



# Police Release Guidelines

## Police Release on a Promise to Appear with an Undertaking in Violence Against Women in Relationships Cases

December 2010

### INTRODUCTION

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#### Background

As first responders, police have a key and important leadership role in managing issues associated with keeping victims safe. Police assume a critical responsibility in identifying highest risk cases of domestic violence and in initiating the flow of information and communication among key response agencies

Emerging best practices recognize the need for integrated cross-agency policies as a key component of an effective domestic violence response strategy. In 2010, as part of the province's domestic violence action plan, the 2004 *Violence Against Women in Relationships (VAWIR) Policy* and the 2005 police release guidelines were updated.

#### Purpose

These guidelines supplement the provincial *VAWIR Policy*. They are intended to assist municipal police and Royal Canadian Mounted Police across British Columbia. Police agencies are advised to provide their officers with a copy of the guidelines and ensure their operational policies are consistent with these guidelines.

If police officers follow these procedures when releasing offenders, the integrity of the court process can be assured and victim safety maximized.

Related documents include:

- ❖ *Violence Against Women In Relationships Policy 2010.*

Related Training Includes:

- ❖ Online Course: *Evidence-based, Risk-Focused Domestic Violence Investigation*
- ❖ Online Course: *Introduction to Domestic Violence Risk Assessment and Safety Planning* (date TBA)
- ❖ Advanced Training: *Risk for Intimate Partner Violence: Threat Assessment and Management Using the B-SAFER* beginning fall 2010.

There are three legal points to be made about the release of persons accused of domestic violence:

### 1. Statutory authority

The Criminal Code of Canada provides authority to police officers to release an accused person who is in custody, having been arrested with or without warrant, under sections 503 and 499.

Sections 496-503 oblige officers to release accused persons with the least restrictions of liberty necessary under the circumstances.

Sections 499 and 503 permit police officers and officers in charge to release suspects on undertakings and recognizances with specified conditions. The available conditions are the same in each section, and include an authority to impose such conditions that the "officer considers necessary for the safety and security of any victim or witness to the offence". However, the officer must be able to justify any condition imposed.

Although the list of conditions can address many risks, the sections do not grant police officers blanket authority to impose conditions unless they can be justified.

### 2. Public interest

Police officers must consider several factors relevant to the public interest.

Factors which justify more restrictive forms of release and more restrictive conditions are the:

- ❖ Need to identify the accused;
- ❖ Need to preserve evidence;
- ❖ Risk that the offender will commit more offences;
- ❖ Risk that the offender may jeopardize the safety of victims or witnesses;
- ❖ Risk that the offender will intimidate witnesses; and
- ❖ Need to ensure the offender will attend court.

If the factors cannot be addressed by police release conditions, the accused should be detained and brought before a court for a bail hearing under section 515 of the Criminal Code.

The court may impose more restrictive conditions and may require a recognizance with cash or surety, or may detain the accused in custody.

### 3. Change of process

If the accused is not in custody when charges are approved and if Crown counsel believes that the release conditions imposed by the police do not adequately protect the safety and security of the victim and the public, Crown counsel may request a warrant according to section 512 of the Criminal Code.

Crown counsel may also make an application for a warrant in order to bring the accused before the court to re-establish protective conditions if the Promise to Appear (PTA) or Undertaking to Appear (UTA) is cancelled. Release conditions or terms of court imposed bail can be changed if there is a change in circumstances, particularly if there is a threat to the safety of a victim or witness, or if the accused is no longer likely to attend court as required.

Sections 499(3), and 503(2.2) permit the accused to apply to the court for variation of the conditions on an undertaking imposed by a police officer, prior to first appearance, without notice to the Crown. This may happen before the Report to Crown Counsel has been received by the Crown.

Section 499(4) and section 503(2.3) permit Crown counsel to apply for changes to the conditions of the undertaking, but requires three days notice to the accused and must be done prior to or at the first appearance.

## **POLICE OPTIONS**

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After arresting a suspect, police may do the following:

- ❖ Release the accused on appearance notice or summons (no conditions);
- ❖ Release the accused on conditions;
- ❖ Request the accused be held for bail hearing before justice of the peace or provincial court judge and released on conditions; or
- ❖ Request court ordered detention.

### **1. Release the accused on appearance notice or summons**

It is not typically in the public interest to release an accused on an appearance notice or summons because no bail conditions can be attached to this form of release. Police must be satisfied the accused poses no risk of violence or intimidation to victims or witnesses.

### **2. Release the accused on conditions**

Criminal Code sections 497-499 and 503 permit police to release accused persons on undertakings and recognizances with specific conditions.

Police release occurs by having the accused enter into an undertaking according to Form 11.1 (Undertaking Given to a Peace Officer or an Officer in Charge) and it may include conditions. It may include the following available conditions:

- ❖ Abstain from communicating, directly or indirectly, with any victim and children, witness (including children) or other person identified in the undertaking;
- ❖ Identify all persons, including children. Names are used where possible. If the names are unknown, an identifying description is reported such as "the family of Jane Doe/John Smith including their mother, father, child, brother and sister";
- ❖ Consider including the names of the victim's children and other family members, or any other person who may be subject to intimidation or undue pressure;
- ❖ Do not attend the family residence, victim's place of work, children's school/daycare, or other place where the accused knows that people named in the non-communication order could be

found. Note: Places are specified by an area restriction or a specific address. Caution is used to avoid providing the accused with unknown information regarding the whereabouts of a victim/witness;

- ❖ Report to a bail supervisor at a designated location at specified times and as directed thereafter by the bail supervisor. This condition should always be applied in domestic violence cases;
- ❖ Abstain from possessing firearms, surrender firearms in their possession, and surrender authorizations, licenses, and registration certificates to acquire or possess firearms. Note: When a suspect on bail with a firearms prohibition is released, police ensure conditions are upheld that require that the accused surrender firearms to the police immediately and not at a later date;
- ❖ Abstain from consuming alcohol and drugs;
- ❖ Comply with other condition that the police consider necessary to ensure the safety and security of the victim or witnesses.

### **3. Request the accused be held for bail hearing before Justice of the Peace or Provincial Court Judge and released on conditions**

In all cases where police determine there is a significant risk of violence, police should hold the accused for a bail or adjournment hearing, unless the investigator has a high degree of confidence that the risk factors can be effectively managed through UTA/PTA, conditions appropriate victim safety planning, and in accordance with the Criminal Code s. 497 – 499.

A Report to Crown Counsel, even if a preliminary report, must be provided for the bail hearing.

The RCC should provide the evidence necessary to support a recommendation to the court that:

- ❖ The victim requires a higher measure of protection from the accused through the issuance of “no contact” orders rather than from “non-communication” conditions available in a form 11.1; and
- ❖ A condition prohibiting the accused from possessing firearms, cross-bows, knives, prohibited and restricted weapons, prohibited devices or ammunition and explosives, is necessary and appropriate in the circumstances.

### **4. Request for court ordered detention**

Where police determine that there is a significant risk of violence, or concerns that the accused will not obey imposed release conditions, police should hold the accused for court and recommend Crown counsel seek a detention order from a judge (or justice of the peace). Section 518(1)(d.2) of the Criminal Code requires a judge to consider any evidence submitted regarding the need to ensure the safety and security of a victim or witness.

More time might be required to conduct additional investigation or to gather further information to determine if it is necessary to detain the accused for the safety or protection of a victim, witness or the public. In this case, Crown counsel may apply to the court to adjourn the show cause hearing for up to three days according to section 516 of the Criminal Code. Police must clearly articulate the investigative steps already taken to obtain the necessary information to assess the safety concerns. They may also be required to explain the steps necessary to obtain the required information should the adjournment be granted.

Subsection 516(2) of the Criminal Code authorizes a justice who remands an accused to custody under subsection 516(1) or subsection 515(11) to order that the accused abstain from communicating directly or indirectly, with any victim, witness or other person identified in the order. The only exemption to this abstention must be in accordance with conditions specified in the order that the justice considers necessary.

## **POLICE RELEASE PROCESS**

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In addition to these guidelines, police are advised to consult the VAWIR policy (including the Protocol for Highest Risk Cases) and their own department or detachment's operational policies and procedures to be followed in cases of violence against women in relationships and other instances of domestic violence.

1. When an indictable offence has occurred, or may occur, police should arrest the suspect without warrant under section 495 of the Criminal Code to:
  - ❖ Protect the public interest;
  - ❖ Ensure victim safety;
  - ❖ Prevent a repeat offence or the commission of new offences (i.e., interference with administration of justice, witness intimidation);
  - ❖ Secure attendance of the accused in court; and
  - ❖ Preserve evidence
2. Comprehensive and accurate documentation are critical elements in the investigation and prosecution of all cases. Police ensure all documents pertaining to the events and circumstances justifying an arrest are completed in this manner.
3. Upon arrest and prior to setting release or bail conditions, police should assess victim safety needs to determine whether to release or detain a suspect.
4. Arrest and detention must always be fully justified in law. The process of justifying the detention of an accused is best accomplished if predicated by an assessment of the risks associated to the release of the accused. A police officer must also be able to articulate the grounds that brought them to the conclusion that a person can safely be released from custody.
5. When considering release, police should:
  - ❖ Consider all risk factors and relevant facts to assess victim safety needs to determine whether to release or detain a suspect. When determining whether to release the suspect, police officers consider the public interest, including the possible risk to children involved;
  - ❖ Check the Protection Order Registry (POR) to determine if any orders are in place. Civil orders as well as criminal orders can provide valuable background information. A history of violation of any order should be taken into consideration.
6. Police supervisors should review all decisions related to release or detention of the accused in domestic violence cases.

## Important Notes and Considerations Regarding Police Release

- Police release does not apply to offences that are punishable in excess of five years in jail.
- The wording of some conditions in form 11.1 may not provide adequate protection to victims. For example, case law indicates court issued “no-contact” orders offer victims greater protection than form 11.1 “non-communication” conditions. If conditions must be put on the suspect that a court must impose, police should not release.
- Amendments to a form 11.1 UTA must be done judicially.
- Police have no power to impose a weapons prohibition (distinct from a firearms prohibition). When a weapon (e.g., knife) is used or threatened, serious consideration is given to seeking a weapons prohibition through a bail hearing. A court may impose a prohibition order for firearms and other weapons. Police can seek such an order either under section 111 of the Criminal Code or through a bail hearing.
- Police Release on an Undertaking to Appear (UTA) or Promise to Appear (PTA) is strongly discouraged in highest risk domestic violence cases. It is recommended that the accused be held in custody for a bail or adjournment hearing unless the investigating officer has a high degree of confidence that the risk factors present can be effectively managed through UTA/PTA conditions and safety planning.
- All alleged breaches of criminal and civil orders require assessment, no matter how minor. When a breach relates to an existing order on a domestic violence case, police should not release but should hold the accused for court.
- If the accused is on any form of bail and has breached the current bail conditions, or if an officer’s best judgment determines there are reasonable and probable grounds to believe the accused has or will commit an indictable offence, the accused is in a position where he/she must justify their release (Refer to Criminal Code section 524). A remand should be sought pursuant to Criminal Code section 516(1). This may be referred to as a reverse onus situation.
- If the ability of the accused to understand or abide by the release conditions is impaired, then consideration should be given to detention until such time that the accused is competent to understand and abide by the conditions.
- If as a result of a charge, the accused will be prevented by condition from returning to their previous residence, every effort should be made to confirm a residence prior to their release. If residence cannot be confirmed prior to release, the bail supervisor should be provided with residence approval authority. If there is concern regarding risk, and a residence cannot be confirmed prior to release, the accused is viewed as a risk to breach bail and/or to commit additional offences and should be held for a bail hearing.

7. Prior to releasing an accused from custody, police should:
  - a. Check for other bail conditions or UTAs that may have been imposed by criminal or family court;
  - b. Immediately submit completed form 11.1 for entry into the POR/CPIC. Any changes to conditions (varied or cancelled) are updated in the POR/CPIC;
  - c. Immediately share the completed form 11.1 with the bail supervisor, if reporting conditions have been imposed;
  - d. In cases when children are present, police should also notify the child welfare worker of the release and conditions;
  - e. Forward the Report to Crown Counsel so that Crown counsel may address any attempt by the accused to change the bail conditions in court at or prior to the first appearance;
  - f. Explain to the accused the need to obey all existing orders;
  - g. Ensure that victim safety issues are addressed. The arresting officer advises the releasing officer of the telephone number and address where the victim is located.
  - h. Notify the victim about the release and explain the conditions, prior to release of the accused. Where agreed practices have been established in the community, Crown counsel or designated personnel may inform the victim;
  - i. Inform the victim of and refer them to a community-based victim service program or, if no community-based program exists, the local police-based victim service program where available;
  - j. Advise the victim of VictimLink BC, a 24-hour, toll-free, confidential help and information line (1-800-563-0808);
  - k. Provide a hard copy of the UTA to the victim as soon as possible; and
  - l. Notify the victim, in the event the UTA/PTA is cancelled.
8. As domestic violence cases are complex and often involve a variety of dynamic factors, the risks posed to victims may change as new or unforeseen circumstances develop. Consequently, a reassessment of risks may be required in conjunction with ongoing communication with other involved agencies (i.e., child welfare worker, corrections staff) to ensure the continued safety of victims.
9. Victim safety is best managed by finding ways to prevent, discourage and monitor contact between the suspect and victim. Police should:
  - ❖ Monitor the suspect to ensure compliance with imposed conditions;
  - ❖ Check with the victim (or with Victim Services) on the status of safety planning;
  - ❖ Ensure that any breach of release conditions should result in a review of the risks present in the case, and a reconsideration of what measures, if any, are necessary to protect the victim's safety.

## **Cancellation of the Promise to Appear/Undertaking**

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If, as of the first appearance date indicated on the promise to appear or appearance notice, no criminal proceeding has been commenced (i.e., no information sworn or direct indictment), any attached UTA in Form 11.1 is no longer in effect. In order to preserve any conditions listed on a Form 11.1 UTA it is important that the information be sworn before the first appearance date on the PTA. It is recommended that the Report to Crown Counsel be completed on an expedited basis to ensure that the information can be sworn, if appropriate, and approved by Crown counsel, prior to the first appearance date.

If the information is sworn after the first appearance date a warrant should be requested so that any protective conditions can be re-established. The following police personnel have responsibilities in this regard:

- ❖ The court liaison officer or designate responsible for swearing the information:
  - a. Notifies the supervisor that the PTA/UTA has been cancelled and that the case will be proceeding by way of either a summons or warrant as determined by the Justice of the Peace;
  - b. At the time of swearing the information, informs the Justice of the Peace of the reasons why protective conditions are sought, and requests a warrant be issued; and
  - c. Requests a personal service summons if the case cannot proceed with a warrant.
  
- ❖ The police supervisor ensures that:
  - a. The victim is informed about the cancelled protective conditions;
  - b. The victim is referred to a community-based victim services agency, if available, or to police-based victim services, for assistance in reviewing victim safety and available protective measures;
  - c. The Protection Order Registry does not remove an order from the database. The order is cancelled and the documentation scanned into the file. The cancelled conditions are deleted from CPIC; and
  - d. Crown counsel is notified of the cancelled PTA/UTA so that they can request a change of process at the first appearance to re-establish protective conditions.