

# Controlled Communication and Incorporation of Advocacy

## Investigative Strategies for Law Enforcement Personnel

### What is controlled communication?

Controlled communication involves recorded contact between suspects and individuals who have been impacted by a crime for the purpose of gathering information about the offense being investigated. Recorded contact often involves victims, but it can also involve witnesses and a victim's parent(s) or legal guardian(s). Controlled communication can be applied to multiple crime types and is most effective when the victim and suspect have a current or previous relationship.

### What are the related benefits and purpose?

Controlled communication can be an effective investigative tool for enhancing investigations. Law enforcement directs and oversees controlled communication, which provides an opportunity to obtain corroborating information about the incident, elicit intelligence information, and determine if the elements of a crime have been met.

Controlled communication may provide an opportunity to record a suspect's potentially incriminating statements; however, the primary purpose of this contact is *not* to elicit a confession or trick suspects into providing false information. Rather, controlled communication provides an opportunity for suspects to describe events outside of law enforcement custody. Ethical and judicious use of controlled communication is a component of—*not a substitute for*—thorough and objective investigations.

### What role do victim advocates play in controlled communication?

Advocates are essential team members in the overall response to incidents of sexual violence and provide vital assistance to crime victims as they navigate complex processes and systems. Incorporating advocacy into investigations can contribute to victim-centered, trauma-informed practices that ensure victims' rights and needs are a priority.

Best practices involve the incorporation of advocates in controlled communication before it occurs, during its application, and after it concludes. Including advocates when training opportunities are available will also enhance their ability to help victims understand the purpose and roles of other professionals and the intent of the

controlled communication process. Advocates can also assist in assessing if victims are willing, able, and prepared emotionally for suspect interaction and all possible outcomes. This assessment includes evaluating victim safety concerns that may arise from participating in this process.

While preparing for controlled communication, advocates can help identify factors that intersect with victim participation and outcomes (e.g., schedule availability, safety concerns, reviewing expectations). To facilitate meaningful engagement for those impacted by crime, advocates not only present all available options to those they serve but also support the chosen option—including a choice not to participate or to cease participation.

If a victim chooses to participate, then an advocate can assist with preparation steps—including the use of practice sessions. Advocates can also provide critical support to individuals during the recorded contact, post-contact meetings, and ongoing engagement opportunities.

#### Factors to Consider

- ◆ Relationship with suspect
- ◆ Trauma timeline
- ◆ Willingness, ability, and readiness to participate
- ◆ Safety concerns
- ◆ Impact of participation on work, school, and daily life

### What are fundamental considerations for controlled communication?

Developing agency written guidance before using controlled communication is essential to promoting collaborative and consistent practices that outline expected and prohibited conduct [see *Controlled Communication Policy—Template*]. Equally essential is the provision of training to all personnel and team members involved in controlled communication.

### Can contact be legally recorded?

Both federal and state laws govern the legality of recording conversations and must be consulted prior to using controlled communication. One key factor in determining legality is consent requirements, which vary by state.<sup>1</sup>

<sup>1</sup>Justia. (2021, October). *Recording phone calls and conversations*. <https://www.justia.com/50-state-surveys/recording-phone-calls-and-conversations/>

Investigators have the obligation and responsibility to (1) review current state laws related to the legal use of this tool and (2) ensure compliance with these laws. In addition to consulting currently enacted laws, law enforcement must determine the existence of any court orders related to contact and communication between the victim(s) and suspect(s). These court orders are often in the form of protection orders, bond conditions, or other injunctions that prohibit contact. When any orders are discovered, consultation with prosecuting attorneys around investigative actions and strategies is encouraged and a vital component to reinforcing collaborative approaches.

### Are necessary equipment, accounts, and locations available?

Controlled communication can occur through various avenues, and each will require distinct equipment and/or agency accounts. Testing equipment is important to confirm that both parties can be effectively recorded. Having access to and utilizing a quiet, secure room will support successful controlled communication.

#### Forms of Controlled Communication

- ◆ Phone calls
- ◆ Text messages
- ◆ Emails
- ◆ Social media platforms

### Has thorough preparation occurred?

All participants in controlled communication must prepare in a comprehensive manner to ensure success; this preparation is most effectively completed through pre-contact meetings and discussion with all parties.

Assessing safety concerns for those impacted by crime should be a priority. Team members must be familiar with legal thresholds related to elements of crimes and possible outcomes of recorded contact. Individuals impacted by crime who choose to participate must understand the potential to be viewed as agents of law enforcement. This understanding can impact approaches used and the success of controlled communication. Knowing limitations around the use of false or deceptive information and conditional threats of actions involving law enforcement is vital.

Another vital preparation step is completing a comprehensive review of case facts. This will help with developing sample communication scripts to guide

recorded conversations with suspects. Developing initial approaches, language, and possible conversation flow is best accomplished when partnering with all participants involved in the controlled communication. Rehearsing these sample scripts can enhance comfort, increase the chances of effectively completing the recorded contact, and enable preparation for the emotional impact of contact with suspects [see *Controlled Communication Sample Script—Template*].

### What happens after the recorded contact?

Controlled communication often generates information that can be corroborated and details that require additional investigative action. Evaluating this combined knowledge can help determine if probable cause exists and guide investigative plans for follow up, including suspect contact.

A post-contact meeting with all involved parties is an effective method for reviewing expectations related to the evaluation of suspect statements and communicating next steps and the status of an investigation. This meeting should also address safety concerns and provide guidance about future contact with suspects.

### What are the expected outcomes of controlled communication?

Controlled communication relies on effective collaboration among team members. Ensuring comprehensive written practices, inclusive and detailed training, and demonstrated skill application will enhance outcomes. This focus also allows each team member to contribute to completing thorough investigations; holding offenders accountable; and addressing fears, concerns, rights, and needs of those impacted by sexual violence.

#### Controlled Communication Fundamentals

- ◆ Written policy/procedures
- ◆ Legality of contact
- ◆ Court orders prohibiting suspect contact
- ◆ Equipment and location
- ◆ Experience and skill of investigators conducting contact
- ◆ Team member collaboration

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