



POLICY STATEMENT:

The Department of Justice supports community-based justice approaches as well as the traditional court-based approach to criminal justice. The ultimate decision as to whether a case is referred to a community-based justice program rests with the Crown Attorney. However, a case should generally be referred to such a program whenever the accused satisfies the admission criteria of that particular program. Community-based approaches can be used prior to the laying of a charge or at any stage during the course of court proceedings (e.g. to assist in determining the appropriate sentence). Community-based justice approaches are authorized in both adult (s. 717 C.C.) and youth proceedings (ss. 6-12 YCJA).

Procedure

The following guidelines should be followed in determining whether referral to a community-based justice program is appropriate:

- (i) The Crown Attorney must be of the opinion that allowing the accused to participate in the program would not threaten the safety of the community or exceed the tolerance of the community.
- (ii) Some types of offences are generally not appropriate for community-based justice programs. These are:
 - Any form of culpable homicide.
 - Domestic violence. See also: Domestic Violence 2:DOM:1.
 - Sexual offences, including child pornography.
 - Child abuse or neglect.
 - Criminal harassment.
 - Offences posing a serious risk to the safety or well being of the community, including hate crimes or racially motivated offences.
 - Offences involving gang activity.
 - Firearms offences.
 - Driving offences under the *Criminal Code*. This includes all driving offences (e.g. criminal negligence causing bodily harm, refuse breathalyzer, dangerous driving, etc.) and all vehicles (cars, boats, aircraft, etc.) as well as cases involving multiple vehicle thefts.

There may be exceptional circumstances where one of the offences listed above could be referred to a community-based justice program. However, before such a referral can be made, a Senior Supervising Crown Attorney must be consulted and a written note setting out the exceptional circumstances must be placed in the file.

- (iii) The Crown Attorney must be satisfied that there is sufficient evidence to support a *prima facie* case against the accused and that the case would have proceeded to trial if not for the existence of the program.
- (iv) An accused with a criminal record, even for a related offence, is not necessarily an inappropriate candidate for a community-based justice program. However, the more extensive the accused's history of criminal activity, the less likely it is that referral to a community-based program will be appropriate. Also, the protocol governing some community-based justice programs may preclude a second referral in the case of a re-involvement. Crowns should be aware of the eligibility guidelines applicable to individual programs.
- (v) Before the accused can be admitted into a program, he/she must admit responsibility for his/her act under circumstances that would indicate the admission was voluntarily given.

(Note: If the accused, while in conversation with program personnel concerning admission into the program or while actually enrolled in the program, makes an admission with respect to his or her role in committing the offence, this admission may not be used against the accused in relation to the prosecution of that offence.)

- (iv) In applying these guidelines, consideration must be given to the special status of aboriginal people as set out in the *Youth Criminal Justice Act* [s. 38(2)(d)], the *Criminal Code* [s. 718.2(e)], appellate decisions such as *R. v. Gladue* and the recommendations of the Aboriginal Justice Inquiry and the Aboriginal Justice Implementation Commission.
- (v) If there appears to be excessive delay in the accused reaching an agreement with program personnel or in completing the terms of the alternative community-based justice program, the Crown Attorney shall proceed with the charge in court.

Where required by *The Victims' Bill of Rights* or the YCJA (s. 12), the victim should be consulted regarding the referral of the case to a community-based justice program. The victim's comments, while not determinative of whether referral will occur, must be considered. If the victim is not an identifiable individual (e.g. a large corporation), it may not be possible to determine the effect of the particular offence on the victim or to elicit the personal views of the victim regarding that particular offence. In those cases, the Crown Attorney should take regard of all the circumstances in deciding whether consultation with the victim is appropriate.

Development of New Programs

The use of alternative measures for adults (s. 717 C.C.) and extrajudicial sanctions for young persons (s. 10 YCJA) are an important element in the administration of justice in Manitoba. These measures or sanctions can often reinforce respect for societal values and encourage the repair of harm done to victims and the community. When a community proposes a program for responding to criminal misconduct, the Crown Attorney responsible for the area will, whenever possible, support and assist in the development of the program, provided that this has been discussed in advance with the appropriate Director. (See also: Community Access to Justice 5:COM:1.

RATIONALE:

The Department of Justice recognizes that there can be many effective and appropriate responses by the justice system to criminal conduct. The Department supports the use of community-based justice programs for certain offences and for certain offenders. If the accused agrees to accept responsibility for his or her action and to participate in the program, there could be greater benefit for the accused, the victim and the community than would be expected from further processing through the criminal justice system. Recognition must be given to the ability of communities and community agencies to develop programs that will more adequately serve their needs.