Columbia has not established a program under section 8 of the YCJA, which permits the Attorney General of a province to establish a program authorizing prosecutors to administer cautions to young persons. This means that section 10(1) of the YCJA, as it relates to cautions, is not binding on the Crown. However, Crown Counsel may nevertheless administer cautions pursuant to this policy, which is consistent with section 10(1).

2. Extrajudicial Sanctions

An EJS is a type of EJM which provides an alternative to a judicial proceeding for a young person who has committed a criminal offence.

Section 10(1) of the YCJA states that “an EJS may be used to deal with a young person alleged to have committed an offence only if the young person cannot be adequately dealt with by a warning, caution or referral mentioned in section 6, 7, or 8 because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances.”

Section 10(2)(a) of the YCJA provides that an EJS can only be used if it is part of a program of sanctions that is authorized by the Attorney General. In B.C., the Ministry of Children and Family Development (Youth Probation) provides the program of sanctions (EJS) as part of its Community Youth Justice programs.

Section 10(2)(b) to (g) of the YCJA provides that an EJS may only be used if Crown Counsel is satisfied that:

- it would be appropriate, having regard to the needs of the young person and the interests of society
- the young person fully and freely consents to be subject to it
- the young person, before consenting, has been advised of their right to be represented by counsel and has been given a reasonable opportunity to consult with counsel
- the young person accepts responsibility for the offence that he or she is alleged to have committed

Section 10(3) of the YCJA provides that an EJS is not appropriate where a young person

- denies participation or involvement in the commission of the offence
- expresses the wish to have the charge dealt with by a youth justice court

Section 10(4) of the YCJA provides that any admission, confession or statement accepting responsibility made by a young person as a condition of being dealt with by an EJM is inadmissible in evidence against the young person in civil or criminal proceedings.

Section 10(5) of the YCJA provides that the use of an EJS is not a bar to judicial proceedings. However, where judicial proceedings are commenced by Crown Counsel the youth justice court:

- shall dismiss the charge if it is satisfied on a balance of probabilities that the young person has totally complied with the terms and conditions of the EJS
- may dismiss the charge if it is satisfied on a balance of probabilities that the young person has partially complied with the terms and conditions of the EJS and if, in the opinion of the court, prosecution of the charge would be unfair having regard to the circumstances and the young person's performance with respect to the EJS

Section 11 of the YCJA provides that where a young person is dealt with by an EJS, the YPO must inform the young person's parent(s) of that fact.

Section 12 of the YCJA provides that, where a young person has been dealt with by an EJS and upon request of the victim, the victim must be informed of the identity of the young person and how the offence has been dealt with.

Extrajudicial Sanctions Procedure

Crown Counsel refers a young person to EJS (EJS referral).

A YPO provides Crown Counsel with a report (youth EJS form) offering an opinion as to whether the young person is suitable for an EJS. If an EJS is recommended by the YPO, the report will include an EJS Plan.

Crown Counsel must ensure that the youth EJS form includes confirmation that:

1. the EJS process and the potential terms and conditions of an EJS have been explained to the young person
2. the young person has been advised
 - of their right to refuse an EJS and have the charges(s) dealt with by the court
 - of their right to be represented by counsel prior to consenting to participate in the recommended EJS plan

- that the original offence may be prosecuted if there is non-compliance or partial compliance with the terms and conditions of an EJS plan
 - that if they are before the Court on a subsequent offence, the Court may be informed of their EJS record
 - that only Crown Counsel can approve an EJS plan
3. the young person:
- agrees with the circumstances of the offence as outlined in the Report to Crown Counsel and does not deny participation or involvement in the offence
 - accepts responsibility for the act forming the basis of the offence
 - does not wish to have charge(s) dealt with by the Court
 - fully and freely consents to participate

Crown Counsel decides whether to approve or reject the EJS plan.

Victims' Rights

The BC *Victims of Crime Act*, federal *Canadian Victims Bill of Rights*, and the *Youth Criminal Justice Act* establish rights for victims of offences in their interactions with the youth criminal justice system. In all YCJA proceedings, including the use of extrajudicial measures, Crown Counsel should be mindful of their obligation to consider the rights of victims under these statutes (*Victims of Crime – Providing Assistance and Information to (VIC 1)*).