

Controlled Communication Policy—Template

This template provides sample language and content to help your agency develop a written policy and to guide your agency's actions related to controlled communication during active investigations for current and cold cases. Review and revise this template to ensure consistency with your state's statutes and your agency's policies and practices.

[Agency Letterhead]

Controlled Communication

Purpose and Scope

This policy provides guidance for investigators in the *[insert appropriate investigative unit/division/command]* for use of controlled communication as an investigative tool on assigned cases.

Definition and Objective

Controlled communication: A recorded contact under the direction of law enforcement between the *individual impacted by the crime* (e.g., victim, witness, or the victim's parent[s] or legal guardian[s]) and the suspect for the purpose of gathering information about the offense being investigated

Objective: To provide an opportunity for the suspect to describe events outside of law enforcement custody and without the believed presence of law enforcement

Procedures

Controlled communication oversight: To ensure effective use of controlled communication as an investigative tool, the *[insert investigative unit supervisor]* shall ensure the following:

- ◆ Personnel understand the purpose and objective of using controlled communication.
- ◆ Investigators receive training on the scope and parameters, including the following:
 - Federal, state, and local statutes that apply to the situation (e.g., one-party consent communications, prohibited use of threats or promises toward suspects)
 - Understanding that *individuals impacted by crimes* who participate in controlled communication may be viewed as agents of law enforcement

- Procurement and use of necessary equipment
- Expectation for complete conversations to be captured and recorded
- Importance of contact being attempted/completed prior to the suspect's awareness of the pending investigation

- ◆ Advocates receive training on the process and their role during ongoing cross-training.
- ◆ Requests are reviewed and approved **prior** to any actual or attempted contact by investigators.

Controlled communication considerations: Considering the case history and context of the relationship between the *individual impacted by the crime* and the suspect, the investigator shall do the following:

- ◆ Identify and determine the best medium to complete the contact (e.g., phone call, text, email, or social media).

Example: If the *individual impacted by the crime* and the suspect met and communicated through a social media app, then the app may be the best medium to use for the controlled communication.
- ◆ Ensure contact strategy follows all applicable federal, state, and local statutes.
- ◆ Ensure there are no active legal or court injunctions that prohibit contact between the *individual impacted by the crime* and the suspect.
- ◆ Consult with an advocate to ensure the willingness and ability of the *individual impacted by the crime* to complete the requested contact. Factors to consider include the following:
 - Trauma response to the original incident
 - Engagement in therapeutic or counseling services
 - Current support system

- Current relationship with the suspect
- Current safety concerns

Controlled communication preparation: Prior to any attempted or actual contact, the investigator shall complete the following:

- ◆ Establish equipment and communication avenues by
 - Securing necessary equipment and communication avenues (e.g., recording device, non-published phone, and agency-approved email or social media account)
 - Ensuring equipment and communication avenues are available and functioning properly
 - Ensuring availability of quiet and secure room to facilitate contact.
- ◆ Develop strategy for contact by
 - Reviewing case facts and prior communication between the *individual impacted by the crime* and the suspect, and asking the following questions:
 - ◆ What is the relationship? (e.g., coworkers, friends, intimate partners, acquaintances)
 - ◆ How do they normally communicate?
 - ◆ When did they last communicate?
 - ◆ Would communicating after the assault be natural?
 - ◆ Is the suspect aware of law enforcement involvement?
 - Reviewing other investigative information present in the case (e.g., evidence or witnesses)
 - Determining the communication avenue and current accounts (e.g., phone number, email address, and social media account) associated with the suspect
- ◆ Conduct meetings/briefings with the following individuals:
 - Prosecutor
 - ◆ Review case details.
 - ◆ Discuss intent to conduct controlled communication.
 - ◆ Review parameters for content of conversational script.
 - ◆ Review all applicable federal, state, and local statutes.
 - Advocate
 - ◆ Discuss intent to conduct controlled communication.
 - ◆ Review purpose of contact and potential results, including the following:
 - Retraumatization of the *individual impacted by the crime*
 - Lack of a clear outcome based on the suspect's statements and the contact
 - Indication to the suspect of the pending investigation
 - Use of contact strategies and methods that may be challenged during trial
 - ◆ Review and identify investigator and advocacy roles before, during, and after contact.
 - ◆ Coordinate a joint meeting/briefing with *individual impacted by the crime*.
 - *Individual impacted by the crime*
 - ◆ Investigator and advocate should review the following:
 - Purpose of contact
 - Safety concerns
 - Potential outcomes that include statements and perceived admissions made by the suspect and the relationship of those statements and perceived admissions to probable cause
 - Ability to discontinue participation in contact and reinforce continued commitment to investigative action
 - Potential themes for contact/conversation with the suspect
 - Potential language and verbiage to avoid (e.g., threats or promises, use of terms to include "rape" and "rapist")
 - ◆ Investigator and advocate, with input from the *individual impacted by the crime*, should develop a script to guide contact/conversation.
 - [insert reference to companion document]
- ◆ Conduct practice sessions to ensure maximum comfort and effective completion of controlled communication.
 - Coordinate joint sessions to include the investigator, advocate, and the *individual impacted by the crime*.

- ◆ Review and discuss the following objectives of contact:
 - To allow the suspect a non-investigative interview opportunity to provide a description of events; this opportunity can include an admission, a denial, or information related to consent.
 - To attempt to establish that there was sexual contact between involved parties and the contact was nonconsensual

Controlled communication completion:

During the controlled communication contact, the investigator shall do the following:

- ◆ Ensure that the entire conversation during contact is captured and recorded.
- ◆ Be prepared to prompt the *individual impacted by the crime* to
 - Use questions that assist in ensuring the suspect is the person involved in the contact
 - Provide small pieces of information to the suspect about the incident that only the suspect and the *individual impacted by the crime* would know
 - Attempt to have the suspect confirm or acknowledge this information as accurate
 - Counter the suspect’s potential statements (e.g., denials, memory lapses).

Controlled communication assessment and activity:

Following completion of controlled communication, the investigator and [*insert investigative unit supervisor*] shall

- ◆ Ensure all contact is captured and recorded according to agency practices.
- ◆ Review and assess suspect’s statements.
 - If probable cause is established, then develop suspect/arrest contact plan.
 - If no probable cause is established, then coordinate an interview with the suspect and determine the next investigative steps.

Following completion of controlled communication, the investigator shall conduct meetings/briefings with the following individuals:

- ◆ Prosecutor
 - Review content of contact (e.g., recording or written substance of the contact).
 - Review and determine future investigative actions and steps.
 - Review possible criminal charges.
- ◆ Advocate and *individual impacted by the crime*
 - Review and develop future investigative actions and steps.
 - Provide guidance around future contact between the *individual impacted by the crime* and the suspect.
 - Review safety concerns.