



Justice

# **Use of Adult Alternative Measures in Saskatchewan 1999-2000 and 2000-2001**

Policy, Planning and Evaluation  
April 2003

# **Saskatchewan**

## Appendix A: Alternative Measures Policies

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This Appendix contains the text from the document **Alternative Measures Policies** published by Community Services Branch, Saskatchewan Justice, January 2001.



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## Preface

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Over the past several years, many agencies and justice organizations have developed alternative measures programs as a way of dealing with conflict. As a result, both the federal and provincial governments have developed policies and guidelines regarding the use of alternative measures and the development of alternative measures programs. This booklet introduces the concept of alternative measures and provides the legislation and policies that govern the use of alternative measures in Saskatchewan.

### Outline of this Booklet

The Introduction briefly describes the types of alternative measures that are commonly used in Saskatchewan.

Section 2 outlines provisions in the *Criminal Code* and the *Young Offenders Act* that authorize the provinces to develop alternative measures programs.

Section 3 provides the Ministerial Orders and the attached policies that authorize alternative measures programs. These include:

- The Ministerial Order and attached *Saskatchewan Justice Diversion Program Policy* (1996), which guide alternative measures programs for adults;
- The Ministerial Order and attached *Saskatchewan Social Services Young Offender Diversion Program Policy* (1997), which guide alternative measures programs for youths;
- The *Saskatchewan Environment and Resource Management Alternative Measures Policy* (revised March 9, 1999), which guide conservation officers in the process of making referrals to alternative measures programs; and
- The Ministerial Order and attached *Federal Diversion Program Policy* (1997), which guide the actions of federal prosecutors.

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## Preface

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### **The Role of Community Services Branch**

Community Services Branch is responsible for supporting community-based justice programs by assisting with community development and the community-based approach to justice. The mission of the Branch is: *“We collaborate with and support communities to develop their capacity to deliver culturally sensitive justice services which promote community owned responses to crime, encourage family participation, meet the needs of victims and hold offenders accountable and fosters positive change”.*

In this capacity, the Community Services Branch offers developmental assistance and ongoing support for community justice and alternative measures programs. The Branch offers services such as advice, consultation with other agencies and organizations, policy and research support, and referrals to other agencies or departments.

The programs that are supported by the Community Services Branch may also receive funding or other support from Justice Canada and Saskatchewan Social Services. These organizations have important roles to play in delivering alternative measures programs.

For more information about the work of the Community Services Branch or the material in this booklet, please feel free to contact us at:

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## Section 1: Introduction

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“Alternative measures” refers to programs in which adults and youth who are accused of a criminal offence take responsibility for their behavior by participating in a community-based program. These programs attempt to balance the needs of victims, the accused, and their communities while ensuring that society is protected. They offer accused persons a chance to take responsibility for their behavior and to address the harm they have committed.

Alternative measures are a way to address crime in conjunction with the present criminal justice system. These programs address the criminal actions of the accused while preserving their dignity and requiring them to be accountable for their behavior. It attempts to make things right by taking a problem-solving approach to crime which emphasizes forgiveness and healing while helping to repair relationships between the victim, the accused and the community. They are consistent with the move towards a responsive justice system that tries to deal with criminal behavior in a proactive manner. They aim to:

- increase the offender’s accountability and responsibility for criminal actions;
- promote the involvement of victims in the process;
- protect society by deterring accused persons from further criminal behavior;
- enhance the community’s participation in resolving conflicts;
- involve the community in addressing the crime; and
- protect the interests of society.

There are many types of alternative measures. Some of the most common types include:

- victim-offender mediation, in which victims and accused meet with a trained mediator who assists in resolving the conflict. Mediation may involve surrogate victims if the real victim is unable or unwilling to participate;
- mediation circles, in which the victim, the accused and members of the community meet to work out an agreement that satisfies the victim, meets the needs of the accused, and gives members of the community a role in helping both parties; and

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## Introduction

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- diversion, in which offenders are referred to counseling, educational programs, addictions treatment, or other programs that may help them deal with personal issues.

The development of alternative measures has been influenced by several factors, including:

- the restorative justice movement;
- the desire of Aboriginal people for a justice system that is responsive to their unique needs; and
- the realization that communities can sometimes deliver a more effective form of justice than the centralized criminal justice system.

Youth alternative measures have been operating in Canada since 1983, and in Saskatchewan since 1985. Both adult and youth programs have usually been delivered by community-based agencies.

Alternative measures programs acknowledge the need for effective, efficient ways of resolving disputes that meet the unique needs of Aboriginal people. Alternative measures programs involve communities in developing culturally sensitive services that promote healing and reconciliation between victims, offenders, and communities.

In 1995, Cabinet approved the restorative justice strategy for Saskatchewan. This strategy includes the following goals:

- enhancing community safety and protection;
- reserving the formal justice system for the most serious of matters;
- developing alternative measures for less serious crime;
- strengthening communities by involving victims, offenders, government and community members in a balanced approach to criminal behavior;
- reducing crime by increasing offender accountability to victims and communities; and
- increasing public trust and public perception of the fairness of the criminal justice system.

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## Introduction

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Cabinet also approved the restorative youth justice strategy. The goals of this strategy are to:

- enhance public understanding about the incidence and nature of crimes committed by youth;
- minimize the involvement of young people in the formal justice system;
- recognize the critical role of Aboriginal people in delivering services; and
- more effectively use the judicial process for cases involving young offenders.

The goals of the restorative justice strategy and the restorative youth justice strategy are also consistent with Saskatchewan's Aboriginal Justice Strategy (1995), which aims to involve the Aboriginal community in developing justice initiatives that are culturally sensitive, responsive to community needs, holistic in service provision, and focus on empowering the community. These objectives will be achieved by focusing on crime prevention, crime reduction, improving race relations, and building bridges within the justice system.

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## Section 2: Legislation

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In September, 1996, a number of amendments were made to the *Criminal Code*. Bill C-41 authorized the use of community-based sentencing alternatives and emphasized that incarceration should be used as a last resort. The use of alternative measures is authorized in section 717 (1) of the *Criminal Code*, which states,

*717. (1). Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:*

- (a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the Lieutenant Governor in Council of a province;*
- (b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;*
- (c) the person, having been informed of alternative measures, fully and freely consents to participate therein;*
- (d) the person has, before consenting to participate in 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 agency, sufficient evidence to proceed with the prosecution of the offence; and*
- (g) the prosecution of the offence is not in any way barred at law.*

*(2) Alternative measures shall not be used to deal with a person alleged to have committed an offence if the person*

- (a) denies participation or involvement in the commission of the offence; or*
- (b) expresses the wish to have any charge against the person dealt with by the court.*

A similar provision respecting young offenders is found in Section 4 of the *Young Offenders Act*, which states,

*"4(1) Alternative measures may be used to deal with a young person alleged to have committed an offence instead of judicial proceedings under this Act only if:*

- (a) the measures are part of a program of alternative measures authorized by the Attorney General or his 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 such measures is satisfied that they 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 alternative measures, freely and fully consents to participate therein;*
- (d) the young person has, before consenting to participate in the alternative measures, been advised of his right to be represented by counsel and been given a reasonable opportunity to consult with counsel;*

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## Legislation

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- (e) *the young person accepts responsibility for the act or omission that forms the basis of the offence he is alleged to have committed;*
- (f) *there is, in the opinion of the Attorney General or his 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”.*

Both sections 717(2) of the *Criminal Code* and section 4(2) of the *Young Offenders Act* state that a person can not be referred to an alternative measures program if they deny committing the offence or express the wish to have the matter dealt with in court.

Although the *Criminal Code* and the *Young Offenders Act* give legislative authority for alternative measures programs, it is the responsibility of the provinces to develop and regulate these programs. In Saskatchewan, the Department of Social Services is responsible for programs for young offenders, while Saskatchewan Justice is responsible for adult programs. Both Departments have authorized these programs with Ministerial Orders and Diversion Program Policies. These policies are included in the next section, which also includes the *Federal Diversion Policy Guidelines* (1997) and the *Saskatchewan Environment and Resource Management Alternative Measures Policy* (revised March 9, 1999).

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## Section 3: Diversion Policy Guidelines

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This section includes the Ministerial Orders and policies that authorize the use of alternative measures in Saskatchewan. These include the *Saskatchewan Justice Diversion Program Policy* (1996), the *Saskatchewan Social Services Diversion Program Policy* (1997), the *Federal Diversion Policy Guidelines* (1997), and the *Saskatchewan Environment and Resource Management Alternative Measures Policy* (revised March 9, 1999).

The *Saskatchewan Justice Diversion Program Policy* (1996) applies to alternative measures programs for adults while the *Saskatchewan Social Services Diversion Program Policy* (1997) applies to alternative measures programs for youths.

*The Federal Diversion Policy Guidelines* (1997) guide the actions of federal prosecutors. The *Saskatchewan Environment and Resource Management Alternative Measures Policy* (revised March 9, 1999) guides conservation officers who are considering referring an accused person to an alternative measures program.

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# Saskatchewan Justice Diversion Program Policy (1996)

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## 1. Purpose:

Diversion programs provide an alternative to the traditional court process for adults facing criminal charges.

Programs offer offenders opportunities to effect reparation to victims and community within a structured, publicly accountable program which is sensitive to cultural diversity.

## 2. Authority:

2.1 Saskatchewan Justice provides operating standards for approved diversion programs consistent with Section 717 of the *Criminal Code*.

2.2 Referrals are made pre-charge and post-charge upon review by a crown prosecutor.

## 3. Eligibility Criteria:

Victim participation is encouraged but not a pre-requisite for program eligibility, except in mediation. Victim participation is voluntary.

### 3.1 Offender:

- Adult
- Sufficient evidence exists to support a criminal charge
- Prosecution is not barred at law
- Acknowledgement of responsibility for behaviour
- Diverted not more than twice in the last three years
- No failed diversion in the last six months
- No substantial record of similar offences or recent charges

### 3.2 Offences to be excluded:

- Incident involved the use of or threatened use of a weapon
- Violence against the person cases (adult or child), where crown elects to proceed by way of indictment
- Child sexual abuse cases
- Sexual assault cases, where crown elects to proceed by way of indictment
- Perjury
- Driving while disqualified
- *Criminal Code* driving offences where alcohol was a contributing factor
- Federal offences other than *Criminal Code*\*
- Family violence cases

\*The availability of diversion respecting these offences determined by the federal Department of Justice.

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## Saskatchewan Justice Diversion Program Policy (1996)

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### 4. Exclusionary Criteria:

- 4.1 Offender refusal to participate.
- 4.2 Offence or offender are excluded.
- 4.3 Referral agent (police, crown) does not think that the offender or offence is suitable for the program.
- 4.4 Agency administering the program does not think the offender or offence is suitable.

### 5. Diversion Options:

(Where available and accessible in a reasonable period of time)

- Restitution/compensation in cash or in kind
- Personal service work for victim
- Community service work
- Mediation (see attached policy)
- Donation to charity
- Referral to specialized program (life skills, crime prevention, Stoplift)
- Referral for counseling/treatment (drug/alcohol, health, mental health, social service agency)
- Aboriginal cultural activities
- Other reasonable agreements
- Some combination of the above

**In addition to meeting the diversion program guidelines, mediation programs must demonstrate the following:**

#### 1. Purpose:

Mediation is a particular type of diversion. Victims and offenders are provided an opportunity to meet and effect a reconciliation and reparation.

Programs must involve victims and offenders through a process of mediation and reparation.

#### 2. Authority:

Mediators must have a combination of theoretical and practical training specific to criminal justice mediation, as approved by Mediation Services.

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## Saskatchewan Justice Diversion Program Policy (1996)

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### 3. **Victim Participation:**

Victim participation is a pre-requisite for eligibility in the program.

Victim participation is strictly voluntary. Refusal by the victim excludes participation in the program.

Special consideration is given in favor of cases where there is an on-going relationship between the victim and offender, in recognition that there is an enhanced likelihood for a positive outcome and reduction of future incidents.

### 4. **Eligibility Criteria:**

Same as diversion.

### 5. **Exclusionary Criteria:** Same as diversion, with the addition of:

- Victim or offender refuse to participate.
- Mediator does not think that mediation would be suitable.



## MINISTER'S ORDER

Section 717 of the *Criminal Code* (Canada) provides, in part, as follows:

"717. (1) Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:

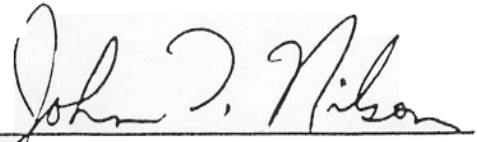
- (a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the lieutenant governor in council of a province;
- (b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;
- (c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;
- (d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;
- (e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;
- (f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and
- (g) the prosecution of the offence is not in any way barred at law."

I, John T. Nilson, Q.C., Minister of Justice and Attorney General for the Province of Saskatchewan, pursuant to section 717 of the *Criminal Code* (Canada), do hereby authorize adult alternative measures programs which are consistent with the program criteria attached hereto as Schedule "A".

I do hereby further authorize the Deputy Minister of Justice and Deputy Attorney General for the Province of Saskatchewan as my delegate for the purpose of amending the program criteria set out in the attached Schedule "A" including with respect to its application to classes of cases or specific cases; for setting operating standards for adult alternative measures programs consistent with the program description authorized above; and for approving individual adult alternative measures programs.

Dated at the City of Regina, Saskatchewan, this 30th day of September, 1996.

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Minister of Justice and Attorney General

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## Saskatchewan Social Services Young Offender Diversion Program Policy (1997)

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### 1. Purpose:

Diversion programs provide an alternative to the traditional court process for youth facing criminal charges.

Programs offer offenders opportunities to effect reparation to victims and community within a structured, publicly accountable program which is sensitive to cultural diversity.

### 2. Authority:

- 2.1 Saskatchewan Justice approves alternative measures programs.
- 2.2 Saskatchewan Social Services provides operating and monitoring standards for approved diversion programs.
- 2.3 Referrals are pre-charge or post-charge upon review by a crown prosecutor.

### 3. Eligibility Criteria:

Victim participation is encouraged, but not a pre-requisite for program eligibility, except in mediation. Victim participation is voluntary. With the approval of the victim, a surrogate may be used when appropriate.

#### 3.1 Offender:

- Youth as defined by the *Young Offenders Act*;
- Sufficient evidence exists to support a criminal charge;
- Prosecution is not barred at law;
- Youth is referred to the program by a Crown Prosecutor, having assessed the circumstances to ensure the referral is not barred by law or policy;
- Acknowledgement by youth of responsibility for behaviour;
- Youth chooses to participate, having been advised of their right to counsel or having consulted counsel.

#### 3.2 Offences to be excluded:

- Incidents involving the use of or threatened use of a weapon;

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- Violence against the person cases (adult or child), (where the crown elects to proceed by way of indictment), includes offenses such as murder, attempted murder, or sexual assault;
  - Child sexual abuse cases;
  - Perjury;
  - Driving while disqualified;

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## Saskatchewan Social Services Young Offender Diversion Program Policy (1997)

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- All *Criminal Code* driving offenses with alcohol or drugs a contributing factor;
- Any federal offence other than *Criminal Code* \*;
- All family violence cases.

\*The availability of alternative measures respecting these offenses determined by the federal Department of Justice.

### 4. Exclusionary Criteria:

- 4.1 Offender refusal to participate;
- 4.2 Offence is excluded or the offender is excluded as a result of significant failure to complete previous diversions or the existence of other significant charges that call into question the appropriateness of alternative measures;
- 4.3 Referral agent (police, Crown) does not think that the offender or offence is suitable for the program;
- 4.4 Agency administering the program does not think the offender or offence is suitable;
- 4.5 An alternative measures program is not available for the area.

### 5. Diversion Options:

(Where available and accessible in a reasonable period of time)

- Restitution/compensation in cash or in kind
- Personal service work for victim
- Community service work
- Mediation (see attached policy)
- Family Group Conferences/Community Accountability Conferences (see attached policy)
- Donation to a charity
- Referral to a specialized program (e.g.: life skills, crime prevention, Stoplift)
- Referral for counseling/treatment (drug/alcohol, health, mental health, social services agency)
- Participation in Aboriginal cultural activities
- Other reasonable agreements

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- Some combination of the above

Diversion options may be delivered, with approval, by a range of service providers including citizen volunteers operating under the auspices of a Community Justice Committee, community based organizations and persons in private practice.

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## Saskatchewan Social Services Young Offender Diversion Program Policy (1997)

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**Within the context of the *Young Offender Diversion Program Policy (1997)*, mediation programs adhere to the following policy:**

**1. Purpose:**

Mediation is a particular type of diversion. Victims and offenders are provided an opportunity to meet and effect a reconciliation and reparation.

Programs must involve victims and offenders through a process of mediation and reparation. Where appropriate, and with the permission of victims, a surrogate may be used in the mediation process.

**2. Authority:**

Mediators must have a combination of theoretical and practical training specific to criminal justice mediation as required by Saskatchewan Social Services.

**3. Victim Participation:**

Victim participation is a pre-requisite for eligibility in the program.

Victim participation is voluntary. Refusal by the victim to participate or to allow for a surrogate excludes mediation as a diversion option for the offender(s).

Special consideration is given in favour of cases where there is an on-going relationship between the victim and offender, recognizing there is an enhanced likelihood for a positive outcome and reduction of future incidents.

**4. Eligibility Criteria:**

Refer to the *Young Offender Diversion Program Policy (1997)*.

**5. Exclusionary Criteria:**

Same as diversion, with the addition of:

- Refusal of the offender to participate;
- Refusal of the victim to participate and does not approve the use of a surrogate;
- Mediator does not believe mediation would be suitable.

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## Saskatchewan Social Services Young Offender Diversion Program Policy (1997)

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Within the context of the *Young Offender Diversion Program Policy (1997)*, family group conferences, alternatively known as community accountability conferences, adhere to the following policy:

**1. Purpose:**

Family Group Conferences (FGC) or Community Accountability Conferences (CAC) are a particular type of diversion. Victims, offenders, their families and significant others, such as extended family members and community members who have an interest in the outcome, or are affected by the crime, are provided an opportunity to meet and attend to the material and emotional effects resulting from and related to the incident.

Programs involve participants in a process of healing, reconciliation and consensus decision-making. They focus on condemning criminal actions, rather than the offender, and serve to reintegrate offenders into the community with the support of an informed community of care.

**2. Authority**

Family Group Conference coordinators must have a combination of theoretical and practical training specific to criminal justice mediation as required by Saskatchewan Social Services.

**3. Victim Participation**

Victim participation is a pre-requisite for eligibility in the program. Victim participation is voluntary.

Victims may be personally represented, appear with supporters or, with their permission, be represented by a surrogate.

Special consideration is given in favor of cases where there is an on-going relationship between the victim and offender, recognizing there is an enhanced likelihood for a positive outcome and reduction of future incidents.

**4. Eligibility Criteria:**

As defined in the *Young Offender Diversion Program Policy (1997)*.

**5. Exclusionary Criteria:**

Same as diversion, with the addition of:

- Refusal of the offender to participate;
- Refusal of the victim to participate or to be represented by a surrogate;
- The circumstances of the case are not appropriate for family group conferencing.



## MINISTER'S ORDER

Section 4 of the *Young Offenders Act* (Canada) provides in part, as follows:

"4.(1) Alternative measures may be used to deal with a young person alleged to have committed an offence instead of judicial proceedings under this Act only if

- (a) the measures are part of a program of alternative measures authorized by the Attorney General or his 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 such measures is satisfied that they 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 alternative measures, fully and freely consents to participate therein;
- (d) the young person has, before consenting to participate in the alternatives measures, been advised of his 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 is alleged to have committed;
- (f) there is, in the opinion of the Attorney General or his agent, sufficient evidence to proceed with the prosecution of the offence; and
- (g) the prosecution of the offence is not in any way barred by law."

I, John T. Nilson, a.c., Minister of Justice and Attorney General for the Province of Saskatchewan, pursuant to section 4 of the *Young Offenders Act* (Canada), do hereby authorize youth alternative measures programs which are consistent with the program criteria attached hereto as Schedule "A".

I do hereby further authorize the Deputy Minister of Justice and Deputy Attorney General for the Province of Saskatchewan as my delegate for the purpose of amending the program criteria as set out in the Attached Schedule "A" including with respect to its application to classes of cases or specific cases; for setting general program standards for youth alternative measures programs consistent with the program description authorized above; and approving individual youth alternative measures programs.

Dated at the City of Regina, Saskatchewan, the 24th day of February, 1997.

A handwritten signature in dark ink, reading "John T. Nilson".  
Minister of Justice  
and Attorney General

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## Saskatchewan Environment and Resource Management Alternative Measures Policy (revised March 9, 1999)

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### **I. Authority**

- *Young Offenders Act* (Canada), Section 4
- *Criminal Code of Canada*, Section 717
- Minister of Justice Order dated September 30, 1996
- Federal Minister of Justice Order dated August, 1997

### **II. Purpose**

To provide an alternative to traditional prosecution and/or court processes for offenders facing charges laid by conservation officers.

### **III. General Application**

It is the duty of the Attorney General's Agent (Crown Prosecutor) to determine the appropriateness of alternative measures. Giving consideration to an offender's age, character, history and rehabilitative prospects, a conservation officer may recommend that it would be appropriate to use measures alternative to traditional prosecution. These measures provide offenders an opportunity to effect reparation to victims and/or the community within structured, publicly accountable forums.

The alternative measures program is not intended to be available for every offender and every offence. Rather, it is an acknowledgement that in some cases, because of the nature and circumstances of the offence and the offender, the public interest would be better served by a resolution outside of the traditional criminal process. The objective of alternative measures programs is to have the offender accept responsibility for the offence without going through the formal court process. It is essential, therefore, that the offender takes responsibility for his actions.

### **IV. Procedure**

1. Investigate the offence following established investigative procedures. If possible, obtain a warned statement from the accused. Do not advise the accused that you are considering alternative measures, as this may jeopardize the admissibility of a warned statement.
2. When the investigation is complete and there is sufficient evidence to support a charge, examine the eligibility criteria to determine whether the accused qualifies for the alternative measures program. The program is generally aimed at offenders without substantial records of resource or environmental offences. Both the circumstances of the offender and the offence should be considered.

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## Saskatchewan Environment and Resource Management Alternative Measures Policy (revised March 9, 1999)

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### 2.1 The Offender

- Acknowledgement of responsibility for behavior
- No substantial record or recent charges of resource or environmental offences
- No failed diversion in the last 6 months

### 2.2 The Offence

Existence of any of the following circumstances will preclude diversion:

- All hunting offences where alcohol was a contributing factor;
- Where the conduct demonstrated sophisticated planning (for example, the offence was part of an ongoing illegal enterprise);
- Offences involving the killing, possessing, capturing, injuring or trafficking in wild species at risk;
- Where the victim (if applicable) does not consent to alternative measures.

In addition to the factors outlined above, the case must satisfy the eligibility criteria established under the *Saskatchewan Justice Diversion Program Policy*, or, for federal offences other than *Criminal Code*, the *Federal Guidelines for Alternative Measures*.

3. Consult the local Crown Prosecutor. Referrals to the diversion program are made pre-charge or post-charge upon review by a Crown Prosecutor. If pre-charge, giving consideration to the statute of limitations period, the prosecutor will advise whether an information should be sworn at this time. The following diversion options may be available and should be considered:
  - Restitution/compensation in cash or in kind
  - Personal service work for the victim
  - Community service work (resource or environment related)
  - Donation to a charity (i.e. SaskTip or other suitable natural resource related charity)
  - Referral to a specialized program (i.e. SAFE)
  - Aboriginal cultural activities
  - Mediation
  - Other reasonable agreements
  - A combination of the above.
4. Interview the accused and advise him that the Crown is considering alternative measures. Explain the program, outlining the diversion options available to him (i.e. completion of a SAFE course).
5. The accused must fully and freely consent to participate in the alternative measures program. Before consenting, he must be advised of the right to be represented by counsel.

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## Saskatchewan Environment and Resource Management Alternative Measures Policy (revised March 9, 1999)

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6. If the accused consents to participate, complete the Allegation and Agreement To Refer To Alternative Measures form (EB10-01). Forward the form to the Crown Prosecutor for review and endorsement.
7. Upon receiving signed approval from the Prosecutor, the case may proceed to Alternative Measures. The designated Resource Area Alternative Measures coordinator will refer the case to the appropriate diversion option. This may include a community justice committee, Mediation Services (Saskatchewan Justice), an Alternative Measures Provider or simply an Alternative Measures Agreement (using the SERM Alternative Measures Agreement form EB10-02). **\*Note: If the accused is a member of a First Nation, the coordinator will consult with the appropriate Tribal Council Justice Committee (See Appendix).**
8. Upon completion of the Alternative Measures, the file will be referred to the investigating conservation officer. Using Form EB10-03, report to the Crown Prosecutor on the results. Forward a copy of the report to the Enforcement Centre.
9. If the Alternative Measures process is unsuccessful, depending upon advice from the Crown Prosecutor, the case will normally proceed through the court system.

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## Saskatchewan Environment and Resource Management Alternative Measures Policy (revised March 9, 1999)

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### Appendix<sup>1</sup>

#### PROCEDURES - ALTERNATIVE MEASURES INVOLVING MEMBERS OF FIRST NATIONS

1. Conservation Officers will investigate all offences following established investigative procedures.
2. Cases being considered for Alternative Measures will be forwarded to the designated Resource Area Alternative Measures Coordinator (generally the Resource Area Manager or Enforcement Specialist).
3. The Alternative Measures Coordinator will consult with the appropriate Tribal Council Justice Committee to determine whether or not the community supports the referral of the case to Alternative Measures. If so, upon receiving approval from the Crown Prosecutor, the case will be referred to the Tribal Council Alternative Measures Program.

If the Tribal Council Justice Committee does not consider the case appropriate for Alternative Measures, it will proceed through the regular court system.

4. Upon completion of the Alternative Measures, the file will be referred to the investigating conservation officer for follow-up reports to the Crown Prosecutor and Enforcement Centre.
5. If the Alternative Measures process is unsuccessful, depending upon advice from the Crown Prosecutor, the case will normally proceed through the court system.

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<sup>1</sup> This Appendix was included as Appendix "D" in the original document.

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# Federal Diversion Policy Guidelines (1997)

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## 1. Introduction

Alternative measures (or diversion as it is sometimes known) is a pre-trial procedure involving the exercise of discretion by Crown counsel not to prosecute an offender. Instead, counsel refers the offender to an individual or agency with the intention of reaching an agreement to deal with the offence outside the judicial process. In appropriate cases, alternative measures may provide greater benefit to the offender, the victim, and society than can the formal criminal process. Indeed, the fundamental principle underlying alternative measures is that criminal proceedings should be used with restraint and only when other less intrusive measures have failed or would be inappropriate. This allows the courts to devote their resources to dealing with serious crime.

The object of alternative measures programs is to have the offender accept responsibility for the offence without going to trial. Participation in an alternative measures program is voluntary; the offender cannot be forced into it. If the offender complies with the diversion agreement, the Crown relinquishes its right to prosecute the offender for the offence.

Diversion can occur before or after a charge is laid. The policy applies after a charge has been laid, except in provinces where pre-charge screening takes place, where it will apply both pre-charge and post-charge. The policy applies to both adults and young offenders.

## 2. Statement of Policy

### 2.1 General Principles

Diversion is not intended to be available for every offender and every offence. Rather, it is an acknowledgement that in some cases, because of the nature and circumstances of the offence and the offender, the public interest would be better served by a resolution outside of the traditional criminal process. Generally speaking it will be most suitable for younger offenders and those of previously good character, who have committed minor offences.

### 2.2 Preconditions to Diversion

Where Crown counsel is considering exercising the discretion to divert an alleged offender, he or she must be satisfied that the following pre-conditions have been met:

- The case meets the criteria in the "Decision to Prosecute" policy (ss. 717(1)(f) and (g), *Criminal Code*, s. 4(1)(f) *Young Offenders Act* (YOA));
- The offender has been advised of his or her right to counsel and is aware that he or she does not have to accept diversion (ss. 717(1)(c)

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and (d), *Criminal Code*, ss. 4(1)(c) and (d) YOA);

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- The offender is willing to acknowledge responsibility for his or her actions (s. 717(1)(e), *Criminal Code*, s. 4(1)(e) YOA);
- A program described in s. 717(1)(a) of the *Criminal Code* or s. 4(1)(a) of the YOA exists for which this particular offender would be eligible;
- Appropriate consultation has been undertaken, where necessary, with victims, investigating authorities or other interested parties, and diversion would be in the interests of society, the offender and the victim (s. 717(1)(b), *Criminal Code*, s. 4(1)(b) YOA).

### 3. The Circumstances of the Offender

The policy is aimed generally at offenders who have not violated the criminal law in the past and are unlikely to do so in the near future. Crown counsel should consider the following factors in assessing an offender's suitability:

- Whether the offender has previously violated the criminal law (including convictions, discharges or diversions) and if so, the date and nature of the violations;
- The offender's remorse (including for example, whether the offender has agreed to fairly compensate any victim(s));
- Whether the offender poses a risk to the community;
- Whether the offender is facing other criminal charges.

#### 3.2 The Nature of the Offence

As indicated above, the policy is directed at "minor" offences. "Minor" offences include offences that are objectively less serious or potentially serious offences committed in a less serious way. The following factors are relevant in determining seriousness:

- Whether the offence is summary or indictable;
- Whether a minimum punishment is prescribed;
- Whether the offence usually results in a sentence exceeding three months imprisonment;
- The potential or actual harm to the victim(s) or society in general.

As well, Crown counsel must ascertain whether the offence is the subject of other policies which would affect the decision to divert, e.g. "Spousal Assault", "Native Law Issues", "Impaired Driving Cases", "Firearms and Other Offensive Weapons".

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### 3.3 The Circumstances of the Offence

Existence of any of the following circumstance will preclude diversion:

- Where the offence involved the use of, or threatened use of, violence reasonably likely to result in harm that is more than merely transient or trifling in nature;
- Where a weapon was used or threatened to be used in the commission of the offence;
- Where the offence affected the sexual integrity of a person;
- Where the offence had a serious impact upon the victim (physical, psychological or financial);
- Where the conduct demonstrated sophisticated planning (for example, the offence was part of an ongoing criminal enterprise);
- Where a person trafficked in a controlled substance or possessed the substance for the purposes of trafficking, in or near a school, on or near school grounds or in or near any public place usually frequented by persons under the age of 18 years;
- Where a person trafficked in a controlled substance, or possessed the substance for the purpose of trafficking, to a person under the age of 18 years;
- Where a person used a person under the age of 18 years to commit a drug offence;
- Where the motivation for committing a drug offence was primarily profit.

### 4. Successful Completion of the Alternative Measures Program

If the offender successfully completes the diversion program, the criminal charge shall be withdrawn or stayed and not re-instituted. If the criminal charge was already withdrawn or stayed before the offender was diverted, the charge shall not be re-instituted. If charges were not laid before the offender was diverted, Crown counsel shall not institute or proceed with those charges.

### 5. Failure to Complete the Alternative Measures Program

If the offender fails to complete the program, criminal proceedings may be instituted or re-instituted. However, before doing so, Crown counsel should determine why the program was not completed and assess the appropriateness of instituting or re-instituting proceedings in light of those facts. The decision to institute or re-institute proceedings will require the authorization of the Prosecution Group Head or Regional Director.

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### 6. Young Offenders

Some special considerations apply to young offenders through the application of the general policy statements set out in s. 3 of the *Young Offenders Act*, and those matters specifically concerning alternative measures set out in s. 4 of the *Act*. Crown counsel is required to keep those matters in mind when considering diversion for young offenders.

### SCHEDULE A

#### ALTERNATIVE MEASURES (DIVERSION) PROGRAMS

For the purposes of s. 717(1)(a) of the *Criminal Code* and s. 4(1)(a) of the *Young Offenders Act*, acceptable programs of alternative measures include the following:

- any program approved by the Attorney General of a province
- any program approved by a territorial government
- referral to a community justice committee, or to an aboriginal justice committee
- community service work
- restitution or compensation in cash or services
- referral to a specialized program (e.g. life skills, drug or alcohol treatment)
- other reasonable alternatives not inconsistent with the objectives of the policy.

While the foregoing programs are generally acceptable, the suitability of any particular program to any particular offender must be determined by Crown counsel.

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## Appendix B: Alternative Measures Form

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This Appendix contains the Alternative Measures Form used to collect data from programs.

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# Alternative Measures Program

Revised April 2000

Program Name: \_\_\_\_\_

INTAKE: ☐ Youth ☐ Adult CASE TYPE: ☐ Pre-charge

Case Number: \_\_\_\_\_

Police Detachment: \_\_\_\_\_

Police Incident #: \_\_\_\_\_

Case Worker: \_\_\_\_\_

Lawyer Type: ☐ Private ☐ Legal Aid ☐ None ☐ Unknown

Name of Legal Counsel: \_\_\_\_\_

Name of Prosecutor: \_\_\_\_\_

☐ Post-Charge

Date of Referral:

|       |  |   |     |  |      |  |  |
|-------|--|---|-----|--|------|--|--|
|       |  | / |     |  | /    |  |  |
| Month |  |   | Day |  | Year |  |  |

Date of Adjudgment:

|       |  |   |     |  |      |  |  |
|-------|--|---|-----|--|------|--|--|
|       |  | / |     |  | /    |  |  |
| Month |  |   | Day |  | Year |  |  |

2<sup>nd</sup> Date of Adjudgment:

|       |  |   |     |  |      |  |  |
|-------|--|---|-----|--|------|--|--|
|       |  | / |     |  | /    |  |  |
| Month |  |   | Day |  | Year |  |  |

Court Location: \_\_\_\_\_

## Offender Information:

Name: \_\_\_\_\_  
Last Name First Name Middle Name

Date of Birth: 

|  |  |   |  |  |   |  |  |
|--|--|---|--|--|---|--|--|
|  |  | / |  |  | / |  |  |
|--|--|---|--|--|---|--|--|

Age: \_\_\_\_\_

Sex: ☐ Female ☐ Male

Ethnic Origin: ☐ Non-Native ☐ Metis ☐ Other ☐ Non-Status ☐ Status Band Name \_\_\_\_\_

Phone Number:

|  |  |  |   |  |  |  |  |
|--|--|--|---|--|--|--|--|
|  |  |  | - |  |  |  |  |
|--|--|--|---|--|--|--|--|

Address: \_\_\_\_\_

## Charge Information:

Number of charges: \_\_\_\_\_ Most serious offense: \_\_\_\_\_ cc# \_\_\_\_\_ Description: \_\_\_\_\_

Type of Charge: ☐ Person ☐ YOA ☐ Other CC  
☐ Property ☐ OAAJ (systems)  
☐ CDSA (drugs) ☐ Provincial Legislation

Date of Offense:

|       |  |   |     |  |      |  |  |
|-------|--|---|-----|--|------|--|--|
|       |  | / |     |  | /    |  |  |
| Month |  |   | Day |  | Year |  |  |

Date of Charge: 

|       |  |   |     |  |      |  |  |
|-------|--|---|-----|--|------|--|--|
|       |  | / |     |  | /    |  |  |
| Month |  |   | Day |  | Year |  |  |

Intake Date:

|       |  |   |     |  |      |  |  |
|-------|--|---|-----|--|------|--|--|
|       |  | / |     |  | /    |  |  |
| Month |  |   | Day |  | Year |  |  |

Education/Employment:

- ☐ working full-time  
☐ working part-time  
☐ not applicable due to age  
☐ not working, attending school  
☐ not working, not attending school  
☐ not working, history of employment  
☐ not working, no history of employment  
☐ other \_\_\_\_\_

Living Arrangement:

- ☐ parental home  
☐ room and board  
☐ community home  
☐ foster home  
☐ group home  
☐ no fixed address  
☐ other \_\_\_\_\_
- ☐ relative  
☐ co-habitation  
☐ own home  
☐ friends  
☐ rental  
☐ therapeutic foster home

## Youth Only:

Responsible Child Welfare Agency: ☐ ICFS ☐ temporary ward ☐ permanent ward ☐ apprehended ☐ none  
☐ DSS

Name(s) of co-accused: \_\_\_\_\_

School: \_\_\_\_\_ Grade: \_\_\_\_\_

Parental Involvement: ☐ Full ☐ Moderate ☐ Little ☐ None

Mother's Name: \_\_\_\_\_ Father's Name: \_\_\_\_\_

Mother's Address: \_\_\_\_\_

Father's Address: \_\_\_\_\_

## For Police Use Only:

Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Hair: \_\_\_\_\_ Eyes: \_\_\_\_\_

Scars/Tattoos: \_\_\_\_\_

## Offender Previous History:

- ☐ previous alternative measures ☐ other ☐ bail violations ☐ suicidal  
☐ violence ☐ police alternative measures (cautioning) ☐ sex crimes ☐ property crimes  
☐ domestic violence ☐ drug and alcohol abuse ☐ driving offenses

Number of contacts with police: \_\_\_\_\_

Comments: \_\_\_\_\_

|  |
|--|
|  |
|--|

**Victim Information:** Name: \_\_\_\_\_ last name first name

Age: \_\_\_\_\_

Sex: ☐ Female ☐ Male

Phone Number: \_\_\_\_\_

|  |  |  |   |  |  |  |  |
|--|--|--|---|--|--|--|--|
|  |  |  | - |  |  |  |  |
|--|--|--|---|--|--|--|--|

Address: \_\_\_\_\_

Type: ☐ Person

☐ Corporate

☐ Government

☐ Public Agency

☐ Small Business

Victim Involvement: ☐ By representative  
☐ Verbal information to coordinator

☐ In person  
☐ Refused to participate

☐ By letter  
☐ Surrogate

☐ By telephone  
☐ Victim did not participate

Intake Date: \_\_\_\_\_

|       |  |   |     |  |   |      |  |
|-------|--|---|-----|--|---|------|--|
|       |  | / |     |  | / |      |  |
| Month |  |   | Day |  |   | Year |  |

**Property Involved:**

Value: \_\_\_\_\_

|    |  |  |  |  |  |
|----|--|--|--|--|--|
| \$ |  |  |  |  |  |
|----|--|--|--|--|--|

Damages: \_\_\_\_\_

|    |  |  |  |  |  |
|----|--|--|--|--|--|
| \$ |  |  |  |  |  |
|----|--|--|--|--|--|

Recovered: \_\_\_\_\_

|    |  |  |  |  |  |
|----|--|--|--|--|--|
| \$ |  |  |  |  |  |
|----|--|--|--|--|--|

Insurance Claim Filed: \_\_\_\_\_

☐ Yes

☐ No

Amount recovered by Insurance: \_\_\_\_\_

|    |  |  |  |  |  |
|----|--|--|--|--|--|
| \$ |  |  |  |  |  |
|----|--|--|--|--|--|

## Letters:

Initial victim: \_\_\_\_\_

Accused: \_\_\_\_\_

Meeting: \_\_\_\_\_

Victim Reminder: \_\_\_\_\_

2<sup>nd</sup> Reminder: \_\_\_\_\_

Notices: Crown/Police/File: \_\_\_\_\_

Closing Victim: \_\_\_\_\_

Closing Accused: \_\_\_\_\_

## Outcome Information:

Was an agreement reached: ☐ Yes ☐ No

1. Participation:

☐ Family Group conference

☐ Healing Circle

☐ Other Group  
Conference

☐ Outside referral

☐ Accountability Conference

☐ Mediation

☐ Cautioning

2. Type of Intervention: ☐ In House ☐ Referral

4. Meeting Date: \_\_\_\_\_

|       |  |   |     |  |   |      |  |
|-------|--|---|-----|--|---|------|--|
|       |  | / |     |  | / |      |  |
| Month |  |   | Day |  |   | Year |  |

6. Result: ☐ payment to victim

|    |  |  |  |  |  |
|----|--|--|--|--|--|
| \$ |  |  |  |  |  |
|----|--|--|--|--|--|

☐ community service

|  |  |  |
|--|--|--|
|  |  |  |
|--|--|--|

hours location: \_\_\_\_\_

☐ service to victim (task)

☐ service to victim

|  |  |  |
|--|--|--|
|  |  |  |
|--|--|--|

Hours

☐ educational program

☐ other \_\_\_\_\_

3. Closure Date: \_\_\_\_\_

|       |  |   |     |  |   |      |  |
|-------|--|---|-----|--|---|------|--|
|       |  | / |     |  | / |      |  |
| Month |  |   | Day |  |   | Year |  |

5. Agreement  
Deadline: \_\_\_\_\_

|       |  |   |     |  |   |      |  |
|-------|--|---|-----|--|---|------|--|
|       |  | / |     |  | / |      |  |
| Month |  |   | Day |  |   | Year |  |

☐ formal caution letter

☐ donation to charity

|    |  |  |  |  |  |
|----|--|--|--|--|--|
| \$ |  |  |  |  |  |
|----|--|--|--|--|--|

☐ essay/presentation

☐ formal apology

☐ referral to \_\_\_\_\_

Comments: \_\_\_\_\_

7. Case Status:

☐ Active

☐ Charge reactivated

☐ No further involvement

8. Outcome:

☐ unable to make contact

☐ accused refused to participate

☐ agency returned referral

☐ total default

☐ completed as amended

☐ accused denied responsibility

☐ unable to reach agreement

☐ inappropriate referral

☐ partially completed

☐ completed as planned

☐ other \_\_\_\_\_

9. Level of satisfaction

Largely Satisfied

Moderately  
Satisfied

Limited  
Satisfaction

Dissatisfied

Unknown

Victim: ☐

Offender: ☐

Parents or caregivers: ☐

Police representative: ☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

☐

## Approvals:

Prosecutor: \_\_\_\_\_

|       |  |   |     |  |   |      |  |
|-------|--|---|-----|--|---|------|--|
|       |  | / |     |  | / |      |  |
| Month |  |   | Day |  |   | Year |  |

Agency Intake: \_\_\_\_\_

|       |  |   |     |  |   |      |  |
|-------|--|---|-----|--|---|------|--|
|       |  | / |     |  | / |      |  |
| Month |  |   | Day |  |   | Year |  |

Police: \_\_\_\_\_

|       |  |   |     |  |   |      |  |
|-------|--|---|-----|--|---|------|--|
|       |  | / |     |  | / |      |  |
| Month |  |   | Day |  |   | Year |  |

## Completion Status:

☐ Offender was successful

☐ Offender was not successful

Agency Signature: \_\_\_\_\_

|       |  |   |     |  |   |      |  |
|-------|--|---|-----|--|---|------|--|
|       |  | / |     |  | / |      |  |
| Month |  |   | Day |  |   | Year |  |