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<b>CHAPTER II – CHAPITRE II :</b> <b>The Decision to Prosecute</b> <b>Décision d’engager une poursuite</b>	Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.	

## ALTERNATIVE MEASURES

### 1. Introduction

Alternative, or extrajudicial, measures are a visible and accessible alternative to prosecution that affords eligible accused persons, victims, the community, and the criminal justice system the opportunity to address and resolve criminal behavior and repair harm caused by offences in an efficient, accountable, and responsible manner.

### 2. Statement of the Policy

The Alternative Measures Program (Alternative Measures) is an approved program for both young persons and adult accused persons authorized by the Attorney General in accordance with section 717 of the *Criminal Code* and section 4 of the *Youth Criminal Justice Act*.

Alternative Measures uses a restorative justice approach to accomplish the following objectives:

- (a) deter offenders;
- (b) increase offender accountability and responsibility;
- (c) enhance community involvement in the criminal justice system; and
- (d) promote the involvement of victims in the criminal justice system.

Alternative Measures may be used where it is not inconsistent with the protection of society or contrary to the public interest.

### **3. Referral to Alternative Measures**

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#### **3.1 Referral by Police**

Upon the completion of a criminal investigation, a senior police officer who was not involved with the investigation shall conduct an assessment to determine whether to refer the accused person to Alternative Measures or lay a charge. The senior police officer must be designated as an agent of the Attorney General for the purpose of paragraph 717(1)(f) of the *Criminal Code* and section 4 of the *Youth Criminal Justice Act*. Where the police are satisfied that there is sufficient evidence to lay a charge, but believe that the matter should proceed by way of alternative measures rather than by prosecution, the police may refer the accused person to Alternative Measures.

In circumstances where eligibility criteria are not met but the police officer, in his or her discretion, considers the accused person a good candidate for Alternative Measures, or where it is otherwise necessary to obtain the Crown Prosecutor's approval to pursue alternative measures, the police officer will consult with the Crown Prosecutor to obtain approval before referring the accused person to Alternative Measures.

#### **3.2 Pre-charge Referral**

Where the Crown Prosecutor receives a file concerning a matter where he or she feels alternative measures are sufficient to hold a person accountable for the offence committed without undermining the administration of justice or public confidence in the criminal justice system, the Crown Prosecutor may refer the qualifying young person or adult accused person to Alternative Measures rather than laying a charge.

The offences for which pre-charge referral is available are listed in section 6 below.

#### **3.3 Post-charge Diversion**

Where the Crown Prosecutor feels alternative measures may be sufficient to hold a person accountable for the offence committed without undermining the administration of justice or public confidence in the criminal justice system, the Crown Prosecutor may also divert a qualifying young person or adult accused person to Alternative Measures post-charge.

A post-charge diversion must continue to respect the sentencing principles found in section 718 of the *Criminal Code*, in that the alternative measures must promote a sense of responsibility in the offender and acknowledge the harm done to victims and the community.

Post-charge diversion is available for all the offences for which Alternative Measures is available pre-charge, as set out in section 6 below.

For offences characterized as intimate partner violence or those of a sexual nature only post-charge diversion is available subject to the approval of the Regional Director or the Director of Specialized Prosecutions, as the case may be. In these cases, a referral for the victim to Victim Services must be confirmed.

### **4. Participation in Alternative Measures**

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Where a person is referred to Alternative Measures, he or she may be required to attend a meeting with the Alternative Measures Committee. The meeting permits the Alternative Measures Committee to draft a formal agreement with terms specific to the circumstances. If the participant agrees to the terms drafted, he or she will enter into the contract with Justice and Public Safety.

#### **4.1 Completion or Breach of the Contract Upon Pre-charge Referral**

Where the participant adheres to and fulfils the terms of the contract for a matter that was referred to Alternative Measures before the charge was laid, no criminal proceedings in relation to the offence will ensue.

Where the participant breaches the contract, he or she will be referred to the police or to Public Prosecution Services and may be subject to prosecution.

#### **4.2 Completion or Breach of the Contract Upon Post-Charge Diversion**

Where the participant adheres to and fulfils the terms of the contract for a matter that was referred to Alternative Measures after the charge was laid, no further criminal proceedings in relation to the offence will ensue.

Where the participant breaches the contract, he or she will be referred to Public Prosecution Services and may be subject to resumed criminal proceedings.

### **5. Eligibility for Alternative Measures**

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#### **5.1 Eligibility Criteria**

To be eligible for Alternative Measures, the following criteria must be met:

- (a) the accused person must be willing to accept responsibility for the act or omission that forms the basis of the offence<sup>1</sup>;
- (b) the accused person must recognize the harm done to the victims and community;
- (c) ordinarily the accused person must have expressed an attitude of remorse respecting the offence;
- (d) the accused person must be fully aware of the program and freely consent to participate in it; and
- (e) the accused person must have been advised of his or her right to legal counsel.

#### **5.2 Limitations**

Regardless if the offence for which the accused person may be charged is an eligible offence as set out in section 6 below, if the accused is subject to any of the following circumstances, Crown Prosecutor's approval must be sought before being eligible for Alternative Measures:

- (a) a sentence; or
- (b) a sentence within the last two (2) years.

The Crown Prosecutor may approve an accused for Alternative Measures in the above circumstances if in their opinion doing so would not be inconsistent with the protection of society or contrary to the public interest.

#### **5.3 Other Considerations**

A victim's views of the use of Alternatives Measures may be considered but are not determinative.

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<sup>1</sup> This would not be taken as an admission of guilt in a subsequent court proceeding.

Where an accused person is an adult, his or her record as a young person, if any, does not preclude eligibility for Alternative Measures, but shall be considered in conducting a public interest analysis.

Where the offence relates to intimate partner violence or is of a sexual nature charges must be laid before alternative measures (post-charge diversion) can be considered. If the offender in those cases meets the criteria as per this Policy and the Regional Director or the Director of Specialized Prosecutions, as the case may be, grants their approval the offender may be directed to post-charge diversion. In these cases, a referral for the victim to Victim Services must be confirmed.

If the victim of a sexual offence is, or was, under the age of 16 years old on the date of the offence was committed, Regional Director or the Director of Specialized Prosecutions, as the case may be, shall not grant their approval for alternative measures.

## **6. Offences Eligible for Alternative Measures**

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### **6.1 Offences Committed by Young People**

All offences committed by a young person between the ages of twelve (12) and seventeen (17), inclusive, are eligible for consideration for Alternative Measures under the *Youth Criminal Justice Act*, except serious violent offences where the young person causes or attempts to cause serious bodily harm and impaired driving offences. Provincial offences are also eligible for Alternative Measures under the *Provincial Offences Procedures for Youth Act*.

Alternative measures should be used if they are adequate to hold a young person accountable for his or her offending behaviour, and if the use of extrajudicial measures is consistent with the principles set out in section 4 of the *Youth Criminal Justice Act*. Nothing in the *Youth Criminal Justice Act* precludes the use of alternative measures in respect of a young person who has previously been dealt with by the use of alternative measures, or has previously been found guilty of an offence.

#### **6.1.1 Exceptions**

Alternative Measures is not available for the following *Criminal Code* offences if committed by a young person:

- (a) **231** – first and second degree murder;
- (b) **232** – murder reduced to manslaughter;
- (c) **234** – manslaughter;
- (d) **239** – attempt to commit murder;
- (e) **273** – aggravated sexual assault; or
- (f) **320.14** and **320.15** – operation while impaired / failure or refusal to comply with demand.

### **6.2 *Criminal Code* Offences Committed by Adults**

Where the offence has been committed by an adult, only the *Criminal Code* offences listed in Appendix A are eligible for consideration for Alternative Measures subject to the restrictions noted in this policy and subject to approval where required, namely:

- a) Crown approval – Requires prior approval of a Crown Prosecutor prior to being eligible for Alternative Measures; and

- b) Regional Crown Approval – Requires prior approval of the Regional Director in the jurisdiction for which the offence took place prior to being eligible for Alternative Measures.

### 6.3 *Controlled Drugs and Substances Act* Offences Committed by Adults

Where the offence has been committed by an adult, only the following *Controlled Drugs and Substances Act* offence is eligible for consideration for Alternative Measures:

- (a) **4(4)(b)** – possession of a substance included in Schedule II and punishable on summary conviction.

## 7. Limitation Periods

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Where the offence is a summary conviction offence, Alternative Measures must be initiated and should be completed within a twelve (12) month limitation period beginning from the date of the commission of the offence. Where a party does not comply with the terms of the agreement during the limitation period, the matter will be forwarded to Public Prosecution Services for prosecution.

Where the offence is a hybrid offence, all reasonable efforts will be made to complete the Alternative Measures within a twelve (12) month limitation period from the date of the commission of the offence. Where the limitation period has expired before Alternative Measures have been initiated, the Crown Prosecutor shall be consulted and shall determine whether the matter should proceed under Alternative Measures or as a prosecution for an indictable offence. Where a party does not comply with the terms of the agreement during the limitation period, the matter will be forwarded to Public Prosecution Services for prosecution.

## 8. Related Documents

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Policy 11	Pre-charge Screening
Policy 22	Disclosure
Policy 42	Youth Criminal Justice
Policy 43	Firearms
Policy 45	Intimate Partner Abuse