

## 5.0 Correctional Services Protocol

### 5.1 Introduction

This protocol outlines Corrections' authority and responsibility to consider referral to the Nova Scotia Restorative Justice Program.

There are separate protocols guiding use of the NSRJP by police, crowns, courts, victim servicing agencies and the Regional RJ Team. There are **Definitions** and a **General protocol** that apply to all protocols.

### 5.2 Authorization

The NSRJP was approved by the Attorney General for Nova Scotia as an integrated program for adults and young persons in conflict with the law. The program may be used by Justice Partners and the Judiciary at their respective stages of the criminal justice process as contemplated in these protocols and pursuant to their authority and discretion available at law and as consistent with their roles and responsibilities.

Post-guilty plea/finding referrals to the NSRJP are not part of the program of alternative measures for adults authorized by the Attorney General under Section 717 of the Criminal Code, RSC 1985, c C-46, or the program of extrajudicial sanctions for young persons approved by the Attorney General under Section 10 of the Youth Criminal Justice Act, SC 2002, c 1 and Section 10 of the Youth Justice Act, SNS 2001, c 38.

Justice Partners have undertaken shared commitments to use, support and advance use of restorative justice in the criminal justice system and in the community. All partners have signed a **Memorandum of Understanding** committing to collaborate in support of restorative justice in Nova Scotia and to coordinated implementation of the NSRJP.

### 5.3 Principles, Goals and Objectives

Justice Partners are committed to a restorative approach to justice grounded in the following principles, which guide the development, governance and implementation of the NSRJP and the work of the Justice Partners in support of the NSRJP:

- **Relationally focused:** attention to interconnection, seeking to understand and promote just relations between individuals, groups and communities
- **Comprehensive and holistic:** takes into account histories, contexts and causes of harm and its impacts
- **Inclusive and participatory:** culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants
- **Responsive:** Contextual, flexible practice, accessible, efficient and effective processes, informed by data and knowledge
- **Focused on promoting individual and collective accountability & responsibility**

- **Collaborative and non-adversarial:** among parties to the process and system and community partners
- **Forward-focused:** educative (not punitive), problem-solving, preventative and proactive

Justice Partners have adopted the following goals and objectives for the NSRJP:

- **Respond to needs of individuals and communities affected by crime:** with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- **Harm reduction:** reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system
- **Support individual and collective taking of responsibility for harm and public safety**
- **Increase access to justice:** more effective, timely, inclusive, equitable justice system
- **Provide responsive justice:** human-centered justice processes that consider root causes and seek meaningful outcomes and responses
- **Increase public confidence and accountability in the administration of justice**
- **Build and support healthy, safe and strong communities**

## 5.4. Eligibility

### 5.4.1 Indigenous Persons

If a person in conflict with the law identifies as an Indigenous person, consideration must first be given to referral to the Mi'kmaw Legal Support Network (MLSN) to assess whether the matter is appropriate for resolution under Customary Law according to policy and procedure. If not, then the matter may be considered for referral to the NSRJP in accordance with these program protocols.

### 5.4.2 Eligibility

All matters are eligible for referral by police, crown, courts, corrections and victim serving agencies. Police, crown and corrections shall consider all matters for referral victim serving agencies. Corrections shall consider all matters for referral, except where:

- **A provincial hold or moratorium is in place;** or
- Referral is otherwise barred by law.

In furtherance of the overall principles, goals and objectives outlined in section 5.3, referral agents shall also consider the following factors as weighing in favour of referral:

- Opportunity for more culturally appropriate, meaningful and effective justice process

- Reduction of harm for direct parties (trauma informed)
- Potential for victim participation
- Enhanced opportunity for access to justice for affected communities – increased confidence in the administration of justice
- Opportunity to understand and consider root causes or systemic issues connected to the parties or offence
- Reduce over-representation in justice system for individuals from vulnerable and marginalized communities/groups
- Access to better supports and wrap around responses to parties needs

In considering whether a referral to the NSRJP is appropriate, Justice Partners may, at any time:

- Consult the Regional RJ Team for information, or
- Request a case conference be convened with the Regional RJ Team Leads, or a designated representative and other Justice Partners as appropriate, to consider potential for referral.

Certain offences are presumed eligible for referral only post-guilty plea/finding. This presumption may be rebutted, and a matter referred earlier in the criminal justice process conviction, where a referral is consistent with the overall principles, goals and objectives of the NSRJP set out in section 5.3. Those offences presumed eligible for referral only post-guilty plea/finding are as follows:

- Cases involving death (murder, manslaughter, criminal negligence causing death, impaired driving causing death);
- Offences involving abuse of a minor child (under 18 years old) or another vulnerable person, by a person in a position of trust;
- Child pornography (adult);
- Firearms offences;
- Impaired driving (adult);
- Serious crimes against the administration of justice (perjury or intimidation of a justice system participant);

### 5.4.3 Options for Referral

Corrections shall consider referral to the NSRJP for all situations where it might be appropriate at the post-sentencing stage. Corrections may also use the NSRJP to support a restorative approach in fulfilling their roles and responsibilities as ordered by the Court or otherwise required in legislation or policy.

Options for using restorative justice include but are not limited to:

- Restorative approach to preparing a pre-sentence report for the Court (may support but not replace Gladue reports)
- In response to administrative breaches
- Pre-breach to offer guidance and motivation to the person in conflict with the law

- Within correctional facilities to support rehabilitation or reparation (including processes involving offenders, victims and community members)
- In response to institutional offences, conflicts or behaviour issues
- To support, review or enhance a support plan related to probation order
- To explore conditions of supervision, and whether an application could be made to the court to change the conditions
- To support reintegration as part of a community supervision order
- To support reintegration post custodial sentence, with a view to restoring relationships where harm has been done, as part of a community corrections sentence, or part of the correctional release plan
- To enable an offender to be placed on conditions requiring attendance with program/counselling to update the victim or community on progress and accountability

## 5.5 Referral Procedures

### 5.5.1 Preparing a Referral

Referrals to NSRJJP must be communicated to the Regional RJ Team Leads in a timely manner. The Regional RJ Team Leads are responsible for considering the referral and making the final determination on whether the referral is appropriate in accordance with the protocol.

Referrals to the NSRJJP will be forwarded to the appropriate Regional RJ Team Leads with a **Referral Form** from the referral source. Referral agents are to use this form to communicate relevant information, including public interest considerations and relevant information regarding the offender, victim and community involved in a case. Referral forms must include attachment(s) as specified on the referral form.

### 5.5.2 Case Communications

Prior to a referral the referring agent may consult the Lead Team of the Regional RJ Teams for information to inform a decision to refer and regarding current cases referred to the Regional RJ Team. Communications with the Regional RJ Team are intended to assist with decision-making regarding referrals and are **not to dictate or set conditions or pre-conditions on the restorative justice process beyond those required by law consistent with a sentencing order.**