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POLICE DIVERSIONS & THE ALTERNATIVE

The Police Adult Diversion Scheme ("diversion") was introduced in the late 1980's with the intention of "diverting" deserving cases away from an already busy District Court system and allowing otherwise deserving offenders to escape a conviction.

Diversion is a Police discretionary programme. The Court cannot order the Police to offer diversion to an offender. This discretion is based on the overriding prosecutorial discretion firstly whether to lay a charge and secondly whether to withdraw that charge later (with the Court's Leave) or to offer no evidence leading to an acquittal.

All cases may be considered for diversion however diversion is normally only offered where the offence is either the offender's first offence or there are otherwise special circumstances where diversion may be appropriate. The Police will take into account any victim's views as they are required to do so, but the final decision is that of the appointed Diversion Officer or a Prosecutor. The Officer in Charge of the case (O/C Case) can make a recommendation either way but cannot refuse or offer diversion.

The offence itself must not be serious. Seriousness of the offence is just not the categorisation of the charge but the circumstances of the offending. For instance a charge of injuring with intent is on its face a serious offence, however diversion has been offered for this charge on the basis that the circumstances involved showed the offending itself not to be so serious. Of course victim's views in such a case are given more weight in the making of the decision.

When a Police file is first submitted to the Prosecutor, the O/C case must indicate whether diversion is appropriate. This gives the Prosecutor appearing in a busy "list" Court a quick reference as to whether diversion can be offered in the first

instance.

When the case is called for the first time the Prosecutor will indicate if diversion is appropriate. If it is the case will be remanded for about six weeks for an interview with the Diversion Officer and to give time for any tasks to be completed. If the tasks are completed within the six week period the offender will not have to reappear in Court and the Police will withdraw the charge. There will be no conviction recorded but the Police will record on their computer system that diversion took place.

An offender must accept full responsibility for the offence. A guilty plea is not entered, however what must be remembered is that the Police will have a record that an offender admitted the offence to them and underwent diversion. This may have later ramifications if a Police check is requested by another organisation. If an offender has not committed the offence he or she should think very carefully before making an admission to the Police solely to obtain diversion.

Where diversion is declined at the initial hearing and there are circumstances surrounding the offence that the offender wants the Police to take into account before refusing diversion entirely, a remand can be sought "without plea" so that submissions can be made to the Prosecutor to show that diversion is appropriate. The Police must consider these submissions in coming to their ultimate decision.

If diversion is ultimately not offered to an offender the Sentencing Act 2002 allows that offender to apply to the Court for a "discharge without conviction" on the grounds that the effect of a conviction on the offender outweighs the seriousness of the offence. Submissions are heard from both the offender and the Police and the final decision is the Judge's.

Discharges without conviction will be dealt with in a newsletter early next year.