

Restorative Justice **Referral Process Overview for Counsel**

Outline of Pilot Project

The Alberta Court of King's Bench and the Provincial Court of Alberta announced the launch of a Restorative Justice pilot project on March 31, 2022.

The pilot is a court-administered program with the goal of referring appropriate criminal matters to a Restorative Justice process.

The pilot project will apply province-wide wherever there are appropriate programs available to accept referrals. Both Indigenous and non-Indigenous participants may be eligible for a referral. All federal and provincial criminal matters may be considered for a referral.

A referral may be made from the Courts at any point in the process post-charge, including at any appearance, and even post-conviction.

For helpful background information, Crown referral guidelines, request form, resources, and a list of Restorative Justice agencies please refer to the following link: <https://rjalbertacourts.ca/>

Court Procedure for RJ Referrals

- RJ referrals are available for all criminal matters (provincial and federal), but more serious charges may require additional Crown screening and approval. Once the Crown agrees, Defence Counsel will consult the roster to find a suitable agency for the referral.
- Defence Counsel is responsible for contacting the appropriate agency in advance for an initial suitability screening to determine whether the agency selected is willing to accept the referral, which can then be requested in Court and noted on the Court record.
- A judge may raise the question of whether the matter has been considered for a referral any stage, but the Court will not entertain a referral on the record unless both Crown and Defence counsel (or the Accused) have canvassed the appropriateness of the referral based on the Prosecution Guidelines and agree that the conditions have been met.
- If a referral is found to be suitable, an adjournment will be sought to allow for the RJ process to take place. The length of the adjournment will depend on the RJ program and may range from 3-6 months. In some cases, a further adjournment may be necessary, depending on the circumstances of the case and the specific RJ process being utilized. If the referral is not suitable, the matter will proceed through the traditional court process.
- Minimum requirements for all RJ referrals:
 - a. The accused must provide a written acknowledgement of responsibility,
 - b. The accused must clearly accept the facts of the offence being referred, and
 - c. All participating parties must provide voluntary informed consent to engage in the RJ process.
- Not all referrals require the participation of both victim and offender (a process called transformative justice is offered by some agencies), but in all cases, participation must be voluntary. Unless it is for a diversionary referral purpose defined below, any post-charge or pre-sentencing referral to

transformative justice does not require the Crown's consent, but any delay caused must be acknowledged by the accused on the record.

- Victims will be informed about the RJ process, and their role in that process, through the joint efforts of prosecutors, victim services and RJ service providers.
- There are 2 referral streams:
 - diversionary referrals – successful completion results in charges being withdrawn, and
 - pre-sentence referrals – successful completion results in the production of information used to inform sentencing.
- Crown Counsel will confirm with the Court which referral stream applies. Counsel will then present their joint request for a referral to the Court, at which time, the matter will be adjourned, and the clerks will add certain codes to the file to track the referral.
- Unless a judge is seized with the matter, the parties will select a return date to speak to the matter in a docket court. Otherwise, they will select a date returnable before the judge who is seized to speak to the matter.
- If the matter results in a successful outcome, the matter will come back to court to be either spoken to for the purpose of the charges being withdrawn, or to set a date for sentencing. Please note that a guilty plea is not a requirement prior to a referral being made to RJ and a formal arraignment may be required prior to sentencing.
- If the matter proceeds to sentencing, the restorative justice agency will provide counsel a report that includes sentencing recommendations.
- If the report is presented in a sentencing hearing, a judge is not obliged to accept any of the recommendations but may consider the report in informing a proper sentence, if appropriate.
- If the restorative justice process is not successful, the matter will return to court to be dealt with in the normal course.
- In the latter situation, any discussions or exchange of information that occurred during the restorative justice process will remain confidential and privileged and cannot be referred to at trial.
- **In all cases, when a referral is made, the following must be made clear on the court record:**
 - **The referral stream being utilized (diversion vs pre-sentence);**
 - **That the accused acknowledges responsibility for the offending behaviour;**
 - **That the accused accepts the facts of the offence;**
 - **That an agency has performed a suitability screening process and is willing to accept the referral;**
 - **That voluntary consent has been provided by all participating parties; and,**
 - **That the accused waives any delay directly associated with the restorative justice process.**

Additional Highlights of the RJ Prosecution Guidelines

- Diversionary referrals are solely the purview of the Crown as an exercise of prosecutorial discretion. Both the Alberta Crown Prosecution Service and the Public Prosecution Service of Canada will be applying the same framework in making decisions regarding diversionary referrals.
- In cases in which the prosecutor deems a diversionary referral to be inappropriate, a referral to an RJ process can still proceed as a pre-sentence referral.
- Pre-sentence referrals can be considered in a wide range of cases, and can be suggested by any party, including defence counsel, the prosecutor, the presiding judge, the accused or the victim. Regardless of which party suggests the use of an RJ process, the minimum requirements set out above must be met in all cases.
- Pre-sentence referrals can proceed following the entry of a guilty plea or finding of guilt, or following a clear understanding being reached between counsel as to what pleas are expected to be entered following the completion of the RJ process.
- In cases involving pre-sentence referrals, the accused will return to court following the completion of the RJ process and will be sentenced in the ordinary course. If successful information from the RJ service provider regarding the RJ process will be shared with the court participants and may be utilized in crafting a fit sentence for the accused. It is anticipated that the outcomes of the RJ process may influence the sentence imposed. However, any agreements reached following the completion of a pre-sentence RJ process are not binding on the sentencing court.
- Cases involving sexual violence, intimate partner violence or gender-based violence are the subject of general cautionary restrictions. These cases are more complex and require specialized approaches. There is very limited capacity for these types of referrals, and such cases should be approached with significant caution and care and should not be the subject of routine referrals.
- A referral form has been developed for any court locations that do not currently have a form that is in use. The form facilitates information sharing between the prosecution offices and RJ service providers. The form is not meant to replace any forms or processes that are already in place. The form will be available on the website for counsel to review and complete.