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| <p>TYPE OF DOCUMENT – TYPE DE DOCUMENT : Policy – Politique</p> | <p>EFFECTIVE DATE – ENTRÉE EN VIGEUR : September 1, 2015 Le 1^{er} septembre 2015</p> | <p>DOCUMENT ORDER – No. DU DOCUMENT: Policy – Politique 23</p> |
| <p>CHAPTER IV – CHAPITRE IV : Pre-trial, Trial, and Appeal Matters Questions avant le procès, pendant le procès et en appel</p> | <p>Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p> | |

JUDICIAL INTERIM RELEASE

1. Introduction

Generally, there is a presumption that the accused will be released from custody pending trial. Except in certain circumstances, including where the accused is charged with one of the reverse onus offences set out in subsection 515(6) of the *Criminal Code*, the court must order that the accused be released on an undertaking without conditions unless the Crown Prosecutor shows cause for detention in custody or for release on conditions.

2. Review by Crown Prosecutor

2.1 Matters for the Crown Prosecutor’s Attention

Where a person in custody is to be brought before the court, the Crown Prosecutor shall do the following:

- (a) consult with the police or other investigative agency;
- (b) review the materials provided by the police or other investigative agency, including any information regarding concerns of the victim, the victim’s family, or a witness to the offence;
- (c) review the information on the New Brunswick Justice Information System (JIS) and other available sources regarding the accused person’s
 - (i) criminal history;
 - (ii) outstanding warrants of arrest and committal; and
 - (iii) future pleas, trials, preliminary inquiries, and sentencing hearings.

2.2 Factors for the Crown Prosecutor’s Consideration

The Crown Prosecutor shall then determine the following:

- (a) whether there is a reasonable likelihood that the court would order detention in custody, given the grounds for detention set out in subsection 515(10) of the *Criminal Code*; and
- (b) whether detention in custody is in the public interest, given the following aspects of the public interest:
 - (i) protecting the community, including the victim of the offence;

- (ii) maintaining public confidence in the administration of justice;
- (iii) ensuring the accused person attends court; and
- (iv) the liberty interests of the accused.

3. Objecting to Release

Where the Crown Prosecutor determines that there is a reasonable likelihood that the court would order detention in custody, and that detention in custody is in the public interest, the Crown Prosecutor shall object to the release of the accused and attempt to show cause for detention in custody.

The Crown Prosecutor shall not object to the release of the accused for the sole purpose of allowing the police or other investigative agency to complete an investigation.

4. Release on Conditions

Where the Crown Prosecutor determines that there is not a reasonable likelihood that the court would order detention in custody, or that detention in custody is not in the public interest, the Crown Prosecutor shall determine appropriate conditions of release and shall advise the accused or the accused person's counsel.

Where the accused agrees to release on the conditions proposed by the Crown Prosecutor, the Crown Prosecutor shall advise the court. Where the accused does not agree to release on the conditions proposed by the Crown Prosecutor, the Crown Prosecutor shall attempt to show cause for the release of the accused on these conditions.

5. "No Contact" Conditions

Where the accused is to be released, the Crown Prosecutor shall consider proposing a "no contact" condition pursuant to subsection 515(4.2) of the *Criminal Code*.

Where the accused is to be detained in custody, the Crown Prosecutor shall consider proposing a "no contact" condition pursuant to subsection 515(12) of the *Criminal Code*.

6. Offences Involving Death

Where the offence involves death, the Crown Prosecutor shall not consent to the release of the accused without the consent of the Regional Director, or the Director of Specialized Prosecutions, as the case may be, and then only on appropriate conditions.

7. Intimate Partner Violence

Where the offence involves violence between spouses or partners, the Crown Prosecutor shall follow the policies set out in Policy 45, Intimate Partner Violence.

8. Firearm-related Offences

Where the offence is a firearm-related offence, the Crown Prosecutor shall follow the policies set out in Policy 43, Firearms.

9. Show Cause Hearing

Where a show cause hearing is to be held, the Crown Prosecutor shall request that it is held as soon as practicable.

At the show cause hearing, the Crown Prosecutor shall present evidence in accordance with the grounds set out in section 518 of the *Criminal Code*.

10. Variation of Conditions

10.1 Matters for the Crown Prosecutor's Attention

Where an accused initiates a request to vary a condition of release, the Crown Prosecutor shall do the following:

- (a) consider all the circumstances of the request;
- (b) consider the views of the originating police or other investigative agency;
- (c) where appropriate, consider the views of the victim; and
- (d) where appropriate, ensure that the victim has been notified of the request and the date scheduled for the hearing.

10.2 Options Available to the Crown Prosecutor

The Crown Prosecutor shall then determine which of the following options is most appropriate:

- (a) to oppose the request;
- (b) to consent to the request; or
- (c) to consent to alternative conditions.

Where a victim supports a request to vary a condition of a "no contact" condition, the Crown Prosecutor shall ensure that the victim states this on the record.

11. Breach of Conditions of Release

Where an accused is charged with breaching a condition of release, the Crown Prosecutor shall rely on the reverse onus provisions under section 515 of the *Criminal Code* and request that the court revoke the original release order and order that the accused be detained in custody, unless detention is not warranted according to the considerations set out in section 2 above. Where detention in custody is not warranted, the Crown Prosecutor shall propose appropriate conditions of release in accordance with this Policy.

12. Review Provisions

Under section 525 of the *Criminal Code*, an accused person who has been detained in custody pending trial is entitled to a review of his or her detention after thirty (30) days, in the case of a summary conviction proceeding, or ninety (90) days, in the case of an indictable proceeding.

13. Related Documents

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| Policy 11 | Pre-charge Screening |
| Policy 24 | Weekend and Statutory Holiday Remand Court |
| Policy 32 | Witnesses |
| Policy 33 | Victims |
| Policy 43 | Firearms |
| Policy 45 | Intimate Partner Violence |