

Caution:

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT

ONTARIO REGULATION

to be made under the

COMMUNITY SAFETY AND POLICING ACT, 2019

STANDARD – INVESTIGATIONS

Definitions

1. In this Regulation,

“investigation” means a systematic inquiry to,

- (a) locate a missing person, or
- (b) determine whether an offence under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) or the *Cannabis Act* (Canada) has been or will be committed when there is a reasonable suspicion that such an offence has been or will be committed; (“enquête”)

“investigator” means a peace officer who is a member of a police service and who has successfully completed the training prescribed by the Minister; (“enquêteur”)

“Major Case Manager” means a person who performs the responsibilities of a Major Case Manager as described in the Ontario Major Case Management Manual referred to in Ontario Regulation 354/04 (Major Case Management) made under the *Police Services Act*; (“gestionnaire des cas graves”)

“senior investigator” means a police officer who has successfully completed the training prescribed by the Minister; (“enquêteur principal”)

“supervisor” means a police officer who is assigned to monitor the performance of and provide support to an investigator or senior investigator with respect to an investigation. (“superviseur”)

Interpretation

2. (1) Failure to comply with a requirement of this Regulation does not, in itself, impugn the lawfulness of any step taken in an investigation.

(2) For greater certainty, subsection (1) shall not be read as having any effect on whether a failure to comply with this Regulation constitutes misconduct under a prescribed code of conduct.

Ability for investigation

3. For every police service, at least one of each of the following individuals shall be available 24 hours a day:

1. A senior investigator.
2. A supervisor.
3. A Major Case Manager.

Investigator or senior investigator

4. Every investigation shall be undertaken by an investigator or senior investigator as determined by a supervisor.

Duty to notify supervisor

5. (1) If a member of a police service, in the course of their duties, becomes aware of a matter mentioned in subsection (2) and believes that a supervisor has not yet been notified of the matter, the member shall promptly notify a supervisor of the matter in accordance with the procedures established by the chief of police under section 17.

(2) The matters referred to in subsection (1) are the following:

1. A missing person occurrence.
2. A matter in relation to which there is a reasonable suspicion that an offence under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) or the *Cannabis Act* (Canada) has been or will be committed.

Duty to inform Major Case Manager

6. If a supervisor determines that a matter of which the supervisor has been notified under section 4, or which is already under investigation, is a major case as defined in section 4 of Ontario Regulation 354/04 (Major Case Management) made under the *Police Services Act*, the supervisor shall promptly notify a Major Case Manager.

Determination re investigation

7. (1) Upon being notified of a matter under section 5, a supervisor shall determine whether the matter will be investigated.

(2) If the supervisor determines the matter will be investigated, the supervisor shall, based on the following factors, assign either an investigator or a senior investigator to undertake an investigation:

1. All information available at the time regarding the matter to be investigated.
2. The complexity of the investigation.
3. Public safety concerns and the impact on the community resulting from the matter to be investigated.

4. The resources required for the investigation and the anticipated length of the investigation.
5. Any procedures established by the chief of police under section 17.
6. Any applicable requirements prescribed under the Act.

Supervisor duties re investigation

8. A supervisor who determines a matter shall be investigated under section 7 shall,

- (a) monitor the performance of and provide support to the investigator or senior investigator undertaking the investigation;
- (b) ensure that the investigation is carried out effectively and in compliance with all relevant law, including this Regulation;
- (c) reassign the investigation to a different investigator or senior investigator if the assigned investigator or senior investigator is unable to undertake the investigation adequately; and
- (d) notify the chief of police, or the chief's designate, if any factors relating to the administration of the police service create systemic barriers to effectively undertaking investigations, including factors such as resources, the procedures established by the chief of police under section 17 and any agreements made under section 14 of the Act.

Duty to ensure safety of persons

9. Every investigator or senior investigator undertaking an investigation shall take all necessary and reasonable steps to ensure the immediate safety of all persons relevant to the investigation including victims, suspects, witnesses and persons of interest, and notify a supervisor if there is an immediate threat to the safety of any of these persons.

Duty re interviews

10. Every investigator or senior investigator undertaking an investigation shall perform any individual interviews with a victim, suspect, witness or person of interest in accordance with their training and any procedures established by the chief of police, and subject to the governing jurisprudence and to the reasonable exercise of the officer's discretion.

Duties re scene to be examined

11. (1) If a location is identified as a scene that should be examined for the purpose of an investigation, the investigator or senior investigator undertaking the investigation shall,

- (a) establish the boundaries of the scene;
- (b) ensure that the scene is secured;
- (c) limit access to the scene; and
- (d) identify and maintain a record of persons present at the scene.

(2) The investigator or senior investigator undertaking an investigation in respect of which subsection (1) applies shall ensure that, where applicable and authorized by law,

- (a) a complete scene search is conducted;
- (b) the scene is documented, including through photographs and, if possible, video recording; and
- (c) records of all actions taken as part of the search are made and kept.

Duty re evidence collection

12. (1) An investigator or senior investigator undertaking an investigation shall ensure that all items of potential evidentiary value that may lawfully be collected are collected, regardless of whether immediate relevance to the investigation is established.

(2) The investigator or senior investigator shall ensure that the chain of continuity is maintained for all evidence collected, including ensuring that any transfer of evidence from one person's control to another person's control is documented.

Duty re records

13. An investigator or senior investigator undertaking an investigation shall ensure the following records relating to an investigation, if obtained or prepared by them or by someone acting under their direction, are entered into the police service's records management system:

1. A copy of the occurrence report or missing person report regarding the matter to be investigated and copies of reports regarding follow-up steps taken.
2. Confessions, admissions and any other statements recorded in any form.
3. Investigative notes.
4. Any Canadian Police Information Centre checks.
5. Any reports from another police service in relation to a Canadian Police Information Centre check.
6. A list of evidence collected during the investigation.

Specialized services

14. (1) An investigator or senior investigator undertaking an investigation shall consider whether it is appropriate to make use of specialized services provided by members of a police service dedicated to or specially trained for the provision of those services, including,

- (a) forensic identification;
- (b) technical collision investigation and reconstruction;
- (c) physical surveillance;
- (d) video and photographic surveillance; and
- (e) community liaison services.

(2) The investigator or senior investigator shall make use of any specialized services mentioned in subsection (1) that the investigator or senior investigator determines it is appropriate to make use of.

Duty to inform supervisor

15. An investigator or senior investigator undertaking an investigation shall promptly inform a supervisor if their ability to undertake the investigation is hindered.

Policy re investigations

16. Every police service board and the Minister shall establish a policy with respect to the conduct of investigations.

Chiefs of police — procedures

17. Every chief of police shall establish and maintain the following procedures:

1. Procedures regarding the notification of supervisors of,
 - i. a missing person occurrence, and
 - ii. a matter in relation to which there is a reasonable suspicion that an offence under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) or the *Cannabis Act* (Canada) has been or will be committed.
2. Procedures for undertaking investigations.
3. Procedures for the management of information relating to investigations.
4. Procedures for managing confidential human sources and ensuring the security of those sources.

Duty to consult with Crown

18. Every chief of police shall consult with the Crown Attorney regarding any concerns raised by the Crown Attorney or judiciary regarding the chief's procedures related to investigations or the practices of members of the police service related to any aspect of an investigation.

Duty to deploy members as required

19. Every chief of police shall deploy members of their police service as required to undertake or supervise investigations.

Factors re number of members required

20. Every chief of police shall consider the following factors when determining the number of members of a police service that are required to undertake and supervise an investigation:

1. Data on the workload of members conducting investigations from the previous five years.
2. The crime severity index for areas being policed.
3. The strategic plan for the police service.
4. The geographical characteristics of the community.

Commencement

21. [Commencement]