

Alternative Measures and Extrajudicial Sanctions Program Manual

Ministry of Justice

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Preface

This manual describes procedures for alternative measures and extrajudicial sanctions programs supported by the Ministry of Justice. The information in this manual will be helpful to caseworkers, police officers, Crown prosecutors and others who are involved with these programs.

Section 1 defines alternative measures and extrajudicial sanctions. It discusses how alternative measures and extrajudicial sanctions developed and how they relate to restorative justice. This introductory section also provides an overview of the procedure for referring and handling cases, describes the kinds of facilitated processes that are used to resolve cases and considers victim participation.

Section 2 outlines the framework for alternative measures and extrajudicial sanctions. This includes the *Criminal Code* of Canada, the *Youth Criminal Justice Act* and the provincial policies that govern alternative measures/extrajudicial sanctions cases in Saskatchewan.

Section 3 describes facilitated processes such as victim-offender mediation, community justice conferences, community justice forums, and referrals to treatment programs. This section also describes the procedures for handling cases, the roles of each participant, and potential conditions in agreements between the victim and the accused about what the accused person will do to address the harm caused by the offence.

Section 4 discusses matters related to the management of alternative measures/extrajudicial sanctions programs, such as developing proposals, work plans and budgets; training; file retention, privacy and access; personnel policies; program statistics and reporting; insurance and liability coverage; and program evaluation.

Section 5 discusses other topics such as community referrals, service providers and community justice committees.

Finally, the Appendices include additional information that may be helpful.

- Appendix A is a glossary of the terms used in this manual.
- Appendix B contains examples of forms that might be used by alternative measures/extrajudicial sanctions programs. Please note that agencies can develop their own forms.
- Appendix C provides contact information and information about relevant services provided by the Ministry of Justice.
- Appendix D includes additional information about the history of the youth justice system.

1.0 Introduction

Alternative measures/extrajudicial sanctions programs provide individuals who are accused of committing a *Criminal Code* offence or other matters set out in provincial policies an opportunity to make reparation to victims and the community. Throughout this manual, “alternative measures” will be referred to as “AM” and “extrajudicial sanctions” will be referred to as “EJS.”

Youth between 12 to 17 years of age at the time of the offence may be referred to EJS programs and adults over 18 years of age may be eligible to participate in AM programs. These programs offer the victim and community members the opportunity to be involved in resolving the case, ask the accused person questions, have the accused take responsibility for their behaviour and help repair the harm that has been done to the extent possible. In addition to being structured and publicly accountable, these programs are sensitive to cultural diversity where appropriate.

AM/EJS processes are a way to address crime in conjunction with the present criminal justice system. These programs address the criminal actions of the accused while preserving their dignity and requiring them to be accountable for their behaviour. This is a problem-solving approach to crime that emphasizes healing while helping repair relationships between the victim, the accused and the community as much as possible.

This approach is consistent with the move towards a responsive justice system that tries to deal with criminal behaviour in a proactive manner. AM/EJS aim to:

- Increase the offender’s accountability and responsibility for criminal actions;
- Promote the involvement of victims in the process;
- Protect society by deterring offenders from further criminal behaviour;
- Enhance the community’s participation in resolving the incident;
- Involve the community in addressing the crime and the victim’s and offender’s needs; and
- Protect the interests of society.

Restorative Justice

AM/EJS programs draw on the values, principles and processes of restorative justice. For the purpose of this manual, restorative justice is: “An approach to justice that focuses on addressing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by crime – victim(s), offender and community – to identify and address their needs in the aftermath of a crime.” It supports healing, reintegration, the prevention of future harm, and reparation, if possible.¹

¹ This definition, and some of the following bullets, were developed by the Federal-Provincial-Territorial Working Group on Restorative Justice. (December 2009). “Key Messages on Restorative Justice”. These concepts were adapted from Robert Cormier’s 2002 report,

Restorative justice practices vary because they are developed in response to specific circumstances and issues. In general, some restorative principles include:

- Crime causes harms to victims and communities.
- Victims, accused persons, communities, and governments all have roles to play in responding to crime.
- The victim is central to the process of defining the harm and how it might be repaired. Restorative justice offers victims who choose to participate an opportunity to express their views and needs.
- Restorative justice helps offenders face those who have been affected by their behaviour, understand the impact of their actions, and take steps to address the harm they caused.
- Restorative justice empowers communities to play a role in responding to crime in a way that is meaningful to them. Communities are actively involved in holding offenders accountable, supporting victims, and providing opportunities for offenders to make amends.
- Governments support restorative justice programs by providing legal authority for these programs to operate, setting standards, developing policies, and providing training and funding so communities can develop services that meet their unique needs.

The Development of Alternative Measures/Extrajudicial Sanctions

The development of AM/EJS has been influenced by several factors:

- The restorative justice movement;
- The victims' movement;
- The desire of Aboriginal people for a justice system that is responsive to their unique needs; and
- The realization that partnerships between the criminal justice system and communities are often the most effective way to respond to crime.

EJS programs were previously called "youth AM." Youth EJS programs have been operating in Canada since 1983 and in Saskatchewan since 1985. Saskatchewan began developing adult AM programs during the 1990s.

Restorative justice, AM and EJS were incorporated into the Ministry of Justice *Restorative Justice Strategy* (1995), which included goals such as strengthening communities by involving victims, offenders, government and community members in a balanced approach to criminal behaviour, and reducing crime by increasing offender accountability to victims and communities. This approach is

"Restorative Justice: Directions and Principles – Developments in Canada." Ottawa: Public Safety Canada. Available online at: <http://www.nicic.org/Library/017800>

consistent with the provincial *Aboriginal Justice Strategy* (1995), which aims to involve the Aboriginal community in developing justice initiatives that are culturally sensitive, responsive to community needs, holistic in service provision, and focus on empowering the community.

Overview of the Process for Referring and Handling Cases

As discussed in section 3, the police may refer criminal cases if the matter is appropriate under the *Criminal Code* of Canada, the *Youth Criminal Justice Act* (YCJA), the Ministerial Orders and the *Saskatchewan Ministry of Justice Adult Alternative Measures Policy* (2011) and the *Young Offender – Extrajudicial Sanctions Policy* (2011). The Crown prosecutor has the responsibility and authority to approve the referral. As outlined in the policies, some kinds of cases are not eligible. AM/EJS coordinators and caseworkers, Courtworkers, defence lawyers and other individuals can suggest that it would be appropriate to use AM/EJS in a particular matter, but the referral must be approved by the Crown prosecutor.

Conservation officers sometimes make referrals to AM/EJS programs under the *Ministry of Environment Enforcement Bulletin – AM/EJS* (2012). The procedure for handling such referrals is similar to that described in section 3 of this manual, but the agency will need to provide reports to the Ministry of Environment official who referred the case. The conditions of the agreement with the accused may also be different, such as referring the accused to firearms courses or other appropriate options.

Section 3 outlines the procedures for referring and handling cases and the roles of the people and groups involved. Cases are referred to community-based agencies or service providers who are contracted by the Ministry of Justice. The case is screened to determine whether the referral should proceed. The way in which cases are referred and screened varies between communities. Some places have a coordinator who might attend court to watch for potential referrals and meet with accused persons who could be considered for AM/EJS. The coordinator distributes referrals to the agencies or service providers that provide AM/EJS, acts as a liaison between the agencies, the police and Crown, and keeps records of referrals. Other communities have a screening committee, which may include representation from the AM/EJS agency, the police, the Crown and others. These committees consider which cases would be best served by a referral.

In communities where there is no coordinator or screening committee, referrals are sent directly to the agency or service provider, depending upon the agreement in that community.

Once an agency or service provider receives a referral, a caseworker speaks to the victim and the accused, decides whether the referral is appropriate, determines how the case should be handled and what kind of process to use, organizes the facilitated meeting, follows up to address any needs the victim or accused may have, ensures that any resulting agreement is completed, completes paperwork and data entry, and closes the case.

While most referrals involve criminal matters, agencies sometimes receive community referrals regarding matters such as disputes between neighbours or conflicts in schools. Many of the steps outlined in this manual (such as screening the referral, organizing a restorative justice process, and following up with the people involved) still occur in community referrals, but justice officials such as police and Crown prosecutors will not be involved.

Types of Processes Used in Alternative Measures/Extrajudicial Sanctions

Community-based agencies have many different names for the kinds of processes used in AM/EJS cases. This manual uses the terms in the *Ministry of Justice Adult AM Policy and Young Offender – EJS Policy*. It is understood that community-based agencies may have different terms. Similarly, people who work with AM/EJS cases have many different titles, so references to “caseworkers” and “facilitators” in this manual should be understood as including “mediators” and other persons who perform similar functions.

Upon receiving the referral, caseworkers draw upon their training, experience, knowledge about the referral (including information from the file provided by the police or Crown prosecutor), and the views of the individuals involved to determine the appropriate process. When appropriate, the process may be adapted to suit the circumstances of the case and the individuals. Section 3 contains additional information about these processes.

The purpose of these processes is to provide an opportunity for those involved to discuss what happened, how it affected them, what they need as a result of the crime, and what can be done to address the harm caused.

Each of the following processes includes the victim. As discussed in the section on victim participation below, the victim may choose to be represented by a friend, family member or someone else if he or she does not want to attend the facilitated meeting in person, and some agencies have surrogate victims who can represent the victim’s interests and views.

Victim-offender mediation is a type of process in which the victim and the accused person meet with a facilitator.

A *community justice forum* or *youth justice forum* is a type of process in which the victim(s), the accused person(s), and other community members who are relevant to the case meet with a facilitator. The facilitator uses a script during the community justice forum or youth justice forum meeting. These kinds of scripted processes initially developed through the work of Real Justice in Australia and were later introduced to Canada through training offered by the Royal Canadian Mounted Police.

A *community justice conference* is a type of process that can occur with adult accused persons. The victim(s) and the accused person(s) meet with a facilitator and additional professionals and community members who are relevant to the case. A *family group conference* is a similar process that can occur when the accused is a young person. Unlike community justice forums and youth justice forums, scripts are not used during community justice conferences and family group conferences.

A “circle” is a generic name for processes to resolve a conflict or issue between an offender, victim, and/or community members. Circles usually involve the accused, the victim, a facilitator, and a wide range of individuals such as family supporters, community members, professionals, and others. There are many kinds of circles, including “peacemaking circles”, “sentencing circles”, “healing circles”, and “releasing circles”. The people who participate and the procedures used vary according to the circle’s purpose and the practices of the group or agency arranging it. In general, the participants sit in the round and may use a “talking piece” held by the person who is currently speaking.

In regards to community justice forums, youth justice forums, community justice conferences and family group conferences, “other relevant community members” who could participate include friends and family members of the victim or the accused, Elders, pastors, community justice committee members, and others who can provide support to the victim and the accused or who were affected by or involved in the incident.

As discussed in the 2011 provincial AM/EJS policies, referrals may also be handled by:

- Holding an accountability conference (this is a process in which the accused person meets with a facilitator and community members to discuss the causes and consequences of their behaviour and how to address the harm caused);
- Referral to a specialized program such as life skills, crime prevention, restitution or Stoplift;
- Referral for counselling or treatment programs (such as drug/alcohol, health, mental health, or programs offered by social service agencies);
- Participation in Aboriginal cultural activities; or
- Other processes that are reasonable in light of the needs and interests of the persons involved and the availability of programs or resources within the agency administering the program and the community.

Victim Participation

AM/EJS provide an opportunity for victims to be involved in the criminal justice process and have input in how the case is addressed. As victims may be unfamiliar with these approaches and concerned about what their involvement means, every effort should be made to invite them to participate, help them feel welcome and comfortable, and address their needs as much as possible. Victim participation is discussed in more detail in section 3.

The victim's participation is strictly voluntary. Victims have many options for being involved, such as participating in person, sending someone to speak on their behalf (a "victim representative"), providing verbal or written input to the caseworker about their views, or being represented by a surrogate in programs that have arrangements for surrogate victims. The referral may still proceed if the victim is unable or unwilling to participate in some way, but whether the victim chooses to participate affects the kind of process that can occur. Victim participation is a prerequisite for eligibility in victim-offender mediation, community justice forums, community justice conferences or family group conferences. If the victim decides that he or she will neither participate nor allow for a surrogate or a victim representative, then these kinds of processes are excluded as an option for the accused, although it may be possible to develop some other kind of restorative justice process to address the matter.

In considering whether to make referrals, special consideration is given in favour of cases where there is an ongoing relationship between the victim and the accused, recognizing there is an enhanced likelihood for a positive outcome and reduction of future incidents. Please note the criteria exclude cases involving sexual violence against children, sexual exploitation of children, and spousal/partner violence. For more information about the criteria for referrals and the kinds of cases and clients that can be accepted, please see the provincial AM/EJS policies.

2.0 Legislative and Policy Framework

This section describes the overall framework for AM/EJS provided by the *Criminal Code* of Canada, the YCJA, and provincial policies. It also discusses some provisions of the YCJA regarding youth justice committees. More specific information about how the legislation relates to access to information is contained in other sections of this manual.

The *Criminal Code*, the YCJA and provincial policies provide the legislative authority for using AM and EJS. In September 1996, a number of amendments were made to the *Criminal Code* to authorize the use of community-based sentencing alternatives for adults and emphasize that incarceration should be used as a last resort. In 2003, the *Youth Criminal Justice Act* (YCJA) made similar provisions regarding EJS programs for young persons. These statutes set out criteria and provisions regarding AM/EJS. Additionally, the statutes state that AM/EJS programs must be authorized by the Attorney General of a province.

2.1 Legislative Authority

Alternative Measures

The use of AM for adult cases is authorized in section 717 (1) of the *Criminal Code* of Canada, which states:

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 agency, 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.*

Extrajudicial Sanctions

In youth cases, there is emphasis on using extrajudicial measures whenever possible and reserving custody for the most serious charges and violent offenders. A provision similar to section 717 (1) of the *Criminal Code* respecting young offenders is found in Section 10 of the YCJA, which states:

10. (1) An extrajudicial sanction may be used to deal with a young person alleged to have committed an offence only if the young person cannot be adequately dealt with by a warning, caution or referral mentioned in section 6, 7 or 8 because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances.

Conditions

(2) An extrajudicial sanction may be used only if:

(a) it is part of a program of sanctions that may be authorized by the Attorney General or authorized by a person, or a member of a class of persons, designated by the lieutenant governor in council of the province;

(b) the person who is considering whether to use the extrajudicial sanction is satisfied that it 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 extrajudicial sanction, fully and freely consents to be subject to it;

(d) the young person has, before consenting to be subject to the extrajudicial sanction, been advised of his or her 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 omission that forms the basis of the offence that he or she is alleged to have committed;

(f) there is, in the opinion of the Attorney General, 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.

Restriction on use

(3) An extrajudicial sanction may not be used in respect of a young person who:

(a) denies participation or involvement in the commission of the offence; or

(b) expresses the wish to have the charge dealt with by a youth justice court.

2.2 Provincial Policies

Although the *Criminal Code* and the YCJA give legislative authority for AM/EJS programs, it is the responsibility of the provinces to develop and regulate them. The development of community-based AM/EJS programs is authorized by Ministerial Orders and the *Saskatchewan Ministry of Justice Adult AM Policy (2011)* and the *Young Offender – EJS Policy (2011)*.

As previously discussed, conservation officers may also refer cases to AM/EJS programs under the *Ministry of Environment Enforcement Bulletin – AM/EJS (2012)*.

2.3 Provisions of the YCJA regarding Youth Justice Committees

The YCJA contains a number of provisions that relate to EJS cases. This section discusses the YCJA's provisions for youth justice committees. Other relevant sections of the Act are discussed where appropriate throughout this manual.

Under Section 18 of the YCJA, the federal government authorizes the development and provincial designation of youth justice committees as part of the continuum of services for youth in conflict with the law. The Act recognizes the important role of citizens in the justice system in their own communities.

18. (1) The Attorney General of Canada or a province or any other minister that the lieutenant governor in council of the province may designate may establish one or more committees of citizens, to be known as youth justice committees, to assist in any aspect of the Administration of this Act or any programs or services for young persons.

Section 18 (2) of the YCJA sets out the specific functions of youth justice committees, such as giving advice on extrajudicial measures for young persons, supporting victims, ensuring that community support is available for young persons, participating in conferences related to young persons, advising the federal and provincial governments on policies and procedures related to the youth criminal justice system, undertaking public education, and other matters:

- (2) The functions of a youth justice committee may include the following:*
- (a) in the case of a young person alleged to have committed an offence,*
 - (i) giving advice on the appropriate extrajudicial measure to be used in respect of the young person,*
 - (ii) supporting any victim of the alleged offence by soliciting his or her concerns and facilitating the reconciliation of the victim and the young person,*
 - (iii) ensuring that community support is available to the young person by arranging for the use of services from within the community, and enlisting members of the community to provide short-term mentoring and supervision, and*
 - (iv) when the young person is also being dealt with by a child protection agency or a community group, helping to coordinate the interaction of the agency or group with the youth criminal justice system;*
 - (b) advising the federal and provincial governments on whether the provisions of this Act that grant rights to young persons, or provide for the protection of young persons, are being complied with;*
 - (c) advising the federal and provincial governments on policies and procedures related to the youth criminal justice system;*
 - (d) providing information to the public in respect of this Act and the youth criminal justice system;*
 - (e) acting as a conference; and*
 - (f) any other functions assigned by the person who establishes the committee.*

3.0 Processes, Procedures, Roles and Potential Conditions of Agreements

3.1 Processes

This section discusses procedures for AM/EJS processes such as:

- Victim-offender mediation, community justice forums/youth justice forums, community justice conferences/family group conferences, and circles;
- Specialized programs such as referrals to counselling or treatment programs; and
- Accountability conferences.

Caseworkers draw upon their training, experience, knowledge about the referral, and the views of the individuals involved to make a decision about the appropriate process.

Victim-offender Mediation, Community Justice Forums, Community Justice Conferences and Circles

These processes provide an opportunity for the accused, the victim, family supporters and community members to meet in a respectful environment where they can discuss the impact of the offence. This assists them in developing an appropriate solution that satisfies the needs of the victim and the community while holding the accused accountable. This solution is written as an agreement in which the accused must fulfill certain conditions.

Community justice forums/youth justice forums are a particular type of process that use a script, so the order of the steps may differ somewhat from what appears here.

When appropriate, the process may be adapted to suit the circumstances of the case and the individuals. In general, however, AM/EJS processes usually involve the following steps:

1. The caseworker contacts the victim(s) and accused person(s) to discuss the purpose of AM/EJS and begin assessing the referral for eligibility. If the victim and accused person seem to be willing to participate, the caseworker arranges for separate pre-meetings with them to discuss the matter in more detail, identify any issues that may affect the case, determine whether the case is eligible and whether they will consent to participate.
2. Assuming that the accused and/or victim consent to participate, the caseworker determines what kind of facilitated process will be used to resolve the matter. The caseworker arranges the time and place for the facilitated process and informs the relevant individuals of the arrangements.

3. During the facilitated process, each person has a chance to express how the offence affected them. The accused is asked to accept responsibility and explain the motivation for their actions. The victim is given the opportunity to explain the impact of the offence and ask the accused questions about the offence. The caseworker facilitates discussion about the facts presented, clarifies the issues and ensures that each person's concerns are addressed.
4. After each person has been given an opportunity to speak, the victim and the accused attempt to come to a resolution about how to deal with the offence. Priority is given to compensating the victim and providing an opportunity for the accused to be accountable and take responsibility in a manner that encourages personal change and growth. The process concludes with the victim and accused (with the help of the facilitator) reaching an agreement about how to repair the harm done as much as possible. See Section 3 for more information about the possible terms in such an agreement.
5. The caseworker documents the terms of the agreement and has both the accused and the victim sign it.

Participation in a Specialized Program such as Counselling Sessions

This option may be used when the accused requires counselling, addictions treatment or anger management, or needs to acquire other skills in order to address a personal issue. The caseworker must find an appropriate program for the accused. If this option is selected, the following must occur:

1. The caseworker calls a placement agency or community organization to arrange the referral.
2. The caseworker has the accused person sign the consent to release information form (Appendix B – Form 6).
3. The caseworker fills out a referral form with the name of the agency that will take the case, the contact person at the other agency who is responsible for the case, and the date by which the counselling or treatment program must be completed. The caseworker sends a copy of the referral form and the consent to release information form to the program or placement agency, provides one copy to the accused, and keeps one copy for the file.
4. The caseworker directs the accused to report to the placement agency or community organization.
5. The caseworker follows up to ensure that the accused completes the terms of the agreement or conditions that are detailed in Appendix B – Form 5.
6. The caseworker fills out Appendix B – Form 7, indicating whether the accused has completed the agreement. The caseworker keeps one copy, forwards one copy to the police and another to the Crown prosecutor.

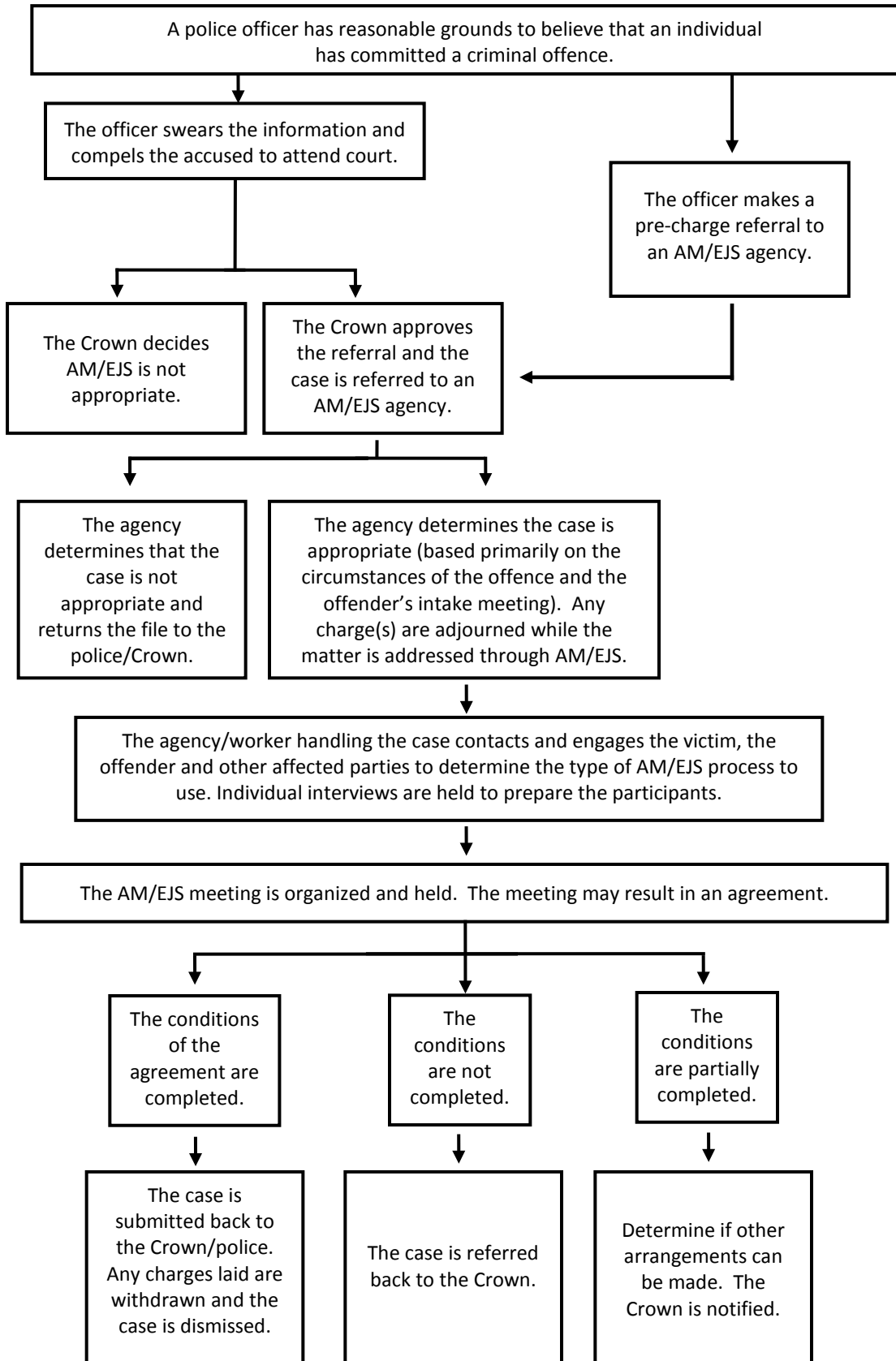
Accountability Conferences

An accountability conference is a process in which the accused person meets with a facilitator and community members to discuss the causes and consequences of their behaviour and how to address the harm caused. Victims and individuals other than the facilitator do not participate in accountability conferences. This kind of process should be used infrequently. Accountability conferences are most suitable in cases that do not involve personal victims and when it is not possible to find a surrogate or someone to represent the victim.

3.2 Procedures in Criminal Matters

This section provides a general overview of the steps that are followed when an accused person facing a criminal charge goes through an AM/EJS program. Text boxes provide additional information about specific aspects of referrals, and the flowchart below illustrates these steps. It should be noted that the order of the steps may vary depending on the circumstances of the case, and some communities or regions have protocols or practices that may differ somewhat from what is presented here. If you have any questions regarding the procedures in your community, please consult your program manager/program consultant.

Flowchart for Alternative Measures/Extrajudicial Sanctions Referrals



Step 1: The Police Referral

When the police receive a complaint or investigate an offence and they believe there is enough evidence to support a charge, they may consider referring the accused to an AM/EJS program. A **pre-charge referral** can be made before a charge is formally laid, and a **post-charge** referral is made after a charge is laid.

In deciding whether to refer an accused, the police officer considers the following factors:

- The criteria in the *Criminal Code* and the YCJA.
- The Canadian Police Information Centre (CPIC) history of the accused (see the text box below).
- The seriousness of the offence and the circumstances of the case.
- The eligibility and exclusionary criteria outlined in the *Saskatchewan Ministry of Justice Adult AM Policy (2011)* or the *Young Offender – EJS Policy (2011)*.
- The degree to which the accused accepts responsibility. The provincial AM/EJS policies state that the accused must accept responsibility “either during or following contact with the police”. This means that the police may decide to make a referral even if the accused person does not initially accept a high degree of responsibility. However, the accused should not be referred if they deny committing the offence or express the wish to have the matter dealt with in court.
- The impact of the offence on the victim.
- Other reasonable factors.

It should be noted that police have discretion about whether to make a referral, but this does not include requesting particular terms in any agreement that might result between the victim and the offender.

CPIC History of the Accused

When deciding whether to refer a case, the police check the CPIC history of the accused to decide whether he or she is eligible according to the criteria in the *Criminal Code*, the YCJA and the provincial policies.

The provincial AM/EJS policies contain criteria for referring AM/EJS cases. This text box provides the criteria regarding the accused person's criminal history only. For more information about the other criteria, please see the relevant policy.

The *Saskatchewan Ministry of Justice Adult AM Policy (2011)* states that in general the offender:

- Must not have been diverted more than twice in the last two years;
- Must not have failed diversion in the previous six months; and
- Must not have a substantial criminal record for similar offences or similar recent convictions.

The *Saskatchewan Ministry of Justice Young Offender – EJS Policy (2011)* states that in general the young person:

- Must not have a significant history of failing to complete previous EJS, or other significant outstanding charges that call into question the appropriateness of EJS;
- Must not have a substantial criminal record for similar offences or similar recent convictions.

Making the Referral

After the police decide that the accused could be referred, the accused is:

- Informed of their rights;
- Given the opportunity to speak to legal counsel;
- Informed that the matter can be dealt with through AM/EJS or they can have it dealt with in court; and
- Asked whether they would like to participate in AM/EJS.

The police should follow their department's procedure for referrals to AM/EJS programs. If the accused indicates that they are willing to participate, they must sign the Allegation and Agreement to Participate form to confirm that they voluntarily consent to the referral (Appendix B – Form 1). Additionally, they are given an information sheet explaining that they must contact or will be contacted by the AM/EJS agency or agent.

In general, the police will give one copy of the Allegation and Agreement to Participate form to the accused, send one copy to the AM/EJS agency, and send one to the Crown prosecutor's office with the police case file information (which should include a copy of the referral form, a summary of information about the offence, victim/witness statements and a victim impact statement if one has been filed.) If there is no standard procedure, the police officer should send a copy of the form and the police file to the Crown prosecutor's office, and the Crown prosecutor will inform them whether the referral can proceed.

Entering the Information on CPIC

After receiving approval for the referral from the Crown prosecutor, the police enter the information on CPIC, stating the accused has been referred. Information about the accused person's involvement in AM/EJS will remain on CPIC for two years.

Step 2: Authorization by the Crown Prosecutor

Crown prosecutors have discretion about whether to refer and approve cases for AM/EJS. Suggestions about potential referrals can come from the police, the staff of AM/EJS programs or community justice agencies, Courtworkers, probation officers, defence attorneys, and other individuals. However, the Crown prosecutor has the legal authority to determine whether the referral can proceed.

Factors to Consider in Referring and Authorizing Cases

As outlined in the provincial AM/EJS policies, Crown prosecutors are encouraged to refer appropriate cases except where the offence is expressly excluded from eligibility. In the exercise of this discretion, some of the factors to be considered by the Crown include:

- The seriousness or triviality of the alleged offence;
- Significant mitigating or aggravating circumstances;
- The age, intelligence, and physical or mental health or infirmity of the persons involved;
- The accused person's circumstances and needs;
- The victim's attitude and interests;
- The availability and appropriateness of alternatives to conventional prosecution;
- The prosecution's likely effect on public order and morale or on public confidence in the administration of justice;
- The prevalence of the alleged offence in the community, whether the alleged offence is of considerable public concern, and the need for general and specific deterrence;
- Whether the consequences of a prosecution or conviction would be disproportionately harsh or oppressive;
- Whether it would otherwise be in the public interest to refer the matter.

Approving the Referral and Sending the Case File

If the Crown prosecutor decides to proceed with the referral, they approve the use of AM/EJS by signing the bottom of the referral form (Appendix B – Form 1) and forwarding it to the AM/EJS agency or agent.

Additionally, if the police have not already done so, the Crown prosecutor arranges for the AM/EJS agency or agent to receive a case file that includes:

- A copy of the referral form;
- A summary of information about the offence;
- Victim/witness statements (see below); and
- A victim impact statement if one has been filed (see below).

The prosecutor also has the charges adjourned to allow enough time to complete AM/EJS. Prosecutors usually request an adjournment of three months so the accused has time to participate in meetings and complete the terms of any agreement about how to resolve the matter. Additional adjournments may be necessary to enable the accused to complete the agreement, depending on the circumstances of the case and factors such as the amount of any restitution involved (see step 11).

Victim/Witness Statements

Victim/witness statements may contain information about the circumstances of the offence, which could be helpful to the AM/EJS caseworker. These statements are subject to disclosure and should be provided to the caseworker if they are available. If there is sensitive or irrelevant information in them, the Crown prosecutor can remove that portion of the information and send the revised statements to the caseworker.

Victim Impact Statements

Victim impact statements (VIS) may contain information about the impact of the crime upon the victim, which can be helpful to the caseworker in addressing the victim's needs and concerns. VIS are subject to disclosure and should be provided to the caseworker if they are available at the time of the referral. If there is sensitive or irrelevant information in the VIS, the Crown prosecutor can remove that portion of the information and send the revised VIS to the caseworker. AM/EJS caseworkers may also want to suggest to the victim that they update or complete a VIS to provide input about the impact of the crime.

Rejecting the Referral

If the Crown prosecutor rejects the referral, they decide how to proceed with the matter, such as pursuing the case in court.

Step 3: The Agency or Agent Receives the Referral and Opens a File

The case is referred to a qualified agency or agent responsible for delivering AM/EJS in the area. The agency or agent may be a Tribal Council, a community justice committee, a community-based program, or a qualified, contracted service provider.

As previously mentioned, the referral should include a copy of the referral form, a summary of information about the offence, any victim/witness statements and a victim impact statement if one has been filed. If information is missing, the agency should contact the Crown prosecutor or police (depending on who made the referral) and request the information.

At this point, the agency or agent opens a file and begins entering data into the AMPCRM database. Data entry must be complete and accurate. This is important to ensure that information about the case and the individuals is correct, and enables comprehensive and valuable reporting about the agency's services and the use of AM/EJS in Saskatchewan. Requirements about data entry and evaluation are part of the contract between the agency and the Ministry of Justice. For more information on these topics, please see Section 4 of this manual on program management and administration.

Step 4: Contacting the Accused

The AM/EJS agency or agent contacts the accused to begin screening the case. Agencies should have procedures regarding the process for contacting the accused. In general, the first contact will be made by phone call or letter, but some agencies have workers who attend court and speak to accused persons there. The initial contact is an opportunity to briefly hear the accused person's perspective about the incident and determine whether they are open to participating. During the initial contact, the caseworker provides some information about AM/EJS and asks to meet the accused in person to discuss the process in more detail.

If the caseworker is unable to contact the accused person with a single letter or phone call, it may be necessary to follow up with further letters or calls. If the caseworker is unable to contact the accused person after repeated attempts, the file should be sent back to the justice official who made the referral. A record of attempts to contact the accused should be kept.

Notifying a Youth's Parents or Guardians about Extrajudicial Sanctions

Section 11 of the YCJA states that the agency or caseworker must notify the young person's parents or guardians that the matter is being dealt with through EJS. The responsibility to inform the parents or guardians does not include a responsibility to inform extended family members.

Additionally, parents and guardians should be strongly encouraged to participate in the EJS process.

If parents are notified by telephone or in person, the following information must be documented and placed in the young person's file:

- The date and time of the call or meeting;
- Who the information was given to;
- What information was provided; and
- The parent's or guardian's response.

If parents are notified by letter, the caseworker must ensure that a copy of the letter is kept in the young person's file.

If the accused agrees to meet with the caseworker, the caseworker arranges a place and time to discuss matters such as:

- What happened during the offence from the accused person's perspective.
- What kinds of harms resulted.
- Whether the accused person accepts responsibility and consents to participate in AM/EJS, or denies responsibility and wishes to have the matter dealt with in court.

If the accused person accepts responsibility and is interested in participating, then the caseworker informs the accused that:

- They have the right to speak to legal counsel regarding this decision.
- Participating in AM/EJS is strictly voluntary, and the accused has the right to withdraw at any time. However, if they withdraw, then the case will be returned to the Crown prosecutor, who will decide how to proceed (such as pursuing the case in court).
- The accused is responsible for attending AM/EJS meetings, participating in developing an agreement and fulfilling the conditions of the agreement.
- If the accused successfully completes AM/EJS then the matter will be ended in terms of criminal court, but some offences have civil court implications that may not be addressed by the AM/EJS process. This means that the victim might decide to sue the accused in civil court to collect damages even if the matter is successfully resolved through AM/EJS.

- The fact that the accused person participated in AM/EJS will be recorded on CPIC, and the record will remain on CPIC for two years.

If the accused agrees to be involved in AM/EJS, the caseworker has the accused sign a form (Appendix B – Form 2) indicating that they formally consent to participate.

Additionally, the caseworker:

- Describes the AM/EJS process in more detail.
- Explains that they will contact the victim to see if the victim is interested in participating.
- Explores the extent to which the accused person is willing and able to address the harm caused.
- Answers any questions the accused person has.
- Refers the accused to other services if necessary.

Step 5: Contacting the Victim

The caseworker contacts the victim to determine if they are willing to participate. Every effort should be made to invite the victim to be involved, make them feel welcome and meet their needs as much as possible.

Agencies and agents should have procedures regarding contacting the victim. The first contact will usually be made by phone call or letter. During this initial contact, the caseworker should:

- Learn about the circumstances of the crime and the harm done.
- Introduce the concept of AM/EJS if that seems appropriate.
- Find out if the victim might be interested in participating in some way. The victim should be told that their participation is strictly voluntary and the accused is eligible for AM/EJS if the victim does not wish to participate.
- Arrange to meet the victim in person if they are interested.
- Ask whether there is anything else they can do to assist the victim, such as referring the victim to a victims services program. This is particularly important if a victim appears to be experiencing distress or has other needs the victims services program could address.

If the caseworker is unable to contact the victim with a single letter or phone call, it may be necessary to follow up with further letters or calls. A record of attempts to contact the victim should be kept. If the caseworker is unable to contact the victim after several attempts, it might still be possible to have some kind of restorative justice process with the accused.

If the victim agrees to meet with the caseworker, the caseworker arranges a place and time to discuss matters such as:

- What happened during the crime from the victim's perspective.
- What kinds of harms resulted from the crime.
- Whether the victim is willing to participate in AM/EJS in some way. The victim's input is important but their participation is strictly voluntary. The victim might choose to send a representative to speak on their behalf, and some agencies have surrogate victims who represent the victim if the victim is unable or unwilling to participate. There are also other ways the victim might choose to participate, such as providing written or verbal input to the caseworker about their views regarding the impact of the crime and how it could be resolved.
- Additionally, the caseworker should thank the victim and provide contact information in case the victim has further questions or changes their mind about wanting to participate.

If the victim consents to participate in AM/EJS, the caseworker:

- Has the victim sign a formal agreement to participate (Appendix B – Form 3).
- Describes the process in more detail.
- Explains that they will contact the victim with information about the time, place and location of the facilitated meeting.
- Answers any questions the victim may have.

If the victim does not consent to participate, the caseworker:

- If possible, and if the victim is willing, has the victim sign a form indicating that they do not consent to participate (Appendix B – Form 3). It is important to have the forms signed and filled out if possible, but the victim should not be pressured to sign this document if they do not wish to do so.
- Explains that the case may still be handled through AM/EJS.
- Asks whether there is anything else they can do to assist the victim, provides their contact information to the victim, and thanks the victim for his or her time.

Victim's Right to Information

According to section 12 of the YCJA, if a victim requests information about a case that is referred to EJS, the caseworker must provide information about the young person's identity, the offence and the status of the case (such as whether the young person completed the EJS process and fulfilled the conditions of any agreement).

Before providing this information, the caseworker must verify the victim's identity by asking for the police file number or details of the offence.

While confidentiality is important in both adult and youth cases, the YCJA includes specific provisions about confidentiality in youth matters (see section 4.1.1 of this manual). The caseworker must explain to the victim that the identity of the young person, details of the EJS process and the status of the case are confidential and may not be shared with anyone who is not directly involved in the process.

The following information about the discussion with the victim must be documented in the young person's file:

- The date and time of the phone call;
- The victim's name;
- What information was provided; and
- The victim's response.

If a caseworker believes that providing information to a victim will place the young person at risk in any way, the police should be notified immediately. The victim must still be informed of the young person's identity as per section 12 of the YCJA.

Victims may request that the EJS agency or caseworker provide information about the case to a victims services program. In this situation, the caseworker should give the appropriate information to the victims services program, who can in turn provide it to the victim. Victims services programs may also request information about EJS cases for their files, and EJS agencies should provide this information upon request. Local protocols should be developed to assist with these practices.

Step 6: Deciding Whether to Accept the Referral

The caseworker draws upon their training, experience, knowledge about the case, and the views of the individuals to decide whether to accept the referral. This decision will be based on factors such as:

- The information in the case file.
- Information provided by the victim and the accused about what happened during the offence, the impact of the offence, and the harm done.
- The degree to which the accused is willing to take responsibility and address the harm caused.
- The victim's concerns and willingness to participate.
- The needs of the victim and the accused.

The caseworker might decide that the case:

- Is appropriate, in which case she or he continues working through the steps listed below.
- Is not appropriate for AM/EJS or the services offered by the agency. In this situation, the caseworker should inform the Crown prosecutor and/or the police that the agency refuses to accept the file and why it has been refused (see form B-7).
- Should be referred to another agency or service.

Step 7: Determining the Appropriate Process

Having decided to accept the referral, the caseworker must determine what kind of facilitated process or meeting is appropriate. Section 3.1 of this manual discusses some of the processes that can be used. The provincial AM/EJS policies indicate that victim-offender mediation, community justice forums, community justice circles, and family group conferences cannot be used if victims do not consent to participate or be represented by a surrogate, but it may be possible to use some other kind of restorative justice process.

Step 8: Preparing for the Facilitated Meeting

Research and experience indicate that preparing victims and accused persons for the facilitated meeting is critical to the success of the referral. The caseworker may have to meet with the victim and accused several times to ensure they understand their role and how the process will work, discuss their concerns or expectations, and explain the importance of confidentiality. It may also be necessary to refer the victim or the accused to counselling, treatment programs or other services before they participate in a facilitated meeting.

Depending on the type of process that will be used and the views of the victim and the accused, the caseworker may also need to make arrangements for support persons, community members, police officers or other people to attend the facilitated meeting. In this situation, the caseworker meets with each individual to explain their role in the process, discuss the importance of confidentiality and answer their questions.

Step 9: Organizing the Facilitated Meeting

The caseworker arranges a time and location for the facilitated meeting to occur. Ideally, the meeting will occur at a place and time that is suitable for both the victim and the accused. The meeting should occur in a neutral location where the participants will feel comfortable discussing sensitive matters. Be cautious about meeting in private homes since that may not be a neutral place or an environment that is safe or conducive to a constructive discussion.

The caseworker may need to make travel arrangements for the participants. There is a policy regarding transfer of files and travel arrangements for meetings (see the text boxes below).

Arrangements to Attend the Facilitated Meeting

Ideally, AM/EJS meetings should occur in a location that is convenient for both the victim and the accused. When that is not possible, every effort should be made to ensure the victim is able to participate with as little inconvenience as possible. It may be necessary to assist the victim, the accused and their support people with transportation to attend the meeting.

There may be situations where the victim or accused live in another region in Saskatchewan. **AM files** are transferred to the AM program that is closest to where the victim resides (if they choose to participate). **EJS files** are transferred to the EJS agency that is nearest to where the accused resides. Every effort should be made to include the victim in these situations. If it is not possible for the victim to participate in person, they may be able to participate on the phone, through a surrogate, or through a victim impact statement.

Transferring Files

The transfer of a case does not have a negative impact on the case count for the referring agency.

When the file is transferred, the agency or coordinator who is sending the file is responsible for contacting the appropriate AM/EJS agency or coordinator who is receiving the referral. The originating agency or coordinator records the case as a transfer in the AMPCRM database and “shares” the electronic file on AMPCRM with the agency that is receiving the transfer. The originating agency also sends a paper copy of the referral package to the agency that is receiving the file.

If the agency or caseworker who receives the transferred file requires an extension, they must contact the originating agency or coordinator, who will request an extension through the court.

The originating agency or coordinator is responsible for keeping track of the transferred case to ensure that information about the case status is submitted to the police officer or Crown prosecutor within the required time frame.

The caseworker who receives the transferred case is responsible for conducting the intervention and monitoring the status of the case. Additionally, they either record the information on AMPCRM to share with the originating agency or provide a copy of the client’s completed intake form and supporting documentation to the agency or coordinator who transferred the referral.

The Ministry of Justice provides updated contact lists to AM/EJS agencies and coordinators to facilitate case transfers within the province. Please contact your program manager/program consultant if this information is not available.

There may be rare situations in which cases need to be transferred out of province. If this occurs, the originating agency or coordinator must make arrangements for another AM/EJS agency to receive the file, conduct any necessary interventions, monitor the status of the case, and submit information about the status of the case within the required time frame.

Step 10: Facilitating the Meeting

The caseworker has the victim and offender sign an agreement to mediate form (Appendix B – Form 4) and facilitates the meeting. The exact steps depend on the type of process and the needs of the individuals involved, but in general the caseworker assists the victim and the accused to discuss the harm caused by the offence, how each person was affected and how the accused can make amends to the victim and the community.

The meeting may result in an agreement that describes what the accused will do to promote healing, restoration and accountability. Appendix B – Form 5 provides an example of a form that can be used to document the agreement. The agreement is a binding contract that outlines the terms and conditions the accused must fulfill. The agreement should contain specific conditions, including the date by which they must be completed. Conditions should be clear and specific enough to be classified as “complete”, “partially complete” or “incomplete”, keeping in mind that it is easier to measure things the accused has done than things they have not done. For more information on agreements, please see section 3.4.

Step 11: Monitoring and Follow-up

The caseworker is responsible for monitoring the agreement on an ongoing basis to determine whether it is completed within the time frame specified by the police or Crown prosecutor (see the text box below). This is important to hold the accused accountable for their behaviour and meet the victim’s needs, since the failure of the accused to complete agreements or failure to inform victims about whether the case was successfully resolved are some of the most common reasons for victims to be dissatisfied with restorative justice approaches.

Monitoring and following up on the agreement includes:

- Checking in with the victim and the accused to determine whether they have any unresolved questions or concerns.
- Referring the accused to specialized treatment programs if necessary.
- Checking whether the accused completes the terms of the agreement within the specified time frame, and discussing this with the accused and the victim if necessary (see below).
- Completing forms and documents.
- Notifying the police, the Crown prosecutor and the victim about the status of the agreement and the details of the agreement.

Time Frame for Completing Agreements

- **Pre-charge Referrals:** Section 786.2 of the *Criminal Code* states that a charge must be laid within six months of an incident occurring unless the prosecutor and the defendant agree otherwise. Therefore, the conditions of the agreement must be completed **well before the six month** date of the time the incident was reported to the police. This is necessary so that the police do not lose jurisdiction over the matter and are still able to lay charges and compel the accused to appear in court if the accused does not participate in the AM/EJS process or complete the terms of the agreement.
- **Post-charge Referrals:** Post-charge cases should be completed **at least one week before the adjournment date** (the date at which the accused is due back in court). Crown prosecutors normally request an adjournment of three months to allow the AM/EJS process to occur and for the accused to complete the terms of the agreement. The procedure for requesting an extension is discussed below. Most cases will be completed within three months and one year, depending on factors such as whether the accused must pay a significant amount of restitution.

Notifying the Police and Crown Prosecutor about the Case Status

The caseworker must keep track of the dates by which cases are due to be completed and ensure that paperwork is submitted within the required time frame (see the text box below). If the agreement will require several months to complete, it is good practice to provide the police or Crown prosecutor with updates about the status of the case.

The process for notifying the police and Crown prosecutor about the status of the case varies in each community, but it is important to provide this information well before the date by which the referral must be completed. Caseworkers should make every attempt to avoid notifying the police and Crown at the last minute. When in doubt about the date by which a referral must be completed or the process for providing information about the status of the case, contact the police officer or Crown prosecutor who made the referral.

Timelines for Notifying the Police and Crown Prosecutor about the Case Status

The caseworker must submit the Notification to Crown Prosecutors and Police form (Appendix B – Form 7) regarding the status of the case within the following timelines:

- For **pre-charge** referrals, the caseworker should report the status of the case to the police **at least three weeks** before the required time period.
- For **post-charge** referrals, the caseworker should report the status of the case to the Crown prosecutor **at least one week** before the date of the court adjournment.

The status of the case may be:

- Complete.
- Not complete.
- Partially complete.

Depending on the circumstances of the case, it is generally good practice to notify the police officer who made the referral, the Crown prosecutor, the victim and the youth's family (if applicable) at the same time.

Completed Cases

Once the accused complies with the agreement, the caseworker informs the police and the Crown prosecutor by filling in Appendix B – Form 7. The caseworker must provide written information about the terms of the agreement and what the accused person did to fulfill the agreement. Sufficient detail must be provided to clearly indicate what the accused person did to fulfill the agreement. For example, if the person was referred for counselling, the report must indicate what agency provided the counselling and how many sessions of counselling occurred.

If charges were laid, the Crown prosecutor withdraws the charges and the case is dismissed.

At this point, the police enter the information on CPIC to indicate that the accused completed the process.

Partially Completed Cases

There may be situations where the accused sincerely attempts to fulfill the terms of the agreement, but unforeseen circumstances (such as the loss of employment) interfere with the person's ability to complete the agreement as planned or within the required time frame. In these situations, caseworkers should consult with the victim (if the victim is involved) to see if they are willing to amend the conditions of the agreement. If the victim and any other relevant participants agree, they need to sign and date the amended agreement. Once the accused completes the amended agreement, the caseworker fills in the notification form (Appendix B – Form 7) and submits it to the police or Crown prosecutor, along with information about the conditions of the agreement and what the accused did to fulfil it.

If the accused does not seem to be making progress on completing the agreement, the caseworker should attempt to contact the accused to determine whether they are still committed to fulfilling the conditions. The caseworker should notify the police and Crown in writing about the reasons for the situation and make a recommendation regarding whether the accused should be allowed to make alternative arrangements for completion. It might be possible to provide an extension, but this must be requested within the required time frame. Furthermore, section 717 (4) (b) of the *Criminal Code* and section 10 (5) (b) of the YCJA provide that the court may dismiss the charge if it is satisfied on the balance of probabilities that the accused person partially complied with the terms of the AM/EJS agreement.

Cases that are Not Completed

The caseworker should refer the case back to the Crown prosecutor if the accused:

- Shows an unwillingness to complete the terms and conditions of the agreement.
- Denies, at any time, their responsibility or involvement in the alleged offence.
- Expresses the desire to have the case dealt with by the court.

In these situations, the Crown prosecutor will determine how to proceed (such as pursuing the case in court).

The caseworker should also ensure that the referring police officer is aware of the status of the case. At this point, the police change the information on CPIC to indicate the status of the case.

Step 12: Finalizing Record Keeping and Data Entry

The caseworker is responsible for ensuring that all relevant documents are completed and placed in the client's file and all required data is entered accurately into the AMPCRM database (see section 4 of this manual). Every effort should have been made at other points to ensure that the relevant data was collected and the appropriate forms and documents were signed and sent to the police, Crown prosecutor, AM/EJS coordinator, or originating AM/EJS agency, as appropriate. If any data or forms are missing, the caseworker must finish those steps. Additionally, service providers who facilitate cases on a fee-for-service basis will need to send an invoice to the appropriate ministry to receive payment.

3.3 The Roles of Participants

This section discusses the roles of the accused, the victim, police, Crown prosecutors, agencies and agents, caseworkers, service providers, families and communities in AM/EJS cases. This information supplements the procedural steps discussed in section 3.2.

The Accused

Accused persons may decide to participate in AM/EJS to make whatever amends they can to the victim and the community and be reintegrated into the community. Research suggests that participating often enables the accused to better understand the full impact of the offence and these approaches can help reduce re-offending.

The accused person must contact the AM/EJS agency, participate in any required meetings and complete the terms of the agreement within the specified time frame.

The Victim

The victim's needs must be respected at every point of the criminal justice process. AM/EJS can provide a way for victims to be involved in their case. If a victim decides to participate, their role is to discuss what happened from their perspective, the harm caused by the offence, whether they want to personally attend some kind of facilitated process, and contribute their ideas about how the accused could make amends.

Every effort should be made to consult with the victim about the referral. Victims experience distinct needs and losses as a result of the offence. Some of these needs are emotional (such as support or reassurance), and others are substantive (such as restitution or repairing damaged property). The initial contact with victims should focus on what the offence meant for the victim. Victims should be asked whether they would like to be referred to a victims services program, and the concept of participating in AM/EJS should be introduced if that seems appropriate.

Some victims decide to participate in AM/EJS to express their emotions to the accused, understand the actions of the accused, or receive restitution. The victim may want to tell the accused how they feel about the offence and its emotional, physical, social or financial consequences. Additionally, victims sometimes want to understand the degree to which the accused accepts responsibility and is willing to make positive changes in their lives so they will not victimize anyone else. In such cases, victims may want the accused to undertake healing and treatment programs.

Discussions with the victim should be respectful and avoid comments that might inadvertently lead them to feel additional trauma. Victims should never be pressured to participate or made to feel guilty if they do not want to be involved.

In some cases, the victim may be unwilling or unable to participate. In this situation, the matter may still go to an AM/EJS program. The victim should be offered the option of selecting a victim representative, and some agencies use surrogate victims to portray the part of the victim and represent the interests and concerns of the community.

As outlined in the provincial AM/EJS policies, victim participation is a prerequisite for eligibility in victim-offender mediation, community justice forums, community justice conferences or family group conferences. Refusal by the victim to participate or to allow for a representative or surrogate excludes these processes as options for the accused, although it may be possible for the caseworker to use some other kind of restorative justice process.

Victims sometimes choose to file victim impact statements in post-charge cases. The statement may contain information about the impact of the crime, which may be helpful for the caseworker. The victim may want to update their victim impact statement to include information about the longer term effects of the crime, or they might agree to complete a victim impact form developed by the AM/EJS agency.

The Police

The police have many roles within the criminal justice system. In regards to AM/EJS, their role is to determine whether to refer the accused. The police are often the first point of contact with the accused, victims, and families, and the information provided by the police can set the tone for a successful referral. Additionally, the police enter information into CPIC regarding the case and they may be asked to participate in a facilitated meeting between the victim and the accused (see the text box below).

It should be noted that the role of the police does not include requesting particular terms in any agreement between the victim and the offender.

Police Participation in Alternative Measures/Extrajudicial Sanctions Meetings

Police officers are sometimes asked to participate in AM/EJS cases. The RCMP have a policy which states they may participate in EJS if they are invited and able to do so. In this situation, they may express their views on a specific investigation or about their work as a police officer as it relates to young persons in the community.

Other police services may have their own policies regarding attendance in AM/EJS meetings. The officer should follow their department's procedure or seek the guidance of their supervisor if they are uncertain about whether to attend. In general, it may be appropriate for a police officer to attend if they are invited to do so by the AM/EJS agency. The officer may be in a position to speak about their views regarding the case or related matters.

The Crown Prosecutor

In regards to AM/EJS, the role of the Crown prosecutor is to make and approve referrals and decide how to proceed with the case if the accused does not successfully complete the referral.

The Crown prosecutor has the legal responsibility and authority to decide whether a case can be referred. They make this decision when reviewing a case, after receiving a referral from a police officer, or after receiving suggestions from other individuals about a potential referral.

The Crown prosecutor's decision is based on the circumstances of the case and the factors outlined in the legislation and the 2011 provincial AM/EJS policies. It should be noted that the Crown prosecutor has discretion about whether to make or approve a referral, but this does not include requesting particular terms in any agreement that might result between the victim and the offender.

If the Crown prosecutor approves the referral, their role includes sending the relevant case file information to the AM/EJS agency or agent.

In post-charge cases, the Crown arranges for the case to be adjourned.

If the accused successfully completes the process, the Crown prosecutor's role includes withdrawing the charges. If the accused does not successfully complete the process, the Crown prosecutor determines how to proceed with the case.

Alternative Measures/Extrajudicial Sanctions Agencies and Agents

AM/EJS programs may be provided by a First Nation, Tribal Council, Métis organization, a community-based agency, or a qualified, contracted service provider. The role of these agencies or individuals is to manage the AM/EJS program. In some places, a government employee coordinates the process by receiving referrals and sending them to community-based agencies, while in other communities a community justice committee receives referrals and sends them to contracted facilitators.

Part of the agency's or agent's role is to determine whether they will accept a referral. The agency must be comfortable dealing with the accused and the circumstances of the offence. They must inform the police and/or Crown prosecutor about whether they accept the referral.

If they accept the referral, the agency makes arrangements for a caseworker to handle the remaining steps of the process. The agency must also ensure that all forms and reports are filled in completely and accurately and submitted to the relevant individuals or organizations. Specific information about reporting requirements is contained in the contract between the agency and the Ministry.

Caseworkers

The person who works with the victim, the accused, and the AM/EJS process may have many different titles, such as a mediator, a community justice worker, a caseworker, or a service provider. For the purpose of this manual, they are referred to as the "facilitator" or the "caseworker."

The caseworker's role is to arrange, facilitate and monitor the AM/EJS process. This includes:

- Contacting the accused and the victim.
- Arranging to meet with the victim and the accused to determine what happened from their perspective, discuss the impact of the crime, and determine whether they wish to participate in AM/EJS.

- Explaining the AM/EJS process to the victim and the accused, answering any questions they have, and referring them to services if necessary.
- Deciding what kind of facilitated meeting or process would be appropriate.
- Meeting with support people if necessary.
- Arranging and facilitating the meeting or process.
- Making travel arrangements for participants if necessary.
- Following up to ensure that the accused completes the terms of any agreement and determine whether the victim and accused have any other needs the caseworker can address.
- Notifying the police, the Crown prosecutor and the victim about the status of the case.
- Requesting extensions from the Crown prosecutor if the accused needs additional time to complete the agreement.
- Completing paperwork and data entry in a comprehensive, accurate and timely manner.

The caseworker's role does **not** include giving legal advice to the accused. If the accused asks questions about legal matters, the caseworker should advise the accused to consult a lawyer. If the accused changes his/her mind about accepting responsibility for the offence, or if the caseworker feels the referral is unsuitable for any reason, the referral should be returned to the police or Crown.

Families of Young People who are Involved in Extrajudicial Sanctions

Parents and guardians of young persons have the right to be informed that the young person is involved in EJS, and the young person's family should be encouraged to participate throughout the EJS process and attend the facilitated meeting if possible. Family participation is important to help the young person understand the impact of their behaviour. Additionally, the family is a powerful source of potential support and guidance to the young person. If family members agree to participate, their role includes attending any meetings related to the EJS process, discussing the impact of the offence on the family, and supporting the young person throughout the case.

Communities

The community has a very important role in preventing and responding to crime and victimization. Having AM/EJS cases handled by community-based agencies and local service providers is one way in which communities are involved in responding to crime. The role of the community depends on what kind of agency provides the AM/EJS program, the kinds of services offered, and the circumstances of the case. For example, community members volunteer as members of community justice committees, surrogate victims and victims

services volunteers. When appropriate, community members sometimes participate during facilitated meetings with the victim and the accused to voice the community's perspective about the issue, offer suggestions about how the harm could be repaired, express the community's concern and support to the victim, and support the accused person and welcome them back into the community.

3.4 Potential Conditions of Agreements

AM/EJS processes often result in agreements about what the accused will do to make amends for the harm caused. It is the caseworker's responsibility to document the terms of the agreement and have the agreement signed and dated by the accused and the victim (if applicable).

Ideally, agreements should be developed by the victim and the accused, with the assistance of the caseworker as required. The terms should reflect the ideas and views of the victim and the accused while considering factors such as the amount of harm caused and the views of community members who are involved in the case. Ultimately, the responsibility for developing a fair and workable agreement rests with the victim and the accused. The caseworker is responsible for assisting them in developing the agreement and monitoring it, but not for coming up with all of the ideas for the agreement. The caseworker should never impose conditions upon the victim or the accused, and the victim and accused should never be pressured into signing agreements.

Please note that police and Crown prosecutors do not have the authority to request particular terms in agreements.

Considerations in Developing the Agreement

Agreements are far more likely to be perceived as fair and be completed if they are specific, measurable, appropriate, realistic and time-limited. Caseworkers may find the acronym "SMART" helpful in drawing up agreements. SMART stands for²:

- **Specific:** The conditions should be as clear and concrete as possible. For example, writing that the accused "will provide the caseworker with post-dated cheques made out to the victim, in the amount of \$50 per month, dated on the first day of every month, for a total of \$250" is much more specific than saying "the accused will pay the victim as much as he thinks the window was worth."

² The "SMART" concept presented here has been adapted from Gilman, Eric, Bowler, Christie, & Stutzman, Eric (2000-2004). *Inviting Dialogue: Restorative Justice & Victim Offender Mediation – Training Manual*. British Columbia, Canada: Fraser Region Community Justice Initiatives Association.

- **Measurable:** The conditions should be stated in such a way that it will be easy to determine whether they have been completed. It is easier to measure something the person has done, and which can be verified in an independent way or by a third party, than to state that they should not do something. For example, it is easier to confirm that the accused has attended an anger management program or paid restitution than to know whether they came home in time for a curfew every night.
- **Appropriate:** The conditions, which should be jointly determined by the victim and the accused, should be proportionate to the seriousness of the crime, the level of harm done and the degree to which the accused was involved in the incident. They should encourage the accused person to be accountable by making whatever amends are possible to the victim and the community and making positive changes in their lives and behaviour to the extent they can.
- **Realistic:** Agreements are more likely to be completed if the accused person is truly able to fulfill them. The conditions should attempt to balance the harm done to the victim and the community with what amends the accused person can make in light of their financial situation and other factors. For example, it may be unrealistic to expect an unemployed accused person to pay \$12,000 in restitution in six months.
- **Time-limited:** The agreement must specify the time frame to complete the terms of the agreement.

Examples of Possible Conditions

The participants are encouraged to develop creative, workable ideas for agreements. While there are many possible conditions in AM/EJS agreements, some common ones include:

- An apology;
- Restitution or compensation in cash or kind;
- Donation to a charity;
- Personal service work for the victim;
- Community service work;
- Participation in a specialized program such as counselling sessions;
- Participation in public education activities, such as writing essays or making presentations in schools;
- Other agreements that are reasonable in light of the needs and interests of the persons involved, the seriousness of the offence, and the circumstances of the case; or
- Some combination of the above.

Procedures for Various Terms and Conditions in the Agreement

The following text discusses specific procedures or things to consider in relation to the terms suggested above.

- **Letters of apology:** This is more common in youth cases than in adult referrals. The accused person should prepare the letter and give it to the caseworker rather than sending it directly to the victim. The caseworker reviews the letter to ensure it is appropriate.

If the letter is appropriate, the caseworker forwards it to the victim. If the letter is not appropriate, the caseworker discusses their concerns with the accused and arranges for the accused to rewrite the letter if necessary.

- **Restitution or compensation in cash or kind:** The accused makes a cheque out to the victim and gives it to the caseworker. Post-dated cheques may be used if the payments will occur over a period of time. The caseworker should encourage the accused to give a cheque rather than cash if possible.

The caseworker documents that they received the payment, gives the accused a receipt, and forwards the payment to the victim (do not send cash through the mail).

Agencies should have a separate bank account and accounting system to track restitution and compensation payments and ensure that they are forwarded to the victim. Such payments must be held in trust for the victim (for example, they must not be deposited into the caseworker's personal bank account).

- **Donation to a charity:** The participants may agree that the accused will make a charitable donation to a non-profit organization or charity. The victim may suggest which charity will receive the donation.

The procedure for handling donations is similar to that for restitution and compensation. The accused should write a cheque to the charity. The caseworker documents that they received the donation and forwards it to the charity.

Please note that the accused is **not** entitled to receive a tax receipt for a charitable donation resulting from an AM/EJS agreement, and the accused will not seek to have a tax receipt issued for any such charitable donation.

- **Personal service work for the victim:** Victims and accused persons sometimes discuss having the accused person do work for the victim, such as repairing property damaged during the offence, assisting the victim with tasks, or working at the victim's business. If such a suggestion is made, the caseworker should discuss it carefully with the victim and the accused to

ensure they are truly comfortable with the arrangement, since having them in close contact might lead to renewed conflict or additional victimization and it is difficult to monitor such arrangements. Due to safety issues it may be advisable for the personal service work to be supervised by the caseworker or a third party.

If the victim and accused decide to proceed with this arrangement, the caseworker needs to ensure that the terms of the agreement are clear regarding the type of tasks the accused will undertake; where the accused will undertake these tasks; the hours, dates or times of the activities; how the number of hours will be tracked; who will supervise the personal service work; how the caseworker will monitor the agreement; and any other factors that need to be addressed.

- **Community service work:** The participants may agree that the accused will volunteer to do community service work. The victim should be consulted regarding the agency where the community service will be performed, while keeping in mind that the placement agency may not wish to accept the accused.

The caseworker finds a placement agency at which the accused can work for a specified number of hours. The caseworker fills out the agreement form, notifies the accused about when and where to work and the date by which the work must be completed, and follows up with the placement agency to ensure they complete the volunteer work.

The caseworker should follow their agency's procedure for making referrals to community service agencies. Some agencies have their own procedure for coordinating these referrals, while others are eligible to receive assistance from Fine Option/Community Service Order Coordinators who are employed by the Ministry of Justice. For more information about the Community Service Order Policy, please contact the Ministry.

Accused persons who are injured while undertaking community service work as a result of an AM/EJS agreement are eligible for worker's compensation. Please see section 4 for more information about this.

- **Participation in a specialized program such as counselling sessions:** The participants may agree that the accused will attend counselling sessions or enter treatment programs for issues such as anger management or addictions. The procedure for referring the accused to specialized programs is discussed in section 3.1. The accused will need to sign a form giving consent to release information (Appendix B-6).

- **Participation in public education activities:** The parties may agree that the accused will write an essay or a letter to the editor or make a presentation in a school or to another audience. The caseworker should ensure that expectations are clear regarding what will be covered in the presentation or document and where and how it will be presented. The caseworker reviews the presentation or document to ensure it is appropriate and forwards it to the victim for input. If it is not appropriate, the caseworker requests that the accused person redo parts of the presentation or document as necessary.

4.0 Program Management and Administration

4.1 Accessing, Storing, Retaining and Disposing of Files

AM/EJS agencies and service providers are required to keep records for each referral in accordance with legislation, provincial policies and local procedures. While the processes and systems may vary, all AM/EJS agencies must ensure that client records:

- Provide adequate and appropriate information that enables the agency to provide its services and meet the reporting requirements outlined in its contract; and
- Meet the data requirements for the AMPCRM database.

Among other things, AM/EJS agencies are required to keep records about the participation of accused persons in the program, information about victims and the status of the agreement. This information is sensitive and must be treated as confidential. It should not be shared with anyone unless there is an appropriate and lawful reason for doing so, and it must be stored and disposed of properly. This section discusses the requirements about privacy and access, storage, retention and disposal of files. For more information, contact your program manager/program consultant.

4.1.1 Privacy and Access to Information

While collecting client information is important, it is equally important to respect the privacy of the individuals involved and ensure that information about the case is not shared with anyone unless there is a lawful and appropriate reason to do so. The Ministry of Justice must respect the provisions of the *Criminal Code*, the *YCJA* and *The Freedom of Information and Protection of Privacy Act*. Agencies that have contracts with the Ministry must also follow these provisions. Matters related to AM/EJS referrals should not be discussed with anyone who is not involved in the process.

The records produced by contracted agencies and service providers are subject to the access and privacy restrictions of the various acts. Therefore, the records that AM/EJS coordinators, caseworkers and service providers create and submit to the Ministry may be disclosed to a member of the public who requests them, even if you intended them to be confidential. In general, the specific matters discussed during a facilitated meeting may not be shared with members of the public, but any agreement that results from the facilitated meeting are considered public records and may be disclosed. There are exemptions that provide protection to third parties, such as contractors, in some situations. Consult your program manager/program consultant if you receive a request for information and are uncertain about what to do.

If someone requests information about a referral and the caseworker does not know the individual, or if the request occurs over the telephone, the caseworker should attempt to verify the identity of the person who is making the request. For example, the caseworker could ask for information about the case or the police file number.

AM/EJS agencies and service providers should maintain a written log of people who request or receive information about client records. The log should:

- Record who requested the information.
- Identify why the person is entitled to access the information (for example, whether they are a parent, a victim, or a police officer).
- Record the date of the request and the date that access to the information was provided.
- Include documentation that the person who requested the information was informed about any limitations on how the information can be used. For example, if a victim is provided with information about the status of an AM/EJS referral, they must be advised about the restrictions on disclosing the information.

Access to Information about Alternative Measures

Section 717 (2) of the *Criminal Code* authorizes persons and organizations to keep records containing information about AM. Section 717 (4) (1) provides that records about AM may be made available to judges, peace officers, members of government departments, and people who are deemed by a judge to have a vital interest in the record. Under section 717 (4) (2), the person who receives the information may subsequently disclose the information but must not do so in a way that would identify the person who was involved in AM. Section 717 (4) (3) further states that the person who is entitled to receive the information about AM may make a copy of the record.

Access to Information about Extrajudicial Sanctions

Section 119 (1) (a-s) of the YCJA identifies who may be entitled to access information about a young person's record, including EJS, but excluding other extrajudicial measures such as police cautions.

If a person requests information about a young person's involvement in EJS, the agency should review section 119 of the YCJA to see if the person is among the types of individuals who are entitled to access the information.

If a person is entitled or allowed access to a record regarding EJS, section 122 of the YCJA provides that they are entitled to the information in the record and a copy of any part of the record.

The following table lists the relevant provisions of the YCJA in terms of access to EJS records.

Table 1: Sections of the Youth Criminal Justice Act Related to Accessing Extrajudicial Sanctions Records

Topic	Section of the YCJA
People and organizations that may keep records regarding extrajudicial measures (including EJS)	116 (2) (a)
Who may access a young person's file for information regarding EJS	119 (1) (a-s)
The period to access a young person's EJS record is two years from the date they consent to participate	119 (2) (a)
Persons who are authorized to access records are allowed any information in it and a copy of the record	122
Upon application, a judge may grant access to information at the end of the access period	123
After the access period, an EJS record can not be used for any purpose that would identify the young person	128

Access to Information by a Non-custodial Parent

In accordance with section 16 (5) of *The Divorce Act* and section 9 (2) of *The Children's Law Act*, a non-custodial parent of a young person who requests information about the case will be given the same information as the custodial parent as long as the non-custodial parent is not barred by court order from having information about the young person. The caseworker should consult the youth and custodial parent regarding the situation and discuss the relevant legislation with them to reduce the potential for family disputes. Information about the request must be documented in the young person's file.

Victim's Right to Information

It is the responsibility of the caseworker to provide information about an EJS case to the victim who is involved in that case, if the victim requests the information.

Section 12 of the YCJA states, "If a young person is dealt with by an extrajudicial sanction, a police officer, the Attorney General, or the provincial director of an organization established by a province to provide assistance to victims shall, upon request, inform the victim of the identity of the young person and how the offence has been dealt with." Similar provisions exist under sections 116 (2) (a), 119 (1) (d), and section 129 of the YCJA.

For more information about procedures involving requests by victims for information about EJS cases, see section 3.2.

Publication of Information related to Youth Extrajudicial Sanctions Cases

As previously discussed, youth records are protected to ensure the confidentiality of the young person. Contracted agencies and service providers must maintain strict confidence regarding these records, who has access to them and what information can be released.

Section 110 (1) of the YCJA states that it is an offence to publish the name of the young person or any other information related to the young person if the information would identify the young person as someone who is being dealt with under the Act. Under section 123 of the YCJA, a judge may, upon application, grant access to information following the access period.

4.1.2 File Storage

Given the importance of confidentiality, any materials related to AM/EJS (including forms, records, information received from the police or Crown prosecutor, and any other documents) should be kept in a secure place such as a locked filing cabinet with restricted access. Electronic files and case data should be kept in a computer system which, at a minimum, is in a secure location and protected with passwords and a firewall.

4.1.3 File Retention

Contracted service providers must send files to the appropriate branch of the Ministry of Justice after they complete a case. Agencies that provide AM/EJS must comply with legislation and policies regarding the length of time they keep files.

All adult records or documents related to AM should be kept for six years past the current year for summary offences and ten years past the current year for indictable offences. This policy is in accordance with section 717 of the *Criminal Code* and the Ministry of Justice Records Retention Schedule. If necessary, alternative measures agencies may send the files to Community Services Branch, which will store the files for the appropriate period of time.

Likewise, all youth records or documents related to EJS must be kept for two years from the date the young person consented to be involved in EJS. After two years, agencies may either retain the files for an additional four years (six years in total after the date the young person consented to participate), or send the files to the appropriate official in the Ministry of Justice. This is in accordance with *The Saskatchewan Archives Act*.

Following the required period of time, the files should be:

- Destroyed by the agency; or
- Sent to the relevant branch or official in the Ministry of Justice, which is responsible for destroying or archiving files in accordance with the provisions of *The Saskatchewan Archives Act*.

If an agency's or service provider's contract is terminated, all files must be sent to the relevant branch of the Ministry of Justice.

4.1.4 File Disposal

The disposal of AM/EJS files must occur in a way that protects the confidentiality of the information. Records should not be placed in a garbage bin or recycling bin. Shredding is a good way to dispose of confidential documents.

4.2 Personnel Policies

It is important to apply a consistent policy when hiring staff in order to establish and maintain the credibility of AM/EJS programming.

A prospective employee is required to:

- Successfully complete the selection process established by the agency.
- Complete a criminal records check.
- Complete a vulnerable sector check if they work with children and youth.
- Give the employer the criminal record check form, as discussed next.

Criminal Record Checks

Employees and board members of agencies that receive funding from the Ministry of Justice must have a criminal record check completed by the appropriate police service. They will also need to have a vulnerable sector check completed if the agency works with children or youth. Having criminal record checks and vulnerable sector checks can help protect the interests of clients who receive services from the agency and reduce the risk of liability. Having criminal record checks is an aspect of good governance and sound operating policy for non-profit organizations.

Among other things, the policy will need to consider what happens if the criminal record check reveals that an individual who is a board member, employee or volunteer has a criminal record. Having a criminal record need not automatically prevent someone from working in or volunteering with the agency, depending on

factors such as the nature of the offence, when it was committed, and what the individual does within the agency. Each case will need to be carefully assessed to see if the criminal record raises any concerns about the individual's suitability for their role. Such matters should be considered in conjunction with any policies the agency has on staffing, human resources and board governance.

The employer must record the Canadian Police Information Centre (CPIC) file number in the individual's file.

Conflict of Interest Policies

Agencies that have contracts with the Ministry of Justice are required to develop a conflict of interest policy. This is meant to ensure that the agency's board, staff and volunteers act appropriately and in the best interests of the organization. Having conflict of interest policies is a normal part of good governance and sound operating policy for non-profit organizations.

The policy should:

- Prohibit board members, staff and volunteers from engaging in any personal or business transactions that come from their official position or authority within the agency, or which are based on confidential or non-public information they become aware of through their position with the agency.
- Ensure that board members, staff and volunteers inform the Ministry of Justice in writing if they have a conflict of interest or foresee that there might be a conflict of interest.

Termination of Employment

Decisions to suspend or terminate an employee should be made based upon the staffing policy of the agency, in keeping with applicable legislation.

4.3 Proposals, Funding Applications and Work Plans

The Ministry of Justice has criteria and requirements for funding applications and proposals. The specific requirements depend on the type of agency or program that is applying. For example, the requirements for proposals for adult AM programs are set out in the Community Justice Program Regulations.

If you have any questions regarding proposals, funding applications or work plans, please contact your program manager/program consultant.

4.4 Program Forms, Statistics and Reports

Regardless of whether a victim or accused choose to participate, all of the proper forms must be filled out in AM/EJS cases. (A victim or accused may refuse to sign a form, but the caseworker should attempt to ensure that forms are completed as fully as possible and signed by the relevant person). Examples of the relevant forms are included in Appendix B. Agencies may choose to develop their own forms, but the forms must cover matters such as consent to participate in AM/EJS; agreement to participate in mediation or other AM/EJS/restorative justice processes; and notification to the police and Crown prosecutor about the status of the case.

Programs that receive funding from the Ministry of Justice are required to submit a number of reports. The specific requirements for reporting are outlined in the contract between the program and the Ministry. In general, programs are required to submit statistical data; progress reports about the kinds of activities they have undertaken; and financial statements. Your program manager/program consultant can assist with understanding and meeting these requirements.

AMPCRM Database

In order for programs to meet the needs of clients, families and communities, it is important to know how many people the program is serving and how effectively it is meeting its goals. This information helps guide decisions about the type of programs that may need to be developed in the future.

The Ministry of Justice has been tracking the use of AM/EJS for many years. The Ministry maintains the Alternative Measures Program Customer Resource Management (AMPCRM) database, which collects detailed information about matters such as the number of referrals, the types of cases referred, characteristics of victims and offenders, the facilitated processes used to resolve cases, and conditions of agreements. This information is used to educate the public and others about AM/EJS, identify trends and issues, and assist with improving services.

The contract between the Ministry and the agency describes the requirements for entering data into the AMPCRM database or for providing this data. In general, agencies that provide AM/EJS services are either required to enter data on the AMPCRM database or submit completed intake forms for all clients to their program manager/program consultant. Contracted service providers provide data to assigned personnel for data entry.

Data entry training and support is provided by a Data Manager employed by the Ministry of Justice. The Data Manager monitors, analyzes, and processes the data in order to provide annual reports for individual agencies, the Ministry, Statistics Canada, and other national organizations.

Users accessing the AMPCRM system are required to have a user account. This account is configured with a password obtained from the Data Manager. When an employee leaves their agency position and no longer requires access to the database, the agency must contact the Data Manager to deactivate the account. The Data Manager regularly reviews stale accounts to disable or remove them from the system.

Progress Reports

Progress reports enable the agency to describe the activities they have undertaken and whether there have been any changes to the program. These reports follow a format provided by the Ministry of Justice in the agency's contract. Progress reports are generally required at mid-year and year-end. Agencies that receive funding through Community Services Branch must submit these reports before the Ministry will authorize a funding payment. For specific information about reporting requirements, please see the contract.

Financial Reports

Programs are required to submit financial statements to ensure that the funding is being used appropriately and for the purposes for which it was provided. The contract between the Ministry and the agency includes provisions about the financial reports required. The contract also includes a section on Administrative and Financial Reporting Guidelines to assist with preparing reports. Agencies that receive funding through Community Services Branch must submit financial reports before the Ministry will authorize a funding payment.

4.5 Insurance and Liability

There are a variety of liability situations that might occur in providing AM/EJS programs. This section identifies the most typical situations. For information about your program's needs, please consult your program manager/program consultant.

Worker's Compensation Coverage for Program Clients

Through their agreements with the Worker's Compensation Program, the Ministry of Justice will provide coverage for any accused person who is injured in the course of participating in AM/EJS work placements.

Insurance Coverage for Non-profit Community-based Agencies

Community-based agencies that offer AM/EJS programs should carefully check their insurance package to ensure they have appropriate coverage.

The agency will require insurance and liability protection for the organization's property and business. In addition to property and general liability protection, an agency might also want to obtain Directors and Officers Liability insurance, which provides coverage for board members. Insurance companies have recently developed insurance coverage for non-profit organizations that is referred to as Non-profit Professional Indemnity insurance. This coverage includes a broad definition of the entity, the Directors and Officers, volunteers and employees.

Consent to Participate

In addition to obtaining insurance and liability protection, it is important that the caseworkers have the victim and the accused fill out forms indicating their consent to participate. This reduces the potential for a legal action against the agency because it demonstrates that the person was informed about the process and chose to participate. Appendix B includes examples of these forms (see Appendix B forms 2-4.)

Coverage for Volunteers with Community Justice Committees

Individuals may volunteer with a community justice committee or youth justice committee that receive AM/EJS referrals. *The Correctional Services Act* provides liability protection for these individuals. It should be noted that volunteers are individuals who do not receive payment.

The Correctional Services Act (as amended in 1998) states,

(3). *In this subsection and in subsection (4):*

(a) *'alternative measures program' means a program of alternative measures authorized pursuant to subsection 717(1) of the Criminal Code; and,*

(b) *'community justice committee' means an individual, group of individuals, organization, corporation or any other entity with which the minister contracts for the delivery or administration of an alternative measures program, and includes the members of any of those groups, organizations, corporations or entities.*

(4). *No action lies or shall be instituted against the minister, the minister's delegate or a community justice committee for:*

(a) *an act done in the execution of good faith of the obligations or functions of the community justice committee in delivering or administering an alternative measures program;*

(b) *neglect or default in the execution in good faith of the obligations or functions of the community justice committee in delivering or administering an alternative measures program; or, an act or default of a person who is alleged to have committed an offence or who is an offender where the act or default occurs while that person is being dealt with in an alternative measures program.*

Non-Liability for Those who Deliver Extrajudicial Sanctions

The *Youth Justice Administration Act* provides that youth justice committees, agencies and service providers who deliver EJS under contract with the province cannot be sued as long as they acted in good faith when they performed their statutory duties. The relevant sections of the *Youth Justice Administration Act* read:

14 (1) Where a person or entity mentioned in subsection (2) is acting pursuant to the authority of this Act or the regulations, no action lies or shall be instituted against that person or entity for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done, by any of them, pursuant to or in the exercise of or supposed exercise of any power conferred by, or in the performing or supposed performing of any function or duty imposed by:

(a) this Act or the regulations;

(b) the federal Act or the federal regulations; or

(c) the provisions of the Young Offenders Act (Canada) adopted pursuant to subsection 3(2).

(2) Subsection (1) applies to the minister, provincial directors, youth workers and other officers, employees and agents of the department.

(3) For the purposes of subsection (2), “agent of the department” includes:

(a) a youth justice committee appointed pursuant to section 18 of the Youth Criminal Justice Act (Canada) and each member of a youth justice committee; and

(b) any person, agency, organization, association, institution or body that provides youth justice services pursuant to an arrangement mentioned in clause 5(b).

4.6 Training

Training is an important aspect of successful AM/EJS programming. Training is available for community justice workers and coordinators, caseworkers, service providers and members of community justice committees.

The Community-based Justice Training Initiative

Training is offered through the Community-based Justice Training Initiative, which involves six days of training and assists with opportunities for mentorship. The training initiative is delivered in partnership between the Ministry of Justice and the Royal Canadian Mounted Police.

The initiative includes the Victim-offender Mediation Training discussed below. It may also cover topics such as community justice committees, the criminal justice process, restorative justice, facilitating cases, culturally sensitive services, program governance, project management and evaluation.

Agencies that have agreements with the Ministry of Justice are required to have individuals who are trained to use the AMPCRM database.

Victim-offender Mediation Training

AM/EJS caseworkers, community justice workers and mediators who work in funded programs must complete two levels of training related to victim-offender mediation: Skills Development – Part 1 and Skills Development – Part 2. These two levels provide 40 hours of training, and mediators must complete both courses in order to be certified.

Skills Development – Part 1 is designed for individuals who will become facilitators in victim-offender mediation. It covers topics such as understanding consensus; defining mediation; the role of mediators, facilitators and Elders; and comparing the processes of mediation, community justice conferences and circles. It includes demonstrations of processes such as victim-offender mediation. From there the session delves into the steps involved in coordinating and facilitating mediations.

Completing Skills Development – Part 1 is a prerequisite for taking Skills Development – Part 2. Part 2 focuses on the theory of conflict, intake and assessment regarding mediations, what kinds of processes to use, the Elders' role within the process, and cultural teachings on conflict resolution. The course also provides information on co-mediation, caucusing, mediation in your own community, promoting mediation and community development, and practitioner self-care.

Participants who complete Skills Development – Parts 1 and 2 are expected to be mentored and/or complete a practicum following training.

Train the Trainer Workshop

In addition to Skills Development – Parts 1 and 2, there is a Train the Trainer Workshop which provides an opportunity for experienced mediators who meet the trainer profile to enhance their ability to teach materials from the “Introduction to Mediation” and “Resolving Conflict Constructively” courses offered by the Dispute Resolution Branch of the Ministry of Justice. This workshop focuses on topics such as preparing a workshop and developing lesson plans. Train the Trainer Workshops are provided only when a need for this is identified.

Engaging Victims in Restorative Processes

Attempting to engage victims in restorative justice processes is often challenging. The *Engaging Victims in Restorative Processes* workshop helps caseworkers develop a conceptual understanding of victimization and victim needs. Participants also look at practical strategies for engaging victims.

This workshop is available upon request. Please consult your program manager/program consultant about scheduling this training.

Community Justice Forum Training

The Royal Canadian Mounted Police offer training on facilitating community justice forums/youth justice forums. Your program manager/program consultant can put you in touch with the appropriate person if you are interested in taking this course.

Accessing and Developing Training Programs

There are many other conferences, learning opportunities, and training packages available in Canada. Your program manager/program consultant may be able to assist you with accessing or developing training that meets your agency's needs.

The first step is to conduct a preliminary needs analysis about the skills that are necessary for your program. This will help you develop a training strategy for the coming year.

Cultural awareness should be built into all training programs. For example, training from an Aboriginal perspective may include the use of traditional teachings, ceremonies and spirituality in the context of the healing process.

For more information, please contact:

- Your program manager/program consultant.
- Dispute Resolution Office of the Ministry of Justice³.
- The Justice Coordinator in the local Tribal Council or First Nation.
- The Royal Canadian Mounted Police, which provides training on community justice forums.

4.7 Program Evaluation

Evaluation is critical to the success of any program. It allows community-based agencies and services providers to work more effectively and serve the needs of their clients. It enables agencies to:

- Determine whether the program is working as it was intended.
- Identify the strengths and weaknesses of the program.
- Gather information to improve services and make decisions about the program's future activities.
- Provide information to the public and clients.
- Satisfy the requirements of funding agencies.

The evaluation requirements for agencies and service providers who offer AM/EJS programs are outlined in the contract between the agency or the individual and the Ministry of Justice. The Ministry employs policy analysts who are experts in research and evaluation. If you are interested in undertaking additional evaluation work in relation to your program, or if you have any questions about evaluation, please contact your program manager/program consultant.

³ If caseworkers wish to consult about a case, Dispute Resolution Office is willing to provide ongoing support (including coaching, co-mediation, and case conferencing) within the limits of their resources.

5.0 Other Topics

5.1 Community Referrals

AM/EJS programs occasionally receive referrals involving non-criminal conflicts. These referrals might come from schools, workplaces, neighbourhoods, First Nations (regarding matters such as housing and bylaw disputes), and other sources.

The process for handling these referrals is similar to that of AM/EJS cases, except that the police and Crown prosecutor are not involved. In general, caseworkers can follow the same kinds of steps outlined in section 3 of this manual, such as:

- Entering information about the referral into a case file or database system.
- Contacting both parties to explain what the agency does and see if they are interested in meeting with the caseworker to discuss the matter.
- Arranging for separate meetings with both parties to discuss what happened during the dispute from each person's perspective and how it affected them.
- Determining whether to accept the referral. In making this decision, the caseworker should consider factors such as:
 - The interest of the parties in resolving the dispute.
 - Whether the caseworker has adequate skills, experience, training, and time to handle the case.
 - Whether the caseworker has any conflict of interest regarding the matter.
 - Any other factors that might be relevant.
- Determining what kind of facilitated process could help resolve the referral.
- Organizing the facilitated process.
- Holding the facilitated process.
- Following up afterward.
- Completing any necessary paperwork or data entry.

5.2 Service Providers

The Ministry of Justice contracts service providers in areas of the province that do not have a high volume of cases. Service providers are paid a standard amount per case that is outlined in their contract. The service agreement between the Ministry and the service provider outlines other kinds of expenses or circumstances for which the agent might be compensated. Additionally, service providers are eligible to participate in training opportunities.

Service providers are expected to submit a case management report about each case to the AM/EJS coordinator in their area. The case management form provides information about the victim, the accused, the nature of the incident, how the incident was resolved and whether the accused successfully completed the agreement. These statistics are important because they are used to evaluate programs.

Requirements about reporting and billing are outlined in the contract between the service provider and the Ministry.

5.3 Community Justice Committees

Community justice committees (CJCs) are groups of citizen volunteers who work with police and other justice professionals to:

- Advise police and justice professionals on justice matters in their community.
- Provide public education on justice-related topics.
- Support crime prevention activities.
- Provide conflict resolution opportunities to members of the community when the law has been broken.

CJCs are part of the community justice program in some First Nations. The committees include Elders, youth and interested citizens who work with the local justice coordinator to provide advice about crime prevention, support services for victims, and AM/EJS. CJC members are often involved with youth cultural camps, and they have participated in sentencing circles.

Métis communities are also interested in CJCs. The first Métis CJC was Central Urban Métis Federated Inc. in Saskatoon.

There are also CJCs in several non-First Nations communities around the province. These CJCs must be incorporated as a non-profit corporation, follow the guidelines of the provincial AM/EJS policies, and be appointed by the Attorney General if they want to handle criminal cases. CJCs do not have to be formally appointed by the Attorney General if they choose to undertake other responsibilities.

Section 18 (2) of the YCJA includes specific provisions related to youth justice committees (YJCs) that work with youth who are in conflict with the law. In Saskatchewan, CJCs carry out those functions.

CJCs complement the justice system, provide direct citizen involvement in local justice issues, and contribute to a seamless service between the youth and the adult justice systems. The Ministry of Justice has developed a CJC Manual that contains guidelines for CJCs. The guidelines provide a template for community justice development in urban and rural communities. The Federation of Saskatchewan Indian Nations has developed a parallel booklet describing CJCs on First Nations.

In circumstances where a Crown prosecutor wishes to have a CJC involved with a particular case, the prosecutor may consult with the CJC to see if they have the capacity to deal with that case.

For more information about CJCs, please see the following website:
<http://www.cpsp.gov.sk.ca/Community-Justice-Committees>

Appendix A

Glossary of Terms

Community-based agencies have many different names for the kinds of processes used in AM/EJS cases. This manual emphasizes the terms in the *Ministry of Justice Adult AM Policy and Young Offender – EJS Policy*. It is understood that community-based agencies may have different terms.

Accountability conference: A process in youth and adult cases in which the accused person meets with a facilitator and community members to discuss the causes and consequences of their behavior and how to address the harm caused. This process is primarily used to hold an accused accountable for an offence in which there is no direct victim (such as causing a disturbance or possession of a controlled drug or substance), or when the victim refuses to participate directly or indirectly through a surrogate or a representative. Sometimes also called an “accountability hearing.”

Accused: A person who has allegedly committed a crime.

Agency: Any community-based organization designated or authorized under contract with the Ministry of Justice to provide and deliver an AM/EJS program.

Alternative measures (AM): A method authorized under the *Criminal Code* of Canada, the Ministerial Order and the *Ministry of Justice Adult AM Policy* (2011) to provide adults who are accused of committing a *Criminal Code* offence an opportunity to make reparation to victims and their community. These programs offer the victim and community members the opportunity to be involved in resolving the case, ask the accused person questions, and have the accused take responsibility for their behaviour and help repair the harm that has been done as much as possible.

AMPCRM: A secure and encrypted web-based database program built from the Microsoft Dynamics™ CRM 4.0 and managed by the Ministry of Justice. The AMPCRM is used to store client information, organize data, and generate reports for AM/EJS programs. The acronym stands for “Alternative Measures Program Customer Resource Management.”

Case: An offence alleged to have been committed by one accused that is referred to an AM/EJS program. Multiple offences committed by the same accused against the same victim, which are referred at the same time, are considered one case. Offences committed by the same accused against different victims that are referred at the same time are counted as separate cases. A victimless offence (such as possession of a controlled drug or substance) is also counted as a case.

Caseworker: The person who is responsible for handling the AM/EJS referral.

Circle: A generic name for processes to resolve a conflict or issue between an offender, victim, and/or community members. Circles usually involve the accused, the victim, a facilitator, and a wide range of individuals such as family supporters, community members, professionals, and others. There are many kinds of circles, including “peacemaking circles”, “sentencing circles”, “healing circles”, and “releasing circles”. The people who participate and the procedures used vary according to the circle’s purpose and the practices of the group or agency arranging it. In general, the participants sit in the round and may use a “talking piece” held by the person who is currently speaking.

Community justice committee: A group of volunteers who advise police and other justice professionals on justice matters in their community; provide public education on justice-related topics to the community; undertake crime prevention activities; and provide conflict resolution opportunities to members of the community when the law has been broken.

Community justice forum: A type of process used in adult cases in which the victim(s), the accused person(s), and other community members who are relevant to the case meet with a facilitator. The facilitator uses a script during the community justice forum meeting. A similar kind of scripted process involving a young person is referred to as a “youth justice forum.” These kinds of scripted processes initially developed through the work of Real Justice in Australia and were later introduced to Canada through training offered by the Royal Canadian Mounted Police.

Community justice conference: A generic term for a process in adult cases in which the victim(s) and the accused person(s) meet with a facilitator and additional professionals and community members who are relevant to the case. A similar process with youth may be called a “youth justice conference” or a “family group conference.” See family group conference.

Conference: This term has a specific meaning in regards to criminal cases involving young persons. Under Section 19 of the *Youth Criminal Justice Act*, a conference is a group of persons who convene to give advice. Among other things, such conferences can give advice on appropriate extrajudicial measures.

Crown prosecutor: The lawyer who represents the government, who prepares a case against the accused and who has the authority to approve a referral for AM/EJS.

Diversion: The process of directing an individual from formal processing in court to an AM/EJS program.

Extrajudicial measures: The term “extrajudicial measures” is used in two ways in the *Youth Criminal Justice Act*. It can be used as a broad term for various interventions that provide an alternative to formal court proceedings, including EJS. It can also refer to specific types of interventions such as police and Crown warnings, cautions and referrals.

Extrajudicial sanctions (EJS): The most formal type of extrajudicial measures, EJS is used if a young person cannot adequately be dealt with by a warning, caution, or referral. EJS provide an alternative to the formal court process for young persons who are alleged to have committed an offence. EJS programs are authorized under the *Youth Criminal Justice Act*, the Ministerial Order and the *Saskatchewan Ministry of Justice Young Offender – EJS Policy* (2011).

Extrajudicial sanctions coordinator: An employee of an agency or government who is assigned to liaise with the police, Crown prosecutors, Legal Aid, court and community to advocate and facilitate the use of EJS. Among other things, the coordinator performs tasks related to referrals, arranges training for caseworkers, and is responsible for maintaining EJS client information on the database.

Family group conference: A type of process used in youth cases in which the victim(s) and the accused person(s) meet with a facilitator, family members and additional professionals and community members who are relevant to the case. See also community justice conference.

Ministry of Justice: A ministry within the Government of Saskatchewan. Among other things, the Ministry is responsible for administering community-based justice programs, including AM programs for adults and EJS programs for youth, restorative justice initiatives and victims services programs.

Parent or guardian: Refers to the legal parents of a young person or another adult who is legally responsible for the young person.

Police/Royal Canadian Mounted Police: Municipal or federal law enforcement officials who investigate offences. The police have discretion about whether to refer appropriate cases to alternative measures.

Post-charge referral: Occurs when the police lay a charge against the accused and refer the case to AM/EJS.

Pre-charge referral: Occurs when the police refer a criminal case to AM/EJS rather than laying a charge, even though there is enough evidence to charge the accused with an offence.

Program manager/program consultant: An individual employed by the Ministry of Justice to work with community-based agencies that provide AM/EJS.

Provincial director: A person or a body designated by the Province who has the authority to perform specific duties or functions under the *Youth Criminal Justice Act*. The Provincial Director has the authority to authorize youth workers and agencies providing EJS to perform duties under the *Youth Criminal Justice Act*.

Referral: An individual who is directed to an AM/EJS program. Adult referrals must meet the criteria set out in the *Criminal Code* and the *Ministry of Justice Adult AM Policy* (2011). Youth referrals must meet the criteria set out in the *Youth Criminal Justice Act* and the *Ministry of Justice Young Offender – EJS Policy* (2011).

Restorative justice: An approach to justice that focuses on addressing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by crime – victim(s), offender and community – to identify and address their needs in the aftermath of a crime. It supports healing, reintegration, the prevention of future harm, and reparation, if possible.

Royal Canadian Mounted Police: Canada’s national police service. See police.

Service provider: A person who is contracted by the Ministry of Justice to provide AM/EJS.

Stop Lift: A program designed for persons charged with shoplifting-related offences.

Surrogate victim: A person assigned by the agency to represent the role of the victim in an AM/EJS process.

Victim: A person who has been harmed by a crime. Harms may be physical, emotional or financial. Family and friends of the primary victim may also be considered “secondary victims” if they have suffered as a result of the harm to another.

Victim-offender mediation: A type of process used in AM/EJS cases in which the victim and the accused person meet with a facilitator.

Victim representative: A person selected by the victim to represent him/her in an AM/EJS process. The victim representative is usually the victim’s friend or family member.

Youth or young person: A person from age 12 up to their 18th birthday at the time of the offence.

Youth justice committee: A group of volunteers who play a role in working with young persons. Section 18 of the YCJA provides for youth justice committees to be involved in working with young persons and sets out their functions.

Youth justice conference: See community justice conference.

Youth justice forum: See community justice forum.

Appendix B

Sample Forms

These forms are included for your reference. With the exception of the Allegation & Agreement for Alternative Measures form (Form B-1) which is being used by the RCMP and some municipal police services, these forms are examples only. Please feel free to adapt them to meet the needs of your own programs.



Saskatchewan
Justice

B-1

Youth Adult

Police File Number _____

ALLEGATION AND AGREEMENT TO REFER TO ALTERNATIVE MEASURES OR EXTRAJUDICIAL SANCTIONS

To _____ first name middle name last name	Date of Birth _____ month/day/year
Of _____ address city province	Postal Code _____
Place of Employment _____ business or school	Phone _____
Parent / Guardian _____ Address _____	Phone _____

I _____, of _____, in the Province of Saskatchewan,
name city
a Peace Officer/Security Officer, have reasonable and probable grounds to believe that you on the ____ day of _____, _____,
day month year
at _____, Saskatchewan, did commit the offence of _____,
city/town name of the offence
_____,
description of offence
contrary to section _____ of the *Criminal Code* or the *Youth Criminal Justice Act*. Having considered the circumstances of the
offence and the offender, I am prepared to have this matter referred to an approved alternative measures or extrajudicial sanctions program.

Dated this ____ of _____, _____, _____
day month year
Signature _____
Peace Officer/Security Officer

WARNING TO OFFENDER

TAKE NOTICE that you may apply to have this matter referred to an appropriate alternative measures or extrajudicial sanctions program instead of being charged or prosecuted for this offence. Should you do so, any information you provide or admissions you make in the course of the program cannot be used against you in any court proceedings related to this offence. However, should you fail to successfully complete the alternative measures or extrajudicial sanctions program you may be prosecuted for this offence. If you complete the program successfully, no further action will be taken against you.

In order to be considered for alternative measures or extrajudicial sanctions you must accept responsibility for the alleged offence. The fact that you have done so cannot be used against you in court later. It is not the same as a plea of guilty.

RIGHT TO COUNSEL: You are entitled to consult counsel [and, if you are a young person, you may also consult a parent, adult, relative or appropriate adult] before applying for alternative measures or extrajudicial sanctions.

APPLICATION: I wish to have this matter referred to an alternative measures or extrajudicial sanctions program. Yes No
Have you ever been referred to an alternative measures or extrajudicial sanctions program before? Yes No
If yes, when and where? _____

ATTENDANCE REQUIREMENTS: I understand that in order to successfully complete the alternative measures or extrajudicial sanctions program I must contact the appropriate agency at _____, in _____,
address
_____, Saskatchewan by the ____ day of _____, _____ and
city/town day month year
participate thereafter as required by the program coordinator.

ACCEPTANCE OF RESPONSIBILITY FOR OFFENCE: In order that this matter may be considered for referral to alternative measures or extrajudicial sanctions, I hereby state that I accept responsibility for the above described offence. I understand that this matter will be referred to the Crown Prosecutor for review. I will be notified if this application is rejected.

Dated this ____ of _____, _____ at _____ in the Province of Saskatchewan.
day month year city/town

Adult or Youth Signature

PROSECUTORIAL REVIEW OF APPLICATION

This application was reviewed and is:

- Approved for alternative measures or extrajudicial sanctions on a pre-charge basis.
- Approved for alternative measures or extrajudicial sanctions on a post-charge basis.
- Not approved for the following reasons: _____

Dated this ____ of _____, _____ Authorized Signature _____
Day month year Crown Prosecutor

April 2007 Original - Police 2nd Copy - Youth or Offender 3rd Copy - Crown 4th Copy - Alternative Measures Agency

B-2

Accused Consent to Participate

You have indicated your wish to participate in the alternative measures (AM) /extrajudicial sanctions (EJS) program as an alternative to the formal court process. You are hereby required to report to the AM/EJS agency or agent within 5 days of this notice (unless you have been informed that the AM/EJS agency or agent will be in contact with you).

Successful completion of the AM/EJS option will result in the (pending) charges being dismissed.

I, _____ have read and understood the above. I understand that my participation in the AM/EJS program is voluntary and that failure to report as required or failure to successfully complete the AM/EJS requirements will result in the (pending) charges being dealt with by the formal court process.

I agree to participate _____
I do not agree to participate _____

Signature: _____

AM/EJS Agent: _____

Date: _____

B-3

Victim Consent to Participate

With regards to the incident between:

_____ and _____
Accused Victim

CRIMINAL CODE OFFENCE DESCRIPTION:

The alternative measures (AM)/extrajudicial sanctions (EJS) program has been explained to me. I am aware that participation in any AM/EJS option is strictly voluntary and understand that if I do not wish to participate, the process will proceed without my involvement.

I agree to participate: _____

I do not agree to participate: _____

Victim's Name: _____

Victim's Signature: _____

AM/EJS Agent: _____

Date: _____

B-4

Example of an Agreement to Mediate Form used by Dispute Resolution Office, Ministry of Justice

AGREEMENT TO MEDIATE

This is an agreement between _____ of _____, Saskatchewan, and _____ of _____, Saskatchewan, and _____ of _____ to enter into mediation.

GUIDELINES FOR MEDIATION

1. **THE ROLE OF THE MEDIATOR** – It is understood that mediation is a process in which an independent mediator assists the participants to find an acceptable solution to their dispute. The mediator’s role is to help the participants make their own agreement.
2. **CONFIDENTIALITY** – The participants agree that any information obtained in mediation will not be used outside the mediation process. The mediator will not be called to testify or provide material for other proceedings.
3. **SHARING INFORMATION** – Each party agrees to fully disclose all information that may be requested by the mediator to aid in the resolution of the issues.
4. **VOLUNTARY PARTICIPATION** – Each party agrees to participate voluntarily and in good faith to try to reach a fair settlement of the dispute.
5. **LEGAL ISSUES** – The mediator will not provide legal advice. All participants are encouraged to talk to a lawyer if they have legal questions. Participants do not give up their legal rights as a result of participation in mediation. If any participant fails to live up to the mediation agreement, the case may be sent back to court or other appropriate agency.
6. **TIME FRAME** – The length of the mediation process will be determined by the participants and the mediator. Mediation will continue until an agreement is reached, or until the participants decide to end mediation.

DATED this _____ day of _____, 20__.

B-6

Consent to Release Information when Referring Someone to Other Services

I, _____ hereby
give permission to _____ of the
EJS / AM caseworker _____ to contact:

AM / EJS agency name

Agency Name: _____

Contact Person: _____

Address: _____

Phone Number: _____ Fax Number: _____

For information limited to:

Consent start date: _____

Consent expiry date: _____

Client Signature

Parent/Guardian Signature

This is to advise the authorizing person that the information collected on this form is used only for administrative purposes for the alternative measures/extrajudicial sanctions program. The information will remain confidential from the public, but may be privy to individuals outlined in and subject to the provisions of the *Youth Criminal Justice Act*, the *Criminal Code* of Canada, and the *Freedom of Information and Protection of Privacy Act*.

B-7

Notification to Crown Prosecutor and Police from the Alternative Measures/Extrajudicial Sanctions Agency or Agent

Accused Name: _____

Offence: _____

Police File #: _____

Alternative Measures/Extrajudicial Sanctions Program File #: _____

Alternative Measures/Extrajudicial Sanctions Caseworker/Coordinator: _____

1. Status of Referral:

____ agency accepted referral

____ agency refused referral

Reason for refusing the referral:

____ unable to contact accused

____ unable to contact victim

____ accused denied responsibility

____ accused refused to participate

____ victim refused to participate

____ referral unsuitable for other reasons

2. What AM/EJS process was used to resolve the case, if any?

____ victim-offender mediation

____ family group conference/community justice conference/community justice forum or circle

____ referral to a specialized program such as life skills, crime prevention or Stoplift

____ referral for counselling or treatment programs such as drugs/alcohol, health, mental health, or program offered by social services agencies

____ participation in Aboriginal cultural activities

____ accountability conference

____ other (please specify): _____

3. If a facilitated meeting occurred, was an agreement reached?

____ yes

____ no

4. If an agreement was reached, what were the conditions in the agreement?

____ formal apology

____ restitution/compensation in cash or kind (specify how much restitution and/or what kind of compensation): _____

____ donation to charity (specify amount of donation and the charity): _____

____ personal service work for the victim (specify what kind of work and how many hours)

____ community service hours (specify how many hours and where): _____

____ participation in specialized program such as life skills, crime prevention or Stoplift (specify how many sessions and where): _____

____ referral for counselling or treatment programs such as drugs/alcohol, health, mental

health, or program offered by social services agencies (specify what program and how many sessions): _____
____ public education activities such as essays/presentations (specify the kind of activity): _____
____ referral to other service (specify the service): _____
____ formal cautioning letter
____ other (specify): _____

5. If an agreement was reached, did the accused complete the agreement?
____ agreement completed
____ agreement partially completed
____ agreement not completed
____ other (please specify): _____

6. Date the agreement was completed (if relevant): _____ (dd/mm/yy)

COMMENTS/ADDITIONAL INFORMATION:

AM/EJS agency or agent: _____
Phone Number: _____
Date: _____

Appendix C

Ministry of Justice

The Ministry of Justice provides several services that support AM, EJS, community justice, and restorative justice. These activities and programs meet the needs of victims, ensure that accused persons receive fair and just treatment, and enable communities to be involved in resolving crimes and local issues.

Over the past several years, the Ministry has expanded the number and capacity of justice services that are delivered by or in partnership with communities. This is based on the realization that partnerships between the criminal justice system and communities are often the most effective way to respond to crime. It also recognizes that the public should be involved in developing and delivering justice services. For these reasons, community-based AM/EJS programs involve citizens and community groups in addressing crime and resolving conflicts.

The Ministry assists communities to develop and implement the type of program that best meets their needs. This includes offering developmental assistance and ongoing support for AM/EJS programs. Among other things, the ministry offers program development, ongoing advice, consultation with other agencies and organizations, policy and research support, and referrals to other agencies or departments.

The Ministry employs program managers and program consultants who work directly with each funded agency. These individuals provide a variety of services, including:

- Developmental assistance, advice, and support to new programs.
- Ongoing assistance, advice, and support to continuing programs.
- Liaison between the agency and other branches of the Ministry of Justice, other ministries within the Government of Saskatchewan, other community organizations, and Justice Canada, as required.
- Developing policies, guidelines, policy manuals, training materials, and other materials related to AM/EJS and restorative justice.
- Facilitating opportunities for caseworkers to network.
- Facilitating opportunities for agencies to network with judges, police, Crown prosecutors, and other justice system officials.
- Assisting agencies in analyzing their training needs and facilitating training opportunities, including training on the AMPCRM database.
- Assisting agents and agencies to understand and fulfill the funding requirements of the Ministry.

For more information about AM, community justice, or restorative justice, please contact:

Community Services Branch
Ministry of Justice
610 - 1874 Scarth St.
Regina, SK S4P 4B3
Phone: (306) 787-5096
Fax: (306) 787-0078

For more information about EJS and programs for young offenders, please contact:

Director of Contracted Services
Ministry of Justice
610 - 1874 Scarth Street
Regina, SK S4P 4B3
Phone: (306) 787-6290
Fax: (306) 787-0676

Appendix D

History of the Youth Criminal Justice System

Since the 1800's, the youth justice system has evolved from a system where young persons were treated as adults to one in which young persons are held accountable for their criminal behaviour while taking their unique needs into account. In the early 1800's children were treated like adults. They were expected to work and were put in prison with adults when they broke the law. As people began to recognize that children have developmental needs which make them different from adults, youth began to be placed in reformatories and training schools rather than adult prisons. By the early 1900's the focus of intervention was on reforming and educating youth.

The *Juvenile Delinquent Act* of 1908 was federal legislation intended to deal with misconduct in youth between the ages of 7 and 15. The philosophy of the *Juvenile Delinquent Act* was that youth were not offenders, but were delinquent and needed guidance and supervision to help them fit into society. The court was placed in the role of the parent and was given broad power. Sentences were imposed without due process and did not necessarily fit the crime. Sentencing options included suspended sentences, fines, probation, and indefinite placement in foster care or training schools.

The *Young Offenders Act*, introduced in 1985, again changed the way society dealt with youth. The *Young Offenders Act* raised the age of criminal accountability to age 12 and governed youth up to and including age 17. The *Act* was intended to balance the rights and responsibilities of youth with the right of the community to be protected. Due process was emphasized and sentences were intended to fit the crime. One result of the *Young Offenders Act* was an increase in the number of youth in custody, particularly due to the increase in "system generated offences" such as breeches and failure to appear.

The *Youth Criminal Justice Act* was enacted on April 1, 2003 as a result of increasing pressures to make reforms to the *Young Offenders Act*. Unlike the *Young Offenders Act*, the *Youth Criminal Justice Act* includes a "Declaration of Principle" to help guide in making decisions under the *Act*. The *Youth Criminal Justice Act* outlines holding young persons accountable for their actions, addressing the needs of victims and the protection of society. It also emphasizes the increased use of front-end, community-based, restorative interventions and reserving the use of custody for violent and repeat offenders.

Since 1985, community-based organizations in Saskatchewan such as the John Howard Society, Aboriginal Friendship Centres and First Nations organizations have been partnering with government to deliver programs that divert young persons from the formal justice system. This is similar to AM programs which have been delivered

under Ministerial Order since 1997. The principles and objectives of the *Youth Criminal Justice Act* are consistent with the Government of Saskatchewan's commitment to develop and maintain a strong network of community-based organizations to deliver programs that reflect community standards and values.

The Saskatchewan Youth Services Model – Reducing Reliance on the Youth Justice System

The Saskatchewan Youth Services Model was developed out of consultations with many organizations, including Aboriginal governments. In 2000, the Youth Services Model was adopted by the Ministries of Health, Learning, Social Services and Justice. It describes the key issues involved in working with youth in conflict with the law, and outlines a framework to guide policy development.

Principles of the Youth Services Model

- Youth are different from adults. Society has a responsibility to guide young persons so they grow into responsible adults.
- Schools, the health system, the child welfare system and the youth justice system have agreed to deal with more youth misconduct outside the justice system. Community agencies will be involved in developing neighbourhood and self-help supports for young persons and their families.
- People who work with young persons in conflict with the law will work together more closely. More attention will be paid to healing victims of crime, developing strong extrajudicial sanctions programs, and strengthening community-based sentencing options.
- Young persons need to have their needs met. They need safe places to live, which should be with family whenever possible. They need to be supported to finish school, develop employment skills as well as everyday life skills. Young persons need to be supported to stop offending and develop healthy lifestyles.
- Serious, chronic offenders will be dealt with through custody and community programs, as well as through sentencing as adults.
- Aboriginal governments are very important partners in planning and delivering services to young persons in conflict with the law.
- Evaluation of services is important so that we know how our service is affecting young persons who are charged, coming to court and being sentenced to custody. This will help guide future planning.

Beliefs about Young Persons

- Youth are part of family, social and cultural systems. These systems affect each other and changes in one system affect the others. This means that young persons are affected by changes in their families, peer groups, schools, neighbourhoods and other systems.
- Crime is often a signal that a young person is in need of more support and guidance than he/she is currently receiving. Many young persons who are in conflict with the law have special physical, emotional, developmental or mental needs or have significant cultural, spiritual or social challenges.
- Young persons need opportunities to exercise reasonable control over their lives. They can learn to be responsible and self-sufficient citizens.
- Young persons need to be held accountable for their actions and be responsible to victims, family, and community for mistakes in judgment and action.
- Young persons have the right to participate in decision-making processes that affect them when they are in conflict with the law.
- Young persons in conflict with the law have a better chance of making positive changes in their lives when the young person, their family, school, and other community agencies work together.

Extrajudicial Sanctions Program Description

Extrajudicial measures are defined by the *Youth Criminal Justice Act* as measures other than judicial proceedings used to deal with a young person who has admitted to committing an offence. The term “extrajudicial measures” is used in two ways in the *Youth Criminal Justice Act*. Part 1 of the *Youth Criminal Justice Act* is titled “Extrajudicial Measures”, so in this instance, the term is used to describe all measures which provide an alternative to formal court proceedings. This overall category of measures is then broken down (sections 6, 7 and 8) into specific extrajudicial measures, which include warnings and cautions made by police or the Crown, as well as referrals to community programs. The *Act* then further outlines the use of EJS (section 10), which is discussed in this manual in relation to agencies and service providers who deliver EJS programming.

EJS are a more serious and formal response than extrajudicial measures. They involve community-based processes that hold the young person accountable for their actions while meeting the needs of the victim and the community. As part of an EJS program, the caseworker decides what type of EJS intervention the young person and the affected parties would benefit more from. Interventions include victim-offender mediation, family group conferencing, a community justice forum, or perhaps a Stoplift Program.

EJS programs work at addressing the offending behaviour in a respectful and non-judgmental way. Participation in the program does not always result in a positive relationship between the victim and the offender, but it tries to restore the balance as closely as possible to the way it was prior to the offence. Agreements reached through EJS interventions could involve the young person paying restitution, completing personal service work for the victim, or participating in additional programming such as addictions counselling.

The goals of EJS in Saskatchewan are:

- To involve communities in addressing the needs of youth who commit offences;
- To increase victim satisfaction;
- To support families in their roles as primary caregivers;
- To reduce reliance on the youth justice system;
- To increase public confidence in the justice system; and
- To increase Aboriginal involvement in delivery of justice and services.

