

NSLA Phase 2 & 3 Submissions

Restorative-Justice-Program_Description (2)

NSLA DV Self Identification Statistics

Restorative-Justice-Program-Protocols (1)

PLE-Sydney-Domestic-Violence-Court

RA-Fact-Sheet (2)

RJ data

RJDashboard_Legal Aid_Aug2022

Domestic abuse prevalence and trends, England and Wales year ending March 2021

September 2, 2022

Mass Casualty Commission
310-1791 Barrington Street
Halifax, N.S.
B3J 3K9

Dear Commissioners:

RE: Submissions – Phase 2 and Phase 3

Please accept the following submissions on behalf of the Nova Scotia Legal Aid Commission for both Phase 2 and Phase 3 proceedings.

At the outset, we wish to make clear that we will not be speaking to the events of April 18 and 19, 2020 and the murders committed by Gabriel Wortman. Other Counsel representing other parties will speak to that.

Our submission will be focused on criminal and family law policies and practices presently in place in the Province of Nova Scotia and what improvements can be made therein.

We are uniquely situated to speak on these issues. We have offices in both rural and urban centers throughout the Province, so we can speak on issues unique to both rural and urban centers.

We are unique amongst all Justice participants at this inquiry in that we represent both victims of domestic violence and individuals accused of perpetrating domestic violence.

We will focus on five areas as follows:

1. The underutilization of Restorative Justice as a Non-Court, Non-Carceral, approach to the resolution of crimes in the Province of Nova Scotia.
2. The abject failure of the domestic violence pro-arrest, pro-charge policy.

3. The functioning of the existing Domestic Violence Courts (DV Court) and the necessity of broadening their coverage throughout the province.
4. Family Law issues.
5. Concern over the criminalization of coercive control.

The Underutilization of Restorative Justice

"The Nova Scotia Restorative Justice Program (NSRJP) was established in 1999. The development of Restorative Justice in Nova Scotia coincided with significant changes brought about by the *Youth Criminal Justice Act*, which was grounded in principles consistent with a restorative approach and created opportunities for alternatives to the formal criminal justice process."

Nova Scotia took a restorative approach to alternative measures for youth through the development of the NSRJP and was an early adaptor and leader nationally in this regard."¹

In November of 2016, the NSRJP expanded to include adults in all regions of Nova Scotia replacing Nova Scotia's existing Adult Diversion Programs.

From the start, the intention of the NSRJP has been to insert a restorative approach throughout the criminal justice system with the assertion that restorative justice, in some modality, could be applicable to all offenders and all offences (emphasis added) throughout the Province.²

When the law is broken, a restorative approach considers the impact on the people and their relationships at interpersonal, social, and institutional levels. Restorative Justice is aimed at understanding and addressing the harms and needs of those affected by crime with an aim to support just relations in future. Restorative Justice processes bring together those with a stake in the outcome of a situation-those who have been affected, those with responsibility for what happened, and those who can support a good outcome. Restorative Justice processes consider the contents, causes, circumstances, and impacts related to the crime to determine what is required for a just outcome. Through Restorative Justice, parties can participate together in processes designed to address harms and needs. Restorative Justice engages those responsible for harms as active

¹ The Nova Scotia Restorative Justice Program description October 2018 - page 1

² The Nova Scotia Restorative Justice Program description October 2018 - page 1

participants in planning an action to address the harm and ensure they relate justly in the future. Restorative processes generally result in plans in which those responsible agree to take actions to address harms and needs related to the crime, and take the steps necessary to secure a just outcome for the future.”³

Restorative Justice is based upon the following principles:

- **“Relationally focused:** attention to interconnection, seeking to understand and promote just relations between individuals, groups and communities
- **Comprehensive and holistic:** takes into account histories, contexts and causes of harm and its impacts
- **Inclusive and participatory:** culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants
- **Responsive:** Contextual, flexible practice, accessible, efficient and effective processes, informed by data and knowledge
- **Focused on promoting individual and collective accountability & responsibility**
- **Collaborative and non-adversarial:** among parties to the process and system and community partners
- **Forward-focused:** educated (not punitive), problem-solving, preventative and proactive”⁴

Restorative Justice in Nova Scotia has the following goals and objectives:

- **“Respond to needs of individuals and communities affected by crime:** with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- **Harm reduction:** reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system

³ Restorative Justice Program description pdf page 2

⁴ Ibid

- **Support individual and collective taking of responsibility for harm and public safety**
- **Increase access to justice:** more effective, timely, inclusive, equitable justice system
- **Provide responsive justice:** human-centered justice processes that consider root causes and seek meaningful outcomes and responses
- **Increase public confidence and accountability in the administration of justice**
- **Build and support healthy, safe and strong communities”⁵**

Indeed, Restorative Justice does not just deal with matters that bring an accused individual before the Court, it also has a “Restorative Approach in School Projects” created jointly with the Departments of Justice and Education.

This underpublicized and underutilized program is another example of a restorative approach, this time to school issues and student misbehavior in school or on school property.

This misbehavior in many cases could give rise to a criminal charge, which, using the Restorative Approaches in School Procedures, could divert the student.⁶

Unfortunately, it is the experience of Nova Scotia Legal Aid that the Restorative Justice Program is grossly underutilized. Attached to these submissions are statistics compiled “in house” by Nova Scotia Legal Aid for the years 2016 to 2022.

This information is maintained by Mr. Shawn Carter, Director of Research Analytics and Information Management for Nova Scotia Legal Aid.

The Commission can see upon review of this data, the total number of adult criminal and youth files that Nova Scotia Legal Aid handles in a year. Only a miniscule amount of them have a Restorative Justice outcome. For youths, the percentage runs between 14%-24%. The number of adult criminal files during that same time span that have Restorative Justice as an outcome is between 2%-4%.

⁵ Ibid page 3

⁶ Restorative Approaches in Schools Project Fact Sheet

We suggest that both the youth file Restorative Justice outcomes and certainly the adult file Restorative Justice outcomes are nothing short of abysmal. That is a strong word but is used because it is felt to be an appropriate description of the extreme underutilization of Restorative Justice.

The extremely low number of referrals is shocking given that Crown Restorative Justice protocol, 3.4.2⁷ and the police Restorative Justice protocol 2.4.2⁸, both give the same mandatory directive to Crowns and police. Specifically,

"all matters are eligible for a referral by police, Crown, Courts, Corrections, and victim serving agencies. Police, Crown and Corrections shall consider all matters for referral, except where:

- **A provincial hold or moratorium is in place; or**
- **Referral is otherwise barred by law.**⁹

Attached to this submission is a graph data printout provided by Restorative Justice entitled "Referrals to the Restorative Justice Program". It provides the Commission with further details concerning the total number of referrals both youth and adult, to the Restorative Justice Program from 2016 to 2022 and the data is broken down by ethnicity, gender, age group, proportion of cases referred by referral sources. Sixty five percent of the referrals come from the Crown, thirty percent from the police and a much small percentage from the Court or Corrections.

It is the position of Nova Scotia Legal Aid that the Restorative Justice Program is a fine program that is underutilized and that more referrals should be made. This is especially the case for Indigenous, African Nova Scotian and other visible minorities. The Restorative Justice referrals graph shows that referrals of minority candidates constitute between 0% and 7% of the total number of referrals. That is an extremely low percentage given what is known about the overrepresentation of these groups in the criminal justice system.

It is also the position of Nova Scotia Legal Aid that the moratorium on referrals of domestic violence should be removed, especially since there are now two funded Domestic Violence Courts in Nova Scotia in Sydney, Cape

⁷ Crown Restorative Justice Protocol 3.4.2

⁸ Police Restorative Justice Protocol 2.4.2

⁹ Crown Restorative Justice Protocol 3.4.2

Breton, and Halifax, and unfunded Domestic Violence Courts existing in other parts of the Province such as Bridgewater, Truro, and Amherst.

We suggest that Domestic Violence Courts are uniquely placed to assess cases and determine if and when it is appropriate to refer a domestic violence charge to Restorative Justice.

We suggest that all of the above information should lead the Commission to conclude that Restorative Justice is underutilized and that this Commission recommend that Restorative Justice referrals be increased by all justice officials.

Note: We have requested from the Provincial Court data regarding the total number of charges that appear before it, province wide, on a yearly basis and the number of those that are ultimately referred to Restorative Justice, are withdrawn, go to trial, etc. However, as of the date of the preparation of this report, such information has not been received.

The Failure of the current Domestic Violence Pro-arrest, Pro-charge, and Pro-Prosecution policies

"Do pro-arrest, pro-charge, and pro-prosecution policies remain the most effective response to DV in Canada?"

Findings indicated 57.6% of the articles either failed to support these policies as an effective response to DV (39.3 percent) or recommended significant revisions (18.3 percent), and only 1 percent (emphasis added) support these policies, in their current form as an effective response to DV."¹⁰

It is the position of Nova Scotia Legal Aid that this policy is a complete and abject failure.

Since its implementation in the 1990's this policy has caused great harm to victims and perpetrators and this harm greatly outweighs any meager benefit that may, in certain occasional isolated cases, be provided.

This Commission will note that it has heard various roundtable discussions on the policy and essentially all participants have expressed dissatisfaction with the pro-arrest, pro-charge policy as it currently stands.

¹⁰ Dr. Nancy Ross and Cary Ryan "A Review of Pro-Arrest, Pro-Charge and Pro-Prosecution Policies Redefining Responses to domestic violence, page 11 COMM0048061 Exhibit-P-003644

To dig deeper into this issue, an internal survey was done of Nova Scotia Legal Aid lawyers who practice criminal law or have a mixed criminal and family practice across the Province. These lawyers were questioned about: their observations of the effectiveness or ineffectiveness of the Domestic Violence Policy, the number of domestic violence cases that they carry in a year, how many of these cases actually proceed to trial and the overall impact of the policy on their clients, regardless of whether the client be an accused or a complainant.

We must point out that as of the date of the dictation of this report, Nova Scotia Legal Aid does not specifically track domestic violence criminal cases and their outcomes as distinguished from other criminal cases, (ie. no distinction between “assault” versus “domestic assault”). So, the information provided below is based on each individual Legal Aid lawyer’s own observations from their practice.

Of particular interest are the comments of lawyers who have a combined practice of family and criminal cases. Their cases are particularly compelling in their description how the criminal justice system continues to fail family clients who are often victims of violence and that their client’s needs are not being met in either the Family or Provincial Courts.

What is uniform through all of the lawyer’s responses is that domestic violence cases that are set down for “regular Court” as opposed to those fortunate few diverted into fully funded Domestic Violence Court in Sydney and Halifax Court, almost never proceed to trial. Approximately 90% of domestic violence cases do not proceed. This is an extraordinary waste of Court time especially the era of *R. v. Jordan*, when the prosecution of criminal cases in a timely matter is of utmost importance.

The responses of each Legal Aid lawyer are included with this report. In some cases, they are copied verbatim and in others they are summarized. The lawyers are not identified by name:

Halifax South

“Of the domestic violence files that come in my door at the Halifax South NSLA office, I’d guesstimate half leave the regular stream and get moved over to the Domestic Violence Court early on. Of the remaining 50%, only a small portion would be the subject of early guilty pleas: most get set down for trial. Virtually none of those get withdrawn before the day of trial—Crown policy prevents same. On the day of trial, however, almost every file gets resolved through (1) plea deals, (2) peace bonds, or (3) Crown withdrawals.

So, in summary, my chart for Halifax Provincial Court would be as follows:

Common Occurrences or Outcomes:

- Domestic Violence Court
- Not-guilty pleas entered
- Day-of-trial settlements

Uncommon Occurrences or Outcomes:

- Early guilty pleas
- Early Crown withdrawals
- Trials actually going ahead

The court itself is well aware of these dynamics and will typically not bat an eye at booking multiple domestic violence trials on top of one another in the same courtroom.”

The last sentence of the emailed response is particularly condemning of the pro-arrest policy. The fact that Provincial Courts will “typically not bat an eye at booking multiple domestic violence trials on top of one another in the same courtroom....” because the expectation is that these trials will not proceed is essentially an admission by the Provincial Court that it is expecting failure.

Trials are being booked and Court time is being consumed with the expectation that trials will not proceed. This is expecting failure in advance. It is yet another indicator of the failure of the pro-charge policy and the, at least tacit, acknowledgement of the Court that it is a failure and that is why it is safe to book multiple domestic violence trials on the same day.

Dartmouth

“I’d say conservatively 50 - 75% of my DV cases result in a peace bond or dismissal.

In 13 months of defence practice, I’ve had one DV case go to trial. I’ve had about 4 or 5 other clients plead guilty. Everything else has been a PB or dismissal.

It routinely happens that a complainant gives no statement to police and there are no third party witnesses.”

Police lay a charge anyway.

Many prosecutors don’t do any follow up right away. Often I’ll contact the complainant. I convey her (usually her) wishes to the Crown and 2, 3, 4 months later there’s a PB.

Of cases where there was no initial cooperation from the complainant, I'd bet 100% resulted in a PB or dismissal. I think many Crown Attorneys know this and are frustrated by it too."

Comments of this lawyer reflect the experience throughout the Province where the complainant "...routinely... gives no statement to police and there are no third-party witnesses." Yet a charge is laid, and a trial date is set.

This lawyer notes that in thirteen months of practice he had a grand total of only one domestic violence trial actually proceed to trial.

Bridgewater

1. If the complainant does not show up, the Crown does not ask for a warrant, and simply offers no evidence;
2. If the complainant does show at trial, the Crown will have a chat with the complainant and if they do not feel threatened, the charge is withdrawn.
3. Changing release conditions: Queens RCMP never consent, most Crowns consult the police, and agree if that's what the complainant wants."
Bridgewater does have Wellness (Domestic Violence) Court. Many cases that are minor go through this process. The complainant is consulted during every step (screening, wellness Court pre-court meetings, graduation). This offers a voice to the complainant.

"Just following up our telephone discussion. You advised that your estimate is that 90% of domestic cases that go to Domestic Violence Court proceed to conclusion. Your local crown tries to refer as many domestics to the DV court as possible.

Your estimate for the domestic cases that proceed through 'regular' provincial court is 10%, so that the remaining 90% do not proceed, usually because of a reluctant/uncooperative complainant.

Your office, like Pictou, does a large number of Form 1 aps to vary, usually initiated by the complainant, to permit contact with the accused.

Thanks
Stephen Robertson"

Reply; "that is all correct."

It is noted that Bridgewater does not have a funded Domestic Violence Court rather it relies on the engagement and cooperation of the presiding Provincial Court Judge, with local Crowns and Defense Counsel.

For the domestic violence cases that proceed through the regular Provincial Court, in **Bridgewater**, again the estimate is 90% that do not proceed.

Dartmouth Legal Aid lawyer who previously practiced in the Amherst Legal Aid Office

"Since moving to Dartmouth, I'd say it's somewhere close to 95% dismissal or peacebond.

80% of my DV files are where the complainant didn't give a statement.

I can say a huge difference between Amherst and Dartmouth is as follows:

- In Amherst, I think I only ever saw one file where the complainant didn't give a statement. The charge was pretty much instantly withdrawn by the Crown in the absence of a statement. In Amherst, all DV files that resulted in charges usually had a video taped statement, or at the very least, an audio taped statement. In Amherst, the # of DV files dropped at trial was much lower. Somewhere closer to 50%. This is because police seemed to do work on the front end of the investigation. Also, "no statement" charges simply were never laid.
- In Dartmouth, 80% of my DV files the complainant did not want to proceed with charges. They get set for trial and are usually dismissed or peace bonded on the day of trial.

They are a waste of time usually prepping a client for a direct that never happens. The level of investigation on DV files here is a 1 page handwritten statement. Rarely get audio or video statements.

I would say in terms of policy – there's nothing wrong with laying the charge per se; however, the Crown should peace bond these "no statement" files right away. These files are usually a push or a shove. This will free up Court time for prosecution of more serious matters."

This lawyer interestingly reflects upon what appears to be a more engaged RCMP detachment in Amherst who appear more diligent in ensuring that domestic violence cases have an evidentiary basis with video or audiotaped statements from the complainant. The comparison between Amherst and Dartmouth is striking in this lawyer's email.

Halifax Duty Counsel

"I don't do trial work in my current role in the Duty Counsel Office, my focus is on varying release conditions in Halifax and Dartmouth Provincial Courts. The vast majority of such applications are to vary Undertakings to allow communication/contact and/or to return home in cases the police have labeled "Intimate Partner Violence" (mandatory conditions imposed). Notably, the police often tell accused individuals that these conditions may be changed within 2 days (when in reality it takes much longer, particularly if there are children).

For years, my impression is that the "hands-tied" police policy casts too wide a net, capturing accused persons and complainants who do not need or want the level of intervention that ensues (eg: first-time, one-off low-end/de minimis assaults in the course of an argument). Often, a complainant will contact the police to remove their partner from the residence for a cooling-off period. Once the Intimate Partner Violence policy kicks in, there may be unintended consequences (charges, no contact/no go conditions) teaching the complainant not to involve the police again or else begin a year-long odyssey through the criminal justice system.

Thanks for receiving our feedback."

We suggest that this lawyer's comments echo those of participants that have appeared before this Commission by highlighting the unintended harm to the victims and specific complainants "who do not need or want the level of intervention that ensues (eg: first time, one of low end/de minimis assaults in the course of an argument)".

This lawyer also comments about the unavailability of an option of simply removing the aggressor for a cooling off period without laying a charge. That option no longer exists for police because of the pro-charge policy.

Annapolis – only about 10% of domestic violence cases go to trial.

Windsor – lawyer who currently practices criminal law but had previously practiced family law

"I want to point out first that reply, particularly about police not investigating or charging unless there's a 911 call, used to be my experience when I practiced family law. It seemed that if there was no 911 call then police deemed the situation "not that serious" and therefore not worth devoting time to. And if kids were involved, police would just tell everyone to contact child protection, family court, civil court, etc. Truth be told, I had numerous family clients (women) who I believed were trying to get criminal charges against their ex to better their own custody/access position, so the lack of investigation meant that things played out in family court, as they properly should. Once in a while I would have a family client who was truly a victim of domestic abuse, they too could not get police to investigate, and then family court would hold it against them that police either wouldn't

investigate (seeming to assume that meant police knew more about the parties and therefore there was no basis to investigate) or that police would not lay charges (implying my female client must be lying, or at least exaggerating, about the situation). If there was a 911 call, then charges were always laid, and the male charged would be considered a risk and a pariah forevermore in family court. Even if acquitted after trial, which happens a year or more after the charges laid, by then the interim order having kids with mom has been in place for so long it was impossible to get an order for anything different, as that kind of change would not be in best interest of child (so court would say). I practiced family law from 2006-2014 (about 80% of my cases were family, 20% crim).

From 2014 to present I've practiced crim law exclusively. The pro-charge policy is all I ever see, if police are called to an incident, someone is getting charged. They determine the aggressor (85-90% of the time they charge the male) and lay charges, put no-contact conditions in place, and male must find new residence. Even if the female begs them not to

charge the male, the charge is laid anyway. 100% of the time. Only very rarely are both parties charged (maybe 2-3% of all my domestic cases).

Our Crown Attorney is quite reasonable, but even his hands are tied. Citing crown policy, he can't drop domestics, needs to see them through to their natural conclusion. So domestics are never resolved ahead of a trial date, which means most domestics get set for trial since there's no point in negotiating. We don't have access to a Domestic Violence Court in Hants County, and domestics are not eligible for RJ or Wellness Courts. Often (maybe 50% of the time?) complainant doesn't show for trial and it gets dismissed for WOP.

When complainant does show, about half of them don't want the matter to proceed anyway, so we work out a peace bond resolution on trial date. Maybe half of the rest get resolved with a plea deal, again on date of trial. And the remaining actually have trial proceed. So that would mean roughly:

50% - no show complainant, DWOP

25% - complainant shows for trial, doesn't want to proceed, peace bond

12.5% - complainant shows, does want to proceed, plea deal

12.5% (max, actual data may show it's much less, but that's my guess) – trial proceeds."

Antigonish – lawyer with a joint criminal and family practice

"First – a qualification - My practice is only 20% criminal, but I represent 90% indigenous clients on my criminal files (my 20% comes from my role as outreach worker at Paq'tnkek and my cells duty counsel work).

However in my 80% family practice capacity I estimate that I represent about 60% of women in our jurisdiction who are before family court while experiencing domestic violence. I think it is important for you to survey the experiences of the family lawyers as well as often the perpetrators of domestic violence on those files are also facing charges in provincial courts at the same time, and they are legal aid clients too, but on certificate (because it creates an office conflict).

So ... my response100% of my criminal clients charged with assault in the context of domestic violence go to trial and 0% are withdrawn before trial. 100% are then dismissed for want of prosecution on the day of trial when the complainant does not show up. I am serious - 100% so far. Given the qualifications re my practice, we are not talking about a lot of matters but I believe the criminal lawyer in this jurisdiction will come back with a number not far off 100% as well. We have a chronic problem in this jurisdiction with crown who do not negotiate (often don't even respond to emails or calls from defence counsel) in advance of the trial date so we may be unique – I don't know. But it has been consistent in the 2 1/2 years since I started working here.

The issue I find is the lack of appropriate response from RCMP at the pre charge stage. It takes wildly inappropriate amount of advocacy to get charges laid in the first place in 100% of these matters in my experience when there has been no 911 call (again I am serious and not exaggerating). For example, I have three files at high risk of murder suicide (including one where I and my staff have been repeatedly threatened by the perpetrator) and my clients have had to advocate for years to get any investigation or response from the RCMP. Typically the RCMP won't do a thing until another third party witness files a report. Complainants are not viewed as believable – full stop. Unfortunately these are the clients who would show up in provincial court on the trial

date, but their complaints are minimized and dismissed by the RCMP outright until further violence occurs.

I view the problem as this:

- The RCMP will not initiate a domestic violence investigation based on complainant reports made after the fact
- The RCMP will only lay charges in domestic matters when they respond to 911 calls and are on scene so the more or less have to acknowledge there was an assault and most of the time they charge the complainant and the perpetrator
- No further investigating is ever done by the RCMP after the initial response, so the whole case then depends on the victim showing up on trial day and they are often still in a relationship with perpetrator or intimidated by the fact they too have been charged with assault
- The women who have left the perpetrator and are in a place where they are pursuing charges and would come to court get no support and get no action from the RCMP (unless they are being assaulted in the moment and call 911)
- All of the above is compounded by the chronic lack of unwillingness to negotiate resolutions in advance that we experience coming from the Crown office in our
- jurisdiction which keeps these women witnesses / complainants in precarious circumstances for long periods of time – right to the end of the Jordan timelines in many cases;

- I know our local crowns are also frustrated by this but I don't believe they appreciate the role they are playing in contributing to this as well"

Both of these dual practice lawyers give clear examples of how the policy fails and, disturbingly, how the police seem to treat the absence of a 911 call as not serious enough to justify a charge, but, when a 911 call is made a charge is laid, whether the complainant wants it to be or not.

We suggest that the conclusions that can be drawn for this is that Province wide, the policy is a failure. Province wide, only 5% to 10% of domestic violence cases actually go to trial, unnecessarily clogging the Provincial Court docket, delaying other trials that actually would proceed, and providing no comfort or safety to the complainants, a significant proportion of whom, it would appear, do not want to go to trial anyway.

It may be obvious, but it should be said in any event; law enforcement officials do not need a pro-charge policy to lay a charge in circumstances of domestic violence if they are satisfied that #1. In the context it is necessary, #2. That reasonable and probable grounds exist to lay one and, #3. It's in the public interest.

If this policy were revoked, it would not lessen the ability of complainants to be protected by the criminal justice system. Indeed, it may increase it.

Currently, Nova Scotia Legal Aid criminal lawyers find themselves in the ironic, if not patently absurd situation of being the voice of the complainants when the complainants ask us to initiate a proceeding to vary or revoke the No-Contact Order so that they can have contact with their partner who is charged with a domestic offence.

What we commonly hear is "I called the police and they told me to call the Crown, or "they said there is nothing they can do. The policy makes them do this".

Out of sense of desperation, the only other person who they perceive as "part of the justice system" are the lawyers who represent the perpetrator.

The absurdity of this situation would be laughable if it were not so tragic. The perpetrator's lawyer, whose ethical obligation it is to defend the perpetrator and hopefully obtain a not guilty verdict for him or her,

which may entail taking steps to undermine the credibility and reliability of the complainant becomes the voice for the complainant as the only means for her to express her wishes to the Court, Crown, and Police, at least as it relates to her wishes regarding the “standard practice” no Contact Order.

We suggest that this is a glaring example of the failure of this policy and the creation of unintended consequences of the pro-charge policy.

It should be revoked.

The Functioning of the Domestic Violence Courts

“The Domestic Violence Courts are “therapeutic Courts with the primary goal of rehabilitating offenders and providing them with the skills and tools to deal with stressful situations in their current or future relationships without resorting to violence or abusive behaviour.”¹¹

To qualify for Domestic Violence Court, an accused person must be charged with committing an offence that is of a domestic nature such as assault, mischief/property damage, uttering threats/criminal harassment, breaches of Court Orders that involve a breach of a no contact condition, etc. The crime must involve a current or former intimate partner and the accused must be prepared to plead guilty.

The accused must agree to participate in a counselling program and agree to a joint statement of fact that will be presented to the Judge at a sentencing hearing.

Currently there are only two locations in the Province that have funded Domestic Violence Courts: Sydney, Cape Breton and Halifax.

Other, unfunded Domestic Violence Courts exist in Truro, Amherst and Bridgewater but because of the lack of funding, their ability to provide more in-depth and substantial programming is limited.

The Domestic Violence Court, unlike any other in the Province, is more team focused. Meetings are held between the Crown Attorney, the Judge, the Defense Attorney and various social workers and probation officers who review the applications for Domestic Violence Court. They also review the applications for each individual accused that comes before the Court. In

¹¹ Nova Scotia Legal Aid Domestic Violence Court (Sydney, Cape Breton) FAQ

Cape Breton, there are three levels of participation depending on the seriousness of the offense. Level one is a five week program of group sessions. Level two is a ten week program of group sessions. Level three, for the most serious of offences, requires the client to complete a ten week program with either the Corner Stone Cape Breton Counselling Center or the Elizabeth Fry Society and then to follow that with a minimum of ten sessions (often more) of therapeutic one-on-one counselling.

The accused who completes their program, is, in most cases, granted a discharge. However, contested sentencings still happen, though they are not as frequent as in regular Provincial Court.

An accused person who goes through the Domestic Violence Court is supervised by more individuals than an accused who is placed on probation after a plea or finding of guilt in regular Provincial Court. Indeed, there is a case management team that follows the accused's progress. The case management team determines if the accused should be accepted into the Domestic Violence Court and then they are followed by the same case management team as they progress through their program.

Nova Scotia Legal Aid does not keep statistics on the percentage of recidivism in the Domestic Violence Court, but it is the opinion of the individual lawyers who practice in Domestic Violence Court is that there is less recidivism than they see in their practices in regular Provincial Court.

We see this as proof, albeit anecdotal, that a focused therapeutic Court with a primary goal of rehabilitation is a more effective venue for the protection of the public. Domestic Violence Court is rehabilitative, not punitive in nature.

Notwithstanding the positive nature of the Domestic Violence Court, we suggest that in five areas, it's practice could be revised:

1. The necessity of a guilty plea

There are times when a client, even if they obtain an absolute discharge from the Domestic Violence Court after entering their guilty plea and completing their program, suffers serious non-judicial consequences that have a significant impact on their life. Those who are refugees, or who are temporary immigrants and do not have permanent residency in Canada, can face serious immigration consequences by pleading guilty. Employment consequences are also a concern. There are some clients who, even though they obtain an

absolute discharge, may find their employment negatively affected or terminated if a guilty plea is entered.

We submit that more leeway be given to permit clients to enter the Domestic Violence Court by formally taking responsibility but without the necessity of actually entering a guilty plea on the record because the consequences of said plea can extend beyond the Courtroom.

2. The denial of entry of youths/young offenders into the Domestic Violence Court

We suggest that if a person under the age of eighteen would otherwise qualify for entry into a Domestic Violence Court, their age alone should not prohibit them from taking part. The Domestic Violence Court could be split into a youth division and an adult division. This would enable youths charged with domestic violence offences to benefit from the counselling available within the Domestic Violence Court process. The Domestic Violence Court is a therapeutic Court focusing on rehabilitation. We suggest that young persons like adults would benefit from this.

It would not cost the Province any more money as Provincial Court Judges in the rural jurisdictions already sit as both a Youth Court Judge and an Adult Criminal Court Judge. The Domestic Violence Judge could do the same, perhaps doing Adult Domestic Violence Court in the morning and Youth Domestic Violence Court for one afternoon a month.

3. Crown veto

If a Crown Attorney refuses to refer a client's case to the Domestic Violence Court, that is the end of it. The accused, even if willing to take responsibility, plead guilty and accept any counselling or conditions recommended to them, can go no further. We suggest that the Crown veto power either be removed or modified to require a majority vote of the case management team when considering if that person should be granted entry to the Domestic Violence Court.

4. The limited geographic nature of the Domestic Violence Court

In Sydney, the offense must have been committed within the Cape Breton Regional Municipality. In Halifax, the offence must be committed within the Halifax Regional Municipality.

It is our recommendation that the Province fund Domestic Violence Courts in all judicial centers where Provincial Court currently exists so that every

judicial center and every accused person who lives in Nova Scotia can have the opportunity to benefit from participation in a Domestic Violence Court.

5. The underrepresentation of racialized and Indigenous clients as participants in Domestic Violence Court

It is the experience of Nova Scotia Legal Aid that the number of racialized and Indigenous clients referred to the Domestic Violence Court is very low in proportion to the total number of referrals. Attached to these submissions are statistics compiled “in house” by Nova Scotia Legal Aid for the years 2016 to 2022 which demonstrate this point.

This information is maintained by Mr. Shawn Carter, Director of Research Analytics and Information Management for Nova Scotia Legal Aid.

Greater effort must be made to increase the representation of racialized and Indigenous clients in Domestic Violence Court.

The Supreme Court of Nova Scotia (Family Division) - An Access to Justice Issue

The Supreme Court of Nova Scotia (Family Division) is becoming increasingly difficult to access. Lawyers report difficulties in obtaining Court time, and in particular, being able to schedule an Interim Hearing. Having to wait weeks to months to get an interim hearing can be a disincentive to leaving an abusive relationship, especially with children. Without child or spousal support, clients often stay because they can’t afford to leave.

Nova Scotia Legal Aid has identified that access to conciliation services through the Supreme Court of Nova Scotia (Family Division) is problematic. Family lawyers across the province were canvassed for the input on challenges with conciliation/mediation/alternative dispute resolution available (or not available) through the Courts. Responses were received mainly from lawyers in HRM and Sydney where Supreme Court (Family Division) has been operational for over 20 years (as opposed to the remaining areas of the province which have recently seen a transition from Family Court to Supreme Court (Family Division)). Not surprisingly, the main issue is lack of resources. One lawyer identified that until recent weeks, there have been 1.5 conciliators in HRM doing the work of 8 positions. It was also identified that what used to be Conciliation Records have been downgraded to a report which lacks specificity and usefulness. True ADR only exists for clients who have money, a clear access to justice issue. Mediation is not available through the Court at all as there are no mediators

on the roster. Another lawyer indicated that when conciliation proceeds, it is usually unsuccessful, and often unfortunately seems to be a formality.

Further, conciliation isn't available if both parties are represented by counsel. Allowing parties to participate even if they are both represented would increase the likelihood of early resolution of matters and would be a better use of resources.

Mandatory referrals to the Department of Community Services – Child Welfare

Similar to the domino effect of the pro-arrest, pro-charge, pro-prosecution policies, mandatory referrals to the Department of Community Services – Child Welfare in domestic violence situations may prevent or discourage complainants from calling the police. In many instances, contacting the police and the associated contact with the Department of Community Services – Child Welfare may escalate the situation and increase the conflict. These issues can be exacerbated for newcomer clients if they are referred to a system that is not sensitive to cultural differences.

Lack of Enforcement of Court Orders

Another issue identified by our lawyers is lack of enforcement of Court Orders. Our clients often report that although they have a Court Order, when they contact the police for enforcement of the provisions, they are told that because it is a family issue and not a criminal issue, no assistance will be provided. There is no mechanism to deal with enforcement and no uniform approach. The response may vary depending on where you are in the province, and clients may experience a variation between municipal police and RCMP responses.

Lack of Information Sharing between Criminal and Civil Justice Systems

The lack of information sharing between our criminal and civil justice systems is problematic. A better flow of information between family and criminal justice systems, particularly between family and criminal justice systems when release conditions impact parenting time, communication and custody/access transfers is needed. This is further compounded if one or both parties are self-represented in one or both systems. This is another reason why specialized, therapeutic courts and restorative justice approaches are beneficial and supports the proposition that these resources should be utilized more.

Problems with the potential criminalization of “coercive control”

It was originally not part of Legal Aid’s intention to speak to this issue. However, as a result of observing multiple round tables in which various participants recommended the criminalization of coercive control, we wish to present our point of view as to why that suggestion is unwise.

How does one prove coerciveness in coercive control? Speaking hypothetically, if we assume an example of a domestic couple, male and female, where the male is employed outside of the home and the female is not so employed and has no independent income. Assume that they have young children who are dependent on them.

The male provides the female with a small allowance and instructs her as to what she can do with that financial allowance.

He routinely checks her cellphone to see with whom she is communicating; he determines whom she may meet outside of the home and whom she may not. He has never committed an act of violence against her or uttered a threat as defined by section 264 and 265 of the *Criminal Code*.

Is the above scenario coercive or merely controlling?

If the male’s explanation for these actions is that the family survives on an extremely limited income and every penny must be strictly monitored and controlled. This is an example of strict adherence to a budget, not coercive control.

If the male’s reason for checking his spouse’s cell phone is “my partner cheated on me in the past and I am suspicious of her.” Is the male’s suspicion simply that, suspicion, or does it rise to the level of coercive control?

If the male’s justification for limiting the people with whom his partner can have contact is that “I believe that those people are bad people. I believe they will cause harm to her or our family. I believe they are meddling and it is they, not I, who would attempt to control her actions and plant thoughts in her head.”

Is that belief, if sincerely held, whether or not it is correct, enough to negate a charge of coercive control? If not, why not?

What is the difference between control, excessive control and criminal coercive control?

The male partner tells the female partner that she is not, under any circumstances, to leave the residence without notifying him and without his prior consent.

Is this demand by the male coercive control? Suppose his justification for this is that his partner has a history of either mental illness, addiction issues or bad decision-making, such that when she is out on her own, she gets into trouble, into drugs, or has caused her own mental health to deteriorate. Is this still coercive control?

Assume that the male partner's demands that she not leave without his permission is not accompanied by any threats of violence. Absent that threat, is it still coercive control?

Assume that even though the male partner tells his partner that she shall not leave, but does not actually do anything to prevent it. The door is unlocked, the public highway is out in front of the street and the partner can physically walk away at any time. Is coercive control still present in that scenario? We suggest that the essential elements of coercive control are unclear. That it should require more than simply one dominant personality in a partnership determining the actions of the submissive personality.

We submit that establishing the essential elements of a coercive control offence would be exceedingly difficult and problematic.

This is reflected in the statistics from the United Kingdom. On December 29, 2015, the *Serious Crime Act* came into effect in the UK. This legislation criminalizes coercive controlling behaviour. Between April 2020 and March 2021, 33,954 offences were recorded by the police in England and Wales. In the year ending in March 2021, 1403 defendants were prosecuted for coercive controlling behaviour,¹² suggesting that only a small percentage (~4%) of perpetrators are being prosecuted.

At one of the roundtable sessions, the final question was asked of the panel as to whether or not they thought that coercive control should be criminalized. The majority of opinion was that it should be. One participant, a Sociology Professor from UNB, suggested that it was unfair if the female in a domestic relationship, after years of coercive control, punches her partner in the nose one time, is charged with assaulting the male, who exerted the coercive control for years.

¹² [Domestic abuse prevalence and trends, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk/domesticabuse/prevalenceand Trends/EnglandandWales)

Our recommendation is that coercive control could be made a defense, not a crime. That it could be recognized statutorily as a form of self defense in scenarios where coercive control exists.

Criminal coercive control, we suggest, would be another intrusion of the State into the private lives of individuals, much like the unsuccessful Pro-Arrest, Pro-Charge policy is an intrusion into the lives of individuals.

We suggest that as a general proposition when the State intrudes into peoples lives, things get worse. Therefore, the creation of coercive control defense to a charge, rather than as a criminal charge of its own, is a better way to approach this issue.

Global Recommendation

We recommend a review of policies and practices to ensure that they are preventative, responsive and proportionate with a particular focus on access to justice and ensuring the minimization of regional differences.

ALL OF WHICH is respectfully submitted this 2nd day of September, 2022.

Yours very truly,
NOVA SCOTIA LEGAL AID

A handwritten signature in blue ink, appearing to read "Amber Snow".

AMBER SNOW on behalf of the Nova Scotia Legal Aid Mass Casualty
Commission Working Group

Cc: Charlene Moore, QC

The Nova Scotia Restorative Justice Program

October 2018



© Crown copyright, Province of Nova Scotia, 2018
Nova Scotia Restorative Justice Program: October 2018
Department of Justice
ISBN: 978-1-55457-897-9

The Nova Scotia Restorative Justice Program

Beginnings of the Restorative Justice Program in Nova Scotia

The Nova Scotia Restorative Justice program (NSRJP) was established in 1999. The development of restorative justice in Nova Scotia coincided with significant changes brought about by the Youth Criminal Justice Act, which was grounded in principles consistent with a restorative approach and created opportunities for alternatives to the formal criminal justice process. Nova Scotia took a restorative approach to alternative measures for youth through the development of the NSRJP and was an early adopter and leader nationally in this regard.

The NSRJP was designed to be implemented in four phases:

1. The first phase began in 1999 with a pilot for youth restorative justice in four regions: Cape Breton Regional Municipality, Annapolis Valley, Cumberland County, and Halifax Regional Municipality.
2. Next was the full implementation for youth across the province in 2001, with restorative justice youth services being administered by eight community-based restorative justice agencies.
3. The full youth rollout was followed by a pilot expansion to adults in 2011 in the Cape Breton Regional Municipality and Colchester County–East Hants, and through an initiative at Dalhousie University. For the adult pilot, restorative justice services were administered by the restorative justice agencies, Mi'kmaw Legal Support Network (MLSN), and Community Corrections staff.
4. In November of 2016, the NSRJP expanded to include adults in all regions of Nova Scotia, replacing Nova Scotia's existing adult diversion programs.

From the start, the intention of the NSRJP has been to insert a restorative approach throughout the criminal justice system with the assertion that restorative justice, in some modality, could be applicable to all offenders and all offences throughout the province. In support of this goal, justice stakeholders in the province embarked on a collaborative process to renew the NSRJP in June 2017. The restorative justice renewal initiative was led by an interim Governance and Management Committee, which represented the justice system and community stakeholders and had a mandate to address program, policy, and implementation issues within the NSRJP. The committee focused on how best to integrate the recently expanded Adult Restorative Justice program with the long-established Youth Restorative Justice program in order to successfully implement a cohesive and principled approach to restorative justice in Nova Scotia. The renewal initiative resulted in a memorandum of understanding confirming justice stakeholders' commitment to this new, integrated approach to restorative justice and new, integrated protocols to support implementation of the NSRJP.

The restorative approach to justice in the province was developed and nurtured by a strong alliance among government, community, universities, and across sectors. Partnership and collaboration between the justice system and community has been core to the successful development, governance, and implementation of restorative justice in Nova Scotia. The program has also depended upon the important partnership with the Mi'kmaw Legal Support Network (MLSN). Nationally, MLSN is unique in its service delivery approach and is the sole provider of culturally appropriate community-based justice services for aboriginal persons in Nova Scotia. MLSN is an organization approved by the 13 Nova Scotia chiefs to offer the Mi'kmaw Customary Law program and Court Worker program.

What is Restorative Justice?

Restorative justice takes a relational approach in response to crime. It is based on and guided by the following principles:

- **Relationally focused:** attention to interconnection, seeking to understand and promote just relations between individuals, groups and communities
- **Comprehensive and holistic:** takes into account histories, contexts and causes of harm and its impacts
- **Inclusive and participatory:** culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants
- **Responsive:** Contextual, flexible practice, accessible, efficient and effective processes, informed by data and knowledge
- **Focused on promoting individual and collective accountability & responsibility**
- **Collaborative and non-adversarial:** among parties to the process and system and community partners
- **Forward-focused:** educative (not punitive), problem-solving, preventative and proactive

When the law is broken, a restorative approach considers the impact on the people and their relationships at interpersonal, social, and institutional levels. Restorative justice is aimed at understanding and addressing the harms and needs of those affected by crime with an aim to support *just* relations in future. Restorative justice processes bring together those with a stake in the outcome of a situation—those who have been affected, those with responsibility for what happened, and those who can support a good outcome. Restorative justice processes consider the contexts, causes, circumstances, and impacts related to the crime to determine what is required for a just outcome. Through restorative justice, parties can participate together in processes designed to address harms and needs. Restorative justice engages those responsible for harms as active participants in planning and action to address the harm and ensure they relate justly in future. Restorative processes generally result in plans in which those responsible agree to take actions to address harms and needs related to the crime, and take the steps necessary to secure a just outcome for the future.

Restorative justice in Nova Scotia has the following goals and objectives:

- **Respond to needs of individuals and communities affected by crime:** with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- **Harm reduction:** reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system
- **Support individual and collective taking of responsibility for harm and public safety**
- **Increase access to justice:** more effective, timely, inclusive, equitable justice system
- **Provide responsive justice:** human-centered justice processes that consider root causes and seek meaningful outcomes and responses
- **Increase public confidence and accountability in the administration of justice**
- **Build and support healthy, safe and strong communities**

How Does the Nova Scotia Restorative Justice Program Work?

Who or what is restorative justice used for in Nova Scotia?

Who is eligible?

The NSRJP is available to youth aged 12–17 and adults across the province.

For what sorts of offences?

Criminal Code and Controlled Drugs and Substances Act matters are eligible to be considered for referral by police, Crown, courts, corrections, and victim-serving agencies. Police, Crown, and corrections must consider all matters for referral, except where

- a provincial hold or moratorium is in place
- referral is otherwise barred by law

All matters can be referred at any stage in the criminal justice process. However, some will generally only be referred by the courts unless a case can be made (consistent with the principles, goals, and objectives of the program) for earlier referral by the police or Crown. These matters include cases involving death, offences involving abuse of a minor child, and serious crimes against the administration of justice.

Referrals can only be made where

- the person referred fully and freely consents to participate
- the person has been advised of the right to be represented by counsel before consenting to participate
- the person accepts responsibility for the act or omission that forms the basis of the offence the person is alleged to have committed
- 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 the prosecution of the offence is not in any way barred at law

In considering whether to refer to restorative justice, system stakeholders will consider whether a referral will advance the goals and objectives of restorative justice, and, in particular, whether any of the following factors are significant in a case:

- Opportunity for more culturally appropriate, meaningful, and effective justice process
- Reduction of harm for direct parties (trauma informed)
- Potential for victim participation
- Enhanced opportunity for access to justice for affected communities—increased confidence in the administration of justice
- Opportunity to understand and consider root causes or systemic issues connected to the parties or offence
- Reduce over-representation in the justice system for individuals from vulnerable and marginalized communities/groups
- Access to better supports and wrap-around responses to parties' needs

Limits/restrictions?

There has been a moratorium in place on referrals to the NSRJP for intimate partner violence and sexual violence offences since 2000. Currently, the only exception to this is the provision of sentencing circles for intimate partner violence files at MLSN.

When can restorative justice be used?

Cases can be referred at several points in the criminal justice process before there is a criminal charge, before a conviction, or after a conviction. Referrals can be made by the police, the Crown, the judiciary, corrections officials, and victim-serving agencies.

Nova Scotia also takes a restorative approach within its justice system through the application of restorative justice principles, particularly within our specialty courts (mental health/wellness and domestic violence court) as well as within some of our correctional facilities.

Who provides restorative justice?

Restorative justice is founded on a collaboration between justice stakeholders from the justice system and community. The NSRJP memorandum of understanding reaffirms justice stakeholders' commitment to the integrated restorative justice program.

These stakeholders include

- community-based restorative justice agencies
- Mi'kmaw Legal Support Network (MLSN)
- Nova Scotia Department of Justice (Court Services, Victim Services, Correctional Services, Public Safety and Security)
- Nova Scotia Public Prosecution Service
- Nova Scotia Legal Aid
- Nova Scotia police agencies
- The Nova Scotia Criminal Lawyers' Association

Cases are referred to the restorative justice regional teams located across the province. These teams include members from the community-based restorative justice agencies in the province and from the Community Corrections unit of the Department of Justice. Members of the team work collaboratively to provide restorative justice in adult cases, while the community-based restorative justice agencies are the primary providers in cases involving young people.

Regional restorative justice teams are responsible for communicating with referring partners; assessing referrals, case planning and management; preparing and facilitating restorative processes; reporting back to referring agents; as well as oversight and follow-through for plans and agreements resulting from restorative processes.

There are currently eight community-based restorative justice agencies in Nova Scotia authorized and funded by the province to deliver the NSRJP. They also play an essential role as community partners in the development, governance, and oversight of the NSRJP. They are located in and serve the regions surrounding Yarmouth, Bridgewater, Halifax, Kentville, Truro, New Glasgow, Amherst, and Sydney. Community Corrections staff (probation officers) collaborate within the restorative justice regional teams and with restorative justice agency staff to deliver restorative justice processes to adults.

Referrals involving individuals who identify as indigenous must first be considered for referral to the Customary Law program offered by MLSN. If the matter is determined by MLSN not to be appropriate for resolution under customary law then a referral may be made to the NSRJP.

What happens when a case is referred to restorative justice?

Cases are received by the leads of the restorative justice regional team and assessed to ensure they are eligible for the program. The case will be reviewed and assigned to the appropriate member(s) of the team to do the casework required. The team members assigned will contact all parties involved or connected to the case to understand the issues, needs, and impact involved. They will design the process (including the number, form, and nature of sessions that might be held) and engage the parties involved in appropriate ways to come to understand

- what happened
- what matters about what happened (including harms and impacts)
- what needs to happen in order to address these harms and impacts in a way that will ensure a just outcome and just relations in future

The restorative process (including preparatory casework, session[s], plans/agreements, and follow-up supervision and support) will reflect the principles of a restorative approach, and endeavor, to the extent possible, to facilitate all parties' participation and collaboration within the process.

All parties can expect to be consulted and supported in advance of any session with respect to their needs, roles, and responsibility (if any) within the process. Generally, a restorative process will involve session(s) that bring together those who are connected to the case (including, as appropriate, those who have been harmed or otherwise affected, those who hold responsibilities for those harms, and those who can offer information or support in the process).

Restorative processes generally result in plans aimed at addressing the issues, harms, and impacts, and moving forward in a better way. These plans typically include agreements by individuals or others responsible for the harm to undertake actions determined through the process to address the harms and to make things right for the future. The plans, actions, and outcomes vary depending on the situation, circumstances, issues, and needs involved in a given case. The agreements and expectations that are part of the plan will be recorded and shared with the parties and, as required, with justice stakeholders. The restorative justice regional team will provide follow-up support and supervision as required to ensure plans are successfully completed.

How is the program governed?

Governance of the NSRJP is shared among the justice stakeholders. Justice stakeholders are expected to contribute to the collaborative and shared governance of the NSRJP through the program's Governance and Management Committee. The work and development of the NSRJP is overseen by this committee.

Referrals to the NSRJP are governed by the program protocols. Each justice system stakeholder is committed to ensuring their internal policies and procedures align with these protocols and support the successful implementation of the program. There are service provider agreements in place that outline the commitment and requirements for service providers and ensure the oversight of the implementation of the integrated NSRJP. A principle-based guide for practice provides guidelines and standards for implementation of restorative justice processes by members of the regional restorative justice teams.

The program is supported at the provincial level by the Nova Scotia Restorative Justice program coordinator who works within the Restorative Initiatives Unit at the Department of Justice alongside the director of restorative initiatives and the restorative approach coordinator.

What is the authority for the NSRJP?

The attorney general for Nova Scotia has authorized the Nova Scotia Restorative Justice program to be used by police and Crown as a program of alternative measures allowed for under section 717 of the Criminal Code, RSC 1985, c C-46, and as a program of extrajudicial sanctions under section 10 of the Youth Criminal Justice Act, SC 2002, c 1 and Section 10 of the Youth Justice Act, SNS 2001, c 38. The NSRJP replaced previous programs for youth and adult diversion. The Nova Scotia Restorative Justice program is not limited to these uses by police and Crown. All justice system stakeholders can refer to the NSRJP at their respective stages of the criminal justice process pursuant to their authority and discretion available at law and as consistent with their roles and responsibilities.

2021-22		
DV Files Closed	Have Withdrawal Outcome	%
351	22	6%

2021-22 (Self-Identified as Indigenous)		
DV Files Closed	Have Withdrawal Outcome	%
25	4	16%

2021-22 (Self-Identified as Black / African Nova Scotian)		
DV Files Closed	Have Withdrawal Outcome	%
17	0	0%

2020-21		
DV Files Closed	Have Withdrawal Outcome	%
394	16	4%

2020-21 (Self-Identified as Indigenous)		
DV Files Closed	Have Withdrawal Outcome	%
41	1	2%

2020-21 (Self-Identified as Black / African Nova Scotian)		
DV Files Closed	Have Withdrawal Outcome	%
16	2	13%

2019-20		
DV Files Closed	Have Withdrawal Outcome	%
410	30	7%

2019-20 (Self-Identified as Indigenous)		
DV Files Closed	Have Withdrawal Outcome	%
51	3	6%

2019-20 (Self-Identified as Black / African Nova Scotian)		
DV Files Closed	Have Withdrawal Outcome	%
8	0	0%

2018-19		
DV Files Closed	Have Withdrawal Outcome	%
263	23	9%

2018-19 (Self-Identified as Indigenous)		
DV Files Closed	Have Withdrawal Outcome	%
24	3	13%

2018-19 (Self-Identified as Black / African Nova Scotian)		
DV Files Closed	Have Withdrawal Outcome	%
12	0	0%

2017-18		
DV Files Closed	Have Withdrawal Outcome	%
111	6	5%

2017-18 (Self-Identified as Indigenous)		
DV Files Closed	Have Withdrawal Outcome	%
21	2	10%

2017-18 (Self-Identified as Black / African Nova Scotian)		
DV Files Closed	Have Withdrawal Outcome	%
1	0	0%

2016-17		
DV Files Closed	Have Withdrawal Outcome	%
66	3	5%

2016-17 (Self-Identified as Indigenous)		
DV Files Closed	Have Withdrawal Outcome	%
5	0	0%

2016-17 (Self-Identified as Black / African Nova Scotian)		
DV Files Closed	Have Withdrawal Outcome	%
0	0	0%

The Nova Scotia Restorative Justice Program Protocols

Contents

- Nova Scotia Restorative Justice Program Protocols - Introduction 1
- Definitions 2
- 1.0 General Protocol3
- 2.0 Police Protocol9
- 3.0 Crown Protocol13
- 4.0 Court Protocol17
- 5.0 Correctional Services Protocol22
- 6.0 Victim Serving Agencies Protocol26
- 7.0 Regional Restorative Justice Team Protocol30

© Crown copyright, Province of Nova Scotia, 2019
Nova Scotia Restorative Justice Program: Protocols: July 2019
Department of Justice
ISBN: 978-1-55457-896-2

Nova Scotia Restorative Justice Program Protocols

Introduction

The Nova Scotia Restorative Justice Program (NSJRP) Protocols are a multi-part document governing referrals within the Nova Scotia Restorative Justice Program. The Definitions and General Protocol provide an overview that applies to all protocols. There are separate protocols guiding use of the NSRJP by police, crowns, courts, corrections, victim serving agencies and the administrative role of the regional restorative justice teams. Taken together, these protocols provide an integrated framework to guide the implementation and operation of the Nova Scotia Restorative Justice Program encompassing referral of young persons and adults. The document is also designed to provide guidance for individual program referral agents and partners through individually tailored protocol sections.

Definitions

“Criminal Code” means the Criminal Code, RSC 1985, c C-46;

“customary law program” means the Mi’kmaq Customary Law Program offered by the Mi’kmaw Legal Support Network;

“Justice Partners” means justice system stakeholders from government and community that are parties to the Nova Scotia Restorative Justice Program Memorandum of Understanding and have roles and responsibilities related to the implementation and operation of the Nova Scotia Restorative Justice Program;

“Regional Restorative Justice Team” or “Regional RJ Team” means the collaborative team responsible for the administration and management of referrals to the Nova Scotia Restorative Justice Program;

“Regional RJ Team Leads” or “Lead Team” means the designated leads from the regional community-based restorative justice agency and Community Corrections responsible for leadership, administration and oversight of a regional restorative justice team;

“NSRJP” means the Nova Scotia Restorative Justice Program;

“person in conflict with the law” or “young person” means an offender under the Criminal Code, or a young person under the YCJA and YJA;

“restorative justice agency” means a community-based partner that enters into a service provider agreement with the Province to support the Nova Scotia Restorative Justice Program;

“Victim Serving Agencies” means an agency or program within an agency with a primary mandate to serve the needs of those who are victims of (have been harmed by) a criminal offence, including, for example: Provincial Department of Justice Victim Services Unit, police-based victim services and senior safety officers;

“YCJA” means the Youth Criminal Justice Act, SC 2002, c 1;

“YJA” means the Nova Scotia Youth Justice Act, SNS 2001, c 38.

1.0 General Protocol

1.1 Introduction

The Nova Scotia Restorative Justice Program is grounded in a shared commitment to collaboration by Justice Partners from government and community in support of restorative justice in Nova Scotia. These Justice Partners have a common commitment and responsibility to the public interest to ensure the administration of criminal justice is accessible, meaningful, effective and efficient. Justice Partners maintain restorative justice is central to achieving this goal and are committed to collaboration in support of the Nova Scotia Restorative Justice Program (NSRJP) in accordance with the Memorandum of Understanding (MOU) signed by the Justice Partners and the following program protocols as well as applicable operating procedures and policies.

The NSRJP is established and supported by the Attorney General for Nova Scotia. Further, the NSRJP is authorized by the Attorney General for use by the police and the Crown as a program of alternative measures for adults under the Criminal Code (Canada) and as a program of extrajudicial sanctions for young persons under the Youth Criminal Justice Act (Canada) and the Youth Justice Act. As reflected in the MOU, Justice Partners are committed to pursue and support coordinated implementation of the NSRJP throughout the justice system.

Justice Partners understand restorative justice as an approach to justice focused on securing just relations among individuals, groups, communities and institutions in society.

Justice Partners are equally committed to supporting and facilitating access to Customary Law Processes for Indigenous young persons and adults in Nova Scotia. It is intended that restorative justice should complement and support the commitment to honour customary law and Indigenous justice.

The NSRJP protocols are consistent with the legal authority for the NSRJP and set out the philosophical and operational framework by which discretion is exercised to refer to NSRJP, including eligibility for referral, referral options (including reasons guiding use and referral to restorative justice), procedures for referral to Regional RJ Teams, and the operations of the Regional RJ Teams.

These protocols apply to all ongoing and future referrals to the NSRJP until such time as the protocols are amended or replaced.

1.2 Authorization

The NSRJP is supported and approved by the Attorney General for Nova Scotia as an integrated program for adults and young persons in conflict with the law. The program may be used by Justice Partners and the Judiciary at their respective stages of the criminal justice process as contemplated in these protocols and pursuant to their authority and discretion available at law and as consistent with their roles and responsibilities. In addition, for purposes of the police and crown protocols, the NSRJP is authorized as a program of alternative measures for adults under section 717 of the Criminal Code, RSC 1985, c C-46, and as a program of extrajudicial sanctions for young persons under section 10 of the Youth Criminal Justice Act, SC 2002, c 1 and Section 10 of the Youth Justice Act, SNS 2001, c 38 (**Program Authorization**).

In the case of young persons, subsection 10(2) of the YCJA provides that 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.

Additionally, subsection 10(2) of Nova Scotia's YJA provides that an extrajudicial sanction may be used only if:

- (a) it is part of a program of sanctions that is authorized by the Minister or authorized by a person, or a member of a class of persons, designated by the 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 the young person's 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 the young person is alleged to have committed;
- (f) there is, in the opinion of the Minister, 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.

In the case of adults, subsection 717(1) of the Criminal Code provides that 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.

In support of the legal authorization for the NSRJP, Justice Partners have undertaken to use and advance use of a restorative approach in the criminal justice system and in the community. All partners have signed a **Memorandum of Understanding** representing their commitments to collaborate in support of restorative justice in Nova Scotia and in coordinated implementation of the NSRJP.

1.3 Principles, Goals and Objectives

Justice Partners are committed to a restorative approach to justice grounded in the following principles, which guide the development, governance and implementation of the NSRJP and the work of the Justice Partners in support of the NSRJP:

- **Relationally focused:** attention to interconnection, seeking to understand and promote just relations between individuals, groups and communities
- **Comprehensive and holistic:** takes into account histories, contexts and causes of harm and its impacts
- **Inclusive and participatory:** culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants
- **Responsive:** Contextual, flexible practice, accessible, efficient and effective processes, informed by data and knowledge
- **Focused on promoting individual and collective accountability & responsibility**
- **Collaborative and non-adversarial:** among parties to the process and system and community partners

- **Forward-focused:** educative (not punitive), problem-solving, preventative and proactive

Justice Partners have adopted the following goals and objectives for the NSRJP:

- **Respond to needs of individuals and communities affected by crime:** with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- **Harm reduction:** reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system
- **Support individual and collective taking of responsibility for harm and public safety**
- **Increase access to justice:** more effective, timely, inclusive, equitable justice system
- **Provide responsive justice:** human-centered justice processes that consider root causes and seek meaningful outcomes and responses
- **Increase public confidence and accountability in the administration of justice**
- **Build and support healthy, safe and strong communities**

1.4 Eligibility

1.4.1 Indigenous Persons

If a person in conflict with the law identifies as an Indigenous person, consideration must first be given to referral to the Mi'kmaw Legal Support Network (MLSN) to assess whether the matter is appropriate for resolution under Customary Law according to policy and procedure. If not, then the matter may be considered for referral to the NSRJP in accordance with these program protocols.

1.4.2 Eligibility

All matters are eligible for referral by police, crown, courts, corrections and victim serving agencies. Police, crown and corrections shall consider all matters for referral, except where:

- **A provincial hold or moratorium is in place;** or
- Referral is otherwise barred by law.

In considering referrals, referral agents shall ensure the following criteria for eligibility are met:

- a) the person referred fully and freely consents to participate
- b) the person has, before consenting to participate, been advised of the right to be represented by counsel and given a reasonable opportunity to consult with counsel
- c) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed

- d) 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
- e) the prosecution of the offence is not in any way barred at law

In furtherance of the overall principles, goals and objectives outlined in section 1.3, referral agents shall also consider the following factors as weighing in favour of referral:

- Opportunity for more culturally appropriate, meaningful and effective justice process
- Reduction of harm for direct parties (trauma informed)
- Potential for victim participation
- Enhanced opportunity for access to justice for affected communities – increased confidence in the administration of justice
- Opportunity to understand and consider root causes or systemic issues connected to the parties or offence
- Reduce over-representation in justice system for individuals from vulnerable and marginalized communities/groups
- Access to better supports and wrap around responses to parties needs

In considering whether a referral to the NSRJP is appropriate, Justice Partners may, at any time:

- Consult the Regional RJ Team for information, or
- Request a case conference be convened with the Regional RJ Team Leads, or a designated representative and other Justice Partners as appropriate, to consider potential for referral

Certain offences are presumed eligible for referral only post-guilty plea/finding. This presumption may be rebutted, and a matter referred earlier in the criminal justice process, where a referral is consistent with the overall principles, goals and objectives of the NSRJP set out in section 1.3. Those offences presumed eligible for referral only post-guilty plea/finding are as follows:

- Cases involving death (murder, manslaughter, criminal negligence causing death, impaired driving causing death)
- Offences involving abuse of a minor child (under 18 years old) or another vulnerable person, by a person in a position of trust
- Child pornography (adult)
- Firearms offences
- Impaired driving (adult)
- Serious crimes against the administration of justice (perjury or intimidation of a justice system participant)

1.5 Referral Procedures

1.5.1 Preparing a Referral

Referrals to NSRJP must be communicated to the Regional RJ Team Leads in a timely manner. The Regional RJ Team Leads are responsible for considering the referral and making the final determination on whether the referral is appropriate in accordance with the protocol.

Referrals to the NSRJP will be forwarded to the appropriate Regional RJ Team Leads with a **Referral Form** from the referral source. Referral agents are to use this form to communicate relevant information, including public interest considerations and relevant information regarding the offender, victim and community involved in a case. Referral forms must include attachment(s) as specified on the referral form.

1.5.2 Case Communications

Provisions for communication between a referral agent and the Regional RJ Team Leads are specified as needed in the individual referral protocols that follow. All referral sources may consult the Leads of the Regional RJ Teams for information to inform a decision to refer and regarding current cases referred to the Regional RJ Team. Except in cases referred by the Court or pursuant to a sentencing order, referral agents shall not **dictate or set conditions or pre-conditions on the restorative justice process**.

2.0 Police Protocol

2.1 Introduction

This protocol outlines police authority and responsibility to consider referrals to the Nova Scotia Restorative Justice Program.

There are separate protocols guiding use of the NSRJP by crowns, courts, corrections, victim serving agencies and the Regional RJ Teams. There are **Definitions** and a **General Protocol** that apply to all protocols.

2.2 Authorization

The NSRJP was approved by the Attorney General for Nova Scotia as an integrated program for adults and young persons in conflict with the law. The program may be used by Justice Partners and the Judiciary at their respective stages of the criminal justice process as contemplated in these protocols and pursuant to their authority and discretion available at law and as consistent with their roles and responsibilities.

In addition, the NSRJP is authorized as a program of alternative measures to be used by police for adults under section 717 of the Criminal Code, RSC 1985, c C-46, and as a program of extrajudicial sanctions for young persons under section 10 of the Youth Criminal Justice Act, SC 2002, c 1 and Section 10 of the Youth Justice Act, SNS 2001, c 38 (**Program Authorization**).

A referral by police to the NSRJP, once accepted by the RJ Regional Team, commences a restorative process that constitutes alternative measures for adults and extrajudicial sanctions for young persons, overseen and facilitated by the applicable restorative justice regional team. The program employs a principle-based approach to process case work, design and facilitation focused on understanding and addressing harms and impacts to support future just relations among individuals, groups, communities and institutions involved. Processes will generally result in an agreed upon restorative plan developed in collaboration with participants. The outcomes are not pre-determined but developed through the process and tailored to the specific circumstances and needs of the parties involved.

For clarity, the NSRJP is not intended to replace a Police Cautioning Program approved by the Attorney General for Nova Scotia pursuant to section 7 of the YCJA and section 7 of the YJA. Police cautions are encouraged and should be considered, as appropriate, before considering a referral to the NSRJP.

Justice Partners have undertaken shared commitments to use, support and advance a restorative approach in the criminal justice system and in the community. All partners have signed a **Memorandum of Understanding** committing to collaborate in support of restorative justice in Nova Scotia and to coordinated implementation of the NSRJP.

2.3 Principles, Goals and Objectives

Justice Partners are committed to a restorative approach to justice grounded in the following principles, which guide the development, governance and implementation of the NSRJP and the work of the Justice Partners in support of the NSRJP:

- **Relationally focused:** attention to interconnection, seeking to understand and promote just relations between individuals, groups and communities
- **Comprehensive and holistic:** takes into account histories, contexts and causes of harm and its impacts
- **Inclusive and participatory:** culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants
- **Responsive:** Contextual, flexible practice, accessible, efficient and effective processes, informed by data and knowledge
- **Focused on promoting individual and collective accountability & responsibility**
- **Collaborative and non-adversarial:** among parties to the process and system and community partners
- **Forward-focused:** educative (not punitive), problem-solving, preventative and proactive

Justice Partners have adopted the following goals and objectives for the NSRJP:

- **Respond to needs of individuals and communities affected by crime:** with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- **Harm reduction:** reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system
- **Support individual and collective taking of responsibility for harm and public safety**
- **Increase access to justice:** more effective, timely, inclusive, equitable justice system
- **Provide responsive justice:** human-centered justice processes that consider root causes and seek meaningful outcomes and responses
- **Increase public confidence and accountability in the administration of justice**
- **Build and support healthy, safe and strong communities**

2.4 Eligibility

2.4.1 Indigenous Persons

If a person in conflict with the law identifies as an Indigenous person, consideration must first be given to referral to the Mi'kmaw Legal Support Network (MLSN) to assess whether the matter is appropriate for resolution under Customary Law according to policy and procedure. If not, then the matter may be considered for referral to the NSRJP in accordance with these program protocols.

2.4.2 Eligibility

All matters are eligible for referral by police, crown, courts, corrections and victim serving agencies. Police, crown and corrections shall consider all matters for referral, except where:

- **A provincial hold or moratorium is in place;** or
- Referral is otherwise barred by law.

In considering referrals, referral agents shall ensure the following criteria for eligibility are met:

- a) the person referred fully and freely consents to participate;
- b) the person has, before consenting to participate, been advised of the right to be represented by counsel;
- c) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;
- d) 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
- e) the prosecution of the offence is not in any way barred at law.

In furtherance of the overall principles, goals and objectives outlined in section 2.3, referral agents shall also consider the following factors as weighing in favour of referral:

- Opportunity for more culturally appropriate, meaningful and effective justice process
- Reduction of harm for direct parties (trauma informed)
- Potential for victim participation
- Enhanced opportunity for access to justice for affected communities – increased confidence in the administration of justice
- Opportunity to understand and consider root causes or systemic issues connected to the parties or offence
- Reduce over-representation in justice system for individuals from vulnerable and marginalized communities/groups
- Access to better supports and wrap around responses to parties needs

In considering whether a referral to the NSRJP is appropriate, Justice Partners may, at any time:

- Consult the Regional RJ Team for information, or
- Request a case conference be convened with the Regional RJ Team Leads, or a designated representative and other Justice Partners as appropriate, to consider potential for referral.

Certain offences are presumed eligible for referral only post-guilty plea/finding. This presumption may be rebutted, and a matter referred earlier in the criminal justice process, where a referral is consistent with the overall principles, goals and objectives of the NSRJP set out in section 2.3. Those offences presumed eligible for referral only post-guilty plea/finding are as follows:

- Cases involving death (murder, manslaughter, criminal negligence causing death, impaired driving causing death)
- Offences involving abuse of a minor child (under 18 years old) or another vulnerable person, by a person in a position of trust
- Child pornography (adult)
- Firearms offences
- Impaired driving (adult)
- Serious crimes against the administration of justice (perjury or intimidation of a justice system participant)

2.5 Referral Procedures

2.5.1 Preparing a Referral

Referrals to NSRJP must be communicated to the Regional RJ Team Leads in a timely manner. The Regional RJ Team Leads are responsible for considering the referral and making the final determination on whether the referral is appropriate in accordance with the protocol.

Referrals to the NSRJP will be forwarded to the appropriate Regional RJ Team Leads with a **Referral Form** from the referral source. Referral agents are to use this form to communicate relevant information, including public interest considerations and relevant information regarding the offender, victim and community involved in a case. Referral forms must include attachment(s) as specified on the referral form.

2.5.2 Case Communications

Police may consult the Lead Team of the Regional RJ Teams for information to inform a decision to refer and regarding current cases referred to the Regional RJ Team. Communications with the Regional RJ Team are intended to assist with decision-making regarding referrals and shall **not dictate or set conditions or pre-conditions on the restorative justice process**.

3.0 Crown Protocol

3.1 Introduction

This protocol outlines Crown authority and responsibility to consider referral to the Nova Scotia Restorative Justice Program.

There are separate protocols guiding use of the NSRJP by police, courts, corrections, victim serving agencies and the Regional RJ Teams. There are **Definitions** and **General Protocol** that apply to all protocols.

3.2 Authorization

The NSRJP was approved by the Attorney General for Nova Scotia as an integrated program for adults and young persons in conflict with the law. The program may be used by Justice Partners and the Judiciary at their respective stages of the criminal justice process as contemplated in these protocols and pursuant to their authority and discretion available at law and as consistent with their roles and responsibilities.

In addition, the NSRJP is authorized as a program of alternative measures for use by the Crown for adults under section 717 of the Criminal Code, RSC 1985, c C-46, and as a program of extrajudicial sanctions for young persons under section 10 of the Youth Criminal Justice Act, SC 2002, c 1 and Section 10 of the Youth Justice Act, SNS 2001, c 38 (**Program Authorization**).

A referral by Crown to the NSRJP, once accepted by the RJ Regional Team, commences a restorative process that constitutes alternative measures for adults and extrajudicial sanctions for young persons, overseen and facilitated by the applicable restorative justice regional team. The program employs a principle-based approach to process case work, design and facilitation focused on understanding and addressing harms and impacts to support future just relations among individuals, groups, communities and institutions involved. Processes will generally result in an agreed upon restorative plan developed in collaboration with participants. The outcomes are not pre-determined but developed through the process and tailored to the specific circumstances and needs of the parties involved.

Justice Partners have undertaken shared commitments to use, support and advance a restorative approach in the criminal justice system and in the community. All partners have signed a **Memorandum of Understanding** committing to collaborate in support of restorative justice in Nova Scotia and to coordinated implementation of the NSRJP.

3.3 Principles, Goals and Objectives

Justice Partners are committed to a restorative approach to justice grounded in the following principles, which guide the development, governance and implementation of the NSRJP and the work of the Justice Partners in support of the NSRJP:

- **Relationally focused:** attention to interconnection, seeking to understand and promote just relations between individuals, groups and communities
- **Comprehensive and holistic:** takes into account histories, contexts and causes of harm and its impacts
- **Inclusive and participatory:** culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants
- **Responsive:** Contextual, flexible practice, accessible, efficient and effective processes, informed by data and knowledge
- **Focused on promoting individual and collective accountability & responsibility**
- **Collaborative and non-adversarial:** among parties to the process and system and community partners
- **Forward-focused:** educative (not punitive), problem-solving, preventative and proactive

Justice Partners have adopted the following goals and objectives for the NSRJP:

- **Respond to needs of individuals and communities affected by crime:** with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- **Harm reduction:** reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system
- **Support individual and collective taking of responsibility for harm and public safety**
- **Increase access to justice:** more effective, timely, inclusive, equitable justice system
- **Provide responsive justice:** human-centered justice processes that consider root causes and seek meaningful outcomes and responses
- **Increase public confidence and accountability in the administration of justice**
- **Build and support healthy, safe and strong communities**

3.4. Eligibility

3.4.1 Indigenous Persons

If a person in conflict with the law identifies as an Indigenous person, consideration must first be given to referral to the Mi'kmaw Legal Support Network (MLSN) to assess whether the matter is appropriate for resolution under Customary Law according to policy and procedure. If not, then the matter may be considered for referral to the NSRJP in accordance with these program protocols.

3.4.2 Eligibility

All matters are eligible for referral by police, crown, courts, corrections and victim serving agencies. Police, crown and corrections shall consider all matters for referral, except where:

- **A provincial hold or moratorium is in place;** or
- Referral is otherwise barred by law.

In considering referrals, referral agents shall ensure the following criteria for eligibility are met:

- a) the person referred fully and freely consents to participate
- b) the person has, before consenting to participate, been advised of the right to be represented by counsel
- c) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed
- d) 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
- e) the prosecution of the offence is not in any way barred at law

In furtherance of the overall principles, goals and objectives outlined in section 3.3, referral agents shall also consider the following factors as weighing in favour of referral:

- Opportunity for more culturally appropriate, meaningful and effective justice process
- Reduction of harm for direct parties (trauma informed)
- Potential for victim participation
- Enhanced opportunity for access to justice for affected communities – increased confidence in the administration of justice
- Opportunity to understand and consider root causes or systemic issues connected to the parties or offence
- Reduce over-representation in justice system for individuals from vulnerable and marginalized communities/groups
- Access to better supports and wrap around responses to parties needs

In considering whether a referral to the NSRJP is appropriate, Justice Partners may, at any time:

- Consult the Regional RJ Team for information, or
- Request a case conference be convened with the Regional RJ Team Leads, or a designated representative and other Justice Partners as appropriate, to consider potential for referral.

Certain offences are presumed eligible for referral only post-guilty plea/finding. This presumption may be rebutted, and a matter referred earlier in the criminal justice process, where a referral is consistent with the overall principles, goals and objectives of the NSRJP set out in section 3.3. Those offences presumed eligible for referral only post-guilty plea/finding are as follows:

- Cases involving death (murder, manslaughter, criminal negligence causing death, impaired driving causing death)
- Offences involving abuse of a minor child (under 18 years old) or another vulnerable person, by a person in a position of trust
- Child pornography (adult)
- Firearms offences
- Impaired driving (adult)
- Serious crimes against the administration of justice (perjury or intimidation of a justice system participant)

3.5 Referral Procedures

3.5.1 Preparing a Referral

Referrals to NSRJP must be communicated to the Regional RJ Team Leads in a timely manner. The Regional RJ Team Leads are responsible for considering the referral and making the final determination on whether the referral is appropriate in accordance with the protocol.

Referrals to the NSRJP will be forwarded to the appropriate Regional RJ Team Leads with a **Referral Form** from the referral source. Referral agents are to use this form to communicate relevant information, including public interest considerations and relevant information regarding the offender, victim and community involved in a case. Referral forms must include attachment(s) as specified on the referral form.

3.5.2 Case Communications

Crown may consult the Lead Team of the Regional RJ Teams for information to inform a decision to refer and regarding current cases referred to the Regional RJ Team. Communications with the Regional RJ Team are intended to assist with decision-making regarding referrals and shall **not dictate or set conditions or pre-conditions on the restorative justice process**.

4.0 Court Protocol

4.1 Introduction

Restorative Justice is a discretionary tool available to the Judiciary post-guilty plea/finding of guilt. It can be used to hold persons accountable, to address or repair harms caused and to restore relationships. The Judiciary may, in their authority and discretion, make referrals to the NSRJP to incorporate restorative justice processes into proceedings and assist in sentencing options. This protocol outlines how the Judiciary may, within their discretion, choose to use the NSRJP.

There are separate protocols guiding use of the NSRJP by police, crowns, corrections, victim serving agencies and the Regional RJ Team. There are **Definitions** and a **General Protocol** that apply to all protocols.

4.2 Authorization

The NSRJP was established by the Attorney General for Nova Scotia as an integrated program for adults and young persons in conflict with the law. The program may be used by Justice Partners and the Judiciary at their respective stages of the criminal justice process as contemplated in these protocols and pursuant to authority and discretion available at law and as consistent with their roles and responsibilities.

Court referrals to the NSRJP are not part of a program of alternative measures for adults authorized by the Attorney General under Section 717 of the Criminal Code, RSC 1985, c C-46, or a program of extrajudicial sanctions for young persons approved by the Attorney General under Section 10 of the Youth Criminal Justice Act, SC 2002, c 1 and Section 10 of the Youth Justice Act, SNS 2001, c 38. A judge's discretion to incorporate restorative justice arises from their authority over court proceedings and sentencing including, for adults, under subsections 723(2) and (3), Section 726.1 and clause 718(e) of the Criminal Code and, for youth, under Section 19 of the YJCA and Section 16 of the YJA. The Judiciary may refer to or incorporate restorative justice processes as part of proceedings to inform sentencing and/or to acquire necessary information to discharge their sentencing responsibilities. The Judiciary may refer to restorative justice following a guilty plea/finding. These referrals do not result in the dismissal of a charge upon successful completion of a restorative process. As contemplated in this protocol a judge may refer to the NSRJP to inform sentencing decisions. Options for sentencing following a restorative justice process remain with the Judiciary to be determined within their authority and discretion. Referral to the NSRJP may also be incorporated into a sentence where appropriate.

4.3 Principles, Goals and Objectives

Justice Partners are committed to a restorative approach to justice grounded in the following principles, which guide the development, governance and implementation of the NSRJP and the work of the Justice Partners in support of the NSRJP:

- **Relationally focused:** attention to interconnection, seeking to understand and promote just relations between individuals, groups and communities
- **Comprehensive and holistic:** takes into account histories, contexts and causes of harm and its impacts
- **Inclusive and participatory:** culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants
- **Responsive:** Contextual, flexible practice, accessible, efficient and effective processes, informed by data and knowledge
- **Focused on promoting individual and collective accountability & responsibility**
- **Collaborative and non-adversarial:** among parties to the process and system and community partners
- **Forward-focused:** educative (not punitive), problem-solving, preventative and proactive

Justice Partners have adopted the following goals and objectives for the NSRJP:

- **Respond to needs of individuals and communities affected by crime:** with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- **Harm reduction:** reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system
- **Support individual and collective taking of responsibility for harm and public safety**
- **Increase access to justice:** more effective, timely, inclusive, equitable justice system
- **Provide responsive justice:** human-centered justice processes that consider root causes and seek meaningful outcomes and responses
- **Increase public confidence and accountability in the administration of justice**
- **Build and support healthy, safe and strong communities**

4.4. Eligibility

4.4.1 Indigenous Persons

If a person in conflict with the law identifies as an Indigenous person, consideration must first be given to referral to the Mi'kmaw Legal Support Network (MLSN) to assess whether the matter is appropriate for resolution under Customary Law according to policy and procedure. If not, then the matter may be considered for referral to the NSRJP in accordance with these program protocols.

4.4.2 Eligibility

All matters are eligible for referral by the police, crown, courts, corrections and victim serving agencies. Police, crown and corrections shall consider all matters for referral except where:

- **A provincial hold or moratorium is in place;** or
- Referral is otherwise barred by law.

In furtherance of the overall principles, goals and objectives outlined in section 4.3, referral agents shall also consider the following factors as weighing in favour of referral:

- Opportunity for more culturally appropriate, meaningful and effective justice process
- Reduction of harm for direct parties (trauma informed)
- Potential for victim participation
- Enhanced opportunity for access to justice for affected communities – increased confidence in the administration of justice
- Opportunity to understand and consider root causes or systemic issues connected to the parties or offence
- Reduce over-representation in justice system for individuals from vulnerable and marginalized communities/groups
- Access to better supports and wrap around responses to parties needs

In considering whether a referral to the NSRJP is appropriate, the Judiciary may, at any time:

- Consult the Regional RJ Team for information, or
- Request a case conference be convened with the Regional RJ Team Leads, or a designated representative and Justice Partners as appropriate, to consider potential for referral.

A judge may refer any matter to the NSRJP post-guilty plea/finding of guilt.

Certain offences are presumed eligible for referral only post-guilty plea/finding. This presumption may be rebutted, and a matter referred earlier in the criminal justice process, where a referral is consistent with the overall principles, goals and objectives of the NSRJP set out in section 3.3. However, due to this presumption, a matter may not have been referred at an earlier stage.

Those offences presumed eligible for referral only post-guilty plea/finding are as follows:

- Cases involving death (murder, manslaughter, criminal negligence causing death, impaired driving causing death)
- Offences involving abuse of a minor child (under 18 years old) or another vulnerable person, by a person in a position of trust
- Child pornography (adult)
- Firearms offences
- Impaired driving (adult)
- Serious crimes against the administration of justice (perjury or intimidation of a justice system participant)

4.4.3 Options for Referral

The Judiciary may, in their discretion, use the principles of restorative justice throughout proceedings. Offences covered by a provisional hold or moratorium cannot be accepted by the Regional RJ Teams for service by RJ Agencies. Options for using restorative justice include but are not limited to:

- Hearing from victims or community members during a court process
 - Judges may wish to incorporate an NSRJP process into court proceedings by requesting that victims, supports or other community members attend to provide more information on the circumstances of the offence, the impacts and harms caused, the needs generated, and the relationships impacted
- Restorative pre-sentence reports
 - Judges may ask for a restorative pre-sentence report that includes details of cultural and contextual circumstances surrounding the offence, the offender, the victim and/or the community
- Restorative sentencing recommendations
 - Judges may ask for sentencing recommendations that contemplate NSRJP processes
- Case conferencing
 - Judges may call a case conference (with or without the judge in attendance) to bring the accused, the victim, community members and all of their supports into a room to discuss the matter and generate broad information for the judge to consider
- Restorative approach to administrative breaches
 - The NSRJP may be an option for offenders who are brought back to court on an administrative breach

- Before a sentencing order
 - Judges may have an individual participate in an interim NSRJP process while awaiting sentencing, to ensure ongoing accountability to the community
- As part of a sentencing order
 - Judges may include referral to the NSRJP in a sentencing order to help address the harm caused by the offence
- Creating a plan following short custodial sentence
 - Judges may refer an offender to NSRJP to assist the offender in crafting a reintegration plan
- As part of a community-based sentence
 - Judges may require that an offender complete a NSRJP process as part of a community-based sentence, and ask that the NSRJP provide oversight of the components of a community-based sentence

4.5 Referral Procedures

4.5.1 Preparing a Referral

Referrals to NSRJP must be communicated to the applicable Regional RJ Team Lead Team in a timely manner. The Regional RJ Team Lead Team is responsible for considering the referral and making the final determination on whether the referral is appropriate in accordance with the protocol.

Referrals to the NSRJP will be forwarded to the appropriate Regional RJ Team with a **Referral Form** from the referral source. The Referral Form will communicate relevant information, including public interest considerations and relevant information regarding the offender, victim and community involved in a case.

4.5.2 Case Communications

As detailed in the Restorative Justice Program **Court Referral Communication Flow Chart** communications with respect to court referrals shall flow between the Lead Team and the court clerk unless otherwise required by the Court.

5.0 Correctional Services Protocol

5.1 Introduction

This protocol outlines Corrections' authority and responsibility to consider referral to the Nova Scotia Restorative Justice Program.

There are separate protocols guiding use of the NSRJP by police, crowns, courts, victim servicing agencies and the Regional RJ Team. There are **Definitions** and a **General protocol**" that apply to all protocols.

5.2 Authorization

The NSRJP was approved by the Attorney General for Nova Scotia as an integrated program for adults and young persons in conflict with the law. The program may be used by Justice Partners and the Judiciary at their respective stages of the criminal justice process as contemplated in these protocols and pursuant to their authority and discretion available at law and as consistent with their roles and responsibilities.

Post-guilty plea/finding referrals to the NSRJP are not part of the program of alternative measures for adults authorized by the Attorney General under Section 717 of the Criminal Code, RSC 1985, c C-46, or the program of extrajudicial sanctions for young persons approved by the Attorney General under Section 10 of the Youth Criminal Justice Act, SC 2002, c 1 and Section 10 of the Youth Justice Act, SNS 2001, c 38.

Justice Partners have undertaken shared commitments to use, support and advance use of restorative justice in the criminal justice system and in the community. All partners have signed a **Memorandum of Understanding** committing to collaborate in support of restorative justice in Nova Scotia and to coordinated implementation of the NSRJP.

5.3 Principles, Goals and Objectives

Justice Partners are committed to a restorative approach to justice grounded in the following principles, which guide the development, governance and implementation of the NSRJP and the work of the Justice Partners in support of the NSRJP:

- **Relationally focused:** attention to interconnection, seeking to understand and promote just relations between individuals, groups and communities
- **Comprehensive and holistic:** takes into account histories, contexts and causes of harm and its impacts
- **Inclusive and participatory:** culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants
- **Responsive:** Contextual, flexible practice, accessible, efficient and effective processes, informed by data and knowledge
- **Focused on promoting individual and collective accountability & responsibility**

- **Collaborative and non-adversarial:** among parties to the process and system and community partners
- **Forward-focused:** educative (not punitive), problem-solving, preventative and proactive

Justice Partners have adopted the following goals and objectives for the NSRJP:

- **Respond to needs of individuals and communities affected by crime:** with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- **Harm reduction:** reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system
- **Support individual and collective taking of responsibility for harm and public safety**
- **Increase access to justice:** more effective, timely, inclusive, equitable justice system
- **Provide responsive justice:** human-centered justice processes that consider root causes and seek meaningful outcomes and responses
- **Increase public confidence and accountability in the administration of justice**
- **Build and support healthy, safe and strong communities**

5.4. Eligibility

5.4.1 Indigenous Persons

If a person in conflict with the law identifies as an Indigenous person, consideration must first be given to referral to the Mi'kmaq Legal Support Network (MLSN) to assess whether the matter is appropriate for resolution under Customary Law according to policy and procedure. If not, then the matter may be considered for referral to the NSRJP in accordance with these program protocols.

5.4.2 Eligibility

All matters are eligible for referral by police, crown, courts, corrections and victim serving agencies. Police, crown and corrections shall consider all matters for referral victim serving agencies. Corrections shall consider all matters for referral, except where:

- **A provincial hold or moratorium is in place;** or
- Referral is otherwise barred by law.

In furtherance of the overall principles, goals and objectives outlined in section 5.3, referral agents shall also consider the following factors as weighing in favour of referral:

- Opportunity for more culturally appropriate, meaningful and effective justice process

- Reduction of harm for direct parties (trauma informed)
- Potential for victim participation
- Enhanced opportunity for access to justice for affected communities – increased confidence in the administration of justice
- Opportunity to understand and consider root causes or systemic issues connected to the parties or offence
- Reduce over-representation in justice system for individuals from vulnerable and marginalized communities/groups
- Access to better supports and wrap around responses to parties needs

In considering whether a referral to the NSRJP is appropriate, Justice Partners may, at any time:

- Consult the Regional RJ Team for information, or
- Request a case conference be convened with the Regional RJ Team Leads, or a designated representative and other Justice Partners as appropriate, to consider potential for referral.

Certain offences are presumed eligible for referral only post-guilty plea/finding. This presumption may be rebutted, and a matter referred earlier in the criminal justice process conviction, where a referral is consistent with the overall principles, goals and objectives of the NSRJP set out in section 5.3. Those offences presumed eligible for referral only post-guilty plea/finding are as follows:

- Cases involving death (murder, manslaughter, criminal negligence causing death, impaired driving causing death);
- Offences involving abuse of a minor child (under 18 years old) or another vulnerable person, by a person in a position of trust;
- Child pornography (adult);
- Firearms offences;
- Impaired driving (adult);
- Serious crimes against the administration of justice (perjury or intimidation of a justice system participant);

5.4.3 Options for Referral

Corrections shall consider referral to the NSRJP for all situations where it might be appropriate at the post-sentencing stage. Corrections may also use the NSRJP to support a restorative approach in fulfilling their roles and responsibilities as ordered by the Court or otherwise required in legislation or policy. Options for using restorative justice include but are not limited to:

- Restorative approach to preparing a pre-sentence report for the Court (may support but not replace Gladue reports)
- In response to administrative breaches
- Pre-breach to offer guidance and motivation to the person in conflict with the law

- Within correctional facilities to support rehabilitation or reparation (including processes involving offenders, victims and community members)
- In response to institutional offences, conflicts or behaviour issues
- To support, review or enhance a support plan related to probation order
- To explore conditions of supervision, and whether an application could be made to the court to change the conditions
- To support reintegration as part of a community supervision order
- To support reintegration post custodial sentence, with a view to restoring relationships where harm has been done, as part of a community corrections sentence, or part of the correctional release plan
- To enable an offender to be placed on conditions requiring attendance with program/counselling to update the victim or community on progress and accountability

5.5 Referral Procedures

5.5.1 Preparing a Referral

Referrals to NSRJJP must be communicated to the Regional RJ Team Leads in a timely manner. The Regional RJ Team Leads are responsible for considering the referral and making the final determination on whether the referral is appropriate in accordance with the protocol.

Referrals to the NSRJJP will be forwarded to the appropriate Regional RJ Team Leads with a **Referral Form** from the referral source. Referral agents are to use this form to communicate relevant information, including public interest considerations and relevant information regarding the offender, victim and community involved in a case. Referral forms must include attachment(s) as specified on the referral form.

5.5.2 Case Communications

Prior to a referral the referring agent may consult the Lead Team of the Regional RJ Teams for information to inform a decision to refer and regarding current cases referred to the Regional RJ Team. Communications with the Regional RJ Team are intended to assist with decision-making regarding referrals and are **not to dictate or set conditions or pre-conditions on the restorative justice process beyond those required by law consistent with a sentencing order.**

6.0 Victim Serving Agencies Protocol

6.1 Introduction

This protocol outlines the potential for victim serving agencies to refer or collaborate with the Nova Scotia Restorative Justice Program in cases where a restorative justice process could assist or support a victim.

There are separate protocols guiding use of the NSRJP by police, crowns, courts, corrections and the Regional RJ Team. There are **Definitions** and a **General Protocol** that apply to all protocols.

6.2 Authorization

Referral can be considered in cases where no individual has been charged in relation to the offence or where an accused is not willing or able to participate in restorative justice. In such cases the restorative justice processes would be oriented to respond to the needs of victims for information, support, reparation or community response. A victim serving agency may consult with the Restorative Justice Regional Team through the Lead Team to determine whether a process is possible or appropriate considering the circumstances and available resources.

Victims may also make request through a victim serving agency or another justice system partner for a restorative justice referral to be considered involving an accused or offender at any stage of the criminal justice process. Such referrals will be contingent upon the willingness of the individual accused or offender involved and a referral by the appropriate justice system partner or the Judiciary.

Justice Partners have undertaken shared commitments to use, support and advance use of restorative justice in the criminal justice system and in the community. All partners have signed a **Memorandum of Understanding** committing to collaborate in support of restorative justice in Nova Scotia and to coordinated implementation of the NSRJP.

6.3 Principles, Goals and Objectives

Justice Partners are committed to a restorative approach to justice grounded in the following principles, which guide the development, governance and implementation of the NSRJP and the work of the Justice Partners in support of the NSRJP:

- **Relationally focused:** attention to interconnection, seeking to understand and promote just relations between individuals, groups and communities
- **Comprehensive and holistic:** takes into account histories, contexts and causes of harm and its impacts
- **Inclusive and participatory:** culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants
- **Responsive:** Contextual, flexible practice, accessible, efficient and effective processes, informed by data and knowledge
- **Focused on promoting individual and collective accountability & responsibility**

- **Collaborative and non-adversarial:** among parties to the process and system and community partners
- **Forward-focused:** educative (not punitive), problem-solving, preventative and proactive

Justice Partners have adopted the following goals and objectives for the NSRJP:

- **Respond to needs of individuals and communities affected by crime:** with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- **Harm reduction:** reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system
- **Support individual and collective taking of responsibility for harm and public safety**
- **Increase access to justice:** more effective, timely, inclusive, equitable justice system
- **Provide responsive justice:** human-centered justice processes that consider root causes and seek meaningful outcomes and responses
- **Increase public confidence and accountability in the administration of justice**
- **Build and support healthy, safe and strong communities**

6.4. Eligibility

6.4.1 Indigenous Persons

If a person identifies as an Indigenous person, consideration must first be given to referral to the Mi'kmaw Legal Support Network (MLSN) to assess whether the matter is appropriate for resolution under Customary Law according to policy and procedure. If not, then the matter may be considered for referral to the NSRJP in accordance with these program protocols.

6.4.2 Eligibility

All matters are eligible for referral by police, crown, courts, corrections and victim serving agencies. Police, crown and corrections shall consider all matters for referral except where:

- **A provincial hold or moratorium is in place;** or
- Referral is otherwise barred by law.

In furtherance of the overall principles, goals and objectives outlined in section 6.3, referral agents shall also consider the following factors as weighing in favour of referral:

- Opportunity for more culturally appropriate, meaningful and effective justice process
- Reduction of harm for direct parties (trauma informed)

- Potential for victim participation
- Enhanced opportunity for access to justice for affected communities – increased confidence in the administration of justice
- Opportunity to understand and consider root causes or systemic issues connected to the parties or offence
- Reduce over-representation in justice system for individuals from vulnerable and marginalized communities/groups
- Access to better supports and wrap around responses to parties needs

In considering whether a referral to the NSRJP is appropriate, Justice Partners may, at any time:

- Consult the Regional RJ Team for information, or
- Request a case conference be convened with the Regional RJ Team Leads, or a designated representative and other Justice Partners as appropriate, to consider potential for referral.

6.4.3 Options for Referral

Options for using restorative justice to assist in meeting victims' needs include, but are not limited to:

- Restorative justice process including the offender
 - To allow the victim to communicate with the offender and community members who have responsibilities for the harm(s) experienced in order to share their needs and receive support and response.
- Circle of support or healing circle for the victim (not including offender)
 - The victim has an opportunity to meet with community members and other supports. Community and support persons can listen to the victim's experience, assist with needs, and identify available support resources. Such a process should address victim reintegration into the community when they experience isolation in relation to the offence.
- Community support group to discuss systemic factors that contributed to the harm
 - Victim may meet with community members to discuss how systemic issues contributed to their harm and harm to the broader community. Attention would be paid to the needs generated by the harm, and the relationships impacted by the harm.

- Restorative Approach to victim voice statement
 - Victim may be assisted in sharing their experience using a restorative process, allowing a victim's voice to be heard and understood by those who matter to the victim. This may form part of the preparation of victim statements to the court or be supported within the context of the court process.

6.5 Referral Procedures

6.5.1 Preparing a Referral

Prior to a referral the referring agent may consult the Lead Team of the Regional RJ Teams for information to inform a decision to refer and regarding current cases referred to the Regional RJ Team. Communications with the Regional RJ Team are intended to assist with decision-making regarding referrals and are **not to dictate or set conditions or pre-conditions on the restorative justice process beyond those required by law consistent with a sentencing order.**

Referring agencies must communicate with Regional RJ Team Leads to ensure the required information is available to the team to accurately assess and undertake the referral.

7.0 Regional Restorative Justice Team Protocol

Location

Regional RJ Teams are organized according to regional catchment areas for Community-Based Restorative Justice Agencies contracted to provide NSRJP processes by the Nova Scotia Department of Justice.

RJ Team Roles & Responsibility

The Regional RJ Team Leads are responsible to oversee the referral process to restorative justice and to ensure the necessary information and support is available to carry out implementation of restorative processes. In doing so, they must ensure referrals are consistent with the eligibility requirements set out in the applicable protocol. The Regional RJ teams process, track, review, assess, plan and determine the approach to cases referred. The teams also oversee and support process implementation at all stages of the restorative process: preparation/case work, case sessions, monitor and follow-up support to implement process plans. Team members will collaborate to ensure case management and implementation of the restorative justice program.

Membership

Regional RJ Teams are collaborative partnerships between community-based Restorative Justice Agencies and Community Corrections. The exact membership will vary by region and according to the resources required as determined and assigned by the Lead Team. Membership will be drawn from:

- Restorative Justice Agency Executive Directors/Directors/Caseworkers
- Assigned Senior Probation Officers/ Probation Officers/ Provincial Program Officers

Operations

Team Leads will be designated from each of Community Corrections and the relevant community-based Restorative Justice Agency ("Lead Team"). The Team Leads will work collaboratively to oversee and administer referrals and ensure case management. Team Leads will meet weekly (additionally if needed) in order to assess and assign files referred and provide oversight and support for the NSRJP.

The RJ Team Leads will communicate with Justice Partners and the Courts to support their understanding and consideration of whether a referral to the NSRJP is appropriate and to provide ongoing progress updates. Team Leads will, as needed or requested:

- Consult with Justice Partners to provide information, or
- Facilitate case conferences with relevant Justice Partners and/or the Court and other Regional RJ Team members as appropriate to consider potential for referral for particular cases.

The Regional RJ Team will be convened by the Lead Team at least once monthly (additionally as needed) to support program implementation and operations. Monthly case management meetings may also include others from Community Corrections and RJ agencies involved in implementing restorative justice processes as necessary.

Regional Restorative Justice Teams shall operate in accordance with these protocols and the program principles, goals and objectives listed below, the current Provincial Principle-Based Guide for Practice, other policy and procedures approved by the Restorative Justice Program Governance and Management Committee, and relevant provisions in agreements with the Province for service.

A referral by a Justice Partner or the Court to the NSRJP, once accepted, will commence a restorative process, overseen and facilitated by the applicable restorative justice regional team. Regional RJ Teams will take a principle-based approach based on the NSRJP program principles to case work, process design and facilitation. Restorative processes will focus on understanding and addressing harms and impacts to support future just relations among individuals, groups, communities and institutions involved. Processes will generally result in an agreed upon restorative plan developed in collaboration with participants. Outcomes are not pre-determined but developed through the process and tailored to the specific circumstances and needs of the parties involved.

Working Principles

The Regional RJ Teams will guide their work and ensure that the implementation of restorative justice in all cases reflects the core principles of restorative justice that Justice Partners have committed will guide the development, governance and implementation of the NSRJP and the work of the Justice Partners in support of the NSRJP:

- **Relationally focused:** attention to interconnection, seeking to understand and promote just relations between individuals, groups and communities
- **Comprehensive and holistic:** takes into account histories, contexts and causes of harm and its impacts
- **Inclusive and participatory:** culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants
- **Responsive:** Contextual, flexible practice, accessible, efficient and effective processes, informed by data and knowledge
- **Focused on promoting individual and collective accountability & responsibility**
- **Collaborative and non-adversarial:** among parties to the process and system and community partners
- **Forward-focused:** educative (not punitive), problem-solving, preventative and proactive

Justice Partners have adopted the following goals and objectives for the NSRJP:

- **Respond to needs of individuals and communities affected by crime:** with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- **Harm reduction:** reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system
- **Support individual and collective taking of responsibility for harm and public safety**
- **Increase access to justice:** more effective, timely, inclusive, equitable justice system
- **Provide responsive justice:** human-centered justice processes that consider root causes and seek meaningful outcomes and responses
- **Increase public confidence and accountability in the administration of justice**
- **Build and support healthy, safe and strong communities**



Domestic Violence Court (Sydney, Cape Breton)

What is the Domestic Violence Court Program?

The Domestic Violence Court Program (DVCP) is a **specialized court** that deals with **criminal charges** that involve, or are related to, **intimate partner violence**.

Do I Have to Participate in the Program if I am Charged with a Criminal Offence that Involves Intimate Partner Violence?

No, the program is entirely **voluntary** and you only commit to participating in the program once you have been assessed and had an opportunity to consult with your lawyer.

Won't My Charges Just be Dropped if My Partner Does Not Want to Proceed?

It depends. Although the Crown will consider the wishes of your partner or former partner, Nova Scotia has a **pro-arrest, pro-prosecution policy** which **means** that the Crown is **required to proceed** with your prosecution so long as he or she believes that it is **in the public interest and** that there is a **reasonable prospect of conviction**.

How Do I Qualify for the DVCP?

The **criteria** to qualify for the Domestic Violence Court (DVC) are:

- The case must **involve** a current or former **intimate partner relationship**.
- You must be prepared to accept responsibility by way of a **guilty plea**.
- You must be charged with an **offence** that is **domestic in nature** (includes various types of assault charges, mischief/property damage, uttering threats/criminal harassment, breaches of court orders that involve a breach of a no contact or remain away condition, etc.).
- The offence(s) need not have been committed in the Cape Breton Regional Municipality (CBRM); however, there must be a substantial **connection** to the **CBRM** (i.e. current residence, etc.).
- You must **agree** to **participate** in the program and **agree on** the **facts** of the case. You also **cannot be incarcerated** and participate in the program.
- The **Crown must consent** to the matter being dealt with in the DVCP.

Are Youth/Young Offender Matters Eligible for the DVCP?

No, not at this time.

How Does the Program Work?

After the police **arrest you**, you will be required to **attend** the Domestic Violence Court to **listen to a presentation**.

The presentation will give more information on the program and what is involved if you participate in the program.

If you are interested, an assessment appointment is scheduled for you with a Probation Officer assigned to the Domestic Violence Court and your matter is adjourned. After your assessment takes place, you will meet with your lawyer so you can make an informed decision about participating in the program. Your lawyer will discuss the following with you:

- The results of your assessment and what level of programming you will be expected to complete in if you participate in the program.
- The disclosure from the Crown to make sure that you are willing to accept responsibility for the offence.
- Tell you the Crown's position on sentence if you successfully complete the DVCP.

It is only after you have all of this information that you are able to make an informed decision on whether or not to participate in the program. If you choose to participate, a guilty plea(s) will be entered to at least some of your charges following which your matter will be adjourned so you can complete your programming.

Sometimes several court appearances will take place to monitor your progress in programming prior to its completion. Once your programming is successfully completed, you will return to the DVC to be sentenced

What if I Don't Want to Plead Guilty?

You have every right to enter a plea of not guilty and have a trial.

If you do not participate in the DVCP and decide to plead not guilty, this decision will not be held against you by the Crown or the Judge. Your trial would occur in either the regular Provincial Court or the Supreme Court of Nova Scotia (depending on a number of things, including the nature of the charge(s), the Crown election and your election), as the DVCP will not conduct trials.

What are the Possible Outcomes in the DVCP?

All of the sentencing outcomes that are generally available in relation to any criminal charge, including an **absolute discharge**, a **conditional discharge**, a **fine**, a **suspended sentence with probation**, a **Conditional Sentence Order** and **jail**, are possible outcomes.

What are the Benefits to Participating in the DVCP?

The DVC is a therapeutic Court with the primary goal of **rehabilitating offenders** and providing them with skills and tools to deal with stressful situations in their current or future relationships without resorting to violence or abusive behaviour.

It is hoped that both you and your family will benefit from participating in the programming that is being made available to you free of charge. Often matters can be **resolved more quickly** in the DVCP than in the regular Court process. Finally, the fact that you have accepted responsibility for your actions and **participated in treatment** is a **significant factor** that both the Crown and the Judge consider and place great reliance upon **in determining** the appropriate **sentence**.

What if I Want to Apply to Change My Release Conditions?

Only applications to vary release conditions for **people** who have already been **accepted** into the **DVCP** will be **heard** in the **DVC**. All other applications to change release conditions will be heard in the regular Provincial Court or the Supreme Court.

Does it Matter How Much Money I Make in Order for Nova Scotia Legal Aid (NSLA) to Represent Me in the DVCP?

No, unlike other matters, NSLA does not look at your financial situation.

If you **qualify** for the **DVCP**, NSLA will provide legal representation regardless of your income.

Disclaimer: This site contains general legal information for residents of Nova Scotia, Canada. It is not intended to be used as legal advice for a specific legal problem.

Restorative Approaches in Schools Project

Fact Sheet

The Restorative Approaches in Schools Project is a crime-prevention initiative being led by the departments of Justice and Education.

Why a Restorative Approach in Schools?

- School is a big part of a young person's life. A restorative approach in school requires students to think about themselves and how they deal with one another, and to work on developing healthy relationships and learning how to manage conflict.
- Adopting a restorative approach in a school can have a positive ripple effect into the home and the community.

What are the benefits to students?

- A child's first year, first month, first week, and even their first day in school will have a significant impact on how they view schooling for the rest of their lives and on how they view themselves relative to their peers. A restorative approach in the early school years and continued throughout a child's education will have a strong influence on the individual.
- Students will have more opportunities to figure out how to be in appropriate relationships and to manage diversity. This has important implications for how students get along and will play a role in reducing bullying behaviours.
- A restorative approach gives students better skills and knowledge for problem solving.
- Students will largely avoid the stigma of being "sent to the office" or being suspended. We should not underestimate the negative side effects of a child's experience at school if that experience involves multiple trips to the principal's office or suspensions from school.

What results will students and families see?

- A restorative approach in schools offers new knowledge, methods and skills for problem solving. Children using these restorative skills latch on to them and thrive, leading to better behaviour and relationships overall.
- Schools that use this approach report that students often solve problems on their own without adult intervention.
- Parents will notice that their children are demonstrating a different way to resolve conflict at home. Parents with children in schools using a restorative approach report more

harmony at home as they and their children practice the same skills that teachers and students are using at the school.

What results will schools see?

- A restorative approach in schools helps students become more attached to their school, which encourages education and discourages absences or “dropping out,” giving students a better chance at being successful in life.
- A restorative approach in schools works alongside and supports all the other things we are doing to keep kids in school.
- A restorative approach in schools gives back time to educators so they can focus on teaching.
- A consistent restorative approach reduces the level of stress around relationships, whether student-to-student or student-to-teacher.
- A common thread that runs through almost every conflict that schools deal with is the perception that only one side is being heard, that one side is being valued over the other. A restorative approach reduces that perception and supports faster and more satisfying conflict resolution.

What are some of the methods that are used?

- A collection of *restorative practices* support a restorative approach in schools. Some examples of restorative practices are:
 - *affective statements and questions (language that describes how something made someone feel – sometimes students are not aware of the impact their behaviour might have on others).*
 - *restorative conversations (conversations that help teachers support an open dialogue starting with questions like “Can you tell me what happened and how you became involved?” instead of “Why did you do that?”).*
 - *restorative meetings (staff meetings and parent/School Advisory Council meetings that are organized to encourage authentic engagement through the use of circle processes).*
 - *restorative conferences (formal responses to serious incidents led by a facilitator that involves all parties including support persons).*
 - *classroom circles (circles are structured but semi-formal opportunities for connection among students. They can include, check-in circles and check-out circles to gauge how students are feeling at the beginning and at the end of the day, circles to establish classroom norms, circles to discuss academic goals, circles to address behaviour problems or even proactive circles. They are an effective tool to build community in a classroom).*

From: Shawn Carter
Sent: Tuesday, August 9, 2022 4:10 PM
To: Stephen Robertson
Cc: Amber Snow
Subject: RJ data

Follow Up Flag: Follow up
Flag Status: Flagged

Stephen,
To get you started, below is the outcome data for the last 5 years on full service files.

2021-22					
	Total Closed	Have Withdrawal Outcome	%	Have RJ Outcome	%
Adult	7,643	1,489	19%	268	4%
Youth	412	168	41%	98	24%

2020-21					
	Total Closed	Have Withdrawal Outcome	%	Have RJ Outcome	%
Adult	7,785	1,722	22%	250	3%
Youth	441	148	34%	98	22%

2019-20					
	Total Closed	Have Withdrawal Outcome	%	Have RJ Outcome	%
Adult	9,282	2,218	24%	353	4%
Youth	660	178	27%	135	20%

2018-19					
	Total Closed	Have Withdrawal Outcome	%	Have RJ Outcome	%
Adult	9,470	2,311	24%	366	4%
Youth	751	200	27%	160	21%

2017-18					
	Total Closed	Have Withdrawal Outcome	%	Have RJ Outcome	%
Adult	9,349	2,343	25%	378	4%
Youth	967	263	27%	166	17%

	2016-17				
	Total Closed	Have Withdrawal Outcome	%	Have RJ Outcome	%
Adult	9,664	2,301	24%	221	2%
Youth	1,106	247	22%	157	14%

Shawn Carter

Director of Research, Analytics and Information Management
Nova Scotia Legal Aid Commission
1701 Hollis Street, Suite 920
Halifax, NS, B3J 3M8
(902) 420-6577

Referrals to the Restorative Justice Program



Last updated on July 7, 2022

The information contained in this dashboard does not include data from MLSN.

What year(s) would you like to view?

Multiple values

Select whether you would like to see adult or youth proportions below:

All

Would you like to view just RJ Agencies or Probation Offices?

All

Would you like to view a specific agency or probation office?

All

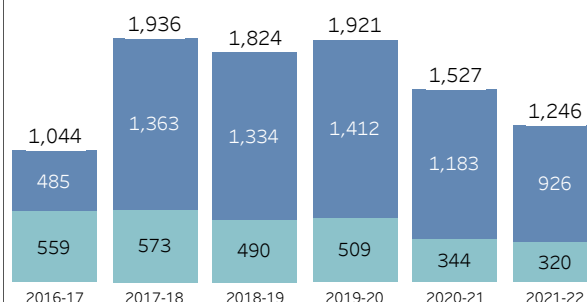
Would you like to view a specific offence group?

All

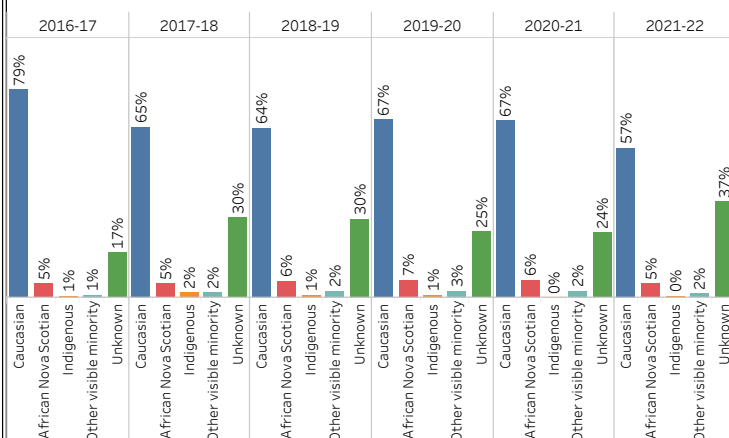
or specific offence?

All

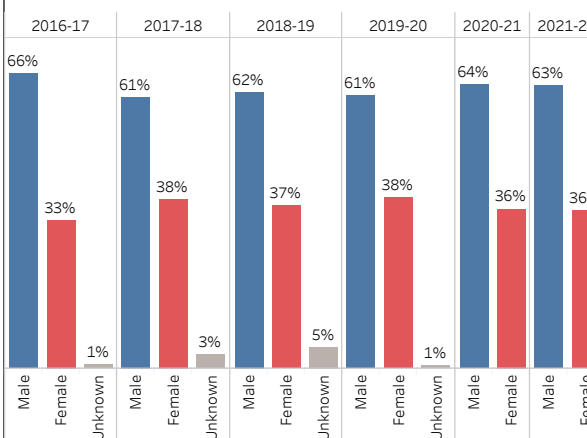
Total Cases Referred, by year



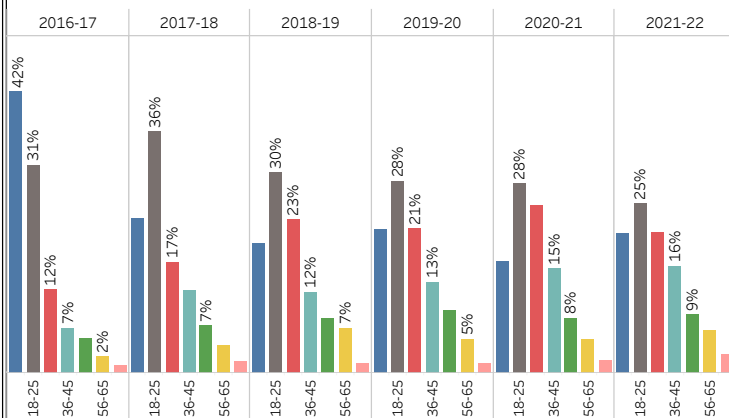
Proportion of cases referred, by ethnicity of offender



Proportion of cases referred, by gender of offender

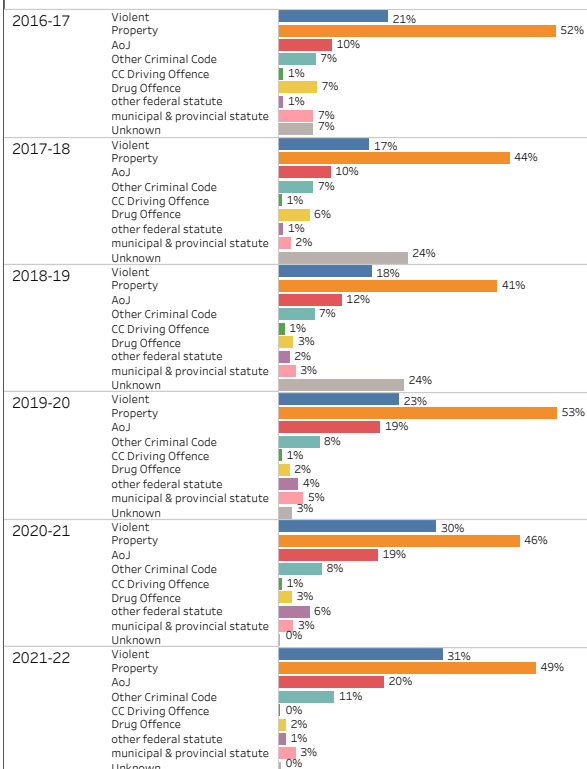


Proportion by Age Group of offender

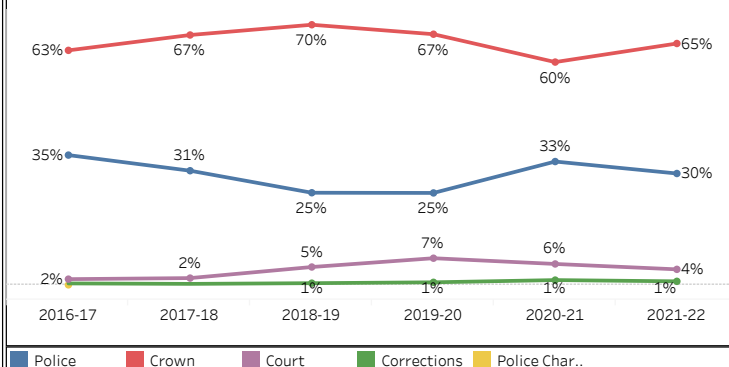


Proportion of cases, by offence

If a case has more than one type of charge, the case is counted once for each type.



Proportion of Cases Referred, by referral source



Would you like to view by offence group or offence type?

Offence Group

[Click here to view Data Tables](#)

[Data Tables](#)

Article

Domestic abuse prevalence and trends, England and Wales: year ending March 2021

Long-term trends and types of domestic abuse experienced by adults, based on findings from police recorded crime.

Contact:
Meghan Elkin
crimestatistics@ons.gov.uk
+44 20 7592 8695

Release date:
24 November 2021

Next release:
To be announced

Table of contents

1. [Other pages in this release](#)
2. [Main points](#)
3. [Understanding domestic abuse](#)
4. [Crime Survey for England and Wales](#)
5. [Police recorded crime](#)
6. [Domestic abuse in England and Wales data](#)
7. [Glossary](#)
8. [Data sources and quality](#)
9. [Related links](#)

1 . Other pages in this release

- [Domestic abuse in England and Wales overview: November 2021](#)
- [Domestic abuse victim characteristics, England and Wales: year ending March 2021](#)
- [Domestic abuse and the criminal justice system, England and Wales: November 2021](#)
- [Domestic abuse victim services, England and Wales: November 2021](#)
- [Redevelopment of domestic abuse statistics: research update November 2021](#)

2 . Main points

- The police recorded a total of 1,459,663 domestic abuse-related incidents and crimes in England and Wales in the year ending March 2021.
- Of these, 845,734 were recorded as domestic abuse-related crimes, an increase of 6% from the previous year, representing 18% of all offences recorded by the police in the year ending March 2021.
- Estimates from our most recent Crime Survey for England and Wales year ending March 2020 show 5.5% of adults aged 16 to 74 years (2.3 million) experienced domestic abuse in the 12 months prior.

Analysis presented in this article should be treated with caution as it is based on police recorded crime data, which do not provide a measure of domestic abuse prevalence. Police recorded crime figures have shown increases in domestic abuse-related incidents and crimes, which may reflect improved recording by the police.

3 . Understanding domestic abuse

Domestic abuse is often a hidden crime that is not reported to the police. Therefore, data held by the police can only provide a partial picture of the actual level of domestic abuse experienced. Many cases will not enter the criminal justice process as they are not reported to the police.

In previous years, estimates including when a victim does not report abuse to the police or to other domestic abuse services, are produced from the Crime Survey for England and Wales (CSEW). However, the face-to-face CSEW was suspended on 17 March 2020 because of the coronavirus (COVID-19) pandemic and replaced with the Telephone-operated Crime Survey for England and Wales (TCSEW). The TCSEW was specifically designed to continue measuring crime during this period. Concerns around confidentiality and respondent safeguarding led to domestic abuse questions being excluded from the survey. As a result, CSEW estimates of domestic abuse for the year ending March 2021 are not available in this release.

Domestic abuse-related crimes continued to be recorded by police throughout the coronavirus pandemic. Police recorded crime data, in isolation, do not provide a measure of prevalence to understand the true extent of domestic abuse. Therefore, figures presented in this release should be interpreted with caution.

In this release, we only analyse data for the year ending March 2021 from the police. Our most recent prevalence estimates from the CSEW can be found in the [Domestic abuse prevalence and trends, year ending March 2020](#) article.

The Home Office collects data on the number of domestic abuse-related incidents and crimes recorded by the police.

4 . Crime Survey for England and Wales

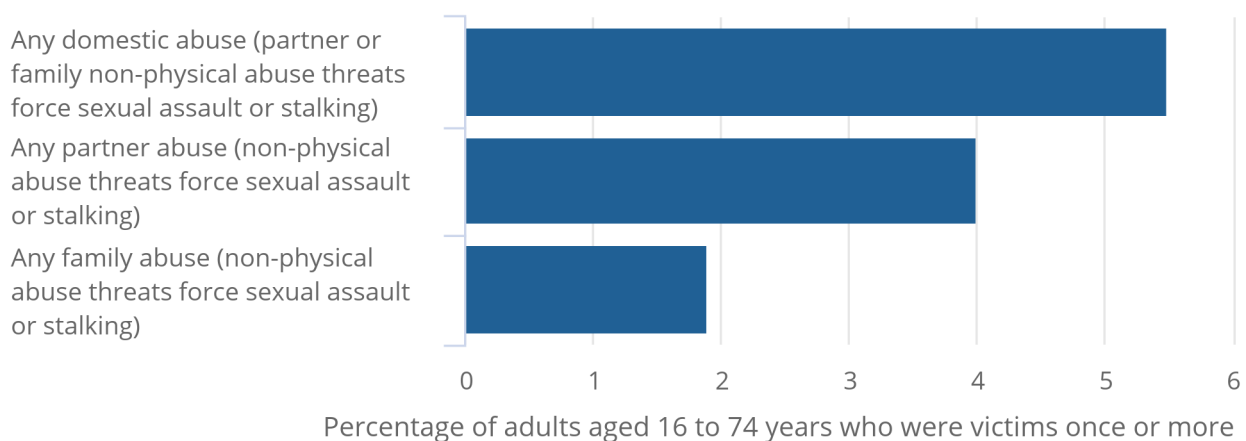
The latest available domestic abuse data from the Crime Survey for England and Wales (CSEW) are for the year ending March 2020. These showed that an estimated 2.3 million adults aged 16 to 74 years experienced domestic abuse in the year ending March 2020: a prevalence rate of approximately 5 in 100 adults (Figure 1).

Figure 1: A higher percentage of adults were victims of partner abuse than family abuse

Prevalence of domestic abuse in the last year for adults aged 16 to 74 years, by perpetrator-relationship, England and Wales, year ending March 2020

Figure 1: A higher percentage of adults were victims of partner abuse than family abuse

Prevalence of domestic abuse in the last year for adults aged 16 to 74 years, by perpetrator-relationship, England and Wales, year ending March 2020



Source: Office for National Statistics - Crime Survey for England and Wales

Notes:

1. Partner abuse refers to abuse carried out by a partner or ex-partner.
2. Some victims may have experienced both partner and family abuse in the last year.

5 . Police recorded crime

The police recorded a total of 1,459,663 domestic abuse-related incidents and crimes¹ in England and Wales in the year ending March 2021. This was an increase of 79,407 from the previous year².

Of the total number of domestic abuse-related incidents and crimes, 613,929 (42%) were incidents not subsequently recorded as a crime³. The remaining 845,734 (58%) were recorded as domestic abuse-related crimes. This was a 6% increase from the previous year and represents 18% of all offences recorded by the police.

Some of this increase may be, in part, driven by general police improvements in offence-recording practices, as well as an increase in domestic abuse-related incidents coming to the attention of the police. The increase could also indicate an increased willingness and confidence of victims to come forward to report domestic abuse.

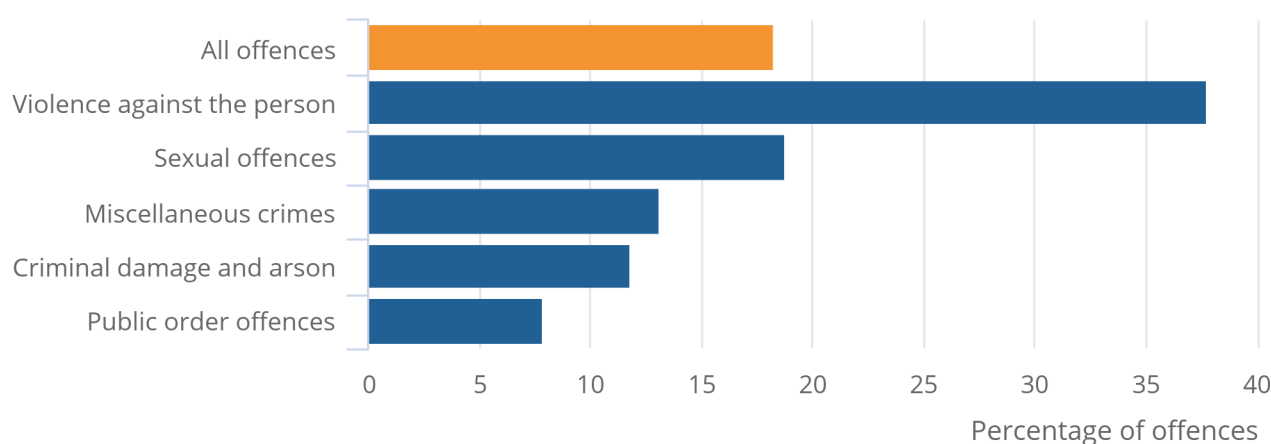
All offence types apart from “other offence types” saw an increase compared with the numbers published in the [year ending March 2020](#). Violence against the person had the highest proportion of offences identified as domestic abuse-related at 38% (Figure 2). This was a 7% increase in the number of domestic abuse-related offences compared with the previous year.

Figure 2: Over a third of violence against the person offences were identified as domestic abuse-related

Proportion of offences recorded by the police that were identified as domestic abuse-related, by selected offence groups, England and Wales, year ending March 2021

Figure 2: Over a third of violence against the person offences were identified as domestic abuse-related

Proportion of offences recorded by the police that were identified as domestic abuse-related, by selected offence groups, England and Wales, year ending March 2021



Source: Home Office - Police recorded crime

Notes:

1. Police recorded crime data are not designated as National Statistics.
2. Domestic abuse-related offences are defined as any incidence of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults, aged 16 years and over, who are or have been intimate partners or family members, regardless of gender or sexuality.

The police recorded 215,173 domestic abuse-related stalking and harassment offences in the year ending March 2021, accounting for a quarter of all domestic abuse-related crimes. Of these, similar proportions of offences were identified as being domestic abuse-related within the stalking subgroup category (39%) and the malicious communication's subgroup category (37%; Figure 3).

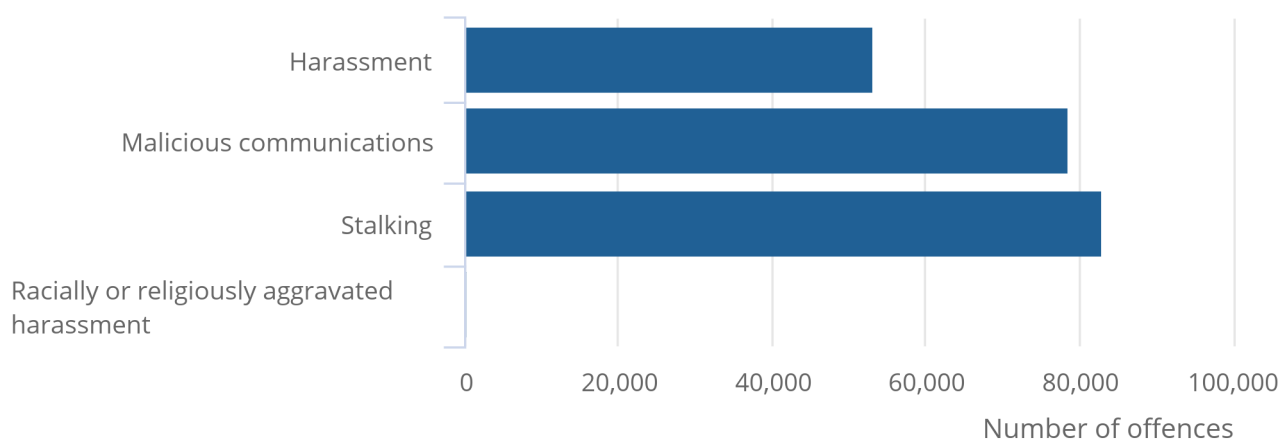
Following a change to the [Home Office Counting rules \(PDF, 1.02MB\)](#) in April 2020, offences within the stalking sub-group category increased. The change means cases where a course of conduct is reported between a victim and their former partner must be recorded as "stalking" unless the police are satisfied that the matter amounts to harassment in law only. Therefore, data for year ending March 2021 are not comparable with previous years.

Figure 3: Stalking and malicious communications were the sub-group categories with the highest number of domestic abuse-related offences

Number of domestic abuse-related stalking and harassment offences recorded by the police, by offence, England and Wales, year ending March 2021

Figure 3: Stalking and malicious communications were the sub-group categories with the highest number of domestic abuse-related offences

Number of domestic abuse-related stalking and harassment offences recorded by the police, by offence, England and Wales, year ending March 2021



Source: Home Office - Police recorded crime

Notes:

1. Police recorded crime data are not designated as National Statistics.
2. Stalking and harassment offences include harassment, malicious communications, racially or religiously aggravated harassment and stalking.
3. Stalking and harassment is a sub-group of the Violence Against the Person offence-group.
4. From April 2020 a change to the Home Office Counting Rules means all cases where a course of conduct is reported between a victim and their former partner must be recorded as 'stalking' unless the police are satisfied that the matter amounts to harassment in law only.

Over one-third of all stalking and harassment offences recorded by the police in England and Wales were domestic abuse-related in the year ending March 2021 (36%).

Controlling or coercive behaviour

There were 33,954 offences of coercive control recorded by the police in England and Wales in the year ending March 2021. This is compared with 24,856 in the year ending March 2020 and 17,616 in the year ending March 2019. The rise of coercive control offences over recent years may be attributed to improvements made by the police in recognising incidents of coercive control and using the [new law](#) accordingly.

Domestic homicide

There were 362 domestic homicides recorded by the police in the three-year period between year ending March 2018 and year ending March 2020. This represents 19% of all homicides where the victim was aged 16 years and over during this period.

Of the 362 homicides, 214 (59%) were female victims who were killed by a partner or ex-partner. In contrast 33 (9%) were male victims who were killed by a partner or ex-partner. The remaining 115 (32%) were victims killed by a suspect in a family category.

Notes for: Police recorded crime

1. Domestic abuse-related incidents cover reports where, after initial investigation, the police have concluded that no notifiable crime was committed. Incidents of domestic abuse that result in a crime being recorded by the police are included in the data on domestic abuse-related crimes. The number of domestic abuse-related incidents and crimes gives a better picture of the demand that domestic abuse puts on the police.
2. There may be some cases where an incident is recorded and then a crime subsequently recorded in a different time period, for example, an incident recorded on 31 March, a crime recorded on 1 April.
3. An example of a domestic abuse-related incident that does not amount to a crime would be two family members having a loud argument, a third party calls the police, the police attend and calm the situation down, but no notifiable crime has taken place.

6 . Domestic abuse in England and Wales data

[Domestic abuse prevalence and victim characteristics](#)

Dataset | Released 24 November 2021

Domestic abuse numbers, prevalence, types and victim characteristics, based upon police recorded crime.

[Domestic abuse in England and Wales – Data tool](#)

Dataset | Released on 24 November 2021

An interactive Excel-based data tool for domestic abuse statistics. It allows users to explore data for their police force area in more detail and compare with other areas.

7 . Glossary

Controlling or coercive behaviour

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape, and regulating their everyday behaviour. Coercive behaviour is a continuing act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten their victim.

Domestic abuse

Domestic abuse is not limited to physical violence and can include a range of abusive behaviours. It can also be experienced as repeated patterns of abusive behaviour to maintain power and control in a relationship. The [Domestic Abuse Act 2021](#) defines domestic abuse as any incident or pattern of incidents between those aged 16 years or over who:

- are a partner
- are an ex-partner
- are a relative
- have, or there has been a time when they each have had, a parental relationship in relation to the same child

The Domestic Abuse Act 2021 outlines the following behaviours as abuse:

- physical or sexual abuse
- violent or threatening behaviour
- controlling or coercive behaviour
- economic abuse
- psychological, emotional, or other abuse

The Domestic Abuse Act 2021 recognises children under the age of 18 years who see, or hear, or experience the effects of the abuse, as a victim of domestic abuse if they are related or have a parental relationship to the adult victim or perpetrator of the abuse.

Domestic abuse-related crimes

Incidents of domestic abuse that resulted in a crime being recorded by the police and are included in police recorded crime.

Domestic abuse-related incidents

Incidents of domestic abuse that were reported to the police, but following investigation, do not amount to a crime or offence according to the National Crime Recording Standards. These can be added to domestic abuse-related crimes to create a total picture of the demand that domestic abuse puts on the police.

Domestic homicide

An offence of murder, manslaughter, or infanticide where the relationship between a victim aged 16 years and over and the perpetrator falls into one of the following categories: spouse, common-law spouse, cohabiting partner, boyfriend or girlfriend, ex-spouse, ex-cohabiting partner or ex-boyfriend or girlfriend, adulterous relationship, son or daughter (including step and adopted relationships), parent (including step and adopted relationships), brother or sister, other relatives.

Stalking

Defined in the CSEW as two or more incidents (causing distress, fear or alarm) of receiving obscene or threatening unwanted letters, emails, text messages or phone calls, having had obscene or threatening information about them placed on the internet, waiting or loitering around home or workplace, or following or watching.

8 . Data sources and quality

Further quality and methodology information can be found in the [Domestic abuse in England and Wales overview](#).

Crime Survey for England and Wales (CSEW)

Previous domestic abuse in England and Wales releases include analysis of data from the Crime Survey in England and Wales (CSEW). For reasons outlined in [Section 3](#), CSEW estimates are not available for the year ending March 2021.

More information about the CSEW can be found in our:

- [User guide to crime statistics for England and Wales](#)
- [Domestic abuse QMI](#)
- [How domestic abuse data are captured through the criminal justice system](#) article

Work to improve the data collected to measure domestic abuse from the CSEW is ongoing. More information can be found in our [Redevelopment of domestic abuse statistics: research update November 2021](#) article.

How the police measure domestic abuse

The Home Office collects data on the number of domestic abuse-related incidents and the number of domestic-abuse related crimes. More information on domestic abuse-related incidents and crimes can be found in our [Domestic abuse QMI](#) and our [How domestic abuse data are captured through the criminal justice system](#) article.

Home Office Homicide Index

The Home Office Homicide Index provides data on whether homicides are “domestic”. The Homicide Index contains detailed record-level information about each homicide recorded by police in England and Wales.

Analysis on data from the Homicide Index within this publication combines data for a three-year period (year ending March 2018 to year ending March 2020) to account for the year-to-year variability in the volume of homicides. More information can be found in our [How domestic abuse data are captured through the criminal justice system](#) article.

9 . Related links

[How domestic abuse data are captured through the criminal justice system](#)

Article | Released 24 November 2021

Information on the stages of the criminal justice process in England and Wales, and how data are captured at each stage.

[Domestic abuse during the coronavirus \(COVID-19\) pandemic. England and Wales: November 2020](#)

Article | Released 25 November 2020

Indicators from a range of data sources to assess the impact of the coronavirus (COVID-19) pandemic on domestic abuse in England and Wales.