



*Manitoba
Department of Justice
Prosecutions*

Guideline No. 2:PRO:1

Policy Directive

*Subject: Offences Committed Against Peace
Officers*

Date: October 2015

POLICY STATEMENT:

Peace officers are on the front line of the justice system's efforts to respond effectively to crime and to protect the public. Society demands that these officers enter into situations that present risks of personal harm in order to protect the community, preserve the peace, apprehend suspects or prevent the continuation of offences. They are routinely required to deal directly with volatile situations and dangerous individuals. Every effort must be made to ensure that the law provides them with the maximum protection possible. This principle also recognizes the broader public interest in effective law enforcement and the effective administration of justice.

This policy is intended to assist Crown Attorneys by:

- a) identifying provisions of the *Criminal Code* with respect to offences committed against peace officers;
- b) identifying matters to consider when conducting a prosecution, including the *Victims' Bill of Rights*; and
- c) providing statistical information with respect to offences committed against peace officers.

A. CRIMINAL CODE OFFENCES

In the majority of cases, offences committed against peace officers involve police officers. However, the definition of 'peace officer' in section 2 of the *Criminal Code* also includes persons holding a range of public offices. These include mayors, wardens, reeves, sheriffs and sheriffs' officers, justices of the peace, correctional and prison officers, bailiffs (crown/court appointed), customs and excise officers, conservation officers, pilots of certain aircraft in flight, and officers and non-commissioned members of the Canadian Forces who are appointed as military police or are performing other prescribed duties. Crown Attorneys should consult section 2 for the full list. As well, courts have concluded that the list in section 2 is not exhaustive; other examples of

officers included in the definition are band constables¹, game wardens, conservation officers, liquor inspectors and animal control officers.²

As well, section 2 of the *Code* defines ‘public officer’ to include a customs or excise officer, a Canadian Forces officer, an RCMP officer and any officer engaged in enforcing the laws of Canada relating to revenue, customs, excise, trade or navigation.

Section 270 of the *Criminal Code* provides that it is an offence to assault a public officer or a peace officer engaged in the execution of his or her duty or someone acting in aid of the officer. As well, it is an offence to assault a person with intent to resist or prevent the lawful arrest or detention of someone, or to assault a person engaged in the lawful execution of a process or making a distress or seizure, or with intent to rescue anything taken under lawful process, distress or seizure.

Section 270 is a hybrid offence with a maximum penalty of five years imprisonment when the Crown proceeds by indictment, or six months imprisonment on summary conviction.

Section 270.01 of the *Code* provides that it is an offence when committing an assault referred to in section 270, to carry, use or threaten to use a weapon or an imitation thereof, or cause bodily harm to the complainant.

Section 270.01 is a hybrid offence with a maximum penalty of ten years imprisonment when the Crown proceeds by indictment, or eighteen months imprisonment on summary conviction.

Section 270.02 of the *Code* provides that it is an offence when committing an assault referred to in section 270, to wound, maim, disfigure or endanger the life of the complainant.

Section 270.02 is an indictable offence with a maximum penalty of fourteen years imprisonment.

Under section 270.1, it is an offence to disarm a peace officer engaged in the execution of his or her duty. Section 270.1 is a hybrid offence with a maximum penalty of five years imprisonment when the Crown proceeds by indictment, or eighteen months imprisonment on summary conviction.

Section 129 provides that it is an offence to resist or willfully obstruct a public officer or peace officer in the execution of his or her duty or any person lawfully acting in aid of an officer. As well, it is an offence to omit, without reasonable excuse, to assist a public

¹ It should be noted that the federal government terminated the ‘band constable program’ across Canada effective March 31, 2015. Manitoba established the First Nation Safety Officer Program that will give these officers the same powers and protections of a peace officer when enforcing provincial enactments.

² See the discussion and cases cited in L. Wilson, “Obstructing a Peace Officer: Finding Fault in the Supreme Court of Canada” 2000, 27 Man. L.J. 273-296 at par. 12 and note 26.

officer or peace officer in arresting a person or preserving the peace, after having reasonable notice of being required to do so. It is also an offence to resist or willfully obstruct a person in the lawful execution of a process or in making a distress or seizure. Section 129 is a hybrid offence with a maximum penalty of two years imprisonment when the Crown proceeds by indictment or six months imprisonment on summary conviction.

Section 423.1 provides that it is an offence to intimidate a justice system participant which by definition in the Criminal Code includes a peace officer. The type of conduct that is prohibited includes using violence against the peace officer or anyone known to them or causing damage to their property, threats to engage in the aforementioned conduct, persistently or repeatedly following them, repeatedly communicating with them or besetting or watching the place where they or anyone known to them resides, works, attends school, carries on business or happens to be.

Section 423.1 is an indictable offence with a maximum penalty of fourteen years imprisonment.

Also note: section 230 (constructive murder) and section 231(4) (first degree murder of peace officer, acting in the course of his/her duties).

B. PROSECUTION

1. COMMUNICATION WITH VICTIM

Manitoba Prosecutions Service recognizes the need to offer information, assistance and supports to victims of serious crimes and supports the principle that victims should be treated with courtesy, compassion and respect. Under the *Victims' Bill of Rights*, victims of certain crimes are entitled to receive information and assistance once a charge has been laid. Assaulting a public officer or a peace officer engaged in the execution of his duty or a person acting in aid of such an officer (s. 270), assault peace officer or public officer with a weapon or causing bodily harm (s. 270.01) and aggravated assault of a peace officer or public officer (s. 270.02) have been designated as offences to which the *Victims' Bill of Rights* (VBR) applies. The victim peace officer may register under the VBR in order to be entitled to receive information and provide input about a prosecution.

Under the *Act*, a victim is entitled, on request, to receive information about the prosecution of the offence. On request, a victim is also entitled to provide input regarding certain matters about the prosecution, if it is reasonably possible to do so without unreasonably delaying or prejudicing an investigation or prosecution. This includes input on the use of alternative measures, the staying of charges, applications for release, agreements relating to the disposition of a charge, positions taken in respect of sentencing, and decisions to appeal or positions taken respecting an appeal by a convicted person. The Crown Attorney should listen to and seriously consider any information the peace officer victim has to offer. Although the VBR recognizes that victims of crime have a legitimate interest in seeing that their concerns are acknowledged by the Crown,

the VBR does not impose restraints on the Crown Attorney's ability to perform his/her function as an officer of the court.

Crown Attorneys must consider the application of the *Victims' Bill of Rights* when prosecuting a charge under s. 270, s. 270.01 and 270.02. However, even where a peace officer does not specifically request information or chooses not to register under the Victim Information Program, the Crown Attorney should make reasonable efforts to keep the officer informed. Crown Attorneys should also consult with the affected peace officer, where reasonably possible, when prosecuting charges under s. 129 (which is not a designated offence under the VBR), and when prosecuting any other offence in circumstances in which the victim is a peace officer.

In particular, the Crown Attorney should take all reasonable steps to ensure that the officer is notified and his or her views are considered regarding a withdrawal or stay of a charge or an agreement to a plea to a lesser charge. The notification and the reasons supporting the decision should be noted in PRISM. The Crown Attorney should also consider the views of the affected peace officer in relation to bail hearings. Where an accused is released from custody pending the completion of proceedings, the Crown Attorney should take reasonable steps to ensure that the officer is aware of the release, the terms of the release and any amendment to those terms.

Crown Attorneys should ensure that the Crime Victim Services Workers are advised of any discussions held with a peace officer when the peace officer is the victim of a crime. As well, appropriate notations should be made in PRISM.

Related policy: Victims Policy 2: VIC: 1

2. CROWN ELECTION

When considering whether to proceed by way of indictment or summary conviction, Crown Attorneys should consider factors relevant to all offences, including the record of the accused, the seriousness of the actions and the nature of the circumstances. An additional factor that must be considered by Crown Attorneys is that the public has a valid interest in protecting peace officers from injury and enabling them to carry out their law enforcement functions without harm. When in doubt, the Crown Attorney should consult with his or her Supervising Senior Crown.

3. COMMUNITY BASED JUSTICE PROGRAMS

There may be circumstances in which an offender is an appropriate candidate for a community-based justice program. The Crown Attorney should have regard to *Guideline No. 5: COM: 1.1 Extra-Judicial Community-Based Justice Programs*, and consider the views of the affected officer before making such a referral. The Crown Attorney should also consider the need to maintain public confidence in and respect for the administration of justice and the effect of the incident on public order.

4. SENTENCING

Upon conviction of an offender under sections 270, 270.01, 270.02, 129 or 423.1, Crown Attorneys should advocate for a significant and meaningful sentence that reflects the gravity of the offence, the need for denunciation and deterrence and the goal of protecting society. Crown Counsel should highlight the fact to the court of the vital role of peace officers in Canadian society, Section 718.02 of the *Code* provides that the court shall give primary consideration to the objectives of denunciation and deterrence when sentencing in regards to an offence against a peace officer (s. 270, 270.01 or 270.02) or other justice system participant (s. 423.1(1) (b)).

In that regard, Crown Attorneys should consider presenting relevant statistics regarding offences committed against public and peace officers in Manitoba and Canada, as described in Appendix “A”. Similarly, when an offender is convicted of another offence and the victim is a peace officer on duty, Crown Attorneys should ensure that this fact is brought to the attention of the court as an aggravating factor for sentencing purposes.

5. DNA DATA BANK ORDER

The Crown Attorney should consider applying for a DNA data bank order under s. 487.05 of the *Criminal Code* when an offender is convicted of assaulting a peace officer under s. 270 as it is a secondary designated offence, and the court may make an order authorizing the taking of samples of bodily substances for the purpose of DNA analysis if the court is satisfied that it is in the best interests of the administration of justice to do so. Assault peace officer with weapon or causing bodily harm (s. 270.01) and aggravated assault of peace officer (s. 270.02) are primary designated (mandatory) offences. Intimidation of a justice system participant (s. 423.1) is a primary (presumptive) offence.

6. PROHIBITION ORDERS

The Crown Attorney should seek a discretionary weapons prohibition order under s. 110 of the *Code* when there are concerns about the safety of any person or of the public. Crown Attorneys are also expected to bring to the Court’s attention s. 115 of the *Code*, which provides for the forfeiture of any weapon prohibited by the order that is in the possession of the person when the order commences.

RATIONALE

Peace officers regularly encounter situations of risk in carrying out their obligation to protect public safety. In recognition of the inherent danger of their functions, their essential role in the effective administration of justice, and the need to maintain public confidence in the justice system, efforts should be made within the justice system to

protect them from harm. Offenders should be aware that interfering with a peace officer who is carrying out his or her duties will have meaningful consequences.

“..... the maintenance of a just, peaceful and safe society is the fundamental purpose of sentencing. Police officers play a unique and crucial role in promoting and preserving a just, peaceful and safe society. We rely on the police to put themselves in harm’s way to protect the community from the criminal element. At the same time, we rely on the police to act with restraint in the execution of their duties and to avoid the use of any force, much less deadly force, unless clearly necessary. Violent attacks upon police officers who are doing their duty are attacks on the rule of law and on the safety and well-being of the community as a whole. Sentences imposed for those attacks must reflect the vulnerability of the police officers, society’s dependence on the police, and society’s determination to avoid a policing mentality which invites easy resort to violence in the execution of the policing function: *R. v. Forrest* (1986), 15 O.A.C. 104 at 107 (Ont. C.A.) referred *R. v. McArthur*, 2004 CarswellOnt 782(Ont. C.A.)

Specifically, in relation to correctional officers, the following cases can be referenced:

R. v. Sharp, 2004 CarswellOnt 1347, Ontario Court of Appeal: *The threats in this case were especially serious. Moreover, the appellant had a concealed weapon inside the correctional facility. The impact of the threat on the correctional worker who received one of them was devastating. Correctional workers have very difficult jobs and deserve to be protected by the courts.*

In sentencing an offender to nine (9) months’ incarceration and a year of probation for having punched a corrections officer, the court in ***R v. Crothers, 2007 NBQB 237***, stated at paragraph 42:

[42] *Corrections officers have a very difficult job and require support of the public in carrying on their duties. A message must be given that this type of behaviour will not be condoned by the Court and that an assault on a peace officer engaged in the course of his duties is viewed by the Court to be very serious.*

Appendix A

Canada

The Canadian Centre for Justice Statistics reports the following statistics in relation to incidents of assault against peace officers³ in Canada:

Total

<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
7224	7616	8179	8508	8868	9089	9534	9593	9876	9806	9822

Total Assault against peace officer 2009 to 2014

<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
11837	15913	11424	10776	9826	9450

The 2014 data represents a 31% increase of total assaults against all police officers and peace officers since 1999.

Manitoba

With respect to Manitoba, the following statistics were reported by the Canadian Centre for Justice Statistics:

Assault against police officer

<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
226	277	321	407	412	423	415	388	391	371	500

Total Assault against peace officer 2009 to 2014

<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
727	1278	863	732	686	577

The 2014 data represents a 155% increase of total assaults against all police officers and peace officers since 1999.

The Canadian Centre for Justice Statistics released statistics in relation to incidents of police officers murdered in the line of duty, 1961 to 2009 in Canada.

- From 1961 to 2009, 133 police officers were murdered in the line of duty in Canada.

³ Peace officers include police officers, correctional officers, bailiffs, justices of the peace and others who are employed for the maintenance of public peace. Since 2009 Stats Canada no longer distinguishes between “assault against police officer” and “peace/public officer,” but only provide the “total assault against peace officer.”

- Firearms were used in 92% of police officer homicides and of these 44% involved handguns.
- Nearly a quarter of police officer homicides (23%) occurred during a robbery investigation, followed by domestic disputes (14%) and firearms complaint investigations (10%) as the most dangerous activities for police officers.
- Manitoba has had six recorded incidents of police officer homicides. These occurred in the following years (one each): 1969, 1970, 1971, 1978, 1986 and 2001.

Crown Attorneys are free to quote the above statistics in making submissions to the court. However:

- a) The source of the information should be referenced.
- b) Defence counsel should be advised in advance of the statistics that will be relied upon.
- c) Where defence counsel challenges the validity of the statistics, the Crown can present further information to back up its statistical information. A copy of the source Canadian Centre for Justice Statistics (CCJS) report can be filed with the court. The Policy Development and Analysis Division of Manitoba Justice has a copy of each of the CCJS reports.