

## **Outline of Post Charge Referral to the Alternative Measures / Extrajudicial Sanctions Program**

### **Introduction :**

In recent discussions between the Department of Public Safety and Public Prosecutions the concept of enhancing the current Alternative Measures and Extrajudicial Sanctions programs by the introduction of a post charge component was considered.

The current program is a pre-charge referral program that is generally at the discretion of the police and, for some offences, on the advice of the crown prosecutor.

It was recognized that in some exceptional cases, it would be to the advantage of the criminal justice system to allow for referral to this program by the Crown after the charge has been laid. This would be considered in cases where an alternative measure was considered to be sufficient to hold the accused accountable and would not undermine the administration of justice nor public confidence in the criminal justice system. The referral would continue to respect the sentencing principle found in sec. 718 (f) in that the alternative measure must promote a sense of responsibility in the offender and an acknowledgement of the harm done to victims and to the community. The post charge referral would be available for both youth and adult offenders.

This introduction of a post charge process is not intended to diminish the authority of the peace officer to refer to the pre-charge program nor is it intended to detract from the current pre-charge process in anyway. The pre-charge referral program will continue to be the primary route to alternative measures / extrajudicial sanctions.

Restorative justice principles will continue to be the foundation of the program as stated in the original alternative measures program description and the Youth Criminal Justice Act. Respecting those principles, the views of the victim will be sought. The accused must accept responsibility for his/her actions. This would not be taken as an admission of guilt, however, for any subsequent court proceedings.

### **Charges eligible for the post charge referral:**

The post charge referral would be available for all offences listed in the schedule developed for the pre-charge alternative measures / extrajudicial sanction. It would also be available for an expanded number of offences and circumstances. For some charges the consent of the regional crown prosecutor and the Regional Director for Public Safety would be required.

In determining the eligibility of offences for post charge referral, the following criteria are to be applied:

- No CCC s. 469 offence (i.e. those offences in the absolute jurisdiction of the Court of Queen's Bench which include most notably murder);
- No offence with a mandatory minimum sentence;
- No offences in the Terrorism section of the CCC;
- No firearms offence related to the commission of another offence;
- No Escape offences;
- No driving while impaired offences;
- No offences listed in YCJA s. 42 (7) (a) (i) which are the list of offences identified for intensive rehabilitative custody and supervision orders (i.e. s. 231; 235 (murder); 239 (attempted murder); 232; 234; 236 (manslaughter); or s. 273 (aggravated sexual assaults);
- No offence characterized as aggravated;
- None of the sexual offence that victimizes children or are of such as nature as to be inappropriate for an alternative measure.

As additional caveats to the list:

- No serious violent offence as defined in the YCJA shall be considered for either adults or youth (i.e. an offence in the commission of which a person causes or attempts to cause serious bodily harm)
- Assaults that are characterized as domestic violence shall only be considered on the recommendation of the Regional Crown Prosecutor and the Regional Manager for Public Safety.