



BY-LAW NO. 272 - 2005

**A BY-LAW RESPECTING
POLICE RESPONSE TO HIGH RISK INDIVIDUALS
(LE-047)**

1. PREAMBLE

- 1.1 WHEREAS subsection 31(1) of the *Police Services Act* provides that a Board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall:
- b. generally determine after consultation with the Chief of Police, objectives and priorities with respect to the police service in the municipality;
 - c. establish priorities for the effective management of the police service; and
 - e. direct the Chief of Police and monitor his or her performance;
- 1.2 AND whereas subsection 31(6) of the *Police Services Act* provides that the Board may, by by-law, make rules for the effective management of the police service;
- 1.3 AND whereas O. Reg. 3/99 prescribes standards for adequacy and effectiveness of police services;
- 1.4 AND whereas section 41(1.2) of the *Police Services Act* allows for the Chief of Police, or designate, to disclose personal information about an individual in accordance with the Regulation;
- 1.5 AND whereas section 2(1) of the *Disclosure of Personal Information Ontario Regulation 265/98* under the *Police Services Act* allows the Chief of Police, or designate, to disclose personal information about an offender when there are reasonable grounds to believe an individual poses a significant risk of harm to other persons or property, and reasonably believes that disclosure will reduce the risk;
- 1.6 AND whereas the *Municipal Freedom of Information and Protection of Privacy Act* provides obligations to disclose any record to the public or persons affected if there is reasonable or probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public;
- 1.7 AND whereas the Ministry of Community Safety and Correctional Services Policing Standards requires a police services board to have a policy with respect to police response to high-risk individuals for the purpose of crime prevention or law enforcement and disclosures of personal information under the *Police Services Act*;

- 1.8 AND whereas Part LE-047 of the Policing Standards Manual (2000), a copy of which is attached hereto as Appendix A, contains guidelines directing the Board, the Chief and members relative to police response to high-risk individuals.

NOW THEREFORE THE REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD ENACTS AS FOLLOWS:

2 DEFINITIONS

- 2.1 "Act" means *Police Services Act*, R.S.O. 1990, c.P.15, as amended;
- 2.2 "Board" means the Regional Municipality of Niagara Police Services Board;
- 2.3 "Chief" means the Chief of the Niagara Regional Police Service;
- 2.4 "Member" means a member of the Niagara Regional Police Service;
- 2.5 "Ministry" means the Ministry of Public Safety and Security;
- 2.6 "Service" means the Niagara Regional Police Service;
- 2.7 "*High Risk Individual*" includes any individual identified through various criteria or factors that may be included in legislation or policies or procedures, including:
- (i) an individual released at Warrant Expiry Date (WED) from a Federal Penitentiary who has been deemed to be a high risk to re-offend and commit a further offence involving sexual assaults, serious bodily harm or death; or
 - (ii) an individual convicted of a sexual offence against a child; or
 - (iii) an individual released from either a Federal or Provincial Institution who is deemed to be high risk to commit a sexual offence or other offence likely to cause serious bodily harm or death to another individual;
 - (iv) an individual entered on the High Risk Offender National Flagging System, has been designated as a Dangerous Offender, Habitual Offender or Long Term Offender; or
 - (v) an individual against whom a judicial restraint order issued pursuant to section 8.10.01 or 8.10.02 of the Criminal Code has been issued;
 - (vi) an individual who has been identified as demonstrating a pattern of escalating violent behaviour likely to cause serious bodily harm or death to another person or a pattern of sexual offences; or
 - (vii) an individual whose psychological state and behaviour places them in a high risk category, even though they may have never been convicted of a serious personal injury offence.
- 2.8 "*High Risk Offender National Flagging System*" means an offender who in the opinion of Crown Counsel, has been identified as posing an ongoing serious threat to society;
- 2.9 "*Warrant Expiry Date (WED)*" expiry date means the date upon which an offender who has been held in custody for their entire sentence and is released from custody at the expiration of their sentence, without any form of supervision by way of probation or parole.

3 BOARD POLICY

- 3.1 The Board recognizes as a priority the identification and management of high risk offenders.
- 3.2 The Board believes that the police service must assume a leadership role in co-ordinating efforts to effectively manage high risk offenders.
- 3.3 It is therefore the policy of the Board that high risk offender management be conducted professionally and thoroughly, and in accordance with the procedure set out by the Chief as established and directed with this by-law.

4 DIRECTION TO THE CHIEF

4.1 PROCEDURES

- 4.1.1 The Chief shall, where possible, work in partnership with the local Crown Attorney, appropriate community members and agencies, including health care providers, government agencies, municipal officials, other criminal justice agencies, including law enforcement agencies, as well as victim services to ensure a co-ordinated and effective strategy in response to high-risk individuals that address:

- (a) post-arrest procedures;
- (b) dangerous offender and long term offender applications;
- (c) information sharing;
- (d) case management planning;
- (e) review of risk assessment information;
- (f) judicial restraint orders;
- (g) victim assistance and safety planning; and
- (h) community notification regarding high risk individuals.

- 4.1.2 The Chief shall ensure that the strategy referred to in section 4.1.1 shall be reflected in policies and procedures that are in accordance with Appendix A.

- 4.1.3 The Chief shall ensure that said procedure above complies with the *Municipal Freedom of Information and Protection of Privacy Act* obligations to disclose records.

4.2 PROTOCOL

- 4.2.1 The Chief shall ensure that the police service, where possible, establish multi-agency protocols with appropriate community members, law enforcement agencies, including local Crown Attorney's and victims services, local provincial probation and parole offices, local federal parole offices, provincial and federal correctional authorities, National Parole Board, Ontario Parole and Earned Release Board, Ontario Review Board, and local mental health facilities, regarding the co-ordinated response to the management of high risk individuals.

4.3 **COMMUNITY NOTIFICATION**

4.3.1 The Chief shall develop and implement written policies and procedures with respect to community notification of high risk offenders that are in accordance with provincial legislation.

4.4 **TRAINING**

4.4.1 The Chief shall ensure that Members involved with high-risk offender management have the requisite knowledge, skills, and abilities to perform this function.

4.4.2 The Chief shall establish a skills development and learning plan that is consistent with Appendix A for Members performing this function.

5 REPORT TO THE BOARD

5.1 **ANNUAL REPORTING REQUIREMENTS**

5.1.1 The Chief shall make a written report to the Board on or before August 30 of each year. The report shall include:

- a. a summary of the written procedures regarding police response to high-risk individuals;
- b. the status of Service compliance with said procedures; and
- c. confirmation that members have been trained in accordance with section 4.3.

6 IMPLEMENTATION

6.1 This By-law shall come into force upon the date of its passage.

6.2 The Chief shall implement this By-law, where applicable, through general order.

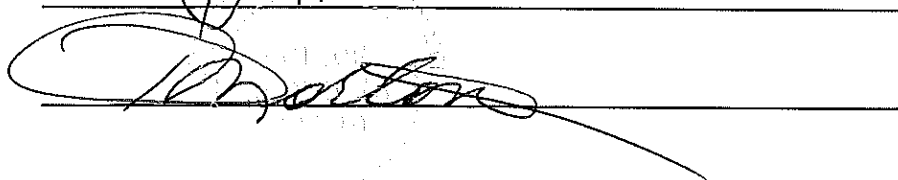
ENACTED AND PASSED this ^{27TH} day of *January*, 2005.

THE REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD

Chairperson



Executive Director



Legislative/Regulatory Requirements

Section 25(3) of the *Corrections and Conditional Release Act (CCRA)* requires that Correctional Service Canada, where they have reasonable grounds to believe that an inmate who is about to be released by reason of the expiration of the sentence will, on release, pose a threat to any person, prior to the release and on a timely basis, take all reasonable steps to give the police all information under its control that is relevant to that perceived threat.

The *Ministry of Correctional Services Act (MCSA)* as amended by the *Community Safety Act, 1997 (CSA)* proclaimed on June 4, 1998, provides the ability for authorized ministry staff to release to a Chief of Police or designate personal information about an individual, in accordance with the regulations, when there are reasonable grounds to believe that the individual poses a "significant risk of harm to other persons or property", and reasonably believes that disclosure will reduce that risk.

Section 41(1.1) of the *Police Services Act (PSA)* as amended by the *Community Safety Act, 1997* allows for the Chief of Police, or designate, to disclose personal information about an individual in accordance with regulations.

Further, section 41(1.2) of the *PSA* requires that any disclosure made under subsection (1.1) be for one or more of the following purposes:

- a) Protection of the public;
- b) Protection of victims of crime;
- c) Keeping victims of crime informed of the law enforcement, judicial or correctional processes relevant to the crime that affected them;
- d) Law enforcement;
- e) Correctional purposes;
- f) Administration of justice;
- g) Enforcement of and compliance with any federal or provincial Act, regulation or government program; and
- h) Keeping the public informed of the law enforcement, judicial or correctional processes respecting any individual.

Section 2(1) of the Disclosure of Personal Information Ontario Regulation 265/98, made under the *PSA*, allows the Chief of Police or designate to disclose personal information about an offender when there are reasonable grounds to believe that the individual poses a significant risk of harm to others or property and the disclosure will reduce the risk posed by the individual. Other sections of the regulation address disclosures made on individuals charged with offences and disclosures allowed to a victim, if requested.

In addition, the *Freedom of Information and Protection of Privacy Act (FIPPA)* section 11(1) states that “Despite any other provisions of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public”.

Finally, section 5(1) of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* provides similar obligations to disclose records.

This guideline has been developed to assist in establishing a consistent approach in managing the risk to public safety posed by sexual, violent and “potentially dangerous” individuals. It recognizes the need for cooperation between police services and their communities, and the importance of respecting and understanding the needs of victims of crime. It also recognizes the complexity of risk assessment and risk management strategies that has resulted in the need for the establishment of formal protocols with multi-agencies for information sharing and decision-making. In addition, although the ultimate decision on whether to disclose personal information rests with local police services, there is a move towards the use of committees with representatives of the justice system, the medical profession and the community, to assist in the review of risk assessment information and to make recommendations on effective management strategies.

In identifying individuals deemed to be “High Risk”, evidence would show that there are reasonable grounds to believe that the individual has a high likelihood to commit an offence causing serious harm. An individual may be assessed as “High Risk” based on the individual’s psychological state and behaviour, such as in some domestic violence cases, even though the individual may not have a prior criminal record or have ever been convicted of a serious personal injury offence. Further, an order under section 810.1 of the Criminal Code does not require a conviction for an offence or even the laying of a charge. It can be obtained by anyone who can establish a reasonable fear that the person in question will commit one or more of the enumerated sexual offences against a person under the age of 14. In addition, a “High Risk” individual may be identified as a released “Dangerous Offender” or a “Long Term Offender”, where the substantial risk that they present by their re-offending needs to be managed in the community with intensive supervision and other risk management strategies, including treatment interventions.

For the purposes of this guideline, a “High Risk” individual is identified through various criteria or factors that may be included in legislation (e.g., Dangerous Offender, Long Term Offender, detained until warrant expiry); or in policies and procedures (e.g., High Risk Offender National Flagging System, Ministry’s guidelines on Bail and Violent Crime and Domestic Violence Occurrence) including:



- *an offender detained until warrant expiry in consideration of the factors identified in sec. 132 of the CCRA and determined likely to commit a further offence involving serious harm or death; a sexual offence against a child; or a serious drug offence prior to the warrant expiry date (Warrant Expiry Inmate Release); or*
- *an offender placed on the High Risk Offender National Flagging System who, in the opinion of Crown counsel, has been identified as posing an ongoing serious threat to society. The High Risk Offender National Flagging System may include Habitual Offenders, Dangerous Sexual Offenders, Dangerous Offenders serving determinate sentence and indeterminate sentence, Long Term Offenders, Warrant Expiry Inmate Releases, and Judicial Restraint Orders pursuant to section 810.1, 810.01 and 810.2 cc; or*
- *an individual assessed by correctional authorities or mental health authorities who presents a high risk to commit a sexual offence or an offence likely to cause serious bodily harm or death to another person (factors would support placement in Intensive Supervision correctional plan); or*
- *an individual where the court has been satisfied that there are reasonable grounds to fear that the individual will cause personal injury or damage.*

Sample Board Policy

Board Policy # _____

It is the policy of the _____ Police Services Board with respect to high risk individuals that the Chief of Police will:

- a) work in partnership, where possible, with the local Crown, appropriate community members and agencies, including health care providers, government agencies, municipal officials, other criminal justice agencies, including law enforcement agencies, as well as victim services to ensure a coordinated and effective strategy in response to high risk individuals that addresses:
 - i) bail opposition consistent with the Ministry's guideline on Bail and Violent Crime;
 - ii) dangerous offender and long term offender applications;
 - iii) High Risk Offender National Flagging System and requirements of CPIC;
 - iv) information sharing;
 - v) case management planning;
 - vi) judicial restraint orders;
 - vii) victim assistance; and
 - viii) disclosure of information, including community notification and safety planning; and
- b) ensure that the police service's skills development and learning plan addresses the training and sharing of information with officers, communication



operators/dispatchers and supervisors on the police response to high risk individuals.

Police Service Guidelines

Local Service Coordination

- 1) Every Chief of Police should work in partnership, where possible, with the local Crown, appropriate community members and agencies, including health care providers, government agencies, municipal officials, other criminal justice and law enforcement agencies and victim services to address:
 - a) the development of a coordinated and effective strategy for the assessment, supervision and inter-agency case management planning of high risk individuals who pose a significant risk of harm to members in the community;
 - b) the designation of an investigator to liaise with partners for responding to high risk individuals;
 - c) enhanced supervision and management of those assessed as high risk individuals under community supervision with Federal or Provincial correctional authorities or under the authority of the Ontario Review Board;
 - d) supervision and management, including inter-agency problem solving of those assessed as high risk individuals in the community that are not under the authority of Federal or Provincial correctional authorities or the Ontario Review Board;
 - e) issues of public concern and safety to ensure that appropriate community stakeholders, have effective and informed input into the pre-release process and post custody;
 - f) safety planning assistance to victims;
 - g) sharing of case specific information among relevant partners responsible for issues related to high risk individuals, subject to confidentiality requirements, in order to assess risk and provide a coordinated response; and
 - h) sharing of relevant information to address specific problems, including specialized enforcement and directed investigation into the timely apprehension of individuals for whom outstanding warrants exist.

Protocol

- 2) Every Chief of Police should, where possible, establish protocols with appropriate community members and law enforcement agencies, including local Crown Attorneys and victim services, local provincial probation and parole offices, local federal parole offices, provincial and federal correctional authorities, National Parole Board, Ontario Parole and Earned Release Board, Ontario Review Board, and local mental health facilities, where ones exist, that address:
 - a) information sharing and legal authority to release information (e.g., relevant information package from the Correctional Service of Canada pursuant to section 25(3) *CCRA*, provincial high risk release package as allowed by the *Ministry of Correctional Services Act*);
 - b) gathering, reviewing and retaining of information, as may be appropriate, for risk assessment and development of risk management strategies (e.g. Combined

Police/Corrections Investigation Unit "Penitentiary Squad"), including the use of behavioural science support, if required;

- c) strategies for risk management, including enhanced supervision with the use of police presence (e.g. home visits, police station interviews), the timely apprehension of individuals for whom outstanding warrants exist, and judicial restraint orders;
- d) practical assistance and support to victims, including disclosure of information to victims regarding their cases; and
- e) community notification and targeted release of information in accordance with the *Police Services Act* and *Disclosure of Personal Information Regulation* and local policies and procedures on media relations.

Bail Procedures

- 3) Every police service's procedures on the police response to high risk individuals should:
 - a) ensure compliance with the procedures set out in the Ministry's guideline on Bail and Violent Crime;
 - b) require that the Crown Attorney conducting the bail hearing is notified, as soon as possible, where it has been determined that an accused has been flagged on CPIC under the Special Interest Police (SIP) category for the High Risk Offender National Flagging System;
 - c) require the retrieval of the file information from the High Risk Offender National Flagging System, if available; and
 - d) require that the Crown Attorney be consulted to determine appropriateness of gathering evidence in support of a Dangerous Offender or Long Term Supervision Order application for cases flagged for the High Risk Offender National Flagging System.

Dangerous Offender and Long Term Offender

- 4) Every police service's procedures should set out the steps to be taken by an investigator, in consultation with the Crown Attorney, when gathering, reviewing and retaining evidence, through consent or order of the court, to support a Dangerous Offender or Long Term Offender application, which may include:
 - a) past criminal record and arrest reports;
 - b) past trial transcripts, including sentencing transcripts;
 - c) victim impact statements;
 - d) interviews with other collaterals, including family members;
 - e) correctional services records and parole records;
 - f) pre-sentence reports and pre-disposition reports;
 - g) psychological reports and psychiatric reports;
 - h) health records;
 - i) employment performance reports and termination records;
 - j) school records;
 - k) military records; and
 - l) Children's Aid Society records.



**Warrant
Expiry
Inmate
Release**

- 5) Every police service's procedures should set out the steps to be taken upon the receipt of information generated by the "Penitentiary Squad" regarding a Warrant Expiry Inmate Release, including:
- a) where an inmate has identified a residence in the police service's jurisdiction consistent with information received from Correctional Service of Canada;
 - b) where a Warrant Expiry Inmate Release locates to a police service jurisdiction and establishes a bona fide residence, without prior knowledge revealed by Correctional Service of Canada; and
 - c) where investigative support from the "Penitentiary Squad" is required.

**Sharing of
Information
on all
High Risk
Cases**

- 6) Every police service's procedures should:
- a) address the sharing of information with correctional authorities, consistent with protocols, including the Correctional Service of Canada, National Parole Board, the Ministry of Community Safety and Correctional Services-Correctional Services, Ontario Parole and Earned Release Board and other law enforcement agencies, including local Crown Attorneys, and with health authorities, including the Ontario Review Board, regarding the expected release or presence in the community of a high risk individual;
 - b) address the linkages to other relevant procedures, including victims' assistance, sex offender registry, criminal harassment, domestic violence occurrences, child abuse and neglect and preventing or responding to occurrences involving firearms;
 - c) require officers, for major cases, to comply with the procedures set out in the Ministry's designated *Ontario Major Case Management Manual*, as well as the provisions of the *Violent Crime Linkage Analysis System Reports (ViCLAS) Regulation*;
 - d) address the role of communications and dispatch in the exchange of information with front-line officers on high risk individuals;
 - e) ensure occurrences involving high risk individuals are referred to an investigator for appropriate follow-up;
 - f) ensure the sharing of information with the Crown Attorney for review for flagging, where appropriate, on the High Risk Offender National Flagging System;
 - g) require the issuance and dissemination of appropriate CPIC information;
 - h) ensure the exchange of appropriate information with police services and other relevant law enforcement agencies, in or outside of Canada, on transfer of a high risk individual from one jurisdiction to another and supporting inter-jurisdictional investigations, including liaising with police services and other law enforcement agencies, pending transfer of a high risk offender; and
 - i) address the investigative supports that may be available to assist in cases determined to be high risk, including the use of:
 - i) physical surveillance;
 - ii) electronic interception;
 - iii) video and photographic surveillance; and



iv) victim/witness protection services.

7) Every police service's procedures should:

- a) ensure the timely review of risk assessment information provided by correctional authorities for those individuals identified as Warrant Expiry Inmate Releases and the timely review of risk assessment information, consistent with protocols, on all cases identified as "High Risk"; and
- b) address the development of a case management plan, consistent with protocols, with correctional authorities and the monitoring of conditions of release (e.g., parole, probation, long term supervision orders) and health authorities, where applicable, including enforcement.

8) Every police service's procedures should set out the steps to be taken by an investigator when applying for a Judicial Restraint Order (810 orders including 810.1, 810.01 and 810.2) provision under the *Criminal Code*, including:

- a) obtaining and reviewing risk assessment documentation (Note: "Protected Information Reports" obtained from correctional services should not form part of the disclosure documents);
- b) interviewing the high risk individual, where possible;
- c) interviewing the institution psychologist, case management officer, classification officer, or other professional institutional staff, where applicable;
- d) consulting with the probation/parole officer, where applicable;
- e) consulting with the Crown Attorney;
- f) reviewing police occurrences/crown briefs/contacts;
- g) preparing "Grounds for Fear" information;
- h) determining firearms possession or acquisition status for consideration of forfeiture condition;
- i) developing conditions for Judicial Restraint Order, including access to support services (e.g. mental health care) and preparing draft recognizance order;
- j) preparing Crown package in a timely fashion, including information regarding prior criminal record, information from correctional services, victim impact statements, interview with the individual and/or their family, psychiatric/psychological reports/assessments;
- k) laying an information (s. 810.1 and s.810.2 applications must be sworn before a provincial court judge and s.810.01 and s.810.2 applications require the initial consent of the Attorney General);
- l) compelling the appearance of the high risk individual;
- m) monitoring compliance with judicial release orders;
- n) addressing the enforcement of judicial release orders when there is a breach of a condition; and
- o) tracking of 810 orders for renewal.

9) Every police service's procedures should address community notifications, including;



Risk
Assessment

Judicial
Restraint
Order

Community
Notification

- a) upon receiving information from Correctional Service of Canada, Ministry of Community Safety and Correctional Services-Correctional Services, Ministry of Health and Long-Term Care or other relevant law enforcement agency or health authorities of an individual assessed as a high risk individual, the designated officer reviewing the information package, including risk assessment documents, consistent with protocols, to determine if reasonable grounds exist to believe that the individual poses a significant risk of harm to other persons or property;
- b) addressing the criteria and steps for assessing risk to the community, including interviewing, where possible, the high risk individual, institutional case manager, psychologist/institutional professional, community corrections officer or health professional;
- c) initiating a Judicial Restraint Order application, in consultation with the local Crown Attorney and the high risk individual;
- d) consulting with the police service's legal representative if proceeding with a media or controlled information release, and ensuring that the disclosure will be in accordance with the *Police Services Act* and *Disclosure of Personal Information Regulation* and local policies and procedures on media relations;
- e) determining the personal information to be released, in accordance with legislation and regulations and the local policies and procedures on media relations and how the disclosure will reduce the risk;
- f) protecting the rights and safety of the public, including the high risk individual; and
- g) disseminating information to the public, where appropriate, regarding high risk individuals.

- Training and Information**
- 10) Every Chief of Police should ensure that the police service's skills development and learning plan addresses the training and sharing of information with officers, communications operators/dispatchers and supervisors on:
 - a) current legislation and case law pertaining to high risk individuals;
 - b) local protocols;
 - c) the use of the Special Interest Police (SIP) category on CPIC;
 - d) the implementation of local community strategies and education/awareness initiatives and programs for addressing issues related to high risk individuals;
 - e) special security measures in cases which generate public interest; and
 - f) victim service providers or a victim referral service available to the area.

