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# Alternative Measures in Canada - 1998



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# Alternative Measures in Canada - 1998

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# **ALTERNATIVE MEASURES IN CANADA**

**PREPARED BY  
BARRY MACKILLOP**

**CORRECTIONAL SERVICES PROGRAM  
CANADIAN CENTRE FOR JUSTICE STATISTICS**

February 1999

Aussi disponible en français

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## Introduction

The report, which represents the first phase of a special study commissioned by the National Justice Statistics Initiative<sup>1</sup>, is intended as a reference document on administrative and operational policies with respect to alternative measures for both youth and adults in Canada. The study focused on the collection of national descriptive information on the organization and delivery of youth and adult alternative measures established pursuant to the *Young Offenders Act (Canada)* (1984) and the *Sentencing Reform Act* (1996). This is viewed as an important and necessary step in order to subsequently place quantitative jurisdictional differences in proper context.

In an effort to ensure a consistent focus across all jurisdictions in Canada, it was essential that the underlying terms of diversion and alternative measures be clearly defined. For the purposes of this report, the term *diversion* is used to identify the **process** of diverting youth or adults who commit acts that could be considered criminal away from the traditional court system. The concept of *diversion* encompasses several different actions or approaches including, but not limited to, the use of police discretion not to lay charges, informal police warnings, and informal police referrals to community-based recreation services and informal police referrals to individual or family intervention services. The process of *diversion* may also include formal referrals to authorized Alternative Measures programs.

The term *Alternative Measures*, which is the focus of this report, refers to formalized programs other than judicial proceedings which may be at the pre or post-charge stage, and that are designed to balance society's right to protection with the needs of youth and adults in conflict with the law.

With respect to youth, *Alternative Measures* include programs which have been **authorized** by the Attorney General or his/her delegate or authorized by a person, or a person within a class of persons, designated by the Lieutenant Governor in Council pursuant to **S.4** of the *Young Offenders Act*. Within jurisdictions, these authorized *Alternative Measures* may be offered at the **pre-charge** stage, the **post-charge** stage, or **both**.

The **delivery** of *Alternative Measures* may be through government agencies such as probation or corrections, through non-governmental organizations, or through *Youth Justice Committees* which have been **established and designated** as such by the Attorney General or other such Minister as the Lieutenant Governor in Council pursuant to **S.69** of the *Young Offenders Act*.

With respect to adults, *Alternative Measures* include programs which have been **authorized** by the Attorney General or his/her delegate or authorized by a person, or a person within a class of persons, designated by the Lieutenant Governor in Council pursuant to **S.717** of the *Criminal Code of Canada*. Within

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<sup>1</sup> The national Justice Statistics Initiative includes representatives from Statistics Canada and all provincial/territorial and federal departments that have responsibility for the administration of justice in Canada.

jurisdictions, these authorized *Alternative Measures* may be offered at the **pre-charge** stage, the **post-charge** stage, or **both**.

## **The Canadian Centre for Justice Statistics**

In 1981, the Chief Statistician and the federal and provincial / territorial Deputy Ministers with justice responsibility in Canada established the National Justice Statistics Initiative. Its purpose is to develop Canada's system of justice statistics and information in order to support the administration of justice in Canada, and to ensure that accurate information regarding the nature and extent of crime and the administration of justice is available to the Canadian public.

The responsibility for Canada's system of justice is shared between the federal and provincial / territorial governments representing some twenty-nine government departments. The lead responsibility for the development of Canada's statistical system rests with Statistics Canada. Its Mandate is to inform Canadians on the conditions and prospects of Canadian society. The term "Initiative" refers to the "partnership" among the federal and provincial / territorial departments with justice responsibility and Statistics Canada. The National Justice Statistics Initiative is unique in that it represents a collaborative effort in which all jurisdictions share authority and responsibility for developing and achieving common objectives.

The governing body of the Initiative is the Justice Information Council (JIC). The JIC is chaired by the Deputy Minister of Justice, Canada and consists of the federal and provincial / territorial Deputy Ministers with justice responsibility and the Chief Statistician. The operational arm of the Initiative is the Canadian Centre for Justice Statistics. The work of the Centre is overseen by the Liaison Officers Committee (LOC). The LOC is chaired by a member of the JIC. Its membership consists of one departmental official appointed by each member of the JIC and a representative of the Canadian Association of Chiefs of Police. With their guidance, the Centre develops and implements statistical surveys, assists with the development of automated operational systems, and provides information products and services to the Partners in the Initiative and to the public.

## **Project Background**

During the 1996 strategic planning exercise, alternative measures was identified as an important existing information gap. It was suggested that the CCJS undertake a special study on alternative measures (AM) for youth and adults in Canada. The descriptive aspect of the study proposed to gather information on the legal and operational responsibilities of federal, provincial, territorial and local agencies involved in AM. This type of information was seen to be valuable for understanding the administration of AM within jurisdictions and to explain and provide context to jurisdictional data.

After a pilot test and two annual data collection cycles (1990-91 and 1991-92), the CCJS published *Alternative Measures for Young Persons in Canada* in June 1993. The publication provided an overview of alternative measures as well as

jurisdictional profiles describing policy and process, and data on numbers referred and their characteristics, offences, agreements reached, types of alternative measures employed, and compliance. The subsequent evaluation report titled *A Review of the Alternative Measures Survey: 1991-92*, found that although the information contained in the 1993 report was useful insofar as the information cited above was concerned, two objectives of the national survey had not been achieved. First, program differences undermined inter-jurisdictional comparability. Second, the unavailability of data from some jurisdictions made it impossible to measure national volumes. At that time, however, alternative measure programs were still relatively new, and the state of jurisdictional data collection relatively undeveloped. An important component of this study was to assess the current state of data collection and recommend whether or not to restart a national alternative measures survey.

In recent years, there has been a move toward the use of alternative measures for adults. The Sentencing Reform Bill (C-41), proclaimed on September 3, 1996, encourages the use of alternative measures and sets out guidelines governing the establishment of programs and eligibility criteria. It was seen as opportune, therefore, that the Initiative establish national data requirements for adult alternative measures programs in order to provide guidance to jurisdictions in the area of data gathering.

## **Methodology**

The first phase of the descriptive alternative measures project was to design and circulate a consultation document to assist Working Group members with the identification of specific descriptive information requirements of national interest about the organization and delivery of alternative measures in Canada for both youth and adults. This document also served an exploratory function in assessing jurisdictional capabilities to provide certain data and in identifying associated respondent burden.

Working Group members were asked to complete the consultation document and comment on the content of the proposed report to ensure that their jurisdictional interests were being addressed. Working Group members forwarded the required information to the CCJS, which was then incorporated into this report. Each jurisdictional chapter, as well as the national overview chapter, was then circulated to the affected jurisdictional Working Group member for review and verification.

## **Organization of the Report**

This report begins with a National Overview of alternative measures for both youth and adults in Canada. The National Overview chapter includes specific references to applicable sections of the *Young Offenders Act (Canada)* and the *Criminal Code of Canada* and is used as a reference for such throughout the other chapters. Each jurisdiction is then presented in successive chapters or sections. Each chapter is designed with its own Table of Contents with the format

maintained throughout all chapters in order to facilitate cross-referencing information between jurisdictions.

Topics covered include the philosophy of alternative measures, responsibility for program delivery, referral agent, the role of the police, the Crown, and the victim, the right to legal counsel, eligibility criteria, a flowchart outlining the alternative measures process, a description of the alternative measures agreement, the range of alternative measures, the supervision of and completion of the agreement, and information regarding record keeping requirements. Where available, appendices have been attached that provide samples of forms currently in use in the jurisdictions as well as any currently available alternative measures data. It is important to note that the data contained in the jurisdictional appendices are provided as a sample only. No analysis has been performed on the data nor has any inter-jurisdictional comparisons been made as there has been no attempt to ensure standard definitions or time frames for the data.

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# 1. National Overview

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## 1.1 The Philosophy of Alternative Measures

The term *alternative measures* refers to formalized programs across Canada other than judicial proceedings that are designed to balance society's right to protection with the needs of youth and adults in conflict with the law.

Section 4 of the *Young Offenders Act (Canada)* establishes the legal framework for the operation of alternative measures programs for youth and states:

4. (1) Alternative measures may be used to deal with a young person alleged to have committed an offence instead of judicial proceedings under this Act only if
  - (a) the measures are part of a program of alternative measures authorized by the Attorney General or his 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 such measures is satisfied that they would be appropriate, having regard to the needs of the young person and the interests of society;
  - (c) the young person, having been informed of the alternative measures, fully and freely consents to participate therein;
  - (d) the young person has, before consenting to participate in the alternative measures, been advised of his right to be represented by counsel and been given a reasonable opportunity to consult with counsel;
  - (e) the young person accepts responsibility for the act or the omission that forms the basis of the offence that he is alleged to have committed;
  - (f) there is, in the opinion of the Attorney General or his 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 young person alleged to have committed an offence if the young person
  - (a) denies his participation or involvement in the commission of the offence; or
  - (b) expresses his wish to have any charge against him dealt with by the youth court

This section was designed to provide considerable flexibility to the provinces/territories in the implementation of programs while protecting the rights of the youth. For instance, a young offender must acknowledge responsibility for the act and consent to the alternative measure that is being suggested. The youth also has the right to consult a lawyer and the right to choose to have the case proceed to court. Although section 4 was held by the Supreme Court of Canada to not require a province/territory to establish a program of alternative measures<sup>1</sup>, and further that failure of the Attorney General to authorize alternative measures does not violate s.15 of the *Charter*, all provinces/territories do currently provide alternative measures programs for youth.

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<sup>1</sup> R.v.S.(S)(1990), 57 C.C.C. (3d) 115, [1990] 2 S.C.R. 254

With the exception of New Brunswick, Ontario and Yukon, all alternative measures programs for youth in Canada are combined pre and post-charge

Alternative measures are available in all jurisdictions for youth and in several jurisdictions for adults. Most of those jurisdictions that do not presently offer programs for adults are in the process of developing these. Alternative measures may be offered at the pre-charge stage, the post-charge stage, or both and are intended as an alternative to the formal criminal justice system process.

programs with the preference, and the general practice, being that youth are referred at the pre-charge stage (i.e., before charges are laid). In New Brunswick, the alternative measures program operates at the pre-charge stage only. In Ontario, youth are only referred to alternative measures programs at the post-charge stage, which means that charges are laid prior to a referral. In Yukon, the general practice is to refer youth to the alternative measures program at the post-charge stage, although, on

occasion, they may be referred at the pre-charge stage. In jurisdictions where the usual practice is to refer youth at the pre-charge stage, the post-charge option is often one that is available to the Crown. This option may be used in cases where the Crown wishes to preserve jurisdictional time lines. Generally, with summary or hybrid offences, the measures must be completed within six months from the date of the offence, and within twelve months from this date for indictable offences. If the Crown stays the charge prior to referral, the time line starts on the date of the stay instead of on the date of the alleged offence as is the case with pre-charge referrals. In Quebec, the Crown may use the post-charge option to suspend judicial proceedings in order to have the opportunity to forward the case to the Provincial Director for consideration of alternative measures.

With respect to adults, the proclamation of *Bill C-41* in September 1996 provided for the establishment of formal adult alternative measures programs. These programs are authorized pursuant to section 717 of the *Criminal Code (Canada)* and contain the following provisions:

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 alternative measures, fully and freely consents to participate therein;
- (d) the person has, before consenting to participate in 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.

As with the alternative measures programs for youth, this section offers

considerable flexibility to the provinces/territories in both the decision to establish alternative measures programs for adults as well as the method in which these programs will be offered. At the present time, most adult alternative measures programs have been developed based on the existing alternative measures programs for youth. This is the case in Prince Edward Island, Manitoba, Saskatchewan, Alberta, and British Columbia where the adult programs are usually offered at the pre-charge stage, with a post-charge option. In New Brunswick, an adult pre-charge

As with the youth programs, the provinces/territories have wide latitude in the design of alternative measures programs for adults and in the choice of whether or not to implement these. In jurisdictions where programs are in operation, they tend to be modeled on the existing youth programs. The exception is Nova Scotia where the process is the same as that for youth but the adult programs are offered only at the post-charge stage.

program was implemented in March 1998 that is based on a restorative justice approach. In Nova Scotia, the program delivery is based on that of the youth programs. However, where the youth programs are offered primarily at the pre-charge stage, with a post-charge option, the programs for adults are only offered at the post-charge stage. Newfoundland, Quebec, and Yukon are presently developing adult alternative measures programs. In Ontario, there is a pilot adult diversion program in operation, although this program is not a formally authorized alternative measures program under section 717. They are exploring the possibility of expanding this program to other communities, but it is uncertain, at this time, whether the expansion, if it occurs, will include formal authorization of the programs. In the Northwest Territories, informal adult diversion may occur at the pre-charge stage through Justice Committees. Often a protocol agreement exists that may be signed by the Committee, the RCMP, the Northwest Territories Department of Justice and Justice Canada to recognize the diversion activity. These agreements, however, are not mandatory and do not constitute formal authorization as an alternative measures program pursuant to section 717 of the *Criminal Code Canada*). Post charge diversion decisions through the Attorney General's Policy on Alternative Measures, are the responsibility of Federal Prosecutors in the Northwest Territories. The utilization of Justice Committees are the same as with pre-charge diversion.

## 1.2 Responsibility for the Delivery of Alternative Measures

Although the legislation for alternative measures is under federal jurisdiction, the provincial and territorial governments have been given wide latitude in designing the delivery of programs to meet the specific needs within their respective jurisdictions. As a result there is not a single consistent entity across the country that is set up to deliver alternative measures programs for both youth and adults.

Within jurisdictions, the responsibility for the delivery of alternative measures programs for youth may be that of

The responsibility for delivering alternative measures programs for both youth and adults may be assumed by one agency/organization or shared among several. Generally, alternative measures programs are delivered by probation officers, community-based agencies, local Justice Committees, community volunteers or a combination of these.

one agency/organization or it may be shared among several agencies/organizations that are authorized to deliver the programs. Generally, alternative measures programs are delivered by probation officers, non-profit community-based agencies or by local volunteer Justice Committees or other community volunteers. In those jurisdictions where Justice Committees tend to

assume all or most of the responsibility, these Committees are established to reflect the specific needs of a local community and are authorized pursuant to section 69 of the *Young Offenders Act (Canada)* that states:

69. The Attorney General of a province or such other Minister as the Lieutenant Governor in Council of the province may designate, or a delegate thereof, may establish one or more committees of citizens, to be known as youth justice committees, to assist without remuneration in any aspect of the administration of this Act or in any programs or services for young offenders and may specify the method of appointment of committee members and the functions of the committees.

With the exception of Nova Scotia, most jurisdictions use the same model of delivery for adult programs as that which is used for the youth programs. Often the mandate on an existing Justice Committee will be expanded to include the provision of services to adults. In Nova Scotia, however, community-based non-profit agencies deliver the youth programs and probation officers deliver the adult programs.

## 1.3 Referral Agent

In most jurisdictions, referrals to alternative measures programs for both youth and adults, originate with the Crown Attorney. The referral happens either before charges are laid (pre-charge) or after charges are laid (post-charge). In the event the referral to alternative measures is made post-charge, the Crown Attorney will

enter a stay of proceedings until the alternative measures process is completed.

In most jurisdictions across Canada, referrals to alternative measures originate with the Crown Attorney. In some, such as Manitoba and the Northwest Territories, the police may be designated as referral agents. In New Brunswick, police officers are the designated attorney general agents for the purposes of alternative measures, and in Quebec, all referrals come from the Provincial Director.

With the exception of Ontario and the adult alternative measures programs in Nova Scotia, referrals are normally made at the pre-charge stage by the Crown Attorney with no need for the person to appear in court.

In some jurisdictions, such as Manitoba and the Northwest Territories the Crown Attorney may delegate the authority to refer persons to alternative measures to

the police. In New Brunswick, the Attorney General has designated senior police officers to act as attorney general agents for the purposes of considering alternative measures in accordance with Section 4 of the *Young Offenders Act (Canada)* and Section 717 of the *Criminal Code of Canada*. The province of Quebec is unique in that the Provincial Director has responsibility for reviewing cases and for initiating all referrals to alternative measures for youth.

#### 1.4 The Role of the Police

As the initial point of contact when an incident occurs, the police may play an important role in the overall delivery of alternative measures programs. When called to investigate a specific incident, police generally have three basic options to consider in deciding how best to proceed. Firstly, police in all jurisdictions can exercise discretion, even where an infraction of the law has occurred, not to lay a charge. In such cases, the police may give a warning or may send or accompany the person home. The police also have the option of laying a charge, or completing a Crown Brief in jurisdictions where charge approval rests with the Crown Attorney. The third option that police have is that of initiating a referral to alternative measures. In some jurisdictions, the police may initiate this referral through recommendations made in the completion of the documents forwarded to the Crown Attorney. Police may, in some jurisdictions such as Manitoba and the Northwest Territories, and the adult alternative measures program in Nova Scotia, refer cases directly to a formal alternative measures program. In New Brunswick, an investigating officer may refer a case to a Senior Police Officer, designated as an Attorney General Agent for consideration for alternative measures. The Senior Police Officer reviews the case to determine if it meets with prescribed conditions (e.g., scheduled offence, sufficient evidence to proceed with a charge, no pending charges, attitude of the accused and the victim). If the case meets with prescribed criteria, the case is forwarded to an Alternative Measures Coordinator who is responsible for determining whether or not to refer the case to an alternative measures committee for further action.

## 1.5 The Role of the Crown Attorney

Generally, the role of the Crown Attorney in the alternative measures process is to review the case to determine appropriateness for alternative measures, to ensure there is sufficient evidence to proceed with prosecution of the offence, and to ensure that prosecution is not in any way barred at law. When the Crown Attorney is satisfied that the person should be referred to alternative measures he/she will proceed with a referral to the appropriate person/organization responsible for delivering alternative measures. If the referral from the Crown Attorney is at the post-charge stage, such as is always the case in Ontario and is an option in other jurisdictions, the Crown Attorney will usually enter a stay of proceedings until the process is completed.

In Quebec, if the alleged offence committed by the youth is listed in section IV of the *Program of Alternative Measures (Quebec)* (see Chapter 6, s.6.19 for a complete list of offences), the Crown Attorney may refer the case to the Provincial Director to consider the appropriateness of using alternative measures or may authorize prosecution. If the offence is not listed in section IV (e.g., theft under), the Crown must refer the case to the Provincial Director for consideration of alternative measures.

In jurisdictions where the police are authorized to make referrals directly to alternative measures, the Crown may be consulted at the pre-charge stage prior to a referral being made.

In New Brunswick, the Alternative Measures program was modified changing significantly the role of the Crown Prosecutor in the alternative measures process. At the local level, the responsibilities of the Crown Prosecutor include dealing with the designated Attorney General's Agent (Senior Police Officer) on any alternative measures cases where there is a need for discussion or follow-up, and providing advice as requested. In the event a case is referred to the Crown Prosecutor for pre-charge screening and the Crown Prosecutor considers it to be a good candidate for the Alternative Measures Program, the Crown will discuss and refer it back for further consideration with the Attorney General's Agent (Senior Police Officer). If no consensus is reached, the matter will be resolved by the Regional Crown Prosecutor.

## 1.6 The Role of the Victim

The extent of victim participation in the alternative measures process and the role

Although victim participation is not a prerequisite to a person's participation in alternative measures, the victim's input is usually sought by the person/organization responsible for delivering alternative measures

they play differs across the country and often within jurisdictions. Quite often, the process used to negotiate an alternative measures agreement in part defines the role of the victim. In Saskatchewan, for example, victim-offender mediation is often the process chosen to arrive at an appropriate measure. In such cases, the participation of the victim is significant and

necessary, and in fact, should the victim choose not to participate, a surrogate victim may be used so that the alleged offender still derives the benefits of experiencing this type of mediation and victim awareness. In other jurisdictions where the process of negotiating an alternative measure consists of an interview with the alleged offender, the victim may not be required to be present.

Across the country, there are some common policies with respect to the role of the victim(s). Generally, the person/organization responsible for delivering the alternative measures program assumes the responsibility for contacting the victim. This is often done to determine if the victim would like to participate in the alternative measures process and to identify the impact of the alleged offence, including financial or property loss, and any other implications the offence has had on the victim. Quite often, the victim may be asked for recommendations they may have for ways in which reparation may be made. Although victim participation is desirable in alternative measures, if the victim chooses not to participate this will not affect the eligibility of an alleged offender for the program.

## 1.7 Right to Legal Counsel

The *Young Offenders Act (Canada)* and the *Criminal Code of Canada* both provide safeguards to ensure that persons who are referred, or are being considered for referral, to alternative measures have the opportunity to consult a lawyer regardless of whether the referral is at the pre-charge or the post-charge stage. Section 4 of the *Young Offenders Act (Canada)* states that:

- 4. (1) (c) the young person, having been informed of the alternative measures, fully and freely consents to participate therein;
- (d) the young person has, before consenting to participate in the alternative measures, been advised of his right to be represented by counsel and been given a reasonable opportunity to consult with counsel;

Section 717 of the *Criminal Code of Canada* provides the same protection for adults who are referred to alternative measures or are being considered for alternative measures. Section 717 states:

- 717.(1) (c) the person, having been informed of alternative measures, fully and freely consents to participate therein;
- (d) the person has, before consenting to participate in alternative measures, been advised of the right to be represented by counsel

The police may, as the first contact with the young person or adult, inform the person of their right to consult counsel prior to agreeing to participate in alternative measures. However, the person/organization that is responsible for the delivery of alternative measures, generally assumes responsibility for ensuring that the person consents to participate, has had an opportunity to

consult counsel, and accepts responsibility for the act or omission that forms the basis of the alleged offence. As a usual practice, these conditions are stipulated on the alternative measures agreement form that is signed by the young person or adult as acknowledgement of the facts.

## 1.8 Eligibility Criteria

The young person's or adult's eligibility to participate in an alternative measures program is assessed according to several criteria. Generally, the evidence in the case, past contact with the criminal justice system, and the nature of the alleged offence are examined along with the attitudes of the person in order to determine their eligibility. The combination of applicable criteria differs across Canada.

Section 4 of the *Young Offenders Act (Canada)* and Section 717 of the *Criminal Code of Canada* outline the mandated conditions governing the eligibility criteria with respect to the evidence in the case. These must be satisfied prior to the Crown Attorney, the police, or the Provincial Director (for youth in Quebec) referring a person to alternative measures. Section 4 states that:

- 4. (1)(f) there is, in the opinion of the Attorney General or his 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 young person alleged to have committed an offence if the young person
  - (a) denies his participation or involvement in the commission of the offence; or
  - (b) expresses his wish to have any charge against him dealt with by the youth court

Section 717 states that:

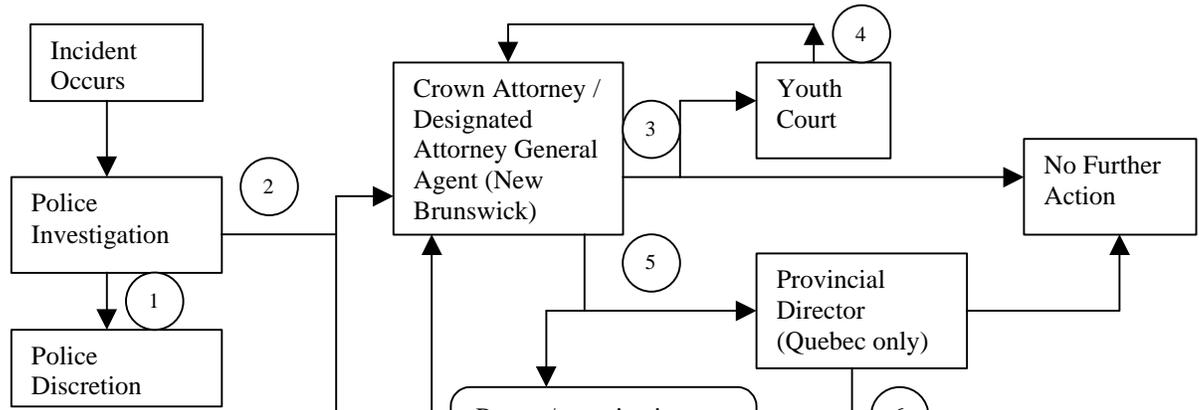
- 717. (1) (f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and
  - (h) the prosecution of the offence is not in any way barred at law.
- (2) Alternative measures shall not be used to deal with a 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.

Alternative measures are generally reserved for persons who have come into contact with the justice system for the first time or who have had no involvement within the previous two years. The Crown, the Provincial Director or, in some

cases, the person/organization delivering the alternative measures program may use discretion in authorizing alternative measures for persons with court records or previous experience in alternative measures. Generally, a person who is serving a custodial sentence or who is presently on probation is not eligible for alternative measures, nor is a person who has other pending charges before the courts.

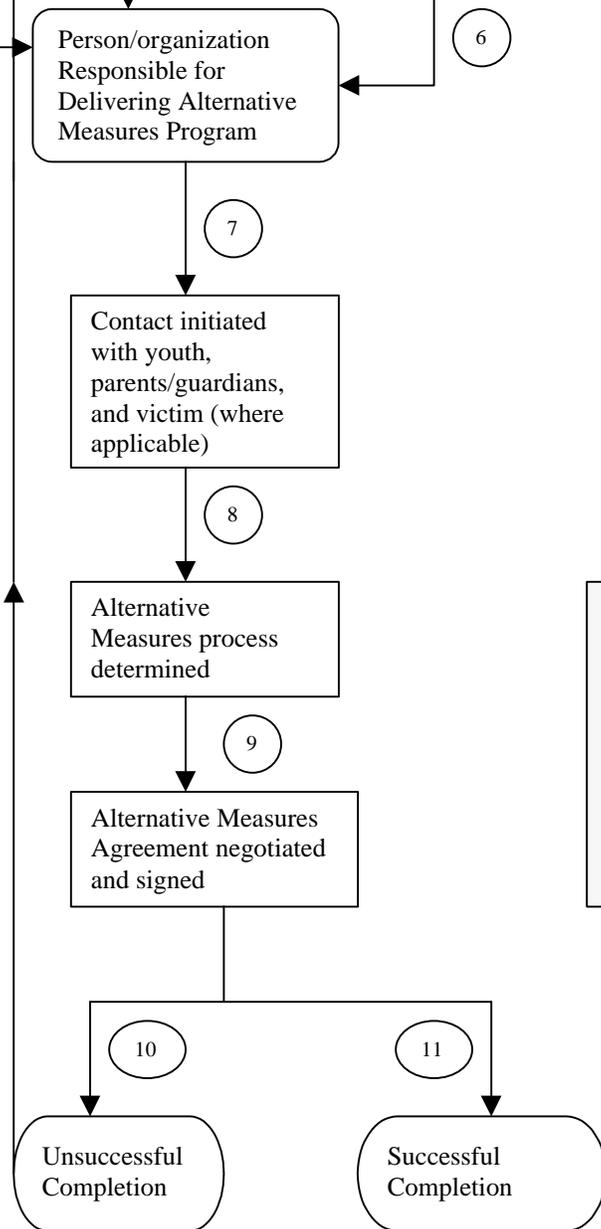
With respect to the offences that are considered eligible for alternative measures, there are considerable variations across the country. In Quebec, for example, all offences are eligible for consideration for alternative measures. In New Brunswick a schedule of offences for consideration for alternative measures has been developed, and British Columbia has also developed offence categories for consideration for alternative measures. In the other provinces and territories, offences that are generally considered ineligible for alternative measures include such offences as murder, manslaughter, major assaults, sexual assaults, domestic violence, narcotic offences and offences related to impaired driving. The decision to include or exclude offences for consideration is usually a reflection of the needs and wishes of the jurisdiction and in some cases, such as the Northwest Territories, this decision reflects the specific needs and abilities of a local community as identified by the local Justice Committee.

## 1.9 Alternative Measures Process for Youth



### LEGEND

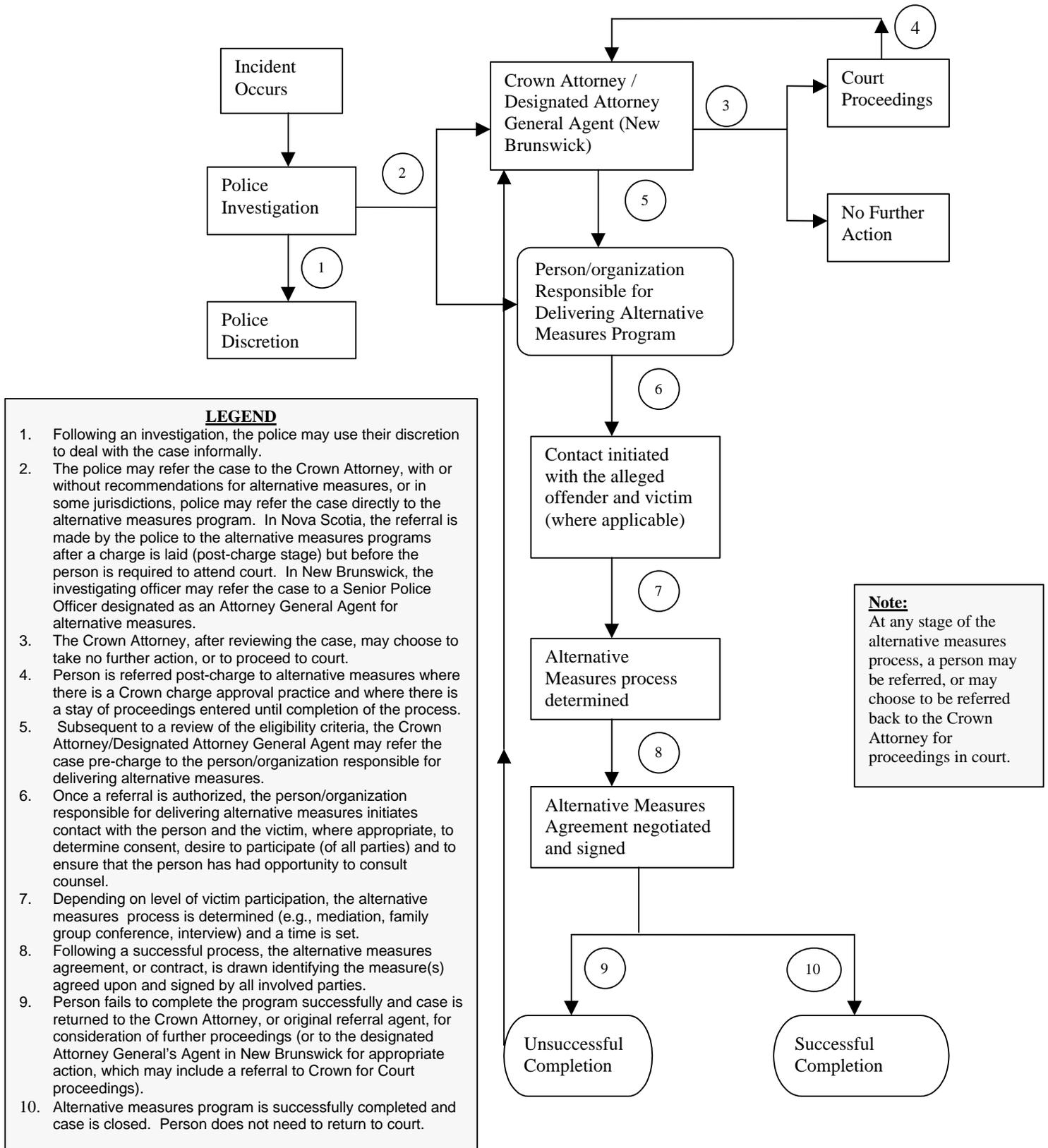
1. Following an investigation, the police may use their discretion to deal with the case informally.
2. The police may refer the case to the Crown Attorney, with or without recommendations for alternative measures, or in some jurisdictions, police may refer the case directly to the alternative measures program. In New Brunswick, the investigating officer may refer the case to a Senior Police Officer designated as an Attorney General Agent for alternative measures.
3. The Crown Attorney, after reviewing the case, may choose to take no further action, or to proceed to youth court.
4. Youth is referred post-charge to alternative measures (This is the case in Ontario and Yukon and is an option elsewhere.)
5. The Crown Attorney/Designated Attorney General Agent may, dependent on eligibility criteria, refer the case pre-charge to the person/organization responsible for delivering alternative measures, or in the case of Quebec, refer the case to the Provincial Director.
6. In Quebec, the Provincial Director will authorize alternative measures, decide to take no further action, or refer the case back to the Crown Attorney for youth court proceedings.
7. Once a referral is authorized, the person/organization responsible for delivering alternative measures initiates contact with the youth, the parents and the victim where appropriate to determine consent, desire to participate (of all parties) and to ensure youth has had opportunity to consult counsel.
8. Depending on level of victim participation, the alternative measures process is determined (e.g., mediation, family group conference, interview) and a time is set.
9. Following a successful process, the alternative measures agreement, or contract, is drawn identifying the measure(s) agreed upon and signed by all involved parties.
10. Youth fails to complete the program successfully and case is returned to the Crown Attorney for consideration of further proceedings (or to designated Attorney General's Agent in New Brunswick for appropriate action, which may include a referral to Crown for Youth Court processing).
11. Alternative measures program is successfully completed and case is closed. Youth does not need to return to court.



### Note:

At any stage of the alternative measures process, the youth may be referred, or may choose to be referred back to the Crown Attorney for proceedings in youth court.

## 1.10 Alternative Measures Process for Adults



## 1.11 The Alternative Measures Agreement

The alternative measures agreement is the document that outlines the contract between the young person or the adult and the person/organization responsible for delivering the alternative measures program. This binding contract forms the basis for the completion of the alternative measures process. The terms and

The alternative measures agreement is a binding contract that outlines the terms and conditions agreed upon through the alternative measures process. Ideally, the measures are reflective of and address the needs of the alleged offender, the victim and those of the community.

conditions of the agreement are tailored to fit the circumstances of the offence, taking in to account the attitude and motivation of the person as well as the needs and concerns of the community as represented through the local Justice Committee, probation officer, community-based agency or other persons delivering the alternative measures program. The conditions may

also reflect the victim's views and opinions, the availability of community resources, and the impact of the offence on the local community and its members.

The contract generally contains a mention of the offence(s) alleged against the person, the nature of the measures agreed upon including the terms and conditions of their application, and the duration of the agreement. The contracts must also respect jurisdictional timelines which means, generally, for cases referred at the pre-charge stage for a summary or hybrid offence(s), that the measures are to be completed within a six month time period from the date the offence was allegedly committed, and within twelve months from this date for indictable offences. If the charge is stayed and hence the referral is made at the post-charge stage, the time line commences on the date of the stay of proceedings and is set at six months for summary offences and twelve months for hybrid or indictable offences. In Quebec, the jurisdictional timeline is set at 6 months regardless of the type of infraction.

The alternative measures agreement usually contains a declaration by the young person or adult that includes acknowledging responsibility for the alleged offence, and indicating that he/she does not wish to have the charge dealt with by the court. As well, the agreement usually indicates that the person has been advised of his/her right to legal counsel and been given an opportunity to consult a lawyer, that he/she has been informed of the alternative measures proposed, and that he/she fully and freely consents to participate in the alternative measures. The agreement may also include reference to the legal implications of failing to complete the measures, such as the fact that the case may be returned to the Crown for court proceedings, and that the application of alternative measures does not prevent a victim from instituting civil proceedings for damage caused. The alternative measures agreement is normally signed by the participating young person or adult and the representative of the agency/organization responsible for delivering the alternative measures program and copies given to all. In the case of young persons, the parent/guardian may also be requested to sign the agreement.

## 1.12 The Range of Alternative Measures

The alternative measures agreement identifies the terms and conditions of the young person or adult's participation in alternative measures. The person participating in alternative measures may be requested to complete one or more measures for varying periods of time in the community. The person/organization responsible for delivering alternative measures has the option of imposing no measures, particularly in cases where the alleged offender has already made reparation to the victim or in the case of young persons, where the parents have imposed some sanctions on the young person. The following is a list of the typical types of measures available:

- ❑ *Apologies or Conciliation* either written or in person where appropriate;
- ❑ *Essays or Posters* that generally focus on crime prevention;
- ❑ *Restitution/Compensation* through financial compensation to the victim;
- ❑ *Charitable Donations* to a non-profit charity in the community
- ❑ *Personal Services* rendered to the victim where appropriate and desired by the victim;
- ❑ *Educational Programs* such as "Stoplift", which is a program aimed at educating people about shoplifting and its impacts on the community and business, or other educational program that relates specifically to the alleged offence;
- ❑ *Counselling/Treatment* for the underlying issues that led to the person's involvement in the criminal justice system. Alternative measures allows for referrals to be made to counselling or treatment centres; however, participation in counselling or treatment cannot be imposed as an alternative measure;
- ❑ *Community Service* whereby the person performs a predetermined number of hours of volunteer community service work to a non-profit agency in the community (the maximum number of hours a person may be requested to complete varies across the country from 50 to 120 hours);
- ❑ *Parental Action Letters* which are sent to the parents/guardians and young persons involved for the first time in the criminal justice system and who have allegedly committed minor property offences (these letters are used, for example, in Manitoba and British Columbia often with first time referrals to alternative measures for youth);
- ❑ *Other* measures found across Canada include social skills improvement courses (in Quebec) and, in Manitoba, an option of implementing traditional consequences that focus on culturally-specific measures (particularly in Aboriginal communities).

### 1.13 Supervision of Alternative Measures Agreement

The person/organization responsible for administering alternative measures is responsible for monitoring all aspects of the alternative measures agreement on an ongoing basis. Community-based agencies, public sector agencies (such as probation officers), local Justice Committees, community volunteers, or a combination of the above assume this responsibility. The supervision of the agreement often entails facilitating the completion of the conditions, completing all required documentation, notifying all parties of the status of the agreement, and ensuring that all contract conditions are completed, or are otherwise referred back to the Crown or to the original referral source.

### 1.14 Completion of Agreement

A young person or adult may complete the terms and conditions of his/her participation in alternative measures successfully, partially successfully, or unsuccessfully. Once the terms of the agreement are fully satisfied, the case is closed and charges, if any, (as in the case of post-charge referrals) are dismissed without need for the person to reappear in court. The person/organization responsible for delivering alternative measures usually forwards notification of completion of the alternative measures to the Crown or the original referral agent.

Section 4 (4) of the *Young Offenders Act (Canada)* states that:

4. (4) The use of alternative measures in respect of a young person alleged to have committed an offence is not a bar to proceedings against him under this act, but
- (a) where the youth court is satisfied on a balance of probabilities that the young person has totally complied with the terms and conditions of the alternative measures, the youth court shall dismiss any charge against him; and
  - (b) where the youth court is satisfied on a balance of probabilities that the young person has partially complied with the terms and conditions of the alternative measures, the youth court may dismiss any charge against him if, in the opinion of the court, the prosecution of the charge would, having regard to the circumstances, be unfair, and the youth court may consider the young person's performance with respect to the alternative measures before making a disposition under this Act.

In reference to adults, section 717 (4) of the *Criminal Code of Canada* also states that:

717. (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.

When a person has only partially completed the terms and conditions of the alternative measures agreement, the person/organization responsible for delivering the program generally indicates the reason(s) for the partial completion and forwards this information to the Crown or the designated Attorney General Agent who is responsible for forwarding the information to the Crown. The Crown is then responsible for deciding, based on the above provisions, whether or not the person is to return to court.

A person may be considered as unsuccessful in alternative measures when he/she cannot be located, shows an unwillingness to complete the terms and conditions of the alternative measures agreement, refutes his/her earlier acceptance of responsibility or involvement in the alleged offence(s), or wishes to have his/her case dealt with by the court. In such cases, the person/organization responsible for delivering alternative measures generally refers the case back to the Crown or the original referral agent who may close the case and take no further action, consider another term in alternative measures, or choose to proceed with prosecution of the case. In New Brunswick, information is forwarded to the Attorney General Agent (Senior Police Officer) if the case is not completed successfully who in turn forwards the full information to the Crown for consideration on whether or not to proceed to court.

### 1.15 Record Keeping

The provisions of the *Young Offenders Act (Canada)* and the *Criminal Code of Canada* govern all records pertaining to alternative measures. Generally, the person/organization responsible for delivering alternative measures is responsible for ensuring that all required documents are duly completed and filed with the appropriate provincial/territorial ministry.

Section 45 of the *Young Offenders Act (Canada)* outlines the provisions on disclosure and the specified time periods for records pertaining to a young person's involvement in alternative measures. It states that:

45. (1) Subject to sections 45.01, 45.1 and 45.2, records kept pursuant to sections 40 to 43 may not be made available for inspection under section 44.1 or 44.2 in the following circumstances:

- (d) where alternative measures are used to deal with the young person, on the expiration of two years after the young person consents to participate in the alternative measures in accordance with paragraph 4(1)(c);
- (2) Subject to subsections (2.1) and (2.2) when the circumstances set out in subsection (1) are realized in respect of any record kept pursuant to section 41, the record shall be destroyed forthwith.
- (3) A young person shall be deemed not to have committed any offence to which a record kept pursuant to sections 40 to 43 relates when the circumstances set out in paragraph (1)(d), (e) or (f) are realized in respect of that record.

The *Young Offenders Act (Canada)* provides that records be flagged for non-disclosure after a period of two years after the young person consents to participate in the alternative measures program. For adults, the records are subject to non-disclosure, except for the purposes of completing court reports, after two years at the end of the period for which the person agreed to participate in the alternative measures program.

With respect to adults involved in alternative measures, section 717 describes the regulations on record keeping and disclosure as follows:

717.2 (1) A record relating to any offence alleged to have been committed by a person, including the original or a copy of any fingerprints or photographs of the person, may be kept by any police force responsible for, or participating in, the investigation of the offence.

(2) A peace officer may disclose to any person any information in a record kept pursuant to this section that it is necessary to disclose in the conduct of the investigation of an offence.

717.3 (1) A department or agency of any government of Canada may keep records containing information obtained by the department or agency

(a) for the purposes of an investigation of an offence alleged to have been committed by a person;

(b) for use in proceedings against a person under this Act; or

(c) as a result of the use of alternative measures to deal with a person.

(2) Any person or organization may keep records containing information obtained by the person or organization as a result of the use of alternative measures to deal with a person alleged to have committed an offence.

717.4 (5) A record kept pursuant to section 717.2 or 717.3 may not be introduced into evidence except for the purposes set out in paragraph 721(3)(c) [court reports], more than two years after the end of the period for which the person agreed to participate in the alternative measures.

Usually, records pertaining to participation in alternative measures programs for both youth and adults are maintained in a central location within the province/territory for the required time period.

## 1.16 Conclusion

This chapter provides a general description of the administration of alternative measures programs for youth and adults in conflict with the law in Canada. Each province/territory is responsible for administering their alternative measures program. However, they may accomplish this in different ways. Some provinces/territories administer alternative measures programs through the appropriate government department. Some contract to non-governmental agencies, and, finally, some rely on volunteer Committees such as Community Justice Committees or Alternative Measures Committees.

Alternative measures programs provide an alternative to the formal criminal justice process and have the potential to involve the offender, their families, the victims, and other members of the community. As a result, the offender not only assumes responsibility for his/her actions but may also gain an understanding of the effects of the offence on the victim and the community.

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## 2. Newfoundland

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## 2.1 The Philosophy of Alternative Measures

Alternative measures (AM) are formalized programs that provide a direct alternative to judicial proceedings for some young persons who are alleged to have committed an offence. The term Alternative Measures is used to describe formal and structured community-based programs that are authorized by the Minister of Health and Community Services as well as by the Attorney General of the Province. Requests for program authorization are submitted through the local district office of the Department of Health and Community Services to the Division of Child Welfare and Community Corrections.

Alternative measures for youth are normally operated at the pre-charge stage by Youth Justice Committees.

The use of alternative measures is consistent with the philosophy, mandate and goals of the Department of Health and Community Services and the Community Corrections Program, especially in the extent to which community participation is possible and desirable. The model chosen for alternative measures program development is one of volunteer community management in partnership with Departmental support and consultation. The vehicle for community involvement is through Youth Justice Committees established pursuant to Section 69 of the *Young Offenders Act* (see Chapter 1, s.1.2 for the wording of this section).

Referrals to alternative measures will normally be of a pre-charge nature whereby no charge is laid in court. Referrals must, therefore, be dealt with and concluded within statute limitation periods, which are, currently, one year for indictable offences and six months for summary conviction offences.

## 2.2 Responsibility for the Delivery of Alternative Measures

### 2.2.1. Youth

In Newfoundland, the responsibility for delivering alternative measures for youth lies with established and recognized Youth Justice Committees. The desirability of direct community participation in Youth Justice programs stems from the enhanced ability to mobilize community resources, and in the visible demonstration that young persons can be held accountable directly to the community for their misdeeds. Further, it is a demonstration that the community may take a significant degree of responsibility for the problem behaviours of some of its youth. For community participation to be meaningful and so as to reflect valid community standards, it is necessary for the community to feel some degree of ownership and control of the program. A co-operative process between the Department, local police, Crown Attorney, and the community is essential to an effective alternative measures program; however, it is the community, through a Youth Justice Committee, that should assume a visible leadership role in the development and management of the program.

Volunteer community-based Youth Justice Committees assume delivery of alternative measures for youth in Newfoundland. There are presently 29 Youth Justice Committees.

Youth Justice Committees may be formed to facilitate the development of alternative measures as well as other youth justice programs for a particular community or district as a result of either a community initiative and/or a Departmental initiative. Committees that are formed at the community level must be authorized by the Minister of Health and Community Services to deal with any case that is referred to them from the Youth Justice System.

As well, in order to operate any alternative measures program, the Committee must be authorized to do so by the Attorney General of the Province, upon a recommendation from the Department of Health and Community Services. A request for program authorization, containing a statement of goals, program objectives and committee membership must be submitted through the local district office of the Department of Health and Community Services, to the Division of Child Welfare and Community Corrections. If the program proposal meets all requirements, the Provincial Director will make a recommendation to the Minister for designation of the committee as an authorized Youth Justice Committee, as well as a recommendation to the Attorney General of the Province (Minister of Justice) for authorization of the program as a duly designated alternative measures program.

Upon receipt of favourable notification from the Minister of Health and Community Services and the office of the Attorney General, the Youth Justice Committee can proceed with the implementation of an alternative measures program. The Committee must ensure, prior to accepting referrals, that all required information has been obtained on all program volunteers including letters of reference, certificates of conduct and signed oaths of confidentiality, as per provincial policy requirements. In addition, the Committee is responsible for informing the Department of any changes to its membership.

#### 2.2.2. Adult

At the present time, there are no formal alternative measures for adults in the province.

### 2.3 Referral Agent

#### 2.3.1. Youth

As the first point of contact, the police are responsible for compiling reports and forwarding them to the Crown Attorney. These reports should contain all pertinent information concerning an offence and a young person's legal history. Upon review of the information, the Crown Attorney decides whether to refer the case to the Youth Justice Committee, based on established referral criteria. Upon receipt of a referral, the Youth Justice Committee may reserve the right to refuse to process the matter through the alternative measures program, if the committee believes that their particular program does not have sufficient information or resources available to proceed. Any refusal of a referral is based on pre-established eligibility criteria based on the circumstances of the alleged offence. The youth, themselves, are also entitled

to reject an offer of referral preferring instead to proceed by way of the normal court process.

#### 2.3.2. Adult

At the present time, there are no formal alternative measures for adults in the province.

### 2.4 The Role of the Police

#### 2.4.1. Youth

The police, as the first point of contact, play varied supportive roles in the planning, promotion and implementation of alternative measures programs. The police are responsible for conducting the investigation and gathering all the facts concerning the offence and for forwarding these reports or summaries to the Crown Attorney for a decision on how to proceed with the case. The knowledge that the police gain during the process of an investigation with respect to the needs and attitudes of the young person as well as the effect of the offence on the victim is often considered valuable in the structuring of an alternative measure. Such additional information may also be useful in helping determine the appropriateness of difficult referrals for alternative measures. The police may be in a position to offer a clear objective assessment of the case, beyond the physical facts, which may assist in many aspects of the alternative measures process.

As crime prevention officers, the police are often used as a resource to the alternative measures program to provide education, information and guidance on topics such as the consequences of crime, and attitudes toward victims, crime and the police. In addition, local Youth Justice Committees may consult with the local Crown Attorney's office and/or the local police detachment to determine, within general guidelines of eligibility, what types of offences should be subject to the alternative measures process.

#### 2.4.2. Adult

At the present time, there are no formal alternative measures for adults in the province.

### 2.5 The Role of the Crown Attorney

#### 2.5.1. Youth

The Crown Attorney is the decision-maker in referrals to any alternative measures program. The Crown Attorney must be of the opinion that there is sufficient

evidence to proceed with the prosecution of the offence and that prosecution of the alleged offence is in no way barred at law.

In considering the appropriateness of a referral, the Crown must take into account several factors. Upon receiving reports on offences by the police, the Crown will consider the recommendations of the police as well as whether or not a referral would be in the best interests of the young person and society in addition to whether or not the young person meets the provincial requirements. The Crown also has the discretion to consider mitigating factors that may make a case normally excluded from the criteria, suitable for alternative measures.

The Crown Attorney also acts as a resource person to the local Youth Justice Committee in training, program planning and policy formulation. The Crown Attorney works in concert with the local Youth Justice Committee to establish referral criteria within the general eligibility guidelines.

#### 2.5.2. Adult

At the present time, there are no formal alternative measures for adults in the province.

## 2.6 The Role of the Victim

### 2.6.1. Youth

One of the guiding principles of alternative measures states that where possible, victims of offences shall be informed of the process as it relates to their situation and may be involved in all appropriate stages of the process. Although the agreement of the victim is not necessary for the young person to be dealt with through alternative measures when all other requirements are met, the victim's consent is required for any condition of an alternative measures contract that involves the young person having direct contact with the victim.

The local Youth Justice Committee is responsible, upon receipt of an eligible referral, for notifying the victim, if applicable, either by telephone, in person or by mail. The victim must be made aware of the decision to use alternative measures, must be informed of the process, and must be encouraged to participate, where appropriate. A determination of the general impact of the offence, the level of potential compensation and the wishes of the victim for restitution should also be made. If the victim does not wish to participate in the program, this will not preclude the young person from participating in the program but may have an effect on the measures employed.

## 2.6.2. Adult

At the present time, there are no formal alternative measures for adults in the province

## 2.7 Right to Legal Counsel

### 2.7.1. Youth

The right to legal counsel is clearly entrenched in the *Young Offenders Act*, section 4(1)(d) (see Chapter 1, s.1.7 for the wording of this section). It states that prior to a young person becoming involved in alternative measures, they must fully and freely consent to participate in the program having been given a reasonable opportunity to consult legal counsel. In the *Alternative Measures Standards and Practices Manual* of the Department of Health and Community Services, Division of Child Welfare and Community Corrections, the local Youth Justice Committee is charged with setting time limits for notification to all parties, keeping in mind the necessity to avoid any unnecessary delays. Among the parties to be notified, the young person and the young person's guardians must be informed of the decision to use alternative measures, the offence in question, the right to legal counsel, and the fact that an interview will be scheduled to discuss participation in the program.

### 2.7.2. Adult

At the present time, there are no formal alternative measures for adults in the province

## 2.8 Eligibility Criteria

### 2.8.1. Youth

Legislated criteria governing the eligibility criteria for formally authorized alternative measures programs across Canada are set out in the federal *Young Offenders Act* in sections 4(1) and 4(2) (see Chapter 1 s.1.8 for the wording of these sections).

In addition to the legislated criteria, the province identifies a number of criteria that must be met for a young person to be referred to an alternative measures program. A young person will be referred if the offence committed is one which has been designated as a referable offence within the parameters of the program, provincial policy and legislative requirements, and if the young person is a first time offender. The following criteria must also be met for referral to alternative measures:

- a) the young person was at least 12 years of age and was under 18 years of age at the time of the alleged offence;

b) the young person has no prior record of a finding of guilt under the Young Offenders Act or the Young Persons Offences Act (Newfoundland). In exceptional and extenuating circumstances, the Crown Attorney has the discretion, with the support of the local Youth Justice Committee to refer a young person with a prior record;

c) the young person has no previous record of prior successful completion of an alternative measures program. In exceptional and extenuating

In order to be eligible for referral, a young person must be a first time offender between 12 and 18 years old, have no prior record of a finding of guilt or prior completion of alternative measures, unless two years or more have passed since the latter happened. As well, the alleged offence must fall within the list of referable offences established by the local Youth Justice Committee and the Crown Attorney.

circumstances, the Crown Attorney has the discretion, with the support of the local Youth Justice Committee to refer a young person with a prior record of successful completion. If, however, a young person was referred to an alternative measures program but did not participate to the point of conclusion and was not subsequently found guilty of the alleged offence in court, they will be deemed to have no prior record. If at least two years have elapsed since a young person's completion of alternative measures they are once again eligible for referral;

d) the alleged offence must be one specified as being appropriate for inclusion in the alternative measures program, which the Crown Attorney and the Youth Justice Committee has predetermined, in accordance with the legislative requirements and provincial policy. The list of referable offences should be routinely followed as an objective determination of eligibility unless, in the opinion of the Crown Attorney, there are special circumstances related to the commission of the alleged offence that makes a referral of that matter to alternative measures, appear contrary to the public interest. As well, subject to acceptance by the local Youth Justice Committee, the Crown Attorney may refer offences not normally included in the established list.

In the *Standards and Practices Manual*, the Division of Child Welfare and Community Corrections provides a list of suggested offence criteria. The *Manual* indicates, however, that each alternative measures program may determine its own priorities and list of suitable offences for referral, bearing in mind the necessity to adhere to legislative requirements and provincial policy. The suggested list includes:

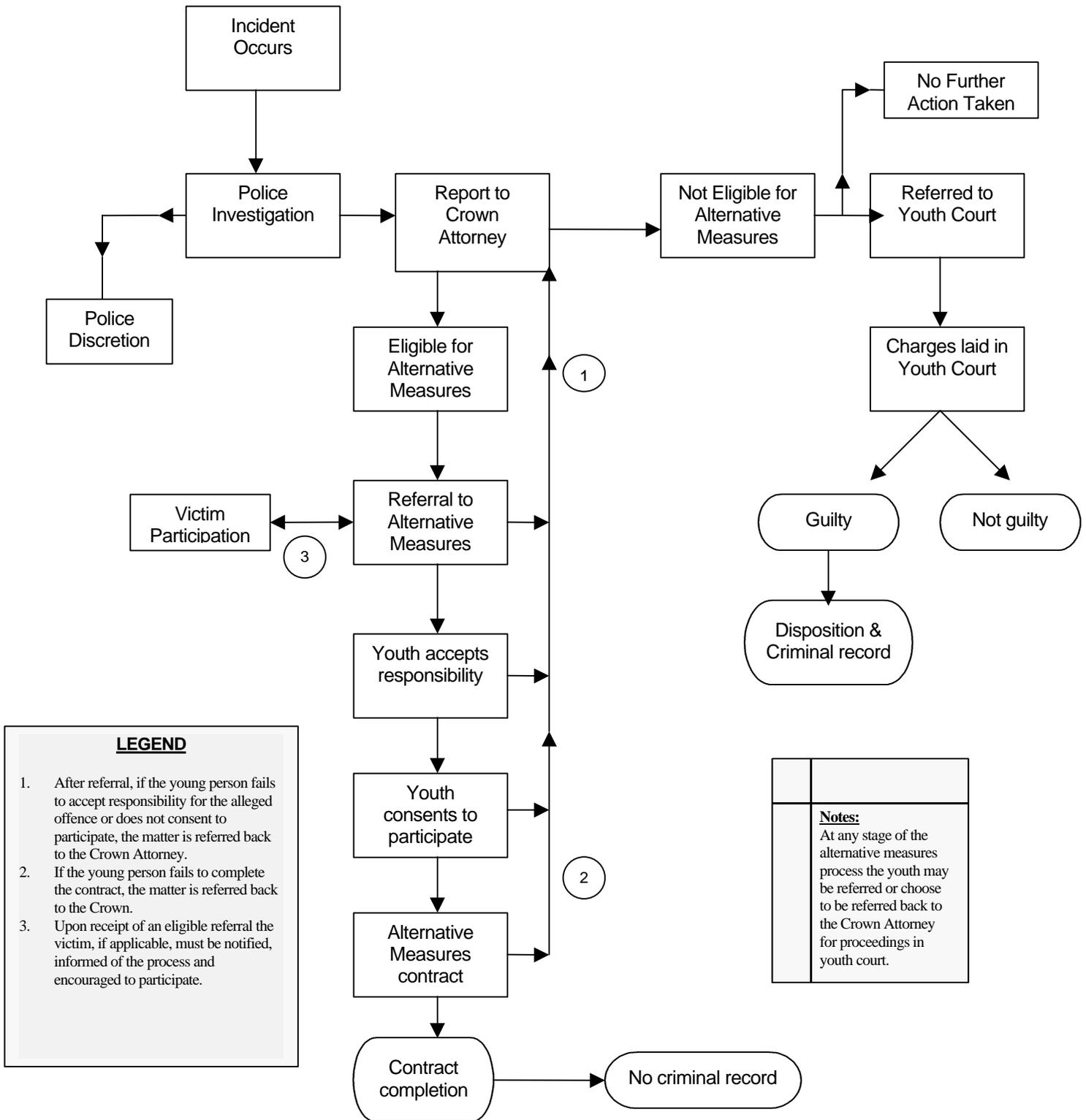
- a) certain property offences (with loss or damage to a maximum of \$3000.00) including theft, possession of stolen property, malicious damage, and mischief;
- b) break, enter and theft (to a maximum of \$3000.00);
- c) setting fire where there is no personal injury involved and loss or damage in under \$3000.00;
- d) fraud and uttering false cheques (to a maximum of \$3000.00);
- e) taking vehicle without consent;
- f) causing a disturbance;
- g) harassing telephone calls;

- h) assault (Section 265 and 266 Criminal Code of Canada) and uttering threats (Section 264.1 Criminal Code of Canada);
- i) all provincial statutes except *Highway Traffic Act*;
- j) all Municipal By-Laws except Municipal Traffic By-Laws
- k) simple possession of narcotics (*Narcotics Control Act* and controlled/restricted substances *Food and Drug Act*);
- l) offences committed under the *Motorized Snow Vehicles and All-Terrain Vehicles Act* (Newfoundland).

#### 2.8.2. Adult

At the present time, there are no formal alternative measures for adults in the province.

## 2.9 Alternative Measures Process for Youth



Once a referral from the Crown is received by a local Youth Justice Committee the Committee becomes responsible for notifying all parties including the young person, the parents or guardians and the victim, and for encouraging victim participation. Each program must set time limits for notification, keeping in mind the need to avoid unnecessary delays in the process.

While the victim's participation is not a prerequisite to the young person's participation in alternative measures, the Youth Justice Committee must make the victim, if applicable, aware of the decision to use alternative measures and of the process to be followed. The Committee, in discussion with the victim, will determine the impact

The local Youth Justice Committee is responsible for notifying all parties, talking to and encouraging the victim to participate and organizing the intake interview with the young person.

of the offence on the victim, the level of potential compensation and the victim's wishes with respect to restitution.

The young person, and the young person's parents or guardians will be informed in person, by telephone or by mail of the decision to use alternative

measures. They will also be informed of the offence in question, the right to consult legal counsel, and the fact that an interview will be scheduled to discuss participation in the alternative measures process. If no response is received to the initial efforts to contact the young person, the young person must be notified by certified mail. If, despite this, the efforts to contact the young person are unsuccessful, the referral will be returned to the Crown Attorney with the reason indicated

In the event that the young person agrees to the interview, a person authorized by the Youth Justice Committee will conduct an intake interview with the young person prior to obtaining consent to participate in alternative measures. This intake interview is done to assure that the statutory requirements of informed consent and acceptance of responsibility are met.

The intake interview must address several points (see Appendix 'A' s.2.16.1). First, the young person must be advised of the right to consult legal counsel before consenting to participate in alternative measures. Second, the young person must be provided complete information as

to the nature and the process of alternative measures. This includes a description of the case process, record disclosure provisions, and a description of other means available to deal with the case should the young person choose not to participate

There are three processes the Youth Justice Committee can use to negotiate an agreement:

1. Full mediation between the victim and offender
2. Mediation with the victim absent but victim's views and effects of the offence presented.
3. Alternative measures contract negotiated with intake interviewer on behalf of the Committee.

in alternative measures (i.e., court process and possible dispositions). Third, the young person must fully and freely accept responsibility for the offence and sign a written form of *Consent to Participate in Alternative Measures* (see Appendix 'A' section 2.16.2) if it is decided that the matter is to be dealt with through alternative measures. Where possible, parental consent is also sought although it is not mandatory. Should the young person decline participation, fail to accept responsibility for the offence or fail to consent to participate, the intake interview is

terminated and the case is returned to the Crown Attorney with the appropriate reasons cited.

Following the intake interview, the Committee will determine the process by which an agreement will be negotiated and may make recommendations for contract conditions. The actual negotiation of the alternative measures contract, however, should be facilitated through discussions with the young person and the victim wherever possible and appropriate. The *Standards and Practices Manual* states that an agreement will normally be achieved in one of the following ways:

- i) full mediation between the victim and the offender;
- ii) diversion meeting with the victim absent but the victim's views and effects of the offence are presented;
- iii) diversion meeting where the contract is negotiated with the intake interviewer on behalf of the Youth Justice Committee.

Where the victim is agreeable to participating in the process, matters referred to alternative measures may proceed through a victim-offender reconciliation process achieved through mediation. In this process, an independent third party facilitates the achievement of a mutually satisfying agreement between the victim and the young person.

The mediator must be provided with a summary of the nature and circumstances of the offence before the mediation commences. This statement should indicate the facts of the offences only, with any inconsistencies between the police and young person's views of the offence pointed out in order to prepare the mediator for any potential controversies. Subjective feelings, assessment of attitudes or past history are not appropriate issues for consideration during mediation and therefore are not to be included in the mediator's information.

There are specific standards that must be adhered to when victim-offender mediation is utilized for alternative measures. These include the need for mediation to be scheduled at such a time that there is no interference with the normal education or employment schedule of the young person and at a time convenient for the victim. In addition, the mediators are to be volunteers, either as members of a Youth Justice Committee, or as individuals recruited, trained and directed by the Committee. They must participate in a training program authorized by the Youth Justice Committee, and must sign an Oath of Confidentiality before performing any mediation duties.

## 2.10 Alternative Measures Process for Adults

At the present time, there are no formal alternative measures for adults in the province.

## 2.11 The Alternative Measures Agreement

### 2.11.1. Youth

The *Alternative Measures Activity Data Form* (see Appendix 'A' s. 2.16.3) outlines the contract between the young person and the victim, or the community, and is the basis for the completion of the alternative measures process. The conditions of a contract should embrace the principle of positive action directly related to the offence, and allow the young person to demonstrate responsibility for reconciliation with the victim and the community.

The alternative measures contract is a binding contract between the young person and the victim or the community. The contract is positive, specific, and time-limited with clear and measurable conditions set out.

The contracts must be specific with respect to time, dates and length of obligations and the conditions must be measurable. The guidelines also require that the conditions be time-limited so that the matter is completed at least two weeks before the statute-barred date. In addition, the *Standards and Practices Manual* requires that

conditions in the contract be positive, to reflect tasks that must be completed as opposed to restrictions that must be adhered to, and the conditions must be non-intrusive so that they do not interfere with organized social activities of a positive nature. The alternative measures contract is binding and must include the names and signatures of the young person and the victim, if applicable, the mediator and it must identify any specific conditions to be completed. These conditions may be modified, but only with the consent of all parties and any modification can only involve the substitution of one condition for another of equivalent magnitude. Additional conditions may not be added subsequent to the signing of the contract.

### 2.11.2. Adult

At the present time, there are no formal alternative measures for adults in the province.

## 2.12 The Range of Alternative Measures

### 2.12.1. Youth

Effective community participation in youth justice programs and services is an essential component of the chosen model of alternative measures delivery in the

province. The use of local Youth Justice Committees lends itself to innovativeness in creating individualized and unique alternative measures contracts. The range of measures that may often be expected to be contained in the alternative measures contracts are:

- *Personal Service to the Victim or Community:* the young person may be required to complete a number of volunteer hours, to a maximum of 60 hours. The appropriateness of the work placement and the specific tasks must be assured before any work placement, and must be agreed to by all parties. The local Youth Justice Committee must ensure that the nature

The Youth Justice Committee can be creative in determining the measures available for youth. Often these include personal service to the victim or community, educational programs, essays, apologies, restitution / compensation, or charitable donations.

and frequency of supervision provided the young person while performing the work is appropriate and agreed upon by all parties. The appropriateness of the work, the environment and the level of supervision should be determined with consideration for the safety of the young person and others, the age, sex, maturity, developmental level, physical and mental capabilities, skills, abilities, and, where appropriate, the young persons interests and preferences for work settings.

- *Educational Programs:* the Youth Justice Committee is responsible for the development and provision of appropriate educational programs (e.g., on topics such as theft, assault, ATV offences and so on). Resource people in the community may be used to provide programs, however, the Committee is responsible to review and approve all aspects of the programs.

- *Essay or other form of presentation related to the offence:* the length and specific subject of the essays and presentations must be specified in the contract, in addition to the due date. The local Youth Justice Committee should consider the young person's literacy level in determining this condition.

- *Personal or Written Apology to the Victim:* the contract must specify the due date and the method of delivery of the apology. The contract may also suggest areas to be covered such as a description of the offence and the young person's feelings and understanding of the effects of the offence on the victim.

- *Financial Restitution to the Victim:* this measure refers to monetary compensation made by the young person to the victim. The victim must provide proof of financial loss and only direct property loss can be considered for compensation on an alternative measures contract. As well, the ability of the young person to pay must be taken into account and not the ability of the young person's parents or guardians.

- *Charitable Donations:* the ability of the young person to pay must be considered before including this condition on a contract. The maximum amount of the donation should not exceed twenty-five dollars (\$25.00), and the Youth Justice Committee must obtain verification of the donation.

#### 2.12.2. Adult

At the present time, there are no formal alternative measures for adults in the province.

### 2.13 Supervision of Alternative Measures Agreement

#### 2.13.1. Youth

Under the current guidelines, the local Youth Justice Committee monitors all alternative measures agreements on an ongoing basis. The Committee is responsible for facilitating the completion of the contract conditions by arranging the tasks to be done, such as, developing educational programs and identifying appropriate community service placements. The local Youth Justice Committee is also responsible for follow-up to ensure that all contract conditions are completed within the statute limitation period.

#### 2.13.2. Adult

At the present time, there are no formal alternative measures for adults in the province.

### 2.14 Completion of Agreement

#### 2.14.1. Youth

The local Youth Justice Committee is responsible for notifying all parties, including the young person, the guardians, and the victim (where applicable), the Crown Attorney and the police, of the status of the referral upon completion of the contract or unsuccessful termination from the program. Upon completion of the conditions, a report must be forwarded to the Crown Attorney, outlining the measures taken and confirming the satisfactory completion, or the unsatisfactory termination from the program. The police report or case summary must also be returned at this time.

If a young person fails, without cause, to complete all conditions of the alternative measures agreement, or decides to withdraw from the program, a report must be forwarded to the Crown Attorney, along with the police report, stating the reasons for non-completion. Termination and submission of the required report to the Crown Attorney must be completed no later than two weeks prior to the statute-barred date, to allow for administrative procedures leading to the possible laying of a charge and the commencement of formal court proceedings.

#### 2.14.2. Adult

At the present time, there are no formal alternative measures for adults in the province.

### 2.15 Record Keeping

#### 2.15.1. Youth

The Youth Justice Committee may maintain a file on the referral containing correspondence regarding the alternative measures process, offence, date of offence, and action taken. This information is subject to the record non-disclosure provisions of the *Young Offenders Act* section 45(1)(d) (see Chapter 1, s.1.15 for wording of this section). The Youth Justice Committee is also authorized to keep records for alternative measures purposes in accordance with section 43(2) of the *Young Offenders Act* (see Chapter 1, s.1.15 for wording of this section). Use of the records is at the discretion of the Youth Justice Committee, within the parameters of legislative requirements.

The provincial standards provide direction as to the contents and use of alternative measures files. Subsequent to completion of the alternative measures process, the files should contain information as per the "Intake and Activity Data Form" (Appendix 'A', s.2.16.3), as well as any correspondence created during the alternative measures process. File information must be made available upon request from the Youth Court, and may be disclosed for research or evaluation purposes, only if in the opinion of the Youth Justice Committee, it is desirable in the interests of the administration of the alternative measures program and only if the disclosure period (two years from date of consent to participate) has not expired.

The Youth Justice Committee is responsible for ensuring that the confidentiality of the young person is maintained at all times and that no information relating to an alternative measures case is disclosed upon the expiration of two years from the date of consent to participate in alternative measures. Following this two-year period, records may be destroyed at the discretion of the Youth Justice Committee.

#### 2.15.2. Adult

At the present time, there are no formal alternative measures for adults in the province.

2.16 Appendix 'A' Forms

2.16.1. Youth Intake Data Form

**YOUNG OFFENDER ALTERNATIVE MEASURES PROGRAM  
INTAKE DATA**

*(to be completed for each referral to the alternative measures program)*

Program Name: \_\_\_\_\_

Case Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Y M D

Young Person's Community of Residence: \_\_\_\_\_

**Details of Offence(s)**

		Statute	Section (subsection)	Date of Offence (Yr./Mo./Day)
1.	Type of Offence(s)	A. _____ B. _____ C. _____	_____	_____
2.	Victim Type:	_____ Individual _____ Public service or Building _____ Business; specify: _____ _____ Victimless Offence		

**Young Person's Characteristics**

- 3. Age at time of offence: \_\_\_\_\_ yrs.
- 4. Sex: 1. Male 2. Female
- 5. School/Work Status: 1. Attending School  
2. Not at school / Employed  
3. Not at school / Unemployed

**Referral Information**

- 6. Referral Source: 1. Crown 2. Police (acting on delegated authority from Crown)
- 7. Date referral received: \_\_\_\_\_  
Y M D
- 8. Did the referral meet the offence criteria  
1. Yes 2. No
- 9. Did the young person consult a lawyer *(about participation in the program)*?  
1. Yes 2. No
- 10a. Did the young person consent to participation?  
1. Yes 2. No
- 10b. If young person did not consent to participation, identify reason:  
1. Young person could not be located  
2. Young person preferred Court process when first contacted  
3. Young person did not accept responsibility when first contacted  
4. Other *(specify)*: \_\_\_\_\_
- 11. Did the young person's parent/guardian support the young person's participation:  
1. Yes 2. No 3. N/A

2.16.2. Youth Alternative Measures Consent Form

**ALTERNATIVE MEASURES PROGRAM  
CONSENT FORM**

**Young Person**

Having had the Alternative Measures process explained to me, I \_\_\_\_\_  
acknowledge that I understand the Alternative Measures program, I have been  
informed of my right to obtain and instruct legal counsel, and I voluntarily agree to  
participate in the \_\_\_\_\_ Alternative Measures Program.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature of Young Person**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature of Program Representative**

**Parents (Optional)**

The undersigned acknowledge that the Alternative Measures process has been  
explained fully and I/We agree with my/our child's decision to participate in the  
\_\_\_\_\_ Alternative Measures Program.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Parent/Guardian**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Parent/Guardian**

\* Section 45(1)(d) of the *Young Offenders Act* (Canada) states that "records may not be made available for inspection... where Alternative Measures are used to deal with the young person, on the expiration of two years after the young person consents to participate in the alternative measures..."; information on this matter will not be disclosed after \_\_\_\_\_.



2.17 Appendix 'B' Data

### 2.17.1. Youth Caseload Data

The following data represents an overview of the alternative measures statistics derived from the Young Offenders Information System. While this does not necessarily represent all the data available, it does provide a perspective on the alternative measures activity in each project during the time period of April 1, 1996 to March 31, 1997.

**Table 1: Program / Project Legend:**

<b>Program Number</b>	<b>Program / Project Name</b>
01	St. John's YDP
11	Bay Robert's YJC
12	Clarenville AMP
13	Hr. Grace / CBN YJC
14	Burin / Placentia YJC
15	Bonavista AMP
16	Northwest Avalon (Whitbourne)
17	Placentia
18	Gran-for-Line
21	Gander AMP
22	Grand Falls / Exploits AMP
23	Dorset AMP
24	Bay D'Espoir
25	Wesleyville
31	Bay of Islands AMP
32	Stephenville AMP
33	Port Saunders / FN AMP
34	Picadilly YJC
35	Deer Lake AMP
36	Port aux Basques
41	Happy Valley AMP
42	Nain AMP
43	Labrador West YJC
44	Churchill Falls AMP
	*Green Bay Youth Justice Committee (Springdale)
	*Notre Dame Alternative Measures (Lewisporte)
	*Burgeo Alternative Measures Program
	*Fresh Start Alternative Measures Program
	*Bell island Alternative Measures Program

\* = new programs not included in following statistics

**Table 2: Project Participation by Age and Sex**

Proj.	MALE							FEMALE							Total
	12	13	14	15	16	17	TOT	12	13	14	15	16	17	TOT	AGR
01	47	40	68	75	52	44	326	27	45	30	35	31	29	197	523
11	0	2	3	3	1	0	9	0	0	0	0	0	1	1	10
12	0	0	6	13	6	13	38	1	0	2	1	1	3	8	46
13	1	11	8	3	4	7	34	1	2	4	7	3	2	19	53
14	5	6	6	10	11	6	44	1	3	5	6	4	3	22	66
15	5	6	2	4	2	2	21	1	2	4	3	6	1	17	38
16	0	0	0	2	0	0	2	0	0	0	0	0	0	0	2
17	2	2	4	4	0	1	13	1	1	0	0	0	0	2	15
18	0	4	4	2	4	1	15	0	1	0	2	0	0	3	18
21	0	0	0	3	3	2	8	1	4	0	2	2	1	10	18
22	0	3	3	7	3	2	18	5	5	2	0	0	0	12	30
23	0	0	0	0	1	2	3	0	0	0	1	0	0	1	4
24	0	0	3	1	1	2	7	0	2	0	2	0	0	4	11
25	1	4	2	1	0	2	10	0	0	1	1	5	2	9	19
31	2	0	1	3	1	3	10	1	1	2	1	2	1	8	18
32	4	3	0	3	5	7	22	1	3	6	1	1	1	13	35
33	2	0	0	2	6	2	12	0	0	0	0	0	1	1	13
34	0	7	2	0	2	2	13	0	1	0	1	1	0	3	16
43	0	2	3	5	7	3	20	0	0	2	3	4	0	9	29
44	0	1	0	1	0	0	2	0	0	0	0	0	0	0	2
<b>Prov TOT</b>	69	91	115	142	109	101	627	40	70	58	66	60	45	339	966
	11%	15%	18%	23%	17%	16%		12%	21%	17%	19%	18%	13%		

**Table 3: Number of Referrals for each type of Offence by Project**

Project	Theft 334(a)	Theft 334(b)	Break & Enter 348	Mischief 430	Assault 265-266	Sexual Assault 271-273	LCA	CCC Other	Other	Total Referrals
01	1	330	22	21	17	0	59	39	15	504
11	0	4	3	5	1	0	2	0	0	15
12	0	10	7	2	0	0	17	1	2	39
13	0	33	0	9	0	0	4	5	3	54
14	0	19	7	6	2	1	28	5	1	69
15	0	3	0	5	2	0	21	0	8	39
16	0	0	1	0	1	0	5	5	1	13
17	0	2	7	2	1	0	5	1	3	21
18	0	4	0	1	1	0	7	2	9	24
21	0	3	0	6	0	0	7	0	0	16
22	0	32	3	2	0	0	2	2	0	41
23	0	1	0	0	0	0	2	0	0	3
24	0	0	2	0	0	0	9	0	0	11
25	0	3	3	8	1	0	8	0	1	24
31	0	11	0	0	1	0	4	0	0	18
32	0	15	0	5	1	0	1	5	4	31
33	0	0	4	1	0	0	2	0	0	7
34	1	3	0	0	0	0	3	3	0	10
43	0	10	0	2	0	0	13	1	0	26
44	0	1	2	0	0	0	0	0	0	3
<b>Prov. Totals</b>	2	484	61	75	28	1	199	70	48	968
	0.2%	50%	6%	8%	3%	0.1%	21%	7%	5%	

**Table 4: Number of Agreements where an Activity was Completed by Project**

Project	Verbal Apology	Written Apology	Essay	Financial Compensation	Work for Victim	CS Work	Educ. Program	Other	Total Agreements
01	4	326	283	11	3	111	327	272	523
11	2	6	6	0	1	0	3	0	10
12	2	22	36	9	5	42	13	3	46
13	7	46	8	5	2	4	32	19	54
14	4	35	51	8	1	27	32	22	66
15	1	16	25	0	0	5	27	5	38
16	0	2	1	0	0	0	0	0	2
17	0	10	15	0	0	3	3	3	15
18	2	6	11	0	0	5	14	12	18
21	4	15	14	0	1	13	7	2	18
22	1	24	24	0	0	21	0	0	31
23	0	1	4	0	0	1	2	0	4
24	0	2	8	0	0	8	0	2	11
25	2	12	17	0	1	16	0	3	19
31	0	17	17	0	0	1	16	0	18
32	0	30	35	0	0	20	22	1	35
33	0	11	4	2	0	12	9	3	13
34	1	13	15	0	2	10	1	9	16
43	0	15	29	0	0	15	29	0	29
44	2	2	0	0	0	2	0	0	2
<b>Prov. Totals</b>	32 3%	611 62%	603 62%	35 4%	16 2%	316 33%	537 55%	356 37%	968

**Table 5: Length of Community Service Work by Project**

Project	1 – 10 hrs	11 – 20 hrs	21 – 30 hrs	31 – 40 hrs	> 40 hrs	Total Number of Agreements Involving CSW
01	82	17	4	5	4	112
12	19	15	3	4	1	42
13	4	0	0	0	0	4
14	13	14	0	0	0	27
15	5	0	0	0	0	5
17	3	0	0	0	0	3
18	5	0	0	0	0	5
21	10	1	2	0	0	13
22	19	2	0	0	0	21
23	0	1	0	0	0	1
24	6	2	0	0	0	8
25	13	0	3	0	0	16
31	0	1	0	0	0	1
32	13	7	0	0	0	20
33	10	2	0	0	0	12
34	5	1	4	0	0	10
43	15	0	0	0	0	15
44	2	0	0	0	0	2
<b>Prov. Totals.</b>	224 71%	63 20%	16 5%	9 3%	5 2%	317

**Table 6: Number of Agreements Successfully Completed by Project**

Project	Successful Completion	Failed to Meet	Agreement not Reached	Default	Other	Total Agreements
01	504	1	0	18	0	523
11	10	0	0	0	0	10
12	46	0	0	0	0	46
13	53	0	0	0	1	54
14	61	0	0	0	0	61
15	37	0	0	1	0	38
16	2	0	0	0	0	2
17	15	0	0	0	0	15
18	18	0	0	0	0	18
21	18	0	0	0	0	18
22	28	0	0	1	2	31
23	4	0	0	0	0	4
24	11	0	0	0	0	11
25	19	0	0	0	0	19
31	17	1	0	0	0	18
32	35	0	0	0	0	35
33	13	0	0	0	0	13
34	15	0	0	1	0	16
43	29	0	0	0	0	29
44	2	0	0	0	0	2
<b>Prov. Totals</b>	937 97%	2 0.2%	0 0%	21 2%	3 0.3%	963

**Table 7: Number of Days between Referral Date and Meeting date**

Project	1 – 15 days	16 – 30 days	31 – 45 days	46 – 60 days	> 60 days	Total Agreements
01	10	52	98	63	300	523
11	1	1	1	1	6	10
12	11	10	2	7	16	46
13	31	14	2	2	5	54
14	5	17	11	6	27	66
15	0	8	11	6	13	38
16	0	0	0	0	2	2
17	2	3	8	0	2	15
18	8	8	1	1	0	18
21	2	3	1	1	11	18
22	3	5	1	6	16	31
23	4	0	0	0	0	4
24	7	1	1	1	1	11
25	7	1	2	3	6	19
31	6	7	4	1	0	18
32	3	6	5	8	13	35
33	1	0	2	0	10	13
34	3	8	0	0	5	16
43	6	1	15	1	6	29
44	2	0	0	0	0	2
<b>Prov. Totals</b>	112 12%	145 15%	165 17%	107 11%	439 45%	968

**Table 8: Number of Days between Meeting Date and End of Agreement**

<b>Project</b>	<b>1 – 30 days</b>	<b>31 – 60 days</b>	<b>61 – 90 days</b>	<b>&gt; 90 days</b>	<b>Total Agreements</b>
01	62	161	100	191	514
11	2	2	4	2	10
12	21	9	4	12	46
13	45	4	1	4	54
14	22	17	15	12	66
15	8	17	11	2	38
16	0	0	0	2	2
17	5	8	2	0	15
18	16	2	0	0	18
21	5	2	4	6	17
22	8	7	4	12	31
23	4	0	0	0	4
24	8	2	0	1	11
25	8	5	4	2	19
31	13	5	0	0	18
32	9	13	6	7	35
33	1	2	3	7	13
34	11	0	1	4	16
43	7	16	3	3	29
44	2	0	0	0	2
<b>Prov. Totals</b>	257 27%	272 28%	162 17%	267 28%	958

## 2.18 References

Department of Human Resources and Employment; Division of Child Welfare and Community Corrections. *Alternative Measures Program: Annual Statistics FY 96/7*. Newfoundland, 1997.

Ibid. *Standards and Practices Manual: Alternative Measures*. Newfoundland, 1997 04-30.

Department of Social Services; Division of Youth Corrections. *An Overview of the Alternative Measures Process for Young Offenders in Newfoundland and Labrador*. Newfoundland, March, 1995.

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# 3. Prince Edward Island

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### 3.1 The Philosophy of Alternative Measures

Alternative measures are formalized programs that offer a diversion from the court system. These programs are authorized by the Attorney General for the Province of Prince Edward Island, for both youth and adults pursuant to Section 4(1) of the *Young Offenders Act (Canada)* and Section 717 of the *Criminal Code of Canada*, respectively (see Chapter 1, s.1.1 for the wording of these sections).

The goal of both the adult and youth alternative measures programs is to reduce the harm done by crime and reduce the involvement in the criminal justice system. The objectives are to:

- ❑ Restore harmony where possible to those affected by crime;
- ❑ Promote the level of responsibility and accountability of adult and young offenders for their actions;
- ❑ Lessen the degree of involvement in the lives of offenders by the criminal justice system;
- ❑ Protect society through the deterrence of adult and young offenders from further criminal conduct; and
- ❑ Enhance the involvement of the community, including the victim(s), in the criminal and youth justice system.

The policies and procedures for the alternative measures programs for youth were first introduced in 1986; however, the use of alternative measures has been in effect in this province since 1984. The alternative measures program operates

Alternative measures programs for both youth and adults clearly do not replace police discretion, are generally available to eligible persons at the pre-charge stage, and must be initiated by the Crown Attorney.

on the basis of several guidelines outlined in the *Alternative Measures – Young Offenders Policy and Procedures Manual*. First, only young persons from age twelve to seventeen inclusive who are alleged to have committed an offence are eligible to be considered. Second, it is clear that alternative measures programs are not to replace traditional police discretion or to circumvent the use of formal legal proceedings. Third, although the Crown Attorney may make referrals at the post-charge stage of proceedings, the program is generally geared

toward eligible young persons at the pre-charge stage of the proceedings. Fourth, the *Policy and Procedures Manual* recognizes that in exceptional cases it may be necessary to lay a charge(s) to maintain jurisdiction to ensure that the statute of limitations in the case of summary offences is satisfied. Fifth, it is acknowledged that alternative measures may be initiated only with the approval of the Crown Attorney and, finally, where an alternative measures agreement includes a referral or requirement to participate in a program there may be a charge.

In September 1996, alternative measures programs for adult offenders were established. The *Alternative Measures – Adult Offenders Policy and Procedures Manual* closely parallels the young offender policy and procedures so as to minimize confusion and avoid duplication. The program shares several operational forms with the youth program and operates on the basis of the same guidelines with the only difference being that they apply to individuals eighteen years of age and over.

### 3.2 Responsibility for the Delivery of Alternative Measures

#### 3.2.1. Youth

Youth and adults both receive alternative measures through Probation Officers or their designate, or Community Justice Forums in Prince Edward Island.

In Prince Edward Island, the responsibility for the delivery of alternative measures programs for youth lies with the Probation Officer or designate, or a Community Justice Forum. Upon receiving an alternative measures case from the Senior Probation Officer, the Probation Officer, or Community Justice Forum, assumes all responsibility for documentation, contacting the parties, arranging interviews, determining an alternative measures agreement and, supervision and termination of the agreement.

#### 3.2.2. Adult

As with young offenders, the responsibility for the delivery of alternative measures programs for adults is that of the Probation Officer or designate, or a Community Justice Forum. Upon receiving an alternative measures case from the Senior Probation Officer, the Probation Officer, or Community Justice Forum, assumes all responsibility for documentation, contacting the parties, arranging interviews, determining an alternative measures agreement and, supervision and termination of the agreement.

### 3.3 Referral Agent

#### 3.3.1. Youth

Alternative measures for youth shall only be initiated with the approval of the Crown Attorney. Where sufficient evidence exists to lay a charge, the police officer may, in lieu of exercising police discretion or proceeding with formal youth court proceedings, decide to recommend to the Crown Attorney that the offence be dealt with by way of alternative measures. The Crown Attorney is responsible for reviewing the information provided by the police in the Crown Brief and the Recommendation for Alternative Measures Form (see Appendix 'A', s.3.16.1), approving and making all referrals

The Crown Attorney is responsible for initiating all referrals to alternative measures programs for both youth and adults.

to an alternative measures program which may include a Community Justice Forum. Generally, these referrals are made at the pre-charge stage of proceedings.

### 3.3.2. Adult

Similar to the youth program, all referrals to alternative measures for adults shall only proceed with the approval of the Crown Attorney. If the Crown Attorney is satisfied that sufficient evidence exists to prosecute and that prosecution is not barred at law, and if the Crown Attorney is in agreement with the Recommendation of Alternative Measures (see Appendix 'A' s.3.16.1) by the Police, the Crown will approve and refer the case to an alternative measures program which may include a Community Justice Forum. Generally, as is the case with youth, referrals to alternative measures are made at the pre-charge stage.

## 3.4 The Role of the Police

### 3.4.1. Youth

As the first point of contact in the criminal justice system, the police play a key role in the overall functioning of alternative measures. When a crime is reported to the police, they conduct an investigation to determine if there is sufficient evidence to proceed with a charge. Where sufficient evidence to charge exists, the police have three choices to consider in deciding how to proceed. They may exercise their discretion to give a warning and take the case no further, the police may recommend to a Crown Attorney that the person be dealt with by way of alternative measures, which may include a Community Justice Forum, or the police may lay a charge and proceed with formal youth court proceedings. In exceptional circumstances, the police may make a referral to alternative measures following the laying of a charge to maintain jurisdiction to ensure that statute of limitations in the case of summary offences is satisfied.

If the police are considering recommending the youth to an alternative measures program, they will discuss the program with the young person and, if the young person is agreeable, they will complete the referral based on certain considerations. Aside from the legislated criteria set out in sections 4(1) and 4(2) of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.1), the police must, prior to making a recommendation for alternative measures, consider the following factors:

- ❑ the seriousness and circumstances surrounding the commission of the offence;
- ❑ any pending charges and / or prior involvement of the young person with the justice system;

- ❑ wishes of the victim;
- ❑ the attitudes of the young person, and the parents;
- ❑ impact on family of the victim(s), family of the offender, and affected community members.

In addition, the nature of the alleged offence must not, except in exceptional circumstances, be one that poses serious or definite risk to the safety or well-being of the community and / or that is violent in nature. Finally, the alternative measures program is not available for offences involving impaired driving, refusing or failing the breathalyzer and other driving related offences in the Criminal Code.

The police also assume responsibility for contacting the victim(s) if appropriate and advising the victim of the referral to alternative measures. The police determine the feelings or views of the victim about having the young offender referred and obtain a telephone number from the victim to facilitate future contact.

Once a complete record check is performed, the police will prepare a Crown Brief and complete the Recommendation for Alternative Measures Form, which may include a recommendation for a Community Justice Forum, and forward this information to the Crown Attorney for review and approval.

#### 3.4.2. Adult

As with the youth alternative measures program, the police, by nature of their role, are key components in the overall functioning of alternative measures. If, following an investigation, there is sufficient evidence to charge, the police have three choices to consider in deciding how to proceed. They retain their right to exercise their discretion to give a warning and take the case no further, to recommend to a Crown Attorney that the person be dealt with by way of alternative measures, which may include a Community Justice Forum, or the police may lay a charge and proceed with formal court proceedings. In exceptional circumstances, the police may make a referral to alternative measures following the laying of a charge to maintain jurisdiction to ensure that statute of limitations in the case of summary offences is satisfied.

If the police are considering recommending the offender to an alternative measures program, they will discuss the program with the offender and, if the offender is agreeable, they will complete the referral based on certain considerations. Aside from the legislated criteria set out in sections 717(1) and 717(2) of the *Criminal Code* (see Chapter 1, s.1.1), the police must, prior to making a recommendation for alternative measures, consider the following factors:

- ❑ the seriousness and circumstances surrounding the commission of the offence;

- ❑ any pending charges and/or prior involvement of the offender with the justice system;
- ❑ wishes of the victim(s);
- ❑ the attitudes of the offender and the victim;
- ❑ impact on family of the victim(s), family of the offender, and affected community members.

In addition, the nature of the alleged offence must not, except in exceptional circumstances, be one that poses serious or definite risk to the safety or well-being of the community and / or that is violent in nature. Finally, the alternative measures program is not available for offences involving impaired driving, refusing or failing the breathalyzer and other driving related offences in the Criminal Code.

The police also assume responsibility for contacting the victim(s) if appropriate and advising the victim of the referral to alternative measures. The police determine the feelings or views of the victim about having the offender referred and obtain a telephone number from the victim to facilitate future contact.

Once a complete record check is performed, the police will prepare a Crown Brief and complete the Recommendation for Alternative Measures Form, which may include a recommendation for a Community Justice Forum, and forward this information to the Crown Attorney for review and approval.

### 3.5 The Role of the Crown Attorney

#### 3.5.1. Youth

The role of the Crown Attorney in the referral process is to review the case to decide appropriateness for alternative measures having specific regard to whether there is sufficient evidence to prosecute and to ensure prosecution is not barred at law. Following a review of the Crown Brief and the Recommendation for Alternative Measures received from the police, the Crown Attorney must decide to either proceed with formal court proceedings, take no further action or use alternative measures having regard to the needs of the young person alleged to have committed the offence and the interests of society and the victim.

If the Crown Attorney is in agreement with the recommendation for alternative measures by the police, the Crown Attorney approves the recommendation and signifies such by signing the Recommendation for Alternative Measures Form. The Crown Attorney then forwards this form and the Crown Brief to the nearest Probation Office.

### 3.5.2. Adult

As in the case of alternative measures for youth, the role of the Crown Attorney in the referral process is to review the case to decide appropriateness for alternative measures. The Crown Attorney reviews the Crown Brief and the Recommendation for Alternative Measures received from the police to determine whether there is sufficient evidence to prosecute and to ensure prosecution is not barred at law. The Crown Attorney must then decide to proceed with formal court proceedings, take no further action, or use alternative measures having regard to the needs of the person alleged to have committed the offence and the interests of society and the victim.

If the Crown Attorney is in agreement with the recommendation for alternative measures by the police, the Crown Attorney approves the recommendation and signifies such by signing the Recommendation for Alternative Measures Form. The Crown Attorney then forwards this form and the Crown Brief to the nearest Probation Office.

## 3.6 The Role of the Victim

### 3.6.1. Youth

The extent to which victims are involved in the alternative measures process is often defined, to some degree, by the victim's willingness to become involved. The policy and procedures regarding alternative measures for youth outlines three distinct opportunities for victim involvement. First, the victim will be contacted by the police and advised of the referral of the young person to alternative measures and be given an opportunity to express their feelings or views about having the young offender referred. Second, once a referral is assigned to a Probation Officer, or to a Community Justice Forum, the Officer, or the Forum Facilitator, will, in reviewing the case documentation, contact the victim of the offence. Third, the victim will, if appropriate, be given an opportunity by the Probation Officer, or the Forum, to be present during the interview of the young offender. Throughout this process, the victim may voice their suggestions about restitution, community service work or treatment programs, and, the victim may have input into the conditions in the alternative measures agreement. Regardless of the level of involvement, the victim will be contacted by the Probation Officer or the Facilitator and kept informed of the young offender's progress and the outcome of the alternative measures program.

### 3.6.2. Adult

The role of the victim in the adult alternative measures program is essentially the same as that of the victim in the youth program. Prior to the police finalizing their recommendation to alternative measures, the victim will be contacted and provided an opportunity to express their feelings or views with respect to the referral of the offender to an alternative measures program. Once the referral is

approved by the Crown Attorney and assigned to a Probation Officer, or a Community Justice Forum, the Probation Officer, or the Forum Facilitator, will contact the victim during the review of the case documentation and to ask the victim for their contribution to the alternative measures agreement being considered. The victim, if appropriate, will be involved in the interview with the offender and will be given an opportunity to express their suggestions about restitution, community service work or treatment programs. The victim may also have input into the conditions in the alternative measures agreement. Whether the victim chooses to participate or not, they will, nevertheless, be contacted by a Probation Officer, or the Facilitator, and kept informed of the participant's progress, and told about the outcome of the alternative measures program.

### 3.7 Right to Legal Counsel

#### 3.7.1. Youth

The *Young Offenders Act (Canada)* section 4(1)(d), (see Chapter 1, s.1.7 for the wording of this section), clearly states that prior to a young person becoming involved in alternative measures, they must fully and freely consent to participate in the program and must be given the opportunity to consult legal counsel. The policy and procedures regarding alternative measures for youth in Prince Edward Island reinforces this at several steps. Primarily, it is the responsibility of the Probation Officer, or the Community Justice Forum, upon receiving a referral, to advise the young person of their right to be represented by counsel and the province's Legal Aid Program if the young person is not already represented by counsel. The Probation Officer, or the Community Justice Forum, will also provide the young person the opportunity to consult with counsel and will ensure that when arranging the interview with the young person that the young person is duly advised of their right to have a lawyer, parent, or other appropriate adult present.

In ascertaining the young person's acceptance of responsibility for the act that forms the basis of the offence that the young person is alleged to have committed, the Probation Officer, or the Community Justice Forum Facilitator, will advise the young person of the inadmissibility of any statement accepting responsibility as evidence in any civil or criminal proceedings as per section 4(3) of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.7 for the wording of this section).

#### 3.7.2. Adult

Section 717(d) of the *Criminal Code* (see Chapter 1, s.1.7 for the wording of this section) states that a person must be advised of their right to be represented by counsel prior to consenting to participate in alternative measures. The policy and procedures respecting adult alternative measures indicates that it is the responsibility of the Probation Officer, or the Community Justice Forum Facilitator, upon receiving a referral, to advise the offender of their right to be represented by

counsel and the province's Legal Aid Program if the offender is not already represented by counsel. The Probation Officer, or Facilitator, will also provide the offender the opportunity to consult with counsel and will ensure that when arranging the interview with the offender that the offender is duly advised of their right to have a lawyer present.

In establishing the offender's acceptance of responsibility for the act that forms the basis of the offence that the offender is alleged to have committed, the Probation Officer, or Facilitator, will advise the offender of the inadmissibility of any statement accepting responsibility as evidence in any civil or criminal proceedings as per section 717(3) of the *Criminal Code* (see Chapter 1, s.1.7 for the wording of this section).

### 3.8 Eligibility Criteria

#### 3.8.1. Youth

Formally authorized alternative measures programs for youth, aged 12 to 17 inclusive, are instituted across Canada pursuant to the federal *Young Offenders Act*. The legislated criteria governing the referral process are contained in sections 4(1) and 4(2) of the *Act* (see Chapter 1, s.1.8 for the wording of the applicable sections).

In addition to the legislated criteria, provincial policies are specifically designed to ensure that the program adequately meets the needs of the province. In Prince Edward Island, alternative measures will not be considered, except in exceptional circumstances, in cases where the alleged offence is one that poses serious and definite risk to the safety or well being of the community and / or is violent in nature. As well, offences involving impaired driving, refusing or failing a breathalyzer and other driving related offences in the *Criminal Code* are excluded from consideration for alternative measures.

Violent offences, offences that pose a serious and definite risk to the safety of the community, impaired driving, refusing or failing a breathalyzer or other driving related offences will not be considered for alternative measures.

The police are also given the responsibility, prior to making a recommendation for alternative measures, to consider the seriousness and circumstances surrounding the commission of the offence, any pending charges or prior involvement of the young person in the justice system as well as the attitudes of the young person, the parents and the victim.

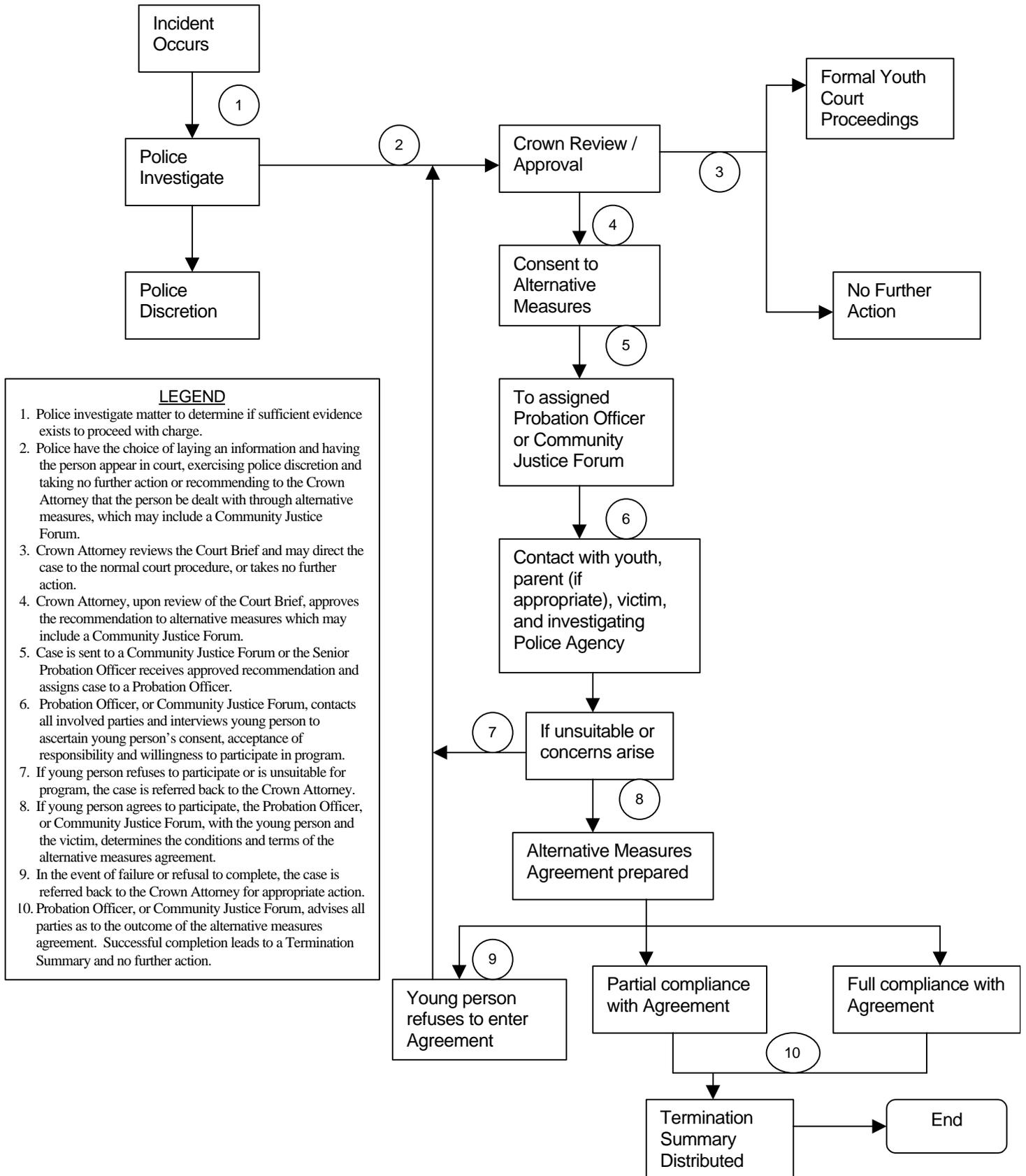
#### 3.8.2. Adult

Sections 717(1) and 717(2) of the *Criminal Code* specify the legislated criteria under which alternative measures may be used for adults (see Chapter 1, s.1.8 for the wording of the applicable sections).

In addition to this, provincial policy states that alternative measures for adults aged 18 years and over are not to be considered, except in exceptional circumstances, in cases where the alleged offence is one that poses serious and definite risk to the safety or well-being of the community and / or is violent in nature. As well, offences involving impaired driving, refusing or failing a breathalyzer and other driving related offences in the Criminal Code are excluded from consideration for alternative measures. The police also assume the responsibility, prior to making a recommendation for alternative measures, to consider the seriousness and circumstances surrounding the commission of the offence, any pending charges or prior involvement of the offender in the justice system as well as the attitudes of the offender and the victim.

Adults who are alleged to have committed violent offences, offences that pose a serious and definite risk to the safety of the community, impaired driving, refusing or failing a breathalyzer or other driving related offences will not be considered for alternative measures.

### 3.9 Alternative Measures Process for Youth



Once a decision is reached by a Police Officer to recommend that the alleged offence be dealt with through alternative measures, the Officer prepares a Crown Brief, completes a Recommendation for Alternative Measures Form, and forwards this information to the Crown Attorney.

The Crown Attorney reviews the documentation and if in agreement with the recommendation for alternative measures, approves such by signing the Form and sending all the information to the nearest Probation Office or Community Justice Forum.

If the approval is sent to the Probation Office, the Senior Probation Officer

Once a case is assigned to a Probation Officer, or a Community Justice Forum, the Probation Officer or the Community Justice Facilitator assumes responsibility for contacting all involved parties, arranging the interview with the young person, ascertaining responsibility and willingness to participate, contacting the victim and determining the conditions of the Alternative Measures Agreement.

examines the information and assigns the case to a Probation Officer. The Probation Officer then becomes responsible for contacting the young person, the parents or guardians, the Police Officer and, if appropriate the victim of the offence.

If the approval is sent to a Community Justice Forum, the Community Justice Facilitator will assume responsibility for contacting all involved parties. The Facilitator is a person who has been accepted for and trained in the process

and procedures of Community Justice Forums in accordance with Royal Canadian Mounted Police (RCMP) training standards.

The Probation Officer, or Community Justice facilitator, must ensure that the young person is advised of his/her right to be represented by counsel and the province's Legal Aid Program and must provide the young person with the opportunity to consult with counsel. The Probation Officer, or facilitator, will also arrange a personal interview with the young person at which the young person, after being duly advised, shall be able to have a lawyer, parent, adult relative, and/or other appropriate person present. One of the objectives of the interview is to ascertain from the young person the acceptance of responsibility for the act that forms the basis of the offence that the young person is alleged to have committed. In so doing, the Probation Officer, or facilitator, will advise the young person of Section 4(3) of the *Young Offenders Act (Canada)* which states:

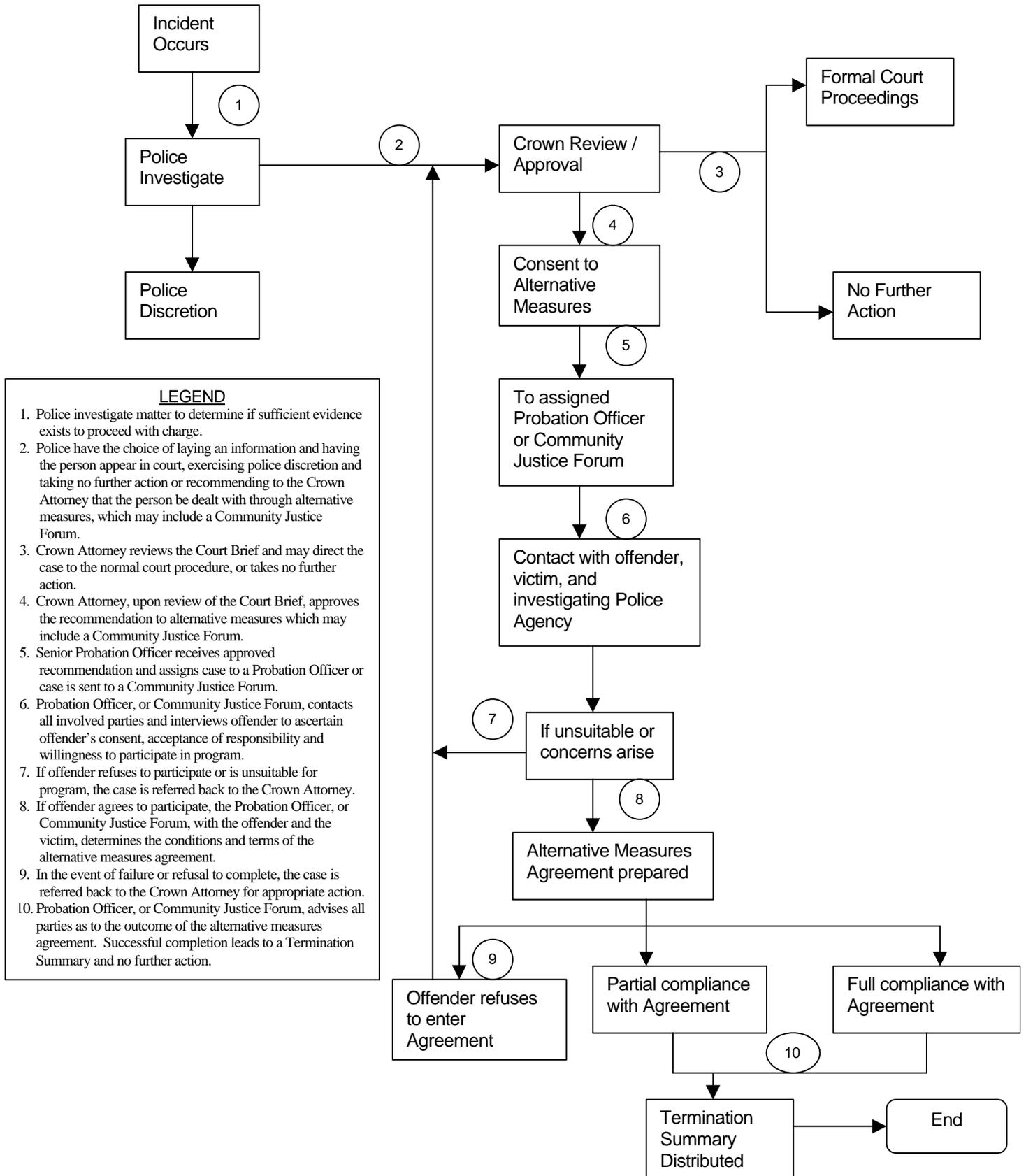
a) No admission, confession or statement accepting responsibility for a given act or omission made by a young person alleged to have committed an offence as a condition of his/her being dealt with by Alternative Measures shall be admissible in evidence against him/her in any civil or criminal proceedings.

If the young person fully and freely consents to participate in the alternative measures program, the Probation Officer, or facilitator, will, where applicable and appropriate, contact the victim and offer them an opportunity to contribute to the Alternative Measures Agreement being considered (see Appendix 'A', s.3.16.2).

In appropriate cases, the victim will be included in the interview or the Forum, with the young person.

If it is determined that alternative measures is appropriate for the young person, the Probation Officer, or facilitator, is responsible for determining the conditions of the Alternative Measures Agreement. In the event that an the Probation Officer, or facilitator, concludes that the young person is not suitable for alternative measures or has reason to believe that there is a question of the young person's responsibility for or participation in the alleged offence, the recommendation should be referred back to and reviewed with the Crown Attorney.

### 3.10 Alternative Measures Process for Adults



The alternative measures process for adults is set in motion in the same way as that for youth. When a Police Officer decides to recommend that the alleged offence be dealt with through alternative measures, which may include a Community Justice Forum, the Officer prepares a Crown Brief, completes a Recommendation for Alternative Measures Form, and forwards this information to the Crown Attorney.

The Crown Attorney reviews the documentation and if in agreement with the recommendation for alternative measures, approves such by signing the Form and sending all the information to the nearest Probation Office or Community Justice Forum.

If the approval is sent to a Probation Office, the Senior Probation Officer examines the information and assigns the case to a Probation Officer. The Probation Officer then becomes responsible for contacting the offender, the Police Officer and, if appropriate the victim of the offence.

Once a case is recommended by the police, approved by the Crown Attorney and assigned to a Probation Officer or a Community Justice Forum, the Probation Officer or the Community Justice Facilitator assumes responsibility for contacting all involved parties, arranging the interview with the offender, ascertaining responsibility and willingness to participate, contacting the victim and determining the conditions of the Alternative Measures Agreement.

If the approval is sent to a Community Justice Forum, the Community Justice Facilitator will assume responsibility for contacting all involved parties. The Facilitator is a person who has been accepted for and trained in the process and procedures of Community Justice Forums in accordance with Royal Canadian Mounted Police (RCMP) training standards.

The Probation Officer, or Community Justice Facilitator, must advise the offender of his/her right to be represented by counsel and the province's Legal Aid Program and

must provide the offender with the opportunity to consult with counsel. The Probation Officer, or facilitator, will also arrange a personal interview with the offender at which the offender, after being duly advised, shall be able to have a lawyer present. One of the objectives of the interview is to ascertain from the offender the acceptance of responsibility for the act that forms the basis of the offence that the offender is alleged to have committed. In so doing, the Probation Officer, or facilitator, will advise the offender of Section 717(3) of the *Criminal Code of Canada*, which states:

a) 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.

If full consent to participate in the alternative measures program is obtained from the offender, the Probation Officer, or facilitator, will, where applicable and appropriate, contact the victim and offer them an opportunity to contribute to the

Alternative Measures Agreement being considered (see Appendix 'A', s.3.16.2). In appropriate cases, the victim will be included in the interview or the Forum with the offender.

If it is determined that alternative measures is appropriate for the offender, the Probation Officer, or facilitator, is responsible for determining the conditions of the Alternative Measures Agreement. In the event that the Probation Officer, or facilitator, concludes that the offender is not suitable for alternative measures or has reason to believe that there is a question of the offender's responsibility for or participation in the alleged offence, the recommendation should be referred back to and reviewed with the Crown Attorney.

### 3.11 The Alternative Measures Agreement

#### 3.11.1. Youth

The *Alternative Measures Agreement Form* (see Appendix 'A', s.3.16.2) is the document prepared by the Probation Officer, or the Facilitator, following approval of alternative measures and contains the conditions and terms of the measures agreed to by the participants in the interview. The policy and procedures require that the Probation Officer, or the Facilitator, in drafting the agreement, consider the nature of the offence, the appropriateness of restitution, personal, or community service work, the special needs of the young person and the availability of community resources.

The policy and procedures related to alternative measures for youth also states that the agreement shall not, except in exceptional circumstances, exceed six months. In appropriate circumstances, the length of the agreement could be extended by an additional three months with the approval of the Senior Probation Officer. It is essential, in order to retain recourse of Court action should the agreement not be complied with by the young person, that any agreement relating to an alleged summary offence be concluded within six months of the date of the alleged offence. The policy also allows for a charge of \$20 where the agreement includes participation in an educational, group or similar program activity. This charge may, however, be waived by the Probation Officer where it may not be appropriate to the case.

In finalizing the alternative measures agreement, the Probation Officer, or the Facilitator, is responsible for having the young person sign the agreement and for having copies of the agreement distributed to the young person, parents/guardian, Police Officer, Senior Probation Officer and the Integrated Justice Information System. The Probation Officer, or Facilitator will, in addition, advise the victim of the terms of the agreement.

#### 3.11.2. Adult

In order to avoid duplication and minimize confusion, the *Alternative Measures Agreement Form* (see Appendix 'A', s.3.16.2) for adults is the same as that in use for youth. The document prepared by the Probation Officer, or facilitator,

following approval of alternative measures and contains the conditions and terms of the measures agreed to by the participants in the interview. Similar to alternative measures for youth, the policy and procedures for adults require that the Probation Officer, or Facilitator, in drafting the agreement, consider the nature of the offence, the appropriateness of restitution, personal or community service work, the needs of the offender and the availability of community resources.

The policy and procedures related to alternative measures for adults also stipulates that the agreement shall not, except in exceptional circumstances, exceed six months. In appropriate circumstances, the length of the agreement could be extended by an additional three months with the approval of the Senior Probation Officer. In order to retain recourse of Court action should the agreement not be complied with by the offender, any agreement relating to an alleged summary offence should be concluded within six months of the date of the alleged offence. The policy also allows for a charge of \$50 where the agreement includes participation in an educational, group or similar program activity. This charge may, however, be waived by the Probation Officer where it may not be appropriate to the case.

In finalizing the alternative measures agreement, the Probation Officer, or the Facilitator, is responsible for having the offender sign the agreement and for having copies of the agreement distributed to the offender, the Police Officer, Senior Probation Officer and the Integrated Justice Information System. The Probation Officer, or the Facilitator will, in addition, advise the victim of the terms of the agreement.

### 3.12 The Range of Alternative Measures

#### 3.12.1 Youth

The policy and procedures manual for alternative measures for youth highlights a number of possible conditions and terms that could be included in an alternative measures agreement. The Probation Officer, or Facilitator, in drafting the agreement, may include, but is not limited to, one or more of these conditions (see Appendix 'A', s.3.16.3 for the provincial form). The manual suggests the following:

- *Donation to a Charitable Organization:* the Probation Officer, or Facilitator, would require that the young person make a monetary donation to a charitable organization that is intended to serve youth, senior citizens or needy members of the public.
- *Community Service Work:* under this measure, the young person is required to complete a set number volunteer community service hours.
- *Restitution:* bearing in mind the young person's circumstances and ability to pay, the young person may be directed to make restitution to the victim(s) in the form of monetary compensation.

- *Apology*: the young person, under this measure, is required to write a letter of apology to the victim(s) and submit the letter to the Probation Officer, or Facilitator, for approval.
- *Specific Terms*: the Probation Officer, or the Community Justice Forum Facilitator, may require the young person to follow residency, curfew, or educational programs. The Probation Officer, or Facilitator, may also specify locations or places that the young person cannot frequent and may require that the young person refrain from contact with certain individuals, including victims.
- *Treatment / Counselling*: the young person may be required to take whatever treatment program or other counselling prescribed by the Probation Officer, or Facilitator, which is considered desirable for preventing future offences.
- *Information / Education Programs*: the young person may be directed to participate in a group program such as information or educational sessions as arranged by the Probation Officer or the Community Justice Forum.
- *Referral*: the Probation Officer, or Facilitator, may arrange for the young person to be referred to the Child and Family Services or to another organization or agency.
- *General Terms / Conditions*: the young person may be required to comply with such other reasonable terms or conditions as the Probation Officer, or the Community Justice Forum considers desirable to deal with the circumstances that gave rise to the offence and/or to prevent further criminal behaviour.

### 3.12.2. Adult

The policy and procedures manual for alternative measures for adults highlights a number of possible conditions and terms that could be included in an alternative measures agreement. These terms and conditions are the same as those outlined for youth, although the number of community service hours and the amount of financial compensation or donations may differ. The Probation Officer, or Facilitator, in drafting the agreement, may include, but is not limited to, one or more of these conditions (see Appendix 'A', s.3.16.3 for the provincial form). The manual suggests the following:

- *Donation to a Charitable Organization*: the Probation Officer, or Facilitator, would require that the offender make a monetary donation to an appropriate charitable organization.
- *Community Service Work*: under this measure, the offender is required to complete a specific number volunteer community service hours.
- *Restitution*: the offender may be required to make restitution to the victim(s) in the form of monetary compensation.

- *Apology*: under this measure, the offender is required to write a letter of apology to the victim(s) and submit the letter to the Probation Officer, or Facilitator, for approval.
- *Specific Terms*: the Probation Officer, or Facilitator, may require the offender to follow residency, curfew, or educational programs. The Probation Officer, or Facilitator, may also specify locations or places that the offender cannot frequent and may require that the offender refrain from contact with certain individuals, including victims.
- *Treatment / Counselling*: the offender may be directed to take whatever treatment program or other counselling prescribed by the Probation Officer, or Facilitator, which is considered desirable for preventing future offences.
- *Information / Education Programs*: the offender may be instructed to participate in a group program such as information or educational sessions as arranged by the Probation Officer, or Facilitator.
- *Referral*: the Probation Officer, or Facilitator, may arrange for the offender to be referred to another organization or agency.
- *General Terms / Conditions*: the offender may be required to comply with such other reasonable terms or conditions as the Probation Officer, or Facilitator, considers desirable to deal with the circumstances that gave rise to the offence and/or to prevent further criminal behaviour.

### 3.13 Supervision of Alternative Measures Agreement

#### 3.13.1. Youth

Under the current policies and procedures, all alternative measures agreements are monitored on an ongoing basis by the assigned Probation Officer or delegate, or a designated member of the Community Justice Forum. This supervision includes monitoring the young person's compliance with the terms and conditions of the agreement to ensure successful completion of the conditions contained in the agreement. The Probation Officer, or Community Justice member is also responsible for advising the victim of both the terms of the agreement and the results of the use of alternative measures. In addition, it is the responsibility of the Probation Officer, or the designated member of the Community Justice Forum, to instigate the necessary steps to refer the case back to the Crown Attorney for consideration, direction and appropriate action in the event the young person fails or refuses to complete the alternative measures agreement.

### 3.13.2. Adult

As is the case with youth, the current policies and procedures stipulate that all alternative measures agreements are monitored on an ongoing basis by the assigned Probation Officer or delegate or a designated member of the Community Justice Forum. This supervision includes monitoring the offender's compliance with the terms and conditions of the agreement to ensure successful completion of the conditions contained in the agreement. The Probation Officer or a designated member of the Community Justice Forum, is also responsible for advising the victim of both the terms of the agreement and the results of the use of alternative measures. In addition, it is the responsibility of the Probation Officer or the designated member of the Community Justice Forum to instigate the necessary steps to refer the case back to the Crown Attorney for consideration, direction and appropriate action in the event the offender fails or refuses to complete the alternative measures agreement.

## 3.14 Completion of Agreement

### 3.14.1. Youth

Upon expiration of the alternative measures agreement, the Probation Officer or the designated member of the Community Justice Forum completes a "Termination Summary" by completing the bottom portion of the *Alternative Measures Agreement Form*. It is the responsibility of the Probation Officer, where the agreement is successfully completed, to distribute the Termination Summary to the young person, the parent/guardian, the Police, the Senior Probation Officer, and the Integrated Justice Information System. In cases where the young person fails or refuses to complete the agreement, the Probation Officer will refer the case back to the Crown Attorney for consideration, direction and appropriate action.

### 3.14.2. Adult

Similar to the process followed with the youth, the Probation Officer or the designated member of the Community Justice Forum will, upon expiration of the alternative measures agreement, complete a "Termination Summary" by completing the bottom portion of the *Alternative Measures Agreement Form*. It is the responsibility of the Probation Officer, where the agreement is successfully completed, to distribute the Termination Summary to the offender, the Police, the Senior Probation Officer and the Integrated Justice Information System. In cases where the offender fails or refuses to complete the agreement, the Probation Officer will refer the case back to the Crown Attorney for consideration, direction and appropriate action.

### 3.15 Record Keeping

#### 3.15.1. Youth

The Probation Officer assigned to the case is responsible for ensuring that the appropriate data relating to the young person's involvement in alternative measures is duly entered in the Integrated Justice Information System. In the event the case is resolved through a Community Justice Forum, the Facilitator will forward all necessary documentation to the Probation Office. The records are kept according to the provisions of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.15 for the wording of the appropriate sections) and particular note is made in the policy and procedures respecting disclosure. Pursuant to Section 45(1)(d) of the *Young Offenders Act (Canada)*, a record of participation in alternative measures may not be disclosed or made available for inspection upon or after the expiration of two years from the date of the young person consenting to participate in the alternative measures program.

#### 3.15.2. Adult

As with the alternative measures program for youth, the Probation Officer assigned to the adult case is responsible for ensuring that the appropriate data relating to the offender's involvement in alternative measures is duly entered in the Integrated Justice Information System. In the event the case is resolved through a Community Justice Forum, the Facilitator will forward all necessary documentation to the Probation Office. The records are kept according to the provisions of the *Criminal Code of Canada* (see Chapter 1, s.1.15 for the wording of the appropriate sections) and particular note is made in the policy and procedures respecting disclosure. Pursuant to Section 717.4(5) of the *Criminal Code of Canada*, a record kept pursuant to Section 717.2 (police records) or Section 717.3 (government records) may not be introduced into evidence more than two years after the end of the period for which the person agreed to participate in alternative measures, except for the purposes set out in paragraph 721(3)(c) respecting presentence reports.

3.16 Appendix 'A' Forms

3.16.1. Recommendation for Alternative Measures (Youth and Adults)

File/Case # \_\_\_\_\_

**RECOMMENDATION FOR ALTERNATIVE MEASURES**

Director of Prosecutions/Federal Prosecutions  
Province of Prince Edward Island

or  Pursuant to Section 4 of the Young Offenders Act (Canada)  
 Pursuant to Section 717(1) of the Criminal Code of Canada, I

\_\_\_\_\_ of \_\_\_\_\_  
PEACE OFFICER POLICE AGENCY

Having considered the interests of society and the needs of this person, recommend that

\_\_\_\_\_  
NAME DATE OF BIRTH  
\_\_\_\_\_  
ADDRESS TELEPHONE NUMBER

be considered for Alternative Measures   
by means of Standard Alternative Measures  OR by means of Community Justice Forum   
Agrees to participate Yes  No  Agrees to participate Yes  No

I verily believe that the facts derived from my investigation, which are set out in the ATTACHED CROWN BRIEF, will reveal sufficient evidence to proceed with prosecution of this person under Section \_\_\_\_\_ of the \_\_\_\_\_ and such prosecution would not appear to be barred at law and an information HAS/HAS NOT been laid to date.

The victim(s) (where applicable) in this complaint is/are:

1. \_\_\_\_\_ 2. \_\_\_\_\_  
NAME NAME

\_\_\_\_\_  
ADDRESS/TELEPHONE NUMBER ADDRESS/TELEPHONE NUMBER

Victim contacted: Yes  No  Victim contacted Yes  No   
Victim agrees with referral: Yes  No  Victim agrees with referral: Yes  No   
Victim consents to CJF Yes  No  Victim consents to CJF Yes  No   
Victim Services contacted Yes  No  Victim Services contacted Yes  No

\_\_\_\_\_  
DATE PEACE OFFICER

To: Probation Services Alternative Measures approved

\_\_\_\_\_  
DATE CROWN ATTORNEY

3.16.2. Alternative Measures Agreement (Youth and Adults)

**ALTERNATIVE MEASURES AGREEMENT**

File / Case # \_\_\_\_\_

or  Pursuant to Section 4 of the Young Offenders Act (Canada)  
 Pursuant to Section 717 of the Criminal Code of Canada, I

\_\_\_\_\_ hereby admit  
FULL NAME ADDRESS DATE OF BIRTH

Responsibility for the offence(s) of \_\_\_\_\_  
DATE OF OFFENCE

I wish to have this matter dealt with by Alternative Measures - Standard Alternative Measures  or  
Community Justice Forum , and not by the Court.

I have been advised of my right to be represented by counsel and have been given an opportunity to  
consult with counsel prior to signing this form.

I consent to participate in an Alternative Measures Program upon the following terms and conditions to  
be completed by \_\_\_\_\_ (date).

I agree to the above Alternative Measures and realize that failure to complete the program could result  
in action in Court. As well:  Section 4 of the Young Offenders Act (Canada)  
or  Section 717 of the Criminal Code of Canada  
has been explained to me.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ at \_\_\_\_\_  
PRINCE EDWARD ISLAND

\_\_\_\_\_  
WITNESS / PROBATION OFFICER

\_\_\_\_\_  
OFFENDER

\_\_\_\_\_  
PARENT / GUARDIAN (if appropriate)

**TERMINATION SUMMARY**

The terms of the Alternative Measures Agreement outlined above were (Please check appropriate box)

not completed  partially completed  successfully completed

Probation Officer/Monitor Comments / Recommendations

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.  
\_\_\_\_\_  
PROBATION OFFICER

cc. Offender Investigating Officer Senior Probation Officer Integrated Justice System  
Parent/Guardian (if appropriate)

3.16.3. Possible Range of Alternative Measures

**ALTERNATIVE MEASURES**

**Possible Conditions for  
Inclusion in Alternative Measures Agreements**

1. Participate in a Community Justice Forum under the responsibility of a trained facilitator.
2. Make a donation to a charitable organization, preferably one intended to serve youth, senior citizens, needy members of the public, etc.
3. Complete \_\_\_\_\_ hours of community service work.
4. Make restitution to the victim(s) of your offence(s) in the amount of \_\_\_\_\_ to the Probation Officer by \_\_\_\_\_.
5. Make a contribution of \$\_\_\_\_\_ to the PEI Victims of Crime fund payable through a clerk at Provincial Court.
6. Write letter of apology to victim(s) and submit same to the Probation Officer for approval.
7. Follow residency, curfew or educational program as indicated by the Probation Officer.
8. Take whatever treatment program or other counselling prescribed to you by the Probation Officer or agreement at the Community Justice Forum, which is considered desirable for preventing a repetition by him/her of the same offence.
9. Participate in a group program such as information/educational sessions as arranged by the Probation Officer, or agreed to at the Community Justice Forum.
10. Referral to Child and Family Services (young offenders) or other organization/agency as arranged.
11. Stay away from locations/places as specified by the Probation Officer or agreed to at the Community Justice Forum.
12. Refrain from contact with individuals including victims as may be specified by the Probation Officer or agreed to at the Community Justice Forum.
13. Comply with such other reasonable terms or conditions as the Probation Officer considers desirable or as agreed to at the Community Justice Forum to deal with the circumstances that gave rise to the offence and/or to prevent further criminal behaviour.

### 3.17 Appendix 'B' Data

### 3.17.1. Youth Caseload Data

There is currently no available caseload data for youth alternative measures programs in Prince Edward Island.

## 3.18 References

Choice Resources Enterprise. *Young Offenders Alternative Measures Review: Final Report*. Prepared for the Department of Justice Canada and Community and Correctional Services Division, Health and Community Services Agency, Prince Edward Island. April, 1995.

Choice Resources Enterprise. *Young Offenders Alternative Measures Review: Final Report Summary*. Prepared for the Department of Justice Canada and Community and Correctional Services Division, Health and Community Services Agency, Prince Edward Island. April, 1995.

Department of Community Affairs and Attorney General. *Alternative Measures –: Policy and Procedures for Adults and Young Offenders*. Prince Edward Island. April 1998.

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# 4 Nova Scotia

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## 4.1 The Philosophy of Alternative Measures

Alternative Measures (AM) programs in Nova Scotia are authorized by the Department of Justice, Correctional Services, for both youth and adults pursuant to Section 4 and Section 69 of the YOA and Section 717 of the *Criminal Code of Canada*, respectively (see Chapter 1, s.1.1 for the wording of these sections).

AM are operated at the pre-charge and post-charge stage for youth, but only at the post-charge stage for adults.

The alternative measures programs for youth are frequently referred to as being based on a pre-charge model where the referral to AM happens in advance of any charges being laid so that there is no need for the

youth to appear in court and there is no subsequent court time taken in staying or withdrawing a charge once AM is successfully completed. Different parts of the province, however, operate exclusively on the basis of a post-charge or modified post-charge model. In the post-charge model, an information is laid and entered on the court docket only to be withdrawn in open court upon the satisfactory completion of the AM agreement. In a modified post-charge model, the information is laid with a Justice of the Peace and no charge is introduced in court so that the need to withdraw court charges is eliminated. The Nova Scotia Department of Justice has adopted a policy that leaves the preferred approach to the discretion of the arresting officer.

Alternative measures for youth, in its current form in Nova Scotia, began as a pilot project in 1986. The purpose of the program is to provide first-time young offenders, who have generally committed minor offences, with an opportunity to avoid formal court proceedings. Consistent with the philosophy of the YOA, the concepts of accountability, responsibility, and restitution are the central foci of alternative measures with punishment being de-emphasized.

The adult alternative measures are operated based on the post-charge, pre-plea model. The AM program is designed to provide to those adult offenders who are eligible, the opportunity to participate in a program referred to as the Adult Diversion Program. This program started as a pilot project in 1995 and is intended to function at the post-charge, pre-trial level. The program is designed to offer an option to the criminal justice system that is visible, accountable, and accessible to victims, offenders, and the community. The delivery of the Adult Diversion Program in Nova Scotia is modelled after their alternative measures for youth.

## 4.2 Responsibility for the Delivery of Alternative Measures

### 4.2.1. Youth

In Nova Scotia, the responsibility for delivering alternative measures for youth lies with seven community-based non-profit agencies registered under the *Societies Act*. These agencies provide a service under contract to the province of Nova Scotia. Initially, the various alternative measures societies contracted with the Department of Community Services and assumed responsibility for providing

alternative measures to youth 12 to 15 years old only. Youth 16 and 17 years of age were provided for through the former Department of the Attorney General directly with alternative measures being managed by the Correctional Services Division of the Department. In 1994, the Young Offender and Court Services Division of the Department of Community Services and the Department of Justice merged with responsibility for the provision of alternative measures to the 16 and 17-year-old youth being transferred to the Societies.

Youth receive AM through community-based non-profit agencies, whereas adults are served by probation officers

#### 4.2.2. Adult

In Nova Scotia, the responsibility for delivering adult alternative measures differs from that of youth in that it lies with Probation Officers or other persons designated by Correctional Services as Adult Diversion Personnel under the Department of Justice.

### 4.3 Referral Agent

#### 4.3.1. Youth

The Crown is responsible for referring all youth cases to alternative measures, whereas adult referrals come from the police

Referral to alternative measures for youth shall be accepted only from the Crown Attorney and only at such time as the Crown Attorney has provided a properly completed and endorsed *Recommendation for Alternative Measures Form* (see Appendix 'A', section 4.16.1). Generally, the Crown authorizes the referral on the recommendation of the police. However, in some instances, the Crown will authorize alternative measures referrals in the absence of, or even against the recommendation of the police. In theory, when the Crown authorizes a referral to an Alternative Measures Society, the Society may reject the referral if it decides that the case is inappropriate with respect to the seriousness of the offence and the Society's ability to adequately deal with the case. The youth, themselves, may also reject an offer of referral preferring instead to proceed by way of the normal court process.

#### 4.3.2. Adult

The Adult Diversion Program was established in such a way that cases are intended to be referred directly to the program by the police. In cases where the appropriateness may be in question, the police will refer to the case to the Crown Attorney for review. Upon receiving a referral, the Adult Diversion personnel will review the referral to ensure that all program criteria are met and will make the final determination of the acceptability of each referral. Once reviewed by the Adult Diversion personnel, the case will be reviewed with the Crown Attorney for

approval or rejection. If all conditions of eligibility are met, the Crown Attorney will decide whether to support and approve the police recommendation to divert the case or to proceed to prosecution.

#### 4.4 The Role of the Police

##### 4.4.1. Youth

As the first point of contact when an incident occurs, the police play a very important role in the overall delivery of alternative measures. When called to investigate, the police have three basic options to consider in deciding how to proceed. Police retain discretion not to lay a charge, to recommend a referral to alternative measures or to lay a charge and commence the youth court process.

Aside from the legislated criteria set out in sections 4(1) and 4(2) of the *Young Offenders Act*, which generally circumscribe the conditions under which a referral to AM can be made, the police enjoy some latitude with respect to the range of offences and offenders who will be considered eligible. Under the *Young Person's Summary Proceedings Act*, a provincial act dealing with provincial and municipal statutes, the arresting officer has a duty to consider alternatives to laying a charge in cases where the youth is between the ages of 12 and 15 and the charge is in relation to a provincial statute or municipal by-law violation.

s.5. Before deciding whether to charge a young person it is the duty of every peace officer who encounters a young person alleged to have committed an offence to determine:

a) whether the young person can best be dealt with in accordance with provisions of the *Children's Services Act*, or if not

b) whether the young person can best be dealt with in accordance with alternative measures where alternative measures are available pursuant to these regulations. (*Young Person's Summary Proceedings Act* (R.S.N.S. 1989, c509, s.5(a) and 5(b))

##### 4.4.2. Adult

In any incident police retain the discretion not to lay a charge or to take no further action. In the adult diversion program, the cases are intended to be referred directly from the police, who will review the facts of the case and the eligibility criteria prior to recommending the case for adult diversion. If there is any question of appropriateness, the police will refer the case to the Crown Attorney for review.

## 4.5 The Role of the Crown Attorney

### 4.5.1. Youth

The role of the Crown Attorney in the referral process is to review the case to decide appropriateness for alternative measures, having specific regard to whether there is sufficient evidence to proceed with prosecution of the offence and to ensure that prosecution of the offence is in no way barred at law. If having considered these, as well as the established eligibility criteria, the Crown Attorney agrees that the case complies with the referral criteria, the Crown will refer the case to the appropriate Alternative Measures Society.

In determining the appropriateness of a referral, the Crown will consider the recommendations of the police as well as whether or not there is a legal basis for proceeding with the charge, whether a referral would be in the best interests of the youth and society, and, whether or not the young person meets the provincial requirements. In addition, there are cases where the Crown will initiate consideration of alternative measures after the charge has been laid. Ultimately, it is the Crown who has the final say for making a referral to alternative measures.

### 4.5.2. Adult

In the adult diversion program, cases that are serious, complicated or questionable are referred to the Crown Attorney for review. As well, once a case is reviewed by the adult diversion personnel for acceptability, it is reviewed by the Crown Attorney for approval or rejection. Having considered whether there is sufficient evidence to proceed with prosecution of the offence and that the prosecution is not in any way barred at law, and having considered the established eligibility criteria, the Crown Attorney will decide whether to support the police recommendation to divert the case or to proceed to prosecution.

## 4.6 The Role of the Victim

### 4.6.1. Youth

The victim plays an extremely important role in the alternative measures process as the underlying approach is one of mediation. Although the victim's approval is not required for a young person to participate in alternative measures and even though a hearing may proceed in the absence of the victim, clearly the victim's participation increases the chances of a mutually satisfying agreement being negotiated.

It is the responsibility of the Society to contact the victim to seek their participation. Quite often, the location of the hearing is arranged to accommodate the needs of the victim. During the course of the hearing the victim is provided an opportunity to discuss the impact of the offence as well as to provide input on an appropriate

measure that the youth may undertake. The Society also assumes responsibility for notifying the victims, if they participate, of the satisfactory completion of the agreement or the failure to complete the agreement on the part of the young person.

#### 4.6.2. Adult

Prior to the assessment interview, contact with the victim is established, where appropriate, both to consider the victim's issues regarding the case and to determine the victim's interest in participating in mediation with the accused. Information is also obtained, at this point, with respect to the need for compensation as well as proof of the nature and extent of compensation requested.

If it is determined at the assessment interview that the accused is accepted for participation in the adult diversion program and the victim has agreed to participate, the diversion personnel will arrange for a mediation hearing. Where the victim does not wish to participate, the matter may be resolved by means of a formal diversion agreement established during the assessment interview. In circumstances where an agreement is reached without the victim's direct participation, the victim is informed of the conditions of the agreement by adult diversion personnel. The victim, where appropriate, shall also be informed of the satisfactory completion of the alternative measures agreement or alternatively of the failure of the accused to complete the measures.

### 4.7 Right to Legal Counsel

#### 4.7.1. Youth

The *Young Offenders Act* section 4(1)(d) (see Chapter 1, s.1.7 for the wording of this section) makes it clear that prior to a young person becoming involved in alternative measures, they must fully and freely consent to participate in the program having been given a reasonable opportunity to consult with legal counsel. This right to counsel is identified in the Department of Justice's Policy and Procedures Manual and is brought to the attention of the youth at several stages in the referral process including by the Alternative Measures Societies. Upon receiving a recommendation for alternative measures from the Crown Attorney, the Society formally advises the young person and the parents of the young person in writing of the opportunity to participate in alternative measures, of the young person's right to legal counsel and of the need for the young person to respond within fourteen days in order to participate in alternative measures.

#### 4.7.2. Adult

Section 717(1)(d) of the *Criminal Code* (see Chapter 1, s.1.7 for the wording of this section) states that one of the conditions that must be met, in order to consider a person for alternative measures, is that the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel. The Department of Justice's Policy and Procedures Manual regarding adult diversion states that the adult diversion personnel, after receiving a referral, shall forward a letter of introduction to the accused person informing him/her of the opportunity to participate in the adult diversion program and of his/her right to retain and consult legal counsel.

### 4.8 Eligibility Criteria

#### 4.8.1. Youth

Formally authorized alternative measures programs are instituted across Canada pursuant to the federal *Young Offenders Act*. The legislated criteria governing the referral process are contained in sections 4(1) and 4(2) of this *Act* (see Chapter 1 s.1.8 for the wording of these sections).

In addition to the above legislated criteria, the province applies a number of policies to ensure that the program meets the specific needs of the province. In Nova Scotia, alternative measures will not be considered where:

- a) the young person is on probation or serving a custodial disposition;
- b) the alleged offence is impaired driving or refusing a breathalyser;
- c) the young person has pending charges in addition to those being considered for alternative measures;
- d) the young person has any prior *Criminal Code* or Federal Statute convictions or has previously participated in alternative measures within the preceding two year period.

Youth who are on probation or serving a custody sentence, are alleged to have committed an impaired driving offence or refusing a breathalyzer, has pending charges, participated in alternative measures in the preceding 2 years, or is alleged to have committed a violent crime are not eligible for consideration.

The one exception to (d) applied by some police in a discretionary way in selected communities, is that referrals for provincial statute violations or municipal by-law violations may, in some areas, not be considered as a youth's one chance at alternative measures if a subsequent *Criminal Code* offence is committed.

Additionally, the policy restrictions indicate that alternative measures shall not normally be considered in circumstances where the alleged offence is indictable and is one which involves violence, personal injury, weapons or a potentially dangerous situation.

#### 4.8.2. Adult

Sections 717 (1) and (2) of the *Criminal Code* specifies the legislated criteria under which alternative measures may be used for adults (see Chapter 1 s.1.8 for the wording of these sections).

Adults who are on probation or serving a custody sentence, have pending charges, participated in alternative measures in the preceding 2 years, have a recent history of similar convictions or are alleged to have committed a violent crime or a criminal code driving offence are not eligible for consideration.

In addition, provincial policy states that adult diversion shall not be considered where:

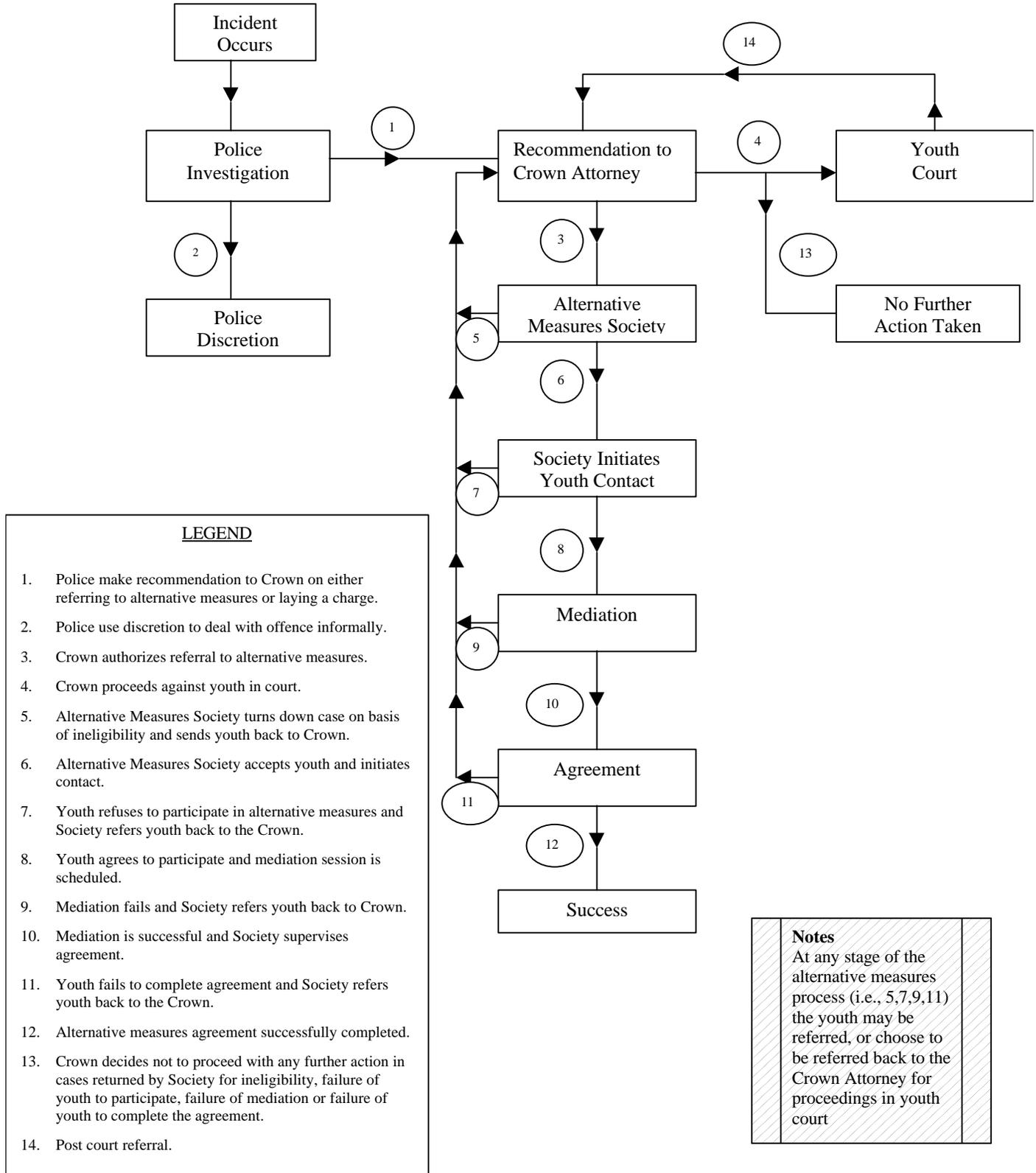
a) the accused person is on probation or is serving a custodial disposition;

b) 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;

c) 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 (d), or has previously participated in a diversion program within the preceding two year period; (conviction free periods date from the end of dispositions);

d) the following offences or factors are involved: serious violence against a person; the alleged offence involved the use or threatened use of a weapon; serious sexual offences; perjury; *Criminal Code* driving offences; spousal/partner violence.

## 4.9 Alternative Measures Process for Youth



Upon receiving a *Recommendation for Alternative Measures* from the Crown Attorney, the young person and the parents of the young person are formally advised in writing, by the appropriate Alternative Measures Society, of the opportunity to participate in alternative measures, of the young person's legal right to counsel and of the need for the young person to respond within fourteen days in order to participate in alternative measures.

In the event that a response is not received from the young person within fourteen days of the date of the notice, the Society will contact the young person to confirm the young person's intentions with respect to participation in alternative measures. Where the young person declines the opportunity to participate, the case is referred back to the Crown Attorney for formal youth court proceedings.

If the young person agrees to participate, an alternative measures hearing is arranged to be conducted no later than thirty days following the young person's agreement to participate. The location of the hearing is usually in the area where the offence took place and, where possible, will attempt to accommodate primarily the needs of the victim and the police in this regard. Upon request of the young person and approval of both the victim and the police, the hearing may be held in the young person's community if this is a considerable distance from the area where the offence occurred.

The Society assumes responsibility, in arranging the hearing, to establish contact with the police, the parents and the victim, where appropriate, to consider

The Alternative Measures Society is charged with arranging the mediation hearing, negotiating an agreement, supervising the agreement and keeping all parties informed at all stages of the alternative

representations regarding the case and to provide them with an opportunity to attend and participate in the hearing. Provincial policy stipulates that while the total number of participants in a hearing may vary, an alternative measures hearing shall not be conducted with fewer than four individuals including the chairperson, a co-chairperson, the youth, and at least one parent or a responsible adult or volunteer from the

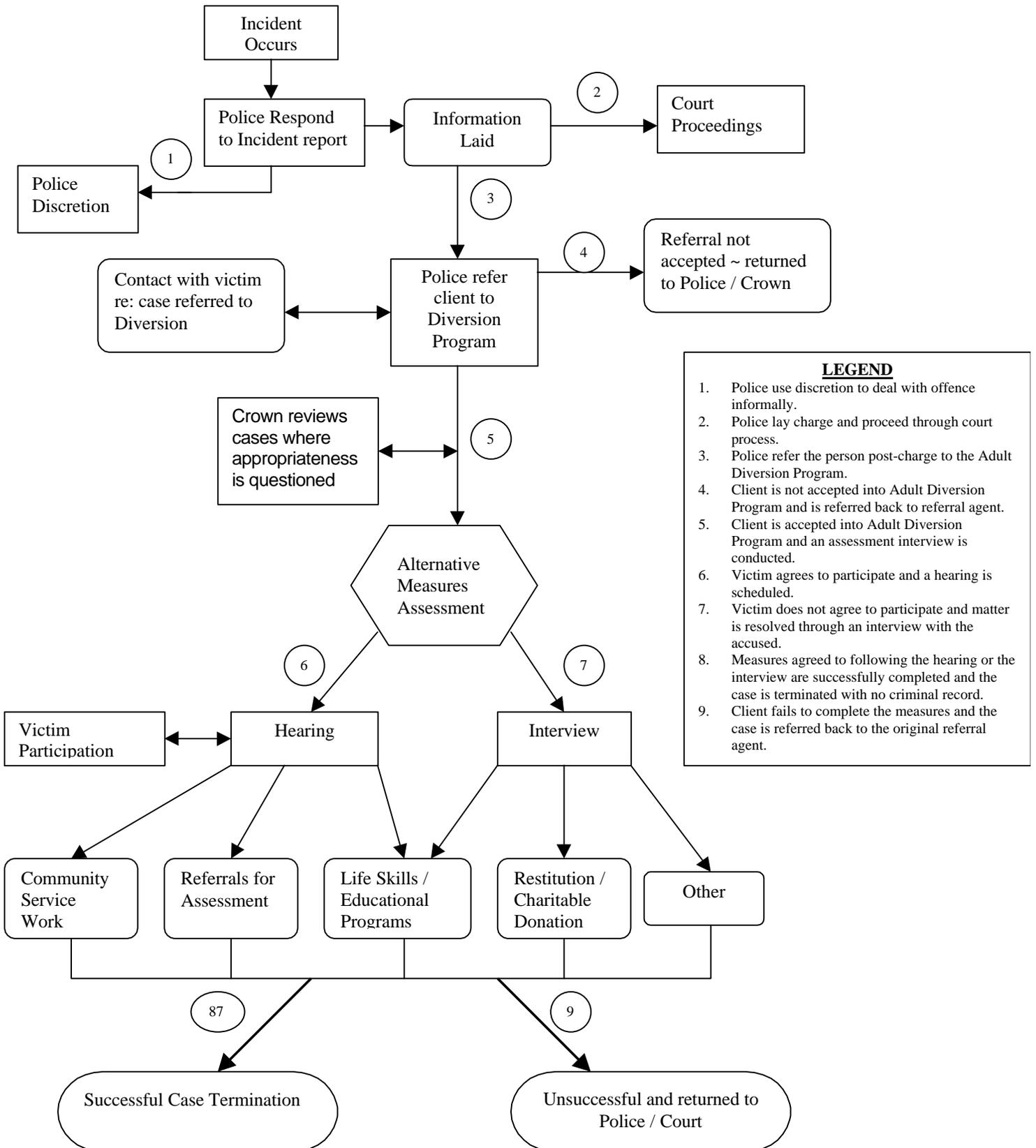
community acting in support of the youth.

The chairperson guides the hearing and outlines the purpose and parameters of the hearing and the nature of the chairperson's role. During the course of the hearing, the chairperson is responsible for ensuring the input from those present and provides direction as to the general nature of the input required from the youth, the victim, the police and the parents. A full discussion follows regarding the offence and its effects on the victim, the community and the offender's family. The main focus of the discussion is to arrive at an appropriate agreement as to what measures the youth will undertake to make reparation for the offence.

Where the hearing is unable to produce an agreement, the chairperson may determine a reasonable compromise, reschedule the hearing with a new chairperson or defer making a determination in the matter for a period not exceeding fourteen days.

If it is determined that alternative measures is appropriate for the young person and an acceptable alternative measure is reached, the young person will enter into an alternative measures agreement. Should the hearing determine that alternative measures is not appropriate or an agreement cannot be reached, the case is referred back to the Crown Attorney for formal youth court proceedings.

#### 4.10 Alternative Measures Process for Adults



The adult diversion program is generally derived from the youth alternative measures program with some variations that reflect the age and responsibility of the offender. Once the *Adult Diversion Program Referral Form* (see Appendix 'A' section 4.16.3) is received, the adult diversion personnel will forward a letter of introduction to 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. The accused person is given fourteen days to respond and failure to do so is taken as an indication that the accused does not wish to participate in the program and the matter is returned to the police or the original referral agent. The accused is also advised that participation in adult diversion does not preclude the possibility that civil litigation may be pursued by the victim.

Where the accused agrees to participate in the program, adult diversion personnel arrange and conduct an assessment interview (see Appendix 'A' sections 4.16.4 and 4.16.5) to determine the offender's acceptance into the program. Prior to this assessment interview, contact with the victim is established, where appropriate, to consider the victim's issues regarding the case and to determine the victim's interest in participating in mediation with the accused. Information is also obtained with respect to the need for compensation as well as proof of the nature and extent of compensation requested.

If it is determined at the assessment interview that the accused is accepted for participation in the adult diversion program and the victim has agreed to participate, the diversion personnel will arrange for a mediation hearing. Where the victim does not wish to participate, the matter may be resolved by means of a formal diversion agreement established during the assessment interview. In circumstances where an agreement is reached without the victim's direct participation, the victim is informed of the conditions of the agreement by adult diversion personnel.

The Adult Diversion Program is broadly based on the youth system with the Adult Diversion Personnel responsible for mediation hearings or assessment interviews, negotiating and supervising agreements and information sharing.

Provincial policy outlines the process to be followed in arranging a mediation hearing. Similar to the youth alternative measures hearing, the number of participants at an adult diversion mediation hearing may vary, however, a hearing will not be conducted without at least four people including the mediator, the co-mediator, the accused person and the victim. The mediator guides the hearing and outlines the purpose, procedures and parameters of the hearing as well as the nature of the mediator's role in the hearing. During the course of the hearing, the mediator is responsible for ensuring input from those present and provides direction as to the general nature of the input required from the accused, the victim and any others in attendance. The mediator facilitates participant discussion regarding the facts which have been presented, clarifies the issues involved and assists the participants in reaching a mutually satisfactory agreement.

Where the hearing is unable to produce a consensus, or where otherwise deemed necessary, the mediator may defer the resolution of the matter for a period agreed upon by the participants.

Where an agreement is reached, terms are set out in writing in an *Adult Diversion Program Agreement* (see Appendix 'A' section 4.16.6). In the event that an agreement cannot be reached, the case is referred back to the original referral agent. Whenever appropriate, victims are asked to participate in a victim satisfaction survey that is completed following resolution of the case.

## 4.11 The Alternative Measures Agreement

### 4.11.1. Youth

The *Alternative Measures Agreement* (see Appendix 'A' section 4.16.2) is the document prepared at the end of the mediation session, following approval for Alternative Measures, and contains the measures agreed to by the participants in the session and approved by the chairperson. The guidelines require that the agreement be signed, at a minimum, by the young person, the young person's parents and the chairperson and that a copy be distributed to all participants. The guidelines also state that the agreement must include a date for completion of the measures that does not exceed six months from the date of the hearing (post-charge environment), and that where a formal charge has not been laid against the young person (i.e., pre-charge environment), the time frame for completion of the measures shall not exceed six months from the date of the offence.

Within the context of the six month limitation period, a Society may, under reasonable circumstances extend or otherwise modify a youth's agreement provided such an extension does not carry beyond the six month period. Where such an extension or modification is granted, the agreement is formally amended to reflect the change and the appropriate notation is made on the young person's file. Under no circumstances can a young person perform or participate in any aspect of the alternative measures agreement beyond the specified completion date.

### 4.11.2. Adult

Once accepted for adult diversion and an appropriate alternative measure is identified, a formal Adult Diversion Agreement is entered into by the accused person and signed by all participants of the mediation hearing. The agreement specifies the measures to be completed by the accused person as well as the completion date and once signed, is distributed to all participants with a copy kept on file.

As with the youth alternative measures, the agreement may be modified or extended under certain circumstances and notice to that effect will be provided to all who had signed the original agreement.

## 4.12 The Range of Alternative Measures

### 4.12.1. Youth

The range of measures currently available to alternative measures is clearly outlined in the Policy and Procedures Manual. The range which may be employed are:

- *Community Service*: the young person may be required to complete a specific number of volunteer hours, to a maximum of 50 hours, at an approved community placement.
- *Restitution/Financial Compensation*: this includes monetary or material compensation made by the young person to the victim. Where this is used, the victim or the police are required to provide a written estimate of the costs and the young person is required to personally complete all necessary transactions and to obtain receipts from the victim. In all cases, the degree of compensation will be based on the young person's ability to pay.
- *Victim-Offender Reconciliation*: with the consent of the victim, the young person may be required to provide compensation to the victim by way of specific personal service the total number of hours of which are not to exceed 50.
- *Community Reconciliation*: under this measure, the young person is required to make amends, either through verbal or written apologies, an expression of appreciation or through a charitable donation to a specific community-based non-profit organization. Where a donation is used, the amount must take into consideration the young person's ability to pay.
- *Education Programs/Projects*: this measure requires the young person to participate in a specific educational program or project that relates to the alleged offence such as a stop-lift program (an educational program about the costs and consequences of shoplifting), completing a poster or an essay. Where an educational program is used the young person will be referred directly to the program and any additional costs become the responsibility of the young person.
- *Counselling/Treatment*: this measure allows for a young person to be required to attend an initial assessment or orientation at a specific counselling or treatment program. The counselling or treatment program is aimed at addressing the behaviour of the young person that may have led to his/her involvement in the alleged offence. Where this measure is used, the young person will be referred directly and any additional costs will be the responsibility of the young person. This measure covers only the initial assessment, as no young person is required to attend on-going treatment sessions as an alternative measure.

The measures available for youth include community service, restitution / compensation, victim-offender reconciliation, apologies, charitable donations, educational programs and counselling.

- *No Further Intervention:* in cases where it is determined at the alternative measures hearing that the young person has already satisfied the requirements or the objectives of the program, it may be deemed that no further intervention is necessary.

#### 4.12.2. Adult

The range of measures which may be employed in the adult diversion program include, but are not limited to, the following:

- *Community Service:* the accused person is required to complete a specific number of volunteer hours, not to exceed 50, at an approved community agency as specified in the adult diversion agreement.

- *Restitution/Financial Compensation:* the accused person makes payment to the victim by way of either monetary or material compensation. All necessary transactions will be required to be completed by the accused person who will be responsible for obtaining a receipt from the victim. Restitution payments must be completed within a two year period unless otherwise approved by the Senior Probation Officer.

- *Victim-Offender Reconciliation:* with the consent of the victim, the accused person provides compensation to the victim by way of specific personal services as indicated in the agreement. When voluntary work is used, the number of voluntary work hours will not exceed 50 in total.

Adult Diversion measures include community service, restitution / compensation, victim-offender reconciliation, education programs, as well as letters or verbal apologies, charitable donations and referrals for counselling.

- *Education Programs:* this measure allows the accused person to participate in a specific educational program which relates to the alleged offence and/or the circumstances leading to the accused person's involvement in the offence. The accused person is to be referred directly by the adult diversion personnel and any additional or associated costs are to be the responsibility of the accused person.

- *No Further Intervention:* in those cases where it is determined at the assessment interview or the mediation hearing that the accused person has already satisfied the objectives of the program, it may be deemed that no further intervention is necessary.

- *Other Approved Measures:* where circumstances dictate, policy guidelines allow other measures to be used such as a letter of apology, a referral for counselling/treatment assessment, a charitable donation and/or an essay.

## 4.13 Supervision of Alternative Measures Agreement

### 4.13.1. Youth

Under the current guidelines, all alternative measures agreements are monitored on an ongoing basis by the appropriate Alternative Measures Society. This supervision includes monthly contact with the young person and collateral contacts, such as community placement agencies and special education programs, to ensure successful completion of the conditions contained in the agreement. It is also the responsibility of the Society to address and instigate any necessary and appropriate disciplinary action, such as terminating the alternative measures, in the event of a violation by the young person of any conditions of the alternative measures agreement.

### 4.13.2. Adult

All adult diversion agreements are monitored by adult diversion personnel (i.e., probation officers), on an ongoing basis to ensure successful completion of the conditions contained in the agreement. It is the responsibility of the adult diversion personnel to investigate any non-compliance of any term by the accused and to modify the agreement, if required, or to return the case to the original referral agent.

## 4.14 Completion of Agreement

### 4.14.1. Youth

It is the responsibility of the Alternative Measures Society, under the current guidelines, to ensure that all participants in the alternative measures process, including the Crown, the police, the young person, the parents of the young person and, where appropriate, the victim, receive formal notification of the satisfactory completion of the agreement. Where the young person fails to complete the conditions of the agreement, the above mentioned participants are formally notified and the case is referred back to the Crown Attorney for formal court proceedings.

### 4.14.2. Adult

Once an accused satisfactorily completes the conditions of the agreement, the *Adult Diversion Referral Form* is completed by the adult diversion personnel and returned to the original referral agent. The accused and, where appropriate, the victim are notified of such. Where an information was laid at the outset, the charge will be withdrawn at this point. Where the accused fails to complete the terms of the agreement satisfactorily, formal notice to that effect is distributed to

the original referral agent, the accused person and, where appropriate, the victim and the case is referred back to the referral agent for appropriate action. No criteria or guidelines exist to define what constitutes an incomplete agreement or to define when a case should be referred back to the original referral agent or what the ensuing appropriate action may be.

#### 4.15 Record Keeping

##### 4.15.1. Youth

Aside from the *Young Offenders Act* provisions regarding record keeping, disclosure and non-disclosure of records, the current provincial policy guidelines provide direction to the Societies with respect to the handling of records and files containing information on youth who have gone through the alternative measures program. The guidelines provide that all records are to be held locally by the Society for a maximum of two years, at which time they are to be transferred to the Provincial Record Centre where they will be stored for an additional year and then destroyed.

##### 4.15.2. Adult

All records pertaining to an accused person's participation in alternative measures are maintained and destroyed in accordance with the Department of Justice Records Retention Schedule and Section 717 of the *Criminal Code of Canada*.



#### 4.16 Appendix 'A' Forms

4.16.1. Youth Recommendation for Alternative Measures Form

Police File # \_\_\_\_\_

**Section One (To be Completed by Police)**

Date: \_\_\_\_\_

1. Name of Young Person: \_\_\_\_\_ Male \_\_\_ Female \_\_\_  
Address \_\_\_\_\_ Phone: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Date of Birth: \_\_\_ / \_\_\_ / \_\_\_ Age at time of Offence: \_\_\_\_\_  
D M Y

3. Parent(s) / Guardian of Young Person: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
\_\_\_\_\_

4. Police Department: \_\_\_\_\_  
Investigating Officer(s): \_\_\_\_\_

5. Particulars of Offence (Include date, time, place and circumstances of offence – Copy of Crown Sheet will suffice)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Previous Convictions: No \_\_\_ Yes \_\_\_ Specify \_\_\_\_\_

7. Victim(s) Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone \_\_\_\_\_  
\_\_\_\_\_

8. Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section Two (To be completed by Crown Prosecutor)**

Case meets basic criteria for referral: \_\_\_\_\_

Has an information been laid: Yes \_\_\_ No \_\_\_

Signature of Crown: \_\_\_\_\_ Date: \_\_\_\_\_

**For Departmental use only:**

Date Referral received: \_\_\_ / \_\_\_ / \_\_\_ Case File No.: \_\_\_\_\_

Referred to: \_\_\_\_\_

4.16.2. Youth Alternative Measures Agreement

Name: \_\_\_\_\_ D.O.B. \_\_\_\_\_

Address: \_\_\_\_\_

I hereby agree to complete the following in order to fulfil my obligations under the Alternative Measures Program:

<b>Terms of Agreement</b>	<b>Date for Completion</b>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

I have been advised of my right to legal counsel and have been afforded a reasonable opportunity to consult with counsel prior to entering into this agreement.

I admit responsibility for the act that forms the basis of the offence alleged against me and voluntarily agree to participate in the program of alternative measures as outlined in this agreement.

It is understood that if I am found guilty of any offence, the Young Offenders Act requires that the Youth Court be advised of any previous involvement in the Alternative Measures Program.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Young Person

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Co-Chairperson

**Copy Distribution: White - Young Person; Pink - Parents; Yellow – Prosecuting officer; Green – Regional**

**ADULT DIVERSION PROGRAM  
REFERRAL FORM**

**Section I (to be completed by Police)**

Police Agency: \_\_\_\_\_ Police File No. \_\_\_\_\_

Investigating Officer: \_\_\_\_\_

Court Appearance date: \_\_\_\_\_ Court Location: \_\_\_\_\_

Offence: \_\_\_\_\_ Date of Offence: \_\_\_\_\_  
(If more than one offence, record most serious only)

Location of Offence: \_\_\_\_\_

Synopsis of Offence: \_\_\_\_\_

Were the following checks performed (place check beside each item if check performed):

CPIC  CNI  LOCAL

Previous Alternative Measures: Yes  No

Previous Convictions: Yes  No

If Yes, specify Offence(s) and Date(s) for most recent conviction:

\_\_\_\_\_

\_\_\_\_\_

\*\*\*\*\*

**OFFENDER INFORMATION**

Surname: \_\_\_\_\_ Given Name: \_\_\_\_\_

A.K.A.: \_\_\_\_\_ Previous Surname: \_\_\_\_\_

D.O.B.: \_\_\_\_\_ Gender: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: (Home) \_\_\_\_\_ (Work): \_\_\_\_\_

Accused advised of legal rights: Yes  No

\*\*\*\*\*

**Section I (con't)**

**VICTIM INFORMATION**

Indicate the number of victims: \_\_\_\_\_ (If more than one victim, record details on principal only)

Surname: \_\_\_\_\_ Given Name(s): \_\_\_\_\_

DOB: \_\_\_\_\_ Gender: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (Home): \_\_\_\_\_ (Work): \_\_\_\_\_

Amount of property loss/damage involved: \$ \_\_\_\_\_

Description of physical injuries: \_\_\_\_\_

Was the victim(s) advised of the referral: Yes  No

Was the victim(s) agreeable to having case referred to Adult Diversion Yes  No

Date Received: \_\_\_\_\_ Date Forwarded to Crown Attorney: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Name of Court Officer/Reader: \_\_\_\_\_

\*\*\*\*\*

**Section II (to be completed by Crown Attorney)**

Name of Crown Attorney: \_\_\_\_\_ Signature \_\_\_\_\_ of \_\_\_\_\_ Crown Attorney \_\_\_\_\_

Approved  Rejected  Date: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\*\*\*\*\*

**Section III (to be completed by Correctional Services)**

Does victim want to be interviewed: Yes  No

Date Offender contacted: \_\_\_\_\_ Accused agreed to participate: Yes  No

Date Victim contacted \_\_\_\_\_ Victim agreed to participate: Yes  No

Date of Interview/Hearing: \_\_\_\_\_ Mediator: \_\_\_\_\_

Outcome of Interview/Mediation Hearing: Successful  Unsuccessful  Reason for:

\_\_\_\_\_  
\_\_\_\_\_

**Section III (con't)**

Disposition of Interview/mediation hearing (check as many as apply)

Letter of apology

Restitution   
If Restitution – Amount: \$ \_\_\_\_\_

Community Service   
If Community Service – Hours: \_\_\_\_\_

Charitable Donation   
If Donation – Amount: \$ \_\_\_\_\_

Personal Service

Other   
Specify: \_\_\_\_\_  
\_\_\_\_\_

Completion Date: \_\_\_\_\_

Successful: Yes  No

Date Form returned to Referral Agent: \_\_\_\_\_

Comments/Reason: \_\_\_\_\_  
\_\_\_\_\_

Signature of Adult Diversion Personnel: \_\_\_\_\_

4.16.4. Adult Diversion Assessment Interview

ADULT DIVERSION ASSESSMENT INTERVIEW  
(Does offender request legal counsel Yes No )

Name \_\_\_\_\_ Maiden Name \_\_\_\_\_

DOB \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Phone # \_\_\_\_\_ Marital Status \_\_\_\_\_

Education \_\_\_\_\_ Employment \_\_\_\_\_

Children \_\_\_\_\_  
(Number and age of children)

Family Income Source \_\_\_\_\_  
\_\_\_\_\_

Financial Situation \_\_\_\_\_

Health Status \_\_\_\_\_

Prior Criminal History Yes  No

Synopsis of Offence: Offender's version \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Does it conflict with police report? Yes  No

If so, how? \_\_\_\_\_  
\_\_\_\_\_

Alcohol / Drug related Yes  No  \_\_\_\_\_

Family Difficulties? Yes  No  \_\_\_\_\_

Relationship to victim \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_

4.16.5. Adult Diversion Program Admission Form

Admitting Office \_\_\_\_\_

**PERSONNEL IDENTIFICATION**

File No.                      Surname                      Given Names                      A.K.A.  
 ~                                      ~                                      ~                                      ~

PERMANENT ADDRESS

~

BIRTHDATE                      GENDER                                      ETHNICITY  
 ~                                      ~                                      Caucasian(~) Native (~) Black(~) Other (~) Unknown(~)

MARITAL STATUS

Single(~)      Married(~)      Widowed(~)      Divorced(~)      Separated(~)      Common Law (~)

EDUCATION ATTAINED

1-3 (~) 4-6 (~) 7-9 (~) 10-13 (~) P/Secondary (~) University (~) Vocational (~) Other (~) Unknown (~)

EMPLOYED AT TIME OF ADMISSION

Full-time (~)      Part-time (~)      Seasonal (~)      Student (~)      No (~)      Other (~)      Unknown (~)

PREVIOUS CRIMINAL CONVICTION

PREVIOUS ALTERNATIVE MEASURES

YOA (~)                      Adult (~)                                      YOA (~)                      Adult (~)

**ADULT ALTERNATIVE MEASURES**

DATE OF OFFENCE ~

Date of referral ~                      Returned to referral agent ~

Hearing Date ~                      Returned to referral agent ~

TYPE OF OFFENCE: CC (~)      FS (~)

No. of Charges                      Offences                      Section

~                                      ~                                      ~

VICTIM:                      Individual (~)      Corporate (~)                      Victim Contacted:      Yes (~) No (~)

CASE PROCESS:      Interview (~)                      Mediation Hearing (~)

Agreement:      Yes (~)                      No (~)

Date (~)

(~) Community Service Hours (~ hours)	(~) Restitution Amount (\$~)
(~) Apology	(~) Charitable Donation Amount (\$~)
(~) Essay	(~) No Action
(~) Personal Service to Victim	(~) Other (~)

4.16.6. Adult Diversion Program Agreement

**ADULT DIVERSION PROGRAM  
AGREEMENT**

Name: \_\_\_\_\_

D.O.B. \_\_\_\_\_

Address: \_\_\_\_\_

I hereby agree to complete the following in order to fulfil my obligations under the Alternative Measures Program:

<b>Terms of Agreement</b>	<b>Date of Completion</b>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

I have been advised of my right to legal counsel and have been afforded a reasonable opportunity to consult with counsel prior to entering into this agreement.

I admit responsibility for the act that forms the basis of the offence alleged against me and voluntarily agree to participate in the Adult Diversion Program as outlined in this agreement.

It is understood that if I am found guilty of any offence, the Court will be advised of any previous involvement in the Adult Diversion Program.

\_\_\_\_\_  
Offender

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Diversion Officer

\_\_\_\_\_  
Witness

Date: \_\_\_\_\_



#### 4.17 Appendix 'B' Data

#### 4.17.1. Youth Caseload Data

The following data pertaining to youth alternative measures are from the report entitled *Alternative Measures in Nova Scotia: A Comprehensive Review* prepared by Andrew Montgomery for the Nova Scotia Department of Justice, August 1997. While this does not represent all the data available on youth alternative measures it does provide a good overview of activities in this area.

**Table 1: Average Monthly Caseload 1996**

Society	Alternative Measures	Community Service Orders
Youth Alternative	300	194
Options for Youth	20	26
John Howard	20	30
Cumberland Community	25	30
Valley Youth Alternatives	55	45
Southwest Alternative Measures	2-16	5-10
Island Alternative Measures	45	80

Note: Estimates obtained from Society staff during on-site interviews

**Table 2: Number of Youth Referred to Alternative Measures Expressed as a Percentage of all Youth Apprehended in Nova Scotia: 1987-1995**

Year	Number of AM Referrals	Total Number of Youth Apprehended	Percent of Youth Referred
1987	894	4,185	21%
1988	1,086	4,713	23%
1989	1,164	4,752	24%
1990	1,427	5,910	24%
1991	1,392	6,415	22%
1992	1,397	5,759	24%
1993	1,402	5,738	24%
1994	1,465	6,108	24%
1995	1,527	5,738	26%
<b>Total</b>	<b>11,754</b>	<b>49,411</b>	<b>24%</b>

**Table 3: Referrals to Alternative Measures by Region of Residence**

Region	Number	Percent
Valley	1,060	9%
Halifax	4,824	41%
Cape Breton	2,026	17%
South Shore	1,112	10%
North	2,676	23%
<b>Total</b>	<b>11,698</b>	<b>100%</b>

56 cases not reporting region of residence

**Table 4: Referrals by Age Category**

Year	Percent 12-15	Percent 16-17	Total Referrals
1987	98	2	894
1988	75	25	1,085
1989	75	25	1,165
1990	73	27	1,427
1991	74	26	1,392
1992	72	28	1,397
1993	68	32	1,402
1994	60	40	1,463
1995	63	37	1,527
<b>Total 1987-1995</b>	67	33	11,752

N=11,752 (2 cases not reporting age)

**Table 5: Percent Distribution of Alternative Measures Referrals by Gender**

Year	Male %	Female %	Total Referrals
1987	69	31	894
1988	71	29	1,085
1989	70	30	1,165
1990	75	25	1,427
1991	73	27	1,392
1992	72	28	1,397
1993	63	37	1,402
1994	64	36	1,463
1995	59	40	1,527
<b>Total 1987-1995</b>	68	32	11,752

N=11,752 (2 cases not reporting gender)

**Table 6: Alternative Measures Referrals by Region of Residence and Gender**

Region	Male %	Female %	Totals
Valley	68	32	1,060
Halifax	66	34	4,824
Cape Breton	71	29	2,026
South Shore	71	29	1,112
North	68	32	2,674
<b>All regions</b>	68	32	11,696

58 cases not reporting gender/residence

**Table 7: Alternative Measures Referrals by Offence Category**

Year	Violence (%)	Theft (%)	Break and Enter (%)	Mischief (%)	Other CC (%)	Provincial Statutes (%)	Totals
1987	1	76	9	8	3	4	893
1988	2	74	7	9	3	6	1,085
1989	4	70	8	11	3	5	1,163
1990	4	66	9	12	2	7	1,428
1991	5	69	9	8	2	8	1,428
1992	5	62	11	12	7	4	1,396
1993	5	63	6	15	4	8	1,402
1994	5	65	5	14	3	7	1,455
1995	4	74	4	8	4	6	1,521
<b>1987 – 1995</b>	4	68	7	11	3	6	11,733

21 cases not reporting offence

**Table 8: Distribution of Offences Referred by Region of Province**

Offence Category	Valley (%)	Halifax (%)	Cape Breton (%)	South Shore (%)	North (%)
Violent	5	4	3	3	5
Theft	61	77	66	64	60
Break and Enter	8	6	10	17	14
Mischief	15	7	10	17	14
Other CC	4	3	4	4	3
Prov. Statutes	7	4	8	6	9
<b>Totals</b>	1,060	4,824	2,026	1,112	2,626

N=11,698 (56 cases not reporting region of residence/offence)

**Table 9: Offences by Age Category**

Offence Category	12 – 15 Year Olds (%)	16 – 17 Year Olds (%)
Violent	4	4
Theft	68	68
Break and Enter	8	6
Mischief	11	10
Other CC	2	6
Provincial Statutes	7	4
<b>Total</b>	7,815	3,918

N=11,733 (21 cases not reporting age/offence)

**Table 10: Offences by Gender**

<b>Offence Category</b>	<b>Males (%)</b>	<b>Females (%)</b>
Violent	4	4
Theft	62	81
Break and Enter	10	2
Mischief	14	3
Other CC	4	3
Provincial Statutes	6	7
<b>Total</b>	<b>7,985</b>	<b>3,748</b>

N=11,733 (21 cases not reporting gender/offence)

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# 5. New Brunswick

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## 5.1 The Philosophy of Alternative Measures

The *Young Offenders Act (Canada)* defines alternative measures programs as measures other than judicial proceedings that hold youth accountable for offences that they commit (see Chapter 1, s.1.1 for the specific wording of the appropriate section of the *Act*). In September, 1996 a number of amendments were made to the *Criminal Code (Bill C-41)* promoting more extensive use of community based sentencing alternatives and utilizing incarceration as a last resort. In addition, provisions were enacted permitting the use of alternative measures for adult offenders instead of judicial proceedings. Legislative provisions pertaining to adult alternative measures are similar to those outlined in Section 4 of the *Young Offenders Act* (see Chapter 1, s.1.1 for the wording of the appropriate *Criminal Code of Canada* sections).

Effective March 17, 1998, the alternative measures program in New Brunswick

The alternative measures program for both youth and adults is authorized by the Attorney General of the Province of New Brunswick. The program is based on the concepts of restorative justice and is offered at the pre-charge stage with no formal charges being laid, but evidence to proceed with charges required. The restorative justice approach offers accused persons, victims, the community, and the criminal justice system an opportunity to address the offence and determine how to repair the harm that has been done.

operates identically for youth and adults. New Brunswick has operated an alternative measures program for youth for close to 15 years. The recent changes to the *Criminal Code of Canada* have led to the development of an adult offender program and a modification to the young offender program to operate a standardized program enhancing the involvement of the community and the victim in the process. The alternative measures program, for both youth and adults, is founded on the basis of restorative justice. Its underlying principle is that it is more beneficial for victims, communities, and offenders if all are involved in addressing the offence and

determining how to repair the harm that has been done. Through restorative justice, communities are empowered to deal with their own problems. Approaches used in restorative justice include family/community group conferencing where the victim, offender, and their relatives are allowed an opportunity to tell their side of the story, victim/offender mediation, and restitution.

A restorative justice approach for alternative measures places the community in the forefront of the delivery of community based justice services. It further enhances and facilitates the implementation of the departmental strategic direction for both community corrections and community based policing programs at the local level

The alternative measures program, for both youth and adults, is a pre-charge option with no formal charges being laid, but evidence to proceed with charges required. It offers eligible accused persons, victims, the community, and the criminal justice system the opportunity to address and resolve, in an efficient and responsible manner, the accused's criminal behaviour outside formal court intervention.

The Alternative Measures Program provides a community option that is visible, accountable, and accessible to accused persons, victims, and the community. It aims to repair the harm done to the victim and the community while holding the accused accountable for his/her actions.

The objectives of the alternative measures program in New Brunswick are to:

protect society through the deterrence of offenders from further criminal conduct;

increase offender accountability and responsibility for their illegal actions;

enhance community involvement in the criminal justice system; and

promote the involvement of victims in the process.

The guiding principles of the alternative measures program are that:

The Alternative Measures Program is an approved program for both youth and adults authorized by the Attorney General of the Province of New Brunswick in accordance with Section 717 of the Criminal Code for adult offenders and Section 4 of the Young Offenders Act (Canada) for young offenders.

The Alternative Measures Program is based on a restorative justice and/or accountability approach where offenders must take responsibility for their actions providing an opportunity for offenders to recognize harm done to victims and the community allowing for reparation through victim/offender reconciliation, restitution, and community service.

Participation in the Alternative Measures Program will result in a formal agreement based on consensus between the parties involved in the alternative measures process, and if successfully completed will terminate any further criminal proceedings in relation to the particular matter. If there is non-compliance with the agreement the matter will proceed through the formal Court process.

## 5.2 Responsibility for the Delivery of Alternative Measures

### 5.2.1. Youth

The New Brunswick Alternative Measures program is a joint initiative of the Departments of the New Brunswick Department of the Solicitor General and the New Brunswick Department of Justice. The New Brunswick Department of Justice is responsible for the designation of senior police officers as attorney general agents and the overall auditing of the program to ensure screening criteria are met, safeguards are in place to prevent coercion or perception of police abuse of power, and adherence to operational policies. The New Brunswick Department of the Solicitor General, Community and Correctional

Services Division is responsible for the overall coordination and monitoring of the accused's activities while in the alternative measures program.

Local Community Committees, established with the help of an Alternative Measures Coordinator are responsible for the delivery of alternative measures programs for youth. The Committee provides a forum for the community to be actively involved, in partnership with the police and Community and Correctional officials, in delivering a restorative justice alternative measures program.

In New Brunswick, the senior police officer (designated attorney general's agent) refers the case to the Alternative Measures Coordinator who contacts the young person, explains the program, and determines if the young person is willing to participate in the program. If the young person agrees the coordinator arranges a committee meeting, contacts the victim, and explains what is to occur, inviting the victim to attend. The young person's parents are advised of the program and asked to attend the community committee meeting with their children. If the young

person or his/her parents do not agree to participate in the program, the case is referred back to the senior police officer to proceed with court action.

Local Community Committees have been, or will be, established with the assistance of an Alternative Measures Coordinator to operate the alternative measures program. There may be existing committees in place for other purposes that can take on these responsibilities (community corrections councils, family violence community awareness committees, community based policing advisory committees).

The alternative measures coordinator and police are considered resource persons to the Committee and may attend all committee meetings.

The purpose of the Committee is to provide a forum where the community is actively involved in the criminal justice process holding the young person responsible for his/her behaviour and allowing the victim to speak to the impact of the offence.

Local Police forces and Community and Correctional Services officials are responsible for establishing community committees to operate a restorative justice alternative measures program that will build on existing community based corrections and police initiatives in place at the local level. Community and Correctional Services will ensure that a standardized orientation and training package will be provided to committee members.

The committee, itself, will be made up of a minimum of three community members reflecting the community it represents. The committee has the power to add members as it sees fit. The term of a committee member is two years, subject to renewal. When the committee is fully operational, 50% of the committee membership may change on an annual basis.

With respect to Committee responsibilities, the committee members will be provided a schedule of cases prior to sessions. Committee members may

withdraw as they see fit due to potential conflicts of interest related to knowing the youth, being a relative, etc. Committee responsibilities include:

meeting with the young person and ensuring he/she is fully aware of his/her rights and is advised that the session is to deal with the events of the criminal act before the committee only and should the young person reveal any other acts of a criminal nature the committee is obligated to report the incidents to the police which may lead to further investigation;

confirming with the young person that he/she acknowledges admission of the criminal act;

listening to both the young person and the victim and determining the best restorative/accountability measure for the individual case taking the young person's options into consideration;

establishing an agreement with the young person for the alternative measure; and

assisting the coordinator in the development of community placements.

The Regional Community and Correctional Services Directors are tasked with ensuring the alternative measures programs are developed and maintained in accordance with provincial policy and procedure in designated regions. They will also act as a liaison with local police chiefs and/or RCMP district commanders for overall program coordination and community based management, ensure community committees are established, that the program is promoted at the local level, and that staff and community committees receive appropriate orientation and ongoing training. As well, the Regional Directors will participate in the program audit team.

Both the Regional Directors and the Alternative Measures Coordinators will liaise with a provincial Program Consultant to ensure that program delivery is standardized across the province. The consultant will act as the representative of the department and will assist in the development and implementation of programs, as well as policies, procedures and standards for the Community and Correctional Services component of the program. The consultant will develop and implement a training strategy with the police and Crown Prosecutors for Community Committees and staff, and will participate in the development and implementation of an evaluation strategy.

#### 5.2.2. Adult

The Alternative Measures Program in New Brunswick provides service to both adult and young offenders. It is based on a restorative approach. The program is a joint initiative of the Departments of the New Brunswick Department of the Solicitor General and the New Brunswick Department of Justice. The New

Brunswick Department of Justice is responsible for the designation of senior police officers as attorney general agents and the overall auditing of the program to ensure screening criteria are met, safeguards are in place to prevent coercion or perception of police abuse of power, and adherence to operational policies. The New Brunswick Department of the Solicitor General, Community and Correctional Services Division is responsible for the overall coordination and monitoring of the accused's activities while in the alternative measures program.

In New Brunswick, the senior police officer (designated attorney general's agent) refers the case to the Alternative Measures Coordinator who contacts the accused, explains the program, and determines if the accused is willing to participate in the program. If the accused agrees the coordinator arranges a committee meeting, contacts the victim and explains what is to occur, inviting the victim to attend. If the accused does not agree to participate in the program, the case is referred back to the senior police officer to proceed with court action.

Local Community Committees have been, or will be, established with the assistance of an Alternative Measures Coordinator to operate the alternative measures program, for both youth and adults. There may be existing committees in place for other purposes that can take on these responsibilities (community corrections councils, family violence community awareness committees, community based policing advisory committees).

Local Community Committees, established with the help of an Alternative Measures Coordinator are responsible for the delivery of alternative measures programs for adults. The Committee provides a forum for the community to be actively involved, in partnership with the police and Community and Correctional officials, in delivering a restorative justice alternative measures program.

The alternative measures coordinator and police are considered resource persons to the Committee and may attend all committee meetings.

The purpose of the Committee is to provide a forum where the community is actively involved in the criminal justice process holding the offender responsible for their behaviour and allowing the victim to speak to the impact of the offence.

Local Police forces and Community and Correctional Services officials will be responsible for establishing community committees to operate a restorative justice alternative measures program that will build on existing community based corrections and police initiatives in place at the local level. Community and Correctional Services will ensure that a standardized orientation and training package will be provided to committee members.

The committee, itself, will be made up of a minimum of three community members reflecting the community it represents. The committee has the power to add members as it sees fit. The term of a committee member is two years, subject to renewal. When the committee is fully operational, 50% of the committee membership may change on an annual basis.

With respect to Committee responsibilities, the committee members will be provided a schedule of cases prior to sessions. Committee members may

withdraw as they see fit due to potential conflicts of interest related to knowing the accused, being a relative, etc. Committee responsibilities include:

meeting with the offender and ensuring the offender is fully aware of his/her rights and is advised that the session is to deal with the events of the criminal act before the committee only and should the offender reveal any other acts of a criminal nature the committee is obligated to report the incidents to the police which may lead to further investigation;

confirming with the offender that he/she acknowledges admission of the criminal act;

listening to both the offender and the victim and determining the best restorative/accountability measure for the individual case taking offender options into consideration;

establishing an agreement with the offender for the alternative measure; and

assisting the coordinator in the development of community placements.

The Regional Community and Correctional Services Directors are tasked with ensuring the alternative measures programs are developed and maintained in accordance with provincial policy and procedure in designated regions. They will also act as a liaison with local police chiefs and/or RCMP district commanders for overall program coordination and community based management, ensure community committees are established, that the program is promoted at the local level, and that staff and community committees receive appropriate orientation and ongoing training. As well, the Regional Directors will participate in the program audit team.

Both the Regional Directors and the Alternative Measures Coordinators will liaise with a provincial Program Consultant to ensure that program delivery is standardized across the province. The consultant will act as the representative of the department and will assist in the development and implementation of programs, as well as policies, procedures and standards for the Community and Correctional Services component of the program. The consultant will develop and implement a training strategy with the police and Crown Prosecutors for Community Committees and staff, and will participate in the development and implementation of an evaluation strategy.

## 5.3 Referral Agent

### 5.3.1. Youth

Effective March 17, 1998, a police officer, after investigating an incident, would make a recommendation regarding eligibility for participation in the alternative measures program. The Senior Police Officer acting as the designated Attorney General's Agent will review the Crown Brief and recommendations from the

As the Designated Attorney General's Agent, the Senior Police Officer assumes the role of the primary screening and referral agent for alternative measures programs in New Brunswick for both youth and adults. Crown approval will be obtained where mandated in the schedule of offences (see s.5.19, Appendix "C") and for exceptional cases.

investigating officer to determine if criteria for eligibility for consideration for the alternative measures program are met. The designated Attorney General's Agent has the authority to screen for program eligibility for all summary conviction offences, provincial statute matters related to young offenders, and a limited number of hybrid offences.

The Senior Police Officer will consult with the Crown Prosecutor and obtain approval where mandated by the schedule of approved offences (see s.5.19 Appendix "C" for a complete list of the approved offences). As well, Crown Prosecutor approval will be obtained in the event that all screening criteria for program eligibility are not strictly met but the youth is considered to be a good candidate for the program by the police force, and for hybrid offences where the program has not been initiated within six months of the offence date.

The Senior Police Officer will document in case files the date of Crown approval where mandated in the schedule of offences or for exceptional cases.

As the Designated Attorney General's Agent, the Senior Police Officer is responsible for deciding whether to refer to the alternative measures program; proceed with formal Court processing; or take no further action and clear the case otherwise.

In cases where the Senior Police Officer decides to refer the youth to alternative measures, he/she will approve the case and sign the referral form. All required information will be forwarded to the Alternative Measures Coordinator at the local Community and Correctional Services Office.

The Senior Police Officer is also responsible for ensuring that all appropriate files and statistics are maintained for auditing purposes, and for acting as a liaison with the Alternative Measures Coordinator for court processing of cases that refuse to participate in the program or do not comply with the alternative measures agreement.

### 5.3.2. Adult

Effective March 17, 1998, the guidelines state that a police officer, after investigating an incident, will make a recommendation to the Senior Police Officer regarding eligibility for participation in the alternative measures program. The Senior Police Officer acting as the designated Attorney General's Agent will review the Crown Brief and recommendations from the investigating officer to determine if criteria for eligibility for consideration for the alternative measures program are met. The designated Attorney General's Agent has the authority to screen for program eligibility for all summary conviction offences.

The Senior Police Officer will consult with the Crown Prosecutor and obtain approval where mandated by the schedule of approved offences (see s.5.19 Appendix "C" for a complete list of the approved offences). As well, Crown Prosecutor approval will be obtained in the event that all screening criteria for program eligibility are not strictly met but the accused is considered to be a good candidate for the program by the police force, and for hybrid offences where the program has not been initiated within six months of the offence date.

The Senior Police Officer will document in case files the date of Crown approval where mandated in the schedule of offences or for exceptional cases.

As the Designated Attorney General's Agent, the Senior Police Officer is responsible for deciding whether to refer to the alternative measures program; proceed with formal Court processing; or take no further action and clear the case otherwise.

In cases where the Senior Police Officer decides to refer the offender to alternative measures, he/she will approve the case and sign the referral form. All required information will be forwarded to the Alternative Measures Coordinator at the local Community and Correctional Services Office.

The Senior Police Officer is also responsible for ensuring that all appropriate files and statistics are maintained for auditing purposes, and for acting as a liaison with the Alternative Measures Coordinator for court processing of cases that refuse to participate in the program or do not comply with the alternative measures agreement.

## 5.4 The Role of the Police

### 5.4.1. Youth

As the initial point of contact with the criminal justice system, the investigating police officer plays a significant role in the overall delivery of alternative measures programs for youth. Once an incident occurs, the police will investigate the incident to determine if there is sufficient evidence to proceed with a charge. The investigating police officer retains his/her discretion to take no further action, to divert the youth informally from the system (for example, accompany the youth home to his/her parents), to refer to the Crown for laying charges and proceeding

to Court, or to recommend alternative measures. In the event of the latter, an investigating police officer may, in lieu of formal Court proceedings, recommend to a designated Attorney General's Agent (Senior Police Officer) that the offence be dealt with by way of Alternative Measures.

The factors to be considered by the police officer prior to making a recommendation for alternative measures include:

- the seriousness and circumstances surrounding the commission of the offence;
- pending charges and/or prior involvement of the young person with the Justice system;
- the attitude of the young person;
- the attitude of the victim; and
- that the eligibility criteria applies to the young person.

In addition, the nature of the alleged offence must not be one that poses serious

Police are important participants in the delivery of the alternative measures program. They are responsible for investigating the offence and acting as Designated Attorney General Agents for reviewing and referring accused to the program based on set criteria authorized by the Attorney General. The police also attend, as ex-officio members, the Community Committee meetings and participate in restorative justice forums.

and definite risk to the safety or well being of the community and must be included in the list of designated offences.

The police officer is responsible, before making a recommendation for alternative measures, for ensuring that a complete record check is performed.

If a decision is reached to recommend that the alleged offence be dealt with through alternative

measures, the police officer will complete a Prosecutor's Information sheet and an Alternative Measures Program Referral Form (see s.5.16, Appendix "A" for a sample of the form), and forward such to the appropriate designated Attorney General's Agent for review and decision.

The role of the police also extends, as part of community-based policing, to being present on an as needed basis at Community Committee meetings. The police will also participate in all restorative justice sessions and are advised of such sessions by the Alternative Measures Coordinator.

#### 5.4.2. Adult

With respect to the alternative measures program for adults, the role of the police is identical to that which they play in the alternative measures program for youth. Once an incident occurs, the police will investigate the incident to determine if there is sufficient evidence to proceed with a charge. In lieu of formal Court proceedings, an investigating police officer may recommend to a designated Attorney General's Agent (Senior Police Officer) that the offence be dealt with by way of Alternative Measures. This does not replace the use of normal police discretion in responding to matters.

The factors to be considered by the police officer before making a recommendation for alternative measures include:

the seriousness and circumstances surrounding the commission of the offence;

pending charges and/or prior involvement of the offender with the Justice system;

the attitude of the accused;

the attitude of the victim; and

that the eligibility criteria applies to the offender.

In addition, the nature of the alleged offence must not be one that poses serious and definite risk to the safety or well being of the community and must be included in the list of designated offences.

The police officer is responsible, before making a recommendation for alternative measures, for ensuring that a complete record check is performed.

If a decision is reached to recommend that the alleged offence be dealt with through alternative measures, the police officer will complete a Prosecutor's Information sheet and an Alternative Measures Program Referral Form (see s.5.16, Appendix "A" for a sample of the form), and forward such to the appropriate designated Attorney General's Agent for review and decision.

The role of the police also extends, as part of community-based policing, to being present on an as needed basis at Community Committee meetings. The police will also participate in all restorative justice sessions and are advised of such sessions by the Alternative Measures Coordinator.

## 5.5 The Role of the Crown Attorney

### 5.5.1. Youth

Effective March 17, 1998, the Alternative Measures program was modified changing significantly the role of the Crown Prosecutor in the alternative measures process. In addition to participating on the provincial steering committee to develop and monitor the program implementation throughout the province, Public Prosecutions will also provide advice to officers designated as Attorney General Agents in accordance with Section 4 of the *Young Offenders Act (Canada)* as requested. Public Prosecutions, in consultation with the Attorney General's Agent (Senior Police Officer), will determine program eligibility where mandated by the schedule of approved offences; in exceptional cases where screening criteria have not been strictly met; or in hybrid offence cases where the program has not been initiated within six months of the offence date. As well, Public Prosecutions will review and refer cases back to the police for entry into the alternative measures program if the cases appear suitable in the view of the Crown Prosecutor, and will assume an ongoing leadership role with the program audit/quality control team at the regional level.

At the local level, the responsibilities of the Crown Prosecutor include dealing with the designated Attorney General's Agent (Senior Police Officer) on any alternative measures cases where there is a need for discussion or follow-up, and providing advice as requested. In the event a case is referred to the Crown Prosecutor for pre-charge screening and the Crown Prosecutor considers it to be a good candidate for the Alternative Measures Program, the Crown will discuss and refer it back for further consideration with the Attorney General's Agent (Senior Police Officer). If no consensus is reached, the matter will be resolved by the Regional Crown Prosecutor.

The Regional Crown Prosecutor also acts as a liaison with the Director of Public Prosecutions on cases to resolve matters where consensus could not be reached on cases for program entry. In addition, the Regional Crown Prosecutor assumes the role of Chair of the audit team, consisting of the Regional Crown Prosecutor, the Regional Director, Community and Correctional Services, and the Chief of Police or District Commander of the RCMP, that will be established in each region to provide audit and quality control functions for the alternative measures program for both youth and adults. The audit team will conduct two program audits a year in each police force or as otherwise directed by the Attorney General. The team will also audit a sample of program case files to ensure that the screening criteria have been met, that safeguards are in place to prevent coercion or perception of police abuse of power, and that operational policies and procedures are being adhered to.

### 5.5.2. Adult

As with the alternative measures program for youth, there are five main functions provided by Public Prosecutions in relation to the provincial alternative measures programs for adults. In addition to participating on the provincial steering

committee to develop and monitor the program implementation throughout the province, Public Prosecutions will also provide advice to officers designated as Attorney General Agents in accordance with Section 717 of the *Criminal Code of Canada* as requested. Public Prosecutions, in consultation with the Attorney General's Agent (Senior Police Officer), will determine program eligibility where mandated by the schedule of approved offences, in exceptional cases where screening criteria have not been strictly met; or in hybrid offence cases where the program has not been initiated within six months of the offence date. As well, Public Prosecutions will review and refer cases back to the police for entry into the alternative measures program if the cases appear suitable in the view of the Crown Prosecutor, and will assume an ongoing leadership role with the program audit/quality control team at the regional level.

At the local level, the responsibilities of the Crown Prosecutor include dealing with the designated Attorney General's Agent (Senior Police Officer) on any alternative measures cases where there is a need for discussion or follow-up, and providing advice as requested. In the event a case is referred to the Crown Prosecutor for pre-charge screening and the Crown Prosecutor considers it to be a good candidate for the Alternative Measures Program, the Crown will discuss and refer it back for further consideration with the Attorney General's Agent (Senior Police Officer). If no consensus is reached, the matter will be resolved by the Regional Crown Prosecutor.

The Regional Crown Prosecutor also acts as a liaison with the Director of Public Prosecutions on cases to resolve matters where consensus could not be reached on cases for program entry. In addition, the Regional Crown Prosecutor assumes the role of Chair of the audit team, consisting of the Regional Crown Prosecutor, the Regional Director, Community and Correctional Services, and the Chief of Police or District Commander of the RCMP, that will be established in each region to provide audit and quality control functions for the alternative measures program for both youth and adults. The audit team will conduct two program audits a year in each police force or as otherwise directed by the Attorney General. The team will also audit a sample of program case files to ensure that the screening criteria have been met, that safeguards are in place to prevent coercion or perception of police abuse of power, and that operational policies and procedures are being adhered to.

## 5.6 The Role of the Victim

### 5.6.1. Youth

The restorative justice philosophy upon which the alternative measures programs for youth are based strongly encourages the participation and input of victims. The underlying principle is that victims and the community must be involved with the young person in determining how to best repair the harm that has been caused. For victims, this means an opportunity to tell the young person about the impact that the crime has had on them and an opportunity to make suggestions about what the young person should do to make amends.

In making a decision to proceed with alternative measures, the victim's interests, needs, and feelings are all considered. Once the young person has agreed to take part in the alternative measures program, the victim is contacted and encouraged to participate. However, if the victim does not agree or declines to participate, the decision to proceed with alternative measures may still be warranted.

The victim plays a central role in the restorative justice philosophy adopted by New Brunswick in their alternative measures program. The victim's interests, needs, and feelings are all considered in making a decision to proceed with alternative measures, although their participation is not a pre-requisite for a young person, or an adult, to be referred to the program.

## 5.6.2. Adult

The restorative justice approach to alternative measures involves the victim, offender, and the community in a search for solutions that promote reparation and reconciliation. The underlying principle is that it is more beneficial for victims and the community to be involved with the offender in determining how to best repair the harm that has been caused. For victims, this means an opportunity to tell the offender about the impact that the crime has had on them and an opportunity to make suggestions about what should be done to make amends.

In making a decision to proceed with alternative measures, the victim's interests, needs, and feelings are all considered. Once the accused person has agreed to take part in the alternative measures program, the victim is contacted and encouraged to participate. However, if the victim does not agree or declines to participate, the decision to proceed with alternative measures may still be warranted.

## 5.7 Right to Legal Counsel

### 5.7.1. Youth

Section 4 of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.7 for the specific wording of the section) specifies that before becoming involved in alternative measures, a young person must fully and freely consent to participate. This consent can only be provided after being informed of the right to consult counsel and having been given an opportunity to do so. In New Brunswick, the primary responsibility for ensuring that a young person is advised of this right is assumed by the Alternative Measures Coordinator. In contacting the young person, the Coordinator will advise him/her of the right to opt out of the program and proceed to court, and of the right to consult legal counsel.

The Community Committee administering the alternative measures program will also ensure that the young person is fully aware of his/her rights, and will also advise the young person that should he/she reveal any other acts of a criminal nature, the Committee is obligated to report the incidents to the police. Prior to

proceeding with the alternative measures process, the Committee will confirm with the young person that he/she acknowledges admission of the criminal act.

#### 5.7.2. Adult

Section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.7 for the specific wording of the section) specifies that a person alleged to have committed an offence must fully and freely consent to participate in alternative measures before becoming involved in the program. This consent is to be provided after being informed of their right to consult counsel. In New Brunswick, the primary responsibility for ensuring that an offender is advised of this right is assumed by the Alternative Measures Coordinator. In contacting the offender, the Coordinator will advise him/her of the right to opt out of the program and proceed to court, and of the right to consult legal counsel.

The Community Committee administering the alternative measures program will also ensure that the offender is fully aware of his/her rights, and will also advise the offender that should he/she reveal any other acts of a criminal nature, the Committee is obligated to report the incidents to the police. Prior to proceeding with the alternative measures process, the Committee will confirm with the offender that he/she acknowledges admission of the criminal act.

### 5.8 Eligibility Criteria

#### 5.8.1. Youth

Legislated criteria governing the eligibility criteria for formally authorized alternative measures programs for youth across Canada are set out in the federal *Young Offenders Act (Canada)* in sections 4(1) and 4(2) (see Chapter 1, s.1.8 for the wording of these sections).

In addition to this, New Brunswick has also established provincial legislation, the *Provincial Offences Procedures for Youth Act*, authorizing the use of Alternative Measures for provincial statute violations committed by young persons. Section 4(1) and 4(2) of the *Provincial Offences Procedures for Youth Act* parallels the *Young Offenders Act (Canada)* provisions related to Alternative Measures.

The policy and procedures manual also identifies a schedule of offences that has been designated as appropriate for consideration for the New Brunswick alternative measures program (see s.5.19 Appendix “C” for a complete list). Limitations have been set for a number of offences where the Crown Prosecutor must be consulted and give approval to the designated Attorney General’s Agent in order for the program to be considered. In exceptional cases where all screening criteria are not strictly met but the young person is considered a good candidate for the program, the designated Attorney General’s Agent will consult and obtain approval from the local Crown Prosecutor for referral to the Alternative Measures Program.

In the case of summary conviction offences, alternative measures must be initiated and should be completed within the six-month limitation period from the date of the commission of the offence. In the case of non-compliance during the six-month limitation period, the matter will be forwarded to the designated Attorney General Agent for court processing.

In the case of hybrid offences, all reasonable efforts will be made to complete the Alternative Measures within six months from the date of commission of the offence. Hybrid offences, where the six-month time limit has expired before the program has been initiated, shall be discussed with the Crown Prosecutor for determination of whether the matter will proceed under this program by way of indictable offence. In the case of non-compliance, the matter will be forwarded to the designated Attorney General Agent for court processing.

As the designated Agent of the Attorney General for the purposes of the alternative measures program, the Senior Police Officer will consider the following in determining a young person's eligibility for program consideration:

The decision to proceed by way of alternative measures is made having regard for the needs of the young person, the victim, and the interests of society;

The offence is one listed in the schedule of offences by the Attorney General;

There is sufficient evidence to proceed with a prosecution;

The prosecution is not barred by law;

There are no other pending charges;

The youth being considered for the program is not currently under sentence and has been not been under sentence within the last two years;

If the young person had previously been granted an absolute discharge or had complied with conditions of a conditional discharge he/she should be considered for Alternative Measures notwithstanding the two year time frame;

### 5.8.2. Adult

Legislated criteria governing the eligibility criteria for formally authorized alternative measures programs for adults across Canada are set out in section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.8 for the wording of these sections).

To date in New Brunswick, there is no provincial legislation authorizing the use of alternative measures for adults who have committed provincial offences.

The policy and procedures manual identifies a schedule of offences that has been designated as appropriate for consideration for the New Brunswick alternative measures program (see s.5.19 Appendix “C” for a complete list). Limitations have been set for a number of offences where the Crown Prosecutor must be consulted and give approval to the designated Attorney General’s Agent in order for the program to be considered. In exceptional cases where all screening criteria are not strictly met but the offender is considered a good candidate for the program, the designated Attorney General’s Agent will consult and obtain approval from the local Crown Prosecutor for referral to the Alternative Measures Program.

In the case of summary conviction offences, alternative measures must be initiated and should be completed within the six-month limitation period from the date of the commission of the offence. In the case of non-compliance during the six-month limitation period, the matter will be forwarded to the designated Attorney General Agent for court processing.

In the case of hybrid offences, all reasonable efforts will be made to complete the Alternative Measures within six months from the date of commission of the offence. Hybrid offences, where the six-month time limit has expired before the program has been initiated, shall be discussed with the Crown Prosecutor for determination of whether the matter will proceed under this program by way of indictable offence. In the case of non-compliance, the matter will be forwarded to the designated Attorney General Agent for court processing.

As the designated Agent of the Attorney General for the purposes of the alternative measures program, the Senior Police Officer will consider the following in determining an offender’s eligibility for program consideration:

the decision to proceed by way of alternative measures is made having regard for the needs of the accused person, the victim, and the interests of society;

the offence is one listed in the schedule of offences by the Attorney General;

there is sufficient evidence to proceed with a prosecution;

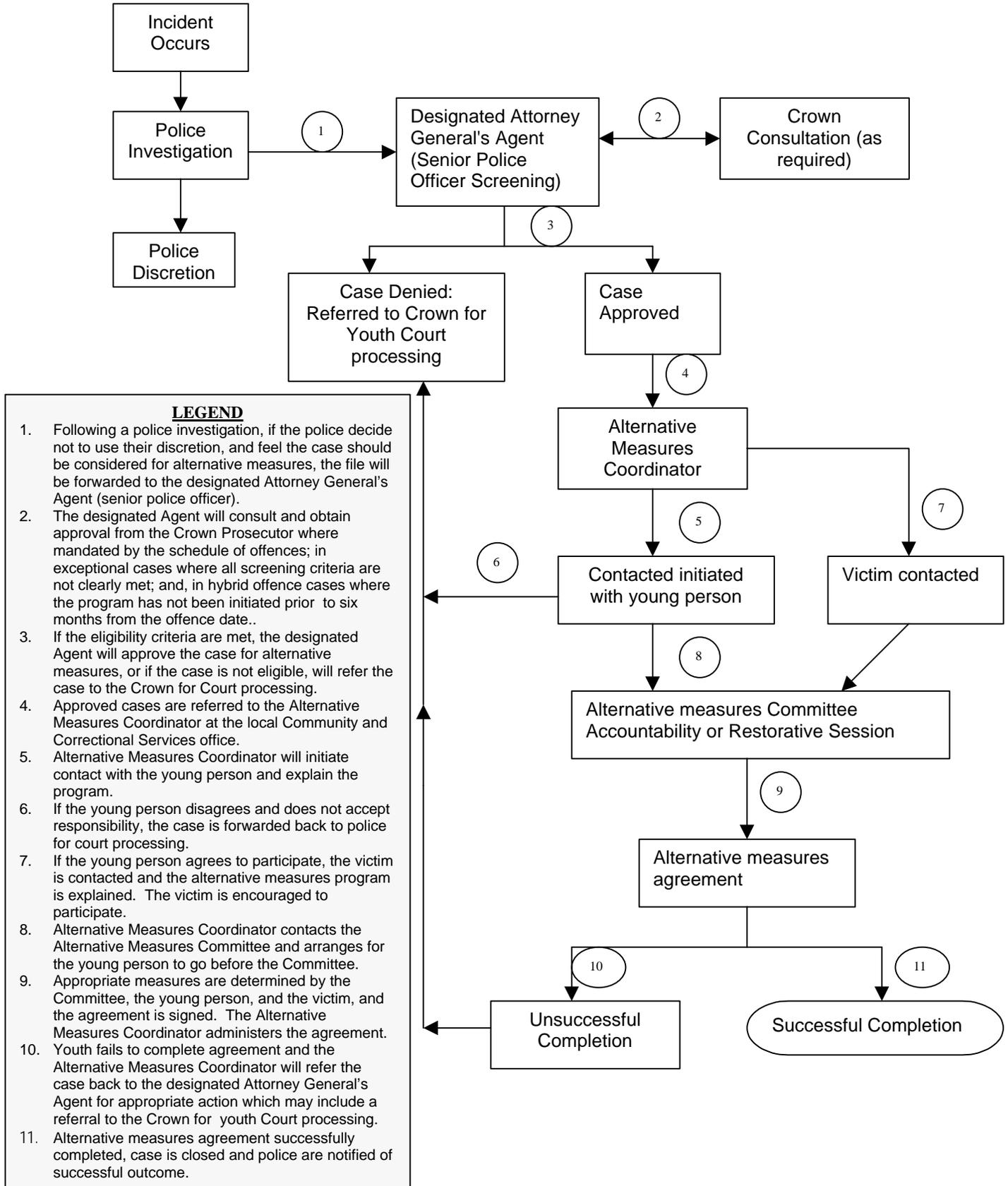
the prosecution is not barred by law;

there are no other pending charges;

the offender being considered for the program is not currently under sentence and has been not been under sentence within the last two years;

if the offender had previously been granted an absolute discharge or had complied with conditions of a conditional discharge he/she should be considered for Alternative Measures notwithstanding the two year time frame;

## 5.9 Alternative Measures Process for Youth



Once the designated Attorney General's Agent approves a referral to alternative measures, the referral will be forwarded to the Alternative Measures Coordinator at the local Community and Correctional Services Office. The Coordinator will contact the young person by telephone or certified mail taking into consideration time limitations for Summary Conviction Offences (i.e., six months from the date of the commission of the alleged offence).

The Alternative Measures Coordinator will explain the alternative measures

program to the young person and will explain the expectations that will be placed on him/her if he/she accepts responsibility for the his/her behaviour. The Coordinator will also advise the young person that he/she has the right to opt out of the program and proceed to court, that he/she has a right to consult a lawyer, and that the parent/guardian must be present. The young person will be informed at this point, that if he/she agrees participate in the program that a Community Committee meeting will be arranged and that he/she is to prepare for the meeting by developing a list of measures to repair the harm done.

The Alternative Measures Coordinator is responsible for contacting the young person to explain the program and to obtain acknowledgement of responsibility, and agreement to participate. If the young person agrees to participate in the program, the Coordinator will contact the victim and encourage him/her to participate. The Coordinator will then arrange a Community Committee meeting where the young person and the victim will determine the measures to be completed to repair the harm (through family/community group conferencing, victim/offender mediation, or restitution).

The Alternative Measures Coordinator will witness the signature of young person's acknowledgement of responsibility and agreement to participate in the program. In the event that the youth does not agree to participate, the Coordinator will contact the respective police forces advising them of such and will return the information back to police for court processing.

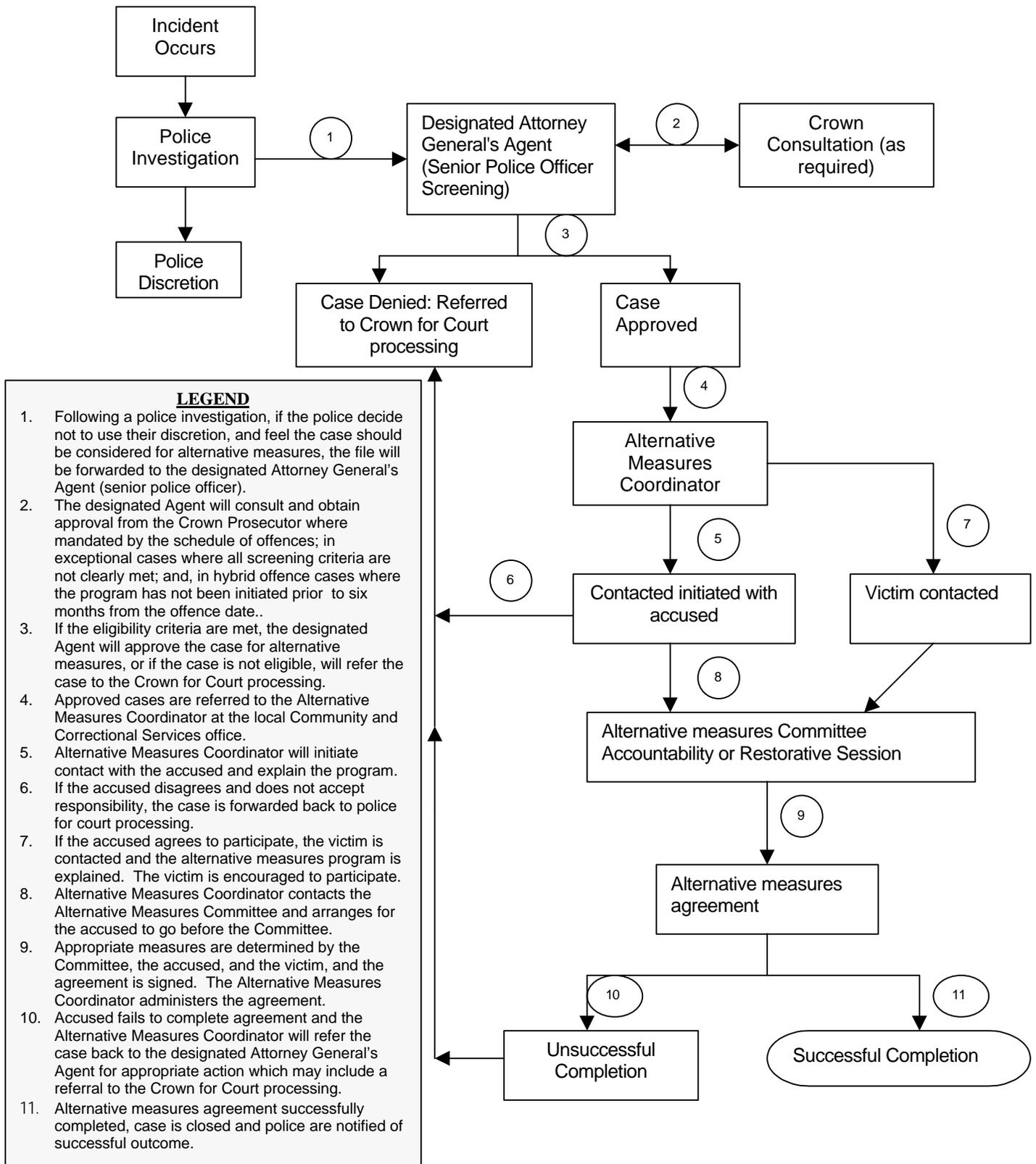
Should the young person agree to participate, the Coordinator will contact the victim to explain the program and the victim's role in the process, asking if they would like to participate in the process. The victim will, in any event, be advised of the progress and outcome of the case.

It is the responsibility of the Coordinator to organize community committee meetings, to advise the police of scheduled restorative justice sessions, and to provide administrative support to the Community Committee.

The Community Committee will meet with the youth and ensure that the youth is fully aware of his/her rights, and will advise the youth that the session is to deal with the events of the criminal act before the Committee only and should the young person reveal any other acts of a criminal nature the committee is obligated to report the incidents to the police which may lead to further investigation. The Committee will confirm with the young person that he/she acknowledges responsibility for the criminal behaviour, and will provide both the

young person and the victim the opportunity to discuss the harm done and determine the best restorative/accountability measure. This measure will be drawn up in an alternative measures agreement which will be signed by the young person and administered by the Alternative Measures Coordinator.

## 5.10 Alternative Measures Process for Adults



As with the alternative measures program for youth, once the designated Attorney General's Agent approves a referral to alternative measures, the referral will be forwarded to the Alternative Measures Coordinator at the local Community and Correctional Services Office. The Coordinator will contact the accused by telephone or certified mail taking into consideration time limitations for Summary Conviction Offences (i.e., six months from the date of the commission of the alleged offence).

The Alternative Measures Coordinator will explain the alternative measures program to the accused and will explain the expectations that will be placed on him/her if he/she accepts responsibility for the his/her behaviour. The Coordinator will also advise the accused that he/she has the right to opt out of the program and proceed to court, and that he/she has a right to consult a lawyer. The accused will be informed at this point, that if he/she agrees participate in the program that a Community Committee meeting will be arranged and that he/she is to prepare for the meeting by developing a list of measures to repair the harm done.

The Alternative Measures Coordinator is responsible for contacting the accused to explain the program and to obtain acknowledgement of responsibility, and agreement to participate. If the accused agrees to participate in the program, the Coordinator will contact the victim and encourage him/her to participate. The Coordinator will then arrange a Community Committee meeting where the accused and the victim will determine the measures to be completed to repair the harm (through family/community group conferencing, victim/offender mediation, or restitution).

The Alternative Measures Coordinator will witness the signature of accused's acknowledgement of responsibility and agreement to participate in the program. In the event that the accused does not agree to participate, the Coordinator will contact the respective police forces advising them of such and will return the information back to police for court processing.

Should the accused agree to participate, the Coordinator will contact the victim to explain the program and the victim's role in the process, asking if they would like to participate in the process. The victim will, in any event, be advised of the progress and outcome of the case.

It is the responsibility of the Coordinator to organize community committee meetings, to advise the police of scheduled restorative justice sessions, and to provide administrative support to the Community Committee.

The Community Committee will meet with the accused and ensure that the accused is fully aware of his/her rights, and will advise the accused that the session is to deal with the events of the criminal act before the Committee only and should the accused reveal any other acts of a criminal nature the committee is obligated to report the incidents to the police which may lead to further investigation. The Committee will confirm with the accused that he/she acknowledges responsibility for the criminal behaviour, and will provide both the offender and the victim the opportunity to discuss the harm done and determine

the best restorative/accountability measure. This measure will be drawn up in an alternative measures agreement which will be signed by the accused and administered by the Alternative Measures Coordinator.

## 5.11 The Alternative Measures Agreement

### 5.11.1. Youth

The alternative measures agreement outlines the contract between the young person and the Alternative Measures Community Committee (see Section 5.16.2

The alternative measures agreement is a binding contract between the young person and the Community Committee that reflects the conditions agreed upon during the Community Committee meeting as well as the timelines for completion of the agreement.

for a sample of this form). The agreement forms the basis for the completion of the alternative measures process. The conditions of the agreement reflect that which was decided during the Community Committee meeting between the young person and, when appropriate and applicable, the victim. The conditions are meant to be specific and tailored to fit the particular circumstances of the young person as well as the needs and concerns

of the victim and/or community. The agreement will clearly identify a completion date that will respect timelines for alternative measures referrals (i.e., six months from the date of the commission of the alleged offence for summary convictions).

### 5.11.2. Adult

The alternative measures agreement outlines the contract between the offender and the Alternative Measures Community Committee (see Section 5.16.2 for a sample of this form). The agreement forms the basis for the completion of the alternative measures process. The conditions of the agreement reflect that which was decided during the Community Committee meeting between the offender and, when appropriate and applicable, the victim. The conditions are meant to be specific and tailored to fit the particular circumstances of the offender as well as the needs and concerns of the victim and/or community. The agreement will clearly identify a completion date that will respect timelines for alternative measures referrals (i.e., six months from the date of the commission of the alleged offence for summary convictions).

## 5.12 The Range of Alternative Measures

### 5.12.1. Youth

The use of local Community Committees to administer alternative measures lends itself to creativity and innovation in regards to the measures applied and allows the Committees to tailor the measures to address their community concerns. In the policy and procedures manual, the following measures have been identified as possible outcomes of alternative measures Community Committee meetings.

- Apology*: either verbal or written from the young person to the victim.
- Community Service Order*: the young person may be required to complete a pre-determined number of unpaid community service work hours.
- Restitution*: the young person may be required to provide financial compensation to the victim. The Alternative Measures Coordinator will coordinate the collection and disbursement of funds ensuring appropriate financial records are kept in accordance with government policy.
- Personal Service to the Victim*: the young person may be required to provide a pre-determined number of hours of personal service to the victim to repair the harm done.
- Caution Letter*:
- Curfew*:
- Restricted Contacts*: the young person may have restrictions imposed regarding peer associations or particular locations within a community.
- Counselling*: the young person may be referred for alcohol, drug or psychiatric counselling if the need is indicated.
- Referral to Specialized Program*: the young person may be referred to a specialized program such as a substance abuse program or a shoplifting program.
- Other*: the Community Committee may apply other conditions that are appropriate given the circumstances of the young person and the needs and concerns of the victim, and/or community.
- No Further Intervention*: this may occur in situations where restoration through victim/offender mediation has occurred through the Community Committee meeting.

### 5.12.2. Adult

Community Committees are encouraged to be creative and innovative in regards to the measures applied in order to address their local community concerns. The measures should attempt to repair the harm caused by the criminal behaviour bearing in mind the circumstances of the offender and the needs and concerns of the victim, and/or the community. In the policy and procedures manual, the following measures are identified as possible measures that may be applied after community committee meetings:

- Apology*: either verbal or written from the offender to the victim.
- Community Service Order*: the offender may be required to complete a pre-determined number of unpaid community service work hours.
- Restitution*: the offender may be required to provide financial compensation to the victim. The Alternative Measures Coordinator will coordinate the collection and disbursement of funds ensuring appropriate financial records are kept in accordance with government policy.
- Personal Service to the Victim*: the offender may be required to provide a pre-determined number of hours of personal service to the victim to repair the harm done.
- Caution Letter*:
- Curfew*:
- Restricted Contacts*: the offender may have restrictions imposed regarding peer associations or particular locations within a community.
- Counselling*: the offender may be referred for alcohol, drug or psychiatric counselling if the need is indicated
- Referral to Specialized Program*: the offender may be referred to a specialized program such as a substance abuse program or a shoplifting program.
- Other*: the Community Committee may apply other conditions that are appropriate given the circumstances of the offender and the needs and concerns of the victim, and/or community.
- No Further Intervention*: this may occur in situations where restoration through victim/offender mediation has occurred through the Community Committee meeting.

## 5.13 Supervision of Alternative Measures Agreement

### 5.13.1. Youth

Under the current guidelines, the alternative measures agreement is negotiated by the Community Committee, prepared, and administered by the Alternative Measures Coordinator. The Coordinator will advise the police of the agreement conditions for entry on CPIC, and is responsible for facilitating the completion of the contract conditions. The Coordinator also assumes responsibility for completing all required documentation, monitoring the young person to review progress, maintaining statistical records, and for ensuring that all contract conditions are completed within the required time frames or otherwise referred back to the designated Attorney General's Agent for appropriate action. The Alternative Measures Coordinator is assisted by the Community Committee in developing appropriate community placements for young persons required to complete community service work hours.

### 5.13.2. Adult

Under the current guidelines, the alternative measures agreement is negotiated by the Community Committee, prepared, and administered by the Alternative Measures Coordinator. The Coordinator assumes responsibility for facilitating the completion of the contract conditions, completing all required documentation (including advising the police of the agreement conditions for entry on CPIC), monitoring the offender to review progress, maintaining statistical records, and for ensuring that all contract conditions are completed within the statute limitation period or otherwise referred back to the designated Attorney General's Agent for appropriate action. The Alternative Measures Coordinator is assisted by the Community Committee in developing appropriate community placements for offenders required to complete community service work hours.

## 5.14 Completion of Agreement

### 5.14.1. Youth

Upon successful completion of the alternative measures agreement, the Alternative Measures Coordinator will notify the designated Attorney General's Agent of the completion for entry on CPIC and for closure of police files. The Coordinator will complete the Alternative Measures Program Intake/Release Form indicating that the measures have been successfully completed,

In the event that the young person fails to comply with the conditions, or violates the agreement, the Coordinator will refer the case back to the designated Attorney General's Agent for appropriate action which may include Court proceedings.

#### 5.14.2. Adult

Upon successful completion of the alternative measures agreement, the Alternative Measures Coordinator will notify the designated Attorney General's Agent of the completion for entry on CPIC and for closure of police files. The Coordinator will complete the Alternative Measures Program Intake/Release Form indicating that the measures have been successfully completed,

In the event that the offender fails to comply with the conditions, or violates the agreement, the Coordinator will refer the case back to the designated Attorney General's Agent for appropriate action which may include Court proceedings.

### 5.15 Record Keeping

#### 5.15.1. Youth

For the purposes of ensuring integrity in the program and the screening process, an audit team, consisting of the Regional Crown Prosecutor, the Regional Director, Community and Correctional Services, and the Chief of Police or District Commander of the RCMP will be established in each region that will provide audit and quality control functions for the alternative measures program for both youth and adults. The team will be chaired by the Regional Crown Prosecutor.

The audit team will conduct two program audits a year in each police force or as otherwise directed by the Attorney General. The team will also audit a sample of program case files to ensure that the screening criteria have been met, that safeguards are in place to prevent coercion or perception of police abuse of power, and that operational policies and procedures are being adhered to.

With respect to alternative measures records, the provisions of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.15 for the wording of the appropriate sections) govern all records pertaining to alternative measures for youth generally. In New Brunswick, it is the responsibility of the Alternative Measures Coordinator to maintain statistical records and forward appropriate documentation to the Police and Community Corrections who will keep records in accordance with the appropriate sections of the *Young Offenders Act (Canada)*.

Active alternative measures records are subject to disclosure to other government agencies engaged in the administration of alternative measures or for research and statistical purposes and shall be made available for review by the audit team.

The disclosure of information to the young person will be the information contained on the prosecutor's information sheet and will be disclosed by the Alternative Measures Coordinator upon initial contact with the young person. The young person, or their legal counsel, may also request information from the police and will be directed to the designated Attorney General's Agent within the police force.

The records of young persons who participate in the alternative measures program are flagged for non-disclosure in accordance with the *Young Offenders Act (Canada)* after a period of two years after the young person consents to participate in the alternative measures program.

#### 5.15.2. Adult

As with the alternative measures program for youth an audit team, consisting of the Regional Crown Prosecutor, the Regional Director, Community and Correctional Services, and the Chief of Police or District Commander of the RCMP will be established in each region to provide audit and quality control functions to the alternative measures programs for youth and adults. The team will be chaired by the Regional Crown Prosecutor.

The audit team will conduct two program audits a year in each police force or as otherwise directed by the Attorney General. The team will also audit a sample of program case files to ensure that the screening criteria have been met, that safeguards are in place to prevent coercion or perception of police abuse of power, and that operational policies and procedures are being adhered to.

With respect to alternative measures records, the provisions of the *Criminal Code of Canada* (see Chapter 1, s.1.15 for the wording of the appropriate sections) govern all records pertaining to alternative measures for adults generally. In New Brunswick, it is the responsibility of the Alternative Measures Coordinator to maintain statistical records and forward appropriate documentation to the Police and Community Corrections who will keep records in accordance with the sections 717.2(1) and 717.3(1) of the *Criminal Code of Canada*.

Alternative measures records are subject to disclosure to other government agencies engaged in the administration of alternative measures or for research and statistical purposes and shall be made available for review by the audit team.

The disclosure of information to the accused will be the information contained on the prosecutor's information sheet and will be disclosed by the Alternative Measures Coordinator upon initial contact with the accused. The accused may also request information from the police and will be directed to the designated Attorney General's Agent within the police force.

The one exception to the two year limitation on the admissibility of adult records as evidence, is when the record is included as part of a pre-sentence report prepared in accordance with s.721 (3)(c) of the *Criminal Code of Canada*.



## 5.16 Appendix 'A' Forms

### 5.16.1. Prosecutor's Information Sheet

**PROSECUTOR'S INFORMATION SHEET  
DEPARTMENT OF JUSTICE**

**FICHE DE RENSEIGNEMENT À L'USAGE DU PROCUREUR  
MINISTÈRE DE LA JUSTICE**

**1. OFFENCE(S)/DÉLIT(S)**

Occurrence No. / No d'incident		Date M   D/J   Y/A			Place/Lieu	Time/Heure
Offence(s)/ Délit(s)	1	Section and Act/Article et Loi		2	Section and Act/Article et Loi	3

**2. POLICE OFFICER / AGENT DE POLICE**

Det. Office No./Dét. - Bureau no.	Investigating Members / Enquêteur(s)	I.D.N. /N.D.I.
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**3. DEFENDANT**  **Young Offender / Jeune Contrevenant**  **Adult / Adulte(e)**

Surname / Non de famille		GI / PI	GP / PI	Alias
Sex/Sexe	D.O.B. / date de naiss. M   D/J   Y/A	Age/Âge	P.O.B. /L.D.N.	Parent's Name and Phone No. / Nom des parents et no de téléphone
Address/Adresse		<input type="checkbox"/> Parent's Same Address/Même adresse des parents		<input type="checkbox"/> Different address &Phone no/Adresse différente et no de téléphone
Driver's Licence No./Permis de conduire no.	Vehicle Licence Plate/Plaque d'immatriculation du véhicule		Issuing province/Province de délivrance	
National Safety Code No./No. de code national de sécurité		<input type="checkbox"/> Yes <input type="checkbox"/> No Oui Non		

**4. COMPLETE THE FOLLOWING FOR ALL CRIMINAL CODE OFFENCES / RÉPONDRE AUX QUESTIONS SUIVANTES POUR TOUTE INFRACTION AU CODE CRIMINEL**

Is there a victim ?  Yes  No - If yes, indicate one (most specific) of the following :  
Est-ce qu'il y a eu victime ?  Oui  Non - Si oui, préciser en choisissant une seule des possibilités suivantes :

- |  |  |
|--|--|
| <input type="checkbox"/> F1 Wife of accused (include common-law)<br>L'épouse de l'accusé (y compris l'épouse de fait)                                | <input type="checkbox"/> F7 Child, no relation (stranger) to accused<br>Un enfant sans lien de parenté avec l'accusé   |
| <input type="checkbox"/> F2 Husband of accused (include common-law)<br>L'époux de l'accusée (y compris l'époux de fait)                              | <input type="checkbox"/> F8 Woman, no relation (stranger) to accused<br>Une femme sans lien de parenté avec l'accusé   |
| <input type="checkbox"/> F3 Child of accused (include adopted - under 18)<br>L'enfant de l'accusé(e) (y compris un enfant adopté de moins de 18 ans) | <input type="checkbox"/> F9 Man, no relation (stranger) to accused<br>Un homme sans lien de parenté avec l'accusé  |
| <input type="checkbox"/> F4 Other family member (living in household)<br>Un membre de la famille vivant sous le même toit que l'accusé(e)            | <input type="checkbox"/> F10 Parent of accused<br>Le père ou la mère de l'accusé   |
| <input type="checkbox"/> F5 No longer in use<br>Usage discontinué  | <input type="checkbox"/> F11 Any child where the accused has been in a position of trust/business relationship<br>Un enfant avec lequel l'accusé entretenait des rapports de confiance ou qu'il fréquentait par affaires |
| <input type="checkbox"/> F6 Other relative (not living in same household)<br>Un membre de la famille ne vivant pas sous le même toit que l'accusé    | <input type="checkbox"/> F12 Close friend of accused (woman abuse)<br>Une amie intime de l'accusé (abus contre la femme)   |
|  | <input type="checkbox"/> F13 Child where accused was casual acquaintance<br>Un enfant pour qui l'accusé était une vague connaissance   |

If CC810 (Peace Bond) requested, indicate one of the following :

S'il y eut demande d'engagement de ne pas troubler l'ordre public (formule CC810), indiquez par qui :

- |   |   |  |  |
|---|---|--|--|
| <input type="checkbox"/> F1 by wife<br>l'épouse | <input type="checkbox"/> F2 by husband<br>l'époux | <input type="checkbox"/> F7 by other complainant<br>un(e) autre plaignant(e) | <input type="checkbox"/> F10 by parent<br>le père ou la mère |
|---|---|--|--|

**PARTICULARS OF OFFENCE(S) (INCLUDE ANY « ET ALS », ADDITIONAL CHARGES) / DÉTAILS DU (DES) DÉLIT(S) (INCLURE TOUT COMPLICE ET AUTRES ACCUSATIONS)**

Alternative Measures Recommended/  
Mesures alternatives recommandé

Yes / Oui

No / Non

Member's Signature du membre

Date

Approved / Approuvé

Yes / Oui

No / Non

Attorney General's Agent Signature

Date

Accepts / Accepté

Denies/Referred Back / Refuse/Renvoyé

Alternative Measures Coordinator Signature

Date

**Victim - Witnesses (Including Police) Victime - témoins (y compris les agents de la paix)**

Name / Nom	Address / Adresse

**Court Information / Renseignement judiciaire**

Traffic and Weather Conditions/Etat des routes et conditions météorologiques	C.P.I.C. Check/Vérification du C.I.P.C.	Value of Property Involved Valeurs des biens en cause
Drinking Driving Offences, Driver record Check / Infractions de conduite avec facultés affaiblies Vérification de dossier du conducteur	Name of Prosecutor / Nom du procureur	
<input type="checkbox"/> Prior Record Dossier antérieur	<input type="checkbox"/> No Prior Record Aucun dossier antérieur	
Crown Recommendation / Recommandation de la couronne		

**Adjudication / Jugement**

Remands / Renvois	Member Witnessing Conviction / Témoins de la condamnation		
Prosecutor / Procureur	Defence Counsel / Avocat de la défense		
Date of Trial / Date du procès	Place of Trial / Lieu du procès		
Plea / Aveu <input type="checkbox"/> Guilty De culpabilité	<input type="checkbox"/> Not Guilty D'innocence	Fine / Amende	Costs / Frais
Time to Pay / Délai de paiement	License Suspended / permis de conduire suspendu <input type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non	Conditions / Conditions	

5.16.2. Alternative Measures Program Agreement

**Alternative Measures Program Agreement  
Entente sur le Programme de mesures de rechange**

**Department of the Solicitor General  
Community and Correctional Services**

**Ministère du Solliciteur général  
Services communautaires et correctionnels**

Adult  Youth   
Adulte  Jeune

I \_\_\_\_\_ of \_\_\_\_\_  
Je \_\_\_\_\_ résidant au \_\_\_\_\_  
(address) / (adresse)

do hereby agree to complete the following as determined by the  
accepte par la présente de faire ce qui suit, tel qu'en a décidé le comité des mesures de rechange de \_\_\_\_\_  
(community)/(communauté)

Alternative Measures Committee in order to fulfill my obligations under the Alternative Measures Program.  
de façon à remplir mes obligations en vertu du Programme de mesures de rechange.

Terms Conditions	Date for completion Date d'achèvement
1.	
2.	
3.	
4.	
5.	

I have been advised of my right to legal counsel and have been afforded a reasonable opportunity to consult with counsel prior to entering this agreement

On m'a informé de mon droit de consulter un conseiller juridique et on m'a accordé un délai raisonnable pour me permettre de le faire avant de prendre part à cette entente.

I accept responsibility for the act that forms the basis of the offence alleged against me and voluntarily agree to participate in the program of alternative measures as outlined in this agreement.

J'assume la responsabilité de l'acte qui constitue le fondement de la prétendue infraction dont on m'a accusé et j'accepte volontairement de participer au Programme de mesures de rechange tel qu'il est mentionné dans cette entente.

I understand that if I do not complete or comply with this Alternative Measures Agreement, my file will be returned to the police and that I may be charged with the original offence and have to appear in Court to answer the charge.

Je comprends que si je ne mène pas à terme la présente Entente de mesures de rechange, ou si je ne m'y conforme pas, mon dossier sera retourné au Service de police. Je pourrais ainsi faire face à des accusations relativement à l'infraction initiale, et devoir comparaître en Cour pour répondre de ces accusations.

It is understood that if I am found guilty of any offence, the Court will be advised of any previous involvement in the Alternative Measures Program.

Il est entendu que si je suis reconnu coupable d'une infraction, on informera le tribunal de toute participation antérieure au Programme de mesures de rechange.

\_\_\_\_\_  
Alternative Measures Participant  
Participant aux mesures de rechange

\_\_\_\_\_  
Witness / Témoin

\_\_\_\_\_  
Chairperson, Alternative Measures Participant  
Président du comité sur les mesures de rechange

\_\_\_\_\_  
Witness / Témoin

\_\_\_\_\_  
Parent / Guardian (For Participants under Eighteen Years)  
Parent ou tuteur (Pour les participants de moins de 18 ans)

\_\_\_\_\_  
Witness / Témoin

Date \_\_\_\_\_

5.16.3. Alternative Measures Program Intake / Release Form

**Alternative Measures Program Intake / Release Form**  
**Formulaire d'admission et de cessation de participation au Programme de mesures de rechange**

**Department of the Solicitor General  
 Community and Correctional Services**

**Ministère du Solliciteur général  
 Services communautaires et correctionnels**

**IDENTIFICATION**

Offender ID No. / No d'identité du contrevenant: 1□□□□□□  
 Probation Office No. / No. d'identité de l'agent de probation: 2□□  
 Occurrence No. / No. du rapport de police: 3□□□□□□

Name / Nom: \_\_\_\_\_  
 Address / Adresse: \_\_\_\_\_

Town / City - Rue / Ville: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code postal: \_\_\_\_\_ Location / Lieu: 4□□□□

**PERSONAL DATA / DONNÉES PERSONNELLES**

Adult / Adulte: 1□ Youth / Jeune: 2□ Sex: 1. Male / 1 masculin: □ 2. Female / 2. Féminin: □ Age / Âge: \_\_\_\_\_ Date of Birth (M/D/Y) / date de naissance (M/J/A): □□/□□/□□□□

Education (Grade) / Formation (niveau de scolarité): \_\_\_\_\_ 14. University / Université: \_\_\_\_\_ 15. Community College / Collège communautaire: \_\_\_\_\_ 16. Other / Autre: □□

Employment / Emploi: 1. Employed / Employé: □ 2. Unemployed / Sans emploi: □ 3. Part time / Temps partiel: □ 4. Seasonal / Saisonnier: □ 5. Student / Étudiant: □

Language Spoken / Langue parlée: 1. English / Anglais: □ 2. French / Français: □ 3. Other / Autre: □

Mother Tongue / Langue maternelle: 1. English / Anglais: □ 2. French / Français: □ 3. Other / Autre: □

Ethnicity / Origine ethnique: 1. North American Indian / Autochtone: □ 2. Metis / Métis: □ 3. Inuit / Inuit: □ 4. Non-Aboriginal / Non-autochtone: □

Date of Offence (M/D/Y) / Date de l'infraction (M/J/A): □□/□□/□□□□ Date Received from AG Agent (M/D/Y) / Date reçu par l'agent du procureur général (M/J/A): □□/□□/□□□□

**ALTERNATIVE MEASURES ACCOUNTABILITY/RESTORATIVE SESSION DETAILS / MODALITÉS DE SÉANCE DE RECONNAISSANCE DE RESPONSABILITÉ OU DE SÉANCE DE RÉPARATION DANS LE CADRE DU PROGRAMME DE MESURES DE RECHANGE**

Name of Offence / Infraction: \_\_\_\_\_ Section / Article: □□□□□□ Sub-Section / Paragraphe: □□□□□□ Location of Offence / Lieu de l'infraction: □□□

Type of Session / Type de séance: Accountability / Reconnaissance de responsabilité: 1□ Restorative / Réparation: 2□

Agreement Conditions / Conditions de l'entente: Restitution / Restitution: Yes / Oui: 1□ No / Non: 2□ If yes, - Amount \$ / Si oui, montant: \_\_\_\_\_ \$

Apology / Excuse: □ Caution Letter / Lettre d'avertissement: □ Curfew / Couvre-feu: □ Restricted Contacts / Contacts restreints: □

Personal Service Work for Victim / Travail personnel pour la victime: □ Mediation / Médiation: □ Community Service Work / Travail communautaire: □ # of Hours / Nbre d'heures: \_\_\_\_\_

Counselling / Counselling: □ Alcohol / Alcool: □ Drug / Drogue: □ Psychiatric / Psychiatrie: □

Referral to Specialized Program / Dirigé vers un programme spécialisé: Substance Abuse / Abus de substances: □ Shoplifting / Vol à l'étalage: □ Other / Autre: □ Specify / Spécifier: \_\_\_\_\_

Other Conditions (Specify) / Autres conditions (spécifier): \_\_\_\_\_ / \_\_\_\_\_

Date of Agreement (M/D/Y) / Date de l'entente (M/J/A): □□/□□/□□□□ Date of Agreement termination / Completion (M/D/Y) / Date de l'expiration ou d'achèvement (M/J/A): □□/□□/□□□□

**TERMINATION DETAILS / MODALITÉS DE CESSATION DE PARTICIPATION**

Type of Termination / Type de cessation de participation: □

- |  |  |
|--|--|
| 1. Successful Completion / Entente menée à bien à terme  | 4. Transfer to other province / Transféré à une autre province |
| 2. Successful early termination / Entente menée à bien plus tôt que prévu  | 5. Death / Mort  |
| 3. Termination due to violation of Conditions Return to AG Agent / Cessation de participation pour infractions aux conditions, retour à l'agent du procureur général | 6. Other / Autre   |

Alteration of Agreement

Yes  
Oui

No  
Non

New Termination Date (M/D/Y)  
Nouvelle date d'expiration  
de l'entente (M/J/A)

 /  / 

Agreement Commencement  
Extension Date (M/D/Y)  
Date du début de la prolongation  
de l'entente (M/J/A)

 /  / 

Office / Bureau

Alternative Measures Coordinator  
Coordonnateur des mesures de rechange

Date

5.17 Appendix 'B' Data

The following data pertaining to alternative measures for youth are from the *Correctional Services Division: Young Offender Services Annual Report, 1996-1997*.

**Table 1: Number of Participants by Probation Office (04/01/96 to 03/31/97)**

Location	Male	Female	Total
Bathurst	19	14	33
Boucouché	30	12	42
Campbellton	25	19	44
Edmundston	21	11	32
Fredericton	82	37	119
Grand Falls	25	5	30
Moncton	162	68	230
Newcastle	11	8	19
Saint John	102	47	149
Shippagan	5	4	9
St. Stephen	6	1	7
Woodstock	17	16	33
Out of Province	0	0	0
Other	0	0	0
Not Applicable	0	0	0
<b>Total</b>	505 67.6%	242 32.4%	747

**Table 2: Alternative Measures Terminations (04/01/96 to 03/31/97)**

Location	Successful		Unsuccessful		Pending		Unknown	Total
	M	F	M	F	M	F		
Bathurst	19	14	0	0	0	0	0	33
Boucouché	39	13	2	0	0	0	0	54
Campbellton	24	17	0	0	2	2	0	45
Edmundston	18	10	1	0	0	0	0	29
Fredericton	71	30	5	4	3	0	0	113
Grand Falls	29	5	0	0	0	0	0	34
Moncton	161	62	3	1	5	4	0	236
Newcastle	10	11	1	2	0	0	0	24
Saint John	97	47	10	4	2	5	0	165
Shippagan	5	4	0	0	0	0	0	9
St. Stephen	5	0	0	0	1	0	0	6
Woodstock	14	10	0	2	4	2	0	32
Out of Province	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0
Not Applicable	0	0	0	0	0	0	0	0
<b>Total</b>	492	223	22	13	17	13	0	780
<b>%</b>	63.1%	28.6%	2.8%	1.7%	2.2%	1.7%		

The total of this table differs from that of Table 1 because it is based on cases terminated during the fiscal year.

**Table 3: Offence Distribution on Admission (04/01/96 to 03/31/97)**

Location	Assault	Theft	Break & Enter	Mischief	Other CCC	Other Fed. Stat.	MVA	LCA	Tres. Act	NCA	Other	Unknown	Total
Bathurst	3	24	0	1	3	0	0	0	0	1	0	1	33
Bouctouche	4	25	2	6	2	0	0	0	0	3	0	0	42
Campbellton	3	24	1	10	2	0	0	0	0	0	0	4	44
Edmundston	4	19	1	5	3	0	0	0	0	0	0	0	32
Fredericton	7	84	0	8	12	0	0	0	4	3	0	1	119
Grand Falls	0	18	8	4	0	0	0	0	0	0	0	0	30
Moncton	14	121	18	23	31	0	0	0	9	12	0	2	230
Newcastle	1	11	1	3	2	0	0	0	0	1	0	0	19
Saint John	20	59	8	27	21	0	0	8	0	6	0	0	149
Shippagan	0	8	0	0	1	0	0	0	0	0	0	0	9
St. Stephen	2	1	0	3	0	0	0	0	0	0	0	1	7
Woodstock	4	11	3	9	2	0	0	3	0	0	0	1	33
Out of Province	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0	0
Not Applicable	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	62	405	42	99	79	0	0	11	13	26	0	10	747
<b>%</b>	8.3%	54.2%	5.6%	13.3%	10.6%			1.5%	1.7%	3.5%		1.3%	

**Table 4: Alternative Measures: Agreement Conditions (04/01/96 to 03/31/97)**

Location	Attend Counselling	Apology	Caution Letter	Essay	Curfew	Alco/ Drug Treat	Adept	Restrict Contact	Vict/Off Reconcil.	Restit.	CSO	Volun. Work	Educ	STP	Good Behav.	Other	Total
Bathurst	0	26	0	32	0	0	0	0	0	0	0	0	1	0	0	31	90
Bouctouche	0	38	0	41	0	1	0	0	0	0	6	0	20	0	0	12	118
Campbellton	3	16	0	8	0	0	0	11	0	4	2	0	0	0	0	4	48
Edmundston	1	17	0	20	0	0	0	8	0	4	5	0	0	0	0	11	66
Fredericton	2	0	0	11	0	0	0	0	0	1	44	0	0	59	0	1	118
Grand Falls	1	8	0	7	0	1	0	1	0	10	25	0	0	0	0	34	87
Moncton	17	160	0	274	0	0	12	0	0	15	34	0	109	87	0	11	719
Newcastle	0	10	0	18	0	0	0	0	0	0	18	0	5	11	0	1	63
Saint John	2	0	0	4	0	0	0	3	0	1	24	0	0	0	0	5	39
Shippagan	0	1	0	9	0	0	0	0	0	0	0	0	0	0	0	0	10
St. Stephen	0	0	3	0	0	0	0	0	0	0	2	0	0	0	0	0	5
Woodstock	1	3	0	9	0	0	0	1	0	5	23	0	0	0	0	19	61
Out of Province	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Not Applicable	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	27	279	3	433	0	2	12	24	0	40	183	0	135	157	0	129	1424
<b>%</b>	1.9%	19.6%	0.2%	30.4%		0.1%	0.8%	1.7%		2.8%	12.9%		9.5%	11 %		9.1%	

The total of this table differs from Table 1 because it is condition based.

**Table 5: Alternative Measures: Age of Participants (04/01/96 to 03/31/97)**

Location	11		12		13		14		15		16		17		18		Other		Total	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Bathurst	0	0	0	0	2	3	2	1	7	4	5	4	3	2	0	0	0	0	19	14
Bouctouche	0	0	1	1	3	1	3	2	5	2	6	5	10	0	2	1	0	0	30	12
Campbellton	0	0	1	1	3	4	4	3	10	6	6	3	1	1	0	1	0	0	25	19
Edmundston	0	0	1	1	1	2	1	1	5	0	7	2	3	5	3	0	0	0	21	11
Fredericton	0	0	5	6	14	9	16	5	16	8	12	6	14	3	5	0	0	0	82	37
Grand Falls	0	0	2	0	3	1	8	0	3	2	3	1	5	1	1	0	0	0	25	5
Moncton	0	0	5	1	23	5	24	11	40	22	33	13	26	10	10	5	1	1	162	68
Newcastle	0	0	0	2	4	1	3	3	1	1	3	0	0	1	0	0	0	0	11	8
Saint John	0	0	7	9	16	11	29	9	15	15	22	2	9	1	4	0	0	0	102	47
Shippagan	0	0	1	0	3	1	0	2	0	0	0	1	1	0	0	0	0	0	5	4
St. Stephen	0	0	0	1	1	0	2	0	2	0	1	0	0	0	0	0	0	0	6	1
Woodstock	1	0	2	0	2	1	4	4	4	6	2	3	2	2	0	0	0	0	17	16
<b>Total</b>	<b>1</b>	<b>0</b>	<b>25</b>	<b>22</b>	<b>75</b>	<b>39</b>	<b>96</b>	<b>41</b>	<b>108</b>	<b>66</b>	<b>100</b>	<b>40</b>	<b>74</b>	<b>26</b>	<b>25</b>	<b>7</b>	<b>1</b>	<b>1</b>	<b>505</b>	<b>242</b>

Average age: 15

**Table 6: Alternative Measures: Previous Criminal Involvement (04/01/96 to 03/31/97)**

Location	Number	Alternative Measures	YOA	Total
Bathurst	33	0	0	33
Bouctouche	42	0	0	42
Campbellton	44	0	0	44
Edmundston	32	0	0	32
Fredericton	119	0	0	119
Grand Falls	30	0	0	30
Moncton	230	0	0	230
Newcastle	19	0	0	19
Saint John	149	0	0	149
Shippagan	9	0	0	9
St. Stephen	7	0	0	7
Woodstock	33	0	0	33
Out of Province	0	0	0	0
Other	0	0	0	0
Not Applicable	0	0	0	0
<b>Total</b>	<b>747</b>	<b>0</b>	<b>0</b>	<b>747</b>
<b>%</b>	<b>100%</b>			

**Table 7: Alternative Measures Caseload Statistics (04/01/96 to 03/31/97)**

Alternative Measures	Males	Females
Cases brought forward	127	52
New Cases accepted into program	505	254
Transfers in from out of province	0	0
Total new cases alternative measures	505	254
Cases successfully completing program	480	223
Cases unsuccessfully completing program	22	12
Terminations – date driven – Status Unknown	18	14
Transfers out - out of province	0	0
Total cases closed	520	249
Average monthly provincial caseload	112	57

## 5.18 References

Department of the Solicitor General (1998). *Description of Alternative Measures Programs in New Brunswick Authorized by the Attorney General 17 March, 1998*. Solicitor General, Justice, RCMP "J" Division, N.B. Association of Chiefs of Police. New Brunswick.

Department of the Solicitor General (1997). *Young Offender Services Annual Report*. Correctional services Division. New Brunswick.



5.19 Appendix "C" Schedule of Offences

### 5.19.1. Alternative Measures Offence Schedule for Authorization into the Program by the Police

Offence	Criminal Code Section	Classification	Restrictions
False statement for passport	57(2)	Hybrid	
Unlawful assembly	66	Summary	
Obstructing/Resisting Police Officer	129	Hybrid	Discuss with Crown. Crown approval required
Public Mischief	140	Hybrid	Under \$1000 / Over \$1000 discuss and obtain Crown approval
Causing a disturbance	175	Summary	
Disturbing religious worship	176(2), 176(3)	Summary	
Trespassing at night	177	Summary	
Offensive/Volatile substance	178	Summary	
Vagrancy	179	Summary	
Fail to watch; water skiing at night	250	Summary	
Assault	266	Hybrid	Level 1 only: <ul style="list-style-type: none"> <li>no domestic violence:</li> <li>consider school violence</li> </ul>
Assault officer; resist arrest	270	Hybrid	Discuss and obtain Crown approval if police feel should be eligible for program
Theft	322 - 332; 334(b)	Hybrid	Under \$1000
Take motor vehicle without owner's consent	335	Summary	
Theft; Forgery Credit Card	342	Hybrid	Under \$1000
Unauthorized use of computer	342.1	Hybrid	
Unlawful possession of a device to commit Sect.342.1	342.2	Hybrid	Discuss with Crown; Crown approval required
Break & Enter	348	Hybrid	<ul style="list-style-type: none"> <li>Under \$1000 for business</li> <li>Discuss and obtain Crown approval for private dwelling house</li> </ul>
Unlawfully in dwelling house	349	Hybrid	Discuss with Crown; Approval required
Possession of property obtained by crime	354; 355(b)	Hybrid	Under \$1000
False pretenses	362(2)(b)	Hybrid	Under \$1000
Obtain food; lodging by fraud	364	Summary	
Pretend to practice witchcraft	365	Summary	
Forgery	366; 367(1)	Hybrid	Under \$1000
Utter forged document	368	Hybrid	Under \$1000 if definable or discuss with crown and obtain approval
Fraud	380(1)(b)	Hybrid	Under \$1000
Indecent/Harassing telephone calls	372(2); 372(3)	Summary	Except in domestic violence cases
Obtain transportation by fraud	393(3)	Summary	Under \$1000
Personation with intent	403	Hybrid	
Mischief	430(3); 430(4); 430(5)	Hybrid	Under \$1000 if definable otherwise discuss with Crown and obtain approval
Injure/endanger animals	445	Summary	
Cause unnecessary suffering to animals or birds	446(2)	Summary	
Attempt / Accessories	463(c);463(d)	Summary & Hybrid	Related to offences in this schedule eligible for Alternative Measures eligibility
Counsel to commit an offence/offence not committed	464(b)	Summary	Related to offences in this schedule eligible for Alternative Measures eligibility
Conspiracy to commit summary conviction offence	465(1)(d)	Summary	Related to offences in this schedule eligible for Alternative Measures eligibility
Provincial Statutes	Provincial Offences Procedures for Youth Act	N/A	Young Offenders only

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# 6. Quebec

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## 6.1 The Philosophy of Alternative Measures

Alternative measures programs for youth in Quebec are formalized programs, other than judicial proceedings, used to deal with young persons alleged to have committed an offence. These programs are authorized by the Ministry of Justice and the Ministry of Health and Social Services pursuant to Section 4 of the *Young Offenders Act (Canada)* (see Chapter 1 s.1.1 for the wording of this section).

The alternative measures programs for youth are based on a pre-charge model, although Section 12 of the *Program of Alternative Measures (Quebec)* does allow

Alternative measures programs for youth are generally operated at the pre-charge stage with a post-charge option in cases where the Provincial Director could not evaluate the matter prior to a charge being laid. The role of the Provincial Director is unique in Quebec.

for the Attorney General's Prosecutor to make a post-charge referral to alternative measures in the event that the Provincial Director had not, prior to a charge being laid, had the opportunity to evaluate the eligibility of the matter for alternative measures. In the pre-charge model, the referral to alternative measures happens in advance of any charges being laid and as such the youth does not need to appear in court nor is subsequent court time consumed in staying or withdrawing charges once alternative measures are successfully completed. As will be discussed later in this chapter, one of the unique aspects of the alternative measures programs in

Quebec is the relationship between the Attorney General's Prosecutor and the Provincial Director, who is dually authorized as a Provincial Director under the *Young Offenders Act (Canada)* and as a Youth Protection Director under the *Youth Protection Act (Quebec)*. This dual authorization recognizes the unique role of the Provincial Director vis-à-vis the police and the judicial sectors, which consists primarily of utilizing his/her psychosocial expertise to analyze the particular situation of the youth and to mobilize specialized intervention resources in order to better guarantee an appropriate and targeted response to the rehabilitative needs of the youth.

At the present time, Quebec does not have a program of alternative measures for adults under article 717 of the Criminal Code. However, work is underway to develop such a program. It will be combined with the non-judicial processing program which is the first step in the policy adopted by the Quebec Attorney General, which aims to deal with less serious criminal offenses in a non-judicial manner. Under this program, the Attorney General's prosecutor will deal with certain files out of court using a warning letter or a formal demand. Montreal's Municipal Court also offers various social programs that encourage other means of dealing with adult offenders, specifically for certain offences that relate to driving, shoplifting, spousal abuse and domestic violence.

## 6.2 Responsibility for the Delivery of Alternative Measures

### 6.2.1. Youth

In Quebec, the ultimate responsibility for delivering alternative measures for youth lies with the Provincial Director or a delegate of the Provincial Director. The

While the Provincial Director is ultimately responsible for all aspects of alternative measures, community-based non profit agencies are often responsible for the actual delivery of the alternative measures agreed to.

Provincial Director may also authorize persons, in writing, to perform the responsibilities entrusted to him under the *Program of Alternative Measures (Quebec)*. Section 21 of this *Program* states that:

Every establishment must, by every available means, facilitate the carrying out of an alternative measure. The same rule applies to every person or body that agrees to apply such measures.

For the most part, community-based non-profit organizations are used in Quebec to supervise the completion of the alternative measures agreed to by the youth and the Provincial Director or delegate. In some instances, youth workers/probation officers will assume this role.

### 6.2.2. Adult

There are currently no formal alternative measures programs for adults in Quebec.

## 6.3 Referral Agent

### 6.3.1. Youth

The Attorney General's Prosecutor initiates referrals to alternative measures for youth. The alternative measures program is designed in such a way that there is

The Attorney General's Prosecutor refers cases to the Provincial Director for authorization for alternative measures. While essentially all offences may be referred, those offences not provided for in Chapter IV of the *Program for Alternative Measures* (see Appendix 'C') must be referred.

a presumptive referral made by the Attorney General's Prosecutor to the Provincial Director for all offences and situations not provided for in Chapter IV of the *Program for Alternative Measures (Quebec)*(see Appendix 'C', Chapter IV Offences), unless the Attorney General's Prosecutor chooses to close the record. For all offences and situations that are provided for in Chapter IV, the Attorney General's Prosecutor retains discretion to either refer the case to the Provincial Director for consideration for alternative measures or to commence judicial proceedings against the youth.

### 6.3.2. Adult

There are currently no formal alternative measures programs for adults in Quebec.

## 6.4 The Role of the Police

### 6.4.1. Youth

As the first point of contact in the criminal justice system, the police play a pivotal role in determining how a young person may be dealt with. When a police investigation indicates that sufficient evidence exists to support a charge, the police officer may recommend that formal proceedings, either alternative measures or youth court proceedings, be commenced by referring the case to the Attorney General's Prosecutor. The police do, however, maintain their discretion to close a case when this seems to be the most appropriate course of action. The law does not prescribe exactly those situations under which cases should be referred or closed, rather the discretion offered police enable them to tailor their interventions and their decisions based on the particular circumstances of the young person and the alleged offence. The police are guided in their decisions by broad parameters such as the nature and seriousness of the offence, the circumstances surrounding the commission of the offence, the existence of a prior criminal record, the age of the young person, his/her attitude and the reaction of the young person's family and community to the offence.

### 6.4.2. Adult

There are currently no formal alternative measures programs for adults in Quebec.

## 6.5 The Role of the Crown Attorney

### 6.5.1. Youth

In Quebec, the Crown Attorney is referred to as the Attorney General's Prosecutor. It is the role of the Attorney General's Prosecutor to examine proceedings and documents relating to any offence committed by a young person. Where it is considered that there is enough evidence to proceed with prosecution and the prosecution of the offence is not barred at law, the Attorney General's Prosecutor must determine the immediate course of action to pursue. According to the *Program of Alternative Measures (Quebec)*, the Attorney General's Prosecutor:

- a) may authorize prosecution of the young person or refer the case to the Provincial Director if the offence or situation is provided for in Chapter IV;
- b) must refer the case to the Provincial Director if the offence or situation is not provided for in Chapter IV.

In the event that the case is referred to the Provincial Director, the Attorney General's Prosecutor must indicate the date when the time limit for instituting proceedings expires, and the date on which the record will be recalled.

The Attorney General's Prosecutor is responsible for initiating referrals to alternative measures. Chapter IV provides direction on whether the offence may be, or must be, referred to the Provincial Director for consideration. The Attorney General's Prosecutor may also refer cases post-charge, under specific circumstances, and may consult the Provincial Director with respect to how to proceed with 12 and 13 year old youth.

This date will either be that already set for another record concerning the same youth, or two months after the decision of the Attorney General's Prosecutor to refer the case, or two weeks prior to the expiration of the time limit to institute proceedings, whichever comes first.

In examining a matter in respect of a young person, the Attorney General's

Prosecutor has the option, taking the protection of society into account, to close a record where it is deemed not to be expedient to authorize prosecution or to refer the case to the Provincial Director. The *Program of Alternative Measures (Quebec)* provides for specific consideration to be given to young persons twelve and thirteen years of age who commit an offence or find themselves in a situation provided for in Chapter IV. In this event, the Attorney General's Prosecutor may, if he/she deems it advisable, consult the Provincial Director before making a decision to either authorize prosecution or refer the case to the Provincial Director.

In situations where a charge has been filed against a young person prior to the Provincial Director having had an opportunity to evaluate the matter, the Attorney General's Prosecutor may, if he/she deems it advisable, refer the case to the Provincial Director for an evaluation with respect to the appropriateness of alternative measures.

#### 6.5.2. Adult

There are currently no formal alternative measures programs for adults in Quebec.

## 6.6 The Role of the Victim

### 6.6.1. Youth

The *Program for Alternative Measures (Quebec)* does not identify a systematic need to consult with or involve the victim in the determination of the eligibility of the young person for alternative measures nor in the determination of the measure to be applied. The victim may, however, play an important role in the success of particular measures agreed to by the Provincial Director and the young person. In effect, the young person may be required to perform unremunerated work for the victim according to terms and conditions agreed upon by the young person, the Provincial Director and the victim. In other circumstances, the young person may, as part of the alternative measures agreement, be required to participate in an activity conducive to improving his/her social skills. This activity may take the form of a victim-offender mediation in which case the victim, as a participant, plays an essential role in the successful completion of the measure.

### 6.6.2. Adult

There are currently no formal alternative measures programs for adults in Quebec.

## 6.7 Right to Legal Counsel

### 6.7.1. Youth

Section 4 of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.7 for the wording of this section) specifies that before becoming involved in alternative measures, a young person must fully and freely consent to participate in the program having been given a reasonable opportunity to consult with legal counsel. The *Program for Alternative Measures* states that the responsibility for advising the young person of his/her right to legal counsel falls to the Provincial Director. The young person must be informed prior to giving his/her consent to participate and must also indicate, in writing, in the alternative measures agreement that he/she has been advised of this right and provided a reasonable opportunity to avail him/herself of this right.

### 6.7.2. Adult

There are currently no formal alternative measures programs for adults in Quebec.

## 6.8 Eligibility Criteria

### 6.8.1. Youth

The legislated criteria governing the referral process for formally authorized alternative measures across Canada are contained in sections 4(1) and 4(2) of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.8 for the wording of these sections). Each province, however, may apply a number of policies to ensure that the alternative measures program meets the specific needs of the province.

In Quebec, there are no policy restrictions on the types of offences that may be considered for alternative measures. There are differences in the process, however, whereby those offences contained in Chapter IV (see Appendix 'C', Chapter IV Offences) of the *Program of Alternative Measures (Quebec)* may be referred to the Provincial Director by the Attorney General's Prosecutor for consideration for alternative measures, all other offences not listed in Chapter IV must be presumptively referred to the Provincial Director for consideration.

In Quebec, there are no policy restrictions on offences that may be considered eligible for alternative measures. Chapter IV of the *Program of Alternative Measures* lists those offences that the Attorney General's Prosecutor **may** refer to the Provincial Director. The Attorney General's Prosecutor **must** refer all other offences not contained in this section to the Provincial Director for consideration for alternative measures.

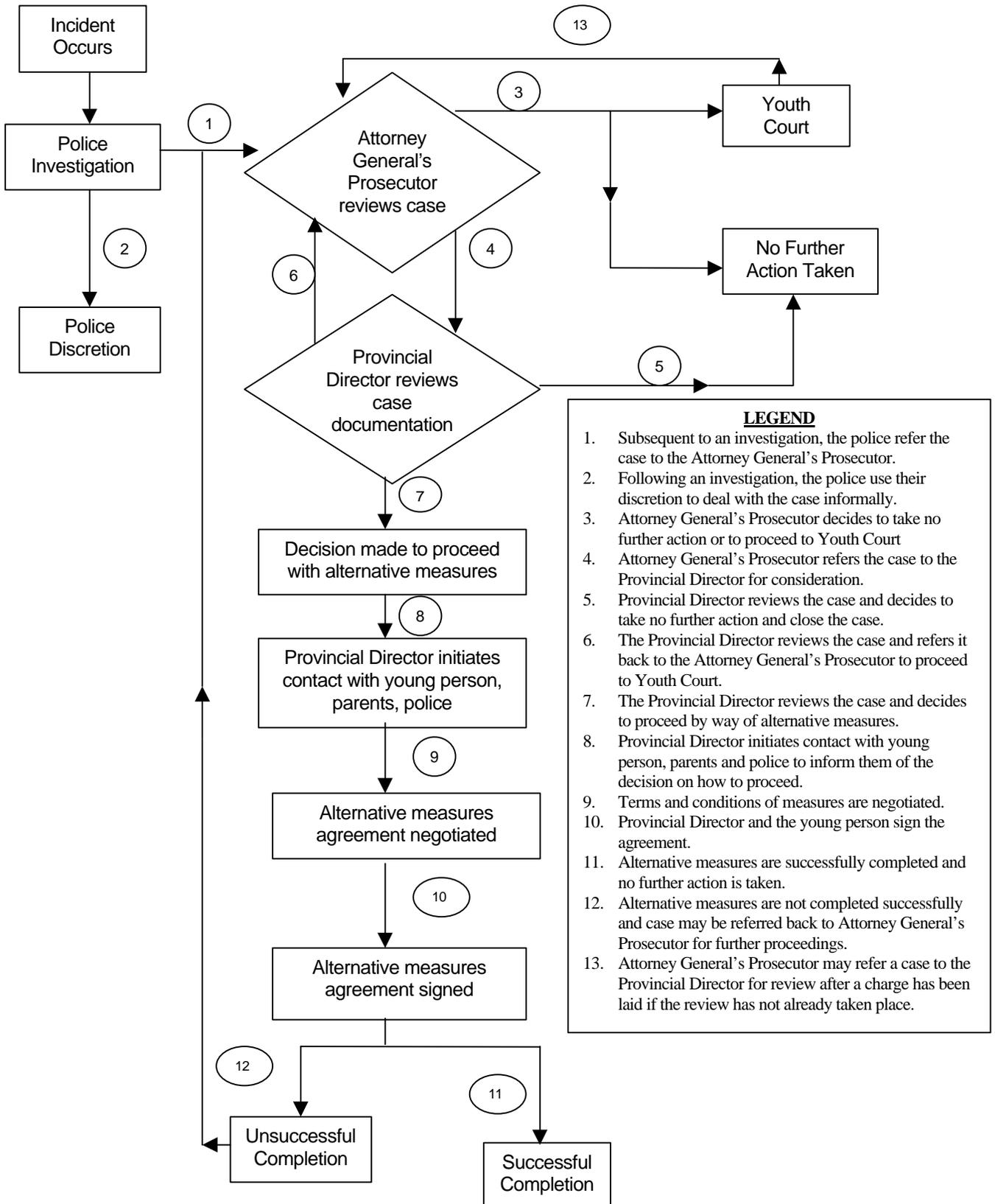
The *Program of Alternative Measures (Quebec)* also allows the Attorney General's Prosecutor to refer a young person to the Provincial Director in cases where, in the same affair, the young person is involved in several offences one of which is mentioned in Chapter IV. In the event the young person is involved in a series of offences related to several events on different dates, the Attorney General's Prosecutor may authorize prosecution of all of these offences when it is evident that this is not an isolated incident in the behaviour of the young person or, it is in the public interest to proceed before the court.

The Attorney General's Prosecutor may also refer a case to the Provincial Director for consideration of alternative measures in incidences where the young person has an existing case pending before the court. A young person with prior convictions or having previously participated in alternative measures may also be referred by the Attorney General's Prosecutor, as may a young person who has been detained following an arrest not pursuant to a warrant.

### 6.8.2. Adult

There are currently no formal alternative measures programs for adults in Quebec.

## 6.9 Alternative Measures Process for Youth



Subsequent to an examination of the proceedings and documents received from the police relating to an alleged offence committed by a young person, the Attorney General's Prosecutor may authorize prosecution of the young person or refer the case to the Provincial Director for consideration for alternative measures if the alleged offence is provided for in Chapter IV of the *Program of Alternative Measures (Quebec)*. If the alleged offence is not provided for in Chapter IV, then the Attorney General's Prosecutor must refer the case to the Provincial Director.

Upon receiving a referral of a young person from the Attorney General's Prosecutor, the Provincial Director, or delegate, shall consider whether or not to apply alternative measures in respect of the young person. In completing the evaluation, the Provincial Director, or delegate, shall decide to either apply one or

The Provincial Director is responsible for deciding the appropriateness of alternative measures, negotiating the measures to be applied with the young person, developing and signing the agreement and seeing to the performance of the alternative measures accepted by the young person.

more of the alternative measures provided for in the *Program of Alternative Measures (Quebec)*, refer the case back to the Attorney General's Prosecutor to have proceedings relating to the offence authorized or, to end the intervention. A notice indicating the decision reached must be sent by the Provincial Director within a reasonable time period to the Attorney General's Prosecutor. If the decision is to proceed by way of alternative measures, the notice must indicate the nature and the duration of the

measures.

The Provincial Director, or delegate, is responsible for contacting the young person and advising the young person, the parents and the investigating police service of the decision made with respect to how to proceed. Where the Provincial Director, or delegate, is satisfied that alternative measures are appropriate, he/she may propose one or more of the measures provided for (see Section 6.11 for the range of measures) to the young person. Together they will decide on the measures that are most suitable and, if need be, on the terms and conditions of application which will be noted in a memorandum of understanding, a copy of which is given to the young person and, where reasonably possible, to the parents of the young person.

It is also the responsibility of the Provincial Director, or the delegate, to ensure that the young person has been advised of his/her right to consult with a lawyer and that reasonable opportunity to do so has been provided. Where the young person agrees to comply with the terms and conditions of the alternative measures, this agreement must be evidence in writing and signed by the young person and the Provincial Director. A copy of this agreement shall be given to the young person and the parents of the young person where reasonably possible.

## 6.10 Alternative Measures Process for Adults

At the present time, there are no formal alternative measures programs for adults established in Quebec.

## 6.11 The Alternative Measures Agreement

### 6.11.1. Youth

If the young person agrees to comply with the terms and conditions of the alternative measures, an agreement in writing must be drafted and signed by the young person and the Provincial Director. The *Program of Alternative Measures (Quebec)* is specific with respect to the content of this agreement. The agreement must contain the following:

- a) mention of the offences alleged against the young person including the nature, place and date of the commission of the offences;
- b) the nature of the alternative measures and, as the case may be, the terms and conditions of their application;
- c) the duration of the agreement with mention of the date of its commencement and termination
- d) a declaration by the young person to the effect that:
  - i) he/she acknowledges his/her responsibility for the act or omission at the origin of the offence that he/she is alleged to have committed;
  - ii) he/she does not wish to have the charge or charges against him/her dealt with by the court;
  - iii) he/she has been advised of his/her right to be represented by a lawyer and given a reasonable opportunity to consult one; and
  - iv) he/she has been informed of the alternative measures proposed for him/her and he/she undertakes to participate in them.

The agreement also includes references to the legal implications such as the fact that proceedings may be instituted against the young person for failure to comply with the terms and conditions of the alternative measures, that the application of alternative measures does not prevent a person from laying a complaint or instituting civil proceedings for damage caused, and that no admission of guilt or acceptance of responsibility may be used as evidence against the young person in any civil or criminal proceedings. In addition, the agreement will state that the court shall or may dismiss any charge brought against the young person if

proceedings are instituted, subject to the degree of compliance with the alternative measures.

With the consent of the young person and the Provincial Director, the terms, conditions and duration of the alternative measures may be changed. When such a change is made, or where the change extends the time limit for the application of alternative measures beyond the date on which the time limit for prosecution expires, notice to this effect must be forwarded to the Attorney General's Prosecutor.

#### 6.11.2. Adult

At the present time, there are no formal alternative measures programs for adults established in Quebec.

### 6.12 The Range of Alternative Measures

#### 6.12.1. Youth

The *Program of Alternative Measures (Quebec)* outlines the range of measures that are currently available. In determining the most appropriate measure, the Provincial Director may propose one or more of the following to the young person:

- *Financial Compensation*: this measure would require that the young person pay a sum of money to the victim, a person or an organization in accordance with the terms and conditions agreed upon.
- *Personal Service*: with the consent of the victim, the young person may be required to perform unremunerated work, to a maximum of 120 hours, for the victim.
- *Community Service*: the young person may be required to perform a maximum of 120 hours of volunteer work or render an appropriate service to the community.
- *Social Skills Improvement/Development*: the young person may be required to participate in an activity conducive to improving his/her social skills. Such activities may include victim-offender mediation, or alcohol/drug educational programs.

The above-mentioned measures are subject to certain requirements outlined in the *Program* that limit the number of hours of unremunerated work or services performed for a person or a community to 120 hours. As well, a young person may not, as an alternative measure, be placed in an institution operating a rehabilitation centre, nor can the total duration of the alternative measures applied exceed six months from the date of the young person's commitment to participate. It is incumbent upon the Provincial Director to ensure that any

alternative measure take into account the financial means, the development and maturity of the young person and that the terms and conditions of any proposed compensation or reparation not exceed the fair value of the prejudice caused. Finally, in proposing an alternative measure, the Provincial Director must, where reasonably possible, include the parents and other persons working in the immediate environment of the young person.

#### 6.12.2. Adult

At the present time, there are no formal alternative measures programs for adults established in Quebec.

### 6.13 Supervision of Alternative Measures Agreement

#### 6.13.1. Youth

Under the current guidelines, it is the responsibility of the Provincial Director to see to the performance of the alternative measures accepted by the young person. The non profit community-based agency, to whom the young person has been referred for completion of the alternative measures, is responsible for the ongoing monitoring of the young person throughout the duration of the alternative measures, and for informing the Provincial Director of the successful completion of the measures or the failure to complete such.

#### 6.13.2. Adult

At the present time, there are no formal alternative measures programs for adults established in Quebec.

### 6.14 Completion of Agreement

#### 6.14.1. Youth

When the young person complies with the terms and conditions of the alternative measures, the Provincial Director is responsible for informing the Attorney General's Prosecutor of the successful completion so that the latter may close the record.

In the event that the young person fails to comply with the terms and conditions of the alternative measures agreement, the Provincial Director must so inform the Attorney General's Prosecutor within such time as will permit the prosecutor to institute proceedings relating to the offence, if deemed necessary.

#### 6.14.2. Adult

At the present time, there are no formal alternative measures programs for adults established in Quebec.

### 6.15 Record Keeping

#### 6.15.1. Youth

The current reference manual specifies that any record held by the Provincial Director constitutes a record of a beneficiary of social services and is subject to all applicable provincial regulations. The management of these records are also subject to provisions of the *Young Offenders Act (Canada)* (see Chapter 1, section 1.15 for the wording of the applicable sections) where applicable. In the event that the *Young Offenders Act* is silent on specific record keeping practices or where the federal and provincial practices are compatible, the provincial regulations will apply to the management of the young offender record.

#### 6.15.2. Adult

At the present time, there are no formal alternative measures programs for adults established in Quebec.

6.16 Appendix 'A' Forms

6.16.1. Examination of Evidence and Disposition

**FOR THE USE OF THE ATTORNEY GENERAL'S PROSECUTORS OFFICE**

A.G.P.'S File No. \_\_\_\_\_

Please refer to this no. for any subsequent exchange with the AGP.

**EXAMINATION OF EVIDENCE AND DISPOSITION**

**IDENTIFICATION**

Surname	Name	Date of Birth
Address		
Parent's Name		
Address		
Police Force	Record No.	

**CRIMINAL RECORDS**

	No	Yes		No	Yes
- Past records	<input type="checkbox"/>	<input type="checkbox"/> Cr.C. s.306 <input type="checkbox"/> Other	Record referred to P.D.	<input type="checkbox"/>	<input type="checkbox"/> Cr.C. s.306 <input type="checkbox"/> Other
- Cases Pending	<input type="checkbox"/>	<input type="checkbox"/>	_____		
- Order	<input type="checkbox"/>	<input type="checkbox"/>	_____		

**Examination of Evidence and Disposition**

<input type="checkbox"/> Upon examination of the record, evidence is deemed sufficient <input type="checkbox"/> But there shall be no prosecution of the offence <input type="checkbox"/> Upon examination of the record, evidence is deemed insufficient  <table border="0"> <thead> <tr> <th style="text-align: center;">Counts</th> <th style="text-align: center;">Limitation</th> </tr> </thead> <tbody> <tr><td>1. _____</td><td>_____</td></tr> <tr><td>2. _____</td><td>_____</td></tr> <tr><td>3. _____</td><td>_____</td></tr> <tr><td>4. _____</td><td>_____</td></tr> <tr><td>5. _____</td><td>_____</td></tr> <tr><td>6. _____</td><td>_____</td></tr> <tr><td>7. _____</td><td>_____</td></tr> <tr><td>8. _____</td><td>_____</td></tr> <tr><td>9. _____</td><td>_____</td></tr> </tbody> </table>	Counts	Limitation	1. _____	_____	2. _____	_____	3. _____	_____	4. _____	_____	5. _____	_____	6. _____	_____	7. _____	_____	8. _____	_____	9. _____	_____	<p><b>IF IMMEDIATE AUTHORIZATION OR CONFIRMED</b></p> <div style="border: 1px solid black; padding: 5px;"> <input type="checkbox"/> Summons  <input type="checkbox"/> Arrest without warrant  <input type="checkbox"/> Warrant  <input type="checkbox"/> Procuring Attendance    <input type="checkbox"/> Bertillon signaletic system requested    <p style="text-align: center;">Date _____ Prosecutor's INTLS _____</p> </div>
Counts	Limitation																				
1. _____	_____																				
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6. _____	_____																				
7. _____	_____																				
8. _____	_____																				
9. _____	_____																				

**DISPOSITION OF CASE**

<input type="checkbox"/> Examination of the 12-13 year old youth's case by P.D.; deadline: _____ <input type="checkbox"/> A.G.P. refers case to the P.D. (s.5a); deadline: _____ <input type="checkbox"/> Youth's case referred to P.D. (s.5b); deadline: _____ <input type="checkbox"/> Authorization for immediate prosecution
---

\_\_\_\_\_ Date

\_\_\_\_\_ Attorney General's Prosecutor

For the judicial district of \_\_\_\_\_

**REMARKS AND COMMENTS**


6.16.2. Examination of Evidence and Disposition Notice to Provincial Director and Police Forces

**EXAMINATION OF EVIDENCE AND DISPOSITION**

**NOTICE TO PROVINCIAL DIRECTOR (or to POLICE FORCE)**

A.G.P.'S File No. \_\_\_\_\_

Please refer to this no. for any subsequent exchange with the AGP.

**IDENTIFICATION**

Surname	Name	Date of Birth
Address		
Parent's Name		
Address		
Police Force	Record No.	

**CRIMINAL RECORDS**

	No	Yes		No	Yes
- Past records	<input type="checkbox"/>	<input type="checkbox"/> Cr.C. s.306 <input type="checkbox"/> Other	Record referred to P.D.	<input type="checkbox"/>	<input type="checkbox"/> Cr.C. s.306 <input type="checkbox"/> Other
- Cases Pending	<input type="checkbox"/>	<input type="checkbox"/>	_____		
- Order	<input type="checkbox"/>	<input type="checkbox"/>	_____		

**Examination of Evidence and Disposition**

<input type="checkbox"/> Upon examination of the record, evidence is deemed sufficient <input type="checkbox"/> But there shall be no prosecution of the offence <input type="checkbox"/> Upon examination of the record, evidence is deemed insufficient  <table border="0"> <thead> <tr> <th style="text-align: center;">Counts</th> <th style="text-align: center;">Limitation</th> </tr> </thead> <tbody> <tr><td>1. _____</td><td>_____</td></tr> <tr><td>2. _____</td><td>_____</td></tr> <tr><td>3. _____</td><td>_____</td></tr> <tr><td>4. _____</td><td>_____</td></tr> <tr><td>5. _____</td><td>_____</td></tr> <tr><td>6. _____</td><td>_____</td></tr> <tr><td>7. _____</td><td>_____</td></tr> <tr><td>8. _____</td><td>_____</td></tr> <tr><td>9. _____</td><td>_____</td></tr> </tbody> </table>	Counts	Limitation	1. _____	_____	2. _____	_____	3. _____	_____	4. _____	_____	5. _____	_____	6. _____	_____	7. _____	_____	8. _____	_____	9. _____	_____	<p><b>IF IMMEDIATE AUTHORIZATION OR CONFIRMED</b></p> <input type="checkbox"/> Summons <input type="checkbox"/> Arrest without warrant <input type="checkbox"/> Warrant <input type="checkbox"/> Procuring Attendance  <input type="checkbox"/> Bertillon signaletic system requested  <p>_____ Date      _____ Prosecutor's INTLS</p>
Counts	Limitation																				
1. _____	_____																				
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9. _____	_____																				

**DISPOSITION OF CASE**

<input type="checkbox"/> Examination of the 12-13 year old youth's case by P.D.; deadline: _____ <input type="checkbox"/> A.G.P. refers case to the P.D. (s.5a); deadline: _____ <input type="checkbox"/> Youth's case referred to P.D. (s.5b); deadline: _____ <input type="checkbox"/> Authorization for immediate prosecution
---

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney General's Prosecutor

For the judicial district of \_\_\_\_\_

**NOTICE TO PROVINCIAL DIRECTOR (or to POLICE FORCE)**

YOU ARE HEREBY ADVISED THAT:

- Following your decision to refer the above captioned youth's record back to us
- No prosecution was authorized

\_\_\_\_\_

\_\_\_\_\_

- Prosecution before the youth court was authorized

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney General's Prosecutor



## 6.17 Appendix 'B' Data

### 6.17.1. Youth Data

There is presently no data available on alternative measures for youth in Quebec.

## 6.18 References

Montréal, Services des affaires corporatives. Module des affaires pénales et criminelles. Cour municipale de Montréal. *Le programme d'incitation des alcooliques récidivistes à la désintoxication*. 1990.

Montréal, Services des affaires corporatives. Module des affaires pénales et criminelles. Cour municipale de Montréal. *Programme visant la réinsertion sociale de personnes se livrant à la prostitution dans les rues de Montréal*. 1990.

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Québec, Ministère de la Justice. Direction générale des affaires criminelles et pénales. *Programme de traitement non judiciaire de certaines infractions criminelles commises par les adultes: Rapport 1995*. Mai 1996.

Québec, Ministère de la Justice et ministère de la Santé et des Services sociaux. *Les jeunes contrevenants. Au nom... et au-delà de la loi*. Rapport du groupe de travail chargé d'étudier l'application de la Loi sur les jeunes contrevenants au Québec. 1995.

Québec, Ministère de la Justice et ministère de la Santé et des Services sociaux. *Programme de mesures de rechange autorisé par le Ministre de la Justice et le Ministre de la Santé et des Services sociaux*. 1994.

6.19 Appendix 'C' Chapter IV Offences

With respect to the application of alternative measures, the Attorney General's Prosecutor may refer the case to the Provincial Director or authorize proceedings against a young person where the charge against the young person is a plot or the attempted commission or the commission of an offence under the following. In such cases, where the alleged offence is not provided for in the following, the Attorney General's Prosecutor must refer the case to the Provincial Director for consideration of alternative measures.

**(A) The *Criminal Code of Canada* (S.C., 1985, c. C-46)**

**In the Matter of Offences Against the Public Order (Part II):**

High treason or treason	s.47
Acts intended to alarm Her Majesty or break public peaces	s.49
Assisting alien enemy to leave Canada, or omitting to prevent treason	s.50
Intimidating Parliament or legislature	s.51
Sabotage	s.52
Offences in relation to sedition	s.61
Offences in relation to military forces	s.62
Piracy by law of nations	s.74
Piratical acts	s.75
Hijacking	s.76
Endangering safety of aircraft	S.77
Transportation of offensive weapons or explosive substances on board an aircraft	s.78
Breach of duty with regard to explosives	s.80
Use of explosives	s.81

**In the Matter of Firearms and other Offensive Weapons (Part III)**

Use of firearms during commission of an offence	s.85
Pointing a firearm	s.86 (1)
Careless use of firearm	s.86 (2)
Possession of weapon or imitation	s.87
Possession of weapon while attending public meeting	s.88
Carrying concealed weapon	s.89
Possession of prohibited weapon	s.90 (1)
Possession of prohibited weapon in motor vehicle	s.90 (2)
Possession of unregistered restricted weapon	s.91 (2)
Possession of restricted weapon elsewhere than at place authorized	s.91 (2)

Possession of restricted weapon in motor vehicle	s.91 (3)
Transfer of firearm to person under sixteen	s.93
Wrongful delivery of firearms	s.94
Importing or delivering prohibited weapon	s.95
Manufacturing automatic weapon	s.95.1
Delivery of restricted weapon to person without permit	s.96
Importation of restricted weapon without permit	s.96 (3)
Delivery of firearm to person without acquisition certificate	s.97 (1)(
Offence against an order of prohibition	s.100 (12)
Tampering with serial number	s.104 (3) and (5)

**In the Matter of Offences against the Administration of Law and Justice (Part IV)**

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# 7. Ontario

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## 7.1 The Philosophy of Alternative Measures

Alternative measures are defined in the *Young Offenders Act (Canada)* (see Chapter 1, s.1.1 for the wording of the specific sections) as formalized programs other than judicial proceedings used to deal with a young person alleged to have committed an offence. Ontario is unique in the fact that the alternative measures programs are authorized by the Ministry of the Attorney General and operated by the Ministry of Community and Social Services for youth twelve to fifteen years old, and by the Ministry of the Solicitor General and Correctional Services for youth aged sixteen and seventeen years.

Alternative measures programs for youth are authorized by the Attorney General and operated by the Ministry of Community and Social Services (12-15 year olds) and the Ministry of the Solicitor General and Correctional Services (16-17 year olds).

The programs are offered on a post-charge, Crown prosecutor referral basis with admission to the alternative measures program being requested by the young person after the police lays a charge.

Currently, there are no formally authorized alternative measures programs for adults although some diversion pilot programs have been implemented.

Although the responsibility for alternative measures programs rests with all three government ministries, they share one policy and procedures manual that outlines the philosophy and components of the alternative measures programs offered in Ontario.

Formally designated alternative measures programs have been offered in Ontario since 1988. The initial Attorney General's model provided a limited framework for diverting young people outside of the criminal justice system. In February 1995, the program was expanded to allow for a restructuring and streamlining of the alternative measures program including broadening the range of offences eligible for diversion. The

Ontario alternative measures program model is based on a post-charge, Crown prosecutor referred diversion model where admission to the program is requested by the young person following the swearing of an information by the police.

In Ontario, alternative measures are seen to contribute to the protection and well being of society through a combination of programs that provide structure and supervision and actively support, assist and encourage young people. The program is designed to provide a framework outside of the formal court process for resolving minor conflicts between young people and society. The principles and assumptions upon which this approach is founded is outlined in the *Alternative Measures Program: Policy and Procedures Manual (Ontario, 1995)* and states that:

- there is a need to work for the short and long-term protection of society;
- each young person in conflict with the law has rights, responsibilities and special needs;
- the principle of minimal intrusion set out in paragraph 3(1)(d) of the YOA is recognized;

- the importance of considering, at all times, the needs, interests and concerns of the victims of crime is recognized and affirmed;
- the parents and family of every young person in conflict with the law have rights, responsibilities and needs;
  
- the unique position of aboriginal communities within Ontario and the desire to encourage, wherever possible, their active participation in a community-based justice system is recognized and affirmed;
  
- the diversity of communities within the province is recognized and affirmed.

Consistent with this philosophy, alternative measures is seen as an additional discretion within the youth justice system and not as a replacement for traditional police discretion or Crown prosecutor discretion in the laying and processing of criminal charges.

There are currently no formally authorized alternative measures programs for adults in Ontario pursuant to Section 717 of the *Criminal Code of Canada*. In 1993, there were, however, four pilot projects implemented that were designed to divert persons accused of minor offences away from the criminal court and correctional services. These projects were implemented by the Ministries of the Attorney General and of the Solicitor General and Correctional Services and were established in Thunder Bay, Windsor, Kingston, and Ottawa. The projects in Thunder Bay, Windsor, and Kingston were based on a post-charge model and the decision to divert was made by the Crown, similar to the youth programs. In Ottawa, the program was designed as a pre-charge model with the investigating police officer assuming responsibility for deciding whether the person should be diverted. In the post-charge projects, alternative measures were administered by probation officers whereas in the pre-charge project a contracted private agency was responsible for service delivery. The target groups of the projects differed, with Thunder Bay having the most restrictive offence criteria for entry, and Kingston having the least restrictive although first time offenders were the primary targets in all projects. In 1995, funding for the three post-charge projects was discontinued with the pre-charge program continuing to depend on joint funding by the Ministry of the Attorney General and Policing Services Division of the Ministry of the Solicitor General and Correctional Services.

In addition to the above, there have also been several community and/or police-based diversion programs established across Ontario. However, as with the pre-charge adult diversion program, the lack of formal authorization as an alternative measures program, and the lack of standard provincial policies and procedures prohibits them from being included within the restricted focus of this report.

## 7.2 Responsibility for the Delivery of Alternative Measures

### 7.2.1. Youth

Once the Crown prosecutor approves the use of alternative measures and directs the stay, the case will be referred to the Ministry of Community and Social Services (youth 12-15 years old) or the Ministry of the Solicitor General and Correctional Services (youth 16 and 17 years old). The Provincial Director under whose jurisdiction the young person falls will monitor the alternative measures and will assign the case to the appropriate probation officer or transfer payment agency. In Ontario, depending on the location of the program, the responsibility for the delivery of alternative measures programs lies with either the probation office or a non-profit transfer payment agency.

Depending on where the program is, the responsibility for delivering alternative measures programs lies with either the probation office or a transfer payment agency.

### 7.2.2. Adult

There are currently no formally authorized alternative measures programs for adults in Ontario. The adult diversion programs that are operated are often done so by community groups and/or police forces often with Crown prosecutor support.

## 7.3 Referral Agent

### 7.3.1. Youth

Alternative measures programs for youth in Ontario are based on a post-charge, Crown prosecutor referred model where the young person requests admission to the program. The Crown prosecutor will consider all requests for alternative measures and determine the appropriateness of referring each case to the alternative measures program. Once a young person is approved for alternative measures, the Crown prosecutor will direct a stay of proceedings and forward the alternative measures application form to the Provincial Director of either the Ministry of Community and Social Services or the Ministry of the Solicitor General and Correctional Services. The Provincial Director is then responsible, either through a probation officer or a transfer payment agency, for determining the young person's personal suitability for the alternative measures program.

All referrals to alternative measures for youth are made post-charge by the Crown prosecutor to the appropriate Provincial Director.

### 7.3.2. Adult

Currently there are no formally authorized alternative measures programs for adults in Ontario. The pre-charge diversion program in Ottawa accepts referrals from the investigating police officer as do the majority of community and/or police-based pre-charge programs. The vast majority of post-charge diversion programs are run by or with the Crown prosecutor.

## 7.4 The Role of the Police

### 7.4.1. Youth

The policy and procedures manual for the alternative measures program in Ontario outlines the role of the police in the alternative measures process. Of

The police play an important role in the alternative measures process. From determining whether or not informal diversion is appropriate, to deciding whether or not to charge a young person, to advising a young person about the availability of alternative measures and the young person's right to legal counsel. The preparation of the Crown Brief is also essential to the Crown's determination of the young person's eligibility for alternative measures.

primary importance is the fact that alternative measures is not to be seen as a reason to change the discretion of the police in the investigation of offences involving a young person or in the decision to charge a young person. The police should continue to utilize informal diversion programs where appropriate and available.

If a young person is charged with an offence that may be considered eligible for alternative measures, the police officer should advise the young person about the availability of alternative measures and the availability of duty counsel to discuss eligibility for the program. The young

person should also be informed of the legal aid telephone numbers and of his/her right to contact legal counsel.

If a charge is to be laid, the police officer must also submit a sworn information to the court along with a completed Crown Brief for review by the Crown prosecutor. The *Alternative Measures Program: Policy and procedures Manual (Ontario, 1995)*, states that the following information must be contained in the Crown Brief:

- ❑ A description of the offence(s) including information for the Crown prosecutor to determine whether or not there is sufficient evidence to prove the charge in court as per paragraphs 4(1)(f) and (g) of the YOA.
- ❑ The name, address and telephone number of the young person.
- ❑ The young person's prior criminal history, including any prior cautioning, if known, and prior involvement in an alternative measures program, if known. In this regard, the police officer will initiate an inquiry of local policing records to determine prior cautioning of the young person and resolution of prior offences by alternative measures, if any. If

the young person resides in a different police jurisdiction, the police officer will initiate an inquiry of the records of that jurisdiction. The name, address, and telephone number of the victim and a description, including monetary value, of any loss should be noted. Note: the police officer should ensure that the information provided to the Crown prosecutor meets the requirements of the YOA.

- ❑ In the case of a Class II offence, the result of consultation with the victim and the victim's view of alternative measures for the young person. The practice of obtaining a victim impact statement is encouraged.
- ❑ If desired, provide a recommendation on whether alternative measures are appropriate.
- ❑ Any other relevant information.

The Crown Brief will be provided to the Crown prosecutor as soon as possible after the offence date and the police officer will establish a court appearance date for the young person.

#### 7.4.2. Adult

Currently there are no formally authorized alternative measures programs for adults in Ontario. Within the context of the diversion programs that exist, the role of the police may vary from one that is similar to that with youth, to acting as a referral agent, to actively participating in the delivery of the diversion program.

### 7.5 The Role of the Crown Attorney

#### 7.5.1. Youth

The Crown prosecutor plays a paramount role in the alternative measures program for youth in Ontario. The Crown prosecutor is responsible for approving all referrals to alternative measures and must consider every request by a young person for alternative measures to determine eligibility and appropriateness for the program.

It is the role of the Crown prosecutor to approve all requests for alternative measures. The charge screening practice ensures that all cases are considered for their appropriateness for alternative measures even if the young person does not make a request. Crown discretion is offence-based with Class I offences normally referred to alternative measures, Class III offences are inappropriate and Class II offences are subject to Crown discretion based on the particular case.

The Crown prosecutor is responsible for approving all referrals to alternative measures and must consider every request by a young person for alternative measures to determine eligibility and appropriateness for the program.

The Crown prosecutor maintains the freedom to exercise independent discretion to determine whether the offence should be prosecuted or is one that should be properly

withdrawn, before considering an application for alternative measures.

In Ontario, there is a *Charge Screening* practice set out in the *Crown Policy C.S.-1 (Ontario)*, whereby every charge laid against a young person must be screened by a Crown prosecutor as soon as practicable after reception of the Crown Brief by the Crown prosecutor's office. One of the purposes of charge screening is to determine the appropriateness of using alternative measures as a method of dealing with the charge. *Crown Policy C.S.-1 (Ontario)* provides in subparagraph 1(b)(vi) that:

1 (b) Screening is the on-going review by the Crown prosecutor's office of every charge in the criminal justice system to determine

(vi) whether an offer of diversion should be made to the accused.

The charge screening is done prior to the first appearance of the young person and may allow a Crown prosecutor to indicate on the charge screening form that alternative measures would be acceptable whether or not the Crown prosecutor has received a request for alternative measures.

When considering the appropriateness of alternative measures, the Crown prosecutor should consider the statutory prerequisites set out in section 4 of the YOA to ensure that the use of alternative measures is not inconsistent with the protection and interests of society, that there is sufficient evidence to proceed, and that there is no legal barrier to the prosecution. In the event that a determination of the appropriateness of alternative measures cannot be made upon initial review of the Crown Brief, the Crown prosecutor may decline to enter a stay on the first appearance and may choose instead, to adjourn the matter in order to obtain further information from the appropriate party.

Crown discretion on the use of alternative measures in Ontario is offence-based. For the purposes of alternative measures, offences are divided into three classes (see section 7.8, Eligibility for a list of offences in each class), with the less serious offences being in Class I. First offenders accused of committing an offence that falls into Class I will normally be dealt with by way of alternative measures. Class III offences are deemed inappropriate for alternative measures due to their seriousness or to a government policy of criminalization. Most other offences fall into Class II and may be considered for alternative measures subject to Crown discretion having regard to the circumstances of the offence, the individual young person and the needs of the community.

#### 7.5.2. Adult

There are currently no formally authorized alternative measures programs for adults in Ontario. The role of the Crown prosecutor in the existing diversion programs will vary depending on whether the program is based on a pre-charge or a post-charge model. The Crown prosecutor's support for the program, especially those that are community and/or police-based, is essential to the success of the program.

## 7.6 The Role of the Victim

### 7.6.1. Youth

The main role of the victim in alternative measures programs for youth is often defined by the measures imposed by the Provincial Director. The Crown prosecutor will, however, take into consideration, where reasonably practical, the views of the victim on the suitability of alternative measures when the young person is charged with a Class II offence. The policy and procedures manual states that this requirement will be met by the Crown prosecutor if he/she is satisfied that consultation with the victim regarding suitability of alternative measures has been carried out by the investigating police office, either before or after an application for alternative measures has been made by the young person.

If the victim is willing to participate in the alternative measures process, the young person may be requested to make a verbal apology to the victim, perform some personal service to the victim, or to provide direct compensation or restitution to the victim. In the event the victim does not wish to participate directly, the victim may, nevertheless, by way of the probation officer or the transfer payment agency, receive a written apology from the young person and/or financial compensation depending on the measures imposed.

### 7.6.2. Adult

Currently, there are no formally authorized alternative measures programs for adults in Ontario. Some of the adult diversion programs, however, rely heavily on the involvement of victims through victim-offender mediation and dispute resolution. In other programs, community involvement is essential as the basis for effective community justice models.

## 7.7 Right to Legal Counsel

### 7.7.1. Youth

Section 4(1)(d) of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.7 for the wording of the appropriate section) specifies that before becoming involved in alternative measures, a young person must fully and freely consent to participate in the program having been given reasonable opportunity to consult with legal counsel. In Ontario, the responsibility for making a request to participate in the alternative measures rests with the young person or the young person's legal counsel.

The young person is informed at several junctions of his/her right to legal counsel, the availability of alternative measures, and how to obtain free legal advice about the program. In addition to the investigating officer advising the eligible young

person of the above, basic information about accessing alternative measures and the availability of duty counsel to discuss eligibility for the program is provided on the *Notice to Parent* and on every young offender release form.

In all major centres in Ontario, the Ontario Legal Aid Plan has taken steps to establish regular drop-in hours for young persons charged who wish information about alternative measures and to facilitate early applications for alternative measures. In other centres, duty counsel is available on the first court appearance to ensure that the young person is advised of his/her rights and has an opportunity to consult counsel.

#### 7.7.2. Adult

Currently, there are no formally authorized alternative measures programs for adults in Ontario.

### 7.8 Eligibility Criteria

#### 7.8.1. Youth

The legislated criteria governing the referral process for formally authorized alternative measures across Canada are contained in sections 4(1) and (2) of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.8 for the wording of these sections). In Ontario, the initial decision to determine eligibility for alternative measures lies with the Crown prosecutor and is based primarily on the class and seriousness of the offence and whether the young person is a first time offender or not. All young persons who apply for alternative measures may be considered for the program if the offence(s) falls within Class I or II.

#### **Class I Offences**

The policy and procedures manual provides the following exhaustive list of Class I offences:

- theft under (s.334 (b))\*
- take motor vehicle without consent (s.335(1))
- possession under (s.354)\*
- false pretences under (s.362(2))\*
- false statement under (s.362)\*
- food fraud (s.364)
- accommodation fraud (s.364)
- fraud under (s.380(1)(b))\*
- mischief under (s.430(4))\*
- cause a disturbance (s.175)

*\* Where the monetary value of the offence is less than \$1000, the offence is considered a Class I offence. Where the monetary value of the offence is more than \$1000, the offence is considered a Class II offence. This policy is currently under review and the monetary limits for these Class I offences may be increased following the review. Whatever the actual monetary value, these offences will always more closely resemble Class I than Class II offences.*

Generally, a first time offender charged with a Class I offence will be referred to alternative measures by the Crown prosecutor.

### **Class II Offences**

In Ontario, this class of offences covers a wide range of conduct and offences not considered in either Class I or II and includes such things as minor assaults, property offences where the value exceeds \$1000, giving false name when

The Crown will consider all requests for alternative measures if the most serious offence, in the case of multiple offences, falls within Class I or II. Having a court record, or having participated in alternative measures before, does not make a young person ineligible, provided the previous charge was disposed of more than one year before and that there is no pattern of criminal behaviour. If the youth is eligible based on the offence, the referral is authorized by the Crown prosecutor and the Provincial Director makes the final eligibility decision based on the young person's personal suitability.

arrested, and credit card offences. Where the offence consists of minor criminal activity, the Crown prosecutor may refer a first time offender charged with a Class II offence to alternative measures.

The existence of a prior youth court record or previous participation in alternative measures does not render a young person ineligible for alternative measures. However, where a young person has a prior record or has previously been referred to an alternative measures program and makes a further application for a subsequent offence, the Crown prosecutor will consider additional factors such as: the nature of the previous charges, any outstanding charges, the youth court record, any demonstrated pattern of offence-related

behaviour as well as any other relevant information. Essentially, the presumption in favour of alternative measures for a first offender charged with a Class I offence does not apply to any subsequent Class I offences. As a general rule, if there is no demonstrated pattern of criminal behaviour and the previous offence was disposed of more than one year before the present offence, the Crown may refer the young person to alternative measures.

In Ontario, any request for alternative measures is evaluated on the basis of the most serious offence, in the case of multiple offences, on which the Crown prosecutor intends to proceed. In addition to Class III offences, which are excluded from alternative measures, federal and provincial offences are also not considered eligible for alternative measures.

### **Class III Offences**

The following offences are not considered appropriate for referral to alternative measures and will not be considered by the Crown prosecutor:

- any form of culpable homicide
- *Criminal Code* vehicle, vessel or aircraft offences resulting in death or bodily harm
- weapons offences involving firearms
- assault causing bodily harm, aggravated assault

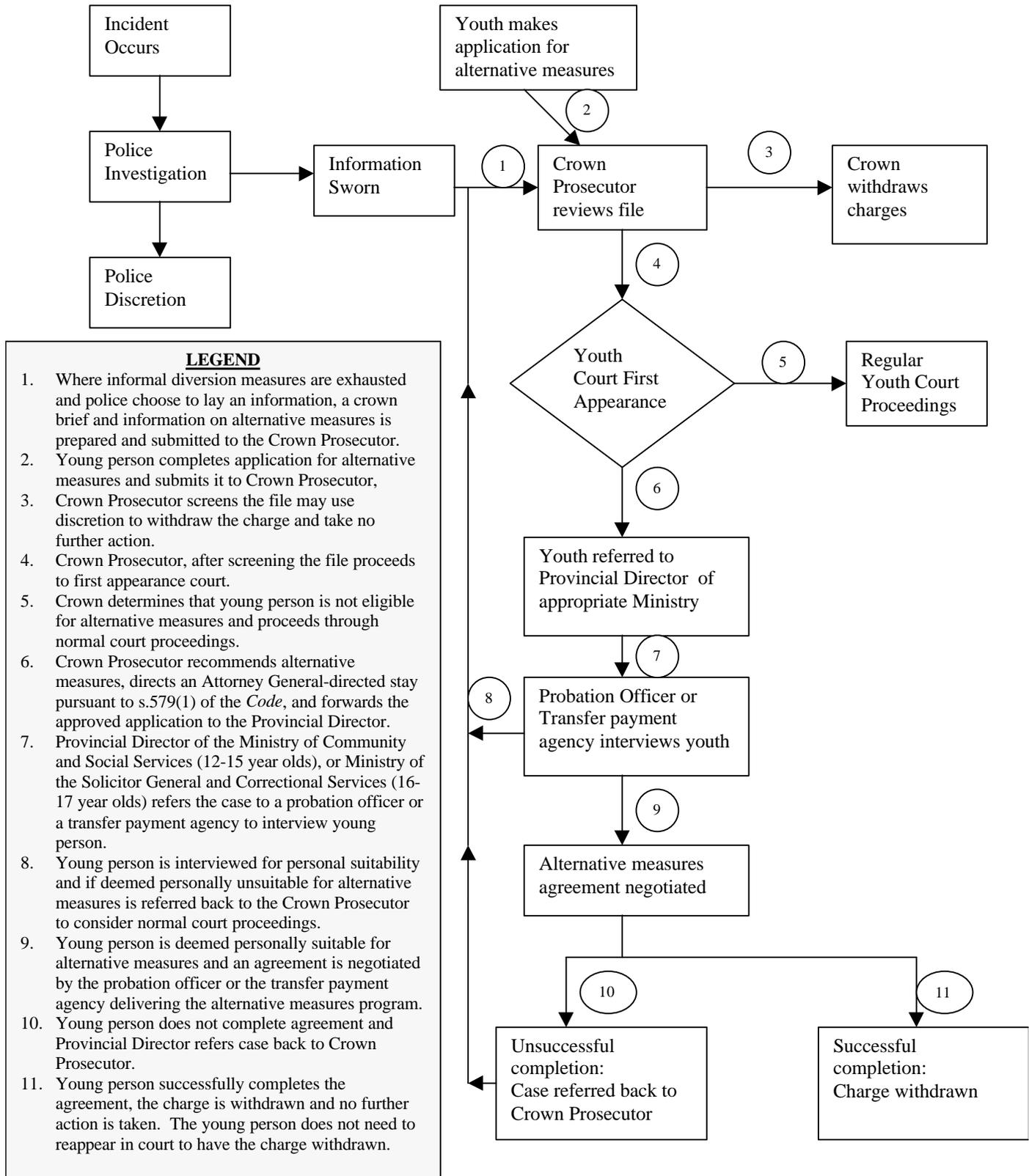
- assault with a weapon
- any sexual assault
- sexual interference
- sexual exploitation
- incest
- criminal harassment
- domestic (i.e., spousal/partner) assaults
- an assault occurring within the context of a dating relationship
- child abuse
- alcohol-related driving offences
- failure to comply with disposition under s.26 of the YOA.

If the youth is considered eligible for alternative measures based on the offence for which he/she is charged, the Provincial Director will make the final decision regarding program eligibility based on the young person's personal suitability. In determining such, the Provincial Director shall take into account any previous offence of which the Crown was not aware when approving the application, any demonstrated pattern of offence-related behaviour, whether or not the youth has a threatening attitude toward the victim, and whether the alternative measures process is meaningful to the young person. In the event that the young person is deemed unsuitable, the matter will be referred back to the Crown prosecutor to consider recommencing youth court proceedings.

#### 7.8.2. Adult

Currently there are no formally authorized alternative measures programs for adults in Ontario.

## 7.9 Alternative Measures Process for Youth



Upon completion of an investigation into an incident, the investigating police officer must decide whether the incident requires no further action taken, or whether the young person would benefit from an informal diversionary measure, or whether to proceed with the laying of an information. In the event of the latter, the investigating police officer must swear the information, prepare a crown brief and, if appropriate and known, provide information on alternative measures to the Crown prosecutor. The police officer will, if appropriate, advise the young person about the alternative measures program as well as his/her right to legal counsel and the availability of duty counsel to discuss eligibility for alternative measures.

It is the responsibility of the young person, the defence counsel or duty counsel to complete the application for alternative measures (see section 7.16.1, Forms) and to submit it to the Crown prosecutor as soon as possible and no later than the first appearance date.

The Crown prosecutor, in accordance with the charge screening practice, will screen the file prior to the first appearance to determine if the requirements of section 4 of the *Young Offenders Act (Canada)* have been met and if the charge falls within Class I or II of the province's offence classification (see s.7.8.1, Eligibility Criteria). If so, the Crown prosecutor will indicate that alternative measures are acceptable. On, or before, the first appearance, the Crown prosecutor will review the young person's completed application for alternative measures. Where the Crown prosecutor recommends alternative measures, the Crown will direct an Attorney General-directed stay pursuant to section 579(1) of the *Criminal Code of Canada*. This stay has the effect of terminating the prosecution and no further appearance by the young person is necessary. After directing the stay, the Crown prosecutor will indicate on the record that the young person must attend the appropriate probation office to arrange an intake

Once a young person's application for alternative measures has been approved by the Crown prosecutor, it is the responsibility of the Provincial Director, through a probation officer or a transfer payment agency, to determine the personal suitability of the young person for the program. An interview with the young person, the parents and the victim, where appropriate, shall be held to determine suitability, provide acknowledgement of the young person's responsibility for the offence, ensure the young person agrees to participate and to determine the measures to be completed.

interview, and will forward the approved application to the Provincial Director of the appropriate ministry (either the Ministry of Community and Social Services for 12-15 year olds, or the Ministry of the Solicitor General and Correctional Services for youth 16 and 17 years old).

It is the responsibility of the Provincial Director to ensure the individual's personal suitability to the program is

assessed and to ensure that the measures adopted are reasonable. Upon receiving an application approved by the Crown prosecutor, the Provincial Director shall assign the case to a probation officer or a transfer payment agency who will establish contact with the young person, and parents, where possible, to arrange an intake interview. The purpose of the interview is to determine the young person's personal suitability for alternative measures and should be based on in-person interviews with the young person, the young person's parents,

where possible, and with the victim where appropriate. The determination of personal suitability will not include the use of a risk-needs assessment tool.

The intake interview will provide confirmation that the young person was advised of his/her right to counsel prior to consenting to participate in alternative measures and that the young person has had an opportunity to do so. The interview will also provide acknowledgement of responsibility by the young person for the alleged offence(s), as well as the young person's willingness and ability to participate in the program. Should the young person not be accepted into the program, this is to be noted on the Alternative Measures Agreement Form (see section 7.16.2) and a copy of the form should be forwarded to the Crown prosecutor.

During the intake interview, each person should be informed of all aspects of the alternative measures program and the procedures associated with the program. Should the young person agree to participate in the program, he/she will sign the agreement form. Section II of the form, when completed and executed, constitutes the agreement between the young person and the province as to the measures that the young person will complete in order to satisfy the requirement of the program. The type of measures agreed to shall be noted in Section III of the Agreement and the time for completion should be no longer than three months. Upon satisfactory completion of the program, the young person will be discharged from the program with no need to reappear in court. In the event the young person wilfully fails to complete the program the Provincial Director will refer the case back to the Crown to review.

## 7.10 Alternative Measures Process for Adults

Currently there are no formally authorized alternative measures programs for adults in Ontario. The referral process and intake procedures may vary considerably between the existing diversion programs.

## 7.11 The Alternative Measures Agreement

### 7.11.1. Youth

The *Alternative Measures Agreement* (see section 7.16.2) outlines the contract between the young person and the province and forms the basis for the completion of the alternative measures process. The form is completed during the intake interview with the young person and provides information regarding personal data and acknowledgements of the young person, as well as the measures the young person has agreed to undertake, and the date by which the measures must be completed.

All agreements must reflect the voluntary consent of the young person and the Provincial Director by being signed and witnessed as indicated. The young

person participating in the alternative measures program shall receive a signed copy of the agreement.

#### 7.11.2. Adult

Currently there are no formally authorized alternative measures programs for adults in Ontario.

### 7.12 The Range of Alternative Measures

#### 7.12.1. Youth

The *Alternative Measures Program: Policy and Procedures Manual (Ontario)* provides a list of possible sanctions for alternative measures. The list is not exhaustive and the policies encourage the Provincial Director to use discretion and creativity in each case to determine the most appropriate measures for the young person bearing in mind the young person's needs and the goals of the program. The following measures are often cited in the alternative measures contract:

- *No Further Action*: this may be the chosen route when the process of having been apprehended and charged and having experience the alternative measures intake interview appears to have had some degree of positive impact on the young person. As well, if the young person has already undertaken reparative measures, is involved in counselling or treatment, or the parents have imposed consequences, the Provincial Director may decide that no further action is necessary.

The Provincial Director shall ensure that the measure is less onerous than a court-ordered disposition. Creativity is encouraged when considering measures, taking into account the young person's input, age, cultural background, personal circumstances, abilities and personal resources, characteristics of the offence and the uniqueness of the local community.

- *Essays*: the topic of the essay should be specific and relevant to the young person and the offence, and should include a research component. It is important that the young person's literacy level be considered prior to agreeing that an essay is an appropriate measure.
- *Verbal Apology to the Victim*: this measure may be considered only when the victim has expressed a willingness to participate in the alternative measures process and may be most appropriate in the case where the victim is a corporation.
- *Written Apology to the Victim*: in assessing the appropriateness of this measure, the young person's literacy level must be considered. No information identifying the victim will be provided to the young person and the Provincial

Director shall have the apology delivered to the victim independently of the young person once the apology has been screened for offensiveness to the victim.

- *Personal Service*: this should be used with caution and only when both the victim and the young person consent. Often this measure is restricted to when the victim and the young person know each other. Personal liability issues should be discussed with the victim and the particular service must be clearly defined in the agreement and must not exceed 50 hours.
- *Compensation or Restitution*: the Provincial Director shall ensure that the victim's interests are met when determining the time and method of return of property or payment. Compensation should only be considered where the amount can be readily quantified and should not exceed what the young person can realistically be expected to pay within three months. The young person may pay compensation or make restitution directly to the victim when they know each other and when this is acceptable to the victim and appropriate in the circumstances. This measure is considered particularly appropriate where the offence resulted in a direct loss of property or there has been damage to property.
- *Charitable Donations*: the young person may be requested to make a charitable donation that is within their personal means, to an organization of his/her choice.
- *Educational / Information Sessions*: the young person may be requested to participate in a program that is less intrusive than the type or intensity of a program that normally would be appropriate for a court-ordered disposition. In considering this measure, the Provincial Director must ensure the availability of the particular program, the appropriateness of the young person for the program, and that the program is related to the offence or class of offences for which the young person has been charged.
- *Counselling*: although counselling in the form of treatment is not an appropriate measure, information about counselling or a referral may be appropriate as part of the negotiation process in alternative measures.
- *Voluntary Community Service*: the young person may be requested to perform volunteer work, not to exceed 50 hours, with a charitable non-profit organization. This measure should not routinely be considered as the first option but may be appropriate where restitution is otherwise indicated but the young person does not have the financial means to satisfy that measure. When this measure is resorted to, the volunteer work must be readily available and the service to be provided must consider the ability and interests of the young person, and must be specified clearly in the agreement.
- *Peer Mediation*: this is a voluntary approach to resolving appropriate disputes using a neutral third party who has no decision making authority. This often involves a fellow student at a school facilitating a mediation session with the goal of generating an agreement based on common understanding and communication.

#### 7.12.2. Adult

There are currently no formally authorized alternative measures programs for adults in Ontario.

### 7.13 Supervision of Alternative Measures Agreement

#### 7.13.1. Youth

Under the current guidelines, the Provincial Director is ultimately responsible for ensuring that the measures adopted are reasonable and for monitoring the completion of the alternative measures. The negotiation of the agreement and the supervision of the young person is assumed by either the probation officer or the transfer payment agency that is delivering the alternative measures program. The Provincial Director is informed of the successful or unsuccessful completion of the program by the young person.

#### 7.13.2. Adult

There are currently no formally authorized alternative measures programs for adults in Ontario.

### 7.14 Completion of Agreement

#### 7.14.1. Youth

Upon satisfactory completion of the alternative measures by the young person, he/she will be discharged from the program. The probation officer or transfer payment agency will complete Section IV of the Agreement, recording successful completion of the program, and retain a copy of the agreement on file.

In cases of willful non-compliance, the probation officer or transfer payment agency will indicate such in Section IV of the Agreement and forward the form to the Provincial Director. The Provincial Director will then refer the case to the Crown prosecutor for review. Where the Provincial Director is satisfied that non-compliance was due to circumstances beyond the control of the young person, the Provincial Director may either discharge the young person from the program with no further action, or re-negotiate the agreement with the young person and provide an additional three month time period to complete the measures.

#### 7.14.2. Adult

There are currently no formally authorized alternative measures programs for adults in Ontario.

### 7.15 Record Keeping

#### 7.15.1. Youth

The *Alternative Measures Program: Policy and Procedures Manual (Ontario)* states that with the exception of approved forms, documentation should be kept to a minimum. Transfer payment agencies must be notified that all young persons accepted into the alternative measures program are clients of the respective ministries. Record keeping provisions provided for in the *Young Offenders Act (Canada)* (see Chapter 1., s.1.15 for the wording of the relevant sections) provide the guidelines for maintaining provincial alternative measures records.

#### 7.15.2. Adult

There are currently no formally authorized alternative measures programs for adults in Ontario.



## 7.16 Appendix 'A' Forms

### 7.16.1. Request for Alternative Measures

YOUTH COURT  
CANADA  
PROVINCE OF ONTARIO

ALTERNATIVE MEASURES  
(Section 4, the Young Offenders Act)

Part I

\_\_\_\_\_  
(Region)

#### REQUEST FOR ALTERNATIVE MEASURES

Youth's Name: \_\_\_\_\_

Last

First

Middle

Address: \_\_\_\_\_

Postal Code: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

I hereby request that I be considered for a program of alternative measures in relation to the following offence(s):

(1)

(2)

I acknowledge that:

- (1) I have been advised of my right to be represented by counsel;
- (2) I have been given a reasonable opportunity to consult with counsel;
- (3) I accept responsibility for the acts or omissions as attached in the copy of the enclosed synopsis that form the basis of the offence(s) stated above in respect of which I request alternative measures;
- (4) I have been informed of the alternative measures available;
- (5) I fully and freely consent to participate in those alternative measures.

I acknowledge that:

- (1) I have not been found guilty of any criminal offence(s); (if yes, give details)
- (2) I was not part of an alternative measures program in the past; (if yes, give details)
- (3) I have no other criminal charges outstanding against me; (if yes, give details).

\_\_\_\_\_  
Signature of Youth

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date Served on Crown's Office

\_\_\_\_\_  
Next Court Appearance Date

\_\_\_\_\_  
Court

Officer in Charge: \_\_\_\_\_

Police Division: \_\_\_\_\_

Synopsis of offence must be attached. Please leave with secretary at Crown's Office.

#### Part II

#### Acknowledgement and Recommendation by Agent of the Crown Attorney

Based on the Crown Brief prepared at today's date:

- (1) In my opinion, sufficient evidence exists to proceed with the prosecution of each of the offences in respect of which this request for alternative measures is made.
- (2) The prosecution of the offence(s) in respect of which this request for alternative measures is made appears not to be barred in law.
- (3) I am satisfied (not satisfied), having regard to the interests of society, that it may be appropriate to use alternative measures in relation to the offence(s) referred to in this request.

- (4) I recommend (do not recommend) that the Provincial Director inquire into the needs of the young person and determine the suitability of the youth referred to herein for alternative measures.

---

Date

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Agent of the Attorney General

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Part III  
Acknowledgement by Provincial Director

- (1) I am satisfied (not satisfied) having regard to the needs of the young person; it would be appropriate to use alternative measures in relation to the offence(s) referred to in this request.
- (2) I am satisfied (not satisfied) that the young person is a suitable candidate for admission to the alternative measures program.
- (3) The young person has agreed to perform the following alternative measures:
- (4) The anticipated time period for completion of these measures is:

---

Date

---

Provincial Director or Agent

**7.16.2. Alternative Measures Agreement - Ministry of the Solicitor General and  
Correctional Services (16-17 year olds)**

Alternative Measures /Mesures de rechange  
(Section 4, The Young Offenders Act/Article 4  
De la Loi sur les jeunes contrevenants)  
Program and Agreement/Programme et entente

Youth's Last Name/Nom de famille du (de la) jeune contrevenant _____ Also Known as /Alias _____ Language/Langue <input type="checkbox"/> English/Anglais <input type="checkbox"/> French/Français Address _____	First Name/Prénom _____ Sex/Sexe <input type="checkbox"/> Male/Masculin <input type="checkbox"/> Female/Feminin	Middle/Deuxième prénom _____ Date of Birth/Date de naissance d/j                      m/m                      y/a _____
Postal Code/Code postal _____		Telephone Number / Numéro de téléphone _____
Special Medical Information / Renseignements médicaux particuliers _____		
Parent's Address/Address des parents <input type="checkbox"/> Same as above / Même que ci-dessus <input type="checkbox"/> Other: specify / Autre: préciser _____		
Postal Code/Code postal _____		Telephone Number / Numéro de téléphone _____
Parent's / Guardians Last Name / Nom de famille du parent / du (de la) tuteur(trice) _____		First Name / Prénom _____

**Alternative Measures Program / Programme de mesures de rechange**

Date referral received from Crown/ Date de réception du renvoi par la Couronne	D/j	M/m	Y/a	Probation Office (Branch) / Bureau de probation (succursale)
Court Appearance / Comparution devant le tribunal Original Appearance date / Date de la première comparution				Telephone Number / Numéro de téléphone
				Probation Officer's Name (print) / Nom de l'agent de probation (en lettres moulées)
Adjournment Date(s) / Date(s) d'ajournement				

Comments / Observations

- I am satisfied (not satisfied) that the young person has accepted responsibility for the acts or omissions in respect of which the alternative measures have been requested /  
Je suis convaincu(e) (ne suis pas convaincu(e)) que le (la) jeune contrevenant(e) a accepté la responsabilité des actes ou des omissions pour lesquels les mesures de rechange ont été demandés.
- I am satisfied (not satisfied) that having regard to the needs of the young person, it would be appropriate to use alternative measures in relation to the offence(s) referred to in this request. /  
Je suis convaincu(e) (ne suis pas convaincu(e)) qu'en ce qui a trait aux besoins du (de la) jeune contrevenant(e), il conviendrait d'avoir recours à des mesures de rechange concernant le(s) infraction(s) dont il est question dans cette demande.
- I am satisfied (not satisfied) that the young person is a suitable candidate for admission to the alternative measures program. /  
Je suis convaincu(e) (ne suis pas convaincu(e)) que le (la) jeune contrevenant(e) est un(e) bon(ne) candidat(e) au programme de mesures de rechange.
- The young person has agreed to perform the following alternative measures. /  
Le (la) jeune contrevenant(e) a accepté de se conformer aux mesures suivantes:

Signature of Provincial Director/Designate / Signature du (de la) directeur(trice) provincial(e)/ de la personne désignée	D/j	M/m	Y/a
---	-----	-----	-----

**Alternative Measures Agreement / Entente de mesures de rechange**

Measures agreed to by young person: (Specify below) / Mesures acceptées par le(la) jeune contrevenant(e). (Indiquer ci-dessous)

The above measures are to be completed by/les mesures de rechange citées ci-haut doivent être exécutées pour le

D/j	M/m	Y/a
-----	-----	-----

I understand that if I fail to complete the measures specified above that this charge(s) shall be referred back to the Crown Attorney for further action/ Je comprends que si je n'arrive pas à exécuter les mesures citées ci-haut, cette (ces) accusation(s) sera (seront) renvoyée(s) au procureur de la Couronne.

Signature of Youth/Signature du (de la) jeune contrevenant(e)		Signature of Parent/Guardian (if applicable) Signature du (le cas échéant) parent/du (de la) tuteur(trice)	
Signature of Probation Officer/Agency Representative/ Signature de l'agent(e) de probation/du (de la) représentant(e) de l'agence			
Agency Address / Adresse de l'agence			
Telephone Number / Numéro de téléphone			
Youth's Last Name / Nom de famille du (de la) jeune contrevenant(e)	First/Prénom	Middle/Deuxième prénom	Date of Birth Date de naissance D/j   M/m   Y/a

**Date on Completion of Alternative Measures Agreement /**

**Données sur l'exécution complète des mesures de rechange prises en vertu de l'entente**

- Completed / Exécution complète      Date Complete / Date d'achèvement
- Incomplete No Further Action / Exécution incomplète/aucune autre mesure nécessaire
- Wilfully failed to Complete ( Referred to Crown) / Exécution incomplète délibérée (accusation(s) renvoyée(s) devant la Couronne
- Final Remand Date / Date du dernier renvoi

D/j / M/m / Y/a / /
------------------------

D/j / M/m / Y/a / /
------------------------

**Probation Officer / Agency Comments / Observations de l'agent(e) de probation ou de l'agence**

Signature of Probation Officer / Agency Representative / Signature de l'agent(e) de probation/du(de la) représentant(e) de l'agence	Date D/j / M/M / Y/a / /
---	--------------------------------

**Provincial Director's/Designates Comments: / Observations du (de la) directeur(trice) provincial(e) / de la personne désignée**

Signature of Provincial Director/Designate / Signature du (de la) directeur(trice) provincial(e) / de la personne désignée	Date D/j / M/M / Y/a / /
--	--------------------------------

Date forwarded to Crown Attorney/Court Officer/  
Date d'envoi au procureur de la Couronne/du greffier du tribunal

Dj / M/m/ Y/a / /
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Date received by Crown Attorney/Court Officer  
Date de réception par le procureur de la Couronne/le greffier du tribunal

Dj / M/m/ Y/a / /
----------------------

Date charge dismissed by Court/  
Date du rejet de l'accusation par le tribunal

Dj / M/m/ Y/a / /
----------------------

This information is collected under the Ministry of the Solicitor General and Correctional Services Act for the purposes of collecting personal data. Please direct any questions about collection of this information to Ministry of the Solicitor General and Correctional Services or Ministry of Community and Social Services or Ministry of the Attorney General employee. / Ces renseignements sont recueillis en tant que données personnelles en vertu de la loi sur le ministère des Services correctionnels. Pour toute question à ce sujet, prière de s'adresser au ministère des Services correctionnels, au ministère des Services sociaux et communautaires ou au ministère du Procureur général.

Note: This document is a young offender record and disclosure and use is subject to the provisions of the *Young Offenders Act*.

\*Remarque: Ce document fait partie du dossier du (de la) jeune contrevenant(e); son utilisation et son divulgation doivent être conformes aux dispositions de la Loi sur les jeunes contrevenants.

7.16.3. Alternative Measures Inquiry / Agreement - Ministry of Community and Social Services (12-15 year olds)

Date Referral Received From \_\_\_\_\_ Alternative Measures Coordinator \_\_\_\_\_  
Crown Attorney \_\_\_\_\_ / \_\_\_\_\_ / 19 \_\_\_\_\_  
Mm dd yy Telephone: \_\_\_\_\_

**PERSONAL DATA AND ACKNOWLEDGEMENTS:**

Youth's Last Name: \_\_\_\_\_ First: \_\_\_\_\_ Middle: \_\_\_\_\_

Also Known as: \_\_\_\_\_

Birthdate: \_\_\_\_\_ / \_\_\_\_\_ / 19 \_\_\_\_\_  
mm dd yy

Address: \_\_\_\_\_ City: \_\_\_\_\_ Province: \_\_\_\_\_

Postal Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

Native Youth	Yes	No		
Status Native	___	___		
Other Native	___	___	Male ___	Female ___
Status Unknown	___	___		

Parent/Guardian: Last Name: \_\_\_\_\_ First: \_\_\_\_\_

Address: \_\_\_\_\_ (if different from Youth's)

I, \_\_\_\_\_ acknowledge that:  
(name o youth)

I have been advised of my right to be represented by counsel before proceeding further with this inquiry.

I have been given a reasonable opportunity to consult with counsel.

I accept responsibility for the offence(s) listed in Section 2.

I have been informed of the alternative measures available.

I fully and freely consent to participate in the alternative measures program.

Date: \_\_\_\_\_ at \_\_\_\_\_ Youth: \_\_\_\_\_  
(signature)

**OFFENCE DATA**

Alleged Offence	Criminal Code #	Date Alleged offence committed	1 <sup>st</sup> Court Date
_____	_____	____/____/____-19	____/____/19
		mm dd yy	mm dd yy

previous court involvement? \_\_\_\_\_  
(if yes, explain)

Referred to Program? Yes \_\_\_ No \_\_\_

**Comments of Interviewer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Agency: \_\_\_\_\_

Interviewer: \_\_\_\_\_

A.M.I. Coordinator

**ALTERNATIVE MEASURES DATA:**

I, \_\_\_\_\_ agree to complete the following assignment and to return it to the Probation Office on or before the specified due date. I also understand that if I fail to complete the measure specified below, that the charge against me may be referred back to the Crown Attorney for further action.

**ASSIGNMENT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated \_\_\_\_\_ at \_\_\_\_\_. Youth: \_\_\_\_\_  
(signature)

Parent/Guardian: \_\_\_\_\_  
(signature)

A.M.I. Coordinator: \_\_\_\_\_  
(signature)

Provincial Director: \_\_\_\_\_  
(approved by) (signature)

**CLOSING DATA:**

Date case closed: \_\_\_\_\_ / \_\_\_\_\_ / 19\_\_\_\_\_

**Reason Case Closed:** Completed successfully \_\_\_\_\_  
Incomplete with no further action taken: \_\_\_\_\_  
Wilfully failed to complete (refer to Crown): \_\_\_\_\_

**Alternative measures Coordinator's Comments:**

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\_\_\_\_\_

Date A.M.I. Coordinator

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**Provincial Director's Comments:**

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\_\_\_\_\_

Date Provincial Director

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**Note:**

It is an offence to publish any report of an offence committed or alleged to have been committed by a young offender or a report of any proceedings taken in respect of a young offender.

It is also an offence (except as authorized by the *Young Offenders Act*) to disclose any record or information contained therein to any persons where to do so would serve to identify a young person as being dealt with under the *Young Offenders Act*.



## 7.17 Appendix 'B' Data

### 7.17.1. Youth Caseload Data

The following data was obtained from the Ministry of Community and Social Services and represents provincial totals with respect to alternative measures. While this may not necessarily represent all possible data available, it does provide some indication of the data available regarding participation in alternative measures programs by youth aged 12 to 15 years.

**Table 1: Provincial Alternative Measures Totals: Ministry of Community and Social Services (12-15 year olds): 1996/97.**

	Referred	Inappropriate Returned to Crown	Admitted	Successful Completion	Incomplete / No Action Taken	Unsuccessful	Clients Active @ Period End
<b>Class I</b>	4480	46	4434	3719	33	169	1167
<b>Class II</b>	834	23	811	648	13	37	207
<b>Report Total</b>	5314	69	5245	4367	46	206	1374
<b>Cases for which Data Available</b>			5245				1374
<b>Cases for which Data Unavailable*</b>			334				173
<b>Total Cases</b>			5579				1547

\* Note: Due to the way the data-base program reports cases, not all data elements are captured for all cases in the data roll-up.

**Table 2" Total Offences for Clients referred to A.M., 1996/97**

Offence	Number	Percent
Theft Under	3777	62.3%
Possession Stolen Property Under	688	11.4%
Mischief Under	380	6.2%
Mischief Over	93	1.5%
Break and Enter (all)	155	2.6%
Possession Auto. Property Over	200	3.3%
Assault (Sum. + Ind.)	254	4.2%
Other*	514	8.5%
<b>Total Offences</b>	<b>6061</b>	<b>100%</b>

\* Note: No offence included here comprises over 3%.

**Table 3. Previous Court Involvement for Admitted Clients, 1996/97**

Nature of Involvement	Number	Percent
Prior Disposition	4	0.1%
Prior AM	164	3.1%
No Prior Involvement	5049	96.8%
<b>Total</b>	<b>5217</b>	<b>100%</b>
Cases for which information is available	5217	93.5%
Case for which information not available	363	6.5%
<b>Total Admissions</b>	<b>5579</b>	<b>100%</b>

**Table 4. Gender of Clients Admitted, 1996/97**

Sex of Applicant	Number	Percent
Male	3134	60.4%
Female	2059	39.6%
<b>Report Total</b>	<b>5193</b>	<b>100%</b>
Cases for which data is available	5193	93.1%
Cases for which data not available	386	6.9%
<b>Total number of Cases</b>	<b>5579</b>	<b>100%</b>

**Table 5. Type of Sanction Applied, 1996/97**

Sanction	Number	Percent
Charitable Donation	1057	11.0%
Compensation	50	0.5%
Counselling	20	0.2%
Educational / information session	267	2.8%
Essay	2189	22.7%
Peer Mediation	21	0.2%
Personal Service	61	0.6%
Poster, Project	560	5.8%
Referral to Program (e.g., Shoplifting)	931	9.7%
Restitution / Compensation	260	2.7%
Verbal Apology to Victim	205	2.1%
Voluntary Community service	1089	11.3%
Written Apology to Victim	2129	22.1%
No Further Action	40	0.4%
Other	764	7.9%
<b>Total Sanctions</b>	<b>9643</b>	<b>100%</b>

Note: Clients are often assigned more than one sanction. Therefore, the total exceeds the number of client admissions.

The following data was derived from the *Evaluation of the Revisions to the Alternative Measures Program (Ministry of the Solicitor General and Correctional Services, August 1996)*. Although the data presented does not necessarily represent all the data available on 16 and 17 year old young offenders participating in alternative measures in Ontario, it does provide some indication of that which is available.

**Table 6. Most Serious Offence\* (April 1, 1995 - March 31, 1996)**

Most Serious Offence	Number	Percent
Theft Under	1155	61.1
Possession Under	115	6.1
Fraud under / price tag switch	29	1.5
Mischief Under	109	5.8
Cause Disturbance	22	1.2
Take Motor Vehicle	20	1.1
Food and Accommodation Fraud	8	0.4
Theft Over	9	0.5
Possession Over	17	0.9
Fraud over	1	0.1
Mischief Over	14	0.7
Break and Enter	56	3.0
Assault	53	2.8
Class II Sex offences	6	0.3
Class II Other	105	5.6
Class III	18	1.0
Unknown	154	8.1
<b>Total Number of Cases</b>	<b>1891</b>	<b>100.</b>

\* Refers to the most serious offence committed in those cases only that were eligible for alternative measures.

**Table 7. Type of Sanction - Percent Relative to Those Receiving Sanction (April 01 1995 - March 31, 1996)**

Type of Sanction	Yes		No	
	Number	Percent	Number	Percent
Essay	355	43.1	469	56.9
Community Service	202	24.5	622	75.5
Restitution	58	7.0	766	93.0
Apology	331	40.2	493	59.8
Charitable Donation	149	18.1	675	81.9
No Further Action	9	1.1	815	98.9
Educational Programs/Referral to helping agency	92	11.2	732	88.8
Poster, Art Work, etc.	83	10.1	741	89.9
First Sanction not Listed Above	157	19.1	667	80.9
Second Sanction not Listed Above	9	1.1	815	98.9
<b>Total Number of Cases receiving Sanction</b>	<b>824</b>	<b>100.0</b>		

**Table 8. Hour and Dollar Breakdown of Sanctions and Time for Completion of Alternative measures) (April 01, 1995 - March 31, 1996)**

Type of Sanction	Mean	Median	Minimum	Maximum	# of Cases Data Available	Total Number of Cases
Number of Hours of Community Service	22	20	1	50	192	1891
Amount of Charitable Donation, in Dollars	41	30	10	150	146	1891
Amount of restitution, in Dollars	327	115	5	4500	51	1891
Time for Completion of Measures, in Days	51	40	0	365	809	1891

**Table 9. Sex of Alternative Measures Applicant (April 01, 1995 - March 31, 1996)**

Sex of Applicant	Number	Percent
Male	1274	70.8
Female	526	29.2
<b>Total</b>	1800	100.0
Cases for which information is available	1800	95.2
Cases for which information is not available	91	4.8
Total Number of Cases	1891	100.0

**Table 10. Prior Convictions (April 01, 1995 - March 31, 1996)**

Prior Conviction	Number	Percent
Yes	48	3.1
No	1514	96.9
<b>Total</b>	1562	100.0
Cases for which information is available	1562	82.6
Cases for which information is not available	329	17.4
Total Number of Cases	1891	100.0

**Table 11. Prior Alternative Measures (April 01, 1995 - March 31, 1996)**

Prior Alternative Measures	Number	Percent
Yes	57	3.7
No	1503	96.3
<b>Total</b>	1560	100.0
Cases for which information is available	1560	82.5
Cases for which information is not available	331	17.5
Total Number of Cases	1891	100.0

**Table 12. Alternative Measures Satisfactorily Completed (April 01, 1995 - March 31, 1996)**

<b>Alternative Measures Satisfactorily Completed</b>	<b>Number</b>	<b>Percent</b>
Yes	650	96.6
No, referred back to Crown	23	3.4
<b>Total</b>	<b>673</b>	<b>100.0</b>
Cases for which information is available	673	35.6
Cases for which information is not available	1218	64.4
Total Number of Cases	1891	100.0

**Table 13. Cases Rejected and Referred Back to Crown (April 01, 1995 - March 31, 1996)**

<b>Cases Rejected and Referred Back to Crown</b>	<b>Number</b>	<b>Percent</b>
Denies Offence	4	14.3
Did not meet criteria	13	29.2
Failed to report to Probation	6	21.4
No reason given on form	5	17.9
<b>Total</b>	<b>28</b>	<b>100.0</b>
Cases for which information is available	28	1.5
Cases for which information is not available	1863	98.5
Total Number of Cases	1891	100.0

## 7.18 References

- Moyer, Sharon. *The Evaluation of the Adult Diversion Pilot Programs: An Overview of Findings*. Final report to the Ministry of the Attorney General and the Ministry of the Solicitor General and Correctional Services of Ontario. August 1996.
- Moyer, Sharon and Catherine Massé. *The Evaluation of the Revised Alternative Measures Program in Ontario*. Progress report to the Ministry of the Attorney General, Ministry of the Solicitor General and Correctional Services and Ministry of Community and Social Services. June 1996.
- Ontario, Ministry of the Attorney General, Ministry of the Solicitor General and Correctional Services and Ministry of Community and Social Services. *Alternative Measures Program: Policy and Procedures Manual*. February, 1995.

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# 8. Manitoba

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## 8.1 The Philosophy of Alternative Measures

Alternative measures programs for youth are defined in the *Young Offenders Act (Canada)* (see Chapter 1, s.1.1 for the specific wording) as programs other than judicial proceedings that may be used to deal with young persons alleged to have committed an offence. In Manitoba, alternative measures programs for youth are authorized by the Minister of Justice and are offered at both the pre-charge and the post-charge stage of proceedings with the preferred, and usual, option being that of pre-charge. The alternative measures programs are designed to provide information, assistance, and direction to young persons in order to enhance their accountability, prevent future criminal behaviour, and to lessen the stigma of judicial proceedings.

Alternative measures programs for youth are authorized by the Minister of Justice and are generally offered at the pre-charge stage, although there is a post-charge option. First time referrals to alternative measures involving minor property offences are generally handled through Parental Action letters that count as a participation in alternative measures. The programs are, for the most part, delivered by one of the 70 local volunteer Justice Committees. The development of provincial policies for the adult alternative measures programs is in the final stages and these programs are expected to closely resemble those offered to youth and will make use of existing community justice committees to deliver the programs.

proceedings.

First time referrals to alternative measures involving young persons alleged to have committed minor property offences where there has been full recovery and/or restitution are generally handled as a Parental Action alternative measures. The Parental Action letter is administered entirely by mail or telephone and is counted, for the purposes of future eligibility to alternative measures, as a participation in an alternative measures program.

Alternative measures programs are delivered, in the vast majority of cases, by community-based volunteer Justice Committees, and in some cases by Probation Officers. Justice Committee development in Manitoba can be traced back to 1975 and have, since 1984, assumed most of the responsibility for the delivery of alternative measures for youth under Section 69 of the *Young Offenders Act (Canada)*. At this time, there are approximately 70 Justice Committees in operation representing over 600 volunteers.

Since 1987, adult diversion programs have been offered by way of prosecutor discretion through local community justice committees. These programs have been available on a pilot project basis and are accessed at both the pre-charge and post-charge stage of proceedings. Currently, a provincial policy for alternative measures for adults, as defined in Section 717 of the *Criminal Code (Canada)* (see Chapter 1, s.1.1 for the wording of this section), is in the final stage of development. These programs would be offered at both the pre-charge and post-charge stage with the preferred option being that of pre-charge. The terms of reference for the adult programs are expected to closely parallel those presently available for youth and the programs will be delivered, primarily, by

existing local community justice committees. Although final authorization for the adult alternative measures programs has not yet been granted, this report will highlight the proposed directions for the establishment of such programs.

## 8.2 Responsibility for the Delivery of Alternative Measures

### 8.2.1. Youth

Although some of the alternative measures programs for youth are delivered by probation officers in areas where the youth do not have access to community justice committees, the primary responsibility for the delivery of alternative

Local community-based Justice Committees are responsible for administering alternative measures programs for youth. In areas where youth do not have access to a Committee, probation officers will deliver the alternative measures program. Justice Committees require formal ministerial designation from the Department of Justice and any group that wishes to establish a Justice Committee will be assisted through the process and provided training by a Community and Youth Corrections liaison staff assigned to them by the Department of Justice.

measures programs rests with local volunteer community Justice Committees established pursuant to Section 69 of the *Young Offenders Act (Canada)*. Justice Committee development in Manitoba can be traced back to 1975 as a response to gang activity and violence in the community. The basic model that has evolved is one that promotes community involvement and ownership in resolving criminal justice issues.

The Manitoba Department of Justice has established guidelines

and procedures that must be followed by any group that wishes to develop a community Justice Committee. These guidelines allow each community to develop specific programs to meet their own needs. On request from a citizen, group or organization interested in forming a Justice Committee, the Community and Youth Corrections Branch (Probation Services) of the Manitoba Department of Justice will assign a Liaison staff to provide consultation during the Committee formation process and orientation to Youth Corrections, as well as a copy of *Manitoba Justice Committees - A Resource & Orientation Manual (Manitoba 1996)*.

The community-based approach to Committee development in Manitoba has generated substantial variation and richness in the Justice Committee activity. While Justice Committees normally start by delivering alternative measures programs for youth, they often evolve to offer other community development and crime prevention programs in addition to the alternative measures programs. Some of these programs include court liaison, mediation, victim-offender reconciliation, adult diversion, healing circles, family group conferencing, fine-option programs, community service order programs, neighbourhood watch, probation supervision and Block Parent programs. In addition, some Committees have initiated other community-based activities such as counselling victims of crime and fundraising to help victims who cannot receive compensation from an offender.

Justice Committees within Manitoba that offer alternative measures programs for youth must seek official ministerial designation from the Manitoba Department of Justice. The Committee, which is typically a group of volunteers who represent a cross section of the community and operate with a local emphasis, must send its constitution to the Executive Director of Community and Youth Corrections requesting official designation. The constitution must address the structure of the Committee, membership, procedures, functions, and the geographical boundaries that it serves. Designation by the Department, which is renewed annually by a process initiated by the Executive Director, acts as a formal agreement between the Department and the Committee. Through Ministerial designation, Justice Committee members are granted the powers of a Probation Officer and are entitled to government indemnification and liability insurance coverage under a blanket policy that covers all direct service volunteers in a government initiated service.

In December 1995, the Manitoba Government established a Provincial Council on Youth Crime. This nine person volunteer panel consists of youth and adult experts appointed by the Minister of Justice for a term of two years. A major focus of the Council activity is to provide support for the numerous Justice Committees located throughout Manitoba and to provide expertise in training and sharing of information. The Council also serves to advise the Minister of Justice on how to expand the mandate and number of Justice Committees. The Council is designed to build on community partnerships that are important in successfully dealing with crime and criminal justice issues.

#### 8.2.2. Adult

In the proposed provincial policy, the responsibility for the delivery of alternative measures for adults will rest with persons or organizations, referred to as "Program Agents" (Manitoba Justice Policy Draft, 1998), who are authorized formally in writing to do so by the Deputy Attorney General. This authorization is granted for a one-year period and may be renewed annually.

The preferred option is to have the alternative measures programs offered by the local Justice Committees that have been established to deliver those programs for youth. In areas where no Committee exists, probation officers, community volunteers and in some cases, community-based agencies may assume the responsibility for the delivery of the adult alternative measures programs.

In order to achieve a clear understanding of the roles and responsibilities carried out by the Program Agent, the Crown has the responsibility to ensure that a training plan, a support plan and process, as well as a formal agreement to respond to referrals in accordance with policy and procedure is developed.

## 8.3 Referral Agent

### 8.3.1. Youth

Alternative measures programs for youth in Manitoba are based primarily on a pre-charge model with referrals to the program originating with the Crown. The Crown may delegate to police the authority to refer cases, pre-court, directly to Community and Youth Corrections providing the circumstances of the alleged offence are clearly within established criteria.

In situations where the Crown authorizes alternative measures on a post-charge basis, and where the authorization is for an "exceptional situation", the Crown will attach a briefing note explaining the rationale. As a normal rule, and preferred method, the Crown will enter a stay of proceeding on cases referred to alternative measures, although to preserve jurisdiction the Crown may elect to remand such cases. Similarly, in situations where police are initiating alternative measures referrals on a pre-charge basis, they may elect to charge the young person as a means of preserving jurisdiction.

### 8.3.2. Adult

As with the youth programs it is proposed that the alternative measures programs for adults in Manitoba, be based primarily on a pre-charge model with referrals to the program originating with the Crown. The Crown may delegate to police the authority to refer cases, pre-court, directly to an authorized Program Agent providing the referral is clearly eligible according to the established criteria.

The proposed policy provides that it may sometimes be necessary for the Referral Agent to lay a charge to ensure that the time line for completing an alternative measures process is realistic. For cases referred without a charge for a summary or hybrid offence, the process must be completed within six months from the date the alleged offence was committed and within twelve months for indictable offences. If a charge is laid and subsequently stayed, the jurisdictional time lines commence on the date of the stay of proceedings and provides six months from this date for summary offences and twelve months for hybrid or indictable offences.

## 8.4 The Role of the Police

### 8.4.1. Youth

In Manitoba, the police in different communities may play somewhat differing roles in the alternative measures process. In all cases, however, when an incident occurs and the police conduct an investigation, they retain the right to utilize their discretion to divert a young person, to take no further action, or to prepare a court brief or a police report and to forward such to the Crown for

consideration for alternative measures or for formal court proceedings. In some communities, the Crown may delegate to Police the authority to refer cases, at the pre-charge stage, directly to Community and Youth Corrections providing the circumstances of the alleged offence are clearly within established criteria. It is clear in the policy and procedures manual that alternative measures is to be considered a resource to be used as an alternative to court and is not a replacement for traditional police discretion.

The police are important partners in the formation and ongoing functioning of Justice Committees. In some communities, police are authorized to refer, at the pre-charge stage, young persons alleged to have committed an offence directly to Community and Youth Corrections for alternative measures.

In the event that the police are acting as the referral agent, it is expected that they will advise the young person of their right to be represented by Counsel and that they will apply established program eligibility criteria determined by agreement between Community and Youth Corrections and the Crown. The police must also be satisfied that alternative measures is appropriate, having regard to the protection of society, the needs of the young person and the interests of society and of the victim. In situations where the police are authorized to initiate alternative measures referrals, they may elect to charge as a means of preserving jurisdiction despite the fact that the referral to alternative measures is made at the pre-court stage.

The role of the police may also include that of being a member of a local Justice Committee. Committees are encouraged to consult with the police and other professionals during the formation stage and it is recommended that Committee membership reflect a cross-section of the local community including the police.

#### 8.4.2. Adult

The proposed policy suggests that the police in different communities may play somewhat differing roles in the alternative measures process for adults. When an incident occurs and the police conduct an investigation, they retain the right to utilize their discretion to informally divert a person, to take no further action, or to prepare a court brief or a police report and to forward such to the Crown for consideration for alternative measures or for formal court proceedings. In those communities where the Crown delegates to Police the authority to refer cases, at the pre-charge stage, directly to an authorized Program Agent, the police must ensure that the alleged offence and the circumstances of the alleged offence are clearly within established criteria.

In the event that the police are acting as the referral agent, it is expected, in the proposed policy, that they will advise the person of his/her right to be represented by Counsel and that he/she will be given a reasonable opportunity to consult with counsel. The police must also be satisfied that alternative measures is appropriate, having regard to the protection of society, the needs of the alleged offender, and the interests of society and of the victim. In situations where the

police are authorized to initiate alternative measures referrals, they may elect to charge as a means of preserving jurisdiction despite the fact that the referral to alternative measures is made at the pre-court stage.

## 8.5 The Role of the Crown Attorney

### 8.5.1. Youth

Once a newly formed Justice Committee is designated, the Crown may be asked to participate in providing training to the new members. It is essential that

It is important that a strong partnership be developed between the Crown and the local Justice Committee. Screening authority for alternative measures for youth originates with the Crown Attorney, although this authority may be delegated to Police.

Committees develop a partnership between community members and justice system officials and the Crown can play an important role in helping Committee members to understand the procedures and principles under the *Young Offenders Act (Canada)*.

The Crown also plays a pivotal role in the alternative measures process as screening authority for alternative measures originates with the Crown. If the Crown is considering a referral to alternative measures, it is expected that he/she will advise the young person of their right to be represented by Counsel and that he/she will apply established program eligibility criteria determined by agreement between Community and Youth Corrections and the Crown. The Crown must also be satisfied that alternative measures is appropriate, having regard to the protection of society, the needs of the young person and the interests of society and of the victim.

In exceptional situations where the Crown authorizes alternative measures on a post-charge basis, it is expected that the Crown will attach a note explaining the rationale. The Crown is also expected to provide a written explanation when the administration of an alternative measures matter has been discontinued and brought to the Crown's attention, and where, upon review, the Crown finds reason to believe that alternative measures may still be appropriate. As a normal rule, the Crown will enter a stay of proceeding on cases referred to alternative measures. The Crown may elect, however, to remand as a means of preserving jurisdiction.

### 8.5.2. Adult

The proposed policy with respect to alternative measures for adults in Manitoba identifies the role of the Crown Attorney as that of the primary referral agent. The Crown will also play a significant role with respect to clarifying the roles and responsibilities carried out by an authorized Program Agent by ensuring the development of a training plan, a process and plan for ongoing support, and the

development of a formal agreement to respond to referrals in accordance with established policy and procedures.

If the Crown is considering a referral to alternative measures, the proposed policy suggests that the Crown will be expected to advise the person of his/her right to be represented by Counsel and to apply established program eligibility criteria. The Crown must also be satisfied that alternative measures is appropriate, having regard to the protection of society, the needs of the young person and the interests of society and of the victim. In addition, prior to initiating a referral to alternative measures, there must be, in the opinion of the Crown, sufficient evidence to proceed with the prosecution of the offence and this prosecution must not be barred by law. The Crown will include a copy of the "Recommendation for Adult Alternative Measures Form", a copy of the Court Brief or the Police Report, and a portion of the Adult Alternative Measures Statistical Form" with any referral made to an authorized Program Agent.

## 8.6 The Role of the Victim

### 8.6.1. Youth

Victim participation, while not a prerequisite for program eligibility unless mediation is part of the alternative measures agreement, is desirable in all appropriate alternative measures processes. As a general rule, the Probation Officer or other authorized persons or organizations such as Justice Committees delegated to determine alternative measures, reviews and considers victim impact information provided in the police report and contacts the victim.

Although victim participation is not a prerequisite for a young person's eligibility for alternative measures, it is always desirable and essential in cases where mediation is to be used.

During contact with the victim(s), the assigned person or organization identifies the fact that victim participation is voluntary and addresses, if applicable, the extent of

loss and damages to property and any recovery, any personal injury arising from the alleged offence(s), and any other implications that the alleged offence(s) has had on the victim(s). The victim's input is also sought, at this time, about the most appropriate method of reparation and when applicable, the victim's willingness to accept compensation in kind or by way of personal service or to participate in a mediation program. In the event that restitution is specified as an alternative measures condition, the victim is notified in writing of the amount, time and method of payment.

### 8.6.2. Adult

The proposed policy for the alternative measures program for adults clearly supports the involvement of victims in the alternative measures process, however, victim participation is not a prerequisite for program eligibility. It is also

proposed that if mediation is to be a part of the alternative measures agreement, participation by the victim or a representative of the victim is required, albeit voluntary.

It is proposed that during contact with the victim(s), the Program Agent will address, if applicable, the extent of loss and damages to property and any recovery, any personal injury arising from the alleged offence(s), and any other implications that the alleged offence(s) has had on the victim(s). The victim's input is also sought, at this time, about the most appropriate method of reparation and when applicable, the victim's willingness to accept compensation in kind or by way of personal service or to participate in a mediation program. In the event that restitution is specified as an alternative measures condition, the victim is notified in writing of the amount, time and method of payment

## 8.7 Right to Legal Counsel

### 8.7.1. Youth

Section 4(1)(d) of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.7 for the specific wording of this section) specifies that before becoming involved in alternative measures, a young person must fully and freely consent to participate. This consent can only be provided after being informed of their right to counsel and having been given an opportunity to consult with counsel. In Manitoba, the primary responsibility for ensuring that the young person is informed of their right to legal counsel rests with the person, either the Crown or the Police, who is considering a referral to Community and Youth Corrections for alternative measures. During the intake process, Community and Youth Corrections will also provide the young person with a pamphlet that highlights their legal safeguards. These safeguards are further reinforced on the alternative measures agreement form.

### 8.7.2. Adult

Section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.7 for the specific wording of this section) specifies that before becoming involved in alternative measures, a person alleged to have committed an offence must fully and freely consent to participate. This consent is to be provided after being informed of their right to counsel and having been given an opportunity to consult with counsel. In Manitoba, it is proposed that the primary responsibility for ensuring that a person who is being considered for alternative measures is informed of their right to legal counsel rests with the person, either the Crown or the Police, who is considering a referral to a Program Agent. In addition, it is proposed that the alleged offender be provided with a copy of the signed consent outlining the above and that a copy be retained by the Program Agent.

## 8.8 Eligibility Criteria

### 8.8.1. Youth

Legislated criteria governing the eligibility criteria for formally authorized alternative measures programs across Canada are set out in the federal *Young Offenders Act (Canada)* in sections 4(1) and 4(2) (see Chapter 1, s.1.8 for the wording of these sections).

In addition to the legislated criteria, the province applies a number of conditions to determine offence eligibility. First time referrals for alternative measures involving minor property offences where there has been full recovery and/or restitution, are generally handled as Parental Action Letters and are counted as a first participation in alternative measures.

The policy and procedures manual also identifies those offences that are not eligible for consideration for alternative measures. These include:

- a driving offence, including refusing a breathalyzer, criminal negligence or dangerous or impaired driving;
- any form of culpable homicide;
- Criminal Code* vehicle, vessel or aircraft offences resulting in death or bodily harm;
- weapons offences involving firearms;
- domestic violence (spousal/partner abuse);
- sexual offences
- child abuse or neglect;
- criminal harassment;
- property offences over \$5000.

First time minor property offences are usually handled through Parental Action Letters. Manitoba identifies a number of offences that are not eligible for alternative measures including driving offences, homicide, sexual assaults, domestic violence offences, child abuse, serious property offences and other offences that pose a serious risk to community safety. A youth may participate up to three times in alternative measures (including Parental Action Letters), subject to certain eligibility conditions.

Other conditions that must be satisfied in order for an alleged offence to be considered eligible are that sufficient evidence exists to proceed with prosecution of the offence, that prosecution is not in any way barred at law, and that the alleged offence did not, except in exceptional circumstances, pose serious and definite risk to the safety or well-being of the community.

If the conditions related to the alleged offence are satisfied, young persons will be dealt with by way of alternative measures unless:

- the young person denies responsibility;

- ❑ the young person does not consent to having the allegation dealt with through alternative measures;
- ❑ the young person has been found guilty of a *Criminal Code* offence and two years has not lapsed since the completion of the disposition;
- ❑ alternative measures has already been used to deal with the young person three times (including Parental Action Letters);
- ❑ the young person has pending *Criminal Code* offences before the court.

If an alternative measures referral is received from the Crown or the police that is outside the agreed upon eligibility criteria, the referral is returned immediately to the referral source accompanied by a written explanation. The only exception is where the referral is from the Crown and includes a note of explanation regarding the referral being an exceptional situation. The Area Director of Community and Youth Corrections will exercise discretion regarding the acceptance of exceptional situation referrals and will provide a written explanation for any referrals that are refused and returned to the referral source.

Normally, one referral to alternative measures for youth reflects a single offence. However, in situations where the incident report refers to more than one offence, the Crown or the police will specify which offence(s) is being referred for alternative measures. Where referrals indicate more than one offence, it is proposed that these be dealt with as one referral unless otherwise directed by the person initiating the referral.

#### 8.8.2. Adult

Legislated criteria governing the eligibility criteria for formally authorized alternative measures programs across Canada are set out in section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.8 for the wording of these sections).

In addition to the legislated criteria, the province of Manitoba proposes to apply a number of conditions to determine offence eligibility. The proposed policy is that first time referrals for alternative measures involving minor property offences where there has been full recovery and/or restitution, are generally handled as Formal Caution Letters and are counted as a first participation in alternative measures.

The policy and procedures manual also proposes a list of offences that will not be considered eligible for consideration for alternative measures. These include:

- ❑ a driving offence, including refusing a breathalyzer, criminal negligence or dangerous or impaired driving;
- ❑ any form of culpable homicide;

- ❑ *Criminal Code* vehicle, vessel or aircraft offences resulting in death or bodily harm;
- ❑ weapons offences involving firearms;
- ❑ domestic violence (spousal/partner abuse);
- ❑ sexual offences
- ❑ child abuse or neglect;
- ❑ criminal harassment;
- ❑ property offences over \$5000;
- ❑ or any offence that poses a serious and definite risk to the safety or well being of the community.

Other proposed conditions that must be satisfied in order for an alleged offence to be considered eligible are that sufficient evidence exists to proceed with prosecution of the offence, that prosecution is not in any way barred at law.

It is proposed that adults who are alleged to have committed, for the first time, minor property offences be issued Formal Caution Letters. Manitoba also proposes a number of offences that will not be eligible for alternative measures including driving offences, homicide, sexual assaults, domestic violence offences, child abuse, serious property offences and other offences that pose a serious risk to community safety. An adult may participate twice in three years in alternative measures (including Parental Action Letters, youth alternative measures, and Formal Caution Letters), subject to certain eligibility conditions.

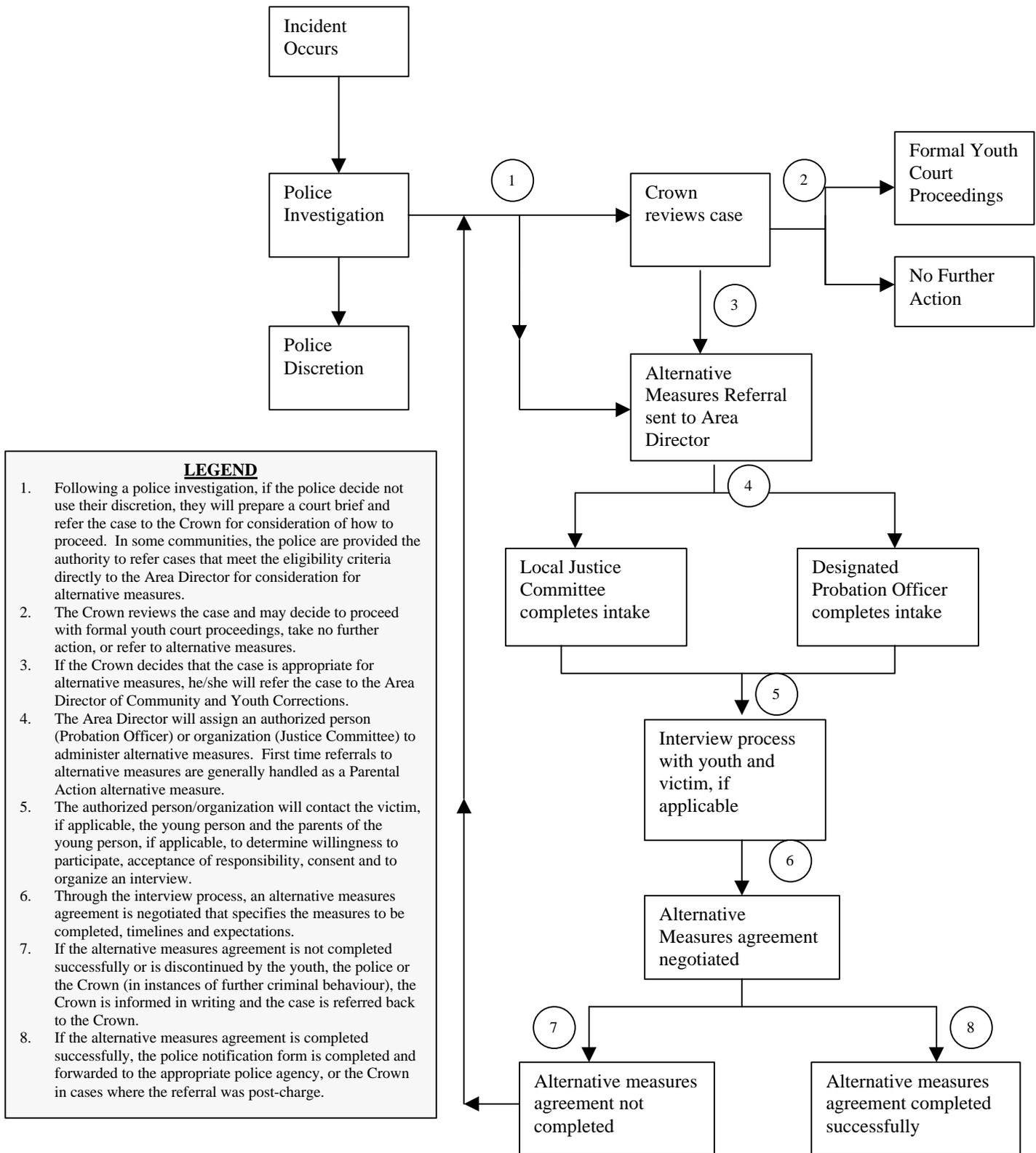
If the conditions related to the alleged offence are satisfied, persons alleged to have committed an offence would be dealt with by way of alternative measures unless:

- ❑ the alleged offender denies responsibility;
- ❑ the alleged offender does not consent to having the allegation dealt with through alternative measures;
- ❑ the alleged offender has been found guilty of more than one minor offence and two years has not lapsed since completion of the disposition;
- ❑ alternative measures has already been used to deal with the alleged offender twice in the previous three years as either an adult or a youth (including Parental Action Letters and Formal Caution Letters);
- ❑ the alleged offender has pending *Criminal Code* offences before the court.

If an alternative measures referral is received from the Crown or the police, in agreement with the Program Agent, that is outside the agreed upon eligibility criteria, the Crown will include a note of explanation along with a written authorization of the referral. It is proposed that one alternative measures referral will normally reflect a single offence. In situations where the incident report refers to more than one offence, the Referral Agent will specify which offence(s) is being referred for alternative measures. Where referrals indicate more than one

offence, it is proposed that these be dealt with as one referral unless otherwise directed by the Referral Agent.

## 8.9 Alternative Measures Process for Youth



As soon as the Area Director for Community and Youth Corrections receives a referral for alternative measures, he/she will assign an authorized person or organization to administer alternative measures. In Manitoba, it is recognized that Probation Officers, volunteers, Justice Committees and other persons or organizations under formal agreement with Community and Youth Corrections administer alternative measures.

First time referrals for alternative measures involving minor property offences where there has been full recovery or restitution, are generally handled as a

Parental Action alternative measure. Parental Action is administered entirely by mail or telephone within a six to eight week period from the date the referral was received. It consists of having a Parental Action Letter, a consent form and a copy of the Alternative Measures brochure forwarded to the young person and the parents of the young person. The letter highlights legal safeguards noted in the brochure and advises that in case of no response by the youth or the parent, the matter

First time referrals to alternative measures for minor property offences are usually handled through Parental Action letters. Subsequent, and other, referrals to alternative measures are administered by probation officers, Justice Committees, volunteers, or other persons authorized by Community and Youth Corrections. The person/organization responsible contacts all involved parties and conducts an interview, or mediation, through which agreement is reached on an appropriate measure to be completed. The agreement is then drafted into a contract signed by the young person.

will be concluded and recorded as an alternative measure that has been completed successfully. If there is no reply to the letter, the Parental Action is reported as "no response received" and "completed successfully" on the Alternative Measures Form (see Section 8.16.1 for a sample of the form).

Within three weeks of receipt of a referral at the district or regional office, the assigned person/organization notifies the young person and his/her parents/guardian of the date of the alleged offence(s), the young person's eligibility for alternative measures and the nature of the alternative measures program. An appointment is also scheduled at this time for the young person and the parents/guardian of the young person to either attend for an interview, to appear before a local Justice Committee, or to participate in a crime prevention program, whichever is applicable. As a general rule, the assigned person/organization that administers the alternative measures contacts the victim to determine his/her willingness to participate as well as the extent of loss and damages to property and any recovery, any personal injury arising from the alleged offence(s), and any other implications of the alleged offence(s) for the victim. The victim's input is also sought at this time with respect to the most appropriate method of reparation.

The interview process (see *Manitoba Justice Committees: A Resource & Orientation Manual*, August 1996, for an in-depth explanation of the process) to determine the most appropriate alternative measure or measures to administer is an opportunity for the assigned person/organization to consider the circumstances and seriousness of the alleged offence(s), the young person's

explanation of the offence(s), maturity level, capacity to handle responsibility, personal circumstances, and the victim's comments and suggestions.

At the conclusion of the interview, the young person is asked to propose conditions to be included in the alternative measures contract. The assigned person/organization may assist the offender in exploring various options including what he/she may want to say to the victim. The parents and the victim, if applicable, will also be asked for their opinion. Following the discussion about possible results and agreement on the measure(s) to be administered, an alternative measures contract is drawn up and signed (see Section 8.16.2 for a sample of the form) and a copy is provided to the young person. If it is determined in the interview that the young person has the ability to pay full or partial compensation then this measure is pursued and the method and time lines for payment are clearly specified on the "Alternative Measures - Restitution" form (see Section 8.16.3 for a sample of the form).

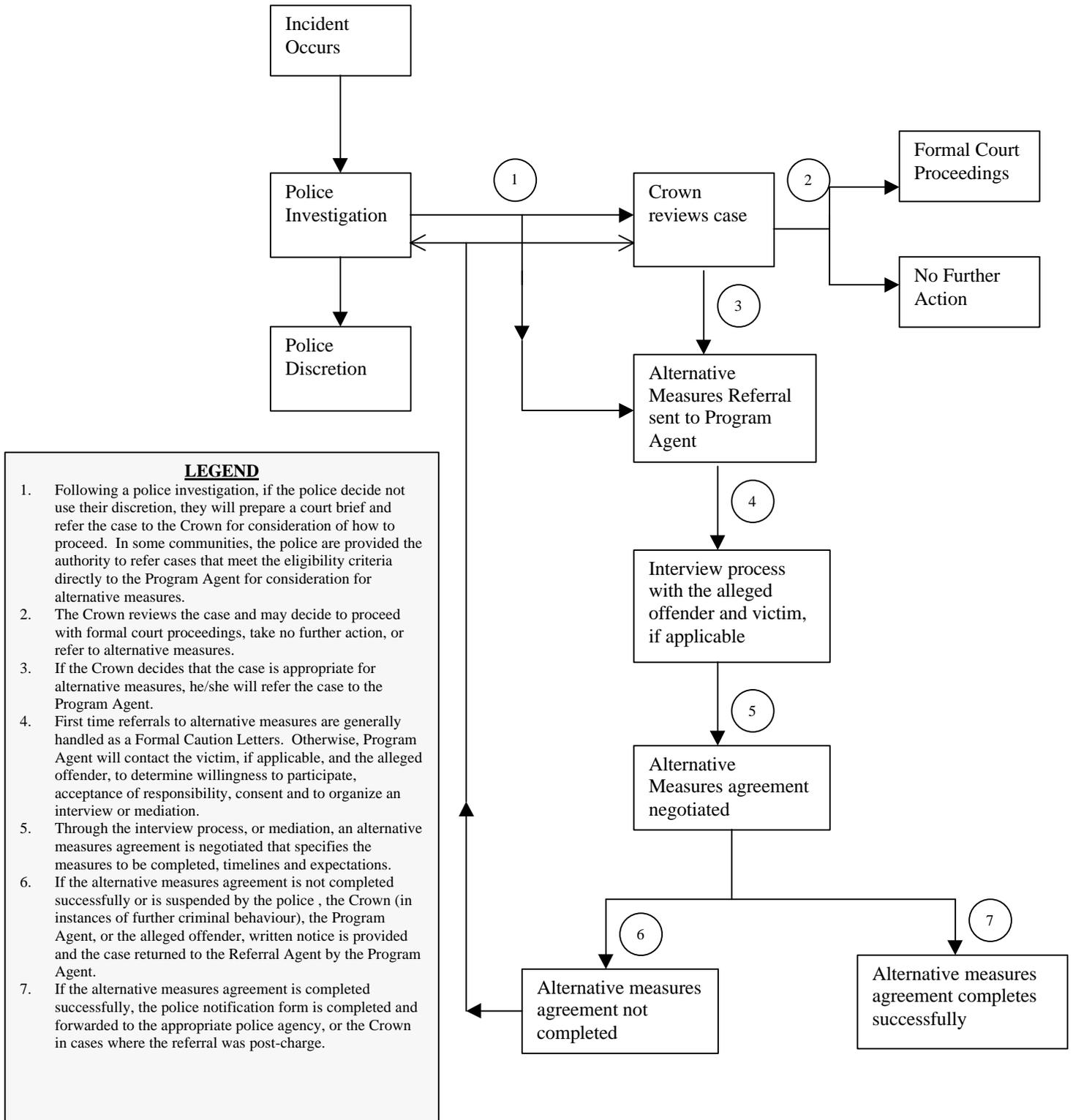
The policy and procedures manual states that financial compensation may be made directly from the young person to the victim if the victim agrees. It may also be made through a responsible third party process, such as a police office or a legal trust fund, or the young person may forward the compensation amount to the Minister of Finance: Revenue Clerk. The assigned person/organization administering the alternative measures provides the victim written notification of the amount, time line and method of restitution payment specified on the consent form. Under no circumstances does the assigned person/organization accept or disburse the restitution payments. On a monthly basis the Revenue Clerk will provide a restitution status report on a per region basis to the appropriate Area Director who will relay this information to the person or organization assigned to administer alternative measures. The assigned person/organization is responsible for monitoring the financial compensation to verify that it has been made by the pre-determined date. If the compensation has not been made, the assigned person/organization may provide the young person with an extension or, alternatively, may initiate court proceedings through the Crown. In the event that changes are made to either the amount of compensation or the due date, the assigned person/organization will inform the Revenue Clerk in writing through the use of the "Changes to Alternative Measures - Restitution Form" (see Section 8.16.4 for a sample of this form).

In the event that the young person cannot be located, the alternative measures will be discontinued and the Crown will be informed of such in writing. In addition, the process will be discontinued and the Crown informed in writing if the young person:

- denies involvement in the offence(s);
- refutes his/her former acceptance of responsibility for the act or omission resulting in the offence;
- wishes to have any charge dealt with by the youth court;
- fails to attend for alternative measures as directed;

- ❑ refuses to accept the recommended alternative measures; and/or,
- ❑ fails to comply with the terms of the measures.

## 8.10 Alternative Measures Process for Adults



It is proposed in the adult alternative measures policy and procedures, that first time referrals for alternative measures involving minor property offences where there has been full recovery or restitution, be generally handled by a Formal Caution Letter. This Letter will be administered entirely by mail or telephone and normally completed within a four to six week period from the date the referral was received. The Letter will be forwarded to the alleged offender and will be accompanied by a consent form and an explanation of alternative Measures. The letter will highlight legal safeguards and advise that in the event of no response, the matter will be reported as "no response received" and sent back to the Crown.

It is proposed that first time referrals to alternative measures for minor property offences be generally handled by Formal Caution Letters. Subsequent, and other, referrals to alternative measures are administered by an authorized Program Agent, such as probation officers, Justice Committees, local volunteers, or community-based agencies. The Program Agent will contact the alleged offender and the victim, where appropriate and applicable, and conducts an interview, or mediation, through which agreement is reached on an appropriate measure to be completed. On request of the victim, financial compensation will be pursued. The agreement is then drafted into a contract signed by the alleged offender.

It is proposed that within four weeks of receipt of a referral, the Program Agent will notify the alleged offender of the date and nature of the alleged offence(s), the person's eligibility to be dealt with by alternative measures and the nature of the alternative measures program. An appointment will also be scheduled at this time for the alleged offender to meet with the Program Agent or to participate in a crime prevention program whichever is applicable. As a general rule, it is proposed that the Program Agent will obtain consent in writing that the alleged offender accepts responsibility for the act or omission resulting in the alleged offence(s), has been advised of the right to consult with or be represented by a lawyer, has been given an opportunity to consult counsel, and fully and freely consents to participate. The Program Agent will also contact the victim to determine his/her willingness to participate as well as the extent of loss and damages to property and any recovery, any personal injury arising from the alleged offence(s), and any other implications of the alleged offence(s) for the victim. The victim's input is also sought at this time with respect to the most appropriate method of reparation.

Similar to that used for youth, the interview process (see *Manitoba Justice Committees: A Resource & Orientation Manual*, August 1996, for an in-depth explanation of the process) to determine the most appropriate alternative measure(s) to administer is an opportunity for the Program Agent to consider several factors. For example, the circumstances and seriousness of the alleged offence(s), the alleged offender's explanation of the offence(s), the victim's comments and suggestions, the impact on the community, and, as a general rule, the maturity, capacity to handle responsibility and personal circumstances of the alleged offender.

At the conclusion of the interview, the alleged offender may be asked to propose conditions to be included in the alternative measures contract. Following the discussion about possible results and agreement on the measure(s) to be administered, an alternative measures contract is drawn up and signed and a copy is provided to the alleged offender. If requested by the victim, financial compensation will be pursued through the alternative measures process.

The policy and procedures manual proposes that financial compensation may be made directly from the alleged offender to the victim if the victim agrees. It may also be made through a responsible third party process, such as a legal trust fund, or the alleged offender may forward the compensation amount to the Minister of Finance: Revenue Clerk. The Program Agent will provide the victim written notification of the amount, time line and method of restitution payment specified on the consent form. It is proposed that on a monthly basis the Revenue Clerk will provide a restitution status report to the Program Agent who will monitor the financial compensation to verify that it has been made by the assigned due date. If the compensation has not been made, the Program Agent will determine whether an extension is required or if suspension of proceedings is warranted. In the event that changes are made to either the amount of compensation or the due date, the Program Agent will inform the Revenue Clerk in writing through the use of the "Changes to Alternative Measures - Restitution Form", and will advise the Crown.

In the event that the alleged offender cannot be located, the alternative measures will be suspended and the Referral Agent will be informed of such in writing. In addition, the process will be suspended if the alleged offender:

- denies involvement in the offence(s);
- refutes his/her former acceptance of responsibility for the act or omission resulting in the offence;
- wishes to have any charge dealt with by the ordinary court;
- fails to attend for alternative measures as directed;
- refuses to accept the recommended alternative measures; and/or,
- fails to comply with the terms of the measures.

When the alternative measures proceedings are suspended, it is proposed that the Referral Agent receive written notification from the Program Agent including the Court Brief or police report, a copy of the Recommendation for Adult Alternative Measures Form, a copy of the alternative measures agreement, the reasons for suspending the proceedings and advisement by the Program Agent that action on the referral is being concluded subject to Crown or Court reviewing the matter and initiating a request for further involvement.

## 8.11 The Alternative Measures Agreement

### 8.11.1. Youth

The alternative measures agreement outlines the contract (see Section 8.16.2 for a sample of this form) between the young person and the assigned

The alternative measures agreement is a binding contract between the young person and the person/organization assigned to administer alternative measures. The measures identified on the agreement should be meaningful and tailored to fit the particular circumstances of the young person and the needs of the community and the victim.

person/organization responsible for administering the alternative measures. This contract forms the basis for the completion of the alternative measures process. The conditions of the agreement should be meaningful and tailored to fit the circumstance taking in to account the attitude and motivation of the young person as well as the needs and concerns of the victim and the community as represented through the local Justice Committee.

The contract must also respect jurisdictional timelines for alternative measures referrals. Consequently, for cases referred at the pre-charge stage for a summary or hybrid offence(s), they are to be completed within a six month time period from the date the offence was allegedly committed, and within twelve months from this date for indictable offences. If the charge is stayed and hence the referral is made at the post-charge stage, the time line commences on the date of the stay of proceedings and is set at six months for summary offences and twelve months for hybrid or indictable offences.

### 8.11.2. Adult

The alternative measures agreement outlines the contract between the alleged offender and the Program Agent. This contract forms the basis for the completion

The alternative measures agreement is a binding contract between the alleged offender and the Program Agent. The measures included in the agreement should be meaningful and tailored to fit the circumstances of the alleged offender, the needs of the community and the victim.

of the alternative measures process. The conditions of the agreement should be meaningful and tailored to fit the circumstance taking in to account the attitude and motivation of the alleged offender as well as the needs and concerns of the victim and of the community as represented through the Program Agent.

The contract must also respect jurisdictional timelines for alternative measures referrals. For cases referred at the pre-charge stage for a summary or hybrid offence(s), they are to be completed within a six month time period from the date the offence was allegedly committed, and within twelve months from this date for indictable offences. If the charge is stayed and hence the referral is made at the post-charge stage, the time line commences on the date of the stay of proceedings and is set at six months for summary offences and twelve months for hybrid or indictable offences.

## 8.12 The Range of Alternative Measures

### 8.12.1. Youth

The chosen model for the delivery of alternative measures in Manitoba consists, for the most part, of using volunteer community-based Justice Committees.

The range of authorized measures is such as to promote innovation and creativity by local Justice Committees in the application of alternative measures.

These Committees establish a strong partnership of parents, community members, justice officials, and other interested parties that is vital to addressing crime. The use of local Justice Committees to administer alternative measures lends itself to creativity and innovation in regards to the measures applied and allows the

Committees to tailor their measures to address their community concerns. In the policy and procedures manual, the following measures are identified as having been authorized for use by the Manitoba Minister of Justice:

- *Compensation*: the young person may be required to provide financial compensation to the victim, to provide in kind compensation, or to compensate the victim by way of personal service.
- *Mediation or Conciliation* between the young person and the victim (e.g., apology).
- *Interview*: this may consist of one or more interviews with the young person and the parents of the young person to examine the circumstances of the offence, any action taken by the young person to make amends, and any action taken by the parents as a consequence.
- *Reprimand*
- *Curfew*
- *Attendance at a Crime Prevention Program*
- *Crime Prevention Project*: the young person may be requested to complete a project such as an essay or a poster that focuses on crime prevention.
- *Referral*: the young person may be referred to a social, educational or health service with appropriate follow-up.
- *Community Service Work*: the young person may be required to complete a pre-determined number of unpaid community service work hours.
- *Traditional Consequences*: culturally appropriate measures may often be used to address the young person's behaviour and to prevent further offending.
- *Parental Action*: first time referrals for minor property offences where there has been full or partial recovery/restitution are generally handled through this type

of measure. It involves sending a letter to the youth and the parents along with a consent form and a brochure explaining alternative measures. No response is required for the measure to be considered completed and it is counted as a first participation in alternative measures for the purposes of determining future eligibility.

- *Any Combination of the above:* the young person may be required to complete any of the above-mentioned measures.

#### 8.12.2. Adult

As with the youth programs, the Program Agent is encouraged to be creative and innovative in regards to the measures applied and allows the Program Agent to tailor the measures to address local community concerns. In the policy and procedures manual, the following measures are proposed as having been tentatively authorized for use by the Manitoba Minister of Justice.

- *Compensation:* the alleged offender may be required to provide financial compensation to the victim, to provide in kind compensation, or to compensate the victim by way of personal service.
- *Contribution to the Victim's Surcharge Fund*
- *Mediation or Conciliation* between the alleged offender and the victim (e.g., apology).
- *Interview:* this may consist of one or more interviews with the alleged offender to examine the circumstances of the offence and any action taken to make amends.
- *Reprimand*
- *Curfew*
- *Attendance at a Crime Prevention Program*
- *Crime Prevention Project:* the alleged offender may be requested to complete a project that focuses on crime prevention.
- *Referral:* the alleged offender may be referred to a social, educational or health service with appropriate follow-up.
- *Community Service Work:* the alleged offender may be required to complete a pre-determined number of unpaid community service work hours.
- *Traditional Consequences:* culturally appropriate measures may often be used to address the alleged offender's behaviour and to prevent further offending.

- *Formal Caution Letter*: first time referrals for minor property offences where there has been full or partial recovery/restitution are generally handled through this type of measure. It involves sending a letter to the alleged offender along with a consent form and an explanation of alternative measures. No response is required for the measure to be considered completed and it is counted as a first participation in alternative measures for the purposes of determining future eligibility.
- *Any Combination of the above*: the alleged offender may be required to complete any of the above-mentioned measures.

## 8.13 Supervision of Alternative Measures Agreement

### 8.13.1. Youth

Under the current guidelines, the person/organization assigned by the Area Director to administer alternative measures is responsible for monitoring all aspects of the agreement on an ongoing basis. The assigned person/organization is responsible for facilitating the completion of the contract conditions, completing all required documentation, and for ensuring that all contract conditions are completed within the statute limitation period or otherwise referred back to the original referral source.

### 8.13.2. Adult

Under the proposed guidelines, the Program Agent will assume responsible for monitoring all aspects of the agreement on an ongoing basis. The Program Agent will be responsible for facilitating the completion of the contract conditions, completing all required documentation, retaining relevant documents securely, and for ensuring that all contract conditions are completed within the statute limitation period or otherwise referred back to the original referral source.

## 8.14 Completion of Agreement

### 8.14.1. Youth

Upon successful completion of the alternative measures agreement, the assigned person/organization completes the police notification form (see Section 8.16.5 for a sample of the form) and forwards such to the appropriate police agency. Details of the alternative measures are not described on the notification form but are provided by the person/organization upon request. In the event the referral originated from the Crown on a post-charge basis, the notification form will be forwarded to the crown upon completion.

The alternative measures process will be discontinued and the Crown will be informed of such in writing, by the assigned person/organization, if at any time during the process information is received from the police or the Crown that the young person has been involved in other criminal offences. In addition, the process will be discontinued and the Crown informed in writing if the young person:

- can not be located
- denies involvement in or disputes the circumstances of the alleged offence(s);
- refutes his/her former acceptance of responsibility for the act or omission resulting in the offence;
- wishes to have any charge dealt with by the youth court;
- fails to attend for alternative measures as directed;
- refuses to accept the recommended alternative measures; and/or,
- fails to comply with the terms of the measures.

The assigned person/organization is responsible for clearly indicating the reasons for discontinuing the alternative measures process in the letter to the Crown, along with detailed attempts to contact the young person, elicit his/her cooperation and the specific terms of the alternative measures agreement. The assigned person/organization will also note in the letter that the alternative measures file is being closed and the referral and police report are returned.

#### 8.14.2. Adult

It is proposed that upon successful completion of the alternative measures agreement, the Program Agent will complete the "Alternative Measures Statistical Data Form" and forward such to the Alternative Measures Information Systems at Community and Youth Corrections. Police reports and Court Briefs provided by the Referral Agent are to be returned to the source of referral when action on the referral is concluded.

The alternative measures process will be suspended and the Referral Agent will be informed of such in writing, by the Program Agent, if at any time during the process information is received from the police or the Crown that the referred individual has been involved in other criminal offences. In addition, the process will be suspended and the Referral Agent informed in writing if:

- financial compensation is requested by the victim and it is determined that the alleged offender is unable to pay;

- ❑ the Program Agent does not think the alleged offender is a suitable candidate for alternative measures;
- ❑ the alleged offender can not be located
- ❑ denies involvement in or disputes the circumstances of the alleged offence(s);
- ❑ refutes his/her former acceptance of responsibility for the act or omission resulting in the offence;
- ❑ wishes to have any charge dealt with by the youth court;
- ❑ fails to attend for alternative measures as directed;
- ❑ refuses to accept the recommended alternative measures; and/or,
- ❑ fails to comply with the terms of the measures.

The Program Agent is responsible for clearly indicating the reasons for discontinuing the alternative measures process in the notification to the Referral Agent, along with detailed attempts to contact the young person and/or elicit his/her cooperation and the specific terms of the alternative measures agreement that may have been developed. The Program Agent will also indicate that action on the referral is being concluded subject to the Crown or Court reviewing the case and initiating a further request for alternative measures involvement.

## 8.15 Record Keeping

### 8.15.1. Youth

The provisions of the Young Offenders Act (Canada) (see Chapter 1, s.1.15 for the wording of the appropriate sections) govern all records pertaining to alternative measures generally. In addition, the assigned person/organization is responsible for ensuring that all required documents are duly completed and placed on the offender files in district or regional offices of Community and Youth Corrections. These documents include a copy of the Alternative Measures form; confirmation of payment by the young person if the alternative measure involved financial compensation, written consent, relevant correspondence, and notification to police. Police reports and any other documentation provided to authorized persons for administering an alternative measures, is returned to Community and Youth Corrections upon termination.

### 8.15.2. Adult

The proposed guidelines places the responsibility on the Program Agent to ensure that relevant documents are retained in a secure manner subject to the

provisions outlined in section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.15 for the wording of the appropriate sections). The Program Agent will also be responsible for returning police reports, or Court Briefs, to the referral source upon conclusion of the process. In addition, proposed policy states that any record kept by a Program Agent as a result of the administration of the alternative measures program may not be disclosed except to the Referral Agent, or to a probation officer preparing a report for the court in respect of a person who has been dealt with by way of alternative measures.

## 8.16 Appendix 'A' Forms

8.16.1. Youth Alternative Measures Form

**Manitoba  
Justice  
Community and Youth  
Correctional Services**

**Alternative Measures**

COMMUNITY CORRECTIONS AREA RECEIVING THIS REFERRAL	AREA CODE SUBCODE	DATE REFERRAL RECEIVED FROM /___/___/___ CROWN/POLICE mm dd yy yy	NAME OF PERSON COMPLETING FORM
CORRECTIONS FILE #	YOUTH'S LAST NAME: _____ FIRST: _____  BIRTHDATE: /___/___/___/___ SEX: _____ 1 male 2 female mm dd yy yy		
YOUTH'S ADDRESS: _____ POSTAL CODE: _____  1. Non Native IS YOUTH AN ABORIGINAL CANADIAN? _____ 2. Metis / Non Treaty 3. Treaty ON Reserve RESERVE 4. Treaty OFF Reserve CODE: _____			

**OFFENCE DATA**

INVESTIGATING POLICE FORCE:	DETACHMENT / DIVISION:	CRIME REPORT NUMBER
DESCRIPTION OF MOST SERIOUS CHARGE AGAINST YOUTH: _____  TOTAL LOSS EST'D IN CRIME REPORT: \$ _____	ACTUAL CODE # FOR THIS CHARGE  _____/_____(_____) ACT / STAT (SEC.SUB.PAR)	DATE THIS OFFENCE WAS COMMITTED  _____/_____/_____ mm dd yy yy
TOTAL NO. OF CHARGES AGAINST YOUTH _____	PREVIOUS ALTERNATIVE MEASURES? _____ 1. Yes 2. No 3. Unknown	PREVIOUS COURT CONVICTION? _____ 1. Yes 2. No 3. Unknown
	STAY FOR ALTERNATIVE MEASURES? _____ 1. Yes 2. No 3. Unknown	

**PROCESS AND ALTERNATIVE MEASURES DATA**

<p><u>PRIMARY MEANS TO ADMINISTER THE A.M. REFERRAL</u></p> <p>1. Probation Officer _____</p> <p>2. Contract Worker _____</p> <p>3. Volunteer _____</p> <p>4. Justice Committee _____</p> <p>5. Other Organization _____</p> <p>6. Letter to Parent _____</p> <p>7. Other (describe) _____</p> <p>(Enter Names as applicable)</p>	<p>DID YOUTH CONSENT TO PARTICIPATE IN A.M. PROCESS? _____</p> <p>1. Yes</p> <p>2. No, Disputes Charges</p> <p>3. No, Preferred Court</p> <p>4. Unable to Locate</p> <p>5. No Response (P.A. only)</p> <p>6. Other _____</p> <p>DATE OF YOUTH'S DECISION /___/___/___ mm dd yy yy</p>
---	---

<p><b>ALTERNATIVE MEASURES AGREED TO BY YOUTH</b></p> <p>(Check as many as applicable)</p> <p>_____ Compensation in \$ \$ _____ (amount)</p> <p>_____ Compensation in Kind _____</p> <p>_____ Personal Service in Hours _____</p> <p>_____ Parental Action Letter _____</p> <p>_____ Reprimand Oral _____ Reprimand Written _____</p> <p>_____ Crime Prev. Program _____ (name)</p> <p>_____ Crime Prev. Project _____ (descr.)</p>	<p><b>YOUTH CONSULTED WITH LAWYER?</b> _____ 1. Yes</p> <p><b>VICTIM CONTACT?</b> _____ 2. No</p> <p style="text-align: right;">9. Unknown</p> <hr/> <p>_____ Curfew</p> <p>_____ Community Service, in Hours _____</p> <p>_____ Interview with Parents, if specified as AM</p> <p>_____ Conciliation with Victim</p> <p>_____ Traditional Consequences</p> <p>_____ Apology _____ Essay</p> <p>_____ Referral to _____ (agency name)</p> <p>_____ Other _____ (describe)</p>
---	---

**CLOSING DATA**

<p><b>DATE CASE CLOSED</b></p> <p>/ ____ / ____ / ____</p> <p style="text-align: center;">mm    dd    yy    yy</p>	<p><b>REASON CASE CLOSED</b> _____</p> <p>1. Completed Successfully</p> <p>2. Disputed Charges</p> <p>3. Preferred Court</p> <p>4. Unable to Locate</p> <p>5. Youth Not Cooperating</p> <p>6. Other _____</p>	<p><b>REFERRED TO CROWN/POLICE?</b></p> <p style="text-align: right;">1. Yes</p> <p>_____ 2. No</p>	<p><b>Was There Alleged Reinvovement During AM Process?</b></p> <p style="text-align: right;">1. Yes</p> <p>_____ 2. No</p>
--	---	---	---

**COMPLETE AND FORWARD WHEN CASE CLOSED (COPY KEPT FOR FILE)**

8.16.2. Alternative Measures Contract for Youth

**LETTER OF CONSENT / INTENT**

WHEREAS the Committee recognizes that given the opportunity people can learn from experience in a positive manner.

AND WHEREAS a major objective of the Committee is to provide constructive alternatives to people who may otherwise be referred to Court.

THIS LETTER specifies the following conditions which would allow for an alternative to court action:

I HEREBY CONFIRM:

- that the nature of this letter has been explained to me.
- that I freely and voluntarily agree to the conditions set forth herein before recognizing that failure to comply may result in a referral to the Court.
- that I accept responsibility for the offence of \_\_\_\_\_ which I am alleged to have committed on \_\_\_\_\_
- and that I have been advised of my right to consult with or be represented by legal counsel before consenting to participate in these measures.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

For the \_\_\_\_\_ Committee

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**NOTE:** Many Committees use a form like this to document both the consent and the terms of the diversion or alternative measures agreement.

8.16.3. Youth Alternative Measures Restitution Form

***Manitoba Justice***

***Memorandum***

**Date:**

**To:** Revenue Clerk  
Administration and Finance  
Department of Justice  
935-405 Broadway  
Winnipeg MB R3C 3L6

**From:**

**Phone:**

**Fax:**

**Subject:** ALTERNATIVE MEASURES - RESTITUTION

Region where young person is resident: ( Winnipeg;  Central;  Eastman;  
 Interlake;  Norman;  Thompson;  Westman;  Parkland)

Name of Young Person: \_\_\_\_\_  
Address of Young Person: \_\_\_\_\_ Postal Code: \_\_\_\_\_  
Total Amount of Restitution this young person has been ordered to pay: \$ \_\_\_\_\_  
Restitution to be paid by : \_\_\_\_\_  
Offence(s) & Date: \_\_\_\_\_

**VICTIM 1**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Postal Code: \_\_\_\_\_  
Amount of Restitution: \_\_\_\_\_

**VICTIM 2**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Postal Code: \_\_\_\_\_  
Amount of Restitution: \_\_\_\_\_

If the Restitution is not paid by the assigned due date, please advise, and appropriate action will be taken.

Thank you for your assistance.

Cc: Liaison Probation Officer: \_\_\_\_\_

\_\_\_\_\_  
Signature

8.16.4. Youth Changes to Alternative Measures Restitution Form

***Manitoba Justice***

***Memorandum***

**Date:**

**To:** Revenue Clerk  
Administration and Finance  
Department of Justice  
935-405 Broadway  
Winnipeg MB R3C 3L6

**From:**

**Phone:**

**Fax:**

**Subject:** CHANGES TO ALTERNATIVE MEASURES - RESTITUTION

Region where young person is resident: ( Winnipeg;  Central;  Eastman;  
 Interlake;  Norman;  Thompson;  Westman;  Parkland)

Name of Young Person: \_\_\_\_\_  
Address of Young Person: \_\_\_\_\_ Postal Code: \_\_\_\_\_  
Total Amount of Restitution this young person has been ordered to pay: \$ \_\_\_\_\_  
Restitution to be paid by : \_\_\_\_\_  
Offence(s) & Date: \_\_\_\_\_

Please be advised of the following change(s) to the above-noted alternative measure.  
Please check () the appropriate box (es):

- Extend due date to : \_\_\_\_\_
- The amount has changed to: \_\_\_\_\_

Cancel because:

- Another alternative measure is being administered, or
- Referral has been returned to the Crown Attorney, or
- Other: \_\_\_\_\_

Should you require further information please call.

Cc. Liaison Probation Officer: \_\_\_\_\_  
Signature

8.16.5. Youth Alternative Measures Police Notification Form

**NOTIFICATION**

DATE: \_\_\_\_\_

FROM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PHONE: \_\_\_\_\_

TO: (Source of Referral)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ALTERNATIVE MEASURE REFERRAL**

RE: \_\_\_\_\_  
(Young Person's Name)

BIRTHDATE: \_\_\_\_\_

POLICE FILE/CRIME REPORT NO.: \_\_\_\_\_

This is to inform that the above noted alternative measure referral has been dealt with successfully. Thank you.

Other (e.g., non-compliance, unable to contact, etc. - please explain)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Yours truly,

\_\_\_\_\_  
(Assigned person/organization)

Cc. (police department)



## 8.17 Appendix 'B' Data

The following data on Manitoba youth participation in alternative measures was provided by the Community and Youth Corrections Division. The available data represents alternative measures activity for the fiscal year 1996-1997 based on 1,826 cases of 2,564 alternative measures cases opened during the fiscal year 1996-1997. The data presented in this report does not represent all the data available with respect to alternative measures for youth in Manitoba but is rather intended to provide a sample of that which is available.

**Table 1. Alternative Measures Authorized in 96/97 by Age**

AREA/REGION	AGE							TOTAL
	MISSING DATA	12	13	14	15	16	17	
WINNIPEG	136	23	143	166	222	190	173	1053
WESTMAN	34	2	21	28	43	35	43	206
EASTMAN	20	1	13	20	23	29	18	124
CENTMAN	19		5	10	1	18	12	75
INTERLAKE	14	3	8	11	15	22	20	93
PARKLANDS	9	2	13	17	12	14	15	82
NORMAN	3	3	4	10	8	9	4	41
THOMPSON	13	6	19	32	33	25	23	151
<b>TOTAL / %</b>	248 13.6%	40 2.2%	226 12.4%	294 16.1%	367 20.1%	342 18.7%	308 16.9%	1826 99.9%

**Table 2. Previous Participation in Alternative Measures**

	Frequency	Valid Percent
<b>Valid No</b>	1637	89.6
<b>Yes</b>	189	10.4
<b>Total</b>	1826	100

**Table 3. Previous Court Convictions**

	Frequency	Valid Percent
<b>Valid No</b>	1814	99.3
<b>Yes</b>	12	0.7
<b>Total</b>	1826	100

**Table 4. Previous Stay of Proceedings**

	Frequency	Valid Percent
Valid No	1448	79.3
Yes	375	20.5
Unknown	3	0.2
Total	1826	100

**Table 5. Offence Groups for All referrals in 96/97**

OFFENCE GROUP	Sex		Total / %
	FEMALE	MALE	
AGAINST PERSON MAJOR	35	41	76 4.1%
AGAINST PERSON MINOR	7	9	16 0.8%
NARCOTICS MINOR	4	13	17 0.8%
AGAINST PROPERTY MAJOR	57	320	377 20.6%
AGAINST PROPERTY MINOR	545	728	1273 69.7%
OTHER CRIMINAL CODE	10	28	38 2.0%
OTHER	3	19	22 1.2%
TOTAL	661 36.2%	1165 63.8%	1826 100%

**Table 6. Alternative Measures Authorized in 96/97 by Sex**

AREA / REGION	Sex		Total
	FEMALE	MALE	
WINNIPEG	396	657	1053
WESTMAN	69	137	206
EASTMAN	46	78	124
CENTMAN	28	47	75
INTERLAKE	28	65	93
PARKLANDS	29	53	82
NORMAN	17	24	41
THOMPSON	48	103	151
TOTAL / %	661 36.2%	1164 63.7%	1825 99.9%

**Table 7. Alternative Measures Authorized and Decision Reached in 96/97**

AREA / REGION	CONSENTED TO ALTERNATIVE MEASURES						TOTAL
	AGREED	REJECT - NOT GUILTY	REJECT - COURT PREFERRED	UNABLE TO LOCATE	NO CONTACT or RESPONSE	OTHER	
WINNIPEG	1028	32	2	128	73	109	1372
WESTMAN	205			1		30	236
EASTMAN	119	8		2	4	11	144
CENTMAN	72	2	4	4	10	3	95
INTERLAKE	103			7		9	119
PARKLANDS	75	3		3	1	11	93
NORMAN	37					5	42
THOMPSON	109	4	1	17	12	8	151
TOTAL / %	1748 77.3%	49 2.2%	7 0.3%	162 7.2%	100 4.4%	186 8.2%	2252 99.6%

**Table 8. Alternative Measures Authorized and Youth Consented in 96/97**

AREA / REGION	ADMINISTERED BY?						TOTAL	
	PROBATION	CONTRACT WORKER	VOLUNTEER	JUSTICE COMMITTEE	OTHER ORGANIZATION	LETTER TO PARENT		OTHER
WINNIPEG	49		2	405	2	568	2	1028
WESTMAN	28	1	6	109			61	205
EASTMAN	41	3	2	62	2	9		119
CENTMAN	15			43		14		72
INTERLAKE	11	8		71		13		103
PARKLANDS	31			27		17		75
NORMAN	14	4	1	18				37
THOMPSON	41	7	7	44	2	7	1	109
TOTAL / %	230 13.2%	23 1.3%	18 1.0%	779 44.5%	6 0.3%	628 35.9%	64 3.7%	1748 99.9%

**Table 9. Alternative Measures with Youth Consented, Closed in 96/97**

AREA / REGION	REASON CASE CLOSED						TOTAL
	SUCCESS	DISPUTED	PREFERRED COURT	UNABLE TO LOCATE	NOT COOPERATING	OTHER	
WINNIPEG	1074	2		7	45	19	1147
WESTMAN	204		1	1	13	2	221
EASTMAN	122			4	11	2	139
CENTMAN	88				6		94
INTERLAKE	120				6	3	129
PARKLANDS	98				4	2	104
NORMAN	50				3		53
THOMPSON	95	1			13	3	112
TOTAL / %	1851 92.6%	3 0.2%	1 0.1%	12 0.6%	101 5.1%	31 1.6%	1999 100%

## 8.18 References

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# 9. Saskatchewan

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## 9.1 The Philosophy of Alternative Measures

Alternative measures programs for youth are defined in the *Young Offenders Act (Canada)* (see Chapter 1, s.1.1 for the specific wording) as programs other than judicial proceedings that may be used to deal with young persons who are alleged to have committed an offence. In Saskatchewan, alternative measures programs for youth are authorized by the Minister of Justice and administered by

the Saskatchewan Department of Social Services. They are offered at both the pre-charge and the post-charge stage and consist of a variety of measures from cautioning to family group conferences. This non-confrontational approach is viewed as being more responsive to the needs of the victim, the young person, and society. A broad range of programs varies by location and may include StopLift (an educational program for shoplifters), Family Group Conferencing, and formal cautioning (i.e., sanctions assigned to the young person). Community Justice Committees will be used to deliver alternative measures in the future. While alternative measures provides an alternative to the court proceedings, it is a formal procedure, visible and publicly accountable, whereby a voluntary settlement of an alleged offence is developed between the offender, the victim (where applicable), and the community.

Alternative measures for youth is a province-wide program offered at both the pre-charge and the post-charge stage. The program often uses mediation as a way of providing youth with the opportunity to accept responsibility for their behaviour and to be responsible to the needs of the victims.

Saskatchewan Social Services has been offering youth mediation since 1984. Youth workers, community-based organizations, and contracts with individuals deliver the province-wide alternative measures programs for youth. This enables the youth justice system to accomplish several goals; it creates the least possible interference and disruption to the lives of young people while ensuring they pose a minimal threat to the community, and it provides youth who have not committed a serious offence with an opportunity to avoid the consequences of a criminal record. In addition, the alternative measures program reduces the number of cases heard by the youth court and holds youth accountable in a manner which is visible to the community (Saskatchewan Social Services, 1995).

Two adult mediation/diversion projects have been operating in Saskatchewan since 1984. In September 1996, Saskatchewan Justice authorized adult alternative measures in accordance with section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.1 for the specific wording of this section). The adult alternative measures programs currently underway in Saskatoon, Battleford, Moose Jaw, Regina, Prince Albert, Weyburn, Yorkton and Fort Qu'Appelle are modeled on existing youth programs and embrace the following restorative justice principles:

- The rehabilitation and reintegration of the offender. The offender must take full responsibility for his or her actions and will be held accountable through measures which encourage healing.

- The victim has to be treated with respect and in a manner that encourages healing, harmony, and balance in his or her life. The victim will be involved as appropriate, in family/community group conferences, mediations, etc.

- Restorative and rehabilitative measures, not those that focus on retribution or punishment, will be used.

- Services will be viewed as options to the traditional justice system.

- Services will focus on alternative measures that restore harmony and encourage healing and balance in the community.

- Services are available to all suitable candidates, Aboriginal and non-Aboriginal, youth and adult alike.

- Services will be culturally sensitive.

- Services provided will be accountable to the community.

Alternative measures programs for adults were authorized by Saskatchewan Justice in September 1996. They are modeled on existing youth programs and accept referrals at both the pre and post-charge stage. Additional guidelines exist for those programs that offer mediation as a process.

The Crown Prosecutor makes referrals to the adult alternative measures programs at both the pre-charge and the post-charge stage upon review.

## 9.2 Responsibility for the Delivery of Alternative Measures

### 9.2.1. Youth

The responsibility for alternative measures programs for youth in Saskatchewan lies with the Department of Social Services. These include community volunteers, persons in private practice, youth workers and community based organizations such as the John Howard Society, Indian and Metis Friendship Centres and tribal councils.

An example is a restorative justice program made and delivered by Aboriginal people in Regina. This program's mandate is to deliver alternative measures programming for adults as well as for youth. The youth program is designed along the lines of the family group conference concepts used in Australia and New Zealand. It is a way of dealing with youthful offenders, which involves creating a positive environment for change, healing, and reconciliation for all parties to the offence, including offenders, victims and the community.

As well, an educational StopLift program that teaches life skills and the consequences of shoplifting and its effects on individuals and society is available in Regina, Prince Albert, and Saskatoon.

### 9.2.2. Adult

The alternative measures programs for adults are designed to increase the level of victim involvement with the criminal justice process and satisfaction. As well, they increase the level of community involvement in and responsibility for intervention strategies. The responsibility for the delivery of adult alternative measures programs lies with Saskatchewan Justice through contracts with community-based agencies. Two examples are the community-based Saskatoon Community Mediation Services and the adult diversion program in the Battlefords. The former has been operating an adult victim-offender mediation and diversion program since 1983, and the latter has been in operation since 1991 through a Diversion Coordinator, with a fee for service for each case accepted.

## 9.3 Referral Agent

### 9.3.1. Youth

The Crown Prosecutor is responsible for authorizing all referrals to alternative measures programs for youth. Where sufficient evidence exists to lay a charge

Referrals are made pre-charge or post-charge upon review by the Crown Prosecutor.	the police may decide to recommend to the Crown Prosecutor that the offence be dealt with by way of alternative measures. Upon review of the case documentation and taking into consideration the recommendation of the police and the eligibility criteria, the Crown Prosecutor may choose to refer the case pre-charge to alternative measures, lay a charge and refer the case post-charge or alternatively, proceed with formal youth court proceedings.
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### 9.3.2. Adult

The Crown Prosecutor authorizes all referrals to alternative measures for adults. In most cases, the police, subsequent to an investigation, make a recommendation to the Crown Prosecutor as to the suitability of the alleged offender for the program. The Crown Prosecutor may then refer the case pre-charge, lay a charge and refer the case post-charge or choose to proceed with normal court proceedings. In the event of a post-charge referral, the Crown adjourns the information pending the outcome of the alternative measures process. Upon successful completion, the Crown withdraws the charges.

## 9.4 The Role of the Police

### 9.4.1. Youth

The police play a very significant role in the overall delivery of alternative measures programs for youth in Saskatchewan. Through the investigation of criminal offences, the police identify cases involving young offenders that may be

The investigating officer(s) often makes a recommendation about the suitability of a young person for alternative measures. The police may also play an active role in the alternative measures process, itself, when it is felt that their presence may be beneficial to the outcome.

suitable for the alternative measures process. While the investigating officer(s) often makes a recommendation about the appropriateness of alternative measures, the particular process that is followed may vary somewhat depending on the program.

For example, in one program, officers may refer youth pre-charge if they are satisfied that the young person meets the

criteria. The S/Sgt. responsible for court services reviews the case and consults with the Crown Prosecutor as to the appropriateness of the referral. If the Crown Prosecutor authorizes the referral, the S/Sgt. will forward it to the agent to start the alternative measures process.

In another program, the investigating officer (RCMP) identifies those young persons suitable for alternative measures. If the young person is prepared to accept responsibility for the alleged offence, the investigating officer explains the alternative measures process to the youth and his/her family and, if applicable, attempts to obtain the consent of the victim. The officer then contacts the Crown Prosecutor by facsimile to obtain authorization for the referral. If the Crown Prosecutor confirms the referral, the RCMP forwards the case to the alternative measures program.

### 9.4.2. Adult

The police play a very similar role in the delivery of alternative measures programs for adults as they do for youth programs in Saskatchewan. Through

The police make recommendations about an adult offender's suitability for alternative measures. This is significant in the Crown's decision to authorize a referral.

the investigation of criminal offences, the police identify cases involving offenders that may be suitable for the alternative measures process. While the investigating officer(s) does not make direct referrals to the alternative measures programs he/she often makes

a recommendation as to the appropriateness of alternative measures for particular cases. The Crown Prosecutor then reviews this recommendation.

The role of the police does not necessarily terminate at the recommendation or referral stage. In cases where their presence may be seen as beneficial to the

successful outcome of a family group conference, the police will be invited to participate.

## 9.5 The Role of the Crown Attorney

### 9.5.1. Youth

The Crown Prosecutor plays a pivotal role in the alternative measures process for youth in Saskatchewan. The Crown is responsible for approving all referrals to the alternative measures program after an investigation has been completed and

The Crown Prosecutor is responsible for authorizing or approving all referrals to the alternative measures program.

it has been established that sufficient evidence exists to justify a charge, and the prosecution is not in any way barred at law. Often, in the event of pre-charge referrals, the Crown will review the recommendation of the police in determining whether or not to approve the referral.

In the case of post-charge referrals, the Crown, often in consultation with the police and the alternative measures program personnel will make the decision to send the young person to alternative measures and will enter proceedings to allow for the completion of the process. If the Crown does not approve the young person for alternative measures, the young person will be charged and will proceed through the formal youth justice system.

### 9.5.2. Adult

The Crown is responsible for authorizing referrals to alternative measures consistent with the provincially approved alternative measures policy that sets criteria for referring the offender and the offences that may be considered suitable for alternative measures.

In the event of pre-charge referrals, the determination and recommendation is often made by the investigating police officer and/or superiors and referred to the Crown for approval. If the Crown does not approve the referral for alternative measures, the offender is charged and could proceed through the formal justice system or through post-charge diversion. In the case of post-charge referrals, the Crown makes the decision to refer the offender to alternative measures.

## 9.6 The Role of the Victim

### 9.6.1. Youth

The extent to which the victim is involved is determined in large part by the choice of alternative measure and the victim's willingness to participate in the process. After a referral has been made and the young person has accepted responsibility for the alleged offence, mediation and family group conferencing provide an opportunity for the accused young person, parents/guardians, victim, and a mediator to meet to discuss the incident and to arrive at a consensus regarding resolution and/or reconciliation.

The victim is contacted by the alternative measures program personnel and is encouraged to participate in the process. In the case of mediation and fgc, the victims are given an opportunity to voice their view on the impact the offence has had on them as well as an opportunity to provide input into the measures that may be agreed upon at the end of the process. The victim may participate personally in the process, by telephone, or submit their thoughts in writing. Although the victim is encouraged to participate fully in the process, participation is voluntary. In

The victim plays a very important role in the alternative measures process. Their participation, in person, by telephone or through written submissions, is strongly encouraged. If the victim does not want to or cannot participate, an impact statement may be obtained from the victim, or surrogate victim may be used in the alternative measures meeting.

circumstances where the victim chooses not to participate, a surrogate victim (i.e., a person substituting for and/or taking the role of the victim in the alternative measures process) may be used. Cases involving personal injury will not, generally, use a surrogate victim without the agreement of the victim. If the victim is agreeable to the use of a surrogate, the alternative measures personnel obtains a thorough impact statement from the victim to be used during the alternative measures meeting. One of the goals of the alternative measures program is to allow for the restoration of harmony involving the young person, the victim(s), and the community in a process of reconciliation. This is best achieved through mediation, family group conferencing or healing circle process.

### 9.6.2. Adult

One of the objectives of the alternative measures program for adults is to increase the level of victim involvement with the criminal justice process and the satisfaction that victims feel with the outcome of the resolution of the offence.

The participation of the victim, although voluntary, is strongly encouraged. This participation may be in person (the preferred manner), by telephone, or by submitting their thoughts in writing. Should the victim choose not to participate, a surrogate victim may be used (i.e., a person substituting for and/or taking the role of the victim in the alternative measures process). Cases involving personal injury will not, generally, take place with a surrogate victim without the agreement

of the victim. If the victim is agreeable to the use of a surrogate, the alternative measures personnel may obtain a thorough impact statement from the victim to be used during the alternative measures meeting.

## 9.7 Right to Legal Counsel

### 9.7.1. Youth

Section 4(1)(d) of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.7 for the specific wording of the section) specifies that before becoming involved in alternative measures, a young person must fully and freely consent to participate having been informed of, and given the opportunity to, consult counsel. The primary responsibility for ensuring that the young person is informed of their right to legal counsel rests with the person, either the police or the Crown, who is considering a referral to alternative measures. Often the right to consult counsel will be reinforced at the initial intake meeting with the alternative measures program personnel.

### 9.7.2. Adult

Section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.7 for the specific wording of this section) states that before becoming involved in alternative measures, a person alleged to have committed an offence must fully and freely consent to participate. This consent is to be provided only after being informed of the right to consult counsel. In Saskatchewan, the primary responsibility for ensuring that the person is informed of the right to counsel rests with the police or the Crown whichever is considering a referral to alternative measures. This right to consult counsel prior to agreeing to participate in the alternative measures program is often restated at the initial meeting between the alternative measures agency personnel and the offender.

## 9.8 Eligibility Criteria

### 9.8.1. Youth

Formally authorized alternative measures programs for youth are instituted across Canada pursuant to the federal *Young Offenders Act (Canada)*. The legislated criteria governing the referral process and eligibility criteria are contained in sections 4(1) and 4(2) of the *Act* (see Chapter 1, s.1.8 for the wording of the applicable sections).

In addition to the legislated criteria, provincial policies are specifically designed to ensure that the program addresses the particular needs of the province or the community. In Saskatchewan, alternative measures will not be considered in cases where:

- the incident, or alleged incident, involves the use of or threatened use of a weapon;
- the incident, or alleged incident, is one of violence against the person (adult or child), (where the Crown elects to proceed by way of indictment), including offences such as murder, attempted murder, or sexual assault;
- the incident, or alleged incident, involves child sexual abuse;
- the incident, or alleged incident, is perjury
- the incident, or alleged incident, involves driving while disqualified
- the incident, or alleged incident, involves any *Criminal Code* driving offence with alcohol or drugs a contributing factor;
- the incident, or alleged incident, involves any federal offence other than *Criminal Code*;
- the incident, or alleged incident, involves family violence.

There is no policy limiting the number of times a young person may access alternative measures. However, violent offences including family violence, use of a weapon, child sexual abuse, driving offences either while disqualified or involving drugs or alcohol, perjury and federal offences other than *Criminal Code* will not be considered. As well, if there is a significant failure to complete previous alternative measures, the young person will not be reconsidered

In addition to the above, alternative measures will not be used if the offender refuses to participate, or if there has been a significant failure to complete previous diversions, or if there exists other significant charges that call into question the appropriateness of alternative measures. Both the referral agent (Crown or police) as well as the agency administering the alternative measures program, retain the right to exclude a young person from the alternative measures program if they do not think that the young person or the offence is suitable for alternative measures or if there is no program available in the area.

### 9.8.2. Adult

In addition to the legislated criteria outlined in sections 717(1) and (2) of the *Criminal Code of Canada* (see Chapter 1, s.1.8 for the wording of these sections), the province of Saskatchewan applies specific criteria that must be met in order for alternative measures to be considered for offenders. The offender must not have been diverted more than twice in the last three years, must have no failed diversion in the last six months, and must have no substantial record of similar offences or recent charges.

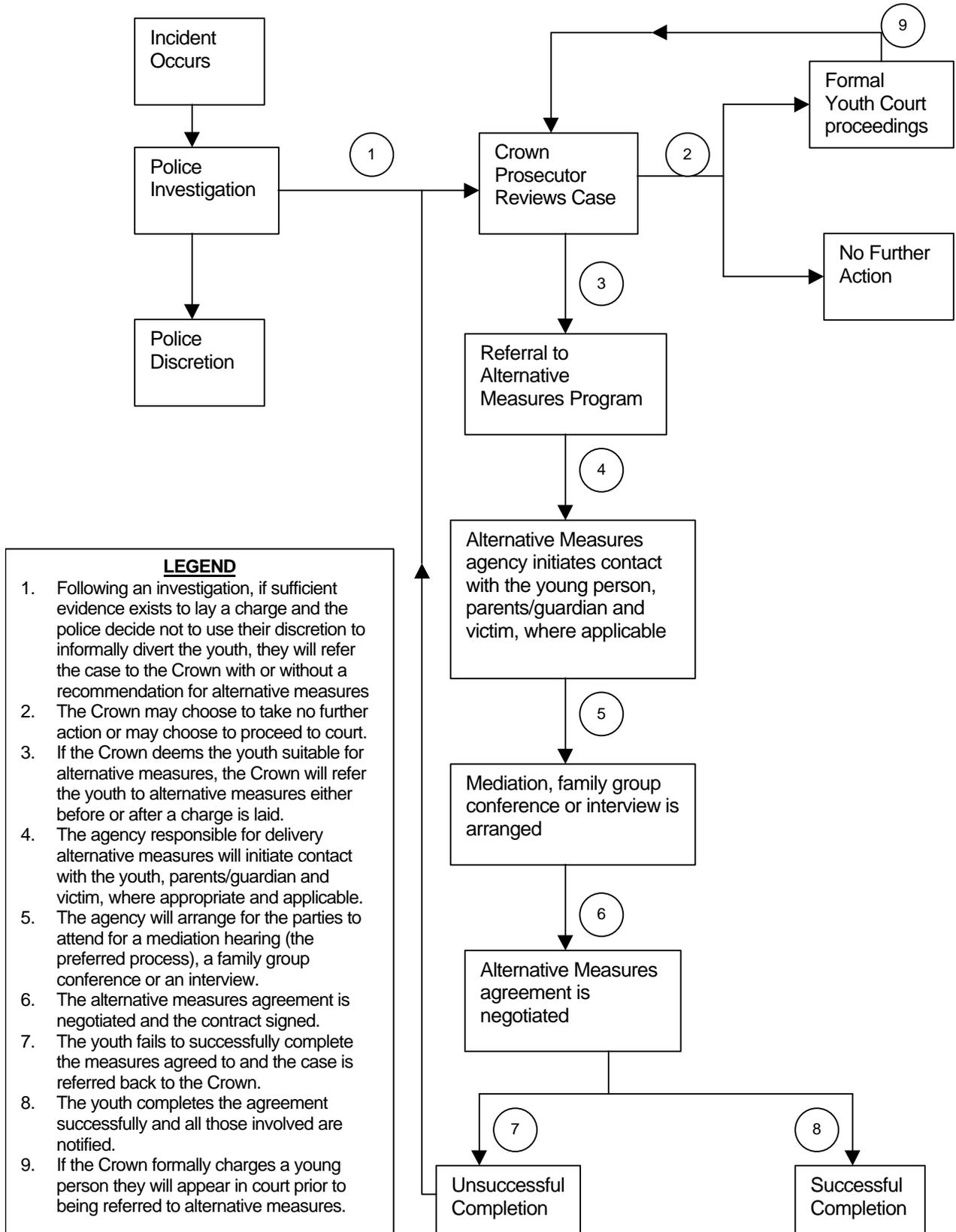
The offences that are not considered suitable for alternative measures are:

- use of or threatened use of a weapon;
- violence against the person (adult or child), where the Crown elects to proceed by way of indictment;
- child sexual abuse;
- sexual assault, where Crown elects to proceed by way of indictment
- perjury
- driving while disqualified
- *Criminal Code* driving offences where alcohol was a contributing factor;
- federal offences other than *Criminal Code*
- family violence

An adult will not be considered for alternative measures if they have been diverted more than twice in the last three years, or have a failed diversion in the last six months, or have a substantial record of similar offences or recent charges. As well, if the incident is a violent offence including family violence, use of a weapon, child sexual abuse, driving offences either while disqualified or involving alcohol, perjury, and federal offences other than *Criminal Code*, the offender will not be considered.

Alternative measures will not be used if the offender refuses to participate. The referral agent, either the police or the Crown, or the agency administering the program may exclude an offender if they deem that the offender or the offence is not suitable for the alternative measures program. Individual programs may create additional criteria.

## 9.9 Alternative Measures Process for Youth



Normally a referral is received by the agency administering alternative measures in writing and signed by the Crown Prosecutor. The referral contains information directly related to the offence as well as information regarding the young person (see s.9.16 for a sample form). At a minimum, the information includes the date of the incident, the charge and date the charge was laid (in the case of a post-charge referral), the name of the young person, date of birth, address and telephone number, as well as identifying information on the victim, if applicable. The referral also indicates the particulars of the charge with respect to what was stolen or damaged, whether or not property was recovered, whether or not there were others involved, the status of the charge, any scheduled court dates and the police file number for reference. The Crown Prosecutor forwards copies of the referral to both the police and the alternative measures agent.

The agency administering the alternative measures contacts all parties involved, assesses each case as to the diversion process best suited to meet the needs of the victim and the young person, coordinates and facilitates the meeting(s) and is responsible for monitoring the completion of the agreement and for referring youth back for appropriate action in the event they do not comply.

When a referral has been made the young person is advised to contact the agent as quickly as possible. An initial meeting with the young person is scheduled immediately after contact has been established. This initial meeting provides an opportunity for the alternative measures agent to complete an initial assessment that aids in determining criminogenic needs and risk levels of the accused and in deciding which venue will best suit the needs of the victim and the accused (i.e., cautioning mediation, family group conference, etc.).

Once a referral is accepted into the alternative measures program, the alternative measures program personnel contact the victim, young person, and family of the young person to explain the program and their respective roles as well as the role that may be played by Elders or other representatives. The alternative measures personnel assists the victim(s) to focus their feelings and to determine whether or not they wish to participate in the process. Victims are encouraged to have supporters participate with them or to access the assistance of Elders, spiritual representatives or staff of the alternative measures agency. It is explained to them that their participation may be in person, by telephone, by submitting their thoughts in writing, or in some situations through a surrogate. If the victim is unable or unwilling to participate in the process and refuses to allow for a surrogate victim to be used, the alternative measures agency personnel will not proceed with a mediation or a family group conference process.

Mediation is a particular type of diversion that provides an opportunity for victims and offenders to meet and to effect a reconciliation and reparation. In order for an alternative measures agency to provide mediation, they must have mediators who have a combination of theoretical and practical training specific to criminal justice mediation as required by Saskatchewan Social Services. Family group conferences are another type of diversion that allows victims, offenders, their families and significant others, such as extended family and community members who have an interest in the outcome, or are affected by the crime, an opportunity

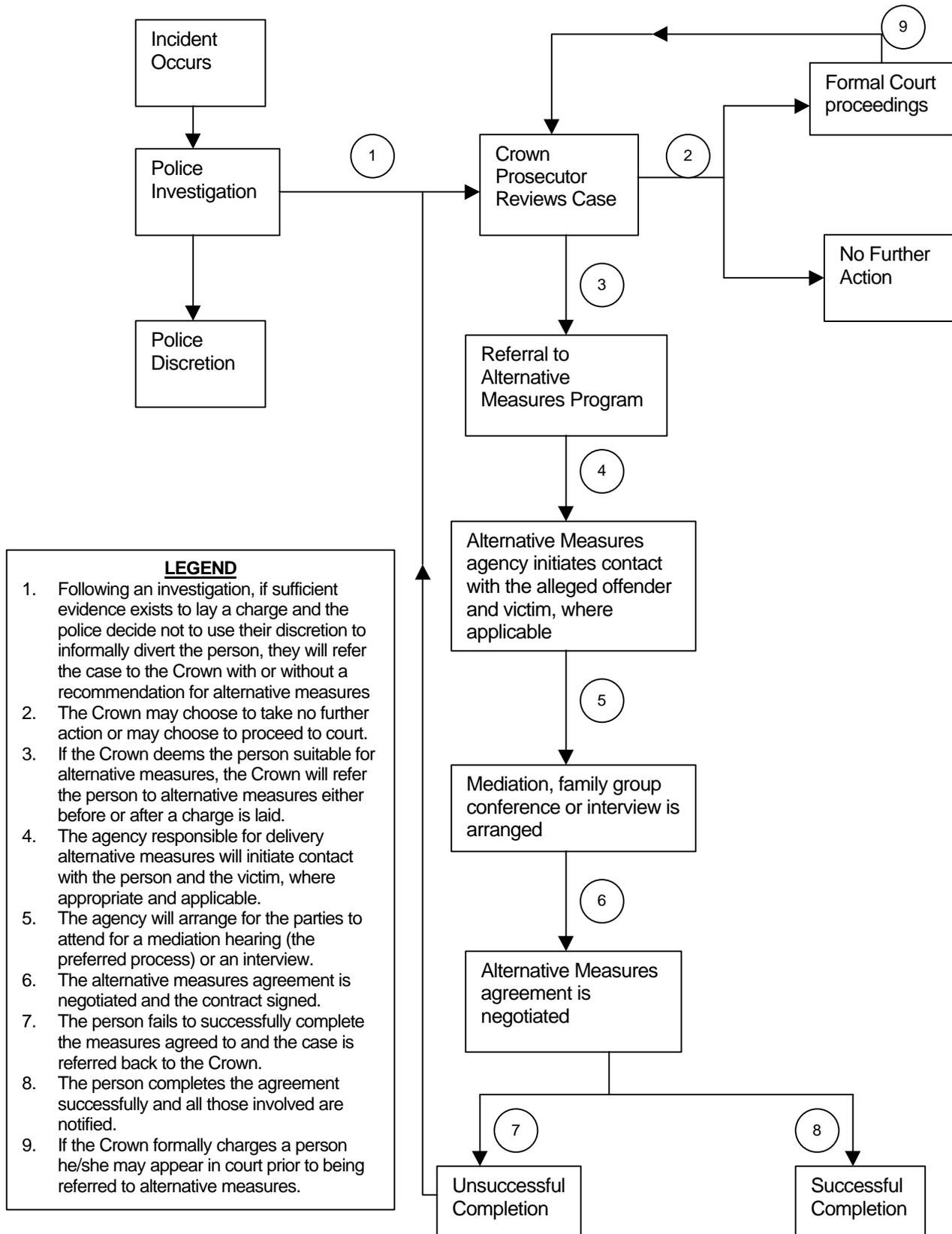
to meet and attend to the emotional and material effects resulting from and related to the incident. These programs involve participants in a process of healing, reconciliation and consensus decision-making in an effort to reintegrate the offender into the community. Alternative measures agencies wishing to provide family group conferencing as an avenue for alternative measures must have coordinators who have a combination of theoretical and practical training specific to criminal justice mediation as required by Saskatchewan Social Services.

Whether the prescribed diversion process is a family group conference, mediation, or healing circle and all parties agree to participate, the alternative measures agent will determine a date, time and location to convene the alternative measures meeting. The alternative measures agency staff will prepare all participants, coordinate attendance of Elders/spiritual representatives and facilitate the meeting. The police will be advised of the particulars and may, if deemed necessary, attend the alternative measures meeting.

When the alternative measure reaches a resolution, the details are documented and the required follow-up identified in a statement agreement that both the victim and the young person sign and receive copies of. The alternative measures agency personnel will coordinate the completion of the agreement and may reconvene an alternative measures meeting to facilitate completion if necessary.

In the event that the process cannot achieve a resolution, the parties will be informed and the case will be returned to the police, in the case of pre-charge referrals, or to the Crown Prosecutor, in the case of post-charge referrals. The case will also be returned if the offender fails to accept full responsibility for his/her actions, fails to make contact with the alternative measures agency, is deemed unacceptable, subsequent to the risk-needs assessment, or if the offender wishes to dictate the terms of the process.

## 9.10 Alternative Measures Process for Adults



The referral process to the adult alternative measures programs generally follow the same steps as those involved in referrals to the youth programs. At the post-charge stage, the Crown Prosecutor selects appropriate cases following an initial appearance in court and makes referrals. At the pre-charge stage, police officers who are satisfied that the offender has met the criteria, can refer the case to court services, for review. Officers are not required, at this point, to provide notice to appear in court. The offender is notified by the police to contact the agent regarding the incident. The police will review the case and consult with the Crown Prosecutor as to the appropriateness

In September 1996, RAMP started to offer adult alternative measures programming. The risk-needs assessments completed at the initial meeting helps determine suitability, create an action plan, and decide if the process should be one of mediation or an interview. RAMP is responsible for contacting all parties, arranging alternative measures meetings and monitoring the completion of the agreement.

of the referral. Those referrals that are authorized will be forwarded to start the process.

The offender is contacted and an initial assessment to explore the criminogenic risk-needs levels is completed. This assessment helps to determine suitability for the program, to create an action plan and to determine which venue will best meet the needs of the victim and the accused.

Once a referral is accepted into the program, the agent will contact the victim and the offender to explain the program and their respective roles as well as the role that may be played by Elders or spiritual representatives. The agent will assist the victim(s) to focus their feelings and to determine whether or not they wish to participate in the process. Victims are encouraged to have support people participate with them or to access the assistance of Elders, spiritual representatives or staff of the alternative measures agency. It is explained to them that their participation may be in person, by telephone, by submitting their thoughts in writing, or in some situations through a surrogate. If the victim is unable or unwilling to participate in the process and refuses to allow for a surrogate victim to be used, the mediation will not proceed.

Provincial policy states that in order for an alternative measures agency to provide mediation, they must have mediators who have a combination of theoretical and practical training specific to criminal justice mediation as required by Mediation Services Saskatchewan Justice.

The prescribed diversion process is mediation. The mediator will prepare all participants, coordinate attendance of Elders/spiritual representatives, and facilitate the meeting. The police will be advised of the particulars and may, if deemed necessary, attend the alternative measures meeting.

When the alternative measures reaches a resolution, the details are documented and the required follow-up identified in a statement agreement that is signed by both the victim and the offender and copies are provided to both. The agent will coordinate the completion of the agreement and may reconvene a meeting to facilitate completion if necessary.

In the event that the process cannot achieve a resolution, the parties will be informed and the case will be returned to the police or the Crown Prosecutor. The agency will also be returned the case if the offender fails to accept full responsibility for his/her actions, fails to make contact with the alternative measures agency, is deemed unacceptable, subsequent to the risk-needs assessment, or if the offender wishes to dictate the terms of the process.

## 9.11 The Alternative Measures Agreement

### 9.11.1. Youth

Whether the diversion process is one of mediation, cautioning, family group conference, healing circle, or interview, if a resolution is reached the details are documented in a statement agreement along with the manner of follow-up required. The provincial policy promotes creativity to ensure that the agreements meet the needs of the victim, the young person, and the community. Although there is a range of options identified in the policy, the policy states that any reasonable agreement may be arranged as long as it is consented to by the young person, the agency and, where applicable, the victim.

The alternative measures agreement is a binding contract that specifically outlines the expectations and the time frame for completion. The agreement should be observable, verifiable, and possible to complete, time limited, related to the harm done as identified by agreement of both parties, agreed to by the young person, the victim, and the mediator, and signed by all parties. A copy of the agreement will be provided to the young person and the victim upon signing.

The alternative measures agency personnel will coordinate the completion of the agreement and will, if necessary, reconvene a meeting to facilitate the completion and/or to amend the agreement upon consent of all parties involved.

### 9.11.2. Adult

When an alternative measure for adults reaches a resolution either through an interview or mediation, the agreement is documented in a written statement that includes the manner of follow-up required. The alternative measures agent coordinates the completion of the agreement and, if required, reconvenes a meeting to assist with the completion of the agreement or amend the agreement if necessary and if consented to by all parties.

The provincial guidelines respecting the alternative measures programs identify several possible options that may be included in the agreement. The policy also allows for discretion to develop any reasonable agreement that is consented to by the victim, the offender and the alternative measures agent that may better address the needs of the victim, the offender and the community. The agreement is a binding contract and should be specific, time limited and achievable. Once signed, a copy of the agreement is provided to both the victim and the offender.

## 9.12 The Range of Alternative Measures

### 9.12.1. Youth

Saskatchewan's restorative justice initiative policy identifies a range of possible options that may be used where available and accessible in a reasonable period of time. The agent administering the alternative measures program is not limited to these options and is in fact encouraged to use creativity in identifying reasonable options that are consented to by the victim, the offender, and the staff of the agency. The provincial policy highlights the following options:

- *Restitution/Compensation*: either in cash or in kind.
- *Personal Service Work for Victim*: if consented to by the victim, the young person may be requested to perform a number of personal service work hours for the victim.
- *Community Service Work*: which is a common part of an agreement and consists of having the young person perform volunteer community service work hours at a local agency.
- *Mediation*: which is a particular type of diversion that allows for the victim and the young person to meet and effect a reconciliation and reparation. Often the agreement generated at the conclusion of a mediation will include one or more of the other options presented herein.
- *Family Group Conference/Community Accountability Conferences*: which is a particular type of diversion. Victims, offenders, their families and significant others, such as extended family and community members who have an interest in the outcome, or are affected by the crime, are provided an opportunity to meet and attend to the material and emotional effects resulting from the incident. The resulting agreement may also include one or more of the options presented here.
- *Donation to Charity*: which includes donations of money or goods such as personal artwork, baking, quilting, or sewing and other personal goods.
- *Referral to a Specialized Program*: such as a life skills program, a crime prevention program or StopLift which is an educational program designed to educate young people about the effects of shoplifting.
- *Referral for Counseling/Treatment*: which may include referrals to drug/alcohol treatment centers, health, mental health and/or social service agencies.
- *Participation in Aboriginal Cultural Activities*.

The range of options provided in the provincial policy is such as to promote creativity in the application of measures and the choice of process to individualize the alternative measures program to best meet the needs of the victim, the young person, and the community.

- *Other Reasonable Agreements.*
- *Some combination of the above.*

#### 9.12.2. Adult

Saskatchewan's Restorative Justice initiative policy identifies a range of possible options that may be used where available and accessible in a reasonable period of time. The agency administering the alternative measures program is not limited to these options and is in fact encouraged to use creativity in identifying reasonable options that are consented to by the victim, the offender, and the staff of the agency. The provincial policy highlights the following options for the adult alternative measures programs:

The restorative justice philosophy encourages the use of individualized agreements to best meet the needs of the victim, the offender, and the community. Alternative measures agencies may choose an option(s) from the list or create other options that best address the circumstances of the particular case.

- *Restitution/Compensation:* either in cash or in kind.
- *Personal Service Work for Victim:* if consented to by the victim.
- *Community Service Work:* which refers to a specified number of volunteer community service hours that the offender would complete in, or for, a local agency.
- *Mediation:* which is particular type of diversion provided for in the adult alternative measures program that that gives the victim and the offender an opportunity to meet and to effect a reconciliation or reparation. Special consideration is given in favour of cases where there is an on-going relationship between the victim and the offender. Often, the resulting agreement will include one or more of the other measures mentioned here.
- *Donation to a Charity:* either a financial donation or a donation of personal goods.
- *Referral to Specialized Program:* such as a life skills program, a crime prevention program or a StopLift program aimed at educating the offender about the effects of shoplifting.
- *Referral for Counseling/Treatment:* which may include a referral to a drug/alcohol treatment centre, a health, mental health, or social service agency to help address the needs of the offender.
- *Aboriginal Cultural Activities.*
- *Other Reasonable Agreements.*

- *Some combination of the above.*

## 9.13 Supervision of Alternative Measures Agreement

### 9.13.1. Youth

Under the current guidelines and policies, the agent responsible for administering the alternative measures program is also responsible for monitoring the completion of the agreement. This includes arranging for appropriate placements for community service work and, if necessary, reconvening additional meetings to review the progress of the young person, to renegotiate the agreement or to amend the agreement with the consent of all parties involved. The agent assumes responsibility for completing all documentation and for keeping all parties informed of the status of the alternative measures.

### 9.13.2. Adult

Once an agreement is reached and signed, the agent responsible for administering the alternative measures program coordinates the completion of the agreement and may reconvene an alternative measures meeting to facilitate completion if necessary. With the consent of the victim, the offender, and the agency an alternative measures agreement may be renegotiated or amended to reflect any necessary changes. The agent completes all required documentation and keeps the involved parties informed of the status of the alternative measures upon completion.

## 9.14 Completion of Agreement

### 9.14.1. Youth

Upon successful completion of the alternative measures agreement, the agent responsible for administering the alternative measures program will provide written confirmation, including a brief summary of the particulars of the agreement, to the victim, the young person, the S/Sgt. in charge of court services, and the Crown Prosecutor. The agent will also forward evaluation and statistical information on a regular basis to the Saskatchewan Social Services Program Manager.

In the event that the young person:

- does not accept full responsibility for his/her actions;
- has not made contact with the alternative measures agency within one month;

- ❑ is deemed unacceptable for the program following the initial assessment;
- ❑ is unwilling to participate;
- ❑ fails to complete the agreement; or
- ❑ wishes to dictate the terms of the process;

the agent will advise the S/Sgt., the Crown Prosecutor, and the victim, in writing, that the matter is being referred back to the police (pre-charge) or the Crown (post-charge) for further action.

#### 9.14.2. Adult

When the offender completes the tasks as stipulated in the alternative measures agreement, the alternative measures agent will provide written confirmation, including a brief summary of the particulars, to the victim, police and the Crown Prosecutor. The agent also forwards evaluation and statistical information on a regular basis to Saskatchewan Justice.

In the event that the offender:

- ❑ does not accept full responsibility for his/her actions;
- ❑ has not made contact with the alternative measures agency within one month;
- ❑ is deemed unacceptable for the program following the initial assessment;
- ❑ is unwilling to participate;
- ❑ fails to complete the agreement; or
- ❑ wishes to dictate the terms of the process;

the agent advises the police, the Crown Prosecutor, and the victim, in writing, that the matter is being referred back to the criminal justice system for further action.

### 9.15 Record Keeping

#### 9.15.1. Youth

The provisions of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.15 for the wording of the appropriate sections) govern all records pertaining to alternative measures generally. In Saskatchewan, the agency responsible for delivering the alternative measures program is responsible for ensuring that all documentation is duly completed, stored, and disposed of appropriately. The

agency is also expected to forward statistical information regarding the program to the Program Manager, Saskatchewan Social Services.

#### 9.15.2. Adult

Record keeping provisions with respect to alternative measures for adults are governed by the provisions outlined in the *Criminal Code of Canada* (see Chapter 1, s.1.15 for the wording of the appropriate sections). It is the responsibility of the agent administering the alternative measures program to ensure that all required documentation is duly completed and that any records kept are done so according to the provisions of the *Criminal Code of Canada*. The agent is also required to forward statistical information and evaluation forms to the Program Manager, Saskatchewan Social Services, and Saskatchewan Justice.

## 9.16 Appendix "A" Forms

9.16.1. Alternative Measures Intake Form

**ALTERNATIVE MEASURES PROGRAM**

INTAKE Case Type  youth  adult  
 pre-charge  post-charge

Case # \_\_\_\_\_ Referral Date: \_\_\_\_\_  
 (mm/dd/yr)

Police Incident #: \_\_\_\_\_ Adjournment Date: \_\_\_\_\_  
 (mm/dd/yr)

Lawyer Type:  personal  Legal Aid  none  
 2<sup>nd</sup> Adjournment Date: \_\_\_\_\_  
 (mm/dd/yr)

Name of Legal Counsel: \_\_\_\_\_

Name of Prosecutor: \_\_\_\_\_ Courtroom #: \_\_\_\_\_

**OFFENDER INFORMATION:** Charge: \_\_\_\_\_ Type of Charge: \_\_\_\_\_  
 cc# person  property Description  
 NCA  YOA  Systems

Intake Date: \_\_\_\_\_ (mm/dd/yr)

Date of Offence: \_\_\_\_\_ (mm/dd/yr) Date of Charge: \_\_\_\_\_ (mm/dd/yr)

Name: \_\_\_\_\_  
 Last First Middle

Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Sex: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Hair: \_\_\_\_\_ Eyes: \_\_\_\_\_

Scars/Tattoos: \_\_\_\_\_

Racial Origin:  Treaty  Non-Status  Caucasian  other  
 Metis  Non-native Band Name: \_\_\_\_\_

School: \_\_\_\_\_ Grade: \_\_\_\_\_

Parental Involvement:  Yes  No Parent's Names: \_\_\_\_\_  
 Parent's Address: \_\_\_\_\_

<b>Education/Employment</b> <input type="checkbox"/> working full time <input type="checkbox"/> not applicable due to age <input type="checkbox"/> not working, not attending school <input type="checkbox"/> not working, history of employment <input type="checkbox"/> not working, no history of employment <input type="checkbox"/> not working, attending school <input type="checkbox"/> working part time <input type="checkbox"/> other _____	<b>Living Arrangement</b> <input type="checkbox"/> parental home <input type="checkbox"/> relative <input type="checkbox"/> board & room <input type="checkbox"/> cohabitation <input type="checkbox"/> community home <input type="checkbox"/> own home <input type="checkbox"/> foster home <input type="checkbox"/> friends <input type="checkbox"/> group home <input type="checkbox"/> therapeutic fh <input type="checkbox"/> no fixed address <input type="checkbox"/> rental <input type="checkbox"/> other _____
--	--

Child Welfare:  temporary ward  permanent ward  apprehended  none

Name of Co-Accused: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



**OUTCOME INFORMATION:**

1. Participation:            Family Group Conference       Mediation       Outside Referral       Cautioning

2. Closure Date: \_\_\_\_\_(dd/mm/yr)

3. Result:

- |   |  |
|---|--|
| <input type="checkbox"/> payment to victim _____        | <input type="checkbox"/> formal caution letter     |
| <input type="checkbox"/> community services _____(hrs)  | <input type="checkbox"/> donation to charity _____ |
| <input type="checkbox"/> service to victim (task) _____ | <input type="checkbox"/> essay/presentation        |
| <input type="checkbox"/> educational program            | <input type="checkbox"/> formal apology            |
| <input type="checkbox"/> counseling _____               | <input type="checkbox"/> referral _____            |
| <input type="checkbox"/> other _____                    |  |

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Case Status:            charge reactivated            active  
                           no further involvement

5. Outcome:

- |   |  |
|---|--|
| <input type="checkbox"/> unable to make contact         | <input type="checkbox"/> accused denied responsibility |
| <input type="checkbox"/> accused refused to participate | <input type="checkbox"/> unable to reach agreement     |
| <input type="checkbox"/> agency returned referral       | <input type="checkbox"/> inappropriate referral        |
| <input type="checkbox"/> total default                  | <input type="checkbox"/> partially completed           |
| <input type="checkbox"/> completed as amended           | <input type="checkbox"/> completed as planned          |
| <input type="checkbox"/> other _____                    |  |

**APPROVALS:**

Prosecutor: \_\_\_\_\_ Date: \_\_\_\_\_  
Intake Agent: \_\_\_\_\_ Date: \_\_\_\_\_  
Police: \_\_\_\_\_ Date: \_\_\_\_\_

**COMPLETION STATUS:**

Offender was successful                           Agent: \_\_\_\_\_  
 Offender was not successful                       Date: \_\_\_\_\_

9.16.2. Alternative Measures Data Form

Saskatchewan  
Social Services

**ALTERNATIVE MEASURES  
DATA FORM**

Agency Name: \_\_\_\_\_ Location: \_\_\_\_\_

Incident Number: \_\_\_\_\_ / \_\_\_\_\_ Case Number: \_\_\_\_\_ / \_\_\_\_\_  
(coll) (number) (yr) (agency) (number)

<b>Youth Information</b>			
Name: _____		_____	
Last Name			First Name
Birthdate: _____ / _____ / _____	Sex: Male <input type="checkbox"/>	Female <input type="checkbox"/>	
Youth's Constitutional Status: Status Indian <input type="checkbox"/> Non-Status Indian <input type="checkbox"/> Inuit <input type="checkbox"/> Metis <input type="checkbox"/> Non-Native <input type="checkbox"/> Unknown <input type="checkbox"/>			
<b>Offence Information</b>			
The information needed to complete the first part of this Section is available in the referral letter from the Crown Prosecutor. The Statute means - what legislation or Act was the offence committed under (the <i>Criminal Code</i> , the <i>Young Offenders Act</i> , etc.).			
	First Offence	Second Offence	Third Offence
Statute (legislation)			
Section			
What was the offence? Describe briefly (e.g., theft, mischief etc.).			
<b>Measures Type</b>			
<input type="checkbox"/> StopLift <input type="checkbox"/> Victim Offender Mediation <input type="checkbox"/> Justice Committee		<input type="checkbox"/> Accountability Conference <input type="checkbox"/> Circle Healing <input type="checkbox"/> Other Cautioning	
<b>Participation Information</b>			
How did the victim participate? <input type="checkbox"/> In Person <input type="checkbox"/> By Representative <input type="checkbox"/> By Letter <input type="checkbox"/> By Telephone <input type="checkbox"/> Verbal Information to Coordinator <input type="checkbox"/> Refused to Participate <input type="checkbox"/> Victim did not participate		Who else participated? <input type="checkbox"/> Offender's Parent(s) <input type="checkbox"/> Offender's Extended Family <input type="checkbox"/> Friends of Offender's Family <input type="checkbox"/> Offender's Peers <input type="checkbox"/> Offender's Lawyer <input type="checkbox"/> Victim's Family and/or friends <input type="checkbox"/> Police Representative <input type="checkbox"/> Crown Prosecutor <input type="checkbox"/> Aboriginal Elder <input type="checkbox"/> Child protection Worker <input type="checkbox"/> Youth Worker <input type="checkbox"/> Other Worker or Treatment Provider	

Measures Information	Case Outcome			
The Measures are what the youth agreed to do. Please indicate <u>all</u> Measures agreed to. If the agreement was amended, please indicate the Measures stated on the amended version.	The Case Outcome indicates the final result of the case. Check <u>only one</u> of the following outcomes.			
<input type="checkbox"/> Payment to Victim <input type="checkbox"/> Service to Victim <input type="checkbox"/> Community Service <input type="checkbox"/> Donation to Charity <input type="checkbox"/> Service to Victim (tasks) <input type="checkbox"/> Goods Donated to Charity <input type="checkbox"/> Formal Apology <input type="checkbox"/> Essay / Presentation <input type="checkbox"/> Counselling <input type="checkbox"/> Education Program <input type="checkbox"/> Referral <input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Youth completed the Measures as agreed / amended <input type="checkbox"/> Youth partially completed the Measures <input type="checkbox"/> Youth could not be located <input type="checkbox"/> Youth said he did not commit the offence <input type="checkbox"/> Youth refused to participate <input type="checkbox"/> Youth agreed to participate but did not come to the meeting(s) <input type="checkbox"/> Mediator could not get the two sides to agree <input type="checkbox"/> Agency returned the referral <input type="checkbox"/> Youth agreed to some of the Measures but did not attempt to complete them <input type="checkbox"/> Other			
Offender and Family Satisfaction				
	Dissatisfied	Limited Satisfaction	Moderately Satisfied	Largely Satisfied
Was the victim satisfied with the outcomes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was the offender satisfied with the outcomes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Were the parent's or caregiver(s) satisfied with the outcomes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If present, was the police representative satisfied with the outcomes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Referral and Case Closure				
Date of referral to Alternative Measures : _____/_____/_____ Was the referral pre-charge? <input type="checkbox"/> post-charge? <input type="checkbox"/> Date Alternative Measures was completed: _____/_____/_____				

9.17 Appendix 'B' Data

The following information is based on a preliminary analysis of the Alternative Measures data to August 1997. The tables presented here do not represent all available data but rather were selected to provide a general overview of the alternative measures activity and to illustrate some of the information that is currently available.

**Table 1. Distribution of Referrals**

Adult			Youth			Total
Post	Pre	Total	Post	Pre	Total	
Cases						
662	52	714	240	82	322	<b>1036</b>

**Table 2. Type of Measures Participated in - Youth and Adult**

		Post			Pre			Total
		Adult Cases	Youth Cases	Total Cases	Adult Cases	Youth Cases	Total Cases	Cases
<b>Cautioning</b>	In House	58		58	5	2	7	<b>65</b>
	To be determined	92		92	3		3	<b>95</b>
	<b>Total</b>	<b>150</b>		<b>150</b>	<b>8</b>	<b>2</b>	<b>10</b>	<b>160</b>
<b>FGC</b>	In House	3	40	43		11	11	<b>54</b>
	To be determined	1		1	1	2	3	<b>4</b>
	Refer to John Howard					1	1	<b>1</b>
	<b>Total</b>	<b>4</b>	<b>40</b>	<b>44</b>	<b>1</b>	<b>14</b>	<b>15</b>	<b>59</b>
<b>Mediation</b>	In House	90		90	4	1	5	<b>95</b>
	To be determined	87		87	3	1	4	<b>91</b>
	Refer to John Howard		32	32		13	13	<b>45</b>
	<b>Total</b>	<b>177</b>	<b>32</b>	<b>209</b>	<b>7</b>	<b>15</b>	<b>22</b>	<b>231</b>
<b>Not recorded yet<sup>1</sup></b>	In House	80	17	97	4	7	11	<b>108</b>
	To be determined	220	2	222	30	1	31	<b>253</b>
	Refer to John Howard		134	134	2	39	41	<b>175</b>
	<b>Total</b>	<b>300</b>	<b>153</b>	<b>453</b>	<b>36</b>	<b>47</b>	<b>83</b>	<b>536</b>
<b>Outside Referral</b>	In House	4		4				<b>4</b>
	To be determined	5	10	15		3	3	<b>18</b>
	Outside Referral	3		3				<b>3</b>
	Refer to John Howard		5	5		1	1	<b>6</b>
	<b>Total</b>	<b>12</b>	<b>15</b>	<b>27</b>		<b>4</b>	<b>4</b>	<b>31</b>
<b>Total</b>		<b>643</b>	<b>240</b>	<b>883</b>	<b>52</b>	<b>82</b>	<b>134</b>	<b>1017</b>

<sup>1</sup> Refers to cases that are active or where the measure is yet to be determined.

**Table 3. Offences Referred to Alternative Measures - Adults**

<b>ADULT</b>			
	<b>Post</b>	<b>Pre</b>	<b>Total</b>
	<b>Cases</b>	<b>Cases</b>	<b>Cases</b>
AGGRAVATED ASSAULT	2		2
ASSAULT	88	10	98
ASSAULT/BODILY HARM (CBH)	14		14
ASSAULT PEACE OFFICER	2		2
ASSAULT/WEAPON	5		5
ASSAULT WITH INTENT TO RESIST ARREST	2		2
ATTEMPT	1		1
B&E	1		1
B&E ATTEMPT	1		1
B&E THEFT	33	4	37
BREECH OF PROBATION	1		1
CAUSE DISTURBANCE	6		6
CHEATING AT PLAY	1		1
COMMUNICATING/SOLICITING	2		2
FRAUD	41	2	43
CONTEMPT	1		1
DANGEROUS OPERATION OF MV	2		2
FAIL TO APPEAR	1		1
FAIL TO STOP AT SCENE	2		2
FALSE PRETENCE	2		2
FALSE STATEMENT	1		1
FORGERY	1	1	2
HIT/RUN	8		8
MISCHIEF	2		2
MISCHIEF OVER \$1000	1		1
MISCHIEF UNDER \$1000	73	4	77
OBSTRUCT PEACE OFFICER	7		7
PEACE BOND		1	1
PERSONATION WITH INTENT	1		1
POSSESSION	46	5	51
PRIORITY TO RESTITUTION	2		2
PUBLIC MISCHIEF	6		6
RESIST ARREST	4		4
SOLICITING	45		45
TAKE MOTOR VEHICLE WITHOUT CONSENT	1		1
THEFT	3		3
THEFT OVER \$1000	7		7
THEFT UNDER \$1000	212	25	237
UTTERING FORGED DOCUMENT	8		8
UTTERING THREATS	23		23
<b>TOTAL</b>	<b>662</b>	<b>52</b>	<b>714</b>

**Table 4. Adult Cases Completed and Recorded**

ADULT				
		Post	Pre	Total
		Cases	Cases	Cases
<b>Cautioning</b>	Completed as planned	150	8	<b>158</b>
	Other	1		<b>1</b>
	Total default	2		<b>2</b>
<b>FGC</b>	Completed as planned	3	1	<b>4</b>
<b>Mediation</b>	Accused refused to participate	5		<b>5</b>
	Completed as amended	3		<b>3</b>
	Completed as planned	149	6	<b>155</b>
	Other	1		<b>1</b>
	Total default	17	1	<b>18</b>
	Unable to reach agreement	1		<b>1</b>
<b>Outside Referral</b>	Completed as amended	1		<b>1</b>
	Completed as planned	19		<b>19</b>
	Other	1		<b>1</b>
	Total default	3		<b>3</b>
<b>Total</b>		<b>356</b>	<b>16</b>	<b>372</b>

**Table 5. Employment Status of Adult Referrals**

ADULT			
	Post	Pre	TOTAL
	Cases	Cases	Cases
Farmer	1		<b>1</b>
Homemaker	1		<b>1</b>
Not applicable due to age	1		<b>1</b>
Not working, attending school	32	1	<b>33</b>
Not working, history of employment	10		<b>10</b>
Not working, no history of employment	6		<b>6</b>
Not working, not attending school	87		<b>87</b>
Part-time work, attending school	7	1	<b>8</b>
Pension	1		<b>1</b>
Presently working full time	115	8	<b>123</b>
Presently working part-time	13	1	<b>14</b>
Retired	3	2	<b>5</b>
Self-employed	2		<b>2</b>
<b>Total</b>	<b>279</b>	<b>13</b>	<b>292</b>

**Table 6. Education/Employment Status by Charge Category for Adult Referrals**

ADULT				
Employment Status	Charge Category	Post Cases	Pre Cases	TOTAL Cases
Employed	DRUG	3		3
	OAAJ	1		1
	OTH	15		15
	PER	33	3	36
	PROP	87	7	94
	TOTAL	139	10	149
Not applicable due to age	PROP	1		1
	TOTAL	1		1
Not working, attending school	DRUG	1		1
	N/A	3		3
	PER	6		6
	PROP	21	1	22
	SYS	1		1
	TOTAL	32	1	33
Unemployed	OAAJ	2		2
	OTH	16		16
	PER	9		9
	PROP	76		76
	TOTAL	103		103
Retired	PROP	4	2	6
	TOTAL	4	2	6
<b>TOTAL</b>		<b>279</b>	<b>13</b>	<b>292</b>

**Table 7. Completion of Measures by Education/Employment Status for Adults**

<b>ADULT</b>						
Measure	Outcome	Education/Employment Status	Post Cases	Pre Cases	TOTAL Cases	
Cautioning	Charge reactivated	Employed	1		1	
		Unemployed	1		1	
		<b>TOTAL</b>	<b>2</b>		<b>2</b>	
	No further involvement	Employed	55	6	61	
		Unknown	29		29	
		Not working, attending school	10		10	
		Unemployed	54		54	
		Retires	3	2	5	
		<b>Total</b>	<b>151</b>	<b>8</b>	<b>159</b>	
	<b>TOTAL</b>		<b>153</b>	<b>8</b>	<b>161</b>	
FGC	No further involvement	Unknown	2		2	
		Not applicable due to age	1		1	
		Not working, attending school		1	1	
		<b>TOTAL</b>	<b>3</b>	<b>1</b>	<b>4</b>	
	<b>TOTAL</b>		<b>3</b>	<b>1</b>	<b>4</b>	
Mediation	Charge reactivated	Employed	8	1	9	
		Unknown	8		8	
		Not working, attending school	2		2	
		No further involvement	Unemployed	7		7
			<b>TOTAL</b>	<b>25</b>	<b>1</b>	<b>26</b>
			Employed	64	3	67
		Unknown	34	3	37	
		Not working, attending school	20		20	
		Unemployed	32		32	
		Pension	1		1	
		<b>TOTAL</b>	<b>151</b>	<b>6</b>	<b>157</b>	
	<b>TOTAL</b>		<b>176</b>	<b>7</b>	<b>183</b>	
Outside referral	Charge reactivated	Unknown	1		1	
		Unemployed	2		2	
		<b>TOTAL</b>	<b>3</b>		<b>3</b>	
	No further involvement	Employed	11		11	
		Unknown	3		3	
		Unemployed	7		7	
		<b>TOTAL</b>	<b>21</b>		<b>21</b>	
	<b>TOTAL</b>		<b>24</b>		<b>24</b>	
<b>TOTAL</b>			<b>356</b>	<b>16</b>	<b>372</b>	

**Table 8. Offences Referred to Alternative Measures - Youth**

YOUTH			
Offence	Post	Pre	TOTAL
	Cases	Cases	Cases
Arson	1		1
Arson Causing Damage		1	1
Assault	31	8	39
Assault/Bodily Harm (CBH)	7		7
Assault/Weapon	3	4	7
Attempt	15		15
B&E Theft	21	8	29
B&E with Intent	1		1
Cause Disturbance	1		1
Dangerous Operation of a Motor Vehicle	2		2
Exposure	1		1
Fraud	1	1	2
Fraud/Public Market	1	2	3
Hit/Run	2		2
Indecent Phone Call		1	1
Mischief		1	1
Mischief Over \$1000	2		2
Mischief Under \$1000	13	10	23
Obstruct Peace Officer	2		2
Possession/Weapon	1	2	3
Possession Break in Instruments	1		1
Possession of Narcotic	1	2	3
Possession Over \$1000	1		1
Possession Prohibited Weapon		2	2
Possession Under \$1000	6	7	13
Public Mischief	2		2
Robbery	2	1	3
Robbery with Violence	2		2
Soliciting	1		1
Taking Motor Vehicle without Consent	11		11
Theft	2		2
Theft Over \$1000	4	1	5
Theft Under \$1000	98	31	129
Uttering Threats	3		3
Weapon	1		1
<b>TOTAL</b>	<b>240</b>	<b>82</b>	<b>322</b>

**Table 9. Youth Cases Completed and Recorded**

YOUTH					
Measure	Outcome		Post	Pre	TOTAL
			Cases	Cases	Cases
Cautioning	Completed as planned	No further involvement		2	2
	<b>TOTAL</b>			2	2
FGC	Accused denied responsibility	Charge reactivated	1		1
	Completed as amended	No further involvement	7		7
	Completed as planned	No further involvement	5	6	11
	Partially completed	No further involvement	5		5
	Total default	Charge reactivated	5	1	6
	Unable to make contact	Charge reactivated		2	2
	<b>TOTAL</b>		<b>23</b>	<b>9</b>	<b>32</b>
Mediation	Accused refused to participate	Charge reactivated	4		4
	Completed as planned	No further involvement	21	13	34
	Other	No further involvement		1	1
	Partially completed	Charge reactivated	1	1	2
		No further involvement	1		1
	Total default	Active	1		1
		Charge reactivated	3		3
	Unable to make contact	Charge reactivated	1		1
<b>TOTAL</b>		<b>32</b>	<b>15</b>	<b>47</b>	
Outside Referral	Completed as planned	No further involvement	7	3	10
	Total default	Charge reactivated	1		1
	Unable to make contact	Charge reactivated	2		2
<b>TOTAL</b>		<b>10</b>	<b>3</b>	<b>13</b>	
<b>TOTAL</b>		<b>65</b>	<b>29</b>	<b>94</b>	

**Table 10. Education/Employment Status of Youth Referred**

YOUTH			
Education/Employment Status	Post	Pre	TOTAL
	Cases	Cases	Cases
Employed	12	3	15
Not applicable due to age	4		4
Not working, attending school	70	26	96
Unemployed	23	5	28
Working part-time, attending school	1		1
<b>TOTAL</b>	<b>110</b>	<b>34</b>	<b>144</b>

**Table 11. Education/Employment Status by Charge Category for Youth Referrals**

YOUTH				
Education/Employment Status	Offence Category	Post	Pre	TOTAL
		Cases	Cases	Cases
Part-time work, attending school	DRUG	1	1	2
	PER	1		1
	PROP	3	1	4
	<b>TOTAL</b>	<b>5</b>	<b>2</b>	<b>7</b>
Employed	PER	2		2
	PROP	6	1	7
	<b>TOTAL</b>	<b>8</b>	<b>1</b>	<b>9</b>
Not applicable due to age	PROP	4		4
	<b>TOTAL</b>	<b>4</b>		<b>4</b>
Not working, attending school	DRUG		1	1
	OTH	2		2
	PER	14	5	19
	PROP	53	20	73
	SYS	1		1
	<b>TOTAL</b>	<b>70</b>	<b>26</b>	<b>96</b>
Unemployed	OTH	2		2
	PER	1		1
	PROP	20	5	25
	<b>TOTAL</b>	<b>23</b>	<b>5</b>	<b>28</b>
<b>TOTAL</b>		<b>110</b>	<b>34</b>	<b>144</b>

**Table 12. Type of Victim Recorded by Case**

Type of Victim	ADULT			YOUTH			TOTAL
	Post Cases	Pre Cases	TOTAL Cases	Post Cases	Pre Cases	TOTAL Cases	Cases
Corporate	213	23	236	70	30	100	336
Government	39		39	2		2	41
Person	314	24	338	144	37	181	519
Public agency	40	1	41	11	9	20	61
Small Business	35	2	37	9	3	12	49
<b>TOTAL</b>	<b>641</b>	<b>50</b>	<b>691</b>	<b>236</b>	<b>79</b>	<b>315</b>	<b>1006</b>

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# 10. Alberta

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## 10.1 The Philosophy of Alternative Measures

The *Young Offenders Act (Canada)* (see Chapter 1, s.1.1 for the specific wording of the appropriate sections) provides legislative authority for the use of voluntary alternative measures rather than requiring all young offenders to appear before

the youth court. In Alberta, alternative measures programs for youth are offered for first and second time offenders at both the pre-charge and the post-charge stage with the preferred option being at the pre-charge stage. The Crown Prosecutor also has the option, for first time young offenders charged with minor property offences, to issue a *Caution Letter*. This letter, issued by mail, serves to notify the young person and his/her parents/guardians that the offence for which he/she was accused was criminal in nature and, in the future, may be dealt with differently. An issued Caution Letter is counted as an enrollment in the alternative measures program for the purposes of assessing future eligibility to the program.

Alberta Justice authorizes alternative measures programs for youth and adults. These programs are offered at the pre-charge and post-charge stage and may be administered by Justice Committees under the supervision of a Community Corrections office. The alternative measures programs for youth also includes the use of Caution Letters for first time offenders alleged to have committed a minor property offence.

Alberta Justice is responsible for authorizing alternative measures programs. The delivery of the programs and the responsibility for ensuring that the young person complies with the measures rests with the Correctional Services Division, through the Community Corrections and Release Programs Branch of the Department of Alberta Justice. Young persons referred to alternative measures may be referred to Youth Justice Committees or other non-provincial government agencies to set and monitor agreements. In Alberta there are presently over thirty designated Youth Justice Committees offering alternative measures programs. The goal of the alternative measures program is to reduce the degree of formal criminal justice intervention into the lives of young persons. The objectives of the program are consistent with the intent of the *Young Offenders Act (Canada)*, and aim to prevent, where feasible, the acquisition of a criminal record, to prevent the continuation of criminal behaviour, and to promote community involvement and foster community awareness through participation in the program.

Adult alternative measures programs are authorized by Alberta Justice and established in accordance with section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.1 for the wording of the appropriate section). With the exception of caution letters, which are not used with adult offenders, the adult alternative measures programs are closely modeled after existing youth programs. First and second time offenders, provided that at least two years has lapsed since the last adult alternative measures program referral, may be referred to the program by the Crown subject to the established provincial eligibility criteria.

ALTERNATIVE MEASURES IN CANADA

## 10.2 Responsibility for the Delivery of Alternative Measures

### 10.2.1. Youth

The Correctional Services Division of Alberta Justice, through the Community Corrections and Release Programs Branch, is responsible for the overall delivery of the alternative measures program and for ultimately ensuring the compliance of the young person. Young persons may be referred to designated Youth Justice

Community Corrections (probation) is responsible for the overall delivery of alternative measures programs for youth. Young persons may be referred to Youth Justice Committees or other non-provincial government agencies to set and monitor agreements. These Committees and agencies are authorized to administer alternative measures programs under the supervision of a Community Corrections office.

Committees (as per s.69 of the YOA, see Chapter 1, s.1.2 for the wording of this section) or other non-provincial government agencies to set and monitor agreements. These Committees and agencies are authorized to administer formal alternative measures programs for youth under the supervision of a Community Corrections office.

Alberta Justice has developed guidelines to assist community groups in establishing a Youth Justice Committee and have outlined the guiding principles and the procedural and developmental steps. Youth Justice Committees are guided by the following principles:

- ❑ Young persons should be held accountable for their criminal behaviour.
- ❑ The rights and freedoms of victims and young persons should be considered.
- ❑ Dispositions should cause the least disruption in young lives while protecting the community.
- ❑ The community has a right and responsibility to participate in the youth justice system. (Alberta Justice, 1997)

Each Youth Justice Committee will determine its specific role and function based on the particular needs of their community. In this way, Committees allow communities to hold young persons accountable for their behaviour and to promote change in the attitudes that underlie the offending behaviour. The local roots of the Committee reflect the knowledge and sentiments of community members in the sanctions or measures applied. Justice Committees also promote cooperation between justice officials, social service agencies and the community, they provide an opportunity for victims to be heard, and they involve the parents and the extended families of the young person in addressing the needs of the young person and the victim(s).

The establishment of a Youth Justice Committee is dependent upon the written support of the local youth court judiciary, senior Crown agent, and local law enforcement agency. Depending on the role they choose, the Committee will

liaise with agents of the youth justice system, Crown Prosecutors, police, and probation officers. The majority of current Youth Justice Committees have assumed one or more of the roles of administering alternative measures, acting as a sentencing advisory, providing informal police diversion, and/or providing public education and crime prevention programs.

Once local interest and support for establishing a Youth Justice Committee is determined, a local steering committee will identify a process for selecting Committee members. The Committee will then work to identify special needs and interests of the particular community in order to determine how a Youth Justice Committee will best serve the community. A constitution will then be drafted along with a letter applying for official designation under section 69 of the *Young Offenders Act (Canada)*, and a list of the names of the Committee members that will be sent to the Executive Director, Young Offender Branch. Following review of the package, the material will be forwarded to the Minister of Justice and Attorney General for consideration. Once formally designated as a Youth Justice Committee, the Committee will be provided with a copy of the Ministerial Order and the members will be considered volunteers of the province and are eligible for liability coverage under the provincial risk management program. The Committee will also commit to collecting data and submitting semi-annual statistical reports to the Department of Justice.

#### 10.2.2. Adult

As with the youth programs, the Correctional Services Division of Alberta Justice, through the Community Corrections and Release Programs Branch, is responsible for the overall delivery of the adult alternative measures program and

As with the youth programs, Community Corrections assumes responsibility for the overall delivery of alternative measures programs for adults. Offenders may be referred to local Justice Committees who are authorized to monitor alternative measures programs under the supervision of a Community Corrections office.

for ultimately ensuring the compliance of the offender. Offenders may be referred to existing designated Justice Committees (as per s.69 of the YOA, see Chapter 1, s.1.2 for the wording of this section) to monitor agreements. These Committees are authorized by the Minister of Justice and Attorney General to administer formal alternative measures programs for adults under the supervision of a Community Corrections office.

Generally, the Justice Committees were initially established to administer youth alternative measures programs and have evolved, in some communities, to include the administration of alternative measures programs for adults. In those communities, where Justice Committees do not exist or are not comfortable in offering adult alternative measures programs, a probation officer from the Community Corrections office will assume the responsibility for administering alternative measures programs.

## 10.3 Referral Agent

### 10.3.1. Youth

The local Crown Prosecutor's are responsible for referring individuals who meet the criteria to the alternative measures program. In the case of all first and

The local Crown Prosecutor's are responsible for approving all referrals to alternative measures programs.

second offenders, where an alleged eligible offence has been committed and police choose not to exercise their traditional discretion, the police will refer the matter to the Crown Prosecutor via a *Notification Form* (see Appendix 'A' s.10.16.3 for a sample of the form) with a recommendation that the

matter be dealt with by way of alternative measures. Approval of entry to the program is at the discretion of the Crown Prosecutor. The Crown will review all program referrals received and will either decline to divert the young person and request that a charge be laid, divert the young person by way of formal alternative measures, or issue a *Caution Letter*.

### 10.3.2. Adult

The process for referring an adult offender to the alternative measures program is the same as that which is followed for youth. The local Crown Prosecutor will review all program referrals received, as well as those accused where a charge has been laid that meet program eligibility criteria, and will decide to either decline to divert the offender and request that a charge be laid, or, in all other cases, will divert the offender by way of the formal alternative measures program.

## 10.4 The Role of the Police

### 10.4.1. Youth

In Alberta, the police in different communities may play somewhat differing roles in the alternative measures process depending on whether or not there exists a

Police may refer youth directly to local Youth Justice Committees as part of an informal diversion, but it is understood that in these cases if the youth does not abide by the negotiated agreement, the Crown Prosecutor will not take any further action in respect of the offence.

local youth Justice Committee. In all cases, however, the police retain the right following an investigation to exercise their traditional discretion to take no further action or to divert the young person informally. In the case of the latter, the police may divert the young person directly to a Youth Justice Committee without prior Crown approval to the formal alternative measures

program. It is understood, however, that should the young person fail to comply with the agreement negotiated with the Youth Justice Committee in these cases, that no action will be taken by the Crown in respect of the alleged offence.

In all cases of first and second offenders, where an alleged eligible offence has been committed and the police choose not to exercise their discretion, the case will be referred to the Alternative Measures Program, via the local Crown Prosecutor. The police assume the responsibility for completing the Notification Form (see S. 10.16.1 for a copy of the form) for all young offenders who meet the eligibility criteria, and for indicating the appropriate reasons on the form in the event the police believe the offender is not a suitable candidate, notwithstanding program eligibility criteria.

In those communities where a Youth Justice Committee exists, the police may play an expanded role as a liaison between the committee and the justice system. Quite often, police support is seen as vital in the creation of a committee and their ongoing support through attending meetings and/or participating in the process is important to the sustained success of the committee.

#### 10.4.2. Adult

The role played by the police in the adult alternative measures program is essentially the same as that which they play in the youth programs. Subsequent to an investigation, the police retain their right to exercise their traditional discretion and to take no further action with an offender or they may informally divert an offender to an existing program. In cases where police directly divert an alleged offender to a Justice Committee without prior Crown Prosecutor approval to the formal alternative measures program, it is understood that should the person fail to comply with the agreement negotiated, that no action will be taken by the Crown in respect of that offence.

In all cases of first and second offenders where the police choose not to exercise their discretion and the alleged offence is one that meets the eligibility criteria, the case will be referred to the alternative measures program via the local Crown Prosecutor. The police will complete the appropriate Notification Form (see S. 10.16.1 for a sample of the form) and forward it to the Crown Prosecutor. In the event that the police do not believe that the offender is a suitable candidate for alternative measures, irrespective of the program eligibility criteria, they will indicate the reasons for such on the Notification Form.

In communities where a local Justice Committee exists, the police often act as a resource to the committee and may attend meetings and/or participate in the alternative measures process.

### 10.5 The Role of the Crown Attorney

#### 10.5.1. Youth

The Crown Prosecutor plays a key role in the alternative measures process in Alberta. Individuals who meet the program criteria are eligible for participation in the alternative measures program at the discretion of the local Crown Prosecutor.

The local Crown Prosecutor's are responsible for referring youth to the alternative measures program who meet the criteria outlined in the provincial policies and procedures. Notwithstanding program exclusions, the Crown Prosecutor can, in

The role of Crown Prosecutors in the alternative measures process is mainly that of the primary referral agent. Crown Prosecutors are responsible for reviewing all referrals and for making the decision on the appropriateness of alternative measures.

exceptional circumstances and with the approval of their Director, divert a first time young offender alleged to have committed an excluded offence if all other program criteria are met.

The role of the Crown Prosecutor consists of reviewing all program referrals received from the police and to decide whether or not to decline to divert

the young offender and request that a charge be laid in circumstances where the Crown Prosecutor believes that program participation is inappropriate, to divert the young offender by way of the formal alternative measures program, or to issue a *Caution Letter* (Caution Letters are discussed in detail in s. 10.9: Alternative Measures Process).

#### 10.5.2. Adult

The policy and procedures dealing with alternative measures identifies the Crown Prosecutor as the primary referral agent for the adult alternative measures programs in Alberta. It is at the discretion of the Crown Prosecutor that adults who meet the eligibility criteria are referred to the program. The Crown Prosecutor will refer individuals who are at least eighteen years of age who meet the eligibility criteria unless the Crown believes there is sufficient reason why participation is inappropriate or unless the offender has received a young offender custody disposition within the preceding twenty-four months. With respect to second time adult offenders, the Crown Prosecutor will refer eligible cases if at least two years have elapsed since the last adult alternative measures program referral unless sufficient reason exists to believe that program participation would be inappropriate.

Similar to the role assumed by the Crown Prosecutor in the case of alternative measures for youth, the Crown Prosecutor will review all program referrals received from the police, and those accused where a charge has been laid that meet program eligibility criteria, and decide whether or not to decline to divert the offender and request that a charge be laid in circumstances where the Crown Prosecutor believes that program participation is inappropriate, or divert the offender by way of the formal alternative measures program,

## 10.6 The Role of the Victim

### 10.6.1. Youth

The extent of victim participation in the alternative measures process is wholly dependent on the victim's desire to become involved. The policy and procedures manual provides that once an alternative measures intake interview is scheduled, the Probation Officer or Justice Committee will, in all cases where there is an identifiable victim, contact the victim by telephone. The purpose is to determine the victim's interest in receiving person service, monetary compensation, and/or personal/written apology from the young person in the event an alternative measures agreement is negotiated. The victim is also asked whether he/she would be interested in attending a victim/offender reconciliation meeting to negotiate the terms of an alternative measures agreement, as well as the amount of insurance coverage/reimbursement received. The Probation Officer, or the Justice Committee, will keep detailed notes of their interaction with the victim.

### 10.6.2. Adult

As is the case with the alternative measures program for youth, victim participation is not a prerequisite for program eligibility but it is encouraged in all appropriate alternative measures processes. The responsibility for contacting the victim, in cases where there is an identifiable victim rests with the Probation Officer or the Justice Committee. The goal of this contact is to determine the victim's interest in receiving person service, monetary compensation, and/or personal/written apology from the alleged offender in the event an alternative measures agreement is negotiated. The victim is also asked whether he/she would be interested in attending a victim/offender reconciliation meeting to negotiate the terms of an alternative measures agreement, as well as the amount of insurance coverage/reimbursement received. The Probation Officer, or the Justice Committee, will keep detailed notes of their interaction with the victim.

## 10.7 Right to Legal Counsel

### 10.7.1. Youth

Section 4(1)(d) of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.7 for the

The Probation Officer or Justice Committee will, in scheduling the intake interview, inform the young person of their right to consult legal counsel, and the fact that participation is voluntary but that the youth must accept responsibility for the alleged offence.

specific wording of this section) specifies that before becoming involved in alternative measures, a young person must fully and freely consent to participate. This consent is to be provided only after the young person is informed of his/her right to consult legal counsel and only after being given the opportunity to do so.

In Alberta, the Probation Officer or the Justice Committee, in scheduling the initial intake interview with the young person will draw attention to the fact the young person is responsible for seeking the advice of legal counsel, if desired. The young person will also be informed, at this time, that participation in the program is voluntary but dependent on the young person accepting responsibility for the alleged offence, and that his/her parents or legal guardians will be contacted and requested to attend the scheduled appointment. During the intake interview, the right to legal counsel and the acceptance of responsibility are reviewed prior to obtaining a young person's consent to participate in the alternative measures program.

#### 10.7.2. Adult

Section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.7 for the wording of the appropriate section) specifies that before becoming involved in alternative measures, a person alleged to have committed an offence must fully and freely consent to participate. In Alberta, the responsibility for ensuring that the alleged offender is informed of his/her right to consult with counsel prior to providing consent to participate is assumed by the Probation Officer or the Justice Committee and is done during the scheduling of the intake interview. The alleged offender is also informed, at this time, that his/her participation is voluntary but dependent upon his/her acceptance of responsibility for the alleged offence. During the intake interview, the right to legal counsel and the acceptance of responsibility are reviewed prior to obtaining an alleged offender's consent to participate in the alternative measures program.

### 10.8 Eligibility Criteria

#### 10.8.1. Youth

Legislated criteria governing the eligibility criteria for formally authorized alternative measures programs across Canada are set out in the federal *Young Offenders Act (Canada)* (see Chapter 1, s.1.8 for the wording of the appropriate sections). In addition to this, the provincial policy and procedures manual specifies particular criteria that must be met prior to the Crown Prosecutor referring a young person to an alternative measures program.

First time young offenders involved in minor property offences are generally handled through a Caution Letter, issued by the Crown Prosecutor, and is counted as a first enrollment in the alternative

First time minor property offences are generally handled through the use of Caution Letters issued by the Crown Prosecutor. In Alberta, offences involving violence or threats of violence, break and enter, perjury, alcohol-related driving offences, drugs (other than simple possession of marijuana) and provincial offences (other than glue and solvent sniffing) are not eligible for alternative measures.

measures program for the purposes of assessing future eligibility to the program.

In order to be referred to the program, the young person must be at least twelve years of age and under eighteen years of age at the time the alleged offence was committed, and must have no more than one previous criminal conviction, nor more than one previous enrollment in the alternative measures or Caution Letter programs (subject to the provisions of Section 45(1) of the *Young Offenders Act* pertaining to the destruction of records as they apply in determining eligibility).

The policy and procedures manual states that the young person must have allegedly committed one or more of the following offences, and that these alleged offences may have occurred over a period of time provided that all alleged offences meet the following criteria:

#### Federal Offences

- a) All Criminal Code of Canada offences except:
  - i) Offences involving violence or the threat of violence (simple assault in a non-domestic situation, however, may be included);
  - ii) Break and Enter of a dwelling house;
  - iii) Perjury and contradictory evidence;
  - iv) Alcohol related driving offences
- b) Simple possession of marijuana or its products contrary to Section 3(1) *Narcotic Control Act*. All other drug offences are excluded.

#### Provincial Offences

Section 78 of the *Public Health Act* (glue and solvent sniffing). All other provincial offences are excluded unless the charging officer or the crown believes that truly exceptional circumstances exist to warrant a program referral.

In the case of all first and second offenders, where an alleged eligible offence has been committed and police decide not to exercise their traditional discretion, the case will be referred, via the Crown Prosecutor, to the alternative measures program. Notwithstanding program eligibility criteria, if the police believe that the young person is not a suitable candidate for the program they may indicate their reasons on the Notification Form. As well, the Crown Prosecutor, with their Director's approval, may in exceptional circumstances refer a young person alleged to have committed an offence excluded from the eligibility criteria if all other program criteria are met.

## 10.8.2. Adult

Section 717 of the *Criminal Code of Canada* sets out the legislated criteria governing the eligibility for formally authorized alternative measures programs across Canada (see Chapter 1, s. 1.8 for the specific wording of the applicable sections).

The policy and procedures manual in Alberta identifies the Crown Prosecutor as the person responsible for referring individuals who meet the criteria to the alternative measures program. Individuals must be at least eighteen years of age at the time of the alleged offence and must not have received a young offender custody disposition within the previous twenty-four months. In addition, second time adult offenders may be eligible for consideration for alternative measures providing that at least two years has lapsed since the last adult alternative measures program referral unless the Crown Prosecutor believes that there is sufficient reason why program participation is inappropriate.

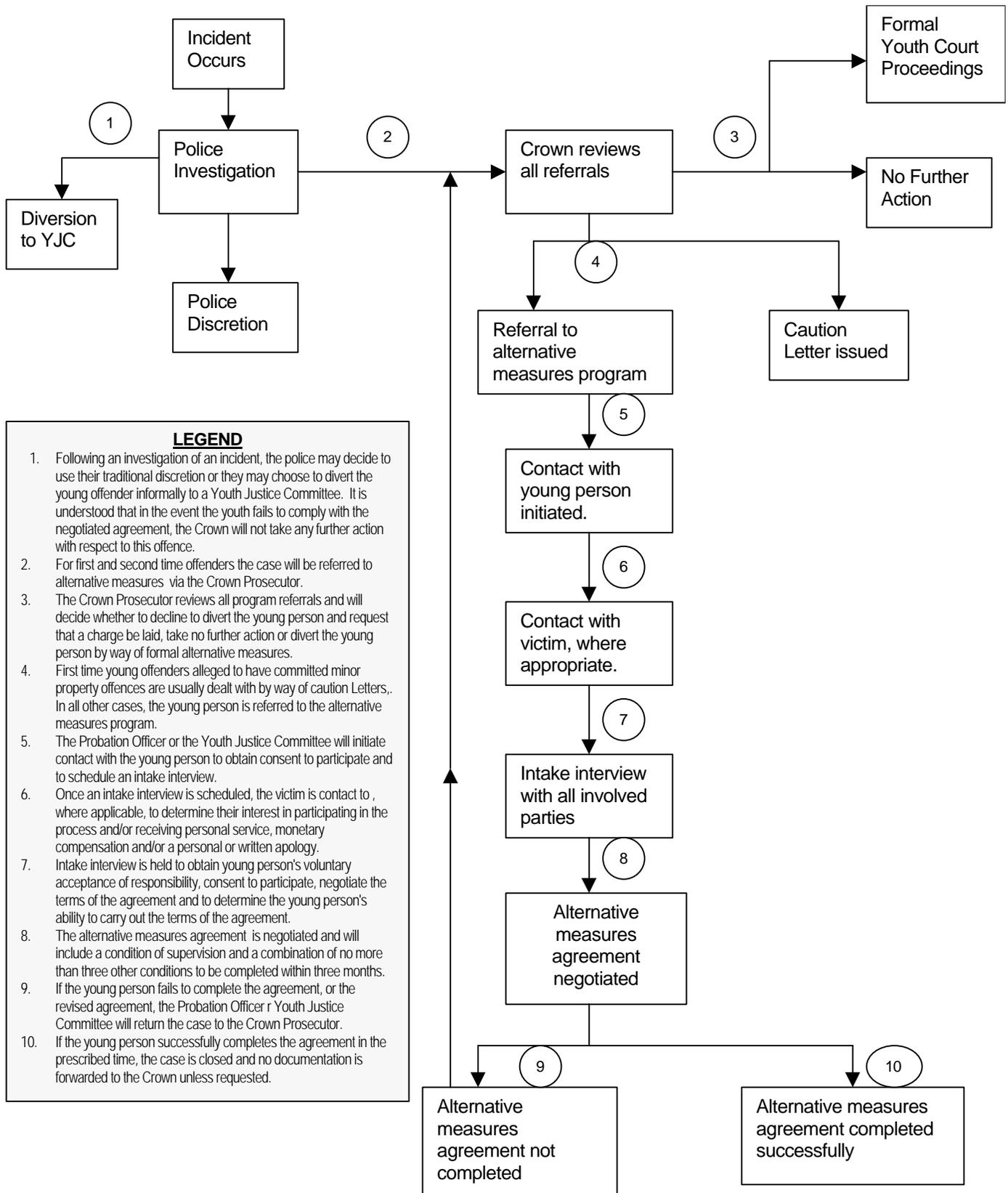
The offences that are considered eligible for referral to alternative measures in Alberta, providing all the other program criteria are met, include:

### Federal Offences

- a) All Summary Conviction Criminal Code offences excluding:
  - i) Offences relating to family violence;
  - ii) Offences relating to failure to comply with Court orders;
  - iii) Offences involving violence or the threat of violence (simple assault in a non-domestic situation, however, may be included);
- b) The following *Criminal Code of Canada* hybrid offences where the Crown would have proceeded by way of Summary Conviction:
  - i) Assault (simple assault in a non-domestic situation);
  - ii) Theft not exceeding \$5000.00;
  - iii) Possession of stolen property not exceeding \$5000.00;
  - iv) Obtain by false pretences not exceeding \$5000.00;
  - v) Fraud not exceeding \$5000.00;
  - vi) Personation with intent;
  - vii) Mischief - property related; and,
  - viii) False fire alarm.

In the case of all first and second offenders, where an alleged eligible offence has been committed and police decide not to exercise their traditional discretion, the case will be reviewed by the Crown Prosecutor, and referred to the alternative measures program if appropriate. Notwithstanding program eligibility criteria, if the police believe that the offender is not a suitable candidate for the program they will indicate their reasons on the Notification Form. Police, as well, may still lay a charge even if the matter has been referred to the Crown Prosecutor in those cases where the police are not recommending alternative measures.

## 10.9 Alternative Measures Process for Youth



The alternative measures process for youth is initiated by the police who are responsible for completing a Notification Form and forwarding it to the Crown Prosecutor. It is understood in the policy and procedures manual that all individuals are to be dealt with expeditiously and that each individual participating in the alternative measures program will have a signed Alternative Measures Agreement (see s.10.16.2 for a sample of the form) negotiated by a Probation Officer or other service provider. All individuals on the alternative measures program are to be supervised as an administered case to ensure that all conditions of the agreement are met within, at most, three months from the date of commencement.

The alternative measures process is initiated by the police who are responsible for completing the Notification Form. First time young offenders alleged to have committed minor property offences are usually dealt with by way of a Caution Letter. All other appropriate alternative measures cases are referred to a Probation Officer or a Youth Justice Committee who are responsible for contacting the involved parties, negotiating alternative measures agreements and supervising the completion of the alternative measures.

In Alberta, as a general rule, first time young offenders alleged to have committed minor property offences will be diverted through the issuing of a *Caution Letter* (see s.10.16.3 for a sample of the letter). This letter is mailed to the young person with a separate letter to the young person's parents/guardians, and serves to formally notify the young person and his/her parents/guardian that the offence for which he/she was accused was criminal in nature and, in future, may be dealt with differently. An issued *Caution Letter* is counted as one previous enrollment in the alternative measures program for the purposes of assessing future eligibility and, if returned

undelivered, will be deemed to have been issued. The Crown Prosecutor will not issue a *Caution Letter* in instances where the victim has suffered damages and no restitution has been made.

All other cases of first and second time offenders who meet the eligibility criteria will be referred to the alternative measures program. An intake interview with the Probation Officer or other service provider, such as a Youth Justice Committee, will be scheduled within fifteen working days from the date of receipt of the referral from the Crown Prosecutor. If the young person cannot be contacted within the first five days, the Probation Officer or Youth Justice Committee, will send a "Letter of Introduction to the Accused Person", and a "Letter to Parent or Guardian".

In scheduling the intake interview the Probation Officer or other service provider will explain the program to the young person, inform the young person of his/her right to consult counsel, explain that participation is voluntary but dependent of the young person accepting responsibility for the alleged offence(s), and inform the young person that his/her parents/guardian will be contacted and requested to attend the alternative measures appointment.

Once an intake interview is scheduled with the young person, his/her parents/guardian will be asked to attend, when appropriate. In the case of an aboriginal young person, it may be appropriate to include an Elder as an advisor. The Probation Officer or other service provider will, in all instances where there is

an identifiable victim, contact the victim once an intake interview is scheduled, to determine their interest in participating in the alternative measures process as well as their interest in receiving personal service, monetary compensation and/or a personal or written apology from the young person. The victim will also be asked the amount of insurance coverage or reimbursement received.

In the event the young person cannot be located or does not respond to the letter within fifteen days of case assignment, the file will be closed and returned to the Crown Prosecutor.

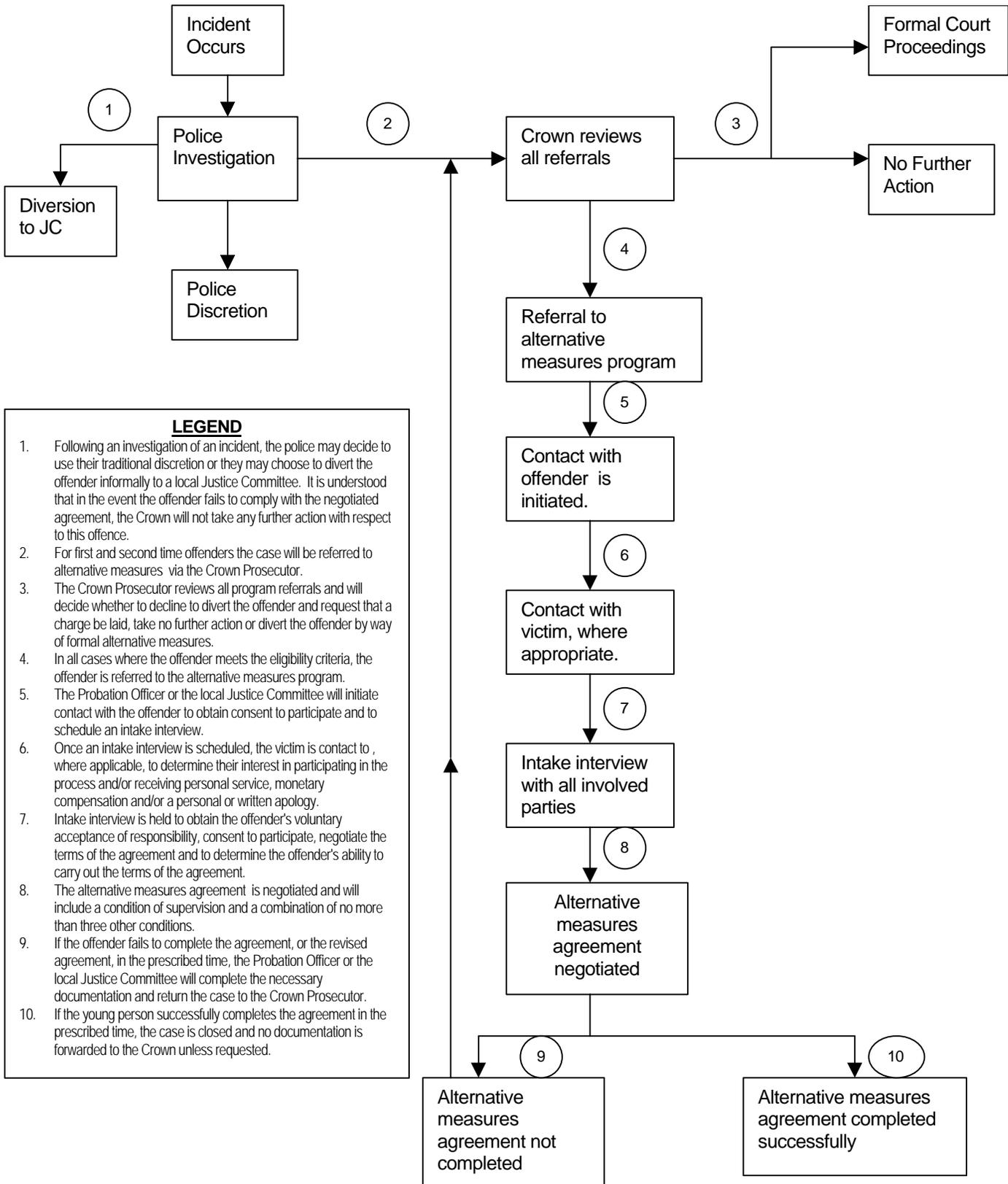
The intake interview is an opportunity to explain the program in detail to the young person and his/her parents/guardian and, where applicable, the victim. The young person is advised of his/her right to consult counsel and the interview process is an opportunity to obtain the young person's voluntary acceptance of responsibility for the alleged offence, and his/her full and free consent to participate in the program. The Probation Officer or other service provider will also use the intake interview to negotiate an alternative measures agreement and to determine the young person's ability to carry out the terms of the agreement. A victim/offender mediation may also be negotiated during the intake interview if the victim is in attendance.

In the event that the young person, during the intake interview, does not voluntarily accept responsibility for the alleged offence, or does not agree to participate, then the interview will be terminated and the case closed and returned to the Crown Prosecutor.

In negotiating the alternative measures agreement, the intent is not to impose more onerous conditions than might have been ordered for the same matter in youth court. The Probation Officer or other service provider will make every effort to ensure that the victim receives full restitution, having regard to the young person's ability to pay, and will negotiate the sanctions bearing in mind the young person's age, full time attendance in school or other day programs, and the time available in which to comply with the alternative measures agreement. The negotiated agreement will not exceed three months from the date of commencement to the date of termination or such lessor time frame required to prevent loss of jurisdiction (6 months from the date a summary conviction offence occurred),

Upon successful termination, the Probation Officer or other service provider will complete section D of the Alternative Measures Agreement and no documentation will be forwarded to the Crown Prosecutor unless so requested. In the event the youth fails to comply with the conditions of the agreement, the proper documentation will be completed and the case will be returned to the Crown Prosecutor for a decision on any further action.

## 10.10 Alternative Measures Process for Adults



In the case of all first and second time offenders, where an alleged eligible offence has been committed, the police will initiate the alternative measures referral process by completing a Notification Form (see s.10.16.1 for a sample of the form) and forwarding such to the Crown Prosecutor. The Crown will review all

The alternative measures process for adults is similar to that used with youth. One exception is that Caution Letters are not used with adult alternative measures referrals. The police, through completing the Notification Form, initiate the alternative measures process. The Crown will refer eligible offenders to the Probation Officer who assumes responsibility for contacting the offender, and the victim, for negotiating an alternative measures agreement, and for supervising the completion of the agreement.

program referrals received, and those accused where a charge has been laid that meet program eligibility criteria and either decline to divert the accused or divert the accused by way of formal alternative measures. It is understood in the policy and procedures manual that all individuals are to be dealt with expeditiously and that each individual participating in the alternative measures program will have a signed Alternative Measures Agreement (see s.10.16.2 for a sample of the

form) negotiated by a Probation Officer. All individuals on the alternative measures program are to be supervised as an administered case to ensure that all conditions of the agreement are met within, at most, three months from the date of commencement to the date of termination.

An intake interview with the Probation Officer will be scheduled within fifteen working days from the date of receipt of the referral from the Crown Prosecutor. If the individual cannot be contacted within the first five days, the Probation Officer will send a "Letter of Introduction to the Accused Person".

In scheduling the intake interview the Probation Officer will explain the program to the individual, inform the individual that it is his/her responsibility for seeking the advice of legal counsel, and explain that participation is voluntary but dependent of the person accepting responsibility for the alleged offence(s). In the case of an Aboriginal offender, an Elder may be contacted to act as an advisor to either the alleged offender or the Probation Officer, or both.

Once an intake interview is scheduled the Probation Officer will, in all instances where there is an identifiable victim, contact the victim by telephone to determine their interest in participating in the alternative measures process as well as their interest in receiving personal service, monetary compensation and/or a personal or written apology from the accused. The victim will also be asked the amount of insurance coverage or reimbursement received.

In the event the alleged offender cannot be located by telephone or does not respond to the letter within fifteen days, the file will be closed and returned to the Crown Prosecutor.

The intake interview is an opportunity to explain the program in detail to the alleged offender and, where applicable, the victim. The alleged offender is advised, during the intake interview, that he/she is responsible for seeking the

advice of legal counsel and the interview process is an opportunity to obtain the alleged offender's voluntary acceptance of responsibility for the alleged offence, and his/her full and free consent to participate in the program. The Probation Officer will also use the intake interview to negotiate an alternative measures agreement and to determine the alleged offender's ability to carry out the terms of the agreement. A victim/offender mediation may also be negotiated during the intake interview if the victim is in attendance.

In the event that the alleged offender, during the intake interview, does not voluntarily accept responsibility for the alleged offence, or does not agree to participate, then the interview will be terminated and the case closed and returned to the Crown Prosecutor.

In negotiating the alternative measures agreement, the intent is not to impose more onerous conditions than might have been ordered for the same matter in court. The Probation Officer will make every effort to ensure that the victim receives full restitution, having regard to the ability of the alleged offender to pay, and will negotiate the sanctions bearing in mind the circumstances of the alleged offender such as full time attendance in school or other day programs, and the time available in which to comply with the alternative measures agreement. The negotiated agreement will not exceed three months from the date of commencement to the date of termination or such lessor time frame required to prevent loss of jurisdiction (6 months from the date a summary conviction offence occurred),

Upon successful termination, the Probation Officer will complete section D of the Alternative Measures Agreement and no documentation will be forwarded to the Crown Prosecutor unless so requested. In the event the alleged offender fails to comply with the conditions of the agreement, the proper documentation will be completed and the case will be returned to the Crown Prosecutor for a decision on any further action.

## 10.11 The Alternative Measures Agreement

### 10.11.1. Youth

The alternative measures agreement is a formal, binding contract between the young person and the Probation Officer or the service provider administering the alternative measures program. The intent of the program is not to impose conditions that would be considered more onerous than that which may be imposed in youth court for a similar matter but to apply sanctions that recognize the circumstances of the youth such as his or her age, attendance in school or other day programs, and the time available to comply with the agreement. All negotiated sanctions should be observable, measurable and time limited (three months from the time of commencement to the time of completion of the agreement).

Every effort should be made to ensure that the victim receives full restitution in addition to any other sanctions that may be imposed, having regard to the young

person's ability to pay. Normally, an alternative measures agreement will not, however, include both full restitution and personal service to the same victim.

The policy and procedures manual identifies a range of acceptable alternative measures conditions and states that all agreements will consist of, at a minimum, a requirement for the young person to be under the supervision of a Probation Officer or other service provider, and a combination of no more than three other conditions. All alternative measures agreements must be endorsed by the Probation Supervisor, or designate, or the Supervisor, or designate, of the contracted agency.

In the event that the young person becomes unable to comply with the original conditions of the agreement, it may be revised once by substituting one condition for another. The revised agreement will not be more onerous than the original and will not exceed three months from the original commencement date.

When a victim agrees to take part in the alternative measures process, victim/offender reconciliation is negotiated in a meeting involving the young person, his/her parent(s)/guardian and the victim. If this meeting fails to generate an agreement, one will be negotiated without the victim's involvement.

#### 10.11.2. Adult

The alternative measures agreement is a formal, binding contract between the alleged offender and the Probation Officer administering the alternative measures program. The intent of the program is not to impose conditions that would be considered more onerous than that which may be imposed in court for a similar matter but to apply sanctions that recognize the circumstances of the offender such as employment, attendance in school or other day programs, and the time available to comply with the agreement. All negotiated sanctions should be observable, measurable and time limited (three months from the time of commencement to the time of completion of the agreement).

Every effort should be made to ensure that the victim receives full restitution in addition to any other sanctions that may be imposed, having regard to the ability of the alleged offender to pay. Normally, an alternative measures agreement will not, however, include both full restitution and personal service to the same victim.

The policy and procedures manual identifies a range of acceptable alternative measures conditions and states that all agreements will consist of, at a minimum, a requirement for the alleged offender to be under the supervision of a Probation Officer or other service provider, and a combination of no more than three other conditions.

In the event that the circumstances of the alleged offender change to the extent that he/she becomes unable to comply with the original conditions of the agreement, it may be revised once by substituting one condition for another. The revised agreement will not be more onerous than the original and will not exceed three months from the original commencement date.

When a victim agrees to take part in the alternative measures process, victim/offender reconciliation is negotiated in a meeting involving the victim and the alleged offender. If a victim/offender reconciliation cannot be negotiated, the conditions of the alternative measures agreement will be negotiated without the victim's involvement.

## 10.12 The Range of Alternative Measures

### 10.12.1. Youth

Alberta's policy manual identifies a range of acceptable sanctions that may be used as alternative measures. The policy states that every effort must be made, where applicable, to ensure that the victim receives full restitution in addition to any other sanctions that may be imposed on the youth, having regard to the ability of the young person to pay. In addition, it is highlighted that all negotiated sanctions should bear in mind the circumstances of the youth such as his/her age, school or other day program attendance, and the time available to comply with the agreement. The provincial policy provides for the following options:

Alberta's policy manual provides a range of acceptable alternative measures. All agreements will consist of a condition of supervision, participation in a victim/offender reconciliation in cases where the victim wishes to be involved, and a combination of no more than three other conditions.

- 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) *Restitution / Return of property to victim(s);*
- e) *Donation to a registered charity;*
- f) *Participation in Aboriginal cultural/spiritual activities;*
- g) *Attendance at a specific counselling or available community intervention program (e.g., AADAC). Counselling will not occur on a fee-for-service basis unless alternative funding can be obtained;*
- h) *Complete an essay or poster;*
- i) *To be under the supervision of a Probation Officer, or other service provider as specified in the agreement;*
- j) *Participation in a Victim/Offender Reconciliation Program, and compliance with the terms of the Alternative Measures Agreement negotiated with the victim's involvement.*

By policy, all alternative measures agreements will consist of a condition (i) of supervision, and, when a victim(s) wishes to become personally involved in negotiating an agreement, condition (j), as well as any combination of no more than three other conditions listed above. The policy manual also states that normally, an agreement will not include full restitution in addition to personal service to the same victim, and all agreements will be completed within three months from the date of commencement to the date of termination, or less if required to prevent loss of jurisdiction (i.e., six months from the date a summary conviction offence occurred).

#### 10.12.2. Adult

The alternative measures policy manual in Alberta identifies a range of options that are available as alternative measures sanctions. They are essentially the same as those available for youth with the exception of the option of completing an essay or a poster, which is not an available measure for adults. Bearing in mind the circumstances of the offender such as employment, attendance in school or other day programs, and time available to comply with the conditions, the following options are available:

- a) *Personal or written apology to the victim(s);*
- b) *Personal service to the victim(s);*
- c) *Community service to a non-profit community or government agency;*
- d) *Restitution/Return of property to the victim(s);*
- e) *Donation to a registered charity;*
- f) *Participation in Aboriginal cultural/spiritual activities;*
- g) This condition (essay/poster) as found on the Alternative Measures Agreement Form, is not to be utilized for adults;
- h) *Attendance at a specific counselling or available community intervention program (e.g., AADAC). Counselling will not occur on a fee-for-service basis unless alternative funding can be obtained.*
- i) *To be under the supervision of a Probation Officer or other service provider (i.e., Youth Justice Committee) as specified in the agreement;*
- j) *Participation in a Victim/Offender Reconciliation Program, and compliance with the terms of the Alternative Measures Agreement negotiated with the victim's involvement.*

In Alberta, all alternative measures agreements for adults will consist of a condition of supervision (i) and a combination of no more than three other conditions excluding that of completing an essay or a poster. In those cases

where the victim wishes to become involved personally in negotiating an agreement, the alternative measures agreement will consist of conditions (i) and (j) as well as a combination of no more than three other conditions excluding that of completing an essay or a poster. As with the youth program, the agreement should not exceed three months from the date of commencement to the date of termination, or less if required to maintain jurisdiction, and normally will not include full restitution to the victim in addition to personal service.

## 10.13 Supervision of Alternative Measures Agreement

### 10.13.1. Youth

Under the current guidelines and policies the Probation Officer, or other service provider (e.g., Youth Justice Committee) under the supervision of a Community Corrections Office, who is responsible for administering the alternative measures program is also responsible for supervising all negotiated alternative measures agreements. This responsibility includes revising, if necessary, the original agreement, completing all required documentation and forwarding such, in the event the young person fails to complete the agreement, to the Crown Prosecutor.

### 10.13.2. Adult

The responsibility for supervising adult alternative measures agreements rests with the Probation Officer or other service provider (e.g., local Justice Committee) under the supervision of a Community Corrections Office. Individuals on the alternative measures program are to be supervised as an administered case to ensure that all conditions of the agreement are met. The administering agency assumes responsibility for completing all documentation and for informing affected parties, if necessary, of the status of the agreement (e.g., in the event the individual fails to complete the agreement).

## 10.14 Completion of Agreement

### 10.14.1. Youth

Upon successful completion of an alternative measures agreement, the Probation Officer, or other service provider, will complete the appropriate section of the Alternative Measures Agreement form (i.e., section D). There is no requirement to forward any documentation regarding a successful completion to the Crown Prosecutor unless specifically requested.

In the event that the young person fails to complete the agreement the Probation Officer, or other service provider, will:

- complete section C of the Police Notification Form by checking box "2" and will describe the circumstances in the "Comments" section;
- forward the "Crown Prosecutor" and "Crown Notification to Police" copies of the Notification Form to the Crown Prosecutor and retain a copy on file;
- return the Crown Prosecutor's copy of the police occurrence report; and
- complete section D of the Alternative Measures Agreement and forward the "Crown Prosecutor" copy to the Crown Prosecutor.

#### 10.14.2. Adult

The process to follow in the case of a successful completion of an alternative measures agreement for adults is the same as that for youth. The Probation Officer, or other service provider, will indicate the successful completion of the agreement by completing section D of the Alternative Measures Agreement form. There is no requirement to forward any documentation regarding a successful completion to the Crown Prosecutor unless specifically requested.

In all cases of unsuccessful termination, the Probation Officer, or other service provider, will:

- complete section C of the Police Notification Form by checking box "2" and will describe the circumstances in the "Comments" section;
- forward the "Crown Prosecutor" and "Crown Notification to Police" copies of the Notification Form to the Crown Prosecutor and retain a copy on file;
- return the Crown Prosecutor's copy of the police occurrence report; and
- complete section D of the Alternative Measures Agreement and forward the "Crown Prosecutor" copy to the Crown Prosecutor.

### 10.15 Record Keeping

#### 10.15.1. Youth

The provisions of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.15 for the wording of the appropriate sections) govern all records pertaining to alternative measures generally. In Alberta, the agency responsible for the administration of the alternative measures program is responsible for ensuring that all documentation is duly completed and that case files are properly stored.

#### 10.15.2. Adult

Record keeping provisions with respect to alternative measures for adults are outlined in the *Criminal Code of Canada* (see Chapter 1, s.1.15 for the wording of the appropriate sections). As with the youth programs in Alberta, it is the responsibility of the agency administering the alternative measures program to ensure that all documentation is duly and appropriately completed. Alternative measures case files are to be retained for a period of two years after closure.



## 10.16 Appendix "A" Forms

10.16.1. Alternative Measures Notification Form

**Adult**       **Youth**  
**Aboriginal:**     **Yes**    **No**    **Unknown**

Police File Number
--------------------

<b>SECTION A - POLICE</b>								<b>COMPLETE FOR ALL 1<sup>ST</sup> AND 2<sup>ND</sup> OFFENDERS WITH ELIGIBLE OFFENCES</b>									
Name o Person		Last			First			Middle			Gender <input type="checkbox"/> M <input type="checkbox"/> F		Date of Birth yy   mm   dd			Age	
Address		Street, P.O. Box, R.R.				City/Town				Province		P.C.		Phone No.			
Alleged Offence(s) Form the list of eligible offences, Sec., Sub.Sec. etc.												Date    yy   mm   dd					
												Location					

**ADDITIONAL FACTS**

**Yes**   **No**   The person has been advised of their right to counsel.  
  

     The person has had the Alternative Measures program explained and Wishes to participate.

     The person accepts responsibility for their actions or omissions.

**Yes**   **No**   **N/A**   Is the name, address and/or phone no. of the victim(s) recorded on Occurrence Report? If not, please provide:

<b>Name</b>		<b>Phone No.</b>
<b>Address</b>		<b>P.C.</b>

**Yes**   **No**   **N/A**

        Restitution made.

        Prior adult court criminal record.

        Prior youth court findings of guilt.

        Prior Alternative Measures Program/ Caution Letter.

**YOUNG PERSON ONLY**

**Yes**   **No**

   The parent/spouse/responsible adult is aware of the alleged offence

   Is the name and address of the young person's parent/spouse/responsible adult recorded on Occurrence Report? If not, please provide:

<b>Name</b>		<b>Phone No.</b>
<b>Address</b>		<b>P.C.</b>

**Comments**

---

<b>Police officer Name print name</b>		<b>Badge Number</b>	<b>Police Agency</b>	<b>Date    yy   mm   dd</b>
	<b>Police Officer Signature</b>			

**Police Copy (Detach prior to forwarding to Crown Prosecutor)**

**SECTION B - CROWN**

I, \_\_\_\_\_, decide as follows:

Print name      Crown Prosecutor

Caution Letter (Youth Only)       Insufficient evidence or charge

Alternative Measures      barred at law(see Section D below)

Do not approve (see Section D below)

**Comments:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

<b>Crown Prosecutor signature</b>	<b>Date    yy   mm   dd</b>
-----------------------------------	-----------------------------

**SECTION C - PROBATION OFFICER NOTIFICATION TO CROWN**

- 1. Not been approved/not entered into Alternative Measures Program (see Comments)
- 2. Not successfully completed the terms of their Alternative Measures Agreement.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

_____	_____
Probation Officer /Other Service Provider	Date yy mm dd

**SECTION D - CROWN NOTIFICATION TO POLICE**

Accordingly, I \_\_\_\_\_,  
Print name Crown Prosecutor

at \_\_\_\_\_  
Location

Hereby request the Investigating police agency named in Section "A" to proceed  
With the charges for the alleged offence(s) in Section "A".

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

_____	_____
Crown Prosecutor signature	Date yy mm dd

10.16.2. Alternative Measures Agreement

**SECTION A**

I, \_\_\_\_\_ do hereby acknowledge that:

**Name**

1. I have been accused of committing the following offence(s):

**Section and Statute**

**Description**

2. I have been advised before signing this Agreement of my right to consult counsel and I have been given a reasonable opportunity to do so.

3. The Alternative measures program has been legal satisfactorily explained to me.

**SECTION B** FURTHER, I UNDERSTAND THAT:

1. Upon my successful completion or compliance with all terms and conditions of this Agreement, I shall not be prosecuted for the above listed offence(s) and therefore shall not have a criminal record.
2. My wilful failure to satisfactorily complete or abide by any term or condition of this Agreement may result in the prosecution of the above offence(s).
3. Any admission, confession, or statement given by me in this Agreement

- In which I accept responsibility for any act or omission on my part regarding the above alleged offence(s) as a condition of acceptance into the Alternative Measures program shall not be admissible against me in any civil or criminal proceedings.
4. Should I re-offend after completion of the Alternative Measures Program, I may not again be allowed to participate in the Alternative Measures Program

**SECTION C**

**IN AGREEING TO ENTER THE ALTERNATIVE MEASURES PROGRAM, I** \_\_\_\_\_

**Name**

1. Accept responsibility for the act or omission that forms the basis of the offence(s) I am alleged to have committed.
2. Freely and fully agree to participate in the Alternative Measures Program by complying with the following conditions:

- (a) Apologize \_\_\_\_\_ to \_\_\_\_\_  
Specify in person/in writing \_\_\_\_\_ Name of Victim(s) \_\_\_\_\_  
by \_\_\_\_\_  
Name of Victim(s) \_\_\_\_\_ yy mm dd
- (b) Complete \_\_\_\_\_ hours of Personal Service for \_\_\_\_\_  
Name of Recipient(s) \_\_\_\_\_  
by \_\_\_\_\_  
Name of Recipient(s) \_\_\_\_\_ yy mm dd
- (c) Complete \_\_\_\_\_ hours of Community Service by \_\_\_\_\_  
yy mm dd
- (d) Pay restitution/return property as follows: \_\_\_\_\_
- (e) Make a donation to a registered charity as follows: \_\_\_\_\_
- (f) Participation in Aboriginal cultural/spiritual activities: \_\_\_\_\_
- (g) Complete and essay or poster by \_\_\_\_\_ as directed by the Probation Officer or Other Service Provider  
yy mm dd
- (h) As directed by the Probation Officer or Other Service Provider, to attend or participate in: Specify \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(i) To be under the supervision of a Probation Officer or other Service provider and report as directed until the above Conditions are satisfactorily completed.

(j) Participate in a Victim/Offender reconciliation Program and carry out the terms as negotiated above.

Victim Signature(s)

\_\_\_\_\_

Effective Date of Agreement    yy mm dd
---

Termination Date of Agreement yy mm dd
--

**Note: Length of Agreement  
cannot exceed 3 months duration**

_____	_____	_____
<b>Probation Officer/Service Provider</b>	<b>Date</b>	<b>yy mm dd</b>
		<b>Participant</b>

**SECTION D** Termination Report  
Complete upon termination

**Note: The Crown Prosecutor copy of this Agreement shall be  
returned to the Crown Prosecutor in the case of an**

**unsuccessful termination.**

The Person named in Section "A" above has  successfully  unsuccessfully completed the terms of this Agreement.

_____	_____	_____
<b>Probation Officer/Service Provider</b>	<b>Phone</b>	<b>Date</b>
		<b>yy mm dd</b>



## 10.17 Appendix "B" Data

The following statistics pertaining to the adult and young offender alternative measures programs in Alberta were provided by Alberta Justice, Correctional Services and represent alternative measures activity in the province for the period April 1, 1996 to March 31, 1997. While the data provided does not, necessarily, represent all available data on alternative measures activity, it does provide an overview of that which is available in Alberta.

**Table 1. Young Offenders Workload Statistics (Apr 1, 1996 - Mar 31, 1997)**

Non-Supervised Cases - Administered Programs	New Cases			Total Caseload		
	Male	Female	Total	Males	Female	Total
Alternative Measures	2849	1628	4477	6042	3227	9269

**Table 2. Alternative Measures Supervised by Youth Justice Committees (Apr 1, 1996 - Mar 31, 1997)**

Programs supervised by Youth Justice Committees	Cases		
	Male	Female	Total
New Alternative Measures Agreements	355	156	511
New Victim/Young Person Agreements	3	0	3
<b>Total</b>	<b>358</b>	<b>156</b>	<b>514</b>

**Table 3. Native Young Offenders Workload Statistics (Apr 1, 1996 - Mar 31, 1997)**

Non-Supervised Cases - Administered Programs	New Cases			Total Caseload		
	Male	Female	Total	Males	Female	Total
Alternative Measures	275	212	487	644	499	1143
Alternative Measures Supervised by Youth Justice Committees	2	3	5			

**Table 4. Adult offenders Workload Statistics (Apr 1, 1996 to Mar 31, 1997)**

Non-Supervised Cases - Administered Programs	New Cases			Total Caseload		
	Male	Female	Total	Males	Female	Total
Adult Alternative Measures*	326	243	569	386	294	680

\* Program commenced in February, 1997

**Table 5. Native Adult offenders Workload Statistics (Apr 1, 1996 to Mar 31, 1997)**

Non-Supervised Cases - Administered Programs	New Cases			Total Caseload		
	Male	Female	Total	Males	Female	Total
Adult Alternative Measures*	6	5	11	6	5	11

\* Program commenced in February, 1997.

## 10.18 References

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Alberta Justice, Community Corrections - Community Programs (1997). *Community Corrections and Release Programs Branch Policy Manual: Adult Alternative Measures Program*. Edmonton Alberta.

Alberta Justice, Community Corrections - Community Programs (1997). *Community Corrections and Release Programs Branch Policy Manual: Young Offenders Alternative Measures Program*. Edmonton Alberta.

Alberta Justice . *X-Change: News for Alberta's Youth Justice Committees*. Issues 1 - 3. Winter 1995-1996, Fall 1996 and Winter 1997. Edmonton, Alberta.

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# 11. British Columbia

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## 11.1 The Philosophy of Alternative Measures

As a matter of policy, youth diversion in British Columbia has been common practice since the late 1970's. The proclamation of the *Young Offenders Act (Canada)* in 1985 provided statutory authority for alternative measures, which

Youth diversion has been common practice since the late 1970's in British Columbia. The alternative measures programs for youth are authorized by the Ministry of Attorney General and are generally provided for at the pre-charge stage. The Crown may also use Caution Letters for youth with no previous involvement, alleged to have committed a minor offence. With the proclamation of *Bill C-41*, the Ministry of Attorney General has significantly expanded the alternative measures programs by allowing the referral of persons and case types not traditionally referred.

are defined as measures other than judicial proceedings to deal with youth alleged to have committed an offence (see Chapter 1, s.1.1 for the specific wording of the appropriate sections in the *Act*). In British Columbia, youth are generally referred to an alternative measures program prior to charges being laid (pre-charge stage). Crown Counsel also has the option of issuing a "Caution Letter" (see s.11.16.1 for a sample letter) instead of using alternative measures, to conclude a case involving a relatively minor offence in cases where the young person has no previous involvement in the criminal justice system. The letter is addressed to the parent or guardian of the young person and is intended to provide a

method of dealing quickly, and simply, but formally, with a young person who would otherwise be charged with a relatively minor offence.

The Ministry of Attorney General is responsible for authorizing alternative measures programs. In most areas, the authorized program will be either a Ministry of Attorney General or Ministry of Children and Families program, delivered by youth probation officers or agencies that are contracted to provide an alternative measures program.

One of a number of projects initiated under the Ministry of Attorney General's Justice Reform Strategy is the expansion of youth alternative measures programs. Historically, alternative measures has been seen as providing a number of benefits to the victim, the offender, and society at large. The expansion of the program is viewed as enhancing restorative practices in the criminal justice system. Although the *Young Offenders Act (Canada)* has always provided that a person dealt with by way of alternative measures could be returned to court for the original offence if there was non-compliance with the terms and conditions of the alternative measures, returns were rarely used in British Columbia because of the lack of an equivalent statutory provision for adults. The proclamation of *Bill C-41* provides the equivalent statutory provision for adults and has led to the support of the Ministry of Attorney General for the significant expansion of alternative measures to young persons and case types not traditionally referred (see s.11.8, 'Eligibility Criteria').

As with the youth diversion, adult diversion has been common practice, as a matter of policy, since the late 1970's. The statutory authority for adult diversion, in the form of alternative measures, came in September 1996 with the

proclamation of *Bill C-41* (see Chapter 1, s.1.1 for the wording of the specific sections). In British Columbia, alternative measures programs for adults are

Adult diversion programs have been common practice since the late 1970's. The present alternative measures programs, based on *Bill C-41*, are authorized by the Ministry of Attorney General and are offered at the pre-charge stage, generally. The development of alternative measures programs based on restorative justice principles is supported by the Ministry of Attorney General as an important way of addressing both offender accountability and the concerns of victims and communities.

generally offered at the pre-charge stage with the option to access the program at any point throughout the prosecution, having regard to the limitation date. Although Caution Letters are usually used to address minor cases involving young offenders, policy does allow Crown Counsel to exercise their discretion to use caution letters directed to adult offenders in appropriate circumstances.

Alternative measures programs for adults are authorized by the Ministry of Attorney General. Those authorized programs report directly to the Crown Counsel respecting the suitability of a person for alternative measures. The statutory safeguard of prosecution when there is

non-compliance with the terms or conditions of an alternative measures agreement, has, as with the youth programs, led the Ministry of Attorney General to significantly expand the alternative measures programs to persons and case types not traditionally referred (see s.11.8 'Eligibility Criteria').

Similar to the programs offered for youth, the philosophy of developing the programs based on restorative justice principles such as family group conferencing, community accountability panels, and victim/offender reconciliation processes, is one that is supported by the Ministry of Attorney General. These programs, it is held, may provide increased opportunities for offender accountability and responses that are more meaningful for victims and communities.

## 11.2 Responsibility for the Delivery of Alternative Measures

### 11.2.1. Youth

In most areas, the responsibility for the delivery of alternative measures programs for youth rests with either a Ministry of Attorney General or Ministry of Children and Families authorized program. A youth probation officer will complete a "pre-trial enquiry" and report to Crown Counsel regarding the suitability of the young person for alternative measures. In other areas, the Ministry of Attorney General or Ministry of Children and Families will contract with community-based agencies to provide alternative measures programs. These agencies are then responsible for reporting directly to Crown Counsel respecting the suitability of a young person referred to alternative measures. The Ministry of Attorney General also supports the development of alternative measures programs such as family group conferencing, community accountability panels, and victim/offender reconciliation programs

### 11.2.2. Adult

Alternative measures programs for adults are delivered by community-based agencies that are authorized to deliver programs by the Ministry of Attorney General pursuant to section 717 of the *Criminal Code of Canada*. The authorized programs report directly to Crown Counsel regarding the suitability of a person for alternative measures. Crown Counsel can then either approve or reject the recommended alternative measures. As with the youth, the Ministry of Attorney General supports the development of restorative justice-based programs that will enhance the involvement of the community in the delivery of alternative measures programs.

## 11.3 Referral Agent

### 11.3.1. Youth

All referrals to alternative measures programs for youth are made by Crown Counsel, who should be satisfied that the charge approval standard has been met before determining whether to refer persons for alternative measures consideration.

Referrals to alternative measures programs for youth originate with Crown Counsel. The Probation Officer or agency administering the program is responsible for reporting to Crown Counsel regarding the suitability of the young person for alternative measures. Final referral authorization is decided following this report.

Referrals to alternative measures are made to a program authorized by the Attorney General pursuant to section 4 of the *Young Offenders Act (Canada)*. When a referral is made, the probation officer, or the agency administering the program, will report directly to Crown Counsel respecting the suitability of the young person for

alternative measures. Crown Counsel can then choose to either approve or reject recommended alternative measures.

In the case of a young person alleged to have committed a relatively minor offence and who has no previous criminal justice history, Crown Counsel should, by policy, conclude the case through the issuance of a Caution letter.

### 11.3.2. Adult

As with the youth programs, Crown Counsel is responsible for initiating all referrals to authorized alternative measures programs. The agency administering the program is then responsible for reporting directly to Crown Counsel respecting the suitability of the person for alternative measures. Crown Counsel can then either reject or approve recommended alternative measures.

Although caution letters are normally used to conclude relatively minor cases involving youth, because the letter is addressed to the parent or guardian who is

responsible for the youth, Crown Counsel may exercise their discretion to use Caution letters, directed to an adult offender, in appropriate circumstances.

## 11.4 The Role of the Police

### 11.4.1. Youth

As the initial point of contact in the criminal justice system, the police play an important role in the overall delivery of services to youth. Although all referrals to alternative measures originate with Crown Counsel, the police are encouraged, by policy, to continue to exercise their discretion and to resolve appropriate youth and adult cases informally. The proposed Justice Reform Initiatives, through the Ministry of Attorney General, suggest the development of province-wide police guidelines encouraging the police to initiate the use of formal “caution letters” for youth.

### 11.4.2. Adult

Although the police do not play a direct role in the delivery of alternative measures programs for adults, they do represent the first point of contact into the system. Following an investigation, police retain their right to exercise their discretion to take no further action, to resolve the matter informally, or to refer the case to Crown Counsel, either for consideration for alternative measures or for proceeding with a charge.

## 11.5 The Role of the Crown Attorney

### 11.5.1. Youth

Crown Counsel plays a primary role in the delivery of alternative measures programs for youth. As the referral agent, Crown Counsel is responsible for

Crown Counsel is responsible for reviewing and approving all recommended alternative measures. Crown Counsel must ensure that all eligibility criteria are met and that the use of alternative measures best addresses the needs of the young person and the interests of society and the victim.

approving all recommended alternative measures and must be satisfied that the charge approval standard has been met before determining whether to refer a young person to alternative measures.

In deciding whether it is appropriate to refer young persons for alternative measures consideration, Crown Counsel should consider both the needs of the young person and the interests of society, which include the interests of the victim. Crown Counsel is also responsible for ensuring that all other

eligibility criteria and legal pre-conditions are met (see s.11.8 'Eligibility Criteria'), and that the Alternative Measures Form includes such confirmation.

In the event that Crown Counsel determines, upon reviewing an Alternative Measures Form, that a young person is not suitable for alternative measures, Crown Counsel is responsible for deciding whether or not a charge should be laid.

#### 11.5.2. Adult

As with the youth programs, Crown Counsel plays a primary role in the adult alternative measures programs. As the referral agent, Crown Counsel is responsible for reviewing and approving all alternative measures recommendations. Crown Counsel should be satisfied that the charge approval standard has been met prior to determining whether to refer persons for alternative measures consideration. Similar to the youth programs, alternative measures may be considered at the time of charge approval, or having regard to the limitation date, at any time throughout the prosecution.

In deciding whether it is appropriate to refer persons for alternative measures consideration, it is the responsibility of Crown Counsel to consider the need to protect society, the needs of the alleged offender, and the interests of society and of the victim. Section 717 of the *Criminal Code of Canada* mandates that alternative measures be used only when the use of such programs are not inconsistent with the protection of society.

The role of Crown Counsel also includes that of determining whether or not to lay a charge if, upon reviewing an Alternative Measures Form, it is determined that the person is not a suitable candidate for alternative measures.

### 11.6 The Role of the Victim

#### 11.6.1. Youth

The role of the victim in alternative measures programs is often defined by the victim's willingness to become involved. The interests of the victim are generally considered in the determination to refer a young person to alternative measures and if the victim is involved in the process, the alternative measures agreement may reflect measures specific to providing reparation or restitution to the victim.

The proposed Justice Reform Initiatives highlights the importance of victim involvement in restorative justice approaches. Crime is seen as an offence that causes harm to individuals, families, friends, and communities and may provide an opportunity for the transformation of people and communities. The involvement of victims, and the opportunity to come together with offenders and communities to address the harm done by the criminal behaviour is viewed as a constructive approach to strengthening positive social bonds.

### 11.6.2. Adult

The willingness and desire of the victim to become involved in the alternative measures process are the determining factors in defining the role they may play. Crown Counsel, by policy, should consider the views and interests of the victim prior to recommending alternative measures. In the event that the victim chooses to participate in the alternative measures process, the agreement will often reflect reparation or restitution to the victim.

Consistent with the restorative justice principles outlined in the proposed Justice Reform Initiatives, the victim plays an essential role along with the community in addressing the harm done by the criminal behaviour, in ensuring that the alleged offender is held accountable for his/her actions and in facilitating the re-integration of the alleged offender into the community.

## 11.7 Right to Legal Counsel

### 11.7.1. Youth

Section 4(d) of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.7 for the specific wording of this section) specifies that before becoming involved in

Crown Counsel assumes the responsibility for ensuring that the young person is advised of his/her right to consult counsel and that a reasonable opportunity to do so has been provided.

alternative measures, the young person must fully and freely consent to participate. Before providing this consent, the young person must be advised of his/her right to consult with counsel and be given a reasonable opportunity to consult. In British Columbia, the responsibility for ensuring that the young person is properly advised of his/her rights rests with Crown Counsel. Crown Counsel

must ensure that the Alternative Measures Form includes confirmation that the youth has been advised of his/her rights. The report must also provide details and confirmation that the youth has been advised that the original offence may be prosecuted if he/she fails to comply with the terms and conditions of the alternative measures agreement, and that the alternative measures record may be introduced as evidence or be included in a pre-sentence report on any subsequent court appearances (subject to time periods outlined in the *Young Offenders Act (Canada)*).

### 11.7.2. Adult

It is the responsibility of Crown Counsel to ensure that the conditions outlined in Section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.7 for the specific wording of the section), have been met before approving alternative measures for adults. This includes ensuring that the person has been advised of his/her right to be represented by legal counsel and that he/she is informed of this right prior to fully and freely consenting to participate in alternative measures. As with the

youth programs, it is the responsibility of Crown Counsel to see that the Alternative Measures Form includes confirmation that these conditions have been met and that the person is advised that the original offence may be prosecuted, in the event of non-compliance with the alternative measures agreement, and that the alternative measures record may be introduced into evidence, or used in a pre-sentence report, should the person appear before the court on a subsequent charge.

## 11.8 Eligibility Criteria

### 11.8.1. Youth

Legislated criteria governing the eligibility criteria for formally authorized alternative measures programs for youth across Canada are set out in the federal *Young Offenders Act (Canada)* (see Chapter 1, s.1.8 for the specific wording of the appropriate sections). Included in this is that prior to approving any alternative measures, Crown Counsel must ensure that there is sufficient evidence to proceed with the prosecution of the offence and that prosecution is not barred in any way. As well, the young person must fully and freely consent to participate in any alternative measures. In addition to this, provincial policy specifies particular criteria that must be met prior to Crown Counsel authorizing a referral to alternative measures.

Young persons with no previous convictions, diversions, alternative measures, or caution letters, who are alleged to have committed a relatively minor offence, are usually dealt with by way of Caution letters. Caution letters are issued by Crown Counsel and are addressed to the parent/guardian who is responsible for the young person.

The Ministry of Attorney General has outlined separate policies that apply to:

- sexual assaults;
- assaults within the family or a relationship;
- offences where the victim is a child;
- hate/propaganda offences;
- hate/bias offences; and
- criminal harassment offences.

All of these policies state that alternative measures should only be approved in exceptional circumstances and that Crown Counsel should consider whether or not the use of alternative measures would be appropriate having regard to the needs of the young person and the interests of society. In addition, when considering the use of alternative measures under these policies, Crown Counsel should consider the policies outlined for Category 1 and 2 offences (see below).

The existence of prior convictions, diversions, or alternative measures does not necessarily render a young person ineligible for alternative measures consideration. The policy states that among the factors to be considered are the nature and the seriousness of the current offence, the circumstances of the offender, and the number, age, nature and outcome of any prior involvement with the criminal justice system.

For the purposes of determining eligibility for alternative measures, offences are classified in British Columbia into four distinct categories (see Appendix 'C' for a complete list of the offences). Category 4 offences are the least serious. All first time young offenders who would otherwise be charged with an offence in this category should be presumed eligible for alternative measures and should be referred by Crown Counsel for consideration, unless the circumstances of the offence and the young person suggest that alternative measures would not be appropriate.

First time offenders who would otherwise be charged with an offence listed in Category 3 are eligible for alternative measures and should be referred for consideration if the circumstances of the offence and the offender suggest that alternative measures may be appropriate having regard to the needs of the young person and the interests of society.

First time offenders alleged to have committed an offence of the type listed in Category 2 should only be referred for alternative measures if exceptional circumstances suggest that alternative measures may be appropriate having regard to the needs of the young person and the interests of society. Policy states that Regional Crown Counsel or their designate should be consulted before alternative measures are approved.

With respect to first time young offenders who would otherwise be charged with an offence of the type listed in Category 1 (with the exception of first and second degree murder, conspiracy to commit murder, attempted murder, and manslaughter which should never be considered for alternative measures), may, in rare circumstances, with the written approval of the Assistant Deputy Attorney General, be referred for alternative measures consideration by Regional Crown Counsel.

First time young offenders alleged to have committed minor offences are usually dealt with through Caution letters that are issued by Crown Counsel to the parent/guardian of the young person. In British Columbia, young persons alleged to have committed sexual assaults, assaults within the family or a relationship, offences where the victim was a vulnerable person, hate/bias offences, offences that involved a breach of trust, serious violent offences and driving offences are generally not eligible for alternative measures. British Columbia policy classifies offences into 4 categories, with 1 being the most serious. Offences in Categories 1 and 2 require exceptional circumstances and consultation with the Regional Crown Counsel and/or the Deputy Attorney General in order to be considered for alternative measures.

Crown Counsel policy in British Columbia outlines specific factors that may be of assistance to Crown Counsel in determining the appropriateness of alternative measures.

**(a) Factors favouring the use of alternative measures are that:**

- there is a likelihood of achieving the statutory aims of the *Young Offenders Act (Canada)* without the time and expense of court proceedings;
- there appears to be no risk of danger to the public;
- the consequences of prosecution would be unduly harsh for the victim, witnesses or the young person due to personal factors including age, physical or mental health, or the young offender's degree of culpability;
- the victim concurs with the use of alternative measures;
- alternative measures would not be contrary to the public interest of the local community;
- the offence is of a type set out in Category 3 or 4;
- a conviction is likely to result in a very small or insignificant penalty;
- the loss or harm can be described as minor and was the result of a single incident.

**(b) Factors necessitating or favouring prosecution are that::**

- the use of alternative measures would endanger the public;
- the offence was of such a serious nature as to threaten the safety or exceed the tolerance of the public;
- a conviction is likely to result in a significant sentence;
- considerable physical and/or psychological harm was caused to a victim;
- a weapon was used or threatened;
- the victim was a vulnerable person;
- the young offender was in a position of authority or trust;
- the offence was a breach of trust;
- there is evidence of premeditation;
- the offence is likely to be continued or repeated;
- the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor;
- there is a significant difference between the actual or mental ages of the young offender and the victim;
- the young offender committed the offence while under an order of the court;
- there is a written direction from Regional Crown Counsel, made in consultation with the Assistant Deputy Attorney General, that designated offences in Categories 3 and 4 should be prosecuted absent exceptional circumstances. This direction will be given when, following discussions with the local police, Regional Crown Counsel is satisfied there is a demonstrated need in the community to prosecute these offences arising from particular events or locations.

**(c) Other factors to consider are:**

- the need to maintain public confidence in the administration of justice;
- the young offender's youth record, or previous diversions or alternative measures; and
- the interests of the victim, being an "interest of society" should be taken into account, but will not necessarily be determinative.

### 11.8.2. Adult

Section 717 of the *Criminal Code of Canada* sets out the legislated criteria governing the eligibility for formally authorized alternative measures for adults across Canada (see Chapter 1, s. 1.8 for the specific wording of the applicable sections). Crown Counsel is responsible for ensuring that the legal conditions set out in Section 717 are met prior to authorizing any alternative measures. As well, Crown Counsel should consider the need to protect society, the needs of the person alleged to have committed the offence, and the interests of society and of the victim in deciding whether it is appropriate to refer persons for alternative measures.

Although Caution letters are, by policy, best used to deal with relatively minor offences involving first time young offenders, Crown Counsel may exercise their discretion to use caution letters directed to adult offenders in appropriate circumstances.

As with the youth program, the Ministry of Attorney General has outlined separate policies that apply to:

- sexual assaults;
- assaults within the family or a relationship;
- offences where the victim is a child;
- hate/propaganda offences;
- hate/bias offences; and
- criminal harassment offences.

All of these policies state that alternative measures should only be approved in exceptional circumstances. In addition, when considering the use of alternative measures under these policies, Crown Counsel should consider the policies outlined for Category 1 and 2 offences (see below).

The existence of prior convictions, diversions, or alternative measures does not necessarily render a person ineligible for alternative measures consideration. The policy states that among the factors to be considered are the nature and the seriousness of the current offence, the circumstances of the offender, and the number, age, nature and outcome of any prior involvement with the criminal justice system.

For the purposes of determining eligibility for alternative measures, offences are classified in British Columbia into four distinct categories (see Appendix 'C' for a complete list of the offences). Category 4 offences are the least serious. All first time offenders who would otherwise be charged with an offence in this category should be presumed eligible for alternative measures and should be referred by Crown Counsel for consideration, unless the circumstances of the offence and the offender suggest that alternative measures would not be appropriate.

First time offenders who would otherwise be charged with an offence listed in Category 3 are eligible for alternative measures and should be referred for consideration if the circumstances of the offence and the offender suggest that alternative measures may be appropriate having regard to the needs of the offender and the interests of society and of the victim.

First time adult offenders, in appropriate circumstance, and at the discretion of Crown Counsel, may be dealt with through Caution letters similar to those used with youth. In British Columbia, persons alleged to have committed sexual assaults, assaults within the family or a relationship, offences where the victim was a vulnerable person, hate/bias offences, offences that involved a breach of trust, serious violent offences and driving offences are generally not eligible for alternative measures. British Columbia policy classifies offences into 4 categories, with 1 being the most serious. Offences in Categories 1 and 2 require exceptional circumstances and consultation with the Regional Crown Counsel and/or the Deputy Attorney General in order to be considered for alternative measures.

Offenders alleged to have committed an offence of the type listed in Category 2 should only be referred for alternative measures if exceptional circumstances suggest that alternative measures may not be inconsistent with the protection of society, and may be appropriate having regard to the needs of the offender and the interests of society and of the victim. Policy states that Regional Crown Counsel or their designate should be consulted before alternative measures are approved.

With respect to offenders who would otherwise be charged with an offence of the type listed in Category 1 (with the exception of first and second degree murder, conspiracy to commit murder, attempted murder, and manslaughter which should never be considered for alternative measures), may, in rare circumstances, with the written approval of the Assistant Deputy Attorney General, be referred for alternative measures consideration by Regional Crown Counsel.

Crown Counsel policy in British Columbia outlines specific factors that may be of assistance to Crown Counsel in determining the appropriateness of alternative measures.

**(a) Factors favouring the use of alternative measures are that:**

- there is a likelihood of achieving the appropriate and effective result without the time and expense of court proceedings;
- there appears to be no risk of danger to the public;
- the consequences of prosecution would be unduly harsh for the victim, witnesses or the offender due to personal factors including age, physical or mental health, or the offender's degree of culpability;
- the victim concurs with the use of alternative measures;
- alternative measures would not be contrary to the public interest of the local community;
- the offence is of a type set out in Category 3 or 4;
- a conviction is likely to result in a very small or insignificant penalty;
- the loss or harm can be described as minor and was the result of a single incident.

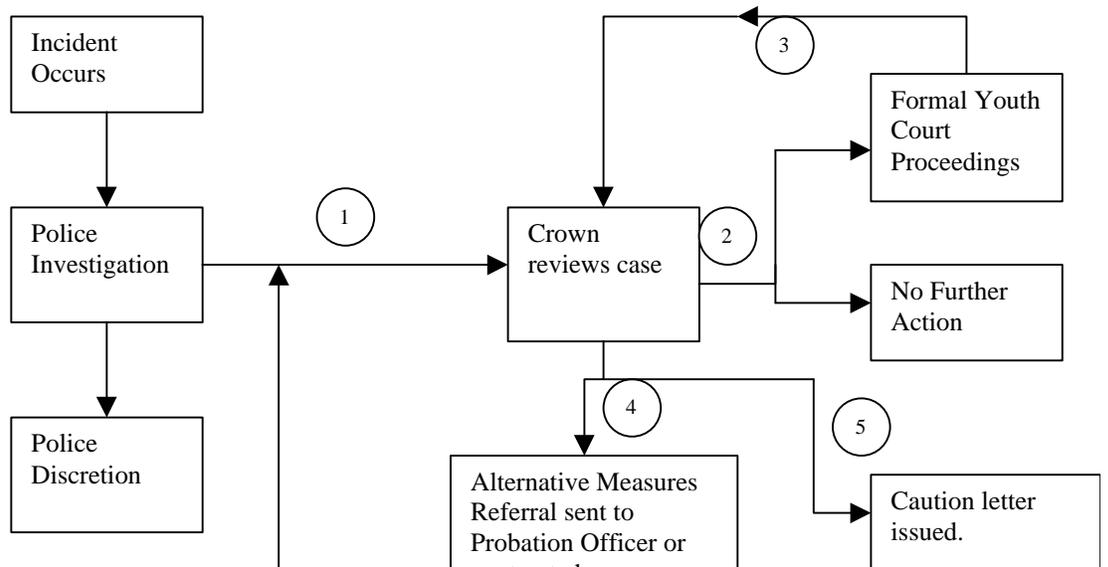
**(b) Factors necessitating or favouring prosecution are that:**

- the use of alternative measures would endanger the public;
- the offence was of such a serious nature as to threaten the safety or exceed the tolerance of the public;
- a conviction is likely to result in a significant sentence;
- considerable physical and/or psychological harm was caused to a victim;
- a weapon was used or threatened;
- the victim was a vulnerable person;
- the offender was in a position of authority or trust;
- the offence was a breach of trust;
- there is evidence of premeditation;
- the offence is likely to be continued or repeated;
- the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor;
- there is a significant difference between the actual or mental ages of the offender and the victim;
- the offender committed the offence while under an order of the court;
- there is a written direction from Regional Crown Counsel, made in consultation with the Assistant Deputy Attorney General, that designated offences in Categories 3 and 4 should be prosecuted absent exceptional circumstances. This direction will be given when, following discussions with the local police, Regional Crown Counsel is satisfied there is a demonstrated need in the community to prosecute these offences arising from particular events or locations.

**(c) Other factors to consider are:**

- the need to maintain public confidence in the administration of justice;
- the offender's criminal or youth record, or previous diversions or alternative measures;
- and
- the interests of the victim, which, while not necessarily determinative, must be taken into account.

## 11.9 Alternative Measures Process for Youth



### LEGEND

1. Following a police investigation, if the police decide not use their discretion, they will refer the case to the Crown for consideration of how to proceed.
2. The Crown reviews the case and may decide to proceed with formal youth court proceedings, take no further action, or refer to alternative measures.
3. Alternative measures is usually considered at the time of charge approval, however, having regard to the limitation date, it may be considered at any time throughout the prosecution.
4. If the Crown decides that the case is appropriate for alternative measures, he/she will refer the case to the Probation Officer or the contracted agency delivering the alternative measures program.
5. First time young offenders alleged to have committed a relatively minor offence are dealt with using a Caution Letter that is sent to the parent/guardian of the youth.
6. The Probation Officer or contracted agency will contact the victim, if applicable, the young person and the parents of the young person, if applicable, to determine the suitability of the young person for alternative measures and will report directly to Crown Counsel. If the youth is unsuitable, the case is referred back to Crown Counsel.
7. If the youth is suitable, an alternative measures agreement is negotiated that specifies the measures to be completed, timelines and expectations.
8. If the alternative measures agreement is not completed successfully or is only partially completed, the case is referred back to the Crown.
9. If the alternative measures agreement is completed successfully, the alternative measures form is completed and a record kept.

Following a police investigation, if the police choose not to exercise their traditional discretion to take no further action or to divert the young person informally, the case will be referred to Crown Counsel. Subject to the eligibility criteria discussed above, Crown Counsel will decide whether to proceed with formal charges, to take no further action, to issue a Caution letter or to refer the young person for consideration for alternative measures.

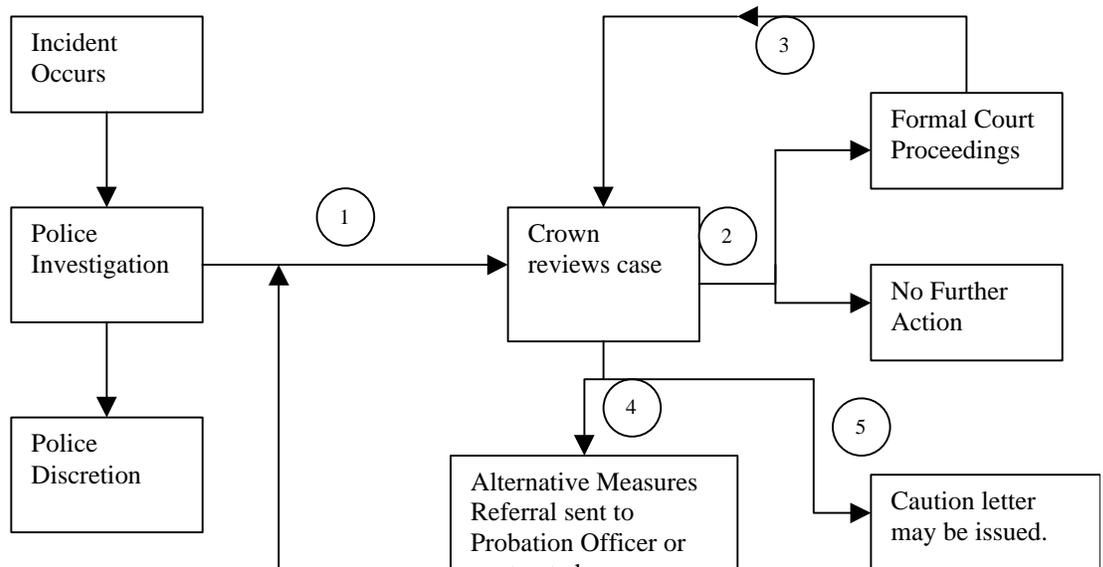
In the event of first time young persons alleged to have committed a relatively minor offence, Crown Counsel will usually conclude the case by issuing a Caution letter that is addressed to the parent/guardian who is responsible for the young person. The purpose of caution letters is to deal quickly, simply, but formally with appropriate young persons. The young person should have had no previous involvement, of any kind, with the criminal justice system and the use of a caution letter must be warranted having regard to the needs of the young person and the interests of society. A record of the caution letter is kept and the young person is advised that the caution will be considered in the event of any further police reports of alleged offences.

All other young persons eligible for alternative measures consideration will be referred by Crown Counsel to a Probation Officer or an agency contracted to deliver the alternative measures program. The Probation Officer, or the contracted agency, is responsible for determining the young person's suitability for alternative measures (e.g., acceptance of responsibility, consent to participate, etc.), and for reporting such directly to Crown Counsel. Final approval from Crown Counsel is then given to appropriate young persons for alternative measures.

The alternative measures process may involve the young person, the parent/guardian of the young person, and, where applicable, the victim. The choice of process is dependent on the types of processes available in the local community. In some cases, the Probation Officer, or contracted agency, may conduct an interview with the involved parties to arrive at an agreement. In other cases, community accountability panels, family group conferencing, or victim/offender reconciliation may be used to assist in arriving at an agreement. These restorative justice approaches are seen as non-adversarial processes in which individuals and communities are provided a voice in settling disputes and responding to crimes that affect them.

Once an agreement is reached the Probation Officer, or the contacted agency, is responsible for monitoring the agreement and for reporting to Crown Counsel the outcome of the alternative measures process.

## 11.10 Alternative Measures Process for Adults



### LEGEND

1. Following a police investigation, if the police decide not use their discretion, they will refer the case to the Crown for consideration of how to proceed.
2. The Crown reviews the case and may decide to proceed with formal court proceedings, take no further action, or refer to alternative measures.
3. Alternative measures is usually considered at the time of charge approval, however, having regard to the limitation date, it may be considered at any time throughout the prosecution.
4. If the Crown decides that the case is appropriate for alternative measures, he/she will refer the case to the Probation Officer or the contracted agency delivering the alternative measures program.
5. Although Caution letters are normally reserved for first time young offenders alleged to have committed a relatively minor offence, Crown Counsel may exercise their discretion to issue a Caution letter to appropriate adult offenders..
6. The Probation Officer or contracted agency will contact the victim, if applicable, and the offender to determine the suitability of the person for alternative measures, and will report directly to Crown Counsel. If the person is unsuitable, the case is referred back to Crown Counsel.
7. If the person is suitable, an alternative measures agreement is negotiated that specifies the measures to be completed, timelines and expectations.
8. If the alternative measures agreement is not completed successfully or is only partially completed, the case is referred back to the Crown.
9. If the alternative measures agreement is completed successfully, the alternative measures form is completed and a record kept.

The alternative measures process for adults is essentially the same as that for youth. If, following an investigation, the police choose not to use their traditional discretion to take no further action, or to divert the person informally, the case will be referred to Crown Counsel. Subject to the eligibility criteria discussed above (s.11.8.2), Crown Counsel will decide whether to proceed with formal charges, to take no further action, to issue a Caution letter or to refer the person for consideration for alternative measures.

Although the use of Caution letters are usually reserved for first time young offenders alleged to have committed a relatively minor offence, Crown Counsel may use their discretion to conclude an adult case by issuing a Caution letter. The purpose of caution letters, as is the case with youth, is to deal quickly, simply, but formally with appropriate offenders. The offender should have had no previous involvement, of any kind, with the criminal justice system and the use of a caution letter must be warranted having regard to the needs of the offender and the interests of society and the victim. A record of the caution letter is kept and the offender is advised that the caution will be considered in the event of any further police reports of alleged offences.

All other offenders eligible for alternative measures consideration will be referred by Crown Counsel to a Probation Officer or an agency contracted to deliver the alternative measures program. The Probation Officer, or the contracted agency, is responsible for determining the person's suitability for alternative measures (e.g., acceptance of responsibility, consent to participate, etc.), and for reporting such directly to Crown Counsel. Final approval from Crown Counsel is then given to appropriate persons for alternative measures.

The alternative measures process will involve the person, and, where applicable, the victim. The choice of process is dependent on the types of processes available in the local community. In some cases, the Probation Officer, or contracted agency, may conduct an interview with the involved parties to arrive at an agreement. In other cases, community accountability panels, family group conferencing, or victim/offender reconciliation may be used to assist in arriving at an agreement. These restorative justice approaches are seen as non-adversarial processes in which individuals and communities are provided a voice in settling disputes and responding to crimes that affect them.

Once an agreement is reached the Probation Officer, or the contacted agency, is responsible for monitoring the agreement and for reporting to Crown Counsel the outcome of the alternative measures process.

## 11.11 The Alternative Measures Agreement

### 11.11.1. Youth

The *Alternative Measures Form* is the document prepared by the Probation Officer or the contracted agency following approval of alternative measures and contains the conditions and terms of the measures agreed to by the participants in the interview. The Form will also include confirmation that the legal pre-

conditions, as set out in Section 4 of the *Young Offenders Act (Canada)*, have been met (e.g., consent to participate, right to legal counsel, acceptance of responsibility). In addition, the Form should provide details about the suitability of the young person, and the victim's views respecting the measures. The form should indicate confirmation that the young person has been advised that the original offence may be prosecuted if there is non-compliance with the terms, and that the alternative measures record may be introduced into evidence in subsequent court processes. The Probation Officer or contacted agency, in drafting the agreement, will consider the nature of the offence, the appropriateness of restitution, personal, or community service work, the special needs of the young person and the availability of community resources.

The agreement will identify the level of participation required in one or more measures and will clearly identify the time frame for completion of the terms. In finalizing the alternative measures agreement, the Probation Officer, or contracted agency, is responsible for having the young person sign the agreement and for having copies of the agreement distributed to all appropriate parties including the victim, where applicable.

#### 11.11.2. Adult

The *Alternative Measures Form* for adults is similar to that which is used for youth. The document is prepared by the Probation Officer or the contracted agency following approval of alternative measures and contains the conditions and terms of the measures agreed to by the participants in the interview. The Form will also include confirmation that the legal pre-conditions, as set out in Section 717 of the *Criminal Code of Canada*, have been met (e.g., consent to participate, right to legal counsel, acceptance of responsibility). In addition, the Form should provide details about the suitability of the offender, and the victim's views respecting the measures, if appropriate. The form should provide confirmation that the offender has been advised that the original offence may be prosecuted if there is non-compliance with the terms, and that the alternative measures record may be introduced into evidence in subsequent court processes. The Probation Officer or contacted agency, in drafting the agreement, will consider the nature of the offence, the appropriateness of restitution, personal, or community service work, the needs of the offender and the availability of community resources.

The agreement will identify the level of participation required in one or more measures and will clearly identify the time frame for completion of the terms. In finalizing the alternative measures agreement, the Probation Officer, or contracted agency, is responsible for having the offender sign the agreement and for having copies of the agreement distributed to all appropriate parties including the victim, where applicable.

## 11.12 The Range of Alternative Measures

### 11.12.1. Youth

The nature of specific alternative measures agreements will depend on the circumstances of the situation. Agreements generally include actions to be undertaken by the young person which hold him/her accountable, make reparation to immediate victims and their families, re-integrate the young person into the community, allow healing for all concerned, and diminish the likelihood of future offences.

In British Columbia, alternative measures agreements for youth often include one or more of the following:

- *Acknowledgement of responsibility* by the youth for the harm done and actions which make amends directly to the victim. These may include participation in the encounter itself, verbal or written apologies, financial restitution, or reparation, and/or a personal service performed by the young person for the victim.
- *Actions that make amends to the community*, which may include such things as a donation to charity, volunteer community service work, and/or public speaking about the young person's experience.
- *Actions which reduce the likelihood of re-offending* which may include counselling, treatment for drug and alcohol abuse, participation in specialized offence-based treatment programs (e.g., shoplifting program), continuing education and employment training, and participation in appropriate cultural activities.

One of the goals of the alternative measures program for both youth and adults is to allow offenders, victims, and communities to come together to confront not only the specific offence but also to address underlying causes of the criminal behaviour. The range of measures include: acknowledging responsibility through apologies, restitution and/or personal service to the victim; making amends to the community through donations to charity, community service work and/or public speaking; and, addressing the underlying causes through such things as participation in counselling, specialized programs, training and appropriate cultural activities.

### 11.12.2. Adult

The adult alternative measures programs are based on current youth programs and rely on a similar range of alternative measures. Under the restorative justice strategy, offenders, victims and communities work together and confront specific offences on a case by case basis, but in so doing, also focus on the underlying causes of criminal behaviour. As a result, the alternative measures employed may vary depending on the circumstances of each case. The common aspect, however, will be the fundamental philosophy that the alternative measures process should hold the offender accountable while making reparation to the victim and the community. The process should promote

the healing of all concerned, strive to reintegrate the offender into the community, and reduce the potential of future criminal activity.

As with the youth programs, one or more of the following measures are generally included in an adult alternative measures agreement:

- *Acknowledgement of responsibility* by the offender for the harm done and actions which make amends directly to the victim. These may include participation in the encounter itself, verbal or written apologies, financial restitution, or reparation, and/or a personal service performed by the offender for the victim.
- *Actions that make amends to the community*, which may include such things as a donation to charity, volunteer community service work, and/or public speaking about the offender's experience.
- *Actions which reduce the likelihood of re-offending* which may include counselling, treatment for drug and alcohol abuse, participation in specialized offence-based treatment programs (e.g., shoplifting program), continuing education and employment training, and participation in appropriate cultural activities.

### 11.13 Supervision of Alternative Measures Agreement

#### 11.13.1. Youth

Under the current policies and procedures, the Probation Officer, or contracted community-based agency responsible for the delivery of the alternative measures program, is responsible for the supervision and monitoring of all alternative measures agreements. This responsibility includes amending, if necessary, any alternative measures agreements and forwarding all required documentation to Crown Counsel in the event the young person fails to completed the agreement or comply with the terms of the agreement.

#### 11.13.2. Adult

As is the case with the youth programs, the Probation Officer, or contracted community-based agency responsible for the delivery of the alternative measures program, is responsible for the supervision and monitoring of all alternative measures agreements. This responsibility includes making any revisions necessary to an alternative measures agreement and forwarding all required documentation to Crown Counsel in the event the offender fails to completed the agreement or comply with the terms of the agreement

## 11.14 Completion of Agreement

### 11.14.1. Youth

In the case of a successful completion of the alternative measures agreement, the Probation Officer or contracted agency will complete the appropriate section of the Alternative Measures Form and will file the documentation accordingly.

In all cases of unsuccessful termination, or if the young person appears to be unnecessarily delaying the making of an alternative measures agreement, the case will be referred back to Crown Counsel for consideration for prosecution of the original offence. Crown Counsel policy states that an original offence can be prosecuted if there was total or substantial non-compliance with the terms and conditions of the agreement. If there was partial non-compliance with a fundamental term or condition of the agreement, prosecution may also be in order. In every case, where the offence is one provided for in Category 4, Crown Counsel must determine whether the public interest requires prosecution. The following guidelines are provided in policy to assist Crown Counsel:

**(a) Generally, prosecution is not encouraged if:**

- the offence was of a type traditionally diverted (i.e., there was no prosecution for non-compliance);
- the young offender has no youth record, or previous diversions or alternative measures;
- a conviction is likely to result in a relatively minor consequence; and,
- the additional court time required to prove non-compliance is not justified.

**(b) Generally, prosecution should be considered if any of the following factors exist:**

- the young offender has a youth record, or previous diversions or alternative measures;
- the young offender has continued to commit offences while subject to alternative measures; and,
- the offence is of a type not traditionally diverted.

In cases where the offence is of a type other than that listed in Category 4, the general policy is that the young person should be prosecuted for failure to comply with the terms and conditions of the alternative measures agreement. Prosecution is subject to the ability of Crown Counsel to prove the original offence and the limitation period of the original offence. In addition, the circumstances of the original offence must be considered along with the nature of the terms and conditions not completed, and whether the defence of partial compliance will likely succeed on a balance of probabilities.

### 11.14.2. Adult

In the case of a successful completion of the alternative measures agreement, the Probation Officer or contracted agency will complete the appropriate section of the Alternative Measures Form and will file the documentation accordingly.

Given the statutory safeguard of prosecution when there is non-compliance with the terms and conditions of an alternative measures agreement that is provided for in Section 717 of the *Criminal Code of Canada*, the Ministry of Attorney General in British Columbia has provided support for the expansion of alternative measures to persons and case types not traditionally diverted. Clear criteria has been developed to respond appropriately to cases where there is non-compliance with alternative measures agreements.

In all cases of unsuccessful termination, or if the offender appears to be unnecessarily delaying the making of an alternative measures agreement, the case will be referred back to Crown Counsel for consideration for prosecution of the original offence. Crown Counsel policy states that an original offence can be prosecuted if there was total or substantial non-compliance with the terms and conditions of the agreement. If there was partial non-compliance with a fundamental term or condition of the agreement, prosecution may also be in order. In every case, where the offence is one provided for in Category 4, Crown Counsel must determine whether the public interest requires prosecution and the following guidelines are provided in policy:

**(a) Generally, prosecution is not encouraged if:**

- the offence was of a type traditionally diverted (i.e., there was no prosecution for non-compliance);
- the offender has no criminal or youth record, or previous diversions or alternative measures;
- a conviction is likely to result in a relatively minor consequence; and,
- the additional court time required to prove non-compliance is not justified.

**(c) Generally, prosecution should be considered if any of the following factors exist:**

- the offender has a criminal or youth record, or previous diversions or alternative measures;
- the offender has continued to commit offences while subject to alternative measures; and,
- the offence is of a type not traditionally diverted.

In cases where the offence is of a type other than that listed in Category 4, the general policy is that the offender should be prosecuted for failure to comply with the terms and conditions of the alternative measures agreement. Prosecution is subject to the ability of Crown Counsel to prove the original offence, and the limitation period of the original offence. As well, the circumstances of the original offence must be considered along with the nature of the terms and conditions not completed, and whether the defence of partial compliance will likely succeed on a balance of probabilities.

## 11.15 Record Keeping

### 11.15.1. Youth

The provisions of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.15 for the specific wording) govern all records pertaining to young offenders, generally. In British Columbia, Crown Counsel policy states that during the two-year period permitted by law, records should be put before the court in a sentencing hearing for a subsequent offence by the youth. These records are made available to all Crown offices via the provincial computer system, CORNET.

### 11.15.2. Adult

Section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.15 for the wording of the appropriate section) outlines the record keeping provisions pertaining to alternative measures for adults. As with the youth programs in British Columbia, Crown Counsel policy states that alternative measures records should be put before the court in any sentencing hearing for a subsequent offence by an offender. These records are available to all Crown offices via the provincial CORNET computer system.

## 11.16 Appendix 'A' Forms

11.16.1. Caution Letter - Youth

[Date]

[Name of Young Offender's Parent(s) or Guardian]

[Address]

[City/Province/PC]

Dear [Salutation]:

**Re:        [Name of Young Offender]  
             [Offence]  
             [Date of Offence]  
             [Police File Number]**

---

Our office has received a police report alleging that your child has committed the above-noted offence(s). Instead of proceeding with criminal charges and a prosecution this time, we have decided to leave the resolution of this matter to you as a parent/parents/guardian in the hope that you will take prompt and appropriate action with your child.

A copy of this letter will be kept in our office.

In view of this Ministry's responsibility to the public, you must understand that if we receive further reports alleging other offences committed by your child, this letter will be considered in determining whether we proceed with a prosecution.

Yours truly,

Crown Counsel.

11.16.2. Caution Letter - Adult

[Date]

[Name of Offender]

[Address]

[City/Province/PC]

Dear [Salutation]:

**Re:        [Name of Offender]  
          [Offence]  
          [Date of Offence]  
          [Police File Number]**

---

Our office has received a police report alleging that you have committed the above-noted offence(s). We have reviewed the reported circumstances and have decided not to proceed with criminal charges and a prosecution of this matter. However, a copy of this letter will be kept in our office.

In view of this Ministry's responsibility to the public, you must understand that if further reports are received alleging other offences, this letter will be considered in determining whether we proceed with a prosecution.

Yours truly,

Crown Counsel.

11.16.3. Contract Service Delivery - Client Profile Form

Province of  
British Columbia

Ministry of  
Solicitor General Corrections Branch

**CONTRACTED SERVICE DELIVERY - CLIENT PROFILE**

**PART 1**

Location Name: \_\_\_\_\_ Contract No: \_\_\_\_\_

Client Name: \_\_\_\_\_ Birthdate: \_\_\_\_\_  
 (Surname) (First) (Initial) (Year/Month/Day)

Indicate:  Adult  Male  Native  
 Youth  Female  Non-Native

Referred to Program by:  Crown  Institution  Other: \_\_\_\_\_  
 Probation Offence(s) \_\_\_\_\_

Accepted into Program:  YES (complete PART II and PART III)  No (complete PART II)

**PART II**

**A. Program Type:** (select only one)

- Residential - Nights (includes summer residential attendance)
- Community - Days (includes weekend residential attendance)

**B. Program Authority:** (select only one)

- Temporary Absence Authorization Permit
- Probation Order or Disposition Order
- Judicial Interim release Order (Pretrial Order)
- Certificate of Parole (B.C. Parole)
- Alternative measures/Diversion Agreement

**C. Program Involvement:** (select as applicable - specify units indicated)

Program	Units	Assigned	Completed
<input type="checkbox"/> Summer residential	Nights	_____	_____
<input type="checkbox"/> Weekend Attendance	Hours	_____	_____
<input type="checkbox"/> Community Service	Hours	_____	_____
<input type="checkbox"/> Fine Option - CSO	Hours	_____	_____
<input type="checkbox"/> Restitution	Dollars	\$ _____	\$ _____
<input type="checkbox"/> Reparation	Dollars	\$ _____	\$ _____
<input type="checkbox"/> Education	Hours	_____	_____
<input type="checkbox"/> Victim Services	Hours	_____	_____
<input type="checkbox"/> Counselling	Check Mark	_____	_____
<input type="checkbox"/> Intensive Supervision	Check Mark	_____	_____
<input type="checkbox"/> Outreach/Lifeskills	Check Mark	_____	_____
<input type="checkbox"/> Victim/Offender Mediation	Check Mark	_____	_____
<input type="checkbox"/> Employment Opportunities	Check Mark	_____	_____
<input type="checkbox"/> Apology	Check Mark	_____	_____
<input type="checkbox"/> Specify _____		_____	_____
<input type="checkbox"/> Specify _____		_____	_____

**PART III**

Completed Program:  YES If NO:  Not Willing to Comply or  Unable to Comply or  Unsuitable  
 Intake (Start) Date: \_\_\_\_\_

(Year/Month/Day)

Complete/Termination Date: \_\_\_\_\_

(Year/Month/Day)

Total Days or Nights on Program: \_\_\_\_\_

Signature: \_\_\_\_\_

11.16.4. Client Screening Form

**Adult Community Alternative Measures Programs  
Client Screening Form**

Client's Name \_\_\_\_\_ Client's Birthdate: \_\_\_\_/\_\_\_\_/\_\_\_\_  
YY/ MM / DD

Client's Address: \_\_\_\_\_

City: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Postal Code: \_\_\_\_\_

<b>Part 1 Crown Counsel</b>	
Referring Crown Counsel Office _____	Referring Crown Counsel _____
Most Serious Offence _____	Police Report Number (attach) _____
Contractor Referred to _____	Court File Number _____
Date Referred _____ YY / MM / DD	Previous Corrections Contact _____ (Y or N)
Exceptional Case as defined by _____	
M.O.U. (explanation) _____	

<b>Part 2 Contractor Screening Interview</b>	
Client Interviewed by _____	Date Client Interviewed ____/____/____ YY / MM / DD
Agency _____	Contractor Phone Number _____
Client Contacted _____ (Y or N)	Client Advised of Right to Counsel _____ (Y or N)
Client Agrees with Police Report In principle _____ YY / MM / DD	Client Accepts Responsibility _____ (Y or N)
Client Agrees to Participate _____ (Y or N)	Recommended for Program Participation _____ (Y or N)
Reasons for Recommendation (use back if necessary) _____ _____ _____	
<b>Recommended Program Plan</b>	
To complete _____ hours of community service work at _____	
To apologize to victim(s) by: Letter _____ In Person _____	
To pay restitution in the amount of \$ _____	
To attend counselling at _____	
To meet with Program Staff Date _____ Time _____	
Other _____	
Victim Contacted _____	Victim Agrees with Program Plan _____

	(Y or N)	(Y or N)
<b>Victim's Comments</b>	<hr/> <hr/> <hr/>	
<b>Client's Signature:</b>	_____	<b>Date:</b> ____/____/____ YY / MM / DD
<b>Contractor's Signature:</b>	_____	<b>Date sent to Crown Counsel :</b> ____/____/____ YY / MM / DD

Part 3 Crown Counsel Final Approval		
<b>Program Plan Approved:</b>	_____ (Y or N)	<b>Date:</b> ____/____/____ YY / MM / DD
<b>Client Approved for Alternative Measures</b>	_____ (Y or N)	<b>Crown Counsel Signature:</b> _____

## 11.17 Appendix "B" Data

The following statistics pertaining to the adult and young offender alternative measures programs in British Columbia were provided by the British Columbia Ministry of Attorney General, Corrections Branch. While the data provided does not, necessarily, represent all available data on alternative measures activity, it does provide an overview of that which is available in Alberta. It should be noted that the youth programs do not fall under the mandate of the Corrections Branch and, consequently, the data provided do not necessarily cover the same period as the adult data.

**Table 1. Youth Alternative Measures Fiscal year 1995/96 to 1996/97**

Month	Fiscal Year 1995/1996						Fiscal Year 1996/1997					
	Island	Vanc	Fraser	Interior	North	Total	Island	Vanc	Fraser	Interior	North	Total
April	288	66	63	106	73	595	215	53	32	125	59	485
May	261	88	59	101	62	569	194	55	38	110	53	449
June	249	83	64	116	57	570	157	52	40	103	43	115
July	227	76	39	88	67	497	115	39	45	80	37	317
August	194	67	51	84	47	443	158	39	46	52	27	323
September	191	55	51	58	40	394	170	42	44	47	21	324
October	236	64	52	59	48	459	149	50	57	49	30	336
November	241	72	47	82	45	487	171	48	65	73	34	390
December	261	63	46	111	59	540	169	42	77	74	45	406
January	281	51	68	68	38	506	174	54	81	70	51	429
February	275	66	35	113	40	529	195	63	71	78	45	452
March	279	56	31	124	50	540	149	69	53	34	11	314
<b>Avg. Monthly Caseload</b>	<b>248.5</b>	<b>67.1</b>	<b>50.4</b>	<b>92.6</b>	<b>52.0</b>	<b>510.6</b>	<b>167.9</b>	<b>50.5</b>	<b>54.0</b>	<b>74.6</b>	<b>37.9</b>	<b>361.7</b>
<b>% Change</b>							<b>-32.4%</b>	<b>-24.7%</b>	<b>7.1%</b>	<b>-19.4%</b>	<b>-27.1%</b>	<b>-29.2%</b>

**Table 2. Adult Alternative Measures Fiscal Years 1995/96 to 1997/98**

Month							Fiscal year 1996/1997						Fiscal year 1997/1998 (in progress)					
	Island	Vanc	Fraser	Interior	North	Total	Island	Vanc	Fraser	Interior	North	Total	Island	Vanc	Fraser	Interior	North	Total
April	155	43	34	1	10	242	144	326	158	90	81	799	119	249	161	130	44	703
May	165	58	198	2	31	453	152	391	161	103	54	760	124	269	153	147	47	740
June	97	75	172	4	5	352	155	245	176	110	40	725	149	205	152	158	36	700
July	126	103	126	3	11	369	161	272	173	130	29	764	163	270	148	135	24	740
August	136	88	162	12	27	425	146	209	161	96	26	638	161	254	156	120	22	713
September	146	112	144	32	47	482	128	209	172	167	30	705	160	270	179	93	22	723
October	135	153	182	48	69	587	139	215	176	126	40	696	122	272	193	115	30	733
November	126	204	215	50	80	675	140	217	175	158	33	723	130	264	190	135	30	749
December	126	198	160	69	93	647	146	228	185	172	36	767						
January	134	230	156	76	104	698	160	236	182	167	42	786						
February	152	291	160	89	102	794	145	240	177	168	42	772						
March	156	318	185	96	93	849	124	287	188	182	22	803						
<b>Avg. Monthly Caseload</b>	<b>137.9</b>	<b>156.0</b>	<b>157.8</b>	<b>40.2</b>	<b>56.0</b>	<b>547.9</b>	<b>144.9</b>	<b>247.9</b>	<b>173.4</b>	<b>139.2</b>	<b>39.5</b>	<b>744.9</b>	<b>141.0</b>	<b>256.5</b>	<b>166.5</b>	<b>129.1</b>	<b>31.9</b>	<b>725.0</b>
<b>% Change</b>							5.1%	58.9%	9.9%	246%	-29.5%	36.0%	-2.7%	3.4%	-4.0%	-7.2%	-19.2%	-2.7%

**Table 3. Contract Client Profile - Adult 1997.04.01 to 1997.12.31**

Category		Discharges		Program Days	
		Number	Percent	Number	Percent
Adult/Youth	Adult	2051	100.0%	153980	100.0%
	Youth	0	0.0%	0	0.0%
	Unknown	0	0.0%	0	0.0%
Program	Residential	0	0.0%	0	0.0%
	Community	2051	100.0%	153980	100.0%
	Unknown	0	0.0%	0	0.0%
Accepted	Yes	1848	90.1%	153980	100.0%
	No	203	9.9%	0	0.0%
	Unknown	0		0	
Gender	Male	1254	61.1%	94838	61.6%
	Female	797	38.9%	59142	38.4%
	Unknown	0		0	
Ethnicity	Native	0		0	
	Non-Native	1	0.0%	0	
	Unknown	2050	100.0%	153980	
Age on Admission	<18	3	0.1%	370	0.2%
	18-19	371	18.1%	30727	20.0%
	20-21	246	12.0%	20356	13.2%
	22-24	222	10.8%	17397	11.3%
	25-29	254	12.4%	19528	12.7%
	30-34	222	10.8%	17778	11.5%
	35-39	220	10.7%	15808	10.3%
	40-49	252	12.3%	18427	12.0%
	50+	260	12.7%	13589	8.8%
Unknown	1		0		
Offence	Administrative	6	0.3%	160	0.1%
	Breach of Probation	1	0.0%	32	0.0%
	Break & Enter	23	1.1%	2324	1.5%
	Cannabis	0	0.0%	0	0.0%
	Cannabis Possession	0	0.0%	0	0.0%
	Driving Disqualified	3	0.1%	274	0.2%
	Driving & Drinking	1	0.0%	22	0.0%
	Drugs	70	3.4%	4402	2.9%
	Heroin	0	0.0%	0	0.0%
	Motor Vehicle Related	23	1.1%	1670	1.1%
	Person	216	10.6%	17096	11.2%
	Property	1657	81.3%	123997	81.1%
	Public Order	244	12.0%	18756	12.3%
	Serious	22	1.1%	1884	1.2%
	Sexual	10	0.5%	1457	1.0%
	Theft by Fraud	59	2.9%	4587	3.0%
	Theft Under \$1000	1300	63.8%	93462	61.1%
	Violent	7	0.3%	381	0.2%
	Weapons	21	1.0%	1702	1.1%
	Unknown	12	0.6%	1120	0.7%

Category		Discharges		Program Days	
		Number	Percent	Number	Percent
Jurisdiction	Federal	1	0.0%	0	0.0%
	Provincial	0	0.0%	0	0.0%
	Unknown	2050	100.0%	153980	100.0%
Order Type	Diversion	2051	100.0%	153980	100.0%
	Pretrial	0	0.0%	0	0.0%
	Probation	0	0.0%	0	0.0%
	Parole	0	0.0%	0	0.0%
	Temporary Absence	0	0.0%	0	0.0%
	Other	0	0.0%	0	0.0%
	Unknown	0	0.0%	0	0.0%
Days on Program	1-3	233	11.4%	51	0.0%
	4-5	6	0.3%	27	0.0%
	6-10	22	1.1%	186	0.1%
	11-15	35	1.7%	468	0.3%
	16-20	43	2.1%	781	0.5%
	21-30	149	7.3%	3848	2.5%
	31-60	430	21.0%	19596	12.7%
	61-90	325	15.8%	24414	15.9%
	91-180	721	35.2%	85762	55.7%
	181-270	80	3.9%	16655	10.8%
	271-360	6	0.3%	1820	1.2%
	361-719	1	0.0%	372	0.2%
	720+	0	0.0%	0	0.0%
Unknown	0	0.0%	0	0.0%	
Referred by	Crown Counsel	2050	100.0%	153980	100.0%
	Probation	0	0.0%	0	0.0%
	Institution	0	0.0%	0	0.0%
	Other	1	0.0%	0	0.0%
	Unknown	0	0.0%	0	0.0%
Completed Program	Yes	1	0.0%	0	0.0%
	No	0	0.0%	0	0.0%
	Inknown	2050	100.0%	153980	100.0%
Total		2051		153980	

**Table 4. Involvement Summary Adults 1997.04.01 to 1997.12.31**

<b>Involvement</b>	<b>Discharge</b>	<b>Assigned</b>	<b>Completed</b>	<b>% Comp.</b>
Assaultive Men's Treatment	9	9	1	0
Apology	1243	1296	1128	87
Counselling	444	455	405	89
Community Service	963	19131 hrs	15083 hrs	78
Education	146	146 hrs	131 hrs	89
Employment Opportunities	1	1	1	100
Essay/Report	16	16	13	81
Victim/Offender Mediation	3	3	1	33
None	42	42	42	100
Other	286	315	299	94
Reparation	7	346 \$	346 \$	100
Restitution	280	110672 \$	94323 \$	85
Victim Services/VORP	14	59 hrs	57 hrs	96
Total Involvement	3454			
Number of Offenders	1839			

## 11.18 References

British Columbia, Ministry of Attorney General (1997). *Criminal Stream Justice Reform Initiative: Youth and Adult Diversion. Evaluation Strategy (Phase I)*. Victoria, British Columbia.

British Columbia, Ministry of Attorney General (1997). *Strategic Reforms of British Columbia's Justice System*. Victoria, British Columbia.

British Columbia, Ministry of Attorney General Criminal Justice Branch (1997). *Alternative Measures for Adult Offenders*. Crown Counsel Policy Manual. Victoria, British Columbia.

British Columbia, Ministry of Attorney General Criminal Justice Branch (1997). *Alternative Measures for Young Offenders - Caution Letters*. Crown Counsel Policy Manual. Victoria, British Columbia.



## 11.19 Appendix "C" Offence Categories

CATEGORY 1	CATEGORY 2	CATEGORY 3	CATEGORY 4
<ul style="list-style-type: none"> <li>- first and second degree murder</li> <li>- attempted murder</li> <li>- conspiracy to commit murder</li> <li>- manslaughter</li> <li>- sexual assault with a weapon, or threats to third parties, or causing bodily harm or aggravated sexual assault</li> <li>- sexual offences involving breach of trust and/or children</li> <li>- robbery</li> <li>- aggravated assault</li> <li>- criminal harassment</li> <li>- arson with disregard for human life</li> <li>- break and enter or unlawfully in a dwelling house involving injury or attempted violence</li> <li>- hostage taking</li> <li>- extortion</li> <li>- criminal negligence</li> <li>- impaired driving or dangerous driving causing death or bodily harm</li> <li>- sabotage</li> <li>- using a firearm in the commission of an offence</li> <li>- kidnapping</li> <li>- unlawful confinement</li> <li>- prison breach</li> <li>- escape lawful custody (involving violence)</li> <li>- living off the avails of prostitution, procuring, etc.</li> <li>- obtaining or attempting to obtain sexual services of children</li> <li>- counterfeiting</li> <li>- bribery</li> <li>- obstructing justice</li> <li>- perjury</li> <li>- mischief causing danger to life</li> <li>- pornography offences (possession or making) involving children</li> <li>- hate/propaganda offences</li> </ul>	<ul style="list-style-type: none"> <li>- abduction (parental)</li> <li>- impaired driving and driving while over 0.08</li> <li>- dangerous driving and driving while disqualified</li> <li>- impaired driving or dangerous driving involving a high speed chase</li> <li>- spousal assault and violence against women in relationships (except for aggravated assaults noted in Category 1)</li> <li>- assaulting a peace officer</li> <li>- arson (except those arson offences noted in Category 1)</li> <li>- break and enter of a dwelling house</li> <li>- carry a concealed weapon</li> <li>- possession of a weapon for a purpose dangerous to the public peace</li> <li>- possession of a restricted weapon</li> <li>- careless use, storage or pointing a firearm</li> <li>- escaping lawful custody (non-violent)</li> <li>- uttering threats to cause death or bodily harm</li> <li>- possession of an explosive substance</li> <li>- possession of forged currency and passports</li> <li>- public mischief</li> <li>- criminal contempt</li> <li>- indecent act (targeting children)</li> <li>- failures to appear and unlawfully at large</li> <li>- sexual assault (other than those noted in Category 1)</li> <li>- theft, possession of stolen property, forgery, fraud, false pretences, uttering, unlawful use of a credit card, unauthorized use of a computer, (involving public funds, public documents, internal theft, a scheme of organized criminal activity, a position of trust, or a vulnerable victim)</li> <li>- hate/bias offences</li> <li>- assault causing bodily harm</li> <li>- assault with a weapon</li> <li>- child abuse (except as noted in Category 1)</li> </ul>	<ul style="list-style-type: none"> <li>- break and enter other than a dwelling house</li> <li>- theft over \$5000 (except as noted in Category 2)</li> <li>- possession of stolen property over \$5000 (except as noted in Category 2)</li> <li>- forgery, fraud, false pretences, unlawful use of a credit card, in amounts over \$5000 (except as noted in Category 2)</li> <li>- unauthorized use of a computer (except as noted in Category 2)</li> <li>- assault - s.266 (except violence against women in relationships)</li> <li>- mischief over \$5000</li> <li>- indecent act (except for offences targeting children as noted in Category 2)</li> <li>- possession of house/car breaking instruments</li> <li>- take auto without consent</li> <li>- trespass at night</li> <li>- soliciting for the purpose of prostitution (exception: demonstrated nuisance in the community, in which case the matter should be dealt with as a Category 2 offence)</li> </ul>	<ul style="list-style-type: none"> <li>- theft under \$5000 (except as noted in Category 2)</li> <li>- possession of stolen property under \$5000 (except as noted in Category 2)</li> <li>- false pretences, uttering, unlawful use of a credit card, where the amounts involved are under \$5000 (except as noted in Category 2)</li> <li>- causing a disturbance</li> <li>- mischief under \$5000</li> </ul>

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# 12. Yukon

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## 12.1 The Philosophy of Alternative Measures

Alternative measures for young people, as defined in the *Young Offenders Act (Canada)* (see Chapter 1, s.1.1 for the specific wording of the appropriate section of the *Act*), are measures, other than judicial proceedings, that hold youth accountable for offences they commit. In Yukon, the goals of the alternative measures program for youth have been identified as:

1. providing an informal (out of court) means of solving problems involving young people in ways that address the interests of the victim, the young person, parents and the community;
2. involving the community in dealing with young people and their problems, and to promote a better understanding of community rights and responsibilities;
3. reducing the number of young people appearing in court; and
4. providing a meaningful and direct remedy to victims of offences and encouraging young people to accept responsibility for their actions.

Youth are generally referred to the alternative measures program after appearing in court (i.e., at the post-charge stage), although, on occasion, youth may be referred at the pre-charge stage.

Alternative measures programs for youth are authorized by Yukon Justice and Health and Social Services and are generally accessed at the post-charge stage. Yukon Justice is in the process of developing an adult alternative measures program.

The Department of Justice and Health and Social Services of the Government of the Yukon Territory are responsible for authorizing all alternative measures programs. These programs may be offered by designated diversion councils, or where no diversion committee exists, the programs

are administered by youth workers or probation officers.

The local youth worker of each field office and the supervisor of the Whitehorse Youth Probation office meet on an ongoing basis and no less than once per year with the Crown Prosecutor and a member of the R.C.M.P. to review the procedures and the practices surrounding alternative measures. These include reviewing the nature of pre-court enquiry referrals, record keeping practices and information flow, recommendations and outcomes, and the speed and timeliness of reports.

Yukon Justice is presently in the process of developing an adult alternative measures program in conjunction with the Royal Canadian Mounted Police (RCMP) and Federal Crown. The intent is to design a program that will be similar to the existing alternative measures program for youth. Protocol is currently under development that will establish procedures and areas of responsibility for the program.

## 12.2 Responsibility for the Delivery of Alternative Measures

### 12.2.1. Youth

The responsibility for the delivery of alternative measures programs for youth rests with a person designated by the provincial/territorial director, or an organization designated by the diversion council within a community. The preference is for a diversion committee to carry out alternative measures, however, where no diversion committee exists, the youth worker, or probation officer, assumes this responsibility.

In communities where no diversion committee exists and there appears to be a suitable demand for one, it is the obligation of the youth worker to initiate and form a committee. In so doing, the youth worker will enlist the assistance of the supervisor of Youth Probation in forming the diversion committee.

### 12.2.2. Adult

With respect to alternative measures programs for adults, Yukon Justice is presently in the process of developing a program. The intent is to design a program that will be similar to the existing youth program in philosophy and in the model of program delivery.

## 12.3 Referral Agent

### 12.3.1. Youth

All referrals to alternative measures programs are made by the Crown Prosecutor once the Crown is satisfied that sufficient evidence exists to proceed with prosecution of the offence and that prosecution is not in any way barred at law. The young person must meet the eligibility criteria set out in the *Young Offenders Act (Canada)* as well as those set out in the policies and procedures manual of Yukon Justice.

Normally, referrals to alternative measures programs for youth are made by the Crown Prosecutor. The Crown may request that a youth worker complete a pre-court enquiry to assist in making a decision regarding the appropriateness of a referral to alternative measures.

Normally, the decision to refer a youth to alternative measures is made prior to the youth appearing in court although the process is that the youth must make a first appearance before being referred to the alternative measures program. On occasion, a youth will be referred pre-charge, and pre-court, to the program. While it is the responsibility of the Crown to refer appropriate young people to the alternative measures program, the Crown, and in some cases the court, may request a pre-court enquiry (an

While it is the responsibility of the Crown to refer appropriate young people to the alternative measures program, the Crown, and in some cases the court, may request a pre-court enquiry (an

investigative report prepared by a youth worker) to assist in determining the young person's personal suitability for alternative measures.

The pre-court enquiry report shall be completed within ten working days or two weeks from the date the request is received. If further time is required to establish contact, the youth worker will send a letter to the Crown requesting direction. Before proceeding with the investigation, the youth worker will obtain oral consent from the young person or, failing that, will refer the matter back to the Crown.

The purpose of the enquiry is to provide the youth worker with an opportunity to discuss the circumstances as set out in the police report with the young person and his/her parents and to obtain an acknowledgement of responsibility. The young person will also be informed, at this time, of his/her right to consult counsel and will be given an opportunity to do so. Where reasonably possible, the youth worker will conduct the interview with the youth and his/her parents at their home. The written report will be forwarded to the Crown to assist the latter in deciding whether or not to refer the young person to alternative measures and will include:

1. previous contact with the criminal justice system;
2. unsolicited agreement or disagreement with the general circumstances as set out in the police report;
3. behaviour at home, the community, and at school;
4. the youth's and parent's/guardian's attitude to the alleged offence;
5. assessment of the parent's/guardian's ability to deal with the situation;
6. a recommendation for or against a plan of alternative measures (diversion);
7. any other information deemed appropriate by the youth worker.

Upon receipt of the report, the Crown will render his/her decision in writing as to whether or not the matter should be referred to an alternative measures program.

#### 12.3.2. Adult

Yukon does not presently offer alternative measures programs for adults. The intent, however, is to develop and design a program that will be similar to the existing youth program in philosophy and in the model of program delivery.

## 12.4 The Role of the Police

### 12.4.1. Youth

As the first point of contact with the criminal justice system, the police may play a significant role in the overall delivery of alternative measures programs. Following an investigation, the police generally have three options to proceed. They may choose to take no further action with the youth, they may divert the young person informally, which may include a referral to a community-based agency or accompanying the youth home, or the police may refer the case to the Crown with or without a recommendation for alternative measures.

In some communities, the police may also play an active role in the Diversion Committee or may be used as a resource called upon to assist in the provision of training or in the formation of a committee.

### 12.4.2. Adult

There are currently no alternative measures programs for adults. Yukon Justice is, however, in the process of developing a program with the intent of modeling the program on existing alternative measures programs for youth.

## 12.5 The Role of the Crown Attorney

### 12.5.1. Youth

The Crown Prosecutor plays a primary role in the overall delivery of alternative measures programs in Yukon. As the referral agent, the Crown Prosecutor is responsible for recommending and approving all alternative measures. He/she must be satisfied that the charge approval standard is met, and that the criteria set out in the *Young Offenders Act (Canada)* is satisfied before determining whether to refer a young person to alternative measures.

After reviewing the police report, and in some circumstances the pre-court enquiry, the Crown Prosecutor will make a decision to refer the youth to a diversion committee or youth worker for alternative measures. In the event the Crown Prosecutor decides that the youth is not suitable for alternative measures, he/she will then make a decision whether or not to proceed with the laying of a charge and normal court proceedings.

### 12.5.2. Adult

There are currently no alternative measures programs for adults. Yukon Justice is, however, in the process of developing a program with the intent of modeling the program on existing alternative measures programs for youth.

## 12.6 The Role of the Victim

### 12.6.1. Youth

The role of the victim in alternative measures programs is often largely defined by the victim's willingness to become involved. The interests of the victim are generally considered in the determination of the Crown Prosecutor to refer to

Depending on the victim's willingness to become involved, the victim may play a significant role in the alternative measures process. Yukon policy on alternative measures clearly identifies the importance of the need to consider the interests of the victim and to ensure that the alternative measures program addresses these needs.

young person to alternative measures and if the victim is involved, the alternative measures agreement may reflect measures designed to provide restitution or reparation to the victim.

Yukon Justice policy regarding alternative measures clearly identifies the importance of the victim in the goals enumerated for the program. The alternative measures program is seen as a means of providing an informal (out of court) way of solving problems

involving young people in ways that address the interests of the victim, the young person, parents, and the community. Another goal of the program is to provide a meaningful and direct remedy to victims of offences and to encourage young people to accept responsibility for their actions.

It is the responsibility of the youth worker or the diversion committee to contact the victim prior to the interview with the young person, to determine the impact of the offence upon the victim, the victim's wishes about the most appropriate mode of reparation, and to invite the victim to participate in the parent/youth interview.

According to alternative measures policy, compensation in the form of either cash or service for the victim shall be required in full or to the victim's satisfaction, where reasonably possible. In cases where the victim agrees, compensation may be made directly by the young person to the victim.

### 12.6.2. Adult

There are currently no alternative measures programs for adults. Yukon Justice is, however, in the process of developing a program with the intent of modeling the program on existing alternative measures programs for youth.

## 12.7 Right to Legal Counsel

### 12.7.1. Youth

Section 4(d) of the *Young Offenders Act (Canada)* (see Chapter 1, s. 1.7 for the specific wording of this section) specifies that before becoming involved in

alternative measures, the young person must fully and freely consent to participate. Before providing this consent, the young person must be informed of his/her right to consult with counsel and be given a reasonable opportunity to do so. In Yukon, the responsibility for ensuring that the young person is properly advised of his/her rights rests mainly with the youth worker or the diversion committee.

If a pre-court enquiry is requested, the youth worker completing the report will ensure that the youth is aware of his/her right to be represented by legal counsel and that he/she is given a reasonable opportunity to consult with counsel prior to making any statements or acceptance of responsibility.

When a referral is made to alternative measures by the Crown Prosecutor, the youth worker or diversion committee will, at the outset of the meeting with the young person, explain his/her rights. This will include the right to consult counsel, the fact that the young person's co-operation with alternative measures is wholly voluntary, that no admission or statement by the youth accepting responsibility is admissible in subsequent court proceedings, and that incomplete or partial compliance with an alternative measures agreement may result in prosecution of the charge. These rights are further reinforced through inclusion on the alternative measures (diversion) agreement form that is signed by the young person, the parent/guardian, and the diversion supervisor or youth worker (see Appendix A, s.12.16.3 for a copy of the form).

#### 12.7.2. Adult

Yukon Justice is presently in the process of developing an adult alternative measures program in conjunction with the Royal Canadian Mounted Police (R.C.M.P.) and Federal Crown. The intent is to design a program that will be similar to the existing alternative measures program for youth. Protocol is currently under development that will establish procedures and areas of responsibility for the program.

### 12.8 Eligibility Criteria

#### 12.8.1. Youth

Legislated guidelines governing the eligibility criteria for formally authorized alternative measures programs for youth across Canada are set out in the federal *Young Offenders Act (Canada)* (see Chapter 1, s.1.8 for the specific wording of the appropriate sections). Included in this is that the measures used must be part of a program of alternative measures authorized by the Attorney General, the young person must fully and freely provide informed consent, and the Crown Prosecutor must be satisfied that there is sufficient evidence to proceed with the prosecution of the offence and that it is not in any way barred at law.

In addition to the legislated criteria, the Crown must also ensure that the young person is alleged to have committed the offence while under the age of eighteen. Yukon policy states that a youth with a criminal history shall not be barred from acceptance into an alternative measures program, provided there is a willingness to make amends and accept responsibility.

If the legislated criteria set out in the *Young Offenders Act (Canada)* are met, all youth are eligible for alternative measures unless they say they are innocent, want to go to court, or have committed a violent or sexual offence. Repeat offenders may be eligible for alternative measures provided there is a willingness to make amends and accept responsibility.

There are three circumstances identified in Yukon Justice policy under which alternative measures cases will not be accepted by a youth worker or a

diversion committee. A referral from the Crown may be declined if:

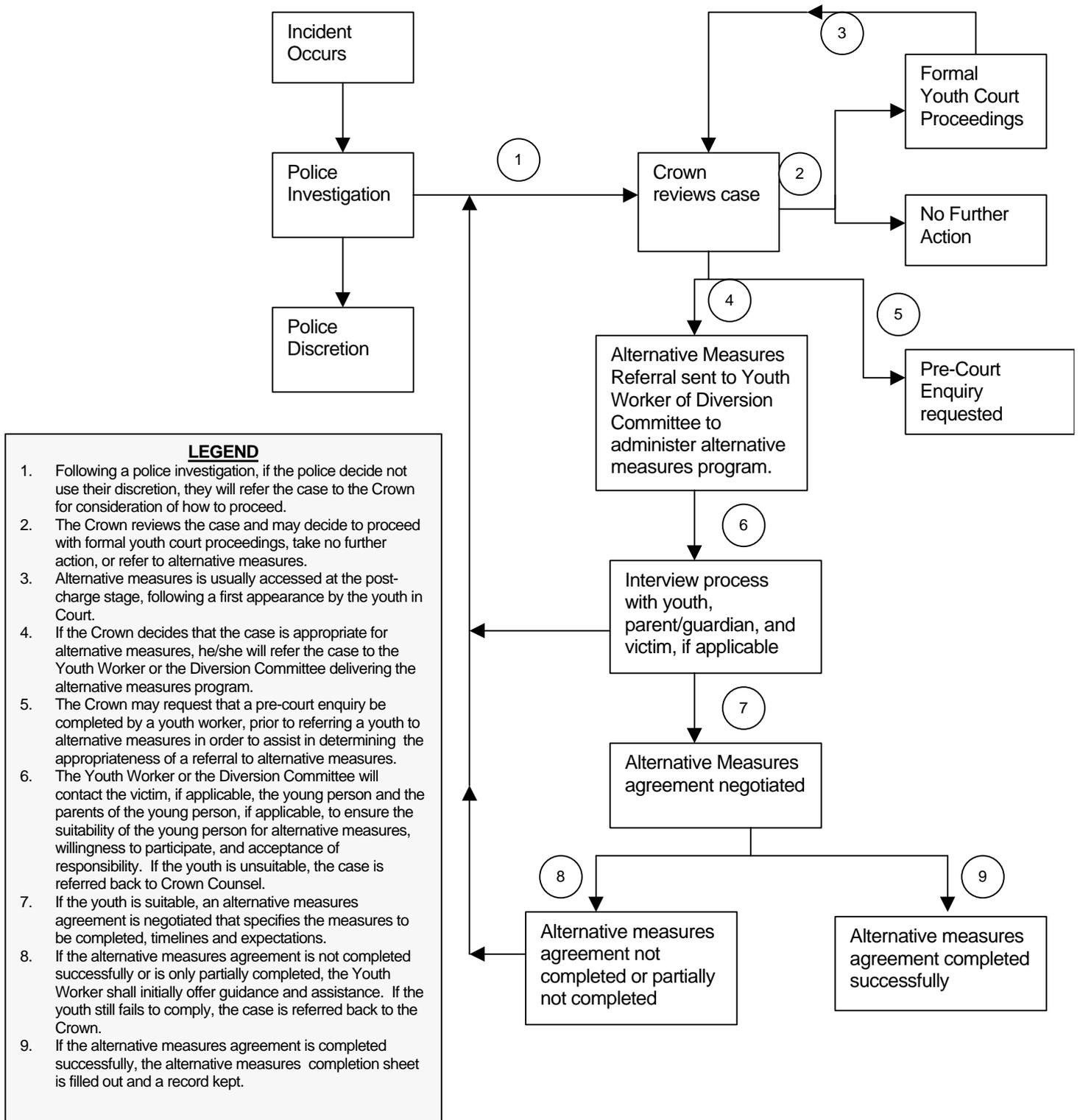
1. the young person says he/she is innocent or not guilty;
2. when the young person wants to go to court to have the case heard by a youth court judge; and/or
3. when the alleged act is very serious such as a violent or sexual offence.

If any or all of these conditions exist, the youth worker or diversion committee will send a letter to the Crown outlining the reason for the youth not being accepted into the program.

#### 12.8.2. Adult

Yukon Justice is presently in the process of developing an adult alternative measures program in conjunction with the Royal Canadian Mounted Police (R.C.M.P.) and Federal Crown. The intent is to design a program that will be similar to the existing alternative measures program for youth. Protocol is currently under development that will establish procedures and areas of responsibility for the program.

## 12.9 Alternative Measures Process for Youth



Upon receipt of a police report of an alleged offence against a youth, the Crown may elect to take no further action, may lay a charge and proceed to court, or may choose to refer the youth to an alternative measures program after a first appearance in court by the youth. In order to assist in determining the appropriateness and suitability of a youth for alternative measures, the Crown may request that a pre-court enquiry be completed by a youth worker. Occasionally, such a request will be made at youth court or after a youth has appeared in court in cases where the judge, defence counsel, or youth worker advances that the youth may be a suitable candidate for alternative measures. In this event, the Crown may either enter a stay of proceedings or set another court date.

The pre-court enquiry is normally a written report completed within ten working days of the request and submitted to the Crown.

After reviewing the police report, and in some cases the pre-court enquiry, the Crown Prosecutor will decide whether or not to refer a young person to a youth worker or diversion committee for alternative measures. The youth worker or diversion committee is responsible for contacting the victim, the youth, and his/her parents/guardians and for arranging an alternative measures interview. The interview is used as the process for arriving at an alternative measures agreement that is monitored by the youth worker or diversion committee.

The youth worker will be provided a copy of the police report to the Crown and any other relevant information prior to interviewing the youth and his/her parents. In completing the report, the youth worker may also, if relevant, interview the investigating police officer, school authorities, relatives, the local First Nation, the social worker, and any other sources of information deemed relevant to rendering a decision,

After examining the police report, and if applicable the pre-court enquiry, the Crown Prosecutor will make a decision as to the appropriateness of referring a youth to a youth worker or a diversion committee for alternative measures. As soon as possible after receiving a referral,

the youth worker or diversion committee sends a letter, which may be accompanied by a brochure, to the youth and his/her parents as a way of initiating contact with the family to arrange an interview. The letter explains the alleged offence, the purpose and nature of alternative measures, the right to legal counsel, and the availability of legal aid.

Prior to interviewing the youth, the youth worker or diversion committee will contact the victim to determine the impact of the offence upon the victim including details required for the determination of compensation, and whether the young person may be given the victim's name for purposes of making compensation. The youth worker or diversion committee will also ascertain the victim's wishes about the most appropriate means of reparation and invite the victim to participate in the process.

The youth worker or diversion committee will contact the youth and his/her parents to arrange a meeting time and place. This meeting serves several purposes including an opportunity to explain the interview process and the nature of alternative measures, to review the youth's rights including the right to legal

counsel, to ensure that the youth understands that his/her participation is voluntary and requires acceptance of responsibility for the alleged offence, and to explain what may happen in the event of non-compliance with the alternative measures agreement. The youth worker or diversion committee will then interview the young person and provide him/her an opportunity to explain why he/she became involved and gauge the young person's attitude toward the offence and the impact that the offence has had on the young person and his/her family.

If an agreement is reached regarding the measures, the alternative measures agreement form (see Appendix 'A', s.12.16.3) is signed by the youth, parents/guardians and the youth worker or diversion committee representative and a copy is provided to the youth and his/her parents/guardians.

The youth worker or diversion committee representative will then complete the intake sheet (see Appendix 'A' s.12.16.2) and forward copies to the Crown Prosecutor and the R.C.M.P. to inform them that the young person has been accepted into the alternative measures program.

Once an agreement is reached, the youth's progress is monitored and recorded by the youth worker or diversion committee. Once the agreement has ended or the youth completes all conditions, the youth worker or diversion committee representative fills out the completion sheet and forwards copies of it and the agreement form to the Crown Prosecutor and the R.C.M.P.. The Crown Prosecutor will then make a decision whether or not to proceed with a charge based on the youth's compliance with the agreement and the conditions.

## 12.10 Alternative Measures Process for Adults

Yukon Justice is presently in the process of developing an adult alternative measures program in conjunction with the Royal Canadian Mounted Police (R.C.M.P.) and Federal Crown. The intent is to design a program that will be similar to the existing alternative measures program for youth. Protocol is currently under development that will establish procedures and areas of responsibility for the program.

## 12.11 The Alternative Measures Agreement

### 12.11.1. Youth

The alternative measures agreement is a binding contract between the youth and the youth worker or diversion committee responsible for administering the alternative measures program. The agreement shall include only those conditions discussed during the interview and shall be specific with respect to dates, hours required and any money due. Copies of the signed agreement are provided to the youth and his/her parents.

Yukon Justice policy states that the agreement shall be for as short a period as possible and in any event, no longer than three months unless an extended period of time is required for payment of monetary compensation.

An agreement shall not be extended where a youth willfully fails to comply. In instances where circumstances beyond the control of the youth prevent successful completion in a timely manner, the agreement may be extended with the approval of the youth worker's supervisor. Revisions to agreements will be noted on the original document and will not be more onerous than the original agreement.

#### 12.11.2. Adult

Yukon Justice is presently in the process of developing an adult alternative measures program in conjunction with the Royal Canadian Mounted Police (R.C.M.P.) and Federal Crown. The intent is to design a program that will be similar to the existing alternative measures program for youth. Protocol is currently under development that will establish procedures and areas of responsibility for the program.

### 12.12 The Range of Alternative Measures

#### 12.12.1. Youth

The nature of specific alternative measures agreements will depend to a large degree on the circumstances of the individual situation, and in cases where a diversion committee is administering the alternative measures program, the needs of the community and the ability of the committee to address the needs of the youth. Generally, the alternative measures will include actions to be undertaken by the young person that address the interests of the victim and the community, that involve the community, and that encourage the young person to accept responsibility and to be accountable for their actions.

Compensation in the form of either cash or service for the victim shall be required in full or to the victim's satisfaction in all alternative measures agreements where reasonably possible. The amount, method, and time for payment will be determined by the youth worker or diversion committee with the victim and the young person.

The measures agreed to will reflect the goals of the alternative measures program such as addressing the interests of the victim and the community, involving the community, and encouraging the youth to be responsible and accountable for his/her actions. Measures will include compensation, whenever possible, as well as a reprimand, an apology, community service, referral to a program or counselling or any combination of these or other measures deemed reasonable.

In addition to compensation, Yukon Justice policy identifies a range of alternative measures available. These include:

- A reprimand;*
- An apology* either verbally or in writing;
- Crime Prevention Program* that may include required attendance at a shoplifting prevention class or other similar program;
- Referral* to an appropriate social agency with appropriate follow-up;
- Community Service Work;*
- Any combination of the above;*
- Any other measures* that are deemed appropriate by the youth worker or diversion committee and that are reasonable in the circumstances; or
- Referral back to Crown Prosecutor* in cases where the youth worker or diversion committee is not satisfied that any alternative measures is appropriate.

In keeping with the philosophy of the *Young Offenders Act (Canada)*, the measure or combination of measures used shall constitute the least possible interference with the freedom of the young person consistent with the protection of society, having regard to the needs of the young person and the interests of the family, the victim, and the community.

#### 12.12.2. Adult

There are currently no adult alternative measures programs in Yukon. Yukon Justice is, however, presently in the process of developing an adult alternative measures program in conjunction with the Royal Canadian Mounted Police (R.C.M.P.) and Federal Crown. The intent is to design a program that will be similar to the existing alternative measures program for youth. Protocol is currently under development that will establish procedures and areas of responsibility for the program.

### 12.13 Supervision of Alternative Measures Agreement

#### 12.13.1. Youth

Under the current policies and procedures, the youth worker or diversion committee responsible for administering the alternative measures program is responsible for providing supervision of the alternative measures agreements. This responsibility includes completing all required documentation, including

amending the agreement if necessary, and forwarding all to the Crown Prosecutor and the R.C.M.P.. In cases where the provision of counselling services to the youth and possibly the youth's family is deemed appropriate, the youth worker or diversion committee may include a reporting requirement in the alternative measures agreement.

#### 12.13.2. Adult

Yukon Justice is currently in the process of developing an adult alternative measures program in conjunction with the Royal Canadian Mounted Police (R.C.M.P.) and Federal Crown. The intent is to design a program that will be similar to the existing alternative measures program for youth. Protocol is currently under development that will establish procedures and areas of responsibility for the program.

### 12.14 Completion of Agreement

#### 12.14.1. Youth

In the case of a successful completion of the alternative measures agreement, the youth worker or diversion committee will complete the required documentation and forward such to the Crown Prosecutor. The youth and the youth's family will be informed, in writing, of the completion of the alternative measures requirements as well as the youth worker or diversion committee's recommendation to the Crown Prosecutor.

If the young person fails to comply with the terms and conditions of the alternative measures agreement, the youth worker or diversion committee shall first contact the young person and offer assistance or guidance. Should the young person still fail to comply, all relevant details will be forwarded to the Crown Prosecutor, in writing, for a decision whether to proceed with the charge.

In the event of partial compliance with the terms and conditions of the agreement, the details will be outlined in writing and forwarded to the Crown Prosecutor for a decision on whether the young person will appear in court. In arriving at this decision, the Crown Prosecutor will be guided by Section 4 of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.14 for the specific wording of the appropriate section).

#### 12.14.2. Adult

Yukon Justice is currently in the process of developing an adult alternative measures program in conjunction with the Royal Canadian Mounted Police (R.C.M.P.) and Federal Crown. The intent is to design a program that will be similar to the existing alternative measures program for youth. Protocol is

currently under development that will establish procedures and areas of responsibility for the program.

## 12.15 Record Keeping

### 12.15.1. Youth

The provisions of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.15 for the specific wording) govern all records pertaining to young offenders, generally. In Yukon, alternative measures policy states that two years after the young person consents to participate in alternative measures, the youth worker sees that records are flagged for non-disclosure. The R.C.M.P. and the Crown Prosecutor are responsible for the non-disclosure requirements of their own records.

### 12.15.2. Adult

There are presently no adult alternative measures programs in Yukon although the Department of Yukon Justice is in the process of developing a program. The intent is to design a program similar to that which is presently in place for youth.

## 12.16 Appendix 'A' Forms

12.16.1. Notice to Parents/Guardians of Referral to Alternative Measures

Whitehorse Diversion Committee, H-6  
Box 2703  
Whitehorse, Yukon  
Y1A 2C6

Dear \_\_\_\_\_:

Your son/daughter, \_\_\_\_\_ has been investigated by the police in connection with a charge of \_\_\_\_\_, section \_\_\_\_\_ of the *Criminal Code of Canada*.

The Crown Attorney has recommended that your son/daughter be referred to the Diversion Committee instead of proceeding through Youth Court.

The Diversion Committee offers a program which provides for an informal way to solve problems with young offenders. This is done outside of the court and looks after the interests of the victim, young person, parents, and community. The Diversion Committee may require the young person to pay back the loss suffered by a victim, to do work for the community, or to meet such other requirements that the Diversion Committee thinks is appropriate under the circumstances. A young person who participates satisfactorily in a diversion program will not have a criminal record.

It is important to note that participation in a diversion program is wholly voluntary. Before a young person may be accepted into a diversion program, the law requires that:

- \* the young person fully and freely consents to participate in the diversion program,
- \* the young person accepts responsibility for the offence (this admission of the offence can never be used against the young person in court).

If the young person does not wish to participate in the diversion program or does not satisfactorily complete the program, they may be referred back to Youth Court.

You will be contacted shortly by a Diversion Committee volunteer for the purpose of arranging a meeting with you and your son/daughter. The meeting will be comprised of parent or guardian, young person and two committee members: \_\_\_\_\_ and \_\_\_\_\_. Your son/daughter is entitled to be represented by a lawyer at any time in this matter, and this includes the right to have a lawyer present at any meeting with the Diversion Committee member.

If you have any problems or concerns in the meantime, please feel free to contact me at the number I have provided below.

Sincerely,

Coordinator  
Whitehorse Diversion Committee  
Phone:  
Date:

12.16.2. Alternative Measures Intake Sheet

R.C.M.P. File: \_\_\_\_\_  
Crown File: \_\_\_\_\_

ALTERNATIVE MEASURES  
INTAKE SHEET

Name: \_\_\_\_\_ Referral Date: \_\_\_\_\_

Address: \_\_\_\_\_ Ethnicity: \_\_\_\_\_

Birthdate: \_\_\_\_\_

Parent's Names: \_\_\_\_\_ Telephone: \_\_\_\_\_

Relevant others: (i.e., school counsellor, social worker, relative, lawyer (if any)).  
\_\_\_\_\_

School: \_\_\_\_\_ attends \_\_\_\_\_ does not attend \_\_\_\_\_

Employment: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Employer: \_\_\_\_\_

Victim's Name: \_\_\_\_\_ Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Offence: \_\_\_\_\_

Date: \_\_\_\_\_ Amount of Damage or loss: \_\_\_\_\_

Accepted into program: Yes \_\_\_\_\_ No \_\_\_\_\_ Date: \_\_\_\_\_

If no, give reason: \_\_\_\_\_

Special Conditions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Period of Contract: \_\_\_\_\_ to \_\_\_\_\_

Supervisor's Names: \_\_\_\_\_

cc. Crown  
R.C.M.P.  
Youth Probation

12.16.3. Alternative Measures Agreement

**YuKon**  
Health and Human Resources

**DIVERSION AGREEMENT**

---

On the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, I \_\_\_\_\_  
appeared before the Diversion Committee having committed:

1. \_\_\_\_\_
2. \_\_\_\_\_

And accept responsibility for my involvement in this offence.

\_\_\_\_\_  
Signature

I was placed on a diversion agreement for the period of  
(from \_\_\_\_\_ to \_\_\_\_\_).

The conditions of my agreement are:

1. to keep the peace and be of good behaviour.
2. If at any time checked by the police, to report the circumstances immediately to the supervisor.
3. To report and accept the supervision of the Supervisor.

Special Conditions:

4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_

(This is to notify you that \_\_\_\_\_ has the right to seek the  
advice of Counsel before entering into this agreement).

I have read this agreement. I understand the conditions of this agreement and agree to follow them. If I do not follow these conditions, or if I choose to, I can go to Youth Court instead to have these charges dealt with.

\_\_\_\_\_  
Name of Young Person

\_\_\_\_\_  
Diversion Supervisor

---

I, \_\_\_\_\_ the parent/guardian of \_\_\_\_\_  
have read this agreement and discussed it with the Supervisor and the young offender. I understand the conditions set down in this agreement.

\_\_\_\_\_  
Parent/Guardian or Advocate

\_\_\_\_\_  
Diversion Committee Chairman or Representative





## 12.17 Appendix 'B' Data

#### 12.17.1. Caseload Data

There is currently no available caseload data for youth alternative measures programs in Yukon.

#### 12.18 References

Government of the Yukon Territory, Department of Justice. *Alternative Measures . Policies and Procedures*. Whitehorse, Yukon.

MacLeod, Linda (1995). *Alternative Measures and Preventive Programs for Young People in Whitehorse, Yukon*. A summary of the series of consultations on alternative measures, diversion, and preventive programs for youth. Commissioned by the Youth Justice Subcommittee, National Crime Prevention Council. Ottawa, Ontario.

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# 13. Northwest Territories

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### 13.1 The Philosophy of Alternative Measures

The *Young Offenders Act (Canada)* defines alternative measures programs as measures other than judicial proceedings that hold youth accountable for offences they commit (see Chapter 1, s.1.1 for the specific wording of the appropriate section of the *Act*). In the Northwest Territories (NWT), alternative measures programs are offered at the pre-charge stage, generally, with a post-charge option, and are administered by Community Justice Committees that exist in most communities although they may be in different stages of development in different places.

Community Justice recognizes crime as a violation of individuals and the community. The underlying philosophy is that solutions that repair, heal, and restore harmony must include the victim, the offender, and the community. Community Justice is based on two concepts; restorative justice and the teachings of Aboriginal peoples. The teachings of Aboriginal peoples emphasize healing, respect, cooperation, and balance. Restorative justice means that the focus is on the healing of damaged relationships to restore harmony in the family and the community. It requires offenders to take responsibility for their actions and the harm they have caused, and seeks redress for victims, recompense by offenders, and reintegration of both within the community. Restorative justice views criminal acts more comprehensively, and involves more parties by including the victims and communities as well as the government and the offender. The concept of restorative justice allows success to be measured differently by examining how much harm has been repaired or prevented instead of how much punishment has been inflicted. Restorative justice principles also recognize the importance of community involvement and builds on the strengths of the community.

Community Justice Committees are authorized by the Northwest Territories Department of Justice to administer alternative measures programs for youth. These programs are generally offered at the pre-charge stage with an option to access the program post-charge. Currently, there are no formal pre-charge alternative measures programs for adults, although informal pre-charge diversion is used.

Community Justice is based on two concepts; restorative justice and the teachings of Aboriginal peoples. The teachings of Aboriginal peoples emphasize healing, respect, cooperation, and balance. Restorative justice means that the focus is on the healing of damaged relationships to restore harmony in the family and the community. It requires offenders to take responsibility for their actions and the harm they have caused, and seeks redress for victims, recompense by offenders, and reintegration of both within the community. Restorative justice views criminal acts more comprehensively, and involves more parties by including the victims and communities as well as the government and the offender. The concept of restorative justice allows success to be measured differently by examining how much harm has been repaired or prevented instead of how much punishment has been inflicted. Restorative justice principles also recognize the importance of community involvement and builds on the strengths of the community.

Community Justice Committees receive their authority through being recognized by the community. Formal appointments are made by the Minister of Justice for the NWT under Section 69 of the *Young Offenders Act (Canada)*. The NWT Department of Justice provides support to community development through Community Justice Specialists who assist community justice activities in each region and through contribution funding to communities.

There are currently no formal alternative measures programs for adults established in the NWT pursuant to Section 717 of the *Criminal Code of Canada*. Adults may, however, be referred, informally at the pre-charge and post-charge stage, to a Community Justice Committee and proceed through a process similar to that which youth follow in alternative measures. One difference, though, is that youth may be prosecuted for non-compliance with the measures whereas adults, given the informal nature of the pre-charge diversion referral, cannot be

prosecuted for non-compliance. With the post-charge diversion, criminal proceedings may be initiated or reinstated if the offender fails to complete the alternative measure.

The Royal Canadian Mounted Police (RCMP), Justice Canada (Northwest Territories Region), and the Department of Justice, Government of the Northwest Territories have established a protocol agreement between themselves and any Community Justice Committee that wishes to offer informal diversion programs to adults. Although a Community Justice Committee is not required to sign this protocol in order to offer adult diversion, and this protocol does not officially recognize the Community Justice Committee as an authorized alternative measures program, it does provide written confirmation that adult cases will be diverted to the Justice Committee.

## 13.2 Responsibility for the Delivery of Alternative Measures

### 13.2.1. Youth

The primary responsibility for the delivery of alternative measures programs for youth rests with local volunteer Community Justice Committees established pursuant to Section 69 of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.2 for the wording of this section). Many communities have chosen to establish Community Justice Committees that are recognized by the Department of Justice, the RCMP, and the Courts. These committees have the authority to deal with cases that are referred to them, and may in some cases, advise the

Local volunteer community-based Justice Committees are responsible for administering alternative measures programs for youth. Although no formal alternative measures programs for adults exist, Community Justice Committees may offer informal diversion for adults at the pre-charge stage. Community Justice Committee members are appointed by the Minister of Justice for the Northwest Territories. Any community wishing to establish a Community Justice Committee will be provided support by a Community Justice Specialist, from the Department of Justice, as well as funding to help with the costs of running a committee.

Judges or the Justices of the Peace about cases going through the court.

The Department of Justice of the Government of the Northwest Territories has established guidelines and procedures to be followed by a community wishing to develop a Community Justice Committee. These guidelines, set out in *Your Community Justice Committee: A Guide to Starting and Operating a Community Justice Committee*, allow each community to develop programs to meet their particular needs with support provided by the Department of Justice through Community Justice Specialists who assist community

justice initiatives in each region, and through contribution funding to communities.

In identifying potential members for a Community Justice Committee, the community should look for people who are respected members of the community,

who are not involved in criminal activities, who represent a broad cross-section of the community including elders, youth, women, and men, and who can contribute a wide range of experience and knowledge. Formal appointments to the Committee are made by the Minister of Justice for the NWT. The guidelines do not establish a set number of members for a Committee; however, it is suggested that the Committee have at least six members.

Once a Committee is established, they may determine how they would like to be involved in community justice. There are several ways this may occur in the NWT and a committee may choose one or more of these:

- **Crime Prevention:** This can include a range of activities such as identifying individuals who appear to be “headed for trouble” and offering support to them and their families, establishing a “neighbourhood watch” program in the community, encouraging healing and wellness in the community, etc.
- **Advice to the Court: Sometimes** a Judge or a Justice of the Peace will ask a panel of elders or others from the community to sit with them and provide advice on sentencing. At other times, the Justice Committee may review a situation before court and advise the Judge about the most appropriate sentence. Sometimes, a Circle Sentencing process is used, where the Judge invites community members to sit in a circle and assist in deciding on the sentence: the Justice Committee could organize this.
- **Diversion:** This is where cases are referred directly to the Justice Committee by the police instead of laying charges (for alternative measures). This option gives the community the greatest scope in what it can do.
- **Counselling/Supervision:** Members of the Community Justice Committee, or others in the community identified by the Committee can counsel offenders and victims, provide cultural opportunities such as time in a camp, or supervise offenders who are doing work for elders or others in the community. This could be in relation to offenders who have been through either the courts or the Justice Committee. Support and guidance may also be offered to offenders after they are released from correctional facilities.

### 13.2.2. Adult

There are currently no formal GNWT authorized alternative measures programs for adults. There is, however, a protocol agreement that can be signed by the Community Justice Committee, the RCMP, the NWT Department of Justice, and Justice Canada. Under this agreement, a Justice Committee can be recognized to handle adult cases diverted, at the pre-charge stage only, from the formal justice system. These agreements are not essential in order for diversion to take place, but they provide written confirmation that cases will be diverted to the Community Justice Committee.

Post-charge diversion falls under the federal 1997 Attorney General’s Policy on Alternative Measures (Diversion). This policy allows the federal Crown Counsel

to refer cases to Community Justice Committees in the NWT and allows formal authorization of post-charge adult alternative measures in the NWT by the federal Minister of Justice and Attorney General.

### 13.3 Referral Agent

#### 13.3.1. Youth

Alternative measures programs for youth in the Northwest Territories are based primarily on a pre-charge model with referrals to the program originating with the police. Although the final decision rests with the Crown, power is devolved to the police level to refer post-charge. The Crown may also refer cases to alternative measures, particularly at the post-charge stage.

Upon reception of a referral from the police, the Community Justice Committee reviews the case and makes a decision as to whether to accept the referral. If the case is accepted, it may be dealt with through a number of models that include justice panel hearings, mediation, family group conferencing, and healing circles. If the case is rejected by the Committee, it may be returned to the police for processing through the courts.

#### 13.3.2. Adult

Community Justice Committees may accept referrals of adults from the police at the pre-charge stage, only, for informal diversion. The Committee may accept referrals at the post-charge stage from the federal Crown as part of a formal program.

### 13.4 The Role of the Police

#### 13.4.1. Youth

As the primary referral agent, the police play a significant role in the overall

delivery of the alternative measures programs for youth. As the first point of contact with the criminal justice system when an incident occurs, the police retain their discretion to take no further action or to divert the young person, informally, from the system. Although caution letters are not formally mandated in the Northwest Territories, they may be utilized by

Police are important partners in the ongoing functioning of a local Community Justice Committee. As the primary referral agent, the police are authorized to make referrals directly to a Committee for alternative measures for youth. The police may also divert adult cases informally, at the pre-charge stage, to a local Community Justice Committee for diversion rather than alternative measures.

some officers as a way of informally diverting youth from the system.

In the event the police choose not to exercise their discretion to informally divert the youth or to take no further action, they may proceed with a charge or they may choose to refer the youth to a formal alternative measures program. In the case of a referral to alternative measures, the police assume responsibility for ensuring that the youth has been advised of his/her rights, and that the youth accepts responsibility for his/her actions and consents to participate in the program. The police will then make the referral directly to the local Community Justice Committee.

The role of the police may also include significant involvement with the local Community Justice Committee. Committees are encouraged to develop supportive relationships with the police as well as other professionals in the formal justice system.

#### 13.4.2. Adult

There are currently no formally authorized pre-charge alternative measures programs for adults. There is, however, a protocol agreement that can be signed by the Community Justice Committee, the RCMP, the NWT Department of Justice, and Justice Canada. Under this agreement, the police may divert adult cases informally, at the pre-charge stage only, from the formal justice system. These cases are primarily dealt with by the same justice committee as that which deals with the youth cases and the cases essentially follows the same process.

### 13.5 The Role of the Crown Attorney

#### 13.5.1. Youth

Although the decision to refer cases to alternative measures programs is devolved to the police in the Northwest Territories, the Crown does, nevertheless, retain the authority to make final decisions.

The final decision for authorizing alternative measures referrals for youth rests with the Crown although this power is devolved to the police. As adults are only informally diverted, the Crown does not play a role in the decision to divert these cases.

As the general practice is for cases to be referred at the pre-charge stage, the Crown primarily relies on the police and the Community Justice Committee to make decisions on a case by case basis. In the event that the police proceed with a charge, the Crown may, upon review of the case, choose to refer the case, post-charge, to a Community Justice Committee for alternative measures.

The role of the Crown also extends outside the formal justice system, as it is essential that the local Community Justice Committee develop strong partnerships between community members and justice system officials. The

Crown may play an important role in assisting Committee members to understand the procedures and principles under the *Young Offenders Act (Canada)*.

#### 13.5.2. Adult

A formal post-charge alternative measures program for adults rests with the Crown and is based on federal authorization. Crown Counsel reviews cases and refers those cases deemed appropriate to the Community Justice Committee in the same manner as the informal process.

### 13.6 The Role of the Victim

#### 13.6.1. Youth

The victim plays a central role in the restorative justice philosophy adopted by the Department of Justice of the Northwest Territories. The underlying philosophy is that solutions that repair, heal, and restore harmony must include the victim, the offender, and the community. The alternative measures program does not require that victims be involved in order to accept a youth into the program, however, their participation is encouraged.

The victim can have a role in the alternative measures proceedings if he/she chooses to be involved. At a minimum, the Community Justice Committee attempts to interview the victim prior to the hearing to gather information and determine what needs to be done in order to make things right (for example, restitution). The victim may also play various roles depending on the process chosen by the Committee. In the event of a justice panel hearing, the victim is often consulted before the hearing and their involvement at the hearing is not necessary. A victim's statement of their loss and concerns is often taken and used instead. When the Committee chooses to proceed by way of victim/offender mediation, the victim is provided an opportunity to meet face-to-face with the offender in a safe and cooperative setting mediated by a Community Justice Committee member. The victim, and the victim's family members, may also be asked to participate in a family group conference by the Committee. In this setting, the victim and his/her supporters are provided an opportunity to explain to the youth the impact that the offence has had on them and to participate directly in the determination of the measures to be agreed upon.

#### 13.6.2. Adult

If the case is accepted by the Committee, the process by which the case is handled is the same as that for youth. Victims are encouraged to, and may choose to be, involved in the diversion proceedings. The role they play is often dependent on the process chosen by the Committee to handle the diversion.

Victims often do not attend justice panel hearings but rather provide a statement of their loss and concerns to be presented at the hearing by a member of the Community Justice Committee. In the case of victim/offender mediation and family group conferencing, victims play a much more active role in addressing the offender, discussing the impact of the crime on themselves and their family, and in determining the measures to be completed. The restorative justice philosophy and approach is maintained in the way these cases are handled by the local Community Justice Committee.

## 13.7 Right to Legal Counsel

### 13.7.1. Youth

Section 4(1)(d) of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.7 for the specific wording of this section) specifies that before becoming involved in alternative measures, a young person must fully and freely consent to participate. This consent can only be provided after being informed of their right to counsel and having been given an opportunity to consult with counsel. In the Northwest Territories, the primary responsibility for ensuring that the young person is informed of their right to legal counsel rests with the police who are considering a referral to a Community Justice Committee for alternative measures. During initial interviews, the Committee will also ensure that the young person has had an opportunity to consult counsel, that the he/she accepts responsibility for the alleged offence, and that he/she fully and freely consents to participate in the alternative measures program.

### 13.7.2. Adult

Prior to diverting an adult informally to a Community Justice Committee, the police will ensure that the adult has been informed of their right to consult legal counsel, that they accept responsibility for the alleged offence, and that they sign a consent form stating that they agree to the referral to the Community Justice Committee.

## 13.8 Eligibility Criteria

### 13.8.1. Youth

Legislated criteria governing the eligibility criteria for formally authorized alternative measures programs for youth across Canada are set out in the *Young Offenders Act (Canada)* (see Chapter 1, s.1.8 for the wording of the appropriate sections).

In the Northwest Territories, the *Young Offenders Act (NWT)* provides complimentary provisions for the referral of cases for alleged non-criminal code

offences. The policy does not identify any set eligibility criteria for youth. Generally, the eligibility of referrals to alternative measures programs for youth is determined on a case by case basis and reflects the ability and the desire of the Community Justice Committee to be involved.

### 13.8.2. Adult

Although there are no formal GNWT authorized alternative measures programs for adults, the protocol agreement that may be signed by a Community Justice Committee to offer informal adult diversion, at the pre-charge stage, does identify specific eligibility criteria to be met prior to the police diverting the case. Post-charge diversion falls under the federal 1997 Attorney General's Policy on Alternative Measures (Diversion). This policy allows the federal Crown Counsel to refer cases to Community Justice Committees in the NWT and allows formal authorization of post-charge adult alternative measures in the NWT by the federal Minister of Justice and Attorney General.

Primarily, the offender must accept responsibility for his/her actions, and must be willing to discuss the matter with the Committee and to follow the decision of the Committee. If these conditions are met, the diversion protocol will apply to the following:

- all offences under territorial legislation;
- all summary conviction offences;
- all hybrid offences that the prosecution would elect to proceed summarily;
- minor break and enter offences where the loss is minimal; and
- other offences in exceptional circumstances, on the joint recommendation of the RCMP and the Committee and with the written consent of Justice Canada.

In spite of the above, the following offences will not be diverted except in the above-mentioned exceptional circumstances:

- all sexual assaults;

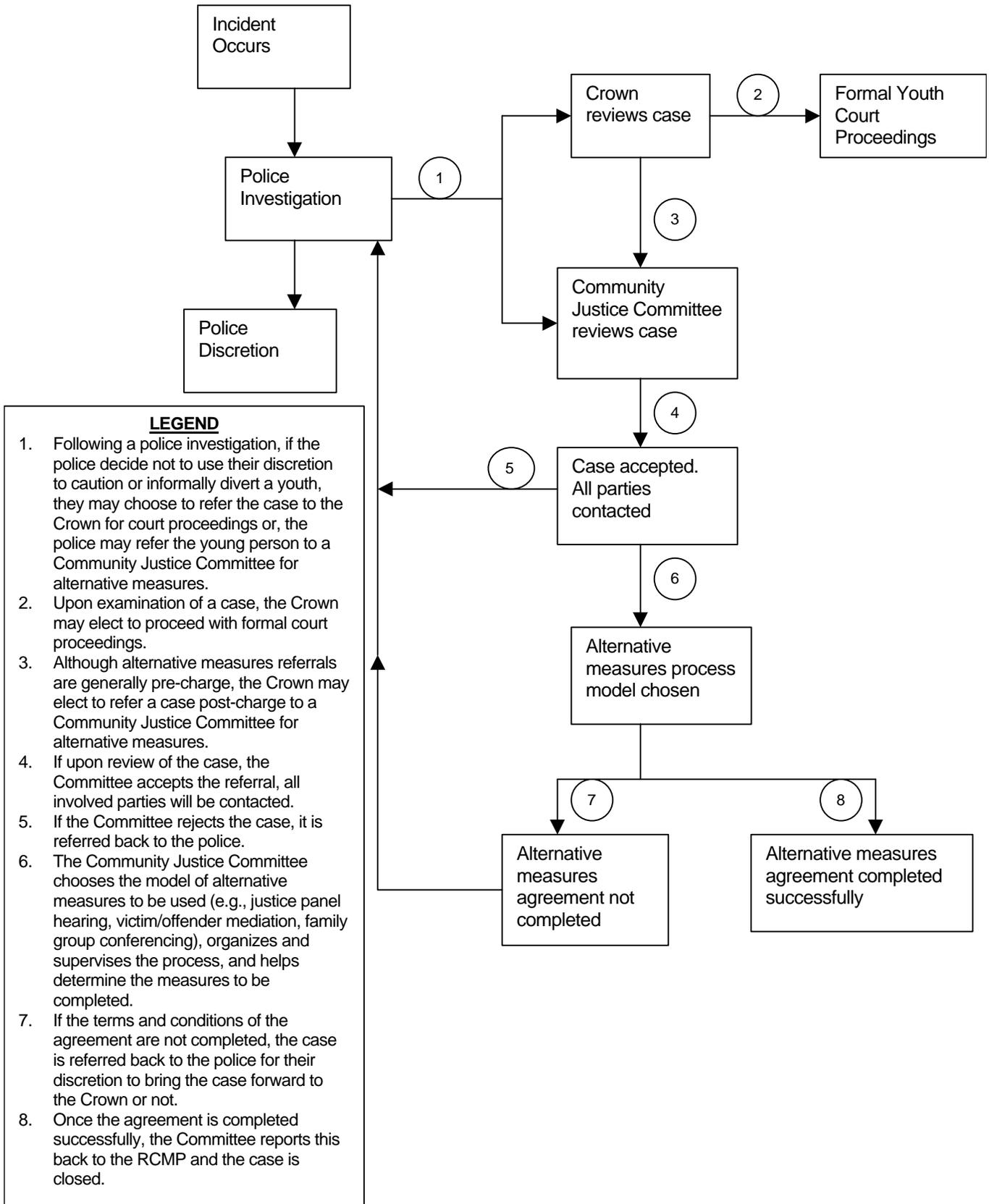
Other than the provisions outlined in the *Young Offenders Act (Canada)*, there are no set eligibility criteria for referrals to alternative measures programs for youth. The determination is made on a case by case basis and reflects the ability and the desire of the Committee to be involved.

The adult diversion protocol, however, excludes the diversion of cases where the offence committed is a sexual assault, a family violence matter, or a child abuse matter. In exceptional circumstances, on the joint recommendation of the RCMP and the Committee and with the written consent of Justice Canada, these or other offences may be considered for diversion.

- ❑ all family violence matters, including spousal abuse; and
- ❑ all child abuse matters under the *Criminal Code of Canada*.

Before diverting an adult offender, the Crown will examine the case upon completion of the investigation to ensure that there exists sufficient evidence to send the case to court. If the offender agrees, the matter will then be diverted by the police to the Committee to decide whether it will accept the case. The diversion protocol provides that an offender who has previously been diverted, and who successfully followed a decision of the Committee, may be diverted again upon re-offending. In order to divert an offender who has previously failed diversion, a joint recommendation of the RCMP, and the Committee is required along with the written consent of Justice Canada.

### 13.9 Alternative Measures Process for Youth



Once a Community Justice Committee accepts a referral from the RCMP, one or more meetings are set up with the young person to discuss the case and come up with a signed agreement. The Committee will, at a minimum, attempt to

Once a referral is accepted, the Community Justice Committee will contact the victim, the offender, and their families (if appropriate) to gather information, to gain agreement to participate and to set a hearing date. The process chosen is usually one of a justice panel hearing, a victim/offender mediation, or a Family Group Conferencing. Regardless of the process model chosen, the goal is to ensure that the offender is held accountable for his/her behaviour, that a mutually agreed upon solution is identified that addresses the needs and concerns of all involved, and that an agreement is drawn up and signed by all parties.

interview the victim prior to any hearing to gather information and identify his/her concerns and needs.

Meetings, or hearings, are arranged in advance and tend to follow some standard process. Those in attendance are usually asked to be there and they attend voluntarily. The meetings are based on restoring harmony and may include ceremonial aspects. A set of guidelines or rules regarding speaking in turn and showing respect are shared with everyone at the beginning of the meeting and may be based on cultural and traditional principles. The meeting may also begin and

end with a ceremonial prayer.

Generally, there are four stages to a meeting or a hearing: owning the behaviour (taking responsibility); exploring the potential consequences (problem solving); repairing the harm (the agreement); and providing positive reinforcement for turning towards a healthier lifestyle (guidance/reintegration).

In processing an alternative measures referral, the Community Justice Committee will select the most appropriate process model to use. Different processes can be adapted to meet the needs of the community including justice panel hearings, victim/offender mediation, and family group conferencing. The justice panel hearing model was developed in the Northwest Territories in the 1980's. The panel can be made up of either the entire Committee or a selected number of members. The panel generally interviews the offender and the victim separately first to gather information, explain the role of the panel, and set a date for the hearing. The panel hearings can take place anywhere in the community and the number of people involved is usually restricted to the committee members, the offender, and his/her parents. Victims are included sometimes; however, often a victim's statement of their loss and concerns is taken and used instead. The panel hearing usually follows the stages outlined above and encourages those in attendance to take an active role in determining an appropriate agreement that takes into consideration the responses of the participants, the victim, the availability of programs and supervision resources. Once agreed upon, an agreement contract is drawn up and signed.

In the case of a victim/offender mediation, there is a face-to-face meeting between the victim and the young person. The role of the Justice Committee is to act as a mediator in order to ensure that both parties are treated with respect, that

safeguards are in place so that the victim and offender can speak honestly and comfortably in a safe environment, and that the atmosphere is focused on problem-solving. In such settings, the victim and the offender must voluntarily agree to meet and come up with a mutually agreed upon solution.

Once a Committee has accepted a referral from the RCMP, the offender, victim, and often both their families are interviewed separately to gather information, explain the process of mediation, gain agreement to attend, and set a date for a meeting. At the meeting, the ground rules are explained to the participants and the order in which people will speak is explained. Generally, Committee members will help direct the participants to come to a mutually agreed upon solution together which is then written up and signed by all.

A family group conference is a blend of the dispute resolution process evident in the mediation hearings and of the Aboriginal concepts of open community participation in resolving conflict. Family Group Conferencing brings together offender(s), their family members, victim(s), their family members, Committee members, and other relevant community people such as elders, Social Workers, Alcohol and Drug Counsellors, RCMP, and teachers. After a Committee accepts a referral from the RCMP, the initial interviews are completed and the actual hearing date is set. The hearing is held in a public setting that can accommodate everyone in a circle format. The circle emphasizes the equality of everyone there, and the shared responsibility for coming up with solutions. The hearing usually has one Committee member acting as a facilitator, and follows a set of procedural guidelines. The facilitator provides everyone an opportunity to speak and helps the participants to arrive at a consensus on an appropriate solution to compensate the victim, ensure a consequence to the offender, and determine if other services are required for the offender and his/her family, such as counselling. The solution is written up and signed by all participants.

Regardless of the process used, if consensus could not be reached, or if the young person does not complete his/her part of the written agreement, the case may be sent back to the RCMP for processing through the courts.

### 13.10 Alternative Measures Process for Adults

There are currently no formal GNWT authorized alternative measures programs

for adults in the Northwest Territories. Although no formally authorized alternative measures programs exist for adults, the police may informally divert adults, at the pre-charge stage, to a Community Justice Committee. The Community Justice Committee will then follow essentially the same process as that used for youth to arrive at a mutually agreed upon solution and diversion agreement.

Informal pre-charge diversion may occur, however, at the discretion of the police. If the police offer diversion to the offender and the offender agrees to follow through with the diversion program, the police will refer the matter to a local Community Justice Committee. Post-charge diversion falls under the federal 1997 Attorney General's Policy on Alternative Measures (Diversion). This policy

allows the federal Crown Counsel to refer cases to Community Justice Committees in the NWT and allows formal authorization of post-charge adult alternative measures in the NWT by the federal Minister of Justice and Attorney General. The Committee will conduct hearings where and when appropriate and with as little formality as possible. The goal of the process will be to reach a consensus on how to deal with the problem created by the offence and to restore, if possible, harmony, and balance within the community.

The Committee is empowered to make any decision regarding the case, except for fines and imprisonment, which is appropriate under the circumstances. The period of the diversion agreement will be set by the Committee and the Prosecution, but will not normally exceed ninety days. The Committee may elect to review a matter where an agreement was reached if it feels that a decision should be changed.

If the Committee believes an offender has failed to follow a diversion agreement, the matter will be referred immediately to the RCMP. The RCMP and Crown Counsel will then decide if a charge should be laid before the court concerning the allegations that were the subject of the diversion.

### 13.11 The Alternative Measures Agreement

#### 13.11.1. Youth

The alternative measures agreement outlines the contract between the young person and the Community Justice Committee, as well as any other person involved in arriving at the solution. The agreement should include who will do what, who will provide assistance and supervision, how will people know when the agreement is completed, and what happens if the agreement is not completed. This agreement is signed by all parties involved and forms the basis for the completion of the alternative measures process.

#### 13.11.2. Adult

Although no formally authorized pre-charge alternative measures program for adults exists, if the police choose to informally divert an adult offender to a Community Justice Committee, a diversion agreement will be drawn up and signed following a successful diversion process. The diversion agreement will identify the terms and conditions agreed to by those parties involved, and will not, generally, exceed ninety days. The Community Justice Committee may review a matter where an agreement was reached if it feels that a decision should be changed.

## 13.12 The Range of Alternative Measures

### 13.12.1. Youth

The alternative measures program for youth is based on a restorative justice philosophy and is administered by local Community Justice Committees. These Committees use the strengths of the people in the community and community involvement is vital to the success of the Committee. Community justice approaches also need the support of those involved in the formal justice system including the police, the judges, the Crown, probation officers, and the Department of Justice. This cooperative approach lends itself to creativity and innovation in regards to the measures applied and allows the Committees to tailor their measures to address their community concerns using the strengths and resources within their community. The Northwest Territories Department of Justice, in recognition of this, does not set guidelines for Committees with respect to the interventions or measures that may be applied. Creativity is encouraged and the range of appropriate measures is left to the Committee to determine. The most prominent interventions used, however, include community service work, lay counselling, apology, and personal service to the victim.

There are no set guidelines as to the range of authorized measures that may be used. Community Justice Committees are encouraged to be creative in their use of measures to address their specific community concerns.

### 13.12.2. Adult

Similar to alternative measures for youth, Community Justice Committees, that handle adult diversion cases, are encouraged to use creative and innovative measures to ensure that the needs and concerns of the victim, the offender, and the community are met.

## 13.13 Supervision of Alternative Measures Agreement

### 13.13.1. Youth

Under the current guidelines, Community Justice Committees are responsible for the implementation and supervision of all individuals under alternative measures agreements. The Committees are responsible for facilitating the completion of the measures agreed to, and for completing all required documentation. In some communities, funding is available to hire a part time coordinator or support people to assist with the supervision requirements.

#### 13.13.2. Adult

There are currently no formal GNWT authorized alternative measures programs for adults. In communities where the Community Justice Committee accepts informal adult pre-charge diversion cases, or post-charge referrals from the federal Crown, the Committee assumes responsibility for supervising the measures agreed to by the individuals, including the completion of any documentation required and forwarding such to the RCMP and Justice Canada.

### 13.14 Completion of Agreement

#### 13.14.1. Youth

Upon successful completion of the alternative measures agreement, the Community Justice Committee will report to the RCMP and the case will be closed. In the event the referral is rejected by the Community Justice Committee, or if the young person does not complete his/her part of the written agreement, the case may be sent back to the RCMP for processing through the court. There are no set policies in place regarding whether or not to proceed to court in the event of an unsuccessful completion of the alternative measures agreement, rather, the police and the Crown use their discretion in examining each case individually.

#### 13.14.2. Adult

There are currently no formal GNWT authorized alternative measures programs for adults. Community Justice Committees may, however, accept informal pre-charge diversion cases from the RCMP, and post-charge referrals from the federal Crown under the 1997 Attorney General's Policy on Alternative Measures (Diversion). The process is then similar to that which is followed with youth. In the event that the adult successfully completes the diversion agreement, the RCMP is informed and the case closed. In all other cases, if the Committee believes an offender has failed to follow a diversion agreement, it will immediately refer the matter to the RCMP. The RCMP and Crown Counsel will then decide if a charge should be laid before the court concerning the allegations that were the object of diversion.

### 13.15 Record Keeping

#### 13.15.1. Youth

The provisions of the *Young Offenders Act (Canada)* (see Chapter 1, s.1.15 for the wording of the appropriate sections) govern all records pertaining to alternative measures generally. In the Northwest Territories there are no

additional policies regarding record keeping or the use of information. The local Community Justice Committee responsible for the administration of the alternative measures program is responsible for ensuring that appropriate documentation is maintained.

#### 13.15.2. Adult

Section 717 of the *Criminal Code of Canada* (see Chapter 1, s.1.15 for the specific wording of the appropriate sections) outlines the general provisions pertaining to record keeping for alternative measures programs for adults. Although there are currently no formally authorized pre-charge alternative measures programs for adults, those Community Justice Committees that sign the diversion protocol do assume responsibility for maintaining records. Justice Canada has agreed to try to oversee the informal adult diversion program and to provide feedback, when appropriate, to the Committee, the RCMP, and the Government of the Northwest Territories Department of Justice regarding the practice by which matters are dealt with by the Committee.

## 13.16 Appendix 'A' Forms

**COMMUNITY JUSTICE INITIATIVE QUESTIONNAIRE**

**(Department of Justice - GNWT)  
(RCMP, "G" Division)**

The following information is required for the periods:

**Jan 1/98 to June 30/98**

**Community** \_\_\_\_\_ **Period** \_\_\_\_\_

**CRIME PREVENTION INITIATIVES**

1. Number of crime prevention initiative undertaken by the RCMP Detachment in the community during the appropriate time period \_\_\_\_\_.

2. List the type of crime prevention initiatives during this period:<sup>1</sup>

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3. Is there an active Community Justice Committee formed in your community?

Yes

No

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<sup>1</sup> Includes all initiatives identified in RCMP Operational policy with exception of detection of crimes and apprehension of offenders & fugitives. Any endeavour that focuses on preventing the desire, ability, and opportunity for an individual from committing a crime in the first place. These types of strategies may include: Programs such as Neighbourhood Watch, Block Parents, Crime Stoppers, which help reduce opportunity; Community-based actions to limit the availability of solvents, a program to lock up firearms and ammunition, or making sure buildings are well lit at night; RCMP involvement in coaching sports, developing youth programs, or other community relations activities which help reduce desire and ability in committing crime; Crime prevention strategies between the RCMP and community to address what they see as the underlying social, economic, cultural, and political elements that seem to be fostering crime in their community. The above examples are not all encompassing.

## POLICE DISCRETION STATISTICS

4. Number of individuals dealt with informally<sup>2</sup>.

Youth (DQ54) \_\_\_\_\_ Adult (DQ53) \_\_\_\_\_

5. Number of offences dealt with informally.

Youth \_\_\_\_\_ Adult \_\_\_\_\_

6. Number of individuals referred to the Community Justice Committee.

Youth (DQ56) \_\_\_\_\_ Adult (DQ55) \_\_\_\_\_

7. Number of offences referred to the Community Justice Committee.

Youth \_\_\_\_\_ Adult \_\_\_\_\_

8. Number of offences cleared through the Community Justice Committee.

Youth \_\_\_\_\_ Adult \_\_\_\_\_

9. Number of cases referred back to the RCMP by the Community Justice Committee for further processing.

Youth \_\_\_\_\_ Adult \_\_\_\_\_

10. Of the cases referred back to the RCMP (as per question 9) how many of these individuals were then referred to the court?

Youth \_\_\_\_\_ Adult \_\_\_\_\_

11. How many charges for individuals (as per question 10) were referred to the court?

Youth \_\_\_\_\_ Adult \_\_\_\_\_

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<sup>2</sup> One example of dealing informally with an individual is when the youth is brought home to the parents by the investigating officer, the offence is explained to his/her parents, and the parents are allowed to deal with the youth. This type of information is normally viewed as "diversion" by the RCMP and is captured on a statistical code.

## COURT STATISTICS

The final two questions are not directly related to the use of informal discretion or justice committees. They pertain directly to court referrals. The statistics needed should be available from your court dockets.

12. How many individuals were referred to the court?

Youth \_\_\_\_\_ Adult \_\_\_\_\_

13. How many charges were referred to the court?

Youth \_\_\_\_\_ Adult \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Please submit the results of this questionnaire directly to the Officer In Charge, RCMP "G" Division, Criminal Operations at the end of the designated periods.**

## 13.17 Appendix "B" Data

#### 13.17.1. Caseload Data

There is currently no available caseload data for alternative measures programs for youth in the Northwest Territories.

#### 13.18 References

Government of the Northwest Territories, Department of Justice, Community Justice Division (1997). *Your Community Justice Committee: A Guide to Starting and Operating a Community Justice Committee*. Community Justice booklet, Yellowknife, Northwest Territories.

Government of the Northwest Territories, Department of Justice, Community Justice Division (1997). Community Justice Committee Protocol Agreement with the RCMP, Justice Canada, and the Department of Justice of the Government of the Northwest Territories.