



Citizen Empowerment Project

Empowering Canadians from underrepresented communities to engage with national law and policy issues.

PRE-CHARGE DIVERSION

DEFINITION

Pre-charge diversion is an alternative to bringing criminal charges against a youth in conflict with the law. Diversion is decided by police officers and will generally send a youth to a program carried out with community organizations to remunerate any losses caused by the crime and provide services and programming for youth.

THIS DOCUMENT

This document provides background information about pre-charge diversion in Toronto for community groups, youth, parents, teachers and any one who may engage with youth in conflict with the law. This document is for educational purposes only and should not be considered legal advice or opinion.

ABOUT THE AUTHORS

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PRE-CHARGE DIVERSION OVERVIEW

If a youth, who is aged 12-17 years old and has never previously been found guilty of an offence, is suspected of a minor criminal offence by the police, a police officer has the choice to:

Charge the youth

OR

Give the youth the option to complete an alternative activity to make up for what you have done. This is formally called pre-charge diversion.

If the officer chooses the pre-charge diversion option, the officer, potentially in collaboration with another organization or government office, will decide what the youth is being asked to do. Youth can get asked to do a range of different things from writing a letter of apology to community service to participating in a mentorship or counseling program. Once the activity is done you have completed the "diversion" and avoided the charge.

The goal of pre-charge diversion is to reduce the number youth that enter the criminal justice system. The Toronto Police Service and the City of Toronto have declared a commitment to offer pre-charge diversion options to youth across the Greater Toronto Area. Whether you are 12-17 years old, or work with someone in that age group, this program affects youth in the community and it is important to be aware of it.

Youth have a choice. Just because a youth is offered this alternative does not mean they have to take it. Participating includes admitting responsibility, so a youth should understand that agreeing to pre-charge diversion is inconsistent with proving they did not do what they are accused of.

ROOTS OF DIVERSION

The Youth Criminal Justice Act calls for a decrease in interactions between youth and the criminal court system. Section 6 of the Act calls for the ability for officers to be able to refer youth to a program or agency in the community which will help the youth not to commit offences. As such, it exists to limit youth-court interaction and provide structured supports to young people in conflict with the law.

Under the Act there are two types of diversion measures: extrajudicial measures (EJM), often referred to as "pre-charge diversion" and extrajudicial sanctions (EJS), often referred to as "post-charge diversion". Pre-charge diversion operates when an officer and youth agree for the youth to enter into a diversion program rather than being charged with a crime. The idea underlying this is that a successful completion of the program will leave the youth uncharged for any criminal conduct, with a clean record. Post-charge diversion occurs after a youth has already been charged with a crime, but takes part in a diversion program instead of receiving a punishment from the court.

HOW DOES IT WORK?

Once a youth aged 12-17 years old, who has also not been previously found guilty of an offence, is in conflict with the law, a police officer has complete discretion to divert him or her. Youth retain the right to challenge the charges in court at all times and must consent to being diverted. If the youth consents to diversion, the charges are frozen until they successfully complete the conditions of the pre-charge diversion. If for whatever reason the youth does not complete the program, the police can choose to press charges.

For many years there has been no centralized pre-charge diversion program at any level of government. Pre-charge diversion has operated differently across Toronto depending on the local relationships between police division stations and community organizations. An example is West Scarborough Neighbourhood Community Centre, which offers pre-charge diversion assistance to youth via their Youth Justice Pre-Charge Panel. A promising model of centralized pre-charge diversion, in which officers relied on a community-based referral system to connect youth to diversion programs, emerged in the early 2000s called "Operation Springboard". However, further funding was not available to the program once the pilot stage was completed, so it was rendered inactive. The Toronto Police Service has developed a strategy to create a new, more centralized referral system for pre-charge diversion in 2016.

OFFENCES THAT MAY BE DIVERTED

Typically minor criminal offences are eligible for pre-charge diversion for youth between 12 and 17 years old, who also have not previously been found guilty of an offence. Examples of such minor offences include:

- Theft of a low-cost item from a store (e.g. shoplifting)
- Minor fraud charges involving a small amount of money (e.g. switching price-tags or not paying transit fare)
- Mischief (involving minor property damage)
- Causing a disturbance
- Possession of small amount of marijuana (intended for personal use)
- Minor assault causing bodily harm

PROGRAMS USED IN DIVERSION

The structure of each pre-charge diversion program is different. Some programs are tailored to the alleged crime or the needs and life circumstances of the youth, including mental health needs and culturally-specific services. Common examples of diversion programs include:

- Behaviour modification programs (e.g. anger management or substance abuse counseling)
- Attending counseling sessions
- Writing a letter to a store owner or retail chain to apologize for shoplifting
- Community service volunteering
- Participating in mediation session

Toronto's Youth Equity Strategy has identified Springboard, West Scarborough Neighbourhood Community Centre, Peacebuilders and East Metro Youth Services as organizations currently offering pre-charge diversion programs.

As community organizations become more experienced in providing pre-charge diversion programs to youth and new programs are developed, we are hopeful that pre-charge diversion will have an increased focus on some additional root causes of criminality among youth. For example, youth in conflict with the law would benefit from skills development that can assist with securing employment, such as financial literacy, resume building or entrepreneurship.

IS DIVERSION EFFECTIVE?

An effective pre-charge diversion program should lead to a reduction in the amount of youth who re-offend. It is not clear that all pre-charge diversion programs are successful at doing this. Our research indicates that programs offering a "wraparound" of services, resources, and life skills that enhance the overall quality of life for youth are more likely to ensure youth do not re-offend.

Police officers have complete discretion to decide who gets diverted at the pre-charge stage. The police may also choose to caution a young person for minor offences, or they can lay a charge. The likelihood of an officer choosing to divert a young person includes several factors such as the history of negative interactions between the youth and law enforcement or an existing criminal record. It is important to recognize that an inherent risk in having police officers play a gatekeeper role for pre-charge diversion is the influence of bias, the power imbalance between officers and youth in conflict with the law and/or the possibility of inconsistency in how pre-charge diversion is applied.

In order for pre-charge diversion to be effective, it's important to strike the right balance between flexibility and uniformity. The experience of Operation Springboard in Toronto suggests a centralized referral system is critical to the successful use of pre-charge diversion. However, enough flexibility is needed to take a tailored approach that suits the needs of particular communities. In order for this to happen, youth, parents, and communities need to be aware of pre-charge diversion and to participate in developing and implementing pre-charge diversion programs.

GET INVOLVED

In order to impact on the role of pre-charge diversion in Toronto, it is critical to engage with the Toronto Police Service (TPS), since pre-charge diversion is in the control of police officers. One way to engage with TPS is to participate in the Community Police Liaison Committee for your local division or one of the city-wide Community Consultative Committees. You may also engage with School Resource Officers, if your local schools have said officers.

Another valuable point of engagement is the City of Toronto's Youth Equity Strategy, which has identified pre-charge diversion as a priority issue for Toronto youth, and the community organizations currently offering pre-charge diversion programs, including Springboard, West Scarborough Neighbourhood Community Centre, Peacebuilders and East Metro Youth Services.