

APPENDIX 8

CRIMINAL CODE PROVISIONS RELATING TO ALTERNATE MEASURES

Sections 716 & 717

The Criminal Code of Canada

**PART XXIII
SENTENCING**

Interpretation

716. In this Part,

“accused” includes a defendant;

“alternative measures” means measures other than judicial proceedings under this Act used to deal with a person who is eighteen years of age or over and alleged to have committed an offence;

“court” means

- (a) a superior court of criminal jurisdiction,
- (b) a court of criminal jurisdiction,
- (c) a justice or provincial court judge acting as a summary conviction court under Part XXVII, or
- (d) a court that hears an appeal;

“fine” includes a pecuniary penalty or other sum of money, but does not include restitution.

R.S., 1985, c. C-46, s. 716; R.S., 1985, c. 27 (1st Supp.), s. 154; 1995, c. 22, s. 6; 1999, c. 5, s. 29(E).

Alternative Measures

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 the alternative measures, fully and freely consents to participate therein;
- (d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;
- (e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;
- (f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and
- (g) the prosecution of the offence is not in any way barred at law.

(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.

(3) No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of the person being dealt with by alternative measures is admissible in evidence against that person in any civil or criminal proceedings.

(4) The use of alternative measures in respect of a person alleged to have committed an offence is not a bar to proceedings against the person under this Act, but, if a charge is laid against that person in respect of that offence,

- (a) where the court is satisfied on a balance of probabilities that the person has totally complied with the terms and conditions of the alternative measures, the court shall dismiss the charge; and
- (b) where the court is satisfied on a balance of probabilities that the person has partially complied with the terms and conditions of the alternative measures, the court may dismiss the charge if, in the opinion of the court, the prosecution of the charge would be unfair, having regard to the circumstances and that person's performance with respect to the alternative measures.

(5) Subject to subsection (4), nothing in this section shall be construed as preventing any person from laying an information, obtaining the issue or confirmation of any process, or proceeding with the prosecution of any offence, in accordance with law.

R.S., 1985, c. C-46, s. 717; 1995, c. 22, s. 6.

717.1 Sections 717.2 to 717.4 apply only in respect of persons who have been dealt with by alternative measures, regardless of the degree of their compliance with the terms and conditions of the alternative measures.

1995, c. 22, s. 6.

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

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

(3) A peace officer may disclose to an insurance company any information in a record kept pursuant to this section for the purpose of investigating any claim arising out of an offence committed or alleged to have been committed by the person to whom the record relates.

1995, c. 22, s. 6.

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

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

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

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

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

1995, c. 22, s. 6.

717.4 (1) Any record that is kept pursuant to section 717.2 or 717.3 may be made available to

(a) any judge or court for any purpose relating to proceedings relating to offences committed or alleged to have been committed by the person to whom the record relates;



(b) any peace officer

(i) for the purpose of investigating any offence that the person is suspected on reasonable grounds of having committed, or in respect of which the person has been arrested or charged, or

(ii) for any purpose related to the administration of the case to which the record relates;

(c) any member of a department or agency of a government in Canada, or any agent thereof, that is

(i) engaged in the administration of alternative measures in respect of the person, or

(ii) preparing a report in respect of the person pursuant to this Act; or

(d) any other person who is deemed, or any person within a class of persons that is deemed, by a judge of a court to have a valid interest in the record, to the extent directed by the judge, if the judge is satisfied that the disclosure is

(i) desirable in the public interest for research or statistical purposes, or

(ii) desirable in the interest of the proper administration of justice.

(2) Where a record is made available for inspection to any person under subparagraph (1)(d)(i), that person may subsequently disclose information contained in the record, but may not disclose the information in any form that would reasonably be expected to identify the person to whom it relates.

(3) Any person to whom a record is authorized to be made available under this section may be given any information contained in the record and may be given a copy of any part of the record.

(4) Nothing in this section authorizes the introduction into evidence of any part of a record that would not otherwise be admissible in evidence.

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

1995, c. 22, s. 6.

