

MCSCS Consultation Session on Enhancing Ontario's Response to Missing Persons

RESPONSE OF THE CRIMINAL LAWYER'S ASSOCIATION

The Criminal Lawyer's Association (CLA) is honoured to have been consulted, is generally supportive of the proposed legislation and offers the comments and responses set out below.

DEFINITIONS

MISSING PERSON

Should Ontario adopt this definition? Why or why not?

The CLA suggests that (a) of the proposed definition of missing persons is unnecessarily broad and vague, and that the definition as contained in (b) standing alone is comprehensive and appropriate.

Is this definition appropriately scoped, so that it can account for the right factors in determining if a person is indeed a “missing person”?

Yes, if it is confined to (b).

Would you propose any changes to this definition? If so, what?

Drop (a) from the definition so that it is not overly broad and respects the privacy of individuals who may simply not wish to be contacted or found.

VULNERABLE PERSON

Do you agree with Ontario’s approach to defining a vulnerable person, as above?

Yes.

Should this or another definition or a corresponding regulation outline specific examples of risk factors? (For example: in BC’s regulation under their Act, the following risk factors are outlined: may be likely to self-harm; may have a substance abuse problem; may require medical attention)

No. The definition as contained in the Police Records Check Reform Act is sufficient to capture those who are involuntarily missing. The scope of the expanded British Columbia definition is almost limitless and overly broad.

If risk factors were to be specified, what would the Ontario- specific risk factors be?

Not specifying the risk factors allows the legislation to capture unique situations. The factors which could lead to a situation of risk are captured within the definition itself.

LEGISLATIVE POWERS

ACCESS TO RECORDS

Are there records missing from those listed, which should be included? Why or why not?

No comment.

Are there records included in those listed, that should not be included? Why or why not?

No comment.

Are there potential risks or implications associated with police having access to any or all of these records?

The records should not be used by the authorities in any proceeding against or investigation into the subject of the records, absent judicial authorisation or constitutional compliance appropriate to the framework of that investigation or proceeding. For example, the records should not be available to the police to use if the missing person becomes the target of a criminal investigation, absent appropriate judicial authorisation related to that investigation as provided in the Criminal Code or other relevant statute.

If there are potential risks or implications, in your opinion, would the fact that police must apply for a judicial order to enable access mitigate these risks/ implications? What else could be put in place to mitigate risks or implications?

Yes, but it should be specified that access per the judicial order is for the purposes of an investigation pursuant to the Missing Persons Legislation and not for any other purpose.

ACCESS TO RECORDS IN EMERGENCY CIRCUMSTANCES

What, if any, additional oversight measures would need to be considered for a provision like this? For example, the Uniform Missing Persons Act includes the following:

- Requirement that a police officer who makes an emergency demand file a written report with his or her commanding officer that sets out the circumstances in which the demand was made.

The above requirement to file a written report is appropriate and should be included.

SEARCH ORDER

Are there potential risks or implications associated enabling police to enter premises under these specific circumstances?

There is a risk that the search could be used to further criminal investigations without the appropriate judicial authorisation, i.e. a Criminal Code search warrant.

If there are potential risks or implications, in your opinion, would the fact that police must apply for a judicial order to enable entry mitigate these risks/implications? What else could be put in place to mitigate risks or implications?

The standard for the warrant should mirror the criminal standard, i.e. reasonable and probably grounds to believe. Absent exigent circumstances, a warrant should always be required to execute a premises search.

The warrant must specify the person sought and place to be searched and should reflect other requirements of criminal searches including setting out the permitted scope, time, and duration of the search as well as the grounds existing for the search.

PRIVACY LIMITATIONS

RETENTION, USE AND DISCLOSURE OF RECORDS

Is there anything missing from the guidance/ limitations outlined here that should be included in the legislation? If so, what changes or additions would you propose?

Once the person sought has been found the stipulated time period for return and/or destruction of the records should be as soon as practicable.

How can we best ensure that missing persons legislation in Ontario respects privacy rights?

Limiting the situations where records can be sought to those where there are clear and realistic concerns for the safety and welfare of the person sought, requiring judicial authorisation (absent exigent circumstances), limiting the use to be made of the records strictly to the search for the person sought and requiring the destruction/return of the records in a timely fashion when the search has ended ought to respect privacy rights of individuals.

Do you have thoughts on what the retention period should be for records that are no longer required for the purpose of determining the whereabouts of the missing person? (e.g. in some jurisdictions, the maximum retention period is 90 days)

There should be no need to retain the records once the person sought has been located, and thus no retention period is necessary. The legislation should aim to ensure not that the records are retained for a specified time period but rather that they are destroyed/returned as soon as practicable and not more than a specified time period, i.e. 15 days.

OVERSIGHT AND ACCOUNTABILITY

REVIEW/ANNUAL REPORT

Do you believe a comprehensive review after a specified time period should be included in Ontario's missing persons legislation? An annual report? Or both?

Both would be appropriate measures.

Are there other oversight/accountability measures that should be included or explored?

It would be helpful to track when and how access to records directly results in the recovery of the missing person.

Are there any other provisions that should be included in missing persons legislation?

No comment.

ADDITIONAL TOOLS AND SUPPORTS

PUBLIC AWARENESS

No comment.

SUPPORTS FOR FAMILIES AND LOVED ONES

A dedicated single point of contact, i.e. liaison, for the families and loved ones would be a valuable resource and should be located within a community agency that is not the police.

POLICE INVESTIGATIVE TOOLS, PROTOCOLS AND POLICIES

No comment.

JUSTICE SECTOR TRAINING AND EDUCATION

There should be comprehensive training on mental health issues and addiction issues as well as cultural issues.

DATA COLLECTION AND MANAGEMENT

The sharing of information between police agencies ought to be mandatory and not voluntary.

Are there other non-legislative tools or supports that should be considered?

No comment.