Introduction

The purpose of this paper is to provide key information about the diversion of juveniles from formal court processing and promote discussion among stakeholders in the Belize juvenile justice system. The information can be readily converted to a presentation, useful in guiding informal or facilitated discussion. The document describes diversion, reviews the reasons for developing mechanisms and programs, briefly considers the effectiveness research and discusses key considerations when starting up such a program. An example of eligibility criteria and a step-by-step reference guide of the development process are appended.

The document is submitted as partial compliance with deliverable #7 of the “Individual Consultancy to Provide Technical Support for the Implementation of Continuum of Care Model for the Juvenile Justice System” (WBS # 2.1.1.4 - SSS); Provide technical assistance to the CRD and key partners in the development of diversion options and aftercare monitoring mechanisms.

What is Diversion in the Juvenile Justice System?

Diversion programs are alternatives to initial or continued formal processing of youth in the juvenile justice system. While it is recognized that some youth commit serious offenses and need to be confined within a secure setting, research has shown that many youth in the juvenile justice system are there for relatively minor offenses and can be successfully programmed in the community.¹

The primary objective of diversion programs is to redirect youths away from formal processing, while still holding them accountable for their actions. Diversion programs are meant to be less costly than formal court proceedings. Furthermore they diminish the burden on the juvenile court system and can reduce the caseload of juvenile probation officers, thus freeing up limited resources that allow the system to concentrate on more chronic or serious juvenile offenders.²

Ideally, diversion occurs at the earliest stages of juvenile justice processing to prevent further involvement in the system. However, diversion mechanisms can be instituted at later stages to prevent further penetration into the system and costly out-of-home placement. Juveniles may
be diverted by law enforcement before arrest, during court intake, or even after adjudication but before disposition. Depending on the point at which youths are diverted, a diversion program may involve outright release with minimal services, referral to a community agency, or direct provision of services.³

Why use Diversion Programs?

Without a diversion mechanism large numbers of youth may be unnecessarily charged and processed through the system, increasing a youth’s probability of further delinquencies due to their exposure to other delinquent youth during this experience⁴. Adolescence is a time when youth may engage in risky behaviours, act without thinking, and make bad decisions including engaging in illegal behaviour. While they may not be caught or apprehended every time, arrest is more common experience among adolescents than other age groups. Then too, for the majority of youth who are arrested, their first delinquency is not a sign of a future delinquency problem.

Avoiding formal processing under certain conditions is important considering the collateral consequences a youth may face after obtaining a juvenile record. Diversion can be a way for youth to avoid the consequences a juvenile court record can have on employment, public housing, and access to schools, and at the same time being held accountable.

Well-designed diversion programs can hold juveniles accountable more effectively and in a more timely manner than formal processing. Models such as victim-offender mediation, family group conferencing and restitution programs assure that the youth understands the seriousness of their actions and the effects that their behaviours may have on the victim(s), community, their family, etc., without formal adjudication⁵.

In a review of the diversion literature over the past 35 years, the Models for Change Working Group⁶ found five emergent themes identified by communities explaining why they developed methods to divert youth from formal juvenile court processing. These themes include; reducing recidivism; providing services; avoiding labeling effects; reducing system costs; and reducing unnecessary social control.

There is considerable indirect theoretical and empirical support for the efficacy of diversion programs. Labeling theory stresses the negative consequences of labeling a youth as delinquent. It suggests that when a youth is identified with criminal activity, there is a negative label attached to the individual, both by the individual and by society⁷. This label results in stigma and negative self-perceptions. A deviant career does not come to realization directly from the initial act of delinquency, but rather from a deviant label imposed by the community and the reaction of the youth to this labeling. From this perspective it is often best to program for youth outside the justice system or leave juveniles alone whenever possible, because labeling can result in a self-fulfilling prophecy creating a higher potential for future crime. Diverting youth from juvenile justice processing could reduce labeling effects and avoid stigma by minimizing exposure to the “delinquent” label and self-perception.

Differential association theory argues that antisocial attitudes and behaviors are learned through the social learning process. Association with others (particularly peers) exhibiting such attitudes and behaviors encourages their adoption in the youth. Both pre- and post-charge
diversion can help to reduce the impact of labeling and association with antisocial peers by reducing the youth’s exposure to the traditional justice system.

This research demonstrates clearly that involvement in the juvenile justice system, holding all other factors constant, is associated with an increased likelihood of offending behavior. Within this context, an important question is whether it is necessary to provide therapeutic interventions within the diversion process. There is considerable difference in the intensity of interventions observed among existing diversion programs, ranging from simply cautioning the youth, providing general services, such as community service, and still others providing more or less intensive therapeutic interventions to address the needs of the youth. Nonetheless, formal diversion programs often exist to provide services to first time offenders and juveniles committing minor crimes if they need them. Higher risk youth and those committing more serious crimes are frequently processed in the formal system to ensure they receive the intervention and treatment services that will help reduce the likelihood of future offending and meet their developmental and problem-related needs.

Certainly the risk/need/responsivity (RNR) model of offender intervention and the large body of research supporting it also has application to first time offenders and those committing less serious crimes. The RNR model suggests that, under some circumstances, focused therapeutic interventions are required to effectively address the youth crime issue.

Three core principles underlie the model. The risk principle states that the intensity of interventions should reflect the level of criminogenic risk exhibited by the youth; intensive services should be reserved for high-risk youth, with less-intensive services reserved for lower risk youth. The implication for diversion programs is that most juveniles referred are low and moderate levels of risk, and it is necessary to ensure that the level of intervention is adjusted to the youth’s level of risk. Of particular importance is that juveniles presenting low levels of risk are provided minimal levels of intervention or none at all.

The need principle states that interventions should be directed toward the specific criminogenic needs of the youth. If the antisocial behaviors of the youth seem primarily related to parenting problems and substance abuse, then these should be the primary targets of intervention. The third principle, responsivity, adds that decisions about programming should take account of non-criminogenic needs of the youth (e.g., academic skills, emotional problems) and strengths exhibited by the youth.

Another body of empirical research supportive of diversion programs derives from comparisons of service delivery in community versus institutional settings. Several meta-analyses have demonstrated that, holding all other factors constant, therapeutic interventions delivered in the community setting are more efficacious than those delivered in institutional settings, supporting the practice of offering diversion programs in community rather than institutional settings.

Reducing system costs has often been a theme of diversion programs. The costs of community-based services are generally less than those of incarceration. Additionally, diversion programs are seen as having the potential to reduce system inefficiencies, including decreasing the number of cases formally processed in the courts and lessening the number of youth sent to expensive out-of-community placements. Where diversion strategies generally have better outcomes than formal justice system interventions, costs are also reduced.
The final theme emerging from the diversion literature is the reduction of unnecessary social control. This concept arises from a legal perspective focusing on civil liberties. Proponents of diversion argue that the judicial system should not impose greater restrictions on individuals than are necessary to protect public safety. When youth engaging in low-severity offenses (e.g., status offenses) are formally processed through the juvenile justice system and taken out of the community, the judicial system sometimes exerts a degree of control that is disproportionate to the actual threat to public safety or the needs of the youth. Diversion programs could reduce social control by serving youth in the least restrictive environments that will satisfy their needs and the community’s safety.

**Do Diversion Programs Work?**

Early studies comparing the recidivism rates of diverted and sentenced juveniles found little or no difference in recidivism rates between the two groups. Some studies found that interventions, regardless of the setting, increased perceived labeling and self-reported delinquency among youth and that even treatment interventions can impose stigma on youth and lead to secondary deviance. Also raised was the theory that diversion programs may “widen the net” of the justice system, taking in youths who otherwise might never come into the system.

More recent research has shown greater benefits from diversion programming. In a 2012 publication, Wilson and Hoge conducted a meta-analysis that included forty-five diversion evaluation studies reporting on 73 programs, assessing 14,573 diverted youth and 18,840 youth processed by the traditional justice system.

The results showed that diversion programs, both cautioning and intervention programs, are significantly more effective in reducing recidivism than conventional judicial interventions. The recidivism rates for all diverted youth averaged 31.5%, while the recidivism rate for the traditionally processed youth averaged 41.3%.

While these findings appear to support labeling and differential association theories, the authors recommend that program developers take into account risk levels when determining the type of intervention to be provided. The implication is that caution programs are more suitable for low-risk offenders, while targeted interventions have a greater impact on moderate risk offenders.

**What Types of Diversion Programs Exist in Other Jurisdictions?**

Programs vary considerably in what they do beyond diverting juveniles from the justice system or stopping formal processing. Some programs offer interventions and services and others do not. Among these alternatives, some involve various degrees of intervention. It is a decision of the jurisdiction about what the objectives of diversion are and the program model will be one that strives to meet those of objectives. For discussion purposes, options are described as fitting one of three overall categories; cautioning, restorative justice and intervention programs.
Cautioning Programs

Cautioning programs, also called warn and release, use minimum intervention involving police officers or prosecutors. Guidelines for the use of cautioning vary by country and by jurisdiction within countries. Cautioning programs are generally more formal than police use of discretion. Police discretion refers to a procedure whereby a police officer may decide to take no further action against a juvenile at the time responsibility for the crime is established.

In New South Wales, Australia for instance, a caution is a formal procedure whereby if a child admits to the commission of an offence, then a time is arranged to attend a police station accompanied by their parent, guardian or other chosen adult, and an official caution is administered by a senior police officer. The child must agree to the caution process. Records are kept.

The police primarily administer juvenile cautioning in the United Kingdom; but prosecutors understand the principles and may provide direction to the process. Here a youth caution is a formal procedure intended to provide a proportionate and effective response to offending behaviour and can be used for any offence provided that the statutory criteria are satisfied, in particular; the police are satisfied that there is sufficient evidence to charge the youth with an offence; the youth admits the offence to the police; the police do not consider that the youth should be prosecuted for the offence.

In these jurisdictions, as well as in Canada, juveniles may be referred to community programs or agencies, such as recreational programs, child welfare agencies, counseling programs or mental health programs. Referrals are made when officers identify or suspect an issue believed to be related to the offending behaviour. In Canada the youth must agree to the referral and must be told of his or her right to talk to a lawyer before deciding to accept the referral. The referral may also be entered into the local police records system.

Crown (prosecutor) cautions are usually a paper process. In Canada, the prosecutor sends the youth a letter, with a copy to the parents and/or guardians. The letter explains the charge and warns the youth to change his or her behaviour if they do not want to face more serious legal consequences in the future.

Restorative Justice Programs.

Restorative justice is a different framework for understanding and responding to crime and victimization. Rather than being solely offender-driven, restorative justice identifies three clients: individual victims, victimized communities, and offenders.

Crime is understood mainly as an offense against people within communities, and not as a violation against the state. Those most directly affected by crime are invited to play an active role in restoring peace between individuals and within communities. Restoration of the emotional and material losses resulting from crime is more important than imposing graduated levels of punishment on the offender. Rather than ‘doing the time’ or “taking their punishment,” offenders are encouraged to actively restore losses, to the degree possible, to victims and communities.
The use of dialogue and negotiation among victims, victimized communities, and offenders is the primary method of resolving conflict resulting from crime. Mediation is an informal, voluntary process in which a neutral third party facilitates factions in conflict to come to a mutually satisfactory resolution of a dispute. In victim-offender mediation, the offender must be willing to take responsibility for his/her actions and agree to be a participant\textsuperscript{22}. If the victim is not willing to participate, in some cases a surrogate victim may be used in his/her place. This approach is meant to restore the physical, emotional, psychological, and spiritual harmony of each person, as well as the relationships between victims, offenders, and the community.

Most victim-offender mediation sessions result in a signed restitution agreement\textsuperscript{23}. However, this agreement is secondary consideration to the importance of the dialogue between the parties. This dialogue addresses emotional and informational needs of victims that are central to both the empowerment of the victims and the development of victim empathy in the offenders. Development of empathy is linked to the prevention criminal behavior in the future. Research has consistently found that the restitution agreement is less important to crime victims than the opportunity to express their feelings about the offense directly to the offenders. Restorative effect is strongly related to the creation of a safe place for dialogue between the crime victim and the offender.

The mediation process has its roots in Australia and began to take hold in Canada and the United States in the early 1970’s. By the year 2000 it was occurring in 300 communities in the United Sates and more than 700 communities in Europe\textsuperscript{24}.

The family/community group conferencing model initiated from the traditional justice practice from the Maori of New Zealand, and was modified for dealing with criminal offences in Australia and North America. This model, while similar to victim-offender mediation, includes all those people directly affected by a crime, including victim(s), offender(s), police officer(s), and support people for victims and offenders (family, friends, etc.), community members, and facilitator(s)\textsuperscript{25}. The major difference between the family group conference and victim-offender mediation is that the family group conference involves more people from the offender’s community and acknowledges that more people have been victimized, therefore involving more participants in the process. While expressing their emotions about the impact of the crime, participants may become involved in the process of reintegrating the offender and victim into the community.

The primary goal of the family group conference is to repair damages and minimize any harm caused by the behaviour of the offender, while maximizing the achievement of social justice for all of the above parties. The assumption is that the interest of the larger community will be served by providing a forum for the families of the victim and offender, and for other members of their community to attempt to repair the harm caused by the crime.

Both victim offender mediation and the family group conference focus on the offence rather than the offender, and provide the offender with an opportunity to accept responsibility for his/her actions. Reparation and restitution for victims are also goals of both\textsuperscript{26}.

\textit{Conditions and Intervention Services}

The type of program(s) and whether services are offered is reflected by the objectives of the jurisdiction implementing the measures. If the objectives go beyond simply diverting the youth
from justice processing to include identifying level of risk for further delinquencies and preventing subsequent involvements, the program may prescribe conditions that constitute an agreement with the offender/family, and once satisfied incentives are applied, such as charges are dismissed and no criminal record exists.

As noted, programs employing conditions and services often formulate a written agreement between the youth, the caretaker/family, and the diversion program. To meet civil rights requirements and provide structure and the ability to enforce them, these agreements cover:

- Measurable program attendance, tasks to be completed, restitution amount, and deadlines for completion, etc.;
- The youth’s knowledgeable and voluntary consent to participate;
- Notification of the juvenile and parents right to refuse;
- A definite duration of the agreement;
- What will happen on successful completion and what will happen if the agreement is not completed within timelines;
- What constitutes successful completion.

The delivery of need-based services to diverted youth can occur in a number of ways. Screening/assessment services along with establishing conditions, providing intervention and doing follow-up can be done by the Ministry in-house, assigned or contracted to a community agency, by assembling a coalition of services or through a combination of mechanisms.

The types of services assembled logically relate to factors identified by research as causative to crime. It may not be feasible, at least initially to provide services to all criminogenic needs; however, factors that reflect particular community issues may be selected. For example if a region has high school dropout rates, education retention might be one focus of services. A typical range of services to support this service model might include:

- Screening and assessment
- Education and tutorial services
- Victim awareness classes and activities
- Substance use education and counselling
- Job skills training
- Mental health treatment
- Crisis intervention
- Family counselling/Parenting skill development/Supports for rebuilding family relationships
- Quality recreation and organized sports programs

What are the Key Considerations for a Diversion Program Start-up?

Starting a diversion programs means up front planning and making decisions about the many possible options throughout the diversion process. Planning logically begins with bringing together the stakeholders in the juvenile justice system, educating them on the possible objectives, benefits and options, and engaging the key stakeholders in a planning process. Stakeholders often include program directors and supervisors, police officials, prosecutors and
defense attorneys, magistrates, private or public child services program directors and possibly school officials. Inventoring community services available for youth may assist planning.

One of the first tasks is to determine the objectives of diversion for the jurisdiction. These objectives are frequently one of more of the reasons for developing alternatives to traditional justice processing. As reviewed earlier in this paper, they might include; reducing recidivism and thereby contributing to public safety, providing services to reduce the likelihood of future offending, reducing system costs by reserving formal intervention resources for repeat and higher risk offenders, reducing unnecessary social control especially for first time and lower risk offenders, increasing successful outcomes for youth by engaging them in positive skill development and increasing pro-social activities, assuring accountability by providing programming that provides options for youth to understand the seriousness of their actions and the effects that their behaviours may have on the victim(s), community, their family, (as provided by restorative justice programming), or avoiding labeling effects that theoretically at least contribute to delinquency.

A referral to diversion programming can occur pre- or post charge and at various points in the juvenile justice continuum. For example, it can occur at the point of arrest or charge decision, by the prosecutor when police forward charge information, or at the first court appearance at the time the information is read. Then too, diversion decisions can be authorized to occur at more than one point. If an objective is to avoid lengthy justice processing, the jurisdiction may want to have the diversion decision made as early as possible in the process.

The program(s) operationalized will be those that will best achieve the diversion objectives. One or more programs may be delivered by one or several organizations, especially if a combination of cautioning, restorative justice and intervention programs are used. In a small jurisdiction, it is advisable to begin on a smaller scale and add programs after one or two demonstration sites have shown positive results. Then too, a new program is not necessarily developed, rather referrals made to an existing agency and program. For example, if an intervention program is preferred, an agency such as Restore Belize might be contracted to deliver the program.

Criteria establishing eligibility must be developed. These guidelines must be written to set forth criteria that define eligibility for entry into the diversion program, as well the intake process. The criteria must be firm and definitive to be useful, yet flexible enough to permit the exercise of discretion. The criteria should endeavour to maximize the opportunities for diversion without “widening the net.” For illustration, the Saskatchewan (Canada) eligibility criteria for diversion programming (called alternative measures) are attached as Appendix B.

Along with eligibility criteria, de-selection conditions are needed. During the process of gathering information and screening it may become apparent the youth and/or the situation are not suitable and the court processing is required for accountability or public safety reasons. As well, the youth and the family may decline to participate at some stage in the process.

Diversion programs frequently use incentives to encourage participation and program completion. The most frequently used incentive is that upon successful completion, the original cause of the action will be dismissed. If a post charge option has been adopted, the charges are stayed. The youth will not have criminal record.
The most common result of a youth’s failure to attend the program or comply with the requirements is dismissal from the program. Dismissal can occur with or without laying the original charge and formal court processing. In the event of dismissal a report is generated for the prosecutor who uses discretion in reinstating formal court processing.

Using a formal process that proceeds through a number of pre-planned steps ensures that all relevant information is considered and critical decisions made. The Juvenile Diversion Guidebook prepared by U.S. National Center for Mental Health and Juvenile Justice has designed a step-by-step process to guide juvenile diversion program development.

The steps are intended to guide planners as they develop program(s) and make decisions about its components and operations. The steps conclude with specific considerations for developers to think about as they work through the process. The document contains forms that can be used to structure meetings and decision making and record conclusions. The use friendly guide can also be found on the Internet at http://cfc.ncmhjj.com/resources/diversion-strategies/overview. A quick reference guide extracted from that document (Appendix A) is reprinted here to provide an overview of the start-up and development process.
References

5. Ibid. Overview.
10. Ibid. Page 499-500.

21 Ibid. Page 1-2.


24 Ibid. Page ix.


26 Ibid.


30 Ibid. Page 1-163.
Appendix A: Quick Reference: 16 Steps for Planning a Diversion Program

From
The Juvenile Diversion Guidebook prepared by U.S. National Center for Mental Health and Juvenile Justice

A. Purpose

1. **Objectives:** The main purpose(s) for developing a diversion program will need to be identified.
   - What will be the primary objectives of the diversion program?
   - In your community, what stakeholders from the juvenile justice public/private youth services systems will be involved to provide input and support in shaping the development of your diversion program?

2. **Referral Decision Points:** There are various points within the juvenile justice processing continuum where youth can be targeted for diversion.
   - At what point or points will referral decisions be made?
   - Who, within the processing spectrum, will be responsible for making the decision to divert youth?

3. **Extent of Intervention:** The diversion program must consider the kind and degree of intervention it will have in the youth's life.
   - What degree of intervention(s) will the program utilize?
   - Will the program provide the youth with a written contract (either formal or informal)?

B. Oversight

4. **Operations:** It is necessary to determine who will have primary responsibility for implementing and operating the diversion program and what the level of community oversight will be.
   - What agency or entity will establish and maintain the program policies, provide staffing, and take responsibility for program outcomes?
   - Will an advisory board or panel be developed to oversee the development of policies and procedures for the diversion program?
   - How will the engagement and buy-in of stakeholders be obtained?

5. **Funding:** Jurisdictions developing or implementing a diversion program must determine how the program will be funded and sustained for both the short and the long run.
   - How will the diversion program be funded?
   - Are secure funding streams currently in place that can help to sustain the program in the future?
   - Has the possibility of using other local, state, or federal resources to help support the diversion program or key aspects of the program been explored?

C. Intake Criteria

6. **Referral and Eligibility:** A diversion program will need to establish criteria that specify who is eligible for entry into the diversion program.
   - What youth will be eligible for diversion?
• What offenses will be accepted for diversion? Are there any offenses that might make a youth ineligible and will there be options for discretion?

7. Are there any offenses that might make a youth ineligible and will there be options for discretion? **Screening and Assessment:** Diversion programs may utilize evidence-based screening and assessment tools to assess risk, needs, and behavioral or mental health problems.
• Will any screening and/or assessment methods/tools be used to determine a youth’s eligibility, and if so, how will these tools be chosen and who will administer them?
• For what purposes will screening and assessment be used?
• Are there any protocols in place to deal with the sensitive nature of information collected and how, if at all, it can be shared among child-serving agencies?

D. Operation Policies

8. **Participant Requirements:** It is important to determine the conditions and responsibilities youth will have to follow in order to ensure meaningful program participation.
• What obligations and conditions will the program require for the youth’s participation and successful completion?
• How will requirements focus on youths’ strengths, address behavioral health needs, satisfy victim concerns, and involve community efforts?

9. **Services:** The diversion program will need to consider what services, if any, will be provided to the youth by the program or through referral to community-based services, as well as how those services will be administered.
• What services will be provided for the youth while participating in the diversion program?
• Will the diversion program need to perform an inventory of community services, and if so, who will be responsible for this effort?
• Will the diversion program encourage or require the youth’s family to participate in services?
• Are there any agreements in place or Memoranda of Understanding (MOU) among the program and community service providers that will better facilitate services to the youth?

10. **Incentives:** Incentives should be employed by a diversion program in order to motivate youth and caretakers to meet the terms of the diversion program and to ensure successful program completion.
• Will the diversion program use any incentives to motivate youth and/or caretakers throughout the diversion process? If so, what forms of incentives will be used?
• Is the use of incentives economically feasible for the diversion program and what funding source will support incentives?
• Will the court agree to dropping charges against the youth or expunging records once the youth successfully completes the terms of diversion?

11. **Consequences of Failure to Comply:** Consequences must be specified for youth since some may have trouble fulfilling the terms of their diversion, either by failing to comply with the program’s requirements or by declining to participate altogether.
• Will there be any negative consequences for youth who fail to comply with the diversion program’s requirements? If so, what will these sanctions be?
• Will the youth ultimately be formally processed for failing to comply with diversion?

12. **Program Completion/Exit Criteria:** Criteria must be established that will define when a youth has successfully completed the terms of their diversion and is ready to exit the program.
  • How will the diversion program monitor a youth’s success or failure during program participation?
  • How will successful program completion be defined, and will there be established exit criteria?

E. Legal Protections

13. **Information Use:** The diversion program will need to consider what procedures and protocols should be in place that will establish how sensitive information is collected and will be kept confidential.
  • What will be the conditions/guidelines for the use of information obtained during the youth’s participation in the diversion program?
  • How will policies concerning the collection and use of information be clearly established and conveyed to youth and caretakers prior to participation in diversion?

14. **Legal Counsel:** In the absence of a state statute or local policies, the program should have established guidelines for the role of counsel.
  • What role will defense counsel play? Are there local policy provisions in place or statutory guidelines that establish the role of counsel?
  • Will the diversion program make counsel available to youth and family?

F. Quality

15. **Program Integrity:** It is important to carefully attend to the diversion program’s development and maintenance to ensure continued quality and program fidelity.
  • Are there clear policies and procedures that will be put into manual form for program personnel to maintain program quality and fidelity?
  • How will training be developed and delivered for diversion program personnel?
  • How will information be collected and in what formats?
  • Will the program conduct a process evaluation?

16. **Outcome Evaluation:** To ensure the diversion program is meeting its objectives and goals, a recordkeeping and data collection system should be in place to assist in providing periodic evaluations.
  • What kind of record keeping and data collection will be used to provide periodic evaluations of the diversion program and monitor achievement of goals and objectives?
  • What youth and program outcomes will be used to measure success?
Appendix B: Saskatchewan Eligibility Criteria for Diversion Programming

Determining Whether an Extrajudicial Measure Would Be Adequate to Hold a Young Person Accountable.

In determining whether any of the following four extrajudicial measures are adequate to hold a young person accountable (withdrawal of the charge; referral to a community program; Crown caution; or extrajudicial sanction), Crown counsel must and also assess: (a) the seriousness of the offence; and (b) the nature and number of previous offences or any other aggravating circumstances.

Factors Related to the Seriousness of the Offence, and the History of Previous Offences or any other Aggravating Circumstances:

- Whether the offence is summary or indictable;
- Whether the offence involved the use of, or threatened use of, violence reasonably likely to result in harm that is more than transient or trifling in nature. An offence involving bodily harm is not necessarily too serious to be dealt with by extrajudicial measures. However, the more serious the harm, the less likely that it should be dealt with by extrajudicial measures.
- The potential or actual harm or damage to the victim (physical, psychological or financial) and/or to society;
- Whether the incident affected the sexual integrity of a person;
- Whether a weapon was used or threatened to be used in the commission of the offence. As youth cases have demonstrated (water balloons and spitballs have been found to be weapons), it is important to consider the actual danger represented by the weapon.
- Whether the offence is a drug offence.
- If the offence is a drug offence, the nature and deleterious consequences of the drugs involved should be considered (Again, see 14.6.6 for specific drug offence considerations and the possible use of extrajudicial measures.)
- If the drug trafficking or possession of the drug for the purpose of trafficking occurred in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of eighteen years old, this should be considered an aggravating factor;
- Whether the offence is a property offence. If so, did the young person intentionally cause or attempt to cause substantial property damage or loss? Should the young person have reasonably foreseen that substantial property damage would be caused by the offence?
- Whether the offence is an administration of justice offence, such as breach of probation. If so, would the non-compliance (e.g., failure to attend school; violation of curfew) have been an offence outside the context of a probation order? If not, it should be considered less serious and more likely to be dealt with appropriately through extrajudicial measures or through a review of the original sentence to determine whether the conditions should be changed.
- The role of the young person in the incident. For example, if the young person was the leader who planned and directed the offence, then his/her degree of responsibility is greater. However, this factor is secondary to the seriousness of the offence.
• Whether the young person was a victim in the commission of the offence (e.g., a sexually exploited juvenile prostitute; a young person committing a drug offence who is being directed or exploited by an adult drug dealer). If so, it is more likely that an extrajudicial measure should be used.
• Whether the young person has a history of committing offences. If so, what is the nature and number of previous offences? Although a history of offences may indicate that a more serious consequence is required to hold the young person accountable, this factor is secondary to the seriousness of the current offence.
• Whether the young person has already displayed remorse (e.g., through voluntary reparation to the victim or to the community) or agreed to do so.
• If the young person were to proceed through the court system, what is the likelihood that the sentence would be more severe than what is available through extrajudicial measures? If the sentence is expected to be less severe, Crown counsel should consider whether proceeding to court would be an effective use of Crown and judicial time and resources.