



MAINE STATE POLICE GENERAL ORDER

E-132

SUBJECT: MAINE STATE POLICE, MAJOR CRIME UNIT HOMICIDE CASE DISCOVERY POLICY

EFFECTIVE DATE: 08.01.2020

EXPIRATION DATE: 08.01.2027

RECENT HISTORY: AMENDED (08.01.2020); AMENDED (01.01.2019); TECHNICAL AMENDMENT (REMOVING THE WORD "ANNOTATED" FROM THE ATTACHMENT; REPLACING THE ATTACHMENT WITH A NONANNOTATED VERSION OF THE DOCUMENT)(10.03.2016); NEW (09.12.2016)

DISTRIBUTION CODE: 2 (MAY BE PUBLICLY DISCLOSED)

APPLICABILITY CODE: S, Z

SIGNATURE OF COLONEL:

A handwritten signature in black ink, appearing to read "W. B. R.", is written over a light blue rectangular background.

I. PURPOSE

1. The purpose of this General Order is to establish the homicide case discovery policy of the Major Crime Units of the Maine State Police.

II. POLICY

1. The policy of the Maine State Police is to ensure -- in accordance with applicable provisions of the Maine Rules of Unified Criminal Procedure -- for the timely and proper submission, approval, and delivery of reports

and other discoverable material in homicide cases to the Office of the Attorney General.

FOR THE PURPOSES OF THIS POLICY, ALL DISCOVERY MATERIALS MUST BE IN THE POSSESSION OF THE OFFICE OF THE ATTORNEY GENERAL, SO THAT THE MATERIALS MAY BE FURNISHED TO A DEFENDANT, NO LATER THAN SIXTY (60) DAYS FOLLOWING THE DEFENDANT'S ARRAIGNMENT DATE.

III. DEFINITIONS

1. For the purposes of this General Order, the terms included in this section are defined as follows, unless otherwise indicated in the order.
 - A. Assistant Attorney General. "Assistant Attorney General" ("AAG") means the prosecutor from the Maine Office of the Attorney General who is assigned to oversee and provide legal advice during an investigation, and to prepare for prosecution of any criminal case resulting therefrom.
 - B. Case supervisor. "Case supervisor" means the Detective Sergeant assigned to manage, direct, supervise, and oversee all aspects of an investigation, and who works closely with the primary detective and AAG in coordinating all aspects of the investigation.
 - C. Discovery. "Discovery" means the process used by parties to a civil or criminal action to obtain materials held by the other party that is relevant to the action.
 1. For reference, *see, e.g.*, ME. R. UNIF. CRIM. P. RULE 16.
 - D. Discovery log. "Discovery log" means a log containing a description of all discovery materials that have been forwarded to and are in the custody of another person or agency.
 1. Such a log must document each specific item that has been forwarded to another person or agency, the date the item was forwarded, the manner in which the item was forwarded, and identify the person or agency and address to whom the item was forwarded.
 - E. Discovery materials. "Discovery materials" means items, including, but not limited to, records, audio and video recordings, and reports, that must be provided to a party through discovery.
 - F. Homicide booklet. "Homicide booklet" means a binder notebook containing a printed copy of each report, document, and other discovery materials associated with a homicide investigation.

1. The homicide booklet is the primary detective's investigative file and reference booklet, and should mirror the homicide booklet being created and maintained by the AAG assigned to oversee and prosecute any criminal case resulting from the investigation.

NOTE: HOMICIDE BOOKLETS ARE CONFIDENTIAL INVESTIGATIVE RECORDS THAT ARE THE PROPERTY OF THE STATE OF MAINE AND MAINE STATE POLICE, AND MUST REMAIN WITHIN THE MCU AFTER A DETECTIVE'S RETIREMENT OR TRANSFER.

- G. MCU. "MCU" means "Major Crime Unit."
- H. Primary detective. "Primary detective" means the lead detective assigned to an investigation who is responsible for the compilation of all reports and coordination of all activities associated with the investigation, as well as primarily responsible for assisting the AAG with the preparation of a case for trial.
 1. The primary detective serves as the liaison to the Office of the Attorney General with respect to the investigation and works closely with the case supervisor in coordinating all aspects of the investigation.
- I. Reasonable time. "Reasonable time" means sixty (60) days from after the date of a defendant's arraignment.
 1. The term "reasonable time" has been interpreted by Superior Court Justices as sixty (60) days from after the date of a defendant's arraignment.
 2. Consideration also is given to the fact that there are or may be ongoing investigations following arraignment, and that discovery is an ongoing process.

IV. PROCEDURE

1. GENERAL

- A. The term "reasonable time" has been interpreted by Superior Court Justices as sixty (60) days from after the date of a defendant's arraignment.
 1. Consideration also is given to the fact that there are or may be ongoing investigations following arraignment, and that discovery is an ongoing process.

- B. For the purposes of an ongoing investigation, the discovery deadline is sixty (60) days from after the date of the newly-completed assignment.

- 1. This deadline shall be abbreviated with respect to matters investigated reasonably close to a trial start date.

2. PRIMARY DETECTIVE

- A. The primary detective ultimately is responsible for ensuring that all discovery materials are provided to the Office of the Attorney General in a reasonable and timely manner.
- B. The primary detective shall keep her or his supervisor updated on the status of discovery on a regular basis and ensure that the supervisor is aware of any potential delays or problems with any discovery materials.
- C. The primary detective also is responsible for ensuring that all reports and attachments are received from any detectives and agencies assisting with a case, entered into the case file, and forwarded to the Office of the Attorney General for discovery purposes.
 - 1. Any delays in the receipt of discovery materials must be reported to the case supervisor as soon as possible.

3. REPORT APPROVAL

- A. Upon completion of each officer's report and its entry into the Maine State Police electronic records management system ("eRMS"), the case supervisor shall be notified of the new reports pending approval.
- B. If the case supervisor approves of a report, the report must be initialed and then forwarded to the Office of the Attorney General and recorded by the MCU administrative assistance in the discovery log, with a hard copy placed in the original file at the MCU office
 - 1. *This approval is intended to diminish the possibility that discovery materials will be lost between the two agencies.*

4. REPORT WRITING AND DISCOVERY PROCESS

- A. Seven (7) days after the date an investigation assignment is completed by any officer involved in a case, a written report must be created and included in the eRMS, and then the case supervisor shall be notified with a request for approval.

1. *Such approval shall be indicated by the supervisor notifying the primary detective that the report has been approved.*
 - B. A copy of the report then must be sent to the Office of the Attorney General for discovery purposes.
 1. As with any discovery item, any distribution of the report must be noted in the unit discovery log.
 - C. Approximately one (1) week after the date of distribution of any discovery materials to the Office of the Attorney General, follow-up must be made to confirm that office's receipt of the materials.
 1. Confirmation that forwarded materials have been received by that office must be noted in the discovery log.
 - D. The primary detective and case supervisor shall remain vigilant of the flow of discovery materials and any conflicts or delays related thereto.
 - E. The primary detective shall meet with the Attorney General trial assistant within six (6) months after arraignment to reconcile each file for completeness.
5. ATTACHMENTS
 - A. All attachments to reports must be submitted with a continuation report describing the material in the attachments.
 - B. Attachments must be noted in the case file and the appropriate distribution list.
6. CRIME LAB REPORTS
 - A. The primary detective shall remain in constant contact with the lab to monitor discovery.
 - B. After any crime lab report is approved, the report must be forwarded to the primary detective and AAG for enclosure in the case file and for distribution.
7. HOMICIDE BOOKLET
 - A. Each primary investigator in a homicide investigation shall create and maintain a homicide booklet that mirrors the homicide booklet being prepared by the prosecutor for trial.
 - B. The primary detective shall meet with the prosecutor at specific intervals throughout the investigation and shall review the homicide booklet to ensure it contains all the necessary, pertinent information regarding the investigation.

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- C. Monthly telephone calls are recommended between the primary detective and the prosecutor to review discovery.

8. TRANSFER OF CASES

- A. Whenever a transfer of a homicide case occurs between detectives, the newly-assigned detective shall, within seven (7) days after transfer of the case, submit a continuation report in the record to document the transfer of the assigned case.
- B. The new primary detective shall promptly schedule a meeting with the former primary detective in order to be briefed and updated on the facts and status of the case.
- C. The new primary detective also shall review the case in the eRMS -- as well as review the homicide booklet related to the case -- to ensure that all reports and materials are enclosed with the booklet.
- D. In addition, the new primary detective shall contact (and, preferably, meet in person with) the assigned AAG to review the case and ensure discovery is up-to-date by comparing the case-related homicide booklets.
- E. The new primary detective also shall review the unit discovery log to ensure that all discovery materials have been forwarded for discovery purposes and to confirm their receipt by the Office of the Attorney General.

9. MCU DISCOVERY LOGS

- A. Each MCU shall maintain a discovery log.

10. AUDIO AND VIDEO RECORDINGS

- A. Copies of all audio and video recordings must be made promptly.
- B. For those assisting primary detectives, two (2) copies of each audio or video recording must be created: one (1) for the primary detective's case file, and one (1) for the prosecutor for discovery purposes.
- C. The primary detective shall provide recordings as discovery; therefore, all recordings must be forwarded to the prosecutor through the primary detective.
- D. All original recordings must be entered and stored in File Mover, and the disc must be stored with the original case file; additionally, the entry of the recordings must be verified and documented in the detective's continuation report.
- E. A case-specific log must be completed by the primary detective for all recordings provided for discovery purposes.

1. The case-specific log must be coordinated with the unit's discovery log.

11. ORIGINAL NOTES

- A. All detectives shall maintain their original notes and place those notes with the original file until such a time that all appeals in a case are exhausted or the post-conviction review period has passed -- whichever period is longer.
- B. All notes in any homicide investigation -- open or closed -- must be submitted for inclusion in the case file at a time deemed appropriate between the detective and case supervisor, or at a time a detective transfers out of or retires from the MCU.
- C. All original notes must be stored in the unit evidence locker, and an evidence control log must be completed and submitted in the file.
 1. Homicide booklets should be maintained separately from other investigative notebooks, be case-specific, and be readily available for review upon request of a defendant.

ATTACHMENT

Memorandum of Understanding for Homicide Case Meetings, Discovery and Report Submissions

NOTICE

THIS GENERAL ORDER IS FOR USE OF THE MAINE STATE POLICE AND NOT FOR ANY OTHER AGENCY. THE GENERAL ORDER IS NOT INTENDED TO BE RELIED UPON BY ANY OTHER INDIVIDUAL OR PRIVATE OR PUBLIC AGENCY. THE GENERAL ORDER EXPRESSLY DOES NOT CREATE, AND IS NOT INTENDED TO CREATE, A HIGHER LEGAL STANDARD OF SAFETY OR CARE IN AN EVIDENTIARY SENSE WITH RESPECT TO THIRD-PARTY CLAIMS. VIOLATIONS OF THIS ORDER ONLY MAY FORM THE BASIS FOR ADMINISTRATIVE SANCTIONS BY THE MAINE STATE POLICE.