

ALTERNATIVE MEASURES PROGRAM

EFFECTIVE: May 7, 2020

SUMMARY: This Guideline provides direction to prosecutors in relation to referrals to the Adult Alternative Measures Program. It replaces the Adult Alternative Measures Program Guideline dated December 6, 2014.

BACKGROUND

The criminal justice response to crime should be proportionate to the crime committed and the resources dedicated to a prosecution should reflect the seriousness of the crime. All files should be scrutinized to determine if alternative avenues exist (short of traditional prosecutions in court) that would be appropriate for the offence, offender, and victim. The Adult Alternative Measures Program (AMP) is one program that is available to divert accused away from the traditional criminal justice system.

Police Discretion

It is recognized that the police do not always lay a charge when they have sufficient evidence to do so. In some cases where the offence is minor in nature and after taking all the circumstances into consideration, a police officer may decide to exercise their discretion not to charge. This police discretion is a longstanding element of our criminal justice process and is recognized by the community as being valid and essential. As such, this Guideline is not intended to alter or interfere with the exercise of police discretion.

In cases where an eligible offence is alleged to have been committed, police may:

1. Exercise their discretion not to charge;
2. Directly refer the accused to AMP by sending a request to the local prosecution office;
or
3. Lay charges.

The Adult Alternative Measures Program is authorized pursuant to section 717 of the *Criminal Code* and contains the basic requirements of eligibility:

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 council¹ 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.*

Once these preconditions required by the *Criminal Code* have been met, prosecutors may proceed to review the file to determine eligibility of the offender and the offence. Crown prosecutors should adopt a principled and flexible approach when considering whether AMP is appropriate and should consider all of the available diversion programs which might be appropriate in the specific circumstances of each case. Prosecutors should consider whether there are other diversion programs that are more suitable such as Mental Health Diversion.

GUIDELINE

Offender Eligibility

The principles below are intended to assist Crown prosecutors in deciding whether to refer an offender to AMP:

- All first time adult offenders are eligible for AMP unless there is sufficient reason why program participation is inappropriate.
- All second time adult offenders are eligible if at least two years has elapsed since a previous finding of guilt or participation in the program, unless there is sufficient reason why program participation is inappropriate.

If unsure about the suitability of AMP in a particular case, Crown prosecutors should consult their Chief Prosecutor (or designate) before a decision is made.

¹ [Ministerial Order](#) 37/96 authorizes the creation of an alternative measures program for adults.

Offence Eligibility

Except as explicitly excluded in this Guideline, all offences arising under the *Criminal Code* or a provincial statute may be considered for AMP. A series of offences that occur out of the same incident (e.g., a series of thefts on the same day) is to be treated as being one offence for the purpose of determining program eligibility. Offences involving an attempt or being an accessory qualify if the substantive offence qualifies.

Offences committed under the following circumstances are *not eligible* for referral to AMP:

1. Offences resulting in the death of an individual;
2. Offences involving the use of violence or the threatened use of violence reasonably likely to result in harm that is more than merely transient or trifling in nature;
3. Offences involving the use, or threatened use, of a weapon;
4. Offences affecting the sexual integrity of a victim;
5. Offences resulting in a serious impact upon the victim (physical, psychological, or financial);
6. Offences involving violence against a victim under 18 years of age committed by a person in trust or authority towards that victim;
7. Offences involving the use of violence or the threatened use of violence against an intimate partner;
8. Offences involving the infliction of pain, suffering, or injury to an animal;
9. Offences involving vulnerable victims (for example, children, the elderly, etc.);
10. Offences demonstrating sophisticated planning (for example, the offence was part of an ongoing criminal enterprise);
11. Driving offences under the *Criminal Code*;
12. Offences under the *Traffic Safety Act*;
13. Offences that are punishable by a mandatory minimum sentence of imprisonment;
14. Offences involving a corporate body as a defendant;
15. Offences of Obstructing Justice, Public Mischief, Perjury, and offences relating to Affidavits under section 138; and
16. Drug offences involving trafficking in a controlled substance.

Exceptional Circumstances

A Chief Prosecutor (or designate) may approve entry into AMP for otherwise ineligible offenders or offences where exceptional circumstances exist. If an otherwise ineligible offender or offence is referred under exceptional circumstances, the approving Chief Prosecutor (or designate) must set out the exceptional circumstances in writing and attach them to the file. Intimate partner violence offences and criminal driving offences are only eligible for diversion if a specific diversion program directed at this offence type has been specifically approved by the Assistant Deputy Minister, Alberta Crown Prosecution Service.

Offenders

Exceptional circumstances approval will only be granted where the use of diversion is not inconsistent with the protection of society. In assessing whether exceptional circumstances exist, account should be taken of:

- Any mental illness of the offender;
- Any disability of the offender; and
- The degree of harm to any victim.

In exceptional circumstances, offenders may be eligible for participation in AMP if they are a third time offender or there has been less than two years since their last involvement or conviction. In considering whether there are exceptional circumstances, the prosecutor should consider the nature of the offender's previous involvement with the criminal justice system, including:

- Prior interventions that have been unsuccessful;
- Recent participation in another diversion program; or
- Where they have recently been convicted of similar offences.

Particular attention must be paid to the cases of Indigenous offenders to ensure that no systemic barriers preclude Indigenous offender program referrals. The individual circumstances of an Indigenous offender should be considered in the context of the distinct situation of Indigenous persons in Canada.

AMP Agreements

AMP is administered by the Correctional Services Division of the Ministry of Justice and Solicitor General. AMP agreements must be negotiated with a view to the offender's ability to carry out its terms and bearing in mind the personal circumstances of the offender, such as:

- Age;
- Full-time attendance in school or other day programs;
- Employment status; and
- The time available in which to complete the agreement.

The conditions of the agreement will not be more onerous than those which it is expected would have been imposed by the court. Every effort should be made to ensure that the victim receives full restitution or compensation in addition to any other sanctions that may be imposed, having regard to the ability of the offender to pay.

AMP agreements will consist of the following conditions:

1. To be under the supervision of a probation officer or other service provider as specified by the Correctional Services Division, and reporting as directed by the probation officer or service provider until the conditions of the agreement are satisfactorily completed;
2. Where a victim is available and freely consents, participation in a victim/offender reconciliation program as negotiated through an agreement; and
3. A combination of **no more than three** other conditions appropriate to the situation. These may include, but are not limited to, the following:
 - (a) Personal or written apology to victim(s);
 - (b) Personal service to victim(s);
 - (c) Community service to a non-profit community or government agency;
 - (d) Donation to a registered charity;
 - (e) Participation in Indigenous cultural/spiritual activities;
 - (f) Attendance and participation in an available community counselling or intervention program as available and appropriate. (Counselling will not occur on a fee-for-service basis unless alternative funding can be obtained.);
 - (g) Completion of an essay or poster;
 - (h) Restitution/compensation/return of property to victim(s);
 - (i) Participation in a restorative justice program as available and appropriate; and
 - (j) Compliance with any other appropriate and reasonable condition.

If the terms of an agreement are successfully completed, the prosecutor will withdraw the underlying charge(s).