



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

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POLICY

General Principles

Prosecution of physical, sexual and exploitative crimes against children and vulnerable youth should be pursued whenever the evidentiary test under policy CHA 1 is met. Any decision not to proceed for reasons other than sufficiency of evidence must be approved by Regional or Deputy Regional Crown Counsel and the reasons for the decision recorded.

Under the *Crown Counsel Act*, Crown Counsel are responsible for the decision to prosecute. The charge assessment policy requires Crown Counsel to examine the case at each stage of the prosecution and decide whether the case should proceed. This cannot be determined solely by the wishes of the child or youth victim or their parents or guardians.

Sections 151 (sexual interference), 152 (invitation to sexual touching) and 153 (sexual exploitation) create offences for sexual acts against children which have minimum sentences of imprisonment for a first offence, and conditional sentences are not available. Therefore, taking into account the paramount need to protect children, when the evidentiary test under policy CHA 1 is met, Crown Counsel should proceed with charges under those sections unless a charge under another provision of the *Criminal Code* will provide more appropriate sentencing options given all of the circumstances (see the policy on Resolution Discussions – RES 1).

All child and youth victims and witnesses should be advised of available specialized victims' services either directly or through their caregiver.

Alternatives to Prosecution

Offences against children and vulnerable youth may be referred for alternative measures and specific alternative measures recommended in an Alternative Measures Report used, only in exceptional circumstances and with the approval of Regional or Deputy Regional Crown Counsel. In all cases, the above approvals should be given only if the following conditions are met:

1. The victim has been consulted and the victim's views considered.
2. The victim has been made aware of available victim assistance programs.
3. There is no apparent history of violence or sexual offences.
4. The offence must not have been of such a serious nature as to threaten the safety or tolerance of the community.

While an alternative measures referral may be considered at any stage of the proceeding, in some cases it may be advisable to approve a charge and have conditions of release in place including no contact with the child or youth before making the referral.

Conditions of Bail or Recognizance to Protect Child and Youth Victims and Witnesses

A warrant should be sought whenever it is necessary to protect the victim, child or youth or other potential victims by seeking a detention order or conditions of release, such as those listed below. This prevents the accused from interfering with the integrity of the prosecution or committing further offences against the victim or other children or youths.

Where the detained accused presents a danger to the victim, a witness or other children or youths, Crown Counsel should consider seeking a detention order with a "no contact" order pursuant to section 515(12) of the *Criminal Code* requiring the accused, while in custody, to abstain from communicating, directly or indirectly, with the victim.

Where an accused has been arrested and then released by the police on a promise to appear or recognizance with conditions, Crown Counsel should review the conditions to ensure that they are adequate to protect the victim and the public and are enforceable, and then, if necessary, request a warrant and an amendment of the conditions under sections 499(4), 503(2.3) or 512 of the *Criminal Code*. See "Discussion" concerning possible conditions of release.

Where there is a decision not to lay a charge, to direct a stay of proceedings or where there is an acquittal, Crown Counsel should consider the availability of a recognizance under sections 810 or 810.1 of the *Criminal Code*, which can include supervision and counselling conditions administered by the Corrections Branch.

Where the offence is of a sexual nature, relevant risk factors should be communicated to the court to ensure protection of the public.

Preparation for Hearing

Administrative Crown Counsel should ensure that the procedures in their offices provide for:

1. early identification and assignment of the case;
2. wherever possible, assignment of the case to Crown Counsel who has received specialized training;
3. early identification and notice to the victim of accommodations available under section 486;
4. vertical prosecution - every effort should be made to have these cases handled by the same Crown Counsel from beginning to end. As long as a positive rapport has developed with the child or youth, that Crown Counsel should remain with the case until final disposition;
5. priority in scheduling to ensure that the case moves expeditiously through the criminal justice system.

Crown Counsel should consider applying, at the first instance, for an order under section 486 of the *Criminal Code*, directing that the identity of a complainant or a witness and any information that could disclose the identity of the complainant or witness shall not be published in any document or broadcast in any way.

Crown Counsel must inform the child or youth witness and the parent or guardian about the accommodations available under sections 486.1 to 486.3 of the *Criminal Code*, unless impracticable to do so. Crown Counsel should make an application for an order where appropriate, taking into account all relevant factors, including whether the witness requests one of the accommodations. The court can make an order:

- for the exclusion of the public
- for a support person
- for the child or youth to give testimony from a different room or behind a screen or other device
- for cross examination by appointed counsel (where the accused is unrepresented)

Crown Counsel should consider whether presentation of evidence by videotape, as provided by section 715.1 of the *Criminal Code*, is appropriate. Utilization of such a procedure does not preclude the child or youth witness from having to testify.

When dealing with victims reluctant to participate in the criminal process, Crown Counsel should attempt to ascertain the reasons for their reluctance to testify and develop strategies to address the reluctance. Crown Counsel should make known to victims and their parents or guardians, any victim services programs or other agencies known to Crown Counsel which may be able to assist the victim.

Crown Counsel should bear in mind that the social worker and parent or guardian need information about the criminal proceedings in order to effectively protect and support the child or youth. Therefore, the social worker and parent or guardian should be advised of any charges laid, conditions of release, adjournment, change of plea or stay of proceedings, and that Crown Counsel is available to provide appropriate information about the case.

Sentencing

Victims should be given the opportunity to provide victim impact information.

Section 718.2 of the *Criminal Code* provides that the abuse of a child and abuse by person in a position of trust or authority are aggravating factors on sentencing. Any aggravating factors should be brought to the attention of the court.

Where probation is appropriate, Crown Counsel should seek conditions which will protect the victim. They may include a “no contact” and reporting requirement, as well as successful completion of an assaultive behaviour, parenting or sexual offender treatment program.

Crown Counsel should consider whether a restitution order is appropriate under section 738(1) of the *Criminal Code*.

Where it is necessary to protect the public, Crown Counsel should apply for an order prohibiting the offender from doing various acts pursuant to section 161 of the *Criminal Code*, where the offender is convicted of a sexual offence, including pornography offences, and the child is under 16.

DISCUSSION

This policy has been revised in the new format and made consistent with other branch policies and recent legislation. A further substantive review of this policy is underway.

The offences of sexual interference (section 151), invitation to sexual touching (section 152) and sexual exploitation (section 153) have minimum sentences of imprisonment for a first offence, whether the Crown proceeds summarily (a 14 day term of imprisonment) or by indictment (a 45 day term of imprisonment). Under section 742.1 of the *Criminal Code*, conditional sentences are not available for offences punishable by a minimum term of imprisonment.

Accordingly, this policy provides that, where the evidentiary test is met, Crown Counsel should proceed with charges under sections 151 to 153 unless another provision of the *Criminal Code* will provide more appropriate sentencing options. The Branch policy on Resolution Discussions – RES 1 applies. Also see the Practice Bulletin entitled Child Victims and Witnesses – Sentencing and New Offences – Bill C-2.

Conditions of Release

Crown Counsel should consider asking the court to impose preventative conditions of release which are appropriate in the particular circumstances of the case, such as conditions prohibiting the accused from being in the presence of children under 16, subject to appropriate supervision exceptions, or conditions similar to those outlined in section 161 of the *Criminal Code*.

Child, Family and Community Services Act – Prosecutions for Breach of Protective/Restraining Orders by Persons who Procure Children to Engage in Prostitution

Sections 28 and 98 of the *Child, Family and Community Services Act* (CFCSA) allow for the Director to seek a protective intervention order (section 28) or a restraining order (section 29) for a six month period with possible extension. These orders can prohibit contact between a child and anyone who might encourage that child to engage in prostitution.

Crown Counsel are responsible for the prosecution of breaches of the above-mentioned orders. The penalty for breach under section 102 of the CFCSA is a maximum fine of \$25,000 or imprisonment for not more than 24 months or both. The police are responsible for the investigation of offences and may submit Reports to Crown Counsel. Crown Counsel should ensure that a copy of the order is attached to the Report to Crown Counsel and that, if the order was obtained ex parte, it can be proven that the accused was served with a copy of the order before the date of the alleged offence.

Depending on the terms of the order, the police may be empowered to arrest the accused either with or without a warrant. Application can be made for a warrant to arrest in a dwelling place. Such an arrest may be necessary in the public interest in order to avoid repetition of the offence and to have the person detained or placed on conditions to ensure the safety of the child, the child's caregivers or the social worker. Release conditions might include no contact, no weapons, reporting conditions and area restrictions.

The Child Protection Social Worker responsible for the child should be notified of the conditions of release and provided with a copy of the conditions as soon as possible. Crown Counsel should not consent to the amendment or deletion of any conditions without prior consultation with the Child Protection Social Worker and the supervising probation officer, if one is assigned.