



NOVASCOTIA
PUBLIC PROSECUTION SERVICE

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ALTERNATIVE MEASURES - ADULT DIVERSION

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NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE “**WORDS & PHRASES**” SECTION OF THIS PART OF THE MANUAL.

ALTERNATIVE MEASURES - ADULT DIVERSION

1. PROGRAM OBJECTIVE

- 1.1 The Adult Diversion Program is a post charge pre-trial option to the criminal justice system which offers to eligible accused persons, victims and the criminal justice system an opportunity to address and resolve in an efficient and responsible manner, the accused person's criminal behaviour with the least amount of formal court intervention. The Adult Diversion Program provides an option which is visible, accountable and accessible to accused persons, victims and the community while repairing, to the extent possible, the harm caused by the offence.

2. OPERATIONAL PRINCIPLES

- 2.1 The Adult Diversion Program is a program approved by the Attorney General for the Province of Nova Scotia, pursuant to s. 717 of the Criminal Code of Canada and is administered by the Department of Justice.
- 2.2 The Adult Diversion Program provides to those accused persons who are eligible, the opportunity to participate in a program of alternative measures, to be undertaken prior to the initiation of any formal Court proceedings.
- 2.3 Participation in the Adult Diversion Program will result in a formal agreement based on consensus between those parties involved in the diversion process which, once successfully completed, will terminate any further criminal proceedings in relation to the particular matter.

3. DEFINITIONS

- 3.1 **Adult Diversion Personnel:** means Probation Officers or other persons designated by Correctional Services, Department of Justice, with responsibility for operating the Adult Diversion Program.
- 3.2 **Accused:** means an adult individual alleged to have committed an offence for whom the Crown Attorney believes there is sufficient evidence to proceed with prosecution of the offence and that any such prosecution is not in any way barred at law.
- 3.3 **Assessment Interview:** means an interview between the accused and Adult Diversion personnel to determine the accused person's acceptance into the program, whether a mediation hearing will be held with the victim(s) and where appropriate, to reach a formal Adult Diversion Agreement.

- 3.4 **Mediation Hearing:** means a meeting between the victim(s) and the accused, facilitated by Adult Diversion personnel, where all parties agree to attempt to reach an acceptable solution and a formal Adult Diversion Agreement which will resolve or repair the harm caused by the offence.

4. ELIGIBILITY CRITERIA

- 4.1 Prior to an accused person becoming actively involved in the Adult Diversion Program, the following eligibility criteria must be considered and/or satisfied:
- 4.1.1 the decision to proceed by way of adult diversion is made having regard for the needs of the accused person, the victim and the interests of society;
 - 4.1.2 there is sufficient evidence to proceed with the prosecution of the offence and any such prosecution is not in any way barred at law;
 - 4.1.3 the accused person accepts responsibility for the act or omission that forms the basis of the offence which is alleged to have been committed;
 - 4.1.4 the accused person, having been informed of adult diversion, fully and freely consents to participate in the program, having been given a reasonable opportunity to consult with counsel.
- 4.2 In addition, adult diversion shall not be considered where:
- 4.2.1 the accused person is on probation or is serving a custodial disposition;
 - 4.2.2 the accused person has pending charges in addition to those being considered for adult diversion; except where the pending charges occurred after the matter being considered for adult diversion;
 - 4.2.3 the accused person has a recent history (previous two years) of convictions for similar offences, five years where the previous convictions were for an offence under section 4.2.4 (conviction free periods date from the end of disposition), or has previously participated in a diversion program within the preceding two-year period;
 - 4.2.4 the following offences or factors are involved:
 - 4.2.4.1 serious violence against a person (where Crown elects to proceed by way of indictment);
 - 4.2.4.2 use or threatened use of a weapon;
 - 4.2.4.3 sexual offences (as contained in Parts V and VIII of the *Criminal Code*);
 - 4.2.4.4 perjury;

- 4.2.4.5 criminal code driving offences; or
- 4.2.4.6 spousal/partner violence.

5. CASE REFERRAL/REVIEW

- 5.1 Cases will be referred directly from the Police, following their review of the circumstances of the case and consideration of the eligibility criteria for the Adult Diversion Program.
- 5.2 Once received and reviewed by Adult Diversion personnel, the case will be referred to the Crown Attorney for approval to proceed with the referral.
- 5.3 The Crown Attorney, in determining whether to grant approval to proceed, shall have regard to:
 - 5.3.1 whether prosecution is in any way barred at law;
 - 5.3.2 whether there is sufficient evidence to proceed with the prosecution of the offence;
 - 5.3.3 whether there is a reasonable chance of conviction [see Practice Note, below]; and,
 - 5.3.4 whether it is in the public interest that the prosecution proceed, having regard to the availability of adult diversion alternative measures, the nature of the offence(s) charged and the established eligibility criteria for the Adult Diversion Program.

6. ASSESSMENT INTERVIEW

- 6.1 Upon approval of the referral by the Crown Attorney, Adult Diversion personnel will establish contact with the accused person, informing them of the opportunity to participate in the Adult Diversion Program and of their right to retain and consult legal counsel.
- 6.2 Where the accused person agrees to participate in the program, Adult Diversion personnel will arrange and conduct an assessment interview to determine the person's acceptance into the program.
- 6.3 Prior to the assessment interview and where appropriate, contact will be established with the victim to determine the victim's interest in participating in mediation with the accused.
- 6.4 Where it is determined at the assessment interview that the accused is accepted for participation in the Adult Diversion Program and where the victim has agreed to participate, Adult Diversion personnel will arrange for a mediation hearing. Where the victim does not wish to participate, the matter

will be resolved by means of a formal Adult Diversion Agreement established during the assessment interview.

7. ADULT DIVERSION AGREEMENT

- 7.1 Having been accepted for the Adult Diversion Program and following the assessment interview or mediation hearing, as appropriate, a formal Adult Diversion Agreement shall be entered into by the accused person.
- 7.2 The Adult Diversion Agreement shall specify the measures to be completed by the accused person, including an agreed upon date for completion.

8. RANGE OF ALTERNATIVE MEASURES

- 8.1 The range of measures which may be employed include the following:
- 8.1.1 community service;
 - 8.1.2 restitution/financial compensation;
 - 8.1.3 personal service for the victim;
 - 8.1.4 specialized education programs;
 - 8.1.5 referral for counselling/treatment assessment;
 - 8.1.6 charitable donation;
 - 8.1.7 letter of apology;
 - 8.1.8 essay;
 - 8.1.9 no further intervention; or,
 - 8.1.10 other such reasonable measures as approved by the Department of Justice.

AUTHORIZATION

This program of alternative measures was authorized by the Attorney General pursuant to Section 717 of the *Criminal Code* on December 30, 1996.

PRACTICE NOTE:

In paragraph **5.3.3**, the words “reasonable chance of conviction” are to be interpreted in the same way as “realistic prospect of conviction”, the evidential threshold established in the Decision to Prosecute policy document

CRIMINAL CODE – Section 717

WHEN ALTERNATIVE MEASURES MAY BE USED/Restriction on use/ Admissions not admissible in evidence/ No bar to proceedings/ Laying of information, etc.

717. (1) Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:

- (a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the lieutenant governor in council of a province;
 - (b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;
 - (c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;
 - (d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;
 - (e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;
 - (f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and
 - (g) the prosecution of the offence is not in any way barred at law.
- (2) Alternative measures shall not be used to deal with a person alleged to have committed an offence if the person
- (a) denies participation or involvement in the commission of the offence; or
 - (b) expresses the wish to have any charge against the person dealt with by the court.
- (3) No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of the person being dealt with by alternative measures is admissible in

evidence against that person in any civil or criminal proceedings.

- (4) The use of alternative measures in respect of a person alleged to have committed an offence is not a bar to proceedings against the person under this Act, but, if a charge is laid against that person in respect of that offence,
 - (a) where the court is satisfied on a balance of probabilities that the person has totally complied with the terms and conditions of the alternative measures, the court shall dismiss the charge; and
 - (b) where the court is satisfied on a balance of probabilities that the person has partially complied with the terms and conditions of the alternative measures, the court may dismiss the charge if, in the opinion of the court, the prosecution of the charge would be unfair, having regard to the circumstances and that person's performance with respect to the alternative measures.
- (5) Subject to subsection (4), nothing in this section shall be construed as preventing any person from laying an information, obtaining the issue or confirmation of any process, or proceeding with the prosecution of any offence, in accordance with law.

RECORDS OF PERSONS DEALT WITH

717.1 Sections 717.2 to 717.4 apply only in respect of persons who have been dealt with by alternative measures, regardless of the degree of their compliance with the terms and conditions of the alternative measures.