

Investigation and Prosecution

600.1 PURPOSE AND SCOPE

The purpose of this policy is to set guidelines and requirements pertaining to the handling and dispositions of criminal investigations.

600.2 POLICY

It is the policy of the Town of Cheektowaga Police Department to investigate crimes thoroughly and with due diligence, and to evaluate and prepare criminal cases for appropriate clearance or submission to a prosecutor.

600.3 INITIAL INVESTIGATION

600.3.1 OFFICER RESPONSIBILITIES

An officer responsible for an initial investigation shall complete no less than the following:

- (a) Make a preliminary determination of whether a crime has been committed by completing, at a minimum:
 1. An initial statement from any witnesses or complainants.
 2. A cursory examination for evidence.
- (b) If information indicates a crime has occurred, the officer shall:
 1. Preserve the scene and any evidence as required to complete the initial and follow-up investigation.
 2. Determine whether additional investigative resources (e.g., investigators or scene processing) are necessary and request assistance as required.
 3. If assistance is warranted, or if the incident is not routine, notify a supervisor or the Watch Commander. This shall include incidents where the information available indicates the circumstances warrant the intervention of a specialized unit and/or personnel with specialized training.
 4. Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects.
 5. Collect any evidence.
 6. Take any appropriate law enforcement action.
 7. Complete and submit the appropriate reports and documentation.
- (c) If the preliminary determination is that no crime occurred, determine what other action may be necessary and what other resources may be available, and advise the informant or complainant of this information.

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- (d) If circumstances prohibit an officer from completing a preliminary investigation, this shall be indicated in the appropriate report and a supervisor or Watch Commander shall be notified.

600.3.2 SCENE/INCIDENT PROCESSING RESPONSIBILITIES

The following scene processing actions should be carried out, depending upon the nature and seriousness of the scene/incident, by the investigating member or other assigned personnel. The assigned member will use the department-provided equipment for:

- Scene photography.
- Scene sketch.
- Video or digital recording of a scene.
- The collecting, documenting, tagging, cataloging, and safekeeping of evidence.
- Processing of latent fingerprint evidence.

Members shall use the appropriate forms for documentation of scene/incident processing, including:

- Evidence log sheet.
- Photograph log sheet.
- Fingerprint evidence log sheet.
- An investigative report detailing the scene under investigation, the nature of the evidence processing work conducted, and other notable observations that are not otherwise reflected in other reports or log sheets prepared by the investigating member.

When handling and preserving items of evidence, members will ensure that items are properly marked or labeled, including:

- A description of the item along with any relevant item number and case/incident number.
- The source from which the item was obtained or seized.
- The date, time, and location where the item was obtained or seized.
- The name of the member collecting the item.

All items of evidence will be securely stored, with their location documented in all relevant reports. Whenever an item of evidence is removed from secure storage for any reason, the member and/or evidence custodian shall ensure that the following information is documented:

- The date and time of the transfer.
- The name of the member/other receiving the evidence.
- The reason for the transfer.

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- The name and location where the evidence was transferred.
- Any examinations performed.

Members processing the scene of an incident for evidence must have proper training commensurate to the special duties performed.

600.3.3 CASE MANAGEMENT AND TRACKING

The Town of Cheektowaga Police Department shall use a case management and tracking system that, at a minimum, includes:

- (a) The lead investigator.
- (b) The date of assignment.
- (c) A schedule of supervisory review.
- (d) The current case status (e.g., open, closed, suspended).
- (e) The method of closure (e.g., closed by investigation, closed by arrest, other).

600.4 CUSTODIAL INTERROGATION REQUIREMENTS

Suspects who are in custody and subjected to an interrogation shall be given the *Miranda* warning, unless an exception applies. Interview or interrogation of a juvenile shall be in accordance with the Temporary Custody of Juveniles Policy.

600.5 DISCONTINUATION OF INVESTIGATIONS

The investigation of a criminal case or efforts to seek prosecution should only be discontinued if one of the following applies:

- (a) All reasonable investigative efforts have been exhausted, there is no reasonable belief that the person who committed the crime can be identified and the incident has been documented appropriately.
- (b) The perpetrator of a misdemeanor has been identified and a warning is the most appropriate disposition.
 1. In these cases, the investigator shall document that the person was warned and why prosecution was not sought.
 2. Warnings shall not be given for felony offenses or other offenses identified in this policy or by law that require an arrest or submission of a case to a prosecutor.
- (c) The case has been submitted to the appropriate prosecutor but no charges have been filed. Further investigation is not reasonable nor has the prosecutor requested further investigation.
- (d) The case has been submitted to the appropriate prosecutor; charges have been filed; further investigation is not reasonable, warranted or requested; and there is no need to take the suspect into custody.
- (e) Suspects have been arrested, there are no other suspects, and further investigation is either not warranted or requested.

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- (f) Investigation has proved that a crime was not committed (see the Sexual Assault Investigations Policy for special considerations in these cases).

The Domestic Violence, Child Abuse, Sexual Assault Investigations and Adult Abuse policies may also require an arrest or submittal of a case to a prosecutor.

600.6 COMPUTERS AND DIGITAL EVIDENCE

The collection, preservation, transportation and storage of computers, cell phones and other digital devices may require specialized handling to preserve the value of the related evidence. If it is anticipated that computers or similar equipment will be seized, officers should request that computer forensic examiners assist with seizing computers and related evidence. If a forensic examiner is unavailable, officers should take reasonable steps to prepare for such seizure and use the resources that are available.

600.6.1 NOTICE TO PROSECUTION OF ELECTRONIC RECORDINGS

The lead investigator should promptly notify the prosecutor's office, in writing, when there is a reasonable belief that an electronic recording of a 9-1-1 call, dispatch recording, Mobile Audio/Video (MAV), body-worn video, or other audio or video recording was made or received in connection with a criminal investigation (CPL § 245.55). The notification should be retained in the case file.

600.7 INVESTIGATIVE USE OF SOCIAL MEDIA AND INTERNET SOURCES

Use of social media and any other internet source to access information for the purpose of criminal investigation shall comply with applicable laws and policies regarding privacy, civil rights and civil liberties. Information gathered via the internet should only be accessed by members while on-duty and for purposes related to the mission of this department. If a member encounters information relevant to a criminal investigation while off-duty or while using his/her own equipment, the member should note the dates, times and locations of the information and report the discovery to his/her supervisor as soon as practicable. The member, or others who have been assigned to do so, should attempt to replicate the finding when on-duty and using department equipment.

Information obtained via the internet should not be archived or stored in any manner other than department-established record keeping systems (see the Records Maintenance and Release and Criminal Organizations policies).

600.7.1 ACCESS RESTRICTIONS

Information that can be accessed from any department computer, without the need of an account, password, email address, alias or other identifier (unrestricted websites), may be accessed and used for legitimate investigative purposes without supervisory approval.

Accessing information from any internet source that requires the use or creation of an account, password, email address, alias or other identifier, or the use of nongovernment IP addresses, requires supervisor approval prior to access. The supervisor will review the justification for accessing the information and consult with legal counsel as necessary to identify any policy or

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legal restrictions. Any such access and the supervisor approval shall be documented in the related investigative report.

Accessing information that requires the use of a third party's account or online identifier requires supervisor approval and the consent of the third party. The consent must be voluntary and shall be documented in the related investigative report.

Information gathered from any internet source should be evaluated for its validity, authenticity, accuracy and reliability. Corroborative evidence should be sought and documented in the related investigative report.

Any information collected in furtherance of an investigation through an internet source should be documented in the related report. Documentation should include the source of information and the dates and times that the information was gathered.

600.7.2 INTERCEPTING ELECTRONIC COMMUNICATION

Intercepting social media communications in real time may be subject to federal and state wiretap laws. Officers should seek legal counsel before any such interception.

600.8 IDENTITY THEFT

A report should be taken any time a person living within the jurisdiction of the Town of Cheektowaga Police Department reports that he/she has been a victim of identity theft. This includes:

- (a) Taking a report, even if the location of the crime is outside the jurisdiction of this department or has not been determined.
- (b) Providing the victim with the appropriate information, as set forth in the Victim and Witness Assistance Policy. Department members should encourage the individual to review the material and should assist with any questions.

A report should also be taken if a person living outside department jurisdiction reports an identity theft that may have been committed or facilitated within this jurisdiction (e.g., use of a post office box in Cheektowaga to facilitate the crime) (CPL § 20.40; CPL § 20.50).

A member investigating a case of identity theft should ensure that the case is referred to the appropriate agency if it is determined that this department should not be the investigating agency (e.g., an identity theft ring working from out of state). The victim should be advised that the case is being transferred to the agency of jurisdiction. The appropriate entries should be made into any databases that have been authorized for department use and are specific to this type of investigation.

600.9 MODIFICATION OF CHARGES FILED

Members are not authorized to recommend to the prosecutor or to any other official of the court that charges on a pending case be amended or dismissed without the authorization of a Captain or the Chief of Police. Any authorized request to modify the charges or to recommend dismissal of charges shall be made to the prosecutor.

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600.10 DETECTING DECEPTION

The Town of Cheektowaga Police Department will utilize the services of trained and certified polygraph operators from accredited law enforcement agencies in Western New York to conduct polygraph tests when appropriate.

600.11 TECHNICAL AIDS FOR DETECTION OF DECEPTION

Technical aids for the detection of deception, owned by the Department or another entity, may be used as investigative tools in criminal investigations. The Department shall only use the services of equipment operators, internally or externally, who are certified to conduct such examinations. If a technical aid for the detection of deception is used, a copy of the examiner's certification should be included in the case file.

Services provided by an external entity shall be approved by the Detective Bureau supervisor. A written report of the results by the certified examiner will be required and maintained in the original investigative file.