



## **SASKATOON POLICE SERVICE**

**TO:** Jo Custead, Chairperson  
Board of Police Commissioners

**FROM:** Troy Cooper  
Office of the Chief

**DATE:** 2022 December 08

**SUBJECT:** Diversion for Possession of Illicit Drug Charges and other Criminal Code Offences

**FILE #:** 2,005

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### **ISSUE:**

At its' April 8, 2022 meeting the Saskatoon Board of Police Commissioners directed that a report from the Saskatoon Police Service (SPS) be received during the fourth Quarter of 2022 on existing diversion of criminal charges for drug use, opportunities to work with community to further diversion, and additional diversionary resources required.

### **RECOMMENDATION:**

This report be received for information.

### **STRATEGIC PRIORITY:**

This report speaks to activities under the strategic theme of Crime and Safety, specifically the strategy to continue to address acutely elevated-risk situations that individuals, families, or environments face in the community. An activity under this strategy is to utilize the new Alternative Measures position to provide offenders with minimal criminal history opportunities to accept responsibility for crime without going to court.

### **DISCUSSION:**

#### **History of Pre-Charge Diversion at the SPS**

In August 2020 Public Prosecution Service Canada (PPSC) created a national policy with regards to charges for the possession of illicit drugs under the *Controlled Drug and Substances*

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*Act* (CDSA), section 4(1). The policy directed that 4(1) CDSA charges would only proceed with charges which raise public safety concerns. Otherwise PPSC advocated for the use of alternative measures and diversion for possession offences.

PPSC was also hesitant to proceed by way of post-charge diversion for possession of illicit drug offences citing they did not have the resources to manage failed diversions, nor the possibility of new charges resulting from a breach of release conditions.

SPS began advocating for community resources to provide pre-charge diversion programming for these types of offences. Pre-charge diversion would take the management of these files out of the hands of PPSC, keeping the administrative work within SPS and allow for the direct partnership with community-based organizations. In mid-2021 the Saskatoon Tribal Council (STC) invited SPS to collaborate with the creation of a harm reduction oriented, evidence-based drug awareness program which would be utilized for diversions. The diversion programming would be facilitated by STC, with SPS being an active stakeholder in the mediation.

As the Saskatoon Tribal Council program was being developed the SPS amended policy and forms for pre-charge diversion applications. Pre-charge diversion is not under the sole administrative control of the SPS. Alternative Measures and Extrajudicial Sanctions Programs (AM/EJS) for adults and youth are governed by Ministerial Order.

### Eligibility for Pre-Charge Diversion not Under the Control of SPS

Eligibility criteria for pre-charge diversion is similar for both the Provincial Crown and the PPSC and can be summarized as being:

- The person responsible must accept responsibility for their actions;
- The person does not pose a risk to the community;
- There must, in the Crown’s opinion, be sufficient evidence to proceed with a charge;
- The person must not have been diverted more than twice in the past year;
- The person must not have failed diversion in the past six months; and
- The person must not have a substantial criminal record for similar offences.

Criteria for exclusion for pre-charge diversion includes:

- Offences involving weapons or the threatened use of a weapon where the Crown proceeds by indictment;
- Sexual violence against children or child pornography related offences;
- Offences involving spousal/partner violence;
- The offence had a serious impact upon the victim or victims;
- The offence involved trafficking of a controlled substance.<sup>1</sup>

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<sup>1</sup> (Public Prosecution Service of Canada, Public Prosecution Service of Canada Desk book, 3.8 Alternative Measures. March 1, 2014. [https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p3/ch08.html#section\\_3\\_2](https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p3/ch08.html#section_3_2)) (Justice and Attorney General, Alternative Measures – Adult, Policy and Practice Memorandum. November 2021. <https://publications.saskatchewan.ca/#/products/81202>)

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In either process the SPS can only apply to one of the Crown prosecutor offices to have a matter sent to pre-charge diversion and it must meet the criteria as set out.

### Changing Attitudes towards Pre-Charge Diversion at the SPS

January – August, 2021:

STC did not have an appropriate Drug Awareness Program to divert offenders to (pre or post charge). STC hired an outside contractor to create a harm reduction, evidence based, multi-day, drug awareness program. SPS was involved with the development of this program.

SPS revised policy for pre-charge diversions to include S. 4(1) CDSA offences. The referral form for pre-charge diversions was also amended to include the CDSA.

October 2021:

SPS launched a mandatory, service wide, on-line training module for AM/EJS with a specific emphasis on pre-charge diversion of possession of controlled substance offence.

November 2021:

As a part of National Restorative Justice Week the SPS had electronic posters displayed on hallway monitor systems promoting the use of pre-charge diversion to all members.

April/May 2022:

SPS, STC and Integrated Justice Services conducted presentations on AM/EJS to front-line personnel at the patrol in-service training. Officers were encouraged to consider AM/EJS as a first consideration for minor Criminal Code offences, as well as possession of controlled substance offences.

All new recruits receive training on pre-charge diversions from the Restorative Justice Coordinator, STC, and Public Prosecutions after they have 3 months patrol experience. Special Constables in the Alternative Response Unit also receive this training.

Unsuccessful pre-charge diversions are routed to the Restorative Justice Coordinator for further follow-up/charges, instead of being routed back to the investigating officer.

An electronic tab was added to our SPS Intranet under “FORMS”, so when an officer releases an offender road-side, they can electronically access the pre-charge diversion forms (pre-filled) and print them from their police vehicle.

### Results of the SPS’ Pre-Charge Diversion Efforts

Since these training initiatives were completed a review of pre-charge diversions at SPS was conducted with an observed increase in police pre-charge diversions, except for possession of controlled substance offences.

SPS reviewed General Occurrence reports dating from January 1, 2022 to November 24, 2022 for simple possession charges which didn’t include another Criminal Code charge. There were 74 general occurrence reports that fit into this criteria, with 61 adults charged and one youth

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charged. Potential reasons for negligible referrals to the pre-charge Drug Awareness Program are believed to include:

- The possession of illicit substance offence charges are often linked other substantive offences where diversion is not allowed; and/or;
- The person arrested does not meet the criteria for diversion as set out above.

	2022	2021	2020
Total Pre-charge Diversions	<b>23</b>	<b>20</b>	<b>16</b>
Community Partners (LPOs)	7	15	16
Saskatoon Police Service	16	5	0
Total Post-charge Diversions	<b>366</b>	<b>371</b>	<b>642</b>
Post-Charge Youth	105	99	116
Post-Charge Adult	261	272	526

### **CONCLUSION:**

In conclusion, there is opportunity to improve SPS’ practices as it relates to restorative approaches and utilizing diversion programs to divert offenders from the criminal justice system. There are numerous Criminal Code offences that can be diverted from the justice system, they include:

- Theft Under \$5000;
- Mischief Under \$5000;
- Fraud Under \$5000;
- Possession of Stolen Property Under \$5000;
- Common Level 1 Assaults;
- Causing Disturbance;
- Criminal Harassment;
- Uttering Threats (except in a domestic context);
- Break and Enter to a shed, compound or garage;
- Obstructing Peace Officer & Minor Breaches of Probation; and
- Unlawful Possession of a Controlled Substance s. 4(1) CDSA.

The foundation has been developed at SPS over the past two years. A shift in internal process would be required to make the consideration of diversion mandatory where it was applicable. This shift may have implications to the SPS records management system where the database would need to be updated by the vendor, incurring financial costs.

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