

Police Review Commission meeting of March 13, 2019

Agenda Item # 10.a.: Lexipol Policies for review and approval

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Motor Vehicle Collision Investigations

501.1 PURPOSE

The purpose of this policy is to establish procedures and guidelines for the investigation of traffic collisions and traffic related incidents, along with the preparation and handling of related reports.

501.2 POLICY

It is the policy of the Berkeley Police Department that all hit and run collisions with investigative leads and collisions with injuries will be fully investigated to determine the causative factors and responsibility for the collision. Documentation shall conform to State and Department reporting requirements.

501.3 GENERAL

The Department is governed in the classification of motor vehicle collisions by the California Highway Patrol (CHP) Collision Investigation Manual.

Traffic collision investigations shall be conducted with the objective of prosecution of violation(s) that caused the collision. Traffic collision investigative reports should clearly define the violation(s) and contain all information necessary for a successful prosecution.

(a) The completed investigative report may be viewed, or a copy purchased, at the front counter of Records Management, located on the first floor of the Public Safety Building (PSB), after approximately ten business days.

501.4 DUTIES OF THE DRIVER

501.4.1 SR-1 FORM The California Vehicle Code requires any driver involved in a vehicle collision in California to report the collision (via SR-1 form) to the DMV within 10 days if:

- (a) There was property damage of more than \$1,000, or
- (b) Anyone was injured (no matter how minor) or
- (c) Anyone was killed.

Each driver must make a report whether they caused the collision or not and even if the collision occurred on private property. The report is the responsibility of the driver, regardless of whether or not a police report was taken. An insurance agent, attorney or another designated representative may file the report for the driver. The SR-1 form is available on the DMV website for download.

EXCHANGE OF INFORMATION

[Vehicle Code](#) § 16025 states, "Every driver involved in the collision shall, unless rendered incapable, exchange with any other driver or property owner involved in the collision and present at the scene, all of the following information:

(a) Driver's name and current residence address, driver's license number, vehicle identification number, and current residence address of registered owner.

(b) Evidence of financial responsibility, as specified in Section 16020. If the financial responsibility of a person is a form of insurance, then that person shall supply the name and address of the insurance company and the number of the insurance policy."

501.5 NON-INJURY MOTOR VEHICLE COLLISION

(a) Berkeley Police Department Communications Center personnel will dispatch officers to the report of a non-injury collision occurring on a highway or private property only when the collision qualifies with one or more of the following conditions:

1. A driver who may be under the influence of alcohol or drugs.
2. A disturbance of the peace.
3. A "hit and run" (the failure or refusal to provide both drivers license and insurance information to the other party).
4. The vehicle(s) and/or vehicle debris is causing a traffic hazard and traffic control is needed (the reporting party should be advised that while traffic control will be provided, no collision report will be taken).

(b) In the event of a significantly delayed response to a qualifying report of a collision due to lack of available personnel, the reporting party should be so informed.

(c) If the parties in the collision refuse to wait for the officer and no traffic problem or criminal matter exist (e.g., DUI or Hit-Run), the police response may be cancelled. The parties should be advised of their responsibility to exchange information.

(d) If an officer is flagged down for a non-injury traffic collision, no collision report will be taken, but the officer may provide an incident number and/or help facilitate an exchange of information, upon request.

(e) A property damage report may be completed at the officer's discretion on a "short form" (CHP Form 555-#03, Traffic Collision Report - Property Damage Only). The short form should be handwritten at the scene and a carbon copy of the involved parties' information should be handed out to each party. The narrative portion of the form will not be given to the parties on scene and may therefore be completed at a later time.

1. The short form report cannot be used when there are more than two involved parties.
2. The short form report cannot be used when any City owned vehicle, City owned property or City liability is involved.
3. The completed short form report, including the narrative, may be viewed or obtained (for a fee) by concerned persons at Records Management.

501.6 INJURY MOTOR VEHICLE COLLISION

(a) Every motor vehicle collision which results in injury or death to any person, including those occurring on private property, shall be thoroughly investigated.

(b) Communications Center personnel receiving a report of an injury collision shall obtain information regarding the location, type and severity of injuries, traffic blockage, and any other information required for immediate emergency vehicle response.

1. An investigating officer shall be immediately assigned. Additional officers may be assigned to assist, as deemed necessary.

(c) Injury is defined as any non-fatal bodily harm received from a motor vehicle collision. Injury includes but is not limited to:

1. A complaint of pain without visible signs of injury

2. Visible signs of injury such as lacerations, abrasions, swelling or limping

3. Momentary unconsciousness

~~1. Bleeding wound, distorted member or any condition that requires the victim to be carried from the scene of the collision.~~

~~2. Other visible injuries such as bruises, abrasions, swelling, limping or other painful movement.~~

~~3. Complaint of pain without visible signs of injury or momentary unconsciousness.~~

501.7 COLLISION SCENE MANAGEMENT

(a) The first officer to arrive at the scene of any collision shall manage and attempt to stabilize the scene until relieved by the assigned officer, or other competent authority.

(b) The initial scene management includes, but is not limited to:

1. Determining the number and extent of injuries, if any, and requesting medical support, if needed.

i. The officer shall broadcast the injury or non-injury information as soon as possible.

ii. If the collision includes the request for an ambulance, it is mandatory that a sergeant respond to the scene.

2. Providing emergency medical aid, if it's safe to do so, until relieved by medical personnel.

3. Determining the need for traffic control and expediting the removal of vehicles, persons, and debris from the roadway when the removal will not interfere with the investigation. The officer should consider:

i. The use of flares, traffic cones and/or barricades.

ii. Enlisting assistance from on-lookers to direct or divert traffic, etc.

501.8 COLLISION INVESTIGATION

Once the scene of the collision is stabilized, and unless relieved by a motor officer or other competent authority, the handling officer should take, or delegate, the following steps to ensure a proper investigation is completed:

(a) Identify the drivers and passengers of the vehicles, determine their positions in the vehicles and obtain statements.

1. If a party has been taken to the hospital, the handling officer may continue his/ her investigation at the scene and contact the injured party at a later time, with supervisor approval.

2. The involved parties should be informed that they are responsible for reporting the collision to the DMV on the appropriate form (SR-1) which is available at the front counter of the PSB or on the DMV's website.

- (b) Identify witnesses and obtain statements.
- (c) Determine whether the involved parties were wearing seatbelts.
- (d) Determine whether the involved parties were in possession of a personal communication device (e.g. cell phone) at the time of the collision.
- (e) Identify whether objective signs of drug and/or alcohol or physical impairment are present.
- (f) Consider whether the criteria for a Priority Re-Examination is met (DMV Form DS-427).
- (g) Determine the point of impact and take any necessary measurements.

(hg) Issue a Notice to Appear at the conclusion of the investigation, when appropriate and possible, and when the investigating officer has completed a course or courses of instruction in collision investigation in compliance with Vehicle Code § 40600(a).

(ih) Protect the personal property of an involved party from theft or loss (e.g. if they are transported to the hospital).

1. If it is not practical for the property to be delivered to the owner, and/or the owner does not authorize another disposition, the property shall be booked for safekeeping. The property's disposition should be documented in the report.

501.9 TRAFFIC COLLISION REPORTS / DOCUMENTATION

(a) Traffic collisions which require documentation, shall use the following CHP Forms:

1. 555 (Traffic Collision Report and Factual Diagram),
2. 556 (Narrative/Supplemental) and
3. 555 (Injured, witness, passenger).

(b) The narrative report shall include the following information in the sequence listed:

1. **FACTS:** List known physical facts such as: skid marks, vehicle debris, paint transfer, location and types of vehicles, roadway conditions, lane width, location and status of traffic control signals/signs, and a description of injuries to persons or damage to property. List the response location, the method used to get measurements, any mechanical defects found and how they were discovered and verified, and any hazardous materials ~~location and type of vehicles/ vehicle debris/paint transfer, roadway construction/ width/lanes, type and location of traffic control signals/signs, description of injuries to persons and damages to property, etc. Also indicate your response location, method used to get measurements, any mechanical defects found and how discovered and verified, and any hazardous materials.~~

2. STATEMENTS: Verbal statements should be recorded as close to verbatim as possible. Written statements may be signed or unsigned and should be recorded exactly as stated. BPD statement forms should be used for written statements~~When practical, written statements should be recorded on a BPD statement form.~~

3. OPINIONS AND CONCLUSIONS: The Point of Impact (POI) is a conclusion drawn from facts and statements. The determination of causative factors is an opinion/-conclusion of the investigator and is recorded in this section. ~~(Do not include opinions or conclusions under FACTS).~~

4. DISPOSITION: Include the fact of arrest and charge(s) if a person is taken into custody. If a Notice to Appear is issued, include the citation number(s), violation(s) charged, court date and person cited. Record the disposition of vehicles (e.g., released to owner at scene, towed, ing information, etc.), and include including the towrelease authority if impounded.

(c) The completed report will be reviewed by the Traffic Analyst who will route copies, as appropriate, to the Statewide Integrated Traffic Records System (SWITRS).

501.10 THE FATAL ACCIDENT INVESTIGATION TEAM (FAIT)

(a) The Fatal Accident Investigative Team (FAIT) is comprised of the following three units:

1. Traffic Unit:

i. This unit is comprised of sworn personnel who have received training in basic, intermediate or advanced traffic collision investigations, collision reconstruction and/or tire friction mark analysis. ~~This unit supervised by the Traffic Unit Sergeant.~~

ii. FAIT ~~members~~ members are volunteers who, when available, will respond to qualifying collisions on a 24-hour basis.

iii. Officers who wish to be designated as FAIT ~~members~~ members should apply in accordance with existing procedures described within the Special and Temporary Duty Assignments policy~~Policy P-15 Special/Temporary Duty Assignments~~. It is not necessary for FAIT members to be assigned to the Traffic Bureau.

iv. ~~This unit is supervised by the Traffic Bureau's Motor Unit Sergeant~~ Traffic Unit Sergeant, The sergeant, or his/her designee, will periodically assess all FAIT traffic members to ensure they remain qualified for this assignment.

(b) Investigative Unit:

1. This unit is comprised of the Detective Bureau's Homicide Detail. ~~It is supervised by the Homicide Detail Detective Sergeant or his/her designee.~~

2. This unit provides guidance and/or assistance to the Traffic ~~Unit~~ Bureau relative to investigative procedures (e.g., interviews, interrogations, search warrants, etc.).

3. This unit has the primary responsibility for conducting any criminal investigation that might arise from the initial incident (e.g., ~~felony hit and run,~~ assault via vehicle, vehicular manslaughter, etc.). This includes ensuring all initial investigative and follow-up reports are completed in a timely manner.

4. It is supervised by the Homicide Detail Detective Sergeant or his/her designee.

(c) Identification Technician/Crime Scene Unit:

1. This unit is comprised of Crime Scene Technicians, ~~and is supervised by the Crime Scene Supervisor or his/her designee.~~

2. The primary responsibility of this unit is to provide assistance in processing the collision and/or crime scene. This unit also provides assistance in ensuring all critical evidence is photographed, identified and collected, ~~(e.g. clothing, vehicle parts, etc.)~~.

3. This unit is supervised by the Crime Scene Supervisor or his/her designee.

(d) The Communications Center shall maintain a call-out list of FAIT ~~members~~ personnel.

1. In the event it is necessary to activate FAIT, on duty FAIT ~~personnel~~ members should be the first who are assigned to respond. The following notifications shall also be made when FAIT is activated:

i. Traffic Unit Sergeant,

ii. Homicide Detail Detective Sergeant, and

iii. Crime Scene Unit Supervisor

(e) The purpose of FAIT is to provide a team ~~collective~~ of well-trained sworn and non-sworn personnel who work ~~working~~ in partnership to ensure the proper investigation and management of the following type of collisions:

1. Fatality involved;

2. Impending fatality involved;

3. Any collision involving a Berkeley Police vehicle with serious injuries, impending fatality and/or fatality shall be investigated by CHP, but FAIT members ~~members of FAIT~~ shall assist as needed; and/or

4. Any collision involving a Berkeley Police Department vehicle with major damage involved.

i. The determination of whether to request FAIT to respond is made at the discretion of the Patrol Watch Commander or sergeant who responds to the scene of the collision. Based on the circumstances, the Watch Commander or assigned sergeant may also request CHP investigate the collision whereafter, FAIT members ~~Members of FAIT~~ shall assist CHP as needed.

ii. If the collision only involves property/vehicle damage, then it is not necessary to contact the FAIT Investigative Unit (Homicide Detail).

501.11 ARREST PROCEDURES

If an arrest is made as a result of a motor vehicle collision (e.g., DUI, Hit-Run, etc.), in addition to the CHP 555 form, a case report shall also be completed under the same case number as the collision investigation.

(a) The case report shall bear the classification of the offense for which the defendant was arrested.

(b) The investigating officer shall complete the narrative report; ensuring sufficient details are included to support the arrest.

501.12 HIT AND RUN INVESTIGATIONS

Any driver of a motor vehicle, who becomes involved in a motor vehicle collision, must stop and identify ~~themselves~~ in compliance with VC § 20002.

An officer shall conduct an investigation of ~~misdemeanor~~ hit#run collisions, whether on roadways or on private property.

(a) If ~~it is a misdemeanor collision investigation and~~ the officer determines there are no investigative leads, no report will be taken, but an incident report number should be provided.

The follow#up investigation for both felony and misdemeanor hit and run cases will be conducted by the ~~originally~~ assigned ~~patrol~~ officer, unless the investigation was handled by a FAIT member who will then be responsible for the follow-up.

501.13 LATE-REPORTED COLLISIONS

Late-reported injury collisions may be reported at any time up to one year from the date of occurrence. However, the ability to conduct a comprehensive investigation may be compromised by the delay in reporting.

(a) A delayed report meeting the above criteria shall have the special conditions box on the CHP 555 form labeled, "Late-Reported".

(b) The reporting party should be informed ~~that~~ they are responsible for reporting the collision to the DMV on the appropriate form (SR-1) which is available at the ~~front counter of the PSB Front Counter~~ or on the DMV's website.

If a non#-injury collision is reported in person after both parties and vehicles have left the scene, the reporting party shall be advised that no report will be taken. However, the reporting party should be informed that they are responsible for reporting the collision to the DMV on the appropriate form (SR-1) which is available at the ~~front counter of the PSB Front Counter~~ or on the DMV's website.

501.14 COLLISIONS INVOLVING CITY-OWNED VEHICLES

The Communications Center shall dispatch an officer to any report of a collision, with or without injury, which involves City owned vehicles, equipment or property.

(a) Investigation - If the collision involves:

1. Minor ~~i~~njury to another party - CHP should be called to conduct the investigation.
2. Serious injury, impending fatality and/or fatality - CHP shall be called to conduct the investigation. However, FAIT shall be notified and shall assist CHP as needed.
3. No injury or property damage only - A patrol officer may conduct the investigation.
4. No injury with MAJOR property damage involving a POLICE vehicle - FAIT should be notified to conduct the investigation, ~~see 501.10 of this policy.~~

~~(a) The determination of whether to request FAIT to respond is made at the discretion of the Patrol Watch Commander or sergeant who responds to the scene of the collision. Based on the~~

~~circumstances, the Watch Commander or assigned sergeant may also request CHP investigate the collision. Members of FAIT shall assist CHP as needed.~~

(b) Documentation

1. Collision reports involving City vehicles shall include the City of Berkeley Accident Report and the City Manager's Report form.
2. ~~Collision reports~~For collisions involving police vehicles ~~shall include t~~—The Supervisor's Avoidability Report ~~which~~ shall be completed and turned into the Patrol Lieutenant's box prior to the end of the supervisor's shift.
3. The completed report will be reviewed by the Traffic Analyst who will route copies, as appropriate, to the Statewide Integrated Traffic Records System (SWITRS).
4. No collision report needs to be taken if the incident only involves damage to city property, and it is the opinion of a supervisor that there is no need for a collision report (~~i.e.e.g.~~ police auto vs. parked police auto in the PSB parking lot).
5. If the collision occurs outside of the City of Berkeley, the collision shall be reported to the appropriate law enforcement agency having jurisdiction.

501.15 COLLISIONS INVOLVING A SCHOOL BUS

The investigation of traffic collisions involving a school bus, as defined in Vehicle Code § 545, or a school pupil activity bus, as defined in Vehicle Code § 546, or a youth bus, as defined in Vehicle Code § 680, taking place anywhere within the State, are the responsibility of the CHP when the vehicle is:

- (a) Transporting any school pupils at or below the 12th grade level to or from a public or private school, or to or from public or private school activities.
- (b) Transporting any school pupils at or below the 12th grade level to or from ~~a public or private school activity, or to or from~~ a residential school.
- (c) Transporting children at or below the 12th grade level to or from an organized non#school related youth activity and the departing/arrival school is within 25 miles of the activity location.

Traffic collisions involving a school bus, school pupil activity bus, or youth bus, but with no pupils or qualifying children aboard, remain the responsibility of the local law enforcement agency and not the CHP.

501.16 COLLISIONS INVOLVING HAZARDOUS MATERIALS

The Berkeley Fire Department (~~BFD~~) is responsible for the scene management of any hazardous or toxic materials spill. Pending the arrival of BFD personnel, police personnel ~~may~~will be required to take ~~any required~~ emergency action.

The following procedures are recommended to assist in the handling of hazardous or toxic materials spill, or the immediate potential of a spill:

- ~~(a)~~ (a) Report the incident as a possible hazardous materials ~~incident~~.
- ~~(b)~~ (b) Give the exact location.
—~~Request assistance~~accident, giving the exact location and request assistance.
- ~~(a)(c)~~ (c) (b) Stay upwind and upgrade.

- (b)(d) Isolate the area of non-essential personnel
- (e)(e) d) Avoid contact with liquid or fumes.
- (d)(f) Eliminate ignition sources (e.g., smoking, flares and combustible engines).
- (e)(g) Identify materials, when possible, without undue risk of exposure/contact.
- (f)(h) Initiate evacuation from downwind first.

1. Select an upwind site for assembly of evacuated persons and report the location of the site to the Communications Center.

501.17 COLLISIONS ON THE EASTSHORE FREEWAY (I-80)

The California Highway Patrol (CHP) has responsibility for investigating traffic collisions originating on the Eastshore Freeway (I-80), including the on and off ramps within the City of Berkeley. However, upon request by the CHP, BPD will render any assistance required, including a complete investigation of a collision and subsequent prosecution of violation(s) causing the collision.

The University Avenue overpass and the Gilman Street underpass are not a part of the Eastshore Freeway (I-80) and jurisdiction remains with the BPD.

501.18 COLLISIONS INVOLVING DISABLED PEDESTRIANS

When an officer investigates a traffic collision involving a pedestrian, they ~~shall~~ write "DP" in CHP form 555's special conditions box, when the pedestrian does either of the following:

- (a) ~~When the pedestrian was using~~ Uses a mobility device, such as a wheelchair, walker, crutches, cane, white cane, or other device.
- (b) ~~When the pedestrian~~ "self-identifies" as having a disability that impairs mobility.

In the narrative portion of the report, the officer shall describe the mobility device the pedestrian used, or the statement the person made when he/she "self-identified" as being disabled.

This procedure does not require an officer to ask any disability related questions of the pedestrian or to do anything that would violate the American with Disabilities Act (ADA). It does not ask that an officer attempt to determine whether the pedestrian was using the mobility device as the result of a temporary medical condition (such as a broken leg), or as the result of a disability as described in the ADA.

The Traffic Analyst will maintain a file of all collision reports that are identified as involving a disabled pedestrian.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 19, 2004

GENERAL ORDER T-16

SUBJECT: MOTOR VEHICLE ACCIDENT INVESTIGATIONS, REPORTS,
ARRESTS AND PROCEDURES

PURPOSE

- 1 - The purpose of this General Order is to establish procedures and guidelines for the investigation of traffic accidents and traffic related incidents, along with the preparation and handling of related reports.

POLICY

- 2 - It is the policy of this Department that all accidents involving fatal or other injuries, hit-run, and named property damage only collisions will be fully investigated to determine the causative factors and responsibility for the accident. Documentation shall conform to State and Department reporting requirements.

GENERAL

- 3 - The Department is governed in the classification of motor vehicle accidents by the Statewide Integrated Traffic Records System COLLISION INVESTIGATION MANUAL, California Highway Patrol document HPM 110.5, which is in accordance with the manual on classification of Motor Vehicle Traffic Accidents published by the National Safety Council.
- 4 - Traffic accident investigations shall be conducted with the objective of prosecution of violation(s) that caused the accident. Traffic accident investigative reports shall clearly define the violation(s) and contain all information necessary for a successful prosecution.

A Notice to Appear should be issued by the investigating officer at the conclusion of the investigation, when appropriate and possible, and the investigating officer has completed a course or courses of instruction in collision investigation in compliance with CVC 40600(a).

- (a) The completed investigative report may be viewed, or a copy purchased, at the **Support Services** Records Unit public counter after approximately ten (10) working days or less.
- 5 - All documents prepared during the course of the investigation shall be delivered to the appropriate team tray for review by a team supervisor. After review, the supervisor shall initial the report and place it in the Report Review Transfer Box.
 - (a) Prior to placing reports in the team tray, the officer shall make copies of the report and route them as follows:
 - (1) Copy to the assigned officer.
 - (2) District Attorney's office when an arrest is made, or a warrant of arrest is requested.
 - (3) Youth Services Detail when a juvenile is arrested or cited.
 - (b) All reports involving police vehicle collisions, including the City of Berkeley Accident Report, form 278-236 (City Manager's Report), and other City vehicle collision reports shall be placed in the Report Review Transfer Box for routing. The Traffic Analyst will later review and route any additional copies of these reports.

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- (c) The Supervisor's Avoidability Report shall be turned into the Patrol Lieutenant's box prior to the end of the shift, with a copy routed to the Traffic Bureau.
- 6 - The assigned Traffic employee shall empty the Traffic Bureau accident tray when reporting for duty. After review by the Traffic Analyst, a copy of each report shall be placed in the Traffic Office Specialist II's in-tray for entry into the Records Management System.
 - (a) The original report shall be taken to the Support Services Bureau Records Unit where it will be made available for viewing or purchase of copies as set forth in General Order T-17.
 - (1) The Traffic Analyst shall make and route one copy of each qualifying accident report to the California Highway Patrol (CHP) Data Processing Unit.

EASTSHORE FREEWAY (I-80) JURISDICTION

- 7 - The California Highway Patrol has responsibility for investigating traffic accidents originating on the Eastshore Freeway (I-80), including the on and off ramps within the City of Berkeley. However, upon request by the CHP, we will render any assistance required, including a complete investigation of an accident and subsequent prosecution of violation(s) causing the accident.
- 8 - The University Avenue overpass and the Gilman Street underpass are not a part of the Eastshore Freeway (I-80) and jurisdiction remains with the Berkeley Police Department.

SCHOOL BUS TRAFFIC ACCIDENTS

- 9 - The investigation of traffic accidents involving a school bus, as defined in Section 545 VC, or a school pupil activity bus, as defined in Section 546 VC, or a youth bus, as defined in Section 680 VC, taking place anywhere within the State, are the responsibility of the CHP when the vehicle is:
 - (a) Transporting any school pupils at or below the 12th grade level to or from a public or private school, or to or from public or private school activities.
 - (b) Transporting any school pupils at or below the 12th grade level to or from a public or private school activity, or to or from a residential school.
 - (c) Transporting children at or below the 12th grade level to or from an organized non-school related youth activity and the departing/arrival school is within 25 miles of the activity location.

Traffic accidents involving a school bus, school pupil activity bus, or youth bus, but with no pupils or qualifying children aboard, remain the responsibility of the local law enforcement agency and not the CHP.

FATAL ACCIDENT INVESTIGATION TEAM

- 10 - A Fatal Accident Investigative Team (F.A.I.T.) has been established within the Department. The Team is comprised of the following three units:
 - (a) Traffic Unit:
 - (1) Sworn personnel who have received training in both basic and advanced

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traffic accident investigations, accident reconstruction and skid mark analysis.

(i) Officers who wish to be designated as F.A.I.T. traffic members are selected in accordance with existing procedures governing Special/Temporary Duty Assignments (General Order P-15). It is not necessary for those selected to be assigned to the Traffic Bureau.

FAIT supervisory staff will periodically assess all F.A.I.T. traffic members to insure they remain qualified for this assignment.

(b) F.A.I.T. Traffic members are volunteers whom, when available, will respond to qualifying collisions on a 24-hour basis.

(2) Assigned Traffic Unit personnel have the primary responsibility for conducting all traffic related investigations and follow-ups. This includes insuring all traffic reports and required follow-ups are completed in a timely manner, consistent with existing Departmental Procedures.

(3) The Traffic Bureau Sergeant, or his/her designee, is responsible for the supervision of all F.A.I.T. traffic investigators.

b) Investigative Unit:

(1) This Unit is comprised of the Detective Bureau/Homicide Detail. It is supervised by the Homicide Detail Detective Sergeant or his/her designee.

(2) This Unit provides guidance and/or assistance to the Traffic Unit relative to investigative procedures (i.e., interviews and interrogations of victims/witnesses/suspects, search warrants, etc.)

(3) This Unit has the primary responsibility for conducting any criminal investigation that might arise from the initial incident (i.e., felony hit and run, assault via vehicle, vehicular manslaughter, etc.) This includes insuring all initial investigative and follow-up reports are completed in a timely manner, consistent with existing

c) Identification Technician/Crime Scene Unit:

(1) This Unit is comprised of the Support Services Bureau Crime Scene Unit that is staffed by a Senior Crime Scene Technician, Identification Technicians (Community Service Officers), and is supervised by the Crime Scene Supervisor or his/her designee.

(2) The primary responsibility of this Unit is to provide assistance in processing the collision and/or crime scene. The Unit also provides assistance in insuring all critical evidence is identified and collected (i.e., clothing, vehicle parts, photographs, etc.)

11 - The Communications Center shall maintain a call-out list of F.A.I.T. personnel.

a) In the event it is necessary to activate F.A.I.T., on duty F.A.I.T. personnel shall first be assigned to respond. The following notifications shall also be made when the F.A.I.T. is activated:

(1) Traffic Bureau Sergeant, and

(2) Homicide Detail Detective Sergeant, and

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GENERAL ORDER T-16

- (3) **Crime Scene Unit Supervisor**
- 12 - The purpose of F.A.I.T. is to provide a collective of well-trained sworn and non-sworn personnel working in partnership to insure the proper investigation and management of the following type of collisions:
- a) Fatality involved
 - b) Impending fatality involved
 - c) Any collision involving a Berkeley Police vehicle with serious injuries, impending fatality and/or fatality shall be investigated by the CHP.
 - (1) Members of F.A.I.T. shall assist CHP as needed.
 - d) Any collision involving a Berkeley Police vehicle with major damage to any involved party.
 - (1) The determination of whether to request F.A.I.T. to respond is made at the discretion of the Patrol Watch Commander or Sergeant who responds to the scene of the collision. Based on the circumstances, the Watch Commander or assigned Sergeant may also request that CHP investigate the collision. Members of F.A.I.T. shall assist CHP as needed.
NOTE: If the collision only involves property/vehicle damage, then it is not necessary to contact the Investigative Unit (Homicide Detail).
- 13 - For all other injury collisions where an ambulance is required, it is mandatory that a Sergeant be assigned to respond to the scene. The Sergeant shall assess whether or not the F.A.I.T. should be activated. Example of factors to consider include, but are not limited to the following:
- a) Is the injury potentially life threatening? (i.e., elderly victim)
 - b) Was the victim taken to a trauma center?
 - c) Is the victim in critical condition?
- 14 - While Team members are responding, the following steps shall be taken:
- a) The first officers arriving shall render whatever aid is necessary, keeping in mind that position of bodies; clothing and other personal items could be critical evidence.
 - b) Block off the area and freeze/seal the scene.
 - c) Determine which persons are involved in the accident and record their positions in the vehicles, etc.
 - d) Unless removed from the scene for medical treatment, isolate the involved persons and obtain initial statements.
 - e) Identify witnesses and obtain initial statements.
 - f) The assigned patrol officer shall be responsible for the investigation and scene management until relieved by a Team member.
 - (1) Once at the scene, the assigned Team member shall be in charge of the scene unless relieved by a commanding officer.

INVESTIGATION OF INJURY AND FATAL MOTOR VEHICLE ACCIDENTS

- 15 - Every motor vehicle accident which results in injury or death to any person, including those occurring on private property, shall be thoroughly investigated.

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GENERAL ORDER T-16

- a) Injury is defined as any non-fatal bodily harm received from a motor vehicle accident. Injury includes:
- (1) Bleeding wound, distorted member or any condition that requires the victim to be carried from the scene of the accident.
 - (2) Other visible injuries such as bruises, abrasions, swelling, limping, or other painful movement.
 - (3) Complaint of pain without visible signs of injury or momentary unconsciousness.
- 16 - Communications Center personnel receiving a report of an injury accident shall obtain information regarding the location, type and severity of injuries, traffic blockage, and any other information required for immediate emergency vehicle response.
- a) An investigating officer shall be immediately assigned. Other officers may be assigned to assist, as deemed necessary.
- 17 - The first on-scene officer shall determine the number and extent of injuries, need for immediate response from other service providers (i.e., fire suppression, other City Departments, EBMUD, PG&E, hazardous material involvement, etc.). When necessary, emergency medical aid shall be provided until relieved by medical personnel.
- a) The officer shall inform the Communications Center of the need for additional assistance, including requesting that F.A.I.T. be activated.
- 18 - Injury and fatal traffic accident investigations shall be recorded on CHP Forms 555 (Traffic Collision Report and Factual Diagram), 556 (Narrative/Supplemental), and 555 page 3 (injured, witness, passenger).
- a) The report may be neatly printed, typed or computer generated.
- 19 - The narrative report shall include the following information in the sequence listed:
- FACTS:** List known physical facts: skid marks, location and type of vehicles/vehicle debris/paint transfer, roadway construction/width/lanes, type and location of traffic control signals/signs, description of injuries to persons and damages to property, etc. Also indicate your response location, method used to get measurements, any mechanical defects found and how discovered and verified, and any hazardous materials.
- STATEMENTS:** Verbal statements should be recorded as nearly verbatim as possible. Written statements may be signed or unsigned and should be recorded exactly as stated. When practical, written statements should be recorded on a BPD statement form.
- OPINIONS AND CONCLUSIONS:** The Point of Impact is a conclusion drawn from facts and statements. The determination of causative factors is an opinion/conclusion of the investigator and is recorded in this section. (Do not include opinions or conclusions under FACTS).
- DISPOSITION:** Include the fact of arrest and charge(s) if a person is taken into custody. If a Notice to Appear is issued, include the citation number(s), violation(s) charged, court date and person cited. Record the disposition of vehicles (released to owner at scene, towing information, etc.), including release authority if impounded.

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INVESTIGATION OF NON-INJURY MOTOR VEHICLE ACCIDENTS

- 20 - Reports of non-injury accidents occurring on private property will not be accepted by Communications Center personnel unless the accident involves:
- A hit-run (hit-run is the failure or refusal to provide both drivers license and registration information to the other party).
 - City owned or leased vehicles, equipment or property, unless only city property is involved and in the opinion of a supervisor there is no need for a collision report. (Police auto vs. parked police auto in the Hall of Justice lot.)
 - A driver who may be under the influence of alcohol or drugs.
 - A disturbance of the peace.
- 21 - Reports of non-injury accidents occurring on a highway shall be documented as a collision report in conformance with the CHP Collision Investigation Manual.
- 22 - An officer shall be dispatched to the scene of qualifying reports.
- In the event an officer cannot be assigned within a period of fifteen minutes, due to lack of available personnel, the reporting party shall be so informed, together with the probable delay before an officer will be available.
 - If the principals in the collision refuse to wait for the officer, no traffic congestion problem exists and, if the principals have been informed of their responsibility to exchange information, the report may be disregarded. Every reasonable effort should be made to dispatch an officer to the scene and to document the collision.
 - If one of the principals to the collision is still present at the scene and that person has the required identifying information on the other involved party, a collision report shall be completed. In no event shall an officer render an opinion as to cause or any violation of the California Vehicle Code unless all involved parties have been interviewed.
- 23 - CHP Form 555-03, Traffic Collision Report -Property Damage Only ("PDO," or also referred to as the "short form") shall be handwritten at the scene of the accident and a copy issued to each involved party.
- When more than two parties are involved, the "short form" cannot be used.
 - "Short form" cannot be used if any City vehicle, property, or liability is involved.
 - The copy provided at the scene will contain names and other identifying data concerning involved parties, vehicles and witnesses. It will not contain the narrative portion of the report.
 - The complete report may be viewed by concerned persons at the Support Service Records Unit and copies can be obtained for a fee.

HIT-RUN INVESTIGATIONS AND ARREST PROCEDURES

- 24 - Any driver of a motor vehicle, who becomes involved in a motor vehicle accident, must stop and identify them self in compliance with Section 20002 VC.
- 25 - If an arrest is made as a result of a motor vehicle accident, in addition to the CHP 555 form, the front of an Universal report form shall also be completed under the same case number as the accident investigation.
- The report shall bear the classification of the offense for which the defendant was arrested.
 - The investigating officer shall complete the narrative report; ensuring sufficient

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details are included to support the arrest.

- 26 - An officer shall conduct an investigation of misdemeanor hit-run accidents, whether on roadways or on private property.
- a) CHP Form 555 shall be used if the responsible party is known or if there are investigative leads.
 - b) CHP Form 555-03 (PDO) should be used if no leads are present.
- 27 - The follow-up investigation for both felony and misdemeanor hit and run cases will be conducted by the assigned patrol officer, unless the investigation was handled by a F.A.I.T. member who will then be responsible for the follow-up. Investigations shall be complete and accurate.

DELAYED REPORTS OF MOTOR VEHICLE ACCIDENTS

- 28 - When an injury accident is reported within 24 hours of the time of the accident, a numbered report shall be initiated and the investigation assigned to a Front Counter Officer.
- a) A patrol officer shall be assigned when a Front Counter Officer is unavailable.
 - b) A delayed report meeting the above criteria shall have the special conditions box on the front of the CHP 555 form labeled, "Late-Reported".
- 29 - A numbered report shall be made if a letter is received, reporting an injury collision more than 24 hours after the occurrence.
- a) CHP Form 555 and DMV form SR-1 shall be sent to the reporting party.
 - (1) The reporting party shall be instructed by letter to complete CHP Form 555 and return it to the Berkeley Police Department for recording and permanent record processing (i.e., microfilming, optical disc storage).
 - (2) The reporting party shall also be informed that the Berkeley Police Department will not forward the information to the California Highway Patrol and that no further action will be taken. The reporting party shall be informed that they are responsible for reporting the collision to the Department of Motor Vehicles on the appropriate form (SR-1).
 - (3) The completed CHP 555 form shall be assigned to the Front Counter Officer who will enter the information, "Counter Report" in the special conditions box.
- 30 - A numbered report may be made if an injury collision is reported in person more than 24 hours after the time of the collision, in which case the reporting party will be afforded the opportunity to fill out in their own handwriting Traffic Collision Report Form 555.
- a) The Front Counter Officer shall be assigned and shall assist the person completing the form and advise them that the report will not be forwarded to the California Highway Patrol and that no further action will be taken. A patrol officer shall be assigned if the Front Counter Officer is not available.
 - b) The reporting party shall be informed that they are responsible for reporting the collision to the Department of Motor Vehicles on the appropriate form (SR-1) which will be provided at the Front Counter.
- 31 - If a non-injury collision is reported by letter, the reporting party will be advised, via form letter, that no investigative action will be taken.
- 32 - If a non-injury collision is reported in person after both principals and vehicles have left

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the scene, the person shall be advised that no report will be taken.

SCENE MANAGEMENT

- 33 - The first officer to arrive at the scene of an accident shall assume the responsibilities of the Scene Manager until relieved by the assigned officer, or other competent authority.
- 34 - Scene management includes, but is not limited to:
 - a) Administering emergency medical care and providing basic life support.
 - b) Summoning ambulance and/or additional assistance (e.g., officers, specialized personnel whether from City departments or other agencies, tow trucks, etc.).
 - c) Protecting the accident scene.
 - (1) Use of flares, traffic cones, barricades.
 - (2) Enlisting assistance from on-lookers to direct or divert traffic, etc.
 - d) Preserving short-lived evidence.
 - e) Establishing a safe traffic pattern around the scene.
 - f) Locating witnesses and recording accident information.
 - g) Expediting the removal from the roadway of vehicles, persons, and debris, when the removal will not interfere with the investigation.
 - h) Protecting citizens' personal property from theft or loss.
 - (1) When it is not practical for personal property to accompany the citizen and the owner does not authorize other disposition, the property shall be taken into safekeeping and placed in the Property Room under the accident case number. The disposition of any property taken into police custody shall be documented in the report.

HAZARDOUS MATERIALS INVOLVEMENT

- 35 - The Berkeley Fire Department is responsible for the scene management of any hazardous or toxic materials spill. Pending the arrival of Fire Department personnel, Police personnel will be required to take any required emergency action.
- 36 - The following procedures are recommended to assist in the handling of hazardous or toxic materials spill, or the immediate potential of a spill:
 - a) Report the incident as a possible hazardous materials accident, giving the exact location and request assistance.
 - b) Stay upwind and updrift.
 - c) Isolate the area of non-essential personnel.
 - d) Avoid contact with liquid or fumes.
 - e) Eliminate ignition sources (smoking, flares, combustible engines).
 - f) Identify materials, when possible, without undue risk of exposure/contact.
 - g) Initiate evacuation from downwind first.
 - (1) Select an upwind site for assembly of evacuated persons and report the location of the site to the Communications Center.

ACCIDENTS INVOLVING DISABLED PEDESTRIANS

- 37 - When an officer investigates a traffic collision that involves a pedestrian who does either of the following, they are to write "DP" in the special conditions box in the upper left corner of the CHP 555 form.
 - (a) When the pedestrian was using a mobility device, such as a wheelchair, walker, crutches, cane, white cane, or other device.

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- (b) When the pedestrian "self identifies" as having a disability that impairs mobility.
- 38 - In the narrative portion of the report, the officer shall describe the mobility device that the pedestrian used, or the statement that the person made when he/she "self identified" as being disabled.
- 39 - This procedure does not require an officer to ask any disability related questions of the pedestrian or to do anything that would violate the American with Disabilities Act (ADA). It does not ask that an officer attempt to determine whether the pedestrian was using the mobility device as the result of a temporary medical condition (such as a broken leg), or as the result of a disability as described in the ADA.
- 40 - The Traffic Analyst will maintain a file of all collision reports that are identified as involving a disabled pedestrian.
-

References:

California Collision Investigation Manual HPM 110.5

California Vehicle Code Sections 545, 546, 680, 12028 (a), 12028 (b), and 40600

General Orders C-2, C-16, C-17, D-2, E-3, P-12, and T-17

Disabled Vehicles

506.1 PURPOSE AND SCOPE

Vehicle Code § 20018 provides that all law enforcement agencies having responsibility for traffic enforcement may develop and adopt a written policy to provide assistance to motorists in disabled vehicles within their primary jurisdiction.

506.2 OFFICER RESPONSIBILITY

When an on-duty officer observes a disabled vehicle on the roadway, the officer should make a reasonable effort to provide assistance. If that officer is assigned to a call of higher priority, the dispatcher should be advised of the location of the disabled vehicle and the need for assistance. The dispatcher should then assign another available officer to respond for assistance as soon as practical.

506.3 EXTENT OF ASSISTANCE

In most cases, a disabled motorist will require assistance. After arrangements for assistance are made, continued involvement by department personnel will be contingent on the time of day, the location, the availability of departmental resources, and the vulnerability of the disabled motorist.

506.3.1 MECHANICAL REPAIRS

Department personnel shall not make mechanical repairs to a disabled vehicle. The use of push bumpers to relocate vehicles to a position of safety is not considered a mechanical repair.

506.3.2 RELOCATION OF DISABLED VEHICLES

The relocation of disabled vehicles by members of this department ~~by pushing or pulling a vehicle~~ should only occur when the conditions reasonably indicate that immediate movement is necessary to reduce a hazard presented by the disabled vehicle.

506.3.3 RELOCATION OF DISABLED MOTORIST

The relocation of a disabled motorist should only occur with the person's consent, and should be suggested when conditions reasonably indicate that immediate movement is necessary to mitigate a potential hazard. The department member may stay with the disabled motorist or transport him/her to a safe area to await pickup.

~~506.4 PUBLIC ACCESS TO THIS POLICY~~

~~This written policy is available upon request.~~

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DATE ISSUED: August 31, 1990

GENERAL ORDER T-18

SUBJECT: ASSISTANCE TO DISABLED MOTORISTS

PURPOSE

- 1 - The purpose of this Order is to establish a written policy for officers in providing information and directions to motorists, and requiring officers to provide assistance to drivers of disabled motor vehicles as required by California Vehicle Code Section 20018.

POLICY

- 2 - The policy of the Berkeley Police Department is for uniformed personnel to stop and render appropriate assistance to motorists.

PROCEDURES

- 3 - When a uniformed officer observes or becomes aware of a disabled or stranded motorist, the employee shall stop and render assistance to minimize the possibility of harm or injury.
- 4 - Emergency assistance shall include:
 - (a) Providing immediate fire or medical assistance;
 - (b) Summoning emergency road service;
 - (c) Protecting vehicles stranded in hazardous locations by means of warning devices, emergency lights or flares, and
 - (d) Waiting with the stranded motorist until help arrives or transporting the person to a place of safety.
- 5 - Officers shall not:
 - (a) Push cars either with police vehicles or by hand;
 - (b) Use police vehicles to jump start stalled vehicles;
 - (c) Change tires or make minor repairs/adjustments, and
 - (d) Open locked vehicles except in emergencies.
- 6 - Uniformed personnel enroute to an emergency call, who observe or become aware of a stranded motorist, shall notify the Communications Center of the location of the motorist and request that a patrol unit be assigned to provide assistance.
 - (a) If possible, the officer should advise the stranded motorist that another officer will be sent to assist.

*Highlighted text is new

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DATE ISSUED: August 31, 1990

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- (b) Communications Center personnel shall promptly assign another officer to provide assistance.

- 7 - The policy of the Berkeley Police Department is not to provide escorts unless prior approval has been received from the Watch Commander. **Section 21057 CVC states that officers are expressly prohibited from using siren or driving at an illegal speed when serving as an escort. Exceptions to this rule are during war time, state of emergency, or local emergency as defined in Government Code Section 8558.**
 - (a) **Local emergencies include conditions of disaster or extreme peril to the safety of life and property. Examples are fire, storm, epidemic, riot, air pollution, hazardous materials, sudden and severe energy shortage, earthquake, or Governor's warning of earthquake prediction.**
 - (b) **Watch Commanders should not authorize escorts except when emergency conditions exist.**

- 8 - Requests for traffic safety publications or other materials may be referred to the Traffic Bureau, California State Automobile Association office, or Department of Motor Vehicles office.

Department of Motor Vehicle SR-1 forms (State of California Report of Traffic Accident) are maintained at the Front Counter.

References: CALEA Standards
California Vehicle Code Sections 20018, 21057 and 21705
General Order T-3

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General Order T-3

Brady Material Disclosure

605.1 PURPOSE AND SCOPE

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (so-called "*Brady* information") to a prosecuting attorney.

605.1.1 DEFINITIONS

Definitions related to this policy include:

***Brady* information** - Information known or possessed by the Berkeley Police Department that is both favorable and material to the current prosecution or defense of a criminal defendant.

605.2 POLICY

~~The Berkeley Police Department will conduct fair and impartial criminal investigations and will provide the prosecution with both incriminating and exculpatory evidence, as well as information that may adversely affect the credibility of a witness. In addition to reporting all evidence of guilt,~~ The Berkeley Police Department will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the defense. The Department will identify and disclose to the prosecution potentially exculpatory information, as provided in this policy.

605.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

Officers must include in their investigative reports adequate investigative information and reference to all material evidence and facts that are reasonably believed to be either incriminating or exculpatory to any individual in the case. If an officer learns of potentially incriminating or exculpatory information any time after submission of a case, the officer or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practicable. Supplemental reports shall be promptly processed and transmitted to the prosecutor's office.

If information is believed to be privileged or confidential (e.g., confidential informant or protected personnel files), the officer should discuss the matter with a supervisor and/or prosecutor to determine the appropriate manner in which to proceed.

Evidence or facts are considered material if there is a reasonable probability that they would affect the outcome of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If an officer is unsure whether evidence or facts are material, the officer should address the issue with a supervisor. The supervisor should communicate this new information to the appropriate prosecutor.

~~Supervisors who are uncertain about whether evidence or facts are material should address the issue in a written memo to an appropriate prosecutor. A copy of the memo should be retained in the Department case file.~~

605.4 DISCLOSURE OF PERSONNEL INFORMATION

Whenever it is determined that *Brady* information is located in the personnel file of a member of this department who is a material witness in a criminal case, the following procedure shall apply:

- ~~(a) In the event that a *Pitchess* motion has not already been filed by the criminal defendant or other party pursuant to Evidence Code § 1043, the prosecuting attorney shall be notified of the potential presence of *Brady* information in the officer's personnel file.~~
- ~~(b) The prosecuting attorney should then be requested to file a *Pitchess* motion in order to initiate an in camera review by the court.~~
- ~~(c)(a) Any member who is the subject of such a motion shall be notified in writing that a motion has been filed by the defense.~~
- ~~(d)(b) An Internal Affairs Sergeant, as the custodian of employee confidential personnel records, The Custodian of Records shall accompany all relevant files during any in camera inspection and address any issues or questions raised by the court in determining whether any information contained in the files is both material and favorable to the criminal defendant.~~
- ~~(e)(c) If the court determines that there is relevant *Brady* information contained in the files, only that information ordered released by the judge will be copied and released to the parties filing the motion.~~
 1. Prior to the release of any information pursuant to this process, the Custodian of Records should request a protective order from the court limiting the use of such information to the involved case and requiring the return of all copies upon completion of the case.

605.5 INVESTIGATING BRADY ISSUES

If the Department receives information from any source that a member may have issues of credibility, dishonesty or has been engaged in an act of moral turpitude or criminal conduct, the information shall be investigated and processed in accordance with the Personnel Complaints Policy.

~~605.6 TRAINING~~

~~Department members should receive periodic training on the requirements of this policy.~~

Vehicle Maintenance

702.1 PURPOSE AND SCOPE

Employees are responsible for assisting in maintaining dDepartment vehicles so that they are properly equipped, properly maintained, properly refueled and present a clean appearance.

702.2 DEFECTIVE VEHICLES

When a department vehicle becomes inoperative or in need of a repair that affects the safety of the vehicle, that vehicle shall be removed from service for repair. Proper documentation shall be promptly completed by the employee who first becomes aware of the defective condition, describing the correction-service needed. The paperwork shall be promptly forwarded to vehicle maintenance for repair.

702.2.1 DAMAGE OR POOR PERFORMANCE

Vehicles that may have been damaged, or perform poorly shall-should be removed from service for inspections and repairs as soon as practicable.

702.2.2 SEVERE USE

Vehicles operated under severe-use conditions, which include operations for which the vehicle is not designed or that exceed the manufacturer's parameters, should be removed from service and subjected to a safety inspection as soon as practicable. Such conditions may include rough roadway or off-road driving, hard or extended braking, pursuits or prolonged high-speed operation.

702.2.3 REMOVAL OF WEAPONS

All firearms, weapons and control devices shall be removed from a vehicle and properly secured in the department armory prior to the vehicle being released for maintenance, service or repair.

702.3 VEHICLE EQUIPMENT

Certain items shall be maintained in all department vehicles for emergency purposes and to perform routine duties.

702.3.1 PATROL VEHICLES

Officers shall inspect the patrol vehicle at the beginning of the shift and ensure that the following equipment, at a minimum, is present in the vehicle:

- 1 trauma kit
- 1 fire extinguisher
- 10 emergency road flares
- 1 roll of crime scene barricade tape
- 20 Emergency road flares

-
- 2 Sticks yellow crayon or chalk
 - 1 Roll Crime Scene Barricade Tape
 - 1 First aid kit, CPR mask
 - 1 Blanket
 - 1 Blood-borne pathogen kit, Incl. protective gloves
 - 1 Sharps container
 - 1 Hazardous waste disposal bag
 - 1 Traffic Safety Vest
 - 1 Hazardous Materials Emergency Response Handbook
 - 1 Evidence collection kit
 - 1 Camera

702.3.2 UNMARKED VEHICLES

An employee driving unmarked department vehicles shall ensure that the minimum following equipment is present in the vehicle:

- 20 Emergency road flares
- 1 Roll Crime Scene Barricade Tape
- 1 First aid kit, CPR mask
- 1 Blanket
- 1 Blood-borne pathogen kit, Incl. protective gloves
- 1 Sharps container
- 1 Hazardous waste disposal bag
- 1 Traffic Safety Vest
- 1 Hazardous Materials Emergency Response Handbook
- 1 Evidence collection kit
- 1 Camera

702.4 VEHICLE REFUELING

Absent emergency conditions or supervisor approval, officers driving patrol vehicles shall not place a vehicle in service that has less than one-quarter tank of fuel. Vehicles shall only be refueled at the authorized location.

702.5 WASHING OF VEHICLES

All units shall be kept clean at all times and weather conditions permitting, shall be washed as necessary to enhance their appearance.

Officers in patrol shall obtain clearance from the dispatcher before responding to the car wash. ~~Only one marked unit should be at the car wash at the same time unless otherwise approved by a supervisor.~~

Employees using a vehicle shall remove any trash or debris at the end of their shift. Confidential material should be placed in a designated receptacle provided for the shredding of this matter.

702.6 – NON-SWORN EMPLOYEE USE

~~Non-sworn employees using marked vehicles shall ensure all weapons are removed from vehicles before going into service. Non-sworn employees shall also prominently display the "out of service" placards or lightbar covers at all times. Non-sworn employees shall not operate the emergency lights or siren of any vehicle unless expressly authorized by a supervisor.~~

Personal Protective Equipment

705.1 PURPOSE AND SCOPE

This policy identifies the different types of personal protective equipment (PPE) provided by the Department as well the requirements and guidelines for the use of PPE.

This policy does not address ballistic vests or protection from communicable disease, as those issues are addressed in the Body Armor and Communicable Diseases policies.

705.1.1 DEFINITIONS

Definitions related to this policy include:

Personal Protective Equipment (PPE) - Equipment that protects a person from serious workplace injuries or illnesses resulting from contact with chemical, radiological, physical, electrical, mechanical or other workplace hazards.

Respiratory PPE - Any device that is worn by the user to protect from exposure to atmospheres where there is smoke, low levels of oxygen, high levels of carbon monoxide, or the presence of toxic gases or other respiratory hazards. For purposes of this policy, respiratory PPE does not include particulate-filtering masks such as N95 or N100 masks.

705.2 POLICY

The Berkeley Police Department endeavors to protect members by supplying certain PPE to members as provided in this policy.

705.3 OFFICER RESPONSIBILITIES

Members are required to use PPE as provided in this policy and pursuant to their training.

Members are responsible for proper maintenance and storage of issued PPE. PPE should be stored in an appropriate location so that it is available when needed.

Any member who identifies hazards in the workplace is encouraged to utilize the procedures in the [Safety Committee Illness and Injury Prevention Policy](#) to recommend new or improved PPE or additional needs for PPE.

705.4 HEARING PROTECTION

Approved hearing protection shall be used by members during firearms training. Hearing protection shall meet or exceed the requirements provided in 8 CCR 5098. [Members who make arrests or manage crowds should be provided hearing protection.](#)

705.5 EYE PROTECTION

Approved eye protection, including side protection, shall be used by members during firearms training. Eye protection for members who wear prescription lenses shall incorporate the prescription (e.g., eye protection that can be worn over prescription lenses). Members shall ensure their eye protection does not interfere with the fit of their hearing protection.

The Personnel and Training Sergeant shall ensure eye protection meets or exceeds the requirements provided in 8 CCR 3382.

705.6 HEAD AND BODY PROTECTION

Members who make arrests or ~~manage control~~ crowds should be provided ballistic head protection with an attachable face shield, ~~as well as:~~ padded body protection consisting of chest, arm, leg and groin protection. ~~should be provided as required by any collective bargaining agreement.~~

705.7 RESPIRATORY PROTECTION

The ~~Professional Standards Support Services~~ Division ~~Captain~~ commander is responsible for ensuring a respiratory protection plan is developed and maintained by a trained and qualified member. The plan shall include procedures for (8 CCR 5144):

- (a) Selecting appropriate respiratory PPE based on hazards and risks associated with functions or positions.
- (b) Fit testing, including identification of members or contractors qualified to conduct fit testing.
- (c) Medical evaluations.
- (d) PPE inventory control.
- (e) PPE issuance and replacement.
- (f) Cleaning, disinfecting, storing, inspecting, repairing, discarding and otherwise maintaining respiratory PPE, including schedules for these activities.
- (g) Regularly reviewing the PPE plan.
- (h) Remaining current with applicable National Institute for Occupational Safety and Health (NIOSH), American National Standards Institute (ANSI), Occupational Safety and Health Administration (OSHA), Environmental Protective Agency (EPA) and state PPE standards and guidelines.

~~705.7.1 RESPIRATORY PROTECTION USE~~

State

~~Designated members may be issued respiratory PPE based on the member's assignment (e.g., a narcotics investigator who is involved in clandestine lab investigations).~~

~~Respiratory PPE may be worn when authorized by a scene commander who will determine the type and level of protection appropriate at a scene based upon an evaluation of the hazards present.~~

~~Scene commanders are responsible for monitoring members using respiratory PPE and their degree of exposure or stress. When there is a change in work area conditions or when a member's degree of exposure or stress may affect respirator effectiveness, the scene commander shall reevaluate the continued effectiveness of the respirator and direct the member to leave the respirator use area when the scene commander reasonably believes (8 CCR 5144).~~

- ~~(a) It is necessary for the member to wash his/her face and the respirator facepiece to prevent~~

eye or skin irritation associated with respirator use:

- (b) The member detects vapor or gas breakthrough, or there is a change in breathing resistance or leakage of the facepiece.
- (c) The member needs to replace the respirator, filter, cartridge or canister.

705.7.2 MEMBER RESPONSIBILITIES FOR RESPIRATORY PROTECTION

State

Members shall not use self-contained breathing apparatus (SCBA), full-face respirators or cartridge respirators unless they have completed training requirements for the equipment.

Members exposed to environments that are reasonably known to be harmful due to gases, smoke or vapors shall use respiratory PPE.

Members using respiratory PPE shall (8 CCR 5144):

- (a) Ensure that they have no facial hair between the sealing surface of the facepiece and the face that could interfere with the seal or the valve function. Members also shall ensure that they have no other condition that will interfere with the face-to-facepiece seal or the valve function.
- (b) Not wear corrective glasses, goggles or other PPE that interferes with the seal of the facepiece to the face, or that has not been previously tested for use with that respiratory equipment.
- (c) Perform a user seal check per department-approved procedures recommended by the respirator manufacturer each time they put on a tight-fitting respirator.
- (d) Leave a respiratory use area whenever they detect vapor or gas breakthrough, changes in breathing resistance or leakage of their facepiece and ensure that the respirator is replaced or repaired before returning to the affected area.

705.7.3705.7.1 GAS MASK

Full-face air-purifying respirators, commonly referred to as gas masks, may be fitted with mechanical pre-filters or combination cartridge/filter assemblies for use in areas where gases, vapors, dusts, fumes or mists are present. Members must identify and use the correct cartridge based on the circumstances (8 CCR 5144).

A scene commander may order the use of gas masks in situations where ~~the use of a SCBA is not necessary. These incidents may include areas where~~ tear gas has or will be used or where a vegetation fire is burning. Gas masks shall not be used if there is a potential for an oxygen-deficient atmosphere.

Members shall ensure their gas mask filters are replaced whenever:

- (a) They smell, taste or are irritated by a contaminant.
- (b) They experience difficulty breathing due to filter loading.
- (c) The cartridges or filters become wet.
- (d) The expiration date on the cartridges or canisters has been reached.

705.7.4 SELF-CONTAINED BREATHING APPARATUS

Scene commanders may direct members to use SCBA when entering an atmosphere that may pose an immediate threat to life, would cause irreversible adverse health effects or would impair an individual's ability to escape from a dangerous atmosphere. These situations may include, but are not limited to:

(cccccccccccccccccccccccccccccccccccc) — Entering the hot zone of a hazardous materials incident.

(cccccccccccccccccccccccccccccccccccc) — Entering any area where contaminant levels may become situation where exposures cannot be identified or reasonably estimated.

(cccccccccccccccccccccccccccccccccccc) — Entering a smoke or chemical-filled area.

The use of SCBA should not cease until approved by a scene commander.

705.7.11705.7.2 GAS MASK SAFETY GLASSES

If a member wears eye glasses, they may obtain a prescription eyeglass insert for their gas mask at no charge. Contact lenses may be worn with the gas mask, but if the member prefers to wear glasses, they should contact the Personnel and Training Bureau, obtain a Prescription Safety Glasses Authorization form, and follow the directions on the form.

705.7.12705.7.3 RESPIRATOR GAS MASK FIT TESTING

No member shall be issued a gas mask respiratory PPE until a proper fit testing has been completed by a designated member or contractor (8 CCR 5144).

After initial testing, fit testing for gas mask respiratory PPE shall be repeated (8 CCR 5144):

- (a) At least once every 12 months.
- (b) Whenever there are changes in the type of SCBA or facepiece used.
- (c) Whenever there are significant physical changes in the user (e.g., obvious change in body weight, scarring of the face seal area, dental changes, cosmetic surgery or any other condition that may affect the fit of the facepiece seal).

All gas mask respiratory fit testing shall be conducted in negative-pressure mode.

705.7.13705.7.4 GAS MASK (RESPIRATORY) MEDICAL EVALUATION QUESTIONNAIRE

No member shall be issued a gas mask respiratory protection that forms a complete seal around the face until (8 CCR 5144):

- (a) The member has completed a medical evaluation that includes a medical evaluation questionnaire.
- (b) A physician or other licensed health care professional has reviewed the questionnaire.
- (c) The member has completed any physical examination recommended by the reviewing physician or health care professional.

705.8 RECORDS

The Personnel and Training Sergeant is responsible for maintaining records of all:

- (a) PPE training.

-
- (b) Initial fit testing for respiratory protection equipment.
 - (c) Annual fit testing.
 - (d) Respirator medical evaluation questionnaires and any subsequent physical examination results.

1. These records shall be maintained in a separate confidential medical file.

The records shall be maintained in accordance with the department records retention schedule and 8 CCR 5144.

705.9 TRAINING

Members should be trained in the respiratory and other hazards to which they may be potentially exposed during routine and emergency situations.

All members shall be trained in the proper use and maintenance of PPE issued to them, including when the use is appropriate; how to put on, remove and adjust PPE; how to care for the PPE; and the limitations (8 CCR 3380).

Members issued respiratory PPE shall attend annual training on the proper use of respiratory protection devices (8 CCR 5144).

Prison Rape Elimination

902.1 PURPOSE AND SCOPE

This policy provides guidance for complying with the Prison Rape Elimination Act of 2003 (PREA) and the implementing regulation that establishes standards (PREA Rule) to prevent, detect and respond to sexual abuse, harassment and retaliation against detainees ~~or prisoners~~ in the Berkeley Police Department ~~Jail Temporary Holding Facilities~~ (28 CFR 115.111).

902.1.1 DEFINITIONS

Definitions related to this policy include:

Detainee: A person who has been arrested for, but not convicted, of a crime.

Prisoner: A person who has been arrested for, and convicted, of a crime. I think we should leave this so people know there is a distinction.

Intersex - A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development (28 CFR 115.5).

Sexual abuse - Any of the following acts, if the detainee does not consent, is coerced into such act by overt or implied threats of violence or is unable to consent or refuse:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
- Contact between the mouth and the penis, vulva or anus
- Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument
- Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or the buttocks of another person, excluding contact incidental to a physical altercation (28 CFR 115.6)

Sexual abuse also includes abuse by a staff member, contractor or volunteer as follows, with or without consent of the detainee, ~~prisoner~~ or resident:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
- Contact between the mouth and the penis, vulva or anus
- Contact between the mouth and any body part where the staff member, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire
- Penetration of the anal or genital opening, however slight, by a hand, finger, object or other

instrument, that is unrelated to official duties, or where the staff member, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire.

- Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh or the buttocks, that is unrelated to official duties, or where the staff member, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire
- Any attempt, threat or request by a staff member, contractor or volunteer to engage in the activities described above
- Any display by a staff member, contractor or volunteer of his/her uncovered genitalia, buttocks or breast in the presence of a detainee, ~~prisoner~~ or resident
- Voyeurism by a staff member, contractor or volunteer (28 CFR 115.6)

Sexual harassment - Repeated and unwelcome sexual advances; requests for sexual favors; verbal comments, gestures or actions of a derogatory or offensive sexual nature by one detainee, ~~prisoner~~ or resident that are directed toward another; repeated verbal comments or gestures of a sexual nature to a detainee, ~~prisoner~~ or resident by a staff member, contractor or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures (28 CFR 115.6).

Transgender - A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth (28 CFR 115.5).

902.2 POLICY

The Berkeley Police Department has zero tolerance toward all forms of sexual abuse and sexual harassment (28 CFR 115.111). The Department will not tolerate retaliation against any person who reports sexual abuse or sexual harassment or who cooperates with a sexual abuse or sexual harassment investigation.

The Berkeley Police Department will take immediate action to protect detainees ~~and prisoners~~ who are reasonably believed to be subject to a substantial risk of imminent sexual abuse (28 CFR 115.162).

902.3 PREA COORDINATOR

The ~~Support Services Lieutenant will~~ Chief of Police shall appoint an upper-level manager with sufficient time and authority to develop, implement and oversee department efforts to comply with PREA standards in the Berkeley Police Department ~~Jail Temporary Holding Facilities~~ (28 CFR 115.111). The PREA Coordinator's responsibilities shall include:

- (a) Developing and maintaining procedures to comply with the PREA Rule.
- (b) Ensuring that any contract for the confinement of detainees ~~or prisoners~~ includes the requirement to adopt and comply with applicable PREA and the PREA Rule, including the obligation to provide incident-based and aggregated data, as required in 28 CFR 115.187 (28 CFR 115.112).
- (c) Developing a staffing plan to provide adequate levels of staffing and video monitoring, where

applicable, in order to protect detainees ~~and prisoners~~ from sexual abuse (28 CFR 115.113). This includes documenting deviations and the reasons for deviations from the staffing plan, as well as reviewing the staffing plan a minimum of once per year.

- (d) Developing methods for staff to privately report sexual abuse and sexual harassment of detainees ~~and prisoners~~ (28 CFR 115.151).
- (e) Developing a written plan to coordinate response among staff first responders, medical and mental health practitioners, investigators and department leadership to an incident of sexual abuse (28 CFR 115.165).
- (f) Ensuring a protocol is developed for investigating allegations of sexual abuse in the Jail Temporary Holding Facility. The protocol shall include (28 CFR 115.121; 28 CFR 115.122):
 1. Evidence collection practices that maximize the potential for obtaining usable physical evidence based on the most recent edition of the U.S. Department of Justice's (DOJ) Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents" or a similarly comprehensive and authoritative protocol.
 2. A process to ensure a criminal or administrative investigation is completed on all allegations of sexual abuse or sexual harassment.
 3. A process to document all referrals to other law enforcement agencies.
 4. Access to forensic medical examinations, without financial cost, for all victims of sexual abuse where appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The efforts to provide SAFEs or SANEs shall be documented.
 5. In accordance with security needs, provisions to permit, to the extent available, detainee ~~and prisoner~~ access to victim advocacy services if the detainee ~~or prisoner~~ is transported for a forensic examination to an outside hospital that offers such services.
- (g) Ensuring that detainees ~~and prisoners~~ with limited English proficiency and disabilities have an equal opportunity to understand and benefit from efforts to prevent, detect and respond to sexual abuse and sexual harassment. This includes, as appropriate, access to interpreters and written materials in formats or through methods that provide effective communication to those with disabilities (e.g., limited reading skills, intellectual, hearing or vision disabilities) (28 CFR 115.116).
 1. The agency shall not rely on other detainees ~~or prisoners~~ for assistance except in limited circumstances where an extended delay in obtaining an interpreter could compromise the detainee's ~~or prisoner's~~ safety, the performance of first-response duties under this policy, or the investigation of ~~a prisoner's~~ allegations of sexual abuse, harassment or retaliation.

- (h) Publishing on the department's website:
1. Information on how to report sexual abuse and sexual harassment on behalf of a detainee ~~or prisoner~~ (28 CFR 115.154).
 2. A protocol describing the responsibilities of the Department and any other investigating agency that will be responsible for conducting sexual abuse or sexual harassment investigations (28 CFR 115.122).
- (i) Establishing a process that includes the use of a standardized form and set of definitions to ensure accurate, uniform data is collected for every allegation of sexual abuse at facilities under this agency's direct control (28 CFR 115.187).
1. The data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence, conducted by DOJ, or any subsequent form developed by DOJ and designated for lockups.
 2. The data shall be aggregated at least annually.
- (j) Ensuring audits are conducted pursuant to 28 CFR 115.401 through 28 CFR 115.405 for ~~the Jail, all Temporary Holding Facilities used to house detainees or prisoners overnight~~ (28 CFR 115.193).
- (k) Ensuring contractors or others who work in the ~~Jail Temporary Holding Facility~~ are informed of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment (28 CFR 115.132).

902.4 REPORTING SEXUAL ABUSE AND HARASSMENT

Detainees ~~or prisoners~~ may make reports verbally, in writing, privately or anonymously of any of the following (28 CFR 115.151):

- Sexual abuse
- Sexual harassment
- Retaliation by other detainees ~~or prisoners~~ or staff for reporting sexual abuse or sexual harassment
- Staff neglect or violation of responsibilities that may have contributed to sexual abuse or sexual harassment

During intake the Department shall notify all detainees ~~and prisoners~~ of the zero-tolerance policy regarding sexual abuse and sexual harassment, and of at least one way to report abuse or harassment to a public or private entity that is not part of the Department and that is able to receive and immediately forward detainee ~~or prisoner~~ reports of sexual abuse and sexual harassment to agency officials. This allows the detainee ~~or prisoner~~ to remain anonymous (28 CFR 115.132; 28 CFR 115.151).

902.4.1 MEMBER RESPONSIBILITIES

Department members shall accept reports from detainees, ~~prisoners~~ and third parties and shall promptly document all reports (28 CFR 115.151).

All members shall report immediately to the Jail Watch Commander any knowledge, suspicion or information regarding:

- (a) An incident of sexual abuse or sexual harassment that occurs in the Jail Temporary Holding Facility.
- (b) Retaliation against detainees or the member who reports any such incident.
- (c) Any neglect or violation of responsibilities on the part of any department member that may have contributed to an incident or retaliation (28 CFR 115.161).

No member shall reveal any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment and investigation decisions.

902.4.2 SUPPORT SERVICES LIEUTENANT WATCH COMMANDER RESPONSIBILITIES

The Support Services Lieutenant Watch Commander shall report to the department's designated investigators all allegations of sexual abuse, harassment, retaliation, neglect or violations leading to sexual abuse, harassment or retaliation. This includes third-party and anonymous reports (28 CFR 115.161).

If the alleged victim is under the age of 18 or considered a vulnerable adult, the Support Services Lieutenant Watch Commander shall also report the allegation as required under mandatory reporting laws and department policy.

Upon receiving an allegation that a detainee ~~or prisoner~~ was sexually abused while confined at another facility, the Support Services Lieutenant Watch Commander shall notify the head of the facility or the appropriate office of the agency where the alleged abuse occurred. The notification shall be made as soon as possible but no later than 72 hours after receiving the allegation. The Support Services Lieutenant Watch Commander shall document such notification (28 CFR 115.163).

If an alleged detainee ~~or prisoner~~ victim is transferred from the Jail Temporary Holding Facility to an Alameda County Sheriff's Office jail facility, a jail, prison or medical facility, the Department shall, as permitted by law, inform the receiving facility of the incident and the detainee's prisoner's potential need for medical or social services, unless the detainee prisoner requests otherwise (28 CFR 115.165).

902.5 INVESTIGATIONS

The Department shall promptly, thoroughly and objectively investigate all allegations, including third-party and anonymous reports, of sexual abuse or sexual harassment. Only investigators who have received department-approved special training shall conduct sexual abuse investigations (28 CFR 115.171).

902.5.1 FIRST RESPONDERS

The first officer to respond to a report of sexual abuse or sexual assault shall (28 CFR 115.164):

- (a) Separate the parties.
- (b) Establish a crime scene to preserve and protect any evidence. Identify and secure witnesses until steps can be taken to collect any evidence.
- (c) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.
- (d) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.

If the first responder is not an officer the responder shall request that the alleged victim not take any actions that could destroy physical evidence and should then notify a law enforcement staff member (28 CFR 115.164).

902.5.2 INVESTIGATOR RESPONSIBILITIES

Investigators shall (28 CFR 115.171):

- (a) Gather and preserve direct and circumstantial evidence, including any available physical and biological evidence and any available electronic monitoring data.
- (b) Interview alleged victims, suspects and witnesses.
- (c) Review any prior complaints and reports of sexual abuse involving the suspect.
- (d) Conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- (e) Assess the credibility of the alleged victim, suspect or witness on an individual basis and not by the person's status as a detainee or a member of the Berkeley Police Department.
- (f) Document in written reports a description of physical, testimonial, documentary and other evidence, the reasoning behind any credibility assessments, and investigative facts and findings.
- (g) Refer allegations of conduct that may be criminal to the District Attorney for possible prosecution, including any time there is probable cause to believe a detainee ~~or prisoner~~ sexually abused another detainee ~~or prisoner~~ in the Jail Temporary Holding Facility (28 CFR 115.178).
- (h) Cooperate with outside investigators and remain informed about the progress of any outside investigation.

902.5.3 ADMINISTRATIVE INVESTIGATIONS

Administrative investigations shall include an effort to determine whether staff actions or failures to act contributed to the abuse. The departure of the alleged abuser or victim from the employment or control of this department shall not be used as a basis for terminating an investigation (28 CFR

115.171).

902.5.4 SEXUAL ASSAULT AND SEXUAL ABUSE VICTIMS

No detainee ~~or prisoner~~ who alleges sexual abuse shall be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation (28 CFR 115.171(e)).

Detainee ~~or prisoner~~ victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment. Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident (28 CFR 115.182).

902.5.5 CONCLUSIONS AND FINDINGS

All completed investigations shall be forwarded to the Chief of Police, or if the allegations may reasonably involve the Chief of Police, to the City Manager. The Chief of Police or City Manager shall review the investigation and determine whether any allegations of sexual abuse or sexual harassment have been substantiated by a preponderance of the evidence (28 CFR 115.172).

All personnel shall be subject to disciplinary sanctions up to and including termination for violating this policy. Termination shall be the presumptive disciplinary sanction for department members who have engaged in sexual abuse. All discipline shall be commensurate with the nature and circumstances of the acts committed, the member's disciplinary history and the sanctions imposed for comparable offenses by other members with similar histories (28 CFR 115.176).

All terminations for violations of this policy, or resignations by members who would have been terminated if not for their resignation, shall be criminally investigated unless the activity was clearly not criminal and reported to any relevant licensing body (28 CFR 115.176).

Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with detainees ~~or prisoners~~ and reported to any relevant licensing bodies (28 CFR 115.177). The Chief of Police shall take appropriate remedial measures and consider whether to prohibit further contact with detainees ~~or prisoners~~ by a contractor or volunteer.

902.6 RETALIATION PROHIBITED

All detainees, ~~prisoners~~ and members who report sexual abuse or sexual harassment or who cooperate with sexual abuse or sexual harassment investigations shall be protected from retaliation (28 CFR 115.167). If any other individual who cooperates with an investigation expresses a fear of retaliation, appropriate measures shall be taken to protect that individual.

The Watch Commander or the authorized designee shall employ multiple protection measures, such as housing changes or transfers for detainee ~~or prisoner~~ victims or abusers, removal of alleged abusers from contact with victims, and emotional support services for detainees, ~~prisoners~~ or members who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

The ~~Support Services Lieutenant~~ Watch Commander or the authorized designee shall identify a

staff member to monitor the conduct and treatment of detainees, ~~prisoners~~ or members who have reported sexual abuse and of detainees ~~or prisoners~~ who were reported to have suffered sexual abuse. The staff member shall act promptly to remedy any such retaliation. In the case of detainees ~~or prisoners~~, such monitoring shall also include periodic status checks.

902.7 REVIEWS AND AUDITS

902.7.1 INCIDENT REVIEWS

An incident review shall be conducted at the conclusion of every sexual abuse investigation, unless the allegation has been determined to be unfounded. The review should occur within 30 days of the conclusion of the investigation. The review team shall include upper-level management officials and seek input from line supervisors and investigators (28 CFR 115.186).

The review shall (28 CFR 115.186):

- (a) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect or respond to sexual abuse.
- (b) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender or intersex identification, status or perceived status; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.
- (c) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse.
- (d) Assess the adequacy of staffing levels in that area during different shifts.
- (e) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.

The review team shall prepare a report of its findings, including any determinations made pursuant to this section and any recommendations for improvement. The report shall be submitted to the Chief of Police and the PREA Coordinator. The Chief of Police or the authorized designee shall implement the recommendations for improvement or shall document the reasons for not doing so (28 CFR 115.186).

902.7.2 DATA REVIEWS

The facility shall conduct an annual review of collected and aggregated incident-based sexual abuse data. The review should include, as needed, data from incident-based documents, including reports, investigation files and sexual abuse incident reviews (28 CFR 115.187).

The purpose of these reviews is to assess and improve the effectiveness of sexual abuse prevention, detection and response policies, practices and training. An annual report shall be prepared that includes (28 CFR 115.188):

- (a) Identification of any potential problem areas.
- (b) Identification of any corrective actions taken.
- (c) Recommendations for any additional corrective actions.

- (d) A comparison of the current year's data and corrective actions with those from prior years.
- (e) An assessment of the department's progress in addressing sexual abuse.

The report shall be approved by the Chief of Police and made readily available to the public through the department website or, if it does not have one, through other means. Material may be redacted from the reports when publication would present a clear and specific threat to the safety and security of the Jail Temporary Holding Facility. However, the nature of the redacted material shall be indicated.

All aggregated sexual abuse data from Berkeley Police Department facilities and private facilities with which it contracts shall be made readily available to the public at least annually through the department website or, if it does not have one, through other means. Before making aggregated sexual abuse data publicly available, all personal identifiers shall be removed (28 CFR 115.189).

902.8 RECORDS

The Department shall retain all written reports from administrative and criminal investigations pursuant to this policy for as long as the alleged abuser is held or employed by the Department, plus five years (28 CFR 115.171).

All other data collected pursuant to this policy shall be securely retained for at least 10 years after the date of the initial collection unless federal, state or local law requires otherwise (28 CFR 115.189).

902.9 TRAINING

All employees, volunteers and contractors who may have contact with detainees ~~or prisoners~~ shall receive department-approved training on the prevention and detection of sexual abuse and sexual harassment within this facility. The Personnel and Training Sergeant shall be responsible for developing and administering this training as appropriate, covering at a minimum (28 CFR 115.131):

- The Department's zero-tolerance policy and the right of detainees ~~and prisoners~~ to be free from sexual abuse and sexual harassment, and from retaliation for reporting sexual abuse or harassment.
- The dynamics of sexual abuse and harassment in confinement settings, including which detainees ~~and prisoners~~ are most vulnerable.
- The right of detainees ~~prisoners~~ and staff members to be free from sexual abuse and sexual harassment, and from retaliation for reporting sexual abuse or harassment.
- Detecting and responding to signs of threatened and actual abuse.
- Communicating effectively and professionally with all detainees ~~and prisoners~~.
- Compliance with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

Investigators assigned to sexual abuse investigations shall also receive training in conducting such investigations in confinement settings. Training should include (28 CFR 115.134):

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- Techniques for interviewing sexual abuse victims.
 - Proper use of *Miranda* and *Garrity* warnings.
 - Sexual abuse evidence collection in confinement settings.
 - Criteria and evidence required to substantiate a case for administrative action or prosecution referral.

The Personnel and Training Sergeant shall maintain documentation that employees, volunteers, contractors and investigators have completed required training and that they understand the training. This understanding shall be documented through individual signature or electronic verification.

All current employees and volunteers who may have contact with detainees ~~or prisoners~~ shall be trained within one year of the effective date of the PREA standards. The agency shall provide annual refresher information to all such employees and volunteers to ensure that they understand the current sexual abuse and sexual harassment policies and procedures.

Recruitment and Selection

1000.1 PURPOSE AND SCOPE

This policy provides a framework for employee recruiting efforts and identifying job-related standards for the selection process. This policy supplements the rules that govern employment practices for the Berkeley Police Department and that are promulgated and maintained by the Personnel and Training Bureau.

1000.2 POLICY

In accordance with applicable federal, state and local law, the Berkeley Police Department provides equal opportunities for applicants and employees, regardless of race, gender expression, age, pregnancy, religion, creed, color, national origin, ancestry, physical or mental handicap, genetic information, veteran status, marital status, sex or any other protected class or status. The Department does not show partiality or grant any special status to any applicant, employee or group of employees unless otherwise required by law.

The Department will recruit and hire only those individuals who demonstrate a commitment to service and who possess the traits and characteristics that reflect personal integrity and high ethical standards.

1000.3 RECRUITMENT

The ~~Professional Standards Division Captain~~ ~~Support Services Division Commander~~ should employ a comprehensive recruitment and selection strategy to recruit and select employees from a qualified and diverse pool of candidates.

The strategy should include:

- (a) Identification of racially and culturally diverse target markets.
- (b) Use of marketing strategies to target diverse applicant pools.
- (c) Expanded use of technology and maintenance of a strong internet presence. This may include an interactive department website and the use of department-managed social networking sites, if resources permit.
- (d) Expanded outreach through partnerships with media, community groups, citizen academies, local colleges, universities and the military.
- (e) Employee referral and recruitment incentive programs.
- (f) Consideration of shared or collaborative regional testing processes.

The ~~Professional Standards Division Captain~~ ~~Support Services Division Commander~~ shall avoid advertising, recruiting and screening practices that tend to stereotype, focus on homogeneous applicant pools or screen applicants in a discriminatory manner.

The Department should strive to facilitate and expedite the screening and testing process, ~~and should periodically inform each candidate of his/her status in the recruiting process.~~

1000.4 SELECTION PROCESS

The Department shall actively strive to identify a diverse group of candidates that have in some manner distinguished themselves as being outstanding prospects. Minimally, the Department should employ a comprehensive screening, background investigation and selection process that assesses cognitive and physical abilities and includes review and verification of the following:

- (a) A comprehensive application for employment (including previous employment, references, current and prior addresses, education, military record)
- (b) Driving record
- (c) Reference checks
- (d) Employment eligibility including U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form I-9 and acceptable identity and employment authorization documents consistent with Labor Code § 1019.1. This required documentation should not be requested until a candidate is hired. This does not prohibit obtaining documents required for other purposes.
- (e) Information obtained from public internet sites
- (f) Financial history consistent with the Fair Credit Reporting Act (FCRA) (15 USC § 1681 et seq.)
- (g) Local, state and federal criminal history record checks
- (h) ~~Computerized Voice Stress Analysis (CVSA) exam~~ ~~lie-detector test~~ (when legally permissible) (Labor Code § 432.2)
- (i) Medical and psychological examination (may only be given after a conditional offer of employment)
- (j) ~~Review board or selection committee assessment~~ [Hiring Authority review](#)

1000.4.1 VETERAN'S PREFERENCE

Qualifying veterans of the United States Armed Forces who receive a passing score on an entrance examination shall be ranked in the top rank of any resulting eligibility list. The veteran's preference shall also apply to a widow or widower of a veteran or a spouse of a 100 percent disabled veteran (Government Code § 18973.1).

1000.5 BACKGROUND INVESTIGATION

Every candidate shall undergo a thorough background investigation to verify his/her personal integrity and high ethical standards, and to identify any past behavior that may be indicative of the candidate's unsuitability to perform duties relevant to the operation of the Berkeley Police Department (11 CCR 1953).

The narrative report and any other relevant background information shall be shared with the psychological evaluator. Information shall also be shared with others involved in the hiring process if it is relevant to their respective evaluations (11 CCR 1953).

1000.5.1 NOTICES

Background investigators shall ensure that investigations are conducted and notices provided in accordance with the requirements of the FCRA and the California Investigative Consumer Reporting Agencies Act (15 USC § 1681d; Civil Code § 1786.16).

1000.5.1 BACKGROUND INVESTIGATION UPDATE

A background investigation update may, at the discretion of the Chief of Police, be conducted in lieu of a complete new background investigation on a peace officer candidate who is reappointed within 180 days of voluntary separation from the Berkeley Police Department or is transferred to a different department within the City as provided in 11 CCR 1953(f).

1000.5.2 STATE NOTICES

If information disclosed in a candidate's criminal offender record information (CORI) is the basis for an adverse employment decision, a copy of the CORI shall be provided to the applicant (Penal Code § 11105).

1000.5.3 REVIEW OF SOCIAL MEDIA SITES

Due to the potential for accessing unsubstantiated, private or protected information, the ~~Professional Standards Division Captain Support Services Division Commander~~ shall not require candidates to provide passwords, account information or access to password-protected social media accounts (Labor Code § 980).

The ~~Professional Standards Division Captain Support Services Division Commander~~ should consider utilizing the services of an appropriately trained and experienced third party to conduct open source, internet-based searches and/or review information from social media sites to ensure that:

- (a) The legal rights of candidates are protected.
- (b) Material and information to be considered are verified, accurate and validated.
- (c) The Department fully complies with applicable privacy protections and local, state and federal law.

Regardless of whether a third party is used, the ~~Professional Standards Division Captain Support Services Division Commander~~ should ensure that potentially impermissible information is not available to any person involved in the candidate selection process.

1000.5.4 DOCUMENTING AND REPORTING

The background investigator shall summarize the results of the background investigation in a narrative report that includes sufficient information to allow the reviewing authority to decide whether to extend a conditional offer of employment. The report shall not include any information that is prohibited from use, including that from private social media sites, in making employment decisions. The report and all supporting documentation shall be included in the candidate's background investigation file (11 CCR 1953).

1000.5.5 RECORDS RETENTION

The background report and all supporting documentation shall be maintained in accordance with the established records retention schedule.

1000.6 DISQUALIFICATION GUIDELINES

As a general rule, performance indicators and candidate information and records shall be evaluated by considering the candidate as a whole, and taking into consideration the following:

- Age at the time the behavior occurred
- Passage of time
- Patterns of past behavior
- Severity of behavior
- Probable consequences if past behavior is repeated or made public
- Likelihood of recurrence
- Relevance of past behavior to public safety employment
- Aggravating and mitigating factors
- Other relevant considerations

A candidate's qualifications will be assessed on a case-by-case basis, using a totality-of-the-circumstances framework.

1000.7 EMPLOYMENT STANDARDS

All candidates shall meet the minimum standards required by state law (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.). Candidates will be evaluated based on merit, ability, competence and experience, in accordance with the high standards of integrity and ethics valued by the Department and the community. The California Commission on Peace Officer Standards and Training (POST) developed a Job Dimensions list, which is used as a professional standard in background investigations.

Validated, job-related and nondiscriminatory employment standards shall be established for each job classification and shall minimally identify the training, abilities, knowledge and skills required to perform the position's essential duties in a satisfactory manner. Each standard should include performance indicators for candidate evaluation. The Personnel and Training Bureau should maintain validated standards for all positions.

1000.7.1 STANDARDS FOR OFFICERS

Candidates shall meet the minimum standards established by POST (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.):

- (a) Free of any felony convictions
- (b) Citizen of the United States, or permanent resident alien eligible for and has applied for citizenship
- (c) At least **2148** years of age **at time of appointment**
- (d) Fingerprinted for local, state and national fingerprint check
- (e) Good moral character as determined by a thorough background investigation (11 CCR 1953)

Recruitment and Selection

- (f) High school graduate, passed the GED or other high school equivalency test ~~and completed at least 60 college semester units or 90 college quarter units~~ ~~or obtained a two-year, four-year or advanced degree from an accredited or approved institution~~
- (g) Free from any physical, emotional or mental condition which might adversely affect the exercise of police powers (11 CCR 1954; 11 CCR 1955)
- (h) Candidates must also satisfy the POST selection requirements, including (11 CCR 1950 et seq.):
 1. Reading and writing ability assessment (11 CCR 1951)
 2. Oral interview to determine suitability for law enforcement service (11 CCR 1952)

In addition to the above minimum POST required standards, candidates may be subjected to additional standards established by the Department (Penal Code § 13510(d)).

1000.7.2 STANDARDS FOR DISPATCHER

Candidates shall satisfy the POST selection requirements, including (11 CCR 1956):

- (a) A verbal, reasoning, memory and perceptual abilities assessment (11 CCR 1957)
- (b) An oral communication assessment (11 CCR 1958)
- (c) A medical ~~and psychological~~ evaluation (11 CCR 1960)

Anti-Retaliation

1004.1 PURPOSE AND SCOPE

This policy prohibits retaliation against members who identify workplace issues, such as fraud, waste, abuse of authority, gross mismanagement or any inappropriate conduct or practices, including violations that may pose a threat to the health, safety or well-being of members.

This policy does not prohibit actions taken for nondiscriminatory or non-retaliatory reasons, such as discipline for cause.

These guidelines are intended to supplement and not limit members' access to other applicable remedies. Nothing in this policy shall diminish the rights or remedies of a member pursuant to any applicable federal law, provision of the U.S. Constitution, law, ordinance or memorandum of understanding.

1004.2 POLICY

The Berkeley Police Department has a zero tolerance for retaliation and is committed to taking reasonable steps to protect from retaliation members who, in good faith, engage in permitted behavior or who report or participate in the reporting or investigation of workplace issues. All complaints of retaliation will be taken seriously and will be promptly and appropriately investigated.

1004.3 RETALIATION PROHIBITED

No member may retaliate against any person for engaging in lawful or otherwise permitted behavior; for opposing a practice believed to be unlawful, unethical, discriminatory or retaliatory; for reporting or making a complaint under this policy; or for participating in any investigation related to a complaint under this or any other policy.

Retaliation includes any adverse action or conduct, including but not limited to:

- Refusing to hire or denying a promotion.
- Extending the probationary period.
- Unjustified reassignment of duties or change of work schedule.
- Real or implied threats or other forms of intimidation to dissuade the reporting of wrongdoing or filing of a complaint, or as a consequence of having reported or participated in protected activity.
- Taking unwarranted disciplinary action.
- Spreading rumors about the person filing the complaint or about the alleged wrongdoing.
- Shunning or unreasonably avoiding a person because he/she has engaged in protected activity.

1004.4 COMPLAINTS OF RETALIATION

Any member who feels he/she has been retaliated against in violation of this policy should promptly report the matter to any supervisor, command staff member ~~or: the~~ Chief of Police ~~or the~~ ~~City Professional Standards Division Captain.~~

Members shall act in good faith, not engage in unwarranted reporting of trivial or minor deviations or transgressions, and make reasonable efforts to verify facts before making any complaint in order to avoid baseless allegations. Members shall not report or state an intention to report information or an allegation knowing it to be false, with willful or reckless disregard for the truth or falsity of the information or otherwise act in bad faith.

Investigations are generally more effective when the identity of the reporting member is known, thereby allowing investigators to obtain additional information from the reporting member. However, complaints may be made anonymously. All reasonable efforts shall be made to protect the reporting member's identity. However, confidential information may be disclosed to the extent required by law or to the degree necessary to conduct an adequate investigation and make a determination regarding a complaint. In some situations, the investigative process may not be complete unless the source of the information and a statement by the member is part of the investigative process.

1004.5 SUPERVISOR RESPONSIBILITIES

Supervisors are expected to remain familiar with this policy and ensure that members under their command are aware of its provisions.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring complaints of retaliation are investigated as provided in the Personnel Complaints Policy.
- (b) Receiving all complaints in a fair and impartial manner.
- (c) Documenting the complaint and any steps taken to resolve the problem.
- (d) Acknowledging receipt of the complaint, notifying the Chief of Police via the chain of command and explaining to the member how the complaint will be handled.
- (e) Taking appropriate and reasonable steps to mitigate any further violations of this policy.
- (f) Monitoring the work environment to ensure that any member making a complaint is not subjected to further retaliation.
- (g) Periodic follow-up with the complainant to ensure that retaliation is not continuing.
- (h) Not interfering with or denying the right of a member to make any complaint.
- (i) Taking reasonable steps to accommodate requests for assignment or schedule changes made by a member who may be the target of retaliation if it would likely mitigate the potential for further violations of this policy.

1004.6 COMMAND STAFF RESPONSIBILITIES

The Chief of Police should communicate to all supervisors the prohibition against retaliation.

Command staff shall treat all complaints as serious matters and shall ensure that prompt actions take place, including but not limited to:

- (a) Communicating to all members the prohibition against retaliation.
- (b) The timely review of complaint investigations.
- (c) Remediation of any inappropriate conduct or condition and instituting measures to eliminate or minimize the likelihood of recurrence.
- (d) The timely communication of the outcome to the complainant.

1004.7 WHISTLE-BLOWING

California law protects members who (Labor Code § 1102.5; Government Code § 53296 et seq.):

- (a) Report a violation of a state or federal statute or regulation to a government or law enforcement agency, including the member's supervisor or any other member with the authority to investigate the reported violation.
- (b) Provide information or testify before a public body if the member has reasonable cause to believe a violation of law occurred.
- (c) Refuse to participate in an activity that would result in a violation of a state or federal statute or regulation.
- (d) File a complaint with a local agency about gross mismanagement or a significant waste of funds, abuse of authority or a substantial and specific danger to public health or safety. Members shall exhaust all available administrative remedies prior to filing a formal complaint.
- (e) Are family members who have engaged in any protected acts described above.

Members are encouraged to report any legal violations through the chain of command (Labor Code § 1102.5).

Members who believe they have been the subject of retaliation for engaging in such protected behaviors should promptly report it to a supervisor. Supervisors should refer the complaint to the Internal Affairs Bureau for investigation pursuant to the Personnel Complaints Policy.

1004.7.1 DISPLAY OF WHISTLE-BLOWER LAWS

The Department shall display a notice to members regarding their rights and responsibilities under the whistle-blower laws, including the whistle-blower hotline maintained by the Office of the Attorney General (Labor Code § 1102.8).

1004.8 RECORDS RETENTION AND RELEASE

The [Support Services Division Captain](#) [Public Safety Business Manager](#) shall ensure that documentation of investigations is maintained in accordance with the established records

retention schedules.

1004.9 TRAINING

The policy should be reviewed with each new member.

All members should receive periodic refresher training on the requirements of this policy.

Reporting of Employee Convictions

1005.1 PURPOSE AND SCOPE

Convictions of certain offenses may restrict or prohibit an employee's ability to properly perform official duties. Therefore, all employees shall be required to promptly notify the Department of any past and current criminal convictions.

The [Professional Standards Division](#) shall submit in a timely manner a notice to the Commission on Peace Officer Standards and Training (POST) of any appointment, termination, reinstatement, name change or status change regarding any peace officer, reserve peace officer, public safety dispatcher and records supervisor employed by this department (11 CCR 1003).

The [Professional Standards Division Support Services Supervisor](#) shall submit in a timely manner a notice to POST of a felony conviction or Government Code § 1029 reason that disqualifies any current peace officer employed by this department or any former peace officer if this department was responsible for the investigation (11 CCR 1003).

1005.2 DOMESTIC VIOLENCE CONVICTIONS, OUTSTANDING WARRANTS, AND RESTRAINING ORDERS

California and federal law prohibit individuals convicted of or having an outstanding warrant for, certain offenses and individuals subject to certain court orders from lawfully possessing a firearm. Such convictions and court orders often involve allegations of the use or attempted use of force or threatened use of a weapon on any individual in a domestic relationship (e.g., spouse, cohabitant, parent, child) (18 USC § 922; Penal Code § 29805).

All members are responsible for ensuring that they have not been disqualified from possessing firearm by any such conviction or court order and shall promptly report any such conviction or court order to a supervisor, as provided in this policy.

1005.3 OTHER CRIMINAL CONVICTIONS AND COURT ORDERS

Government Code § 1029 prohibits any person convicted of a felony from being a peace officer in the State of California. This prohibition applies regardless of whether the guilt was established by way of a verdict, guilty or nolo contendere plea.

Convictions of certain violations of the Vehicle Code and other provisions of law may also place restrictions on an employee's ability to fully perform the duties of the job.

Outstanding warrants as provided in Penal Code § 29805 also place restrictions on a member's ability to possess a firearm.

Moreover, while legal restrictions may or may not be imposed by statute or by the courts upon conviction of any criminal offense, criminal conduct by members of this department may be inherently in conflict with law enforcement duties and the public trust.

1005.4 REPORTING PROCEDURE

All members of this department and all retired officers with an identification card issued by the Department shall promptly notify their immediate supervisor (or the Chief of Police in the case of retired officers) in writing of any past or current criminal arrest, outstanding warrant or conviction regardless of whether or not the matter is currently on appeal and regardless of the penalty or sentence, if any.

All members and all retired officers with an identification card issued by the Department shall further promptly notify their immediate supervisor (or the Chief of Police in the case of retired officers) in writing if the member or retiree becomes the subject of a domestic violence restraining order or similar court order or becomes the subject of an outstanding warrant.

Any member whose criminal conviction unduly restricts or prohibits that member from fully and properly performing his/her duties may be disciplined including, but not limited to, being placed on administrative leave, reassignment and/or termination. Any effort to remove such disqualification or restriction shall remain entirely the responsibility of the member on his/her own time and expense.

Any member failing to provide prompt written notice pursuant to this policy shall be subject to discipline.

1005.5 PROCEDURE FOR RELIEF

Pursuant to Penal Code § 29855, a peace officer may petition the court for permission to carry a firearm following a conviction under state law. Federal law, however, does not provide for any such similar judicial relief and the granting of a state court petition under Penal Code § 29855 will not relieve one of the restrictions imposed by federal law. Therefore, relief for any employee falling under the restrictions imposed by federal law may only be obtained by expungement of the conviction. Each employee shall seek relief from firearm restrictions on their own time and through their own resources.

Pursuant to Family Code § 6389(h), an individual may petition the court for an exemption to any restraining order, which would thereafter permit the individual to carry a firearm as a part of their employment. Relief from any domestic violence or other restriction shall also be pursued through the employee's own resources and on the employee's own time.

Pending satisfactory proof of relief from any legal restriction imposed on an employee's duties, the employee may be placed on administrative leave, reassigned or disciplined. The Department may, but is not required to return an employee to any assignment, reinstate any employee or reverse any pending or imposed discipline upon presentation of satisfactory proof of relief from any legal restriction set forth in this policy.

Body Armor

1012.1 PURPOSE AND SCOPE

The purpose of this policy is to provide law enforcement officers with guidelines for the proper use of body armor.

1012.2 POLICY

It is the policy of the Berkeley Police Department to maximize officer safety through the use of body armor in combination with prescribed safety procedures. While body armor provides a significant level of protection, it is not a substitute for the observance of officer safety procedures.

1012.3 ISSUANCE OF BODY ARMOR

The ~~Personnel and Training Sergeant Support Services supervisor~~ shall ensure that body armor is issued to all officers when the officer begins service at the Berkeley Police Department and that, when issued, the body armor meets or exceeds the standards of the National Institute of Justice.

The ~~Personnel and Training Sergeant Support Services supervisor~~ shall establish a body armor replacement schedule and ensure that replacement body armor is issued pursuant to the schedule or whenever the body armor becomes worn or damaged to the point that its effectiveness or functionality has been compromised.

1012.3.1 USE OF ~~SOFT~~ BODY ARMOR

Generally, the use of body armor is required subject to the following:

- (a) Officers shall only wear agency-approved body armor.
- (b) Officers shall wear body armor anytime they are in a situation where they could reasonably be expected to take enforcement action.
- (c) Officers may be excused from wearing body armor when they are functioning primarily in an administrative or support capacity and could not reasonably be expected to take enforcement action.
- (d) Body armor shall be worn when an officer is working in uniform or taking part in Department range training.
- (e) An officer may be excused from wearing body armor when he/she is involved in undercover or plainclothes work that his/her supervisor determines could be compromised by wearing body armor, or when a supervisor determines that other circumstances make it inappropriate to mandate wearing body armor.

1012.3.2 INSPECTIONS OF BODY ARMOR

Supervisors should ensure that body armor is worn and maintained in accordance with this policy

through routine observation, and periodic documented inspections. Annual inspections of body armor should be conducted by an authorized designee for fit, cleanliness, and signs of damage, abuse and wear.

~~1012.3.3 CARE AND MAINTENANCE OF SOFT BODY ARMOR~~

~~Soft body armor should never be stored for any period of time in an area where environmental conditions (e.g., temperature, light, humidity) are not reasonably controlled (e.g., normal ambient room temperature/humidity conditions), such as in automobiles or automobile trunks.~~

~~Soft body armor should be cared for and cleaned pursuant to the manufacturer's care instructions provided with the soft body armor. The instructions can be found on labels located on the external surface of each ballistic panel. The carrier should also have a label that contains care instructions. Failure to follow these instructions may damage the ballistic performance capabilities of the armor. If care instructions for the soft body armor cannot be located, contact the manufacturer to request care instructions.~~

~~Soft body armor should not be exposed to any cleaning agents or methods not specifically recommended by the manufacturer, as noted on the armor panel label.~~

~~Soft body armor should be replaced in accordance with the manufacturer's recommended replacement schedule.~~

1012.4 PERSONNEL AND TRAINING SERGEANT RESPONSIBILITIES

The Personnel and Training Sergeant should:

- (a) Monitor technological advances in the body armor industry for any appropriate changes to Department approved body armor.
- (b) Assess weapons and ammunition currently in use and the suitability of approved body armor to protect against those threats.
- (c) Provide training that educates officers about the safety benefits of wearing body armor.

Commendations ~~and Awards~~

1014.1 PURPOSE AND SCOPE

This policy provides general guidelines for recognizing commendable or meritorious acts of members of the Berkeley Police Department and individuals from the community.

1014.2 POLICY

It is the policy of the Berkeley Police Department to recognize and acknowledge exceptional individual or group achievements, performance, proficiency, heroism and service of its members and individuals from the community through commendations ~~and awards~~.

1014.3 1015.3 COMMENDATIONS

Commendations for members of the Department or for individuals from the community may be initiated by any department member or by any person from the community.

1014.4 1015.4 CRITERIA

A meritorious or commendable act may include, but is not limited to:

- Superior handling of a difficult situation.
- Conspicuous bravery or outstanding performance.
- Any action or performance that is above and beyond typical duties.

DEPARTMENT MEMBER DOCUMENTATION

Members of the Department should document meritorious or commendable acts. The documentation should contain:

- (a) Identifying information:
 1. For members of the Department - name, division and assignment at the date and time of the meritorious or commendable act
 2. For individuals from the community - name, address, telephone number
- (b) A brief account of the meritorious or commendable act with report numbers, as appropriate.
- (c) The signature of the member submitting the documentation.

COMMUNITY MEMBER DOCUMENTATION

Documentation of a meritorious or commendable act submitted by a person from the community should be accepted in any form. However, written documentation is preferred.

Department members accepting the documentation should attempt to obtain detailed information regarding the matter, including:

- (a) Identifying information:
 1. For members of the Department - name, division and assignment at the date and time of the meritorious or commendable act

2. For individuals from the community - name, address, telephone number
- (b) A brief account of the meritorious or commendable act with report numbers, as appropriate.
- (c) The signature of the person submitting the documentation.

1015.4.3 PROCESSING DOCUMENTATION

Commendations shall be forwarded up the Chain of Command. The Chief will return the commendation to the Professional Standards Division for the appropriate routing and for entry into the employee's personnel file.

When appropriate or directed, the Professional Standards Division shall forward copies of commendations to the following.

- (a) City Manager.
- (b) Police Review Commission Officerchairperson.
- (c) Berkeley Police Association.

if deemed appropriate, a communication of acknowledgment will be prepared and sent to the originator of an external commendation.

~~Documentation regarding the meritorious or commendable act of a member of the Department should be forwarded to the appropriate Division Commander for his/her review. The Division Commander should sign and forward the documentation to the Chief of Police for his/her review.~~

~~The Chief of Police or the authorized designee will present the commendation to the department member for his/her signature. The documentation will then be returned to the Support Services secretary for entry into the member's personnel file.~~

~~Documentation regarding the meritorious or commendable act of an individual from the community should be forwarded to the Support Services Division Commander. The documentation will be signed by the Division Commander and forwarded to the Chief of Police for his/her review. An appropriate venue or ceremony to acknowledge the individual's actions should be arranged. Documentation of the commendation shall be maintained in a file designated for such records.~~

1015.5 AWARDS

Discretionary

~~Awards may be bestowed upon members of the Department and individuals from the community. These awards include:~~

~~Award of Merit.~~

~~Award of Valor.~~

~~Lifesaving Award.~~

~~Meritorious Conduct.~~

~~Criteria for each award and the selection, presentation and display of any award are determined by the Chief of Police.~~

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 16, 2010

GENERAL ORDER P-21

SUBJECT: REPORTS OF COMMENDATORY SERVICES

PURPOSE

- 1 - The purpose of this General Order is to describe procedures for the receipt and processing of internal and external commendations.

POLICY

- 2 - Employees of the Berkeley Police Department shall follow the procedures described in this Order.

DEFINITIONS

- 3 - **Commendation**: a written report or other communication recognizing an employee's thoughtful, outstanding, extraordinary, meritorious or valorous service.
 - (a) **External**: a commendation originating from outside the Berkeley Police Department.
 - (b) **Internal**: a commendation originating from within the Berkeley Police Department.

PROCEDURES

- 4 - When meritorious action or outstanding service by a member of this Department is witnessed by or comes to the attention of an employee, he/she should submit the matter to the chain of command for commendation consideration.
- 5 - The employee who submits a commendation for administrative consideration shall do so in writing.
 - (a) The employee shall summarize the event and meritorious activities the subject incident, and reference relevant documents (i.e., report number(s)).
 - (b) The requirement for supporting written documentation will not apply when an external commendation contains sufficient information about the event and involved personnel.
- 6 - Commendations pending review shall be directed to the Administrative Bureau via the chain of command.
 - (a) The commanding officer who receives a forwarded commendation may include his/her endorsement or comment, as appropriate.

* Highlighted text is new

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 16, 2010

GENERAL ORDER P-21

- 7 - **Within ten (10) business days of receipt of a new commendation, Administrative Bureau staff shall place a routing slip identifying the commended employee's chain of command on the commendation and route the document for review through the Chief of Police and chain of command to the employee.**
- 8 - **After review, the commendation shall be returned to the Administrative Bureau for inclusion in the commended employee's personnel file.**
- 10 - **If deemed appropriate, a communication of acknowledgment will be prepared and sent to the originator of an external commendation.**
 - (a) **A copy of the communication or correspondence shall be placed in the commended employee's personnel file.**
- 11 - **When appropriate or directed, the Administrative Bureau shall forward copies of external commendations to the following:**
 - (a) **City Manager.**
 - (b) **Police Review Commission chairperson.**
 - (c) **Berkeley Police Association.**

Outside Employment

10201.1 PURPOSE AND SCOPE

In order to avoid actual or perceived conflicts of interest for departmental employees engaging in outside employment, all employees shall obtain written approval from the Chief of Police prior to engaging in any outside employment. Approval of outside employment shall be at the discretion of the Chief of Police in accordance with the provisions of this policy.

10201.1.1 DEFINITIONS

Outside Employment - Any member of this department who receives wages, compensation or other consideration of value from another employer, organization or individual not affiliated directly with this department for services, product(s) or benefits rendered. For purposes of this section, the definition of outside employment includes those employees who are self-employed and not affiliated directly with this department for services, product(s) or benefits rendered.

~~**Outside Overtime** – Any member of this department who performs duties or services on behalf of an outside organization, company, or individual within this jurisdiction. Such outside overtime shall be requested and scheduled directly through this department so that the Department may be reimbursed for the cost of wages and benefits.~~

10201.2 OBTAINING APPROVAL

No member of this department may engage in any outside employment without first obtaining prior written approval ~~from~~ of the ~~City Manager~~ ~~Chief of Police~~. Failure to obtain prior written approval for outside employment or engaging in outside employment prohibited by this policy may lead to disciplinary action.

In order to obtain approval for outside employment, the employee must complete a 'Request to Engage in Outside Employment' Application which shall be submitted to the employee's immediate supervisor. The application will then be forwarded through channels to the Chief of Police ~~and the City Manager, for consideration.~~

If approved, the employee will be provided with a copy of the approved permit. Unless otherwise indicated in writing on the approved permit, a permit will be valid through the end of the calendar year in which the permit is approved. Any employee seeking to renew a permit shall submit a new 'Request to Engage in Outside Employment' Application in a timely manner.

Any employee seeking approval of outside employment, whose request has been denied, shall be provided with a written reason for the denial of the application at the time of the denial (Penal Code § 70(e)(3)).

10201.2.1 APPEAL OF DENIAL OF OUTSIDE EMPLOYMENT

If an employee's 'Request to Engage in Outside Employment' Application is denied or withdrawn by the Department, the employee may file a written notice of appeal to the Chief of Police ~~within~~

ten days of the date of denial.

If the employee's appeal is denied, the employee may file a grievance pursuant to the procedure set forth in the current Memorandum of Understanding (MOU).

10204.2.2 REVOCATION/SUSPENSION OF OUTSIDE EMPLOYMENT PERMITS

Any outside employment permit may be revoked or suspended under the following circumstances:

- (a) Should an employee's performance at this department decline to a point where it is evaluated by a supervisor as needing improvement to reach an overall level of competency, the Chief of Police may, at his or her discretion, revoke any previously approved outside employment permit(s). That revocation will stand until the employee's performance has been reestablished at a satisfactory level and his/her supervisor recommends reinstatement of the outside employment permit
- (b) Suspension or revocation of a previously approved outside employment permit may be included as a term or condition of sustained discipline
- (c) If, at any time during the term of a valid outside employment permit, an employee's conduct or outside employment conflicts with the provisions of department policy, the permit may be suspended or revoked
- (d) When an employee is unable to perform at a full duty capacity due to an injury or other condition, any previously approved outside employment permit may be subject to similar restrictions as those applicable to the employee's full time duties until the employee has returned to a full duty status

10204.3 PROHIBITED OUTSIDE EMPLOYMENT

Consistent with the provisions of Government Code § 1126, the Department expressly reserves the right to deny any "Request to Engage in Outside Employment." Application submitted by an employee seeking to engage in any activity which:

- (a) Involves the employee's use of departmental time, facilities, equipment or supplies, the use of the Department badge, uniform, prestige or influence for private gain or advantage
- (b) Involves the employee's receipt or acceptance of any money or other consideration from anyone other than this department for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course or hours of employment or as a part of the employee's duties as a member of this department
- (c) Involves the performance of an act in other than the employee's capacity as a member of this department that may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other employee of this department
- (d) Involves time demands that would render performance of the employee's duties for this department less efficient

1021.3.1 OUTSIDE SECURITY AND PEACE OFFICER EMPLOYMENT

Consistent with the provisions of Penal Code § 70, and because it would further create a potential

conflict of interest, no member of this department may engage in any outside or secondary employment as a private security guard, private investigator or other similar private security position.

~~Any private organization, entity or individual seeking special services for security or traffic control from members of this department must submit a written request to the Chief of Police in advance of the desired service. Such outside extra duty overtime assignments will be assigned, monitored and paid through the Department.~~

- ~~(a) The applicant will be required to enter into an indemnification agreement prior to approval.~~
- ~~(b) The applicant will further be required to provide for the compensation and full benefits of all employees requested for such outside security services.~~
- ~~(c) Should such a request be approved, any employee working outside overtime shall be subject to the following conditions:

 - ~~1. The officer(s) shall wear the departmental uniform/identification.~~
 - ~~2. The officer(s) shall be subject to the rules and regulations of this department.~~
 - ~~3. No officer may engage in such outside employment during or at the site of a strike, lookout, picket, or other physical demonstration of a labor dispute.~~
 - ~~4. Compensation for such approved outside security services shall be pursuant to normal overtime procedures.~~
 - ~~5. Outside security services shall not be subject to the collective bargaining process.~~
 - ~~5. No officer may engage in outside employment as a peace officer for any other public agency without prior written authorization of the Chief of Police.~~~~

~~1021-3-2 OUTSIDE OVERTIME ARREST AND REPORTING PROCEDURE~~

~~Any employee making an arrest or taking other official police action while working in an approved outside overtime assignment shall be required to complete all related reports in a timely manner pursuant to department policy. Time spent on the completion of such reports shall be considered incidental to the outside overtime assignment.~~

1020+ 3.3 SPECIAL RESTRICTIONS

Except for emergency situations or with prior authorization from the Division Captain Commander, undercover officers or officers assigned to covert operations shall not be eligible to work overtime or other assignments in a uniformed or other capacity which might reasonably disclose the officer's law enforcement status.

10210.4 DEPARTMENT RESOURCES

Employees are prohibited from using any department equipment or resources in the course of or for the benefit of any outside employment. This shall include the prohibition of access to official records or databases of this department or other agencies through the use of the employee's position with this department.

10201.4.1 REVIEW OF FINANCIAL RECORDS

Employees approved for outside employment expressly agree that their personal financial records may be requested and reviewed/audited for potential conflict of interest (Government Code § 3308; Government Code § 1126). Prior to providing written approval for an outside employment position, the Department may request that an employee provide his/her personal financial records for review/audit in order to determine whether a conflict of interest exists.

Failure of the employee to provide the requested personal financial records could result in denial of the off-duty work permit. If, after approving a request for an outside employment position, the Department becomes concerned that a conflict of interest exists based on a financial reason, the Department may request that the employee provide his/her personal financial records for review/audit. If the employee elects not to provide the requested records, his/her off-duty work permit may be revoked pursuant to the Revocation/Suspension of Outside Employment Permits section of this policy.

10201.5 CHANGES IN OUTSIDE EMPLOYMENT STATUS

If an employee terminates his or her outside employment during the period of a valid permit, the employee shall promptly submit written notification of such termination to the Chief of Police through channels. Any subsequent request for renewal or continued outside employment must thereafter be processed and approved through normal procedures set forth in this policy.

Employees shall also promptly submit in writing to the Chief of Police any material changes in outside employment including any change in the number of hours, type of duties, or demands of any approved outside employment. Employees who are uncertain whether a change in outside employment is material are advised to report the change.

10201.6 OUTSIDE EMPLOYMENT WHILE ON DISABILITY

Department members engaged in outside employment who are placed on disability leave or modified/light-duty shall inform their immediate supervisor in writing within five days whether or not they intend to continue to engage in such outside employment while on such leave or light-duty status. The immediate supervisor shall review the duties of the outside employment along with any related doctor's orders, and make a recommendation to the Chief of Police whether such outside employment should continue.

In the event the Chief of Police determines that the outside employment should be discontinued or if the employee fails to promptly notify his/her supervisor of his/her intentions regarding their work permit, a notice of revocation of the member's permit will be forwarded to the involved employee, and a copy attached to the original work permit.

Criteria for revoking the outside employment permit include, but are not limited to, the following:

- (a) The outside employment is medically detrimental to the total recovery of the disabled member, as indicated by the City's professional medical advisors.
- (b) The outside employment performed requires the same or similar physical ability, as would be required of an on-duty member.

(c) The employee's failure to make timely notice of their intentions to their supervisor.

When the disabled member returns to full duty with the Berkeley Police Department, a request (in writing) may be made to the Chief of Police to restore the permit.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: January 26, 2012

GENERAL ORDER P-20

SUBJECT: OUTSIDE EMPLOYMENT

PURPOSE

- 1 - The purpose of this policy is to define "outside employment" for Police Department personnel, identify who is affected by the policy and outline the procedure for obtaining approval for outside employment.

POLICY

- 2 - City Manager approval is required for all outside employment ventures undertaken by full-time employees. City employees may not carry on, concurrently with their public service, any private business or undertaking which affects their time, or the quality of their work in the City, or which casts discredit upon or creates embarrassment for the City of Berkeley.

DEFINITIONS

- 3 - Outside employment includes self-employment and employment by others.
 - (a) Self-employment: Includes the offering for sale of goods or services on a regular or periodic basis or by contract as an independent contractor. Self-employment does not include the management of one's own investments.
 - (b) Employment by others: Means the creation of an employer-employee relationship between the employee and an employer other than the City of Berkeley.
 - (c) Exclusions: Outside employment does not include non-paid voluntary involvement.
 - (d) Public Office: No employee shall accept appointment to the deputyship or assistantship of any County or State office or position, or otherwise incur an obligation of civil public service outside his/her municipal employment without first obtaining the recommendation of the Chief of Police and the City Manager.

PROCEDURES

- 4 - Department personnel requesting to engage in outside employment, as defined above, are required to seek approval from the City Manager through the Chief of Police. The procedure is as follows:
 - (a) Complete City of Berkeley "Request to Engage in Outside Employment" form and submit to supervisor for Chief of Police recommendation.

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- (1) This form is available through the Professional Standards Division Captain.
 - (b) The Chief of Police will complete the Recommendation section and approve or disapprove. If approved, the Chief of Police will send the form to the Personnel Director for review and comment.
 - (c) The Personnel Director will review and forward the request to the City Manager for approval or disapproval.
 - (1) If the City Manager approves, the form is routed to the Tax and License Administrator, the Purchasing Agent and the Personnel Director.
 - (2) If the City Manager disapproves, the form is returned to the Chief of Police for return to the employee.
 - (d) The Personnel Director will file the original copy of the request with the employees records and return a duplicate copy to the employee via the Chief of Police.
- 5 - Changes and terminations of outside employment should be noted by filing a supplemental report directed to the Personnel Department with a copy to the Professional Standards Division Captain.
- 6 - In addition to the policies and procedures described in sections 1 through 4 which apply to all City employees, all Police Department employees must obtain the written permission of the Chief of Police on an annual basis to engage in any outside employment. Because of the potential liability which may accrue to the City of Berkeley, the Chief of Police has the right to refuse/deny/revoke any requests for outside employment.
- (a) Employees interested in carrying on outside employment longer than one year must renew their "Outside Employment" status with the Chief of Police. Renewal may be accomplished by submitting a written memorandum at the beginning of each calendar year, directed to the Chief of Police via the Professional Standards Division Captain, describing the following:
 - (1) Full description of outside employment, including terms and conditions of such employment,
 - (2) the duration of the assignment, and
 - (3) the name, address and telephone number of the employer.

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- (b) The submission of the City of Berkeley form (Request to Engage in Outside Employment) is the only requirement for the first year of employment, all subsequent years (requests for renewal) must be submitted as a memorandum as defined in sub-section (a).

References: California Government Code Section 1126
City of Berkeley Administrative Regulations 2.10

Police Gadet Aides

1025.1 PURPOSE AND SCOPE

GadetPolice Aides work under direct supervision, perform a variety of routines and progressively more advanced tasks in an apprenticeship program in preparation for a career in law enforcement.

1025.2 EDUCATION REQUIREMENTS

GadetPolice Aides are required to maintain a minimum grade point average of 2.0 ("C" grade) for all courses taken. GadetPolice Aides shall complete at least six semester units (or equivalent) of college course work per semester. ~~and senior cadetPolice Aides shall complete 12 units per semester.~~

1025.3 PROGRAM COORDINATOR

The Personnel and Training Sergeant ~~Training Bureau Manager~~ will serve as the Program Coordinator. This supervisor will be responsible for tracking the educational and job performance of cadetPolice Aides as well as making their individual assignments throughout the Department. He/she will also monitor the training provided for all cadetPolice Aides and review all decisions affecting job assignments, status for compensation, school attendance and performance evaluations.

1025.3.1 PROGRAM ADVISORS

~~The Program Coordinator may~~ The Personnel and Training Sergeant may select individual officers to serve as advisors for the GadetPolice Aide Program. These officers will serve as mentors for each cadetPolice Aide. ~~Cadets will bring special requests, concerns, and suggestions to their program advisor for advice or direction before contacting the Program Coordinator. One advisor may be designated as the Coordinator's assistant to lead scheduled meetings and training sessions involving the cadets. Multiple cadets may be assigned to each program advisor. Program advisors are not intended to circumvent the established chain of command. Any issues that may be a concern of the individual's supervisor should be referred back to the Program Coordinator.~~

1025.4 ORIENTATION AND TRAINING

Newly hired cadetPolice Aides will receive an orientation of the organization and facilities before reporting to their first assignment. On-the-job training will be conducted in compliance with the GadetPolice Aide Training Manual. Training sessions will be scheduled as needed to train cadetPolice Aides for as many assignments as possible. In addition to job-specific training, information will be offered to prepare cadetPolice Aides to compete successfully in the police officer selection process, as well as the academy training. All training will focus on improving job performance, as well as preparation to become police officers. These meetings will also offer an opportunity to receive continuous feedback regarding progress of the program.

1025.5 CADETPOLICE AIDE UNIFORMS

Each cadetPolice Aide will be provided two uniforms meeting the specifications described in the Uniform Manual for non-sworn employees.

1025.6 ROTATION OF ASSIGNMENTS

Rotating job assignments should occur on a regular basis to enhance the career development for each cadetPolice Aide. Department needs and concerns will take precedence over individual considerations with the final decision resting with the Personnel and Training Sergeant/Training Bureau Manager.

In general, senior cadetPolice Aides will be assigned to positions requiring more technical skill or responsibility, as well as serving to train cadetPolice Aides for new assignments or those newly hired.

1025.7 RIDE-ALONG PROCEDURES

All cadetPolice Aides are authorized to participate in the Ride-Along Program on their own time and as approved by their immediate supervisor and the appropriate Watch Commander. Applicable waivers must be signed in advance of the ride-along. Cadet

1025.8 PERFORMANCE EVALUATIONS

Performance evaluations for all cadetPolice Aides shall be completed bi-monthly during their first yearsix months on probation. Upon successful completion of probation, cadetPolice Aides will and senior cadetPolice Aides will be evaluated on a yearly basis to assess their current job performance and their potential as police officers.

Nepotism and Conflicting Relationships

1026.1 PURPOSE AND SCOPE

It is the policy of the Berkeley Police Department to avoid nepotism in its hiring and promotion actions and to ensure that merit is the basis for employee selection. When BPD employees are related, as specified below, such persons shall not have the same immediate supervisor or have supervisory relationships, except if approved in writing by the City Manager.

No individual shall be excluded from the competitive examination process by virtue of his or her relationship as described below.

No person shall be appointed, promoted, demoted, flexibly placed, or transferred to any position, whether exempt, permanent, provisional, acting, part-time, seasonal or temporary, in any division of any department of the City or to a department without divisions, where such person's near relative already holds a position which would create a supervisory relationship as described herein.

No employee shall interview, recommend or in any way be involved in the selection or disciplinary process of an employee's near relative.

~~The purpose of this policy is to ensure equal opportunity and effective employment practices by avoiding actual or perceived favoritism, discrimination or actual or potential conflicts of interest by or between members of this department. These employment practices include: recruiting, testing, hiring, compensation, assignment, use of facilities, access to training opportunities, supervision, performance appraisal, discipline and workplace safety and security.~~

1026.1.1 DEFINITIONS

Business relationship - Serving as an employee, independent contractor, compensated consultant, owner, board member, shareholder, or investor in an outside business, company, partnership, corporation, venture or other transaction, where the Department employee's annual interest, compensation, investment or obligation is greater than \$250.

Conflict of interest - Any actual, perceived or potential conflict of interest in which it reasonably appears that a department employee's action, inaction or decisions are or may be influenced by the employee's personal or business relationship.

Nepotism - The practice of showing favoritism to relatives over others in appointment, employment, promotion or advancement by any public official in a position to influence these personnel decisions.

Personal relationship - Includes marriage, cohabitation, dating or any other intimate relationship beyond mere friendship.

Public official - A supervisor, officer or employee vested with authority by law, rule or regulation or to whom authority has been delegated.

Near Relative - An employee's spouse, parent, sibling, child, grandparent, aunt, uncle, niece, nephew, mother in law, father in law, sister in law, brother in law, son in law, daughter in law, stepparent, stepsibling, stepchild, grandchild, dependent or domestic partner or immediate family members of domestic partner. ~~parent, stepparent, spouse, domestic partner, significant other, child (natural, adopted or step), sibling or grandparent.~~

Subordinate - An employee who is subject to the temporary or ongoing direct or indirect authority of a supervisor.

Supervisor - An employee who has temporary or ongoing direct or indirect authority over the actions, decisions, evaluation and/or performance of a subordinate employee.

1026.2 RESTRICTED DUTIES AND ASSIGNMENTS

The Department will not prohibit all personal or business relationships between employees. However, in order to avoid nepotism or other inappropriate conflicts, the following reasonable restrictions shall apply (Government Code § 12940):

- (a) Employees are prohibited from directly supervising, occupying a position in the line of supervision or being directly supervised by any other employee who is a relative or with whom they are involved in a personal or business relationship.
 1. If circumstances require that such a supervisor/subordinate relationship exist temporarily, the supervisor shall make every reasonable effort to defer matters pertaining to the involved employee to an uninvolved supervisor.
 2. When personnel and circumstances permit, the Department will attempt to make every reasonable effort to avoid placing employees in such supervisor/subordinate situations. The Department, however, reserves the right to transfer or reassign any employee to another position within the same classification in order to avoid conflicts with any provision of this policy.
- (b) Employees are prohibited from participating in, contributing to or recommending promotions, assignments, performance evaluations, transfers or other personnel decisions affecting an employee who is a relative or with whom they are involved in a personal or business relationship.
- (c) Whenever possible, FTOs and other trainers will not be assigned to train relatives. FTOs and other trainers are prohibited from entering into or maintaining personal or business relationships with any employee they are assigned to train until such time as the training has been successfully completed. ~~and the employee is off probation~~
- (d) To avoid actual or perceived conflicts of interest, members of this department shall refrain from developing or maintaining personal or financial relationships with victims, witnesses or other individuals during the course of or as a direct result of any official contact.

- (e) Except as required in the performance of official duties or, in the case of immediate relatives, employees shall not develop or maintain personal or financial relationships with any individual they know or reasonably should know is under criminal investigation, is a convicted felon, parolee, fugitive or registered sex offender or who engages in serious violations of state or federal laws.

1026.2.1 EMPLOYEE RESPONSIBILITY

City employees shall submit the "Near Relative Notification" form to Human Resources within 30 days of becoming a near relative of another City employee, see COB Admin Reg 2.12 for further.

Prior to entering into any personal or business relationship or other circumstance which the employee knows or reasonably should know could create a conflict of interest or other violation of this policy, the employee shall promptly notify his/her uninformed, next highest level of supervisor.

Whenever any employee is placed in circumstances that would require the employee to take enforcement action or provide official information or services to any relative or individual with whom the employee is involved in a personal or business relationship, the employee shall promptly notify his/her uninformed, immediate supervisor. In the event that no uninformed supervisor is immediately available, the employee shall promptly notify dispatch to have another uninformed employee either relieve the involved employee or minimally remain present to witness the action.

1026.2.2 SUPERVISOR'S RESPONSIBILITY

Upon being notified of, or otherwise becoming aware of any circumstance that could result in or constitute an actual or potential violation of this policy, a supervisor shall take all reasonable steps to promptly mitigate or avoid such violations whenever possible. Supervisors shall also promptly notify the Chief of Police of such actual or potential violations through the chain of command.

1026.3. EXCEPTIONS TO POLICY

The City Manager may authorize exceptions to this policy whenever the City Manager determines that the best interests of the City so require. If an exception is granted, it shall be in writing and a copy placed in the employees personnel file.

Temporary Modified-Duty Assignments

1028.1 PURPOSE AND SCOPE

This policy establishes procedures for providing temporary modified-duty assignments. This policy is not intended to affect the rights or benefits of employees under federal or state law, City rules, current memorandums of understanding or collective bargaining agreements. For example, nothing in this policy affects the obligation of the Department to engage in a good faith, interactive process to consider reasonable accommodations for any employee with a temporary or permanent disability that is protected under federal or state law.

1028.2 POLICY

Subject to operational considerations, the Berkeley Police Department may identify temporary modified-duty assignments for employees who have an injury or medical condition resulting in temporary work limitations or restrictions. A temporary assignment allows the employee to work, while providing the Department with a productive employee during the temporary period.

1028.3 GENERAL CONSIDERATIONS

1028.3.1 ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES

Employees on Workers' Compensation Leave: The City may assign any employee on Workers' Compensation leave who is medically released to return to modified duty when feasible, to such work within the Police Department which is consistent with medical limitations as determined by the attending physician and the employee's skills and abilities at no reduction in the employee's regular rate of pay. Prior to changing the shift of a member who is medically released to return to work on modified duty, the Department shall make a reasonable and good faith effort to accommodate the member's personal/family scheduling for the duration of the period on modified duty. However, if the Department is not able to accommodate the member's personal/family scheduling for the period of the modified duty the Department is not precluded to change the member's shift.

1028.3.2 NON-INDUSTRIAL INJURIES

The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment. The City will periodically review such modified assignments in order to determine whether such assignments continue to meet the needs of the City.

The modified assignment may be in that employee's classification. To be eligible for such a modified assignment, the employee must initially, and subsequently at the request of the City, provide the Human Resources Department with a medical statement from his or her attending physician that clearly states the medical limitations and abilities of the employee and estimates when the employee will be able to return to a regular assignment. If modification of that assignment

within that employee's classification does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

Priority consideration for temporary modified-duty assignments will be given to employees with work-related injuries or illnesses that are temporary in nature. Employees having disabilities covered under the Americans with Disabilities Act (ADA) or the California Fair Employment and Housing Act (Government Code § 12940 et seq.) shall be treated equally, without regard to any preference for a work-related injury.

No position in the Berkeley Police Department shall be created or maintained as a temporary modified-duty assignment.

Temporary modified-duty assignments are a management prerogative and not an employee right. The availability of temporary modified-duty assignments will be determined on a case-by-case basis, consistent with the operational needs of the Department. Temporary modified-duty assignments are subject to continuous reassessment, with consideration given to operational needs and the employee's ability to perform in a modified-duty assignment.

The Chief of Police or the authorized designee may restrict employees working in temporary modified-duty assignments from wearing a uniform, displaying a badge, carrying a firearm, operating an emergency vehicle, engaging in outside employment, or being otherwise limited in employing their peace officer powers.

Temporary modified-duty assignments shall generally not exceed a cumulative total of 1,040 hours in any one-year period.

1028.4 PROCEDURE

Employees may request a temporary modified-duty assignment for short-term injuries or illnesses.

Employees seeking a temporary modified-duty assignment should contact their supervisor, who will make notifications via the chain of command, submit a written request to their Division Commanders or the authorized designees. The request should, as applicable, include a certification from the treating medical professional containing:

An assessment of the nature and probable duration of the illness or injury.

The prognosis for recovery.

The nature and scope of limitations and/or work restrictions.

A statement regarding any required workplace accommodations, mobility aids or medical devices.

A statement that the employee can safely perform the duties of the temporary modified-duty assignment.

The Division CaptainCommander will make a recommendation through the chain of command to the

Chief of Police regarding temporary modified-duty assignments that may be available based on the needs of the Department and the limitations of the employee. The Chief of Police or the authorized designee shall confer with the Personnel and Training Bureau or the City Attorney as appropriate.

Requests for a temporary modified-duty assignment of 20 hours or less per week may be approved and facilitated by the ~~Watch Commander~~ or Division ~~Commander~~Captain, with notice to the Chief of Police.

1028.5 ACCOUNTABILITY

Written notification of assignments, work schedules and any restrictions should be provided to employees assigned to temporary modified-duty assignments and their supervisors. Those assignments and schedules may be adjusted to accommodate department operations and the employee's medical appointments, as mutually agreed upon with the Division ~~Commander~~Captain.

1028.5.1 EMPLOYEE RESPONSIBILITIES

The responsibilities of employees assigned to temporary modified duty shall include, but not be limited to:

- (a) Communicating and coordinating any required medical and physical therapy appointments in advance with their supervisors.
- (b) Promptly notifying their supervisors of any change in restrictions or limitations after each appointment with their treating medical professionals.
- ~~(c) Communicating a status update to their supervisors no less than once every 30 days while assigned to temporary modified duty.~~
- ~~(c)~~ (c) Submitting a written status report, via the chain of command, to the Division ~~Commander~~Captain after every medical appointment, that contains a status update and anticipated date of return to full-duty when a temporary modified-duty assignment extends beyond 60 days.

1028.5.2 SUPERVISOR RESPONSIBILITIES

The employee's immediate supervisor shall monitor and manage the work schedule of those assigned to temporary modified duty.

The responsibilities of supervisors shall include, but not be limited to:

- (a) Periodically apprising the Division ~~Commander~~Captain of the status and performance of employees assigned to temporary modified duty.
- (b) Notifying the Division ~~Commander~~Captain and ensuring that the required documentation facilitating a return to temporary modified or full duty is received from the employee and provided to the Personnel and Training Bureau within 24 hours of receipt.
- (c) Ensuring that employees returning to full duty have completed any required training and certification.

1028.6 MEDICAL EXAMINATIONS

Prior to returning to full-duty status, employees shall be required to provide certification from their treating medical professionals stating that they are medically cleared to perform the essential functions of their jobs without restrictions or limitations.

~~The Department may require a fitness-for-duty examination prior to returning an employee to full-duty status, in accordance with the Fitness for Duty Policy.~~

1028.7 PREGNANCY

If an employee is temporarily unable to perform regular duties due to a pregnancy, childbirth or a related medical condition, the employee will be treated the same as any other temporarily disabled employee (42 USC § 2000e(k)). A pregnant employee shall not be involuntarily transferred to a temporary modified-duty assignment.

1028.7.1 NOTIFICATION

Pregnant employees should notify their immediate supervisors as soon as practicable and provide a statement from their medical providers identifying any pregnancy-related job restrictions or limitations. If at any point during the pregnancy it becomes necessary for the employee to take a leave of absence, such leave shall be granted in accordance with the City's personnel rules and regulations regarding family and medical care leave.

1028.8 PROBATIONARY EMPLOYEES

Probationary employees who are assigned to a temporary modified-duty assignment shall have their probation extended by a period of time equal to their assignment to temporary modified duty.

1028.9 MAINTENANCE OF CERTIFICATION AND TRAINING

Employees assigned to temporary modified duty shall maintain all certification, training and qualifications appropriate to both their regular and temporary duties, provided that the certification, training or qualifications are not in conflict with any medical limitations or restrictions. Employees who are assigned to temporary modified duty shall inform their supervisors of any inability to maintain any certification, training or qualifications.

Employee Absences

1033.1 PURPOSE AND SCOPE

This policy defines the Department's reporting procedures for employee absences.

1033.2 POLICY

It is the policy of the Berkeley Police Department that all employees adhere to prescribed procedures relative to all anticipated and unanticipated absences.

1033.3 PROCEDURES

The Absence Report form shall be used whenever an employee will be absent from his/her assigned duty or becomes absent during the assigned duty.

- (a) The form should be used whenever an employee is absent, or expected to be absent, because of vacation, floating holiday, recovery (compensatory time off), sick leave, family sick leave, military leave, death leave, parental leave, Worker's Compensation leave, suspension, leave without pay, organizational leave or other absences not amounting to an extended leave without pay.

1033.4 ANTICIPATED ABSENCE

When an employee requests a day off, he or she should complete an Absence Report form.

- (a) If the time off requested is more than two weeks away and staffing has not been completed, the employee shall:
 1. For Operations/Patrol: Place the request form in the designated location within the Lieutenant's Office.
 2. For Special Assignments: Place the request form in the designated location within their unit/detail or deliver the form directly to their supervisor.
- (b) If the time off requested is less than two weeks away, the employee shall:
 1. For Operations/Patrol: Place the request form in the Team tray, or deliver the form directly to their supervisor.
 2. For Special Assignments: Deliver the request form directly to their supervisor.

The employee has the responsibility to submit supporting documents with the request form (e.g. military leave orders, etc.).

1033.5 UNANTICIPATED ABSENCE

When an employee makes a request for sick leave, family sick leave, death leave, Worker's Compensation leave or another unanticipated (emergency) absence, the request shall be made to a supervisor or commanding officer of the employee's division or, if none are available, the Communications Center supervisor on duty or in his/her absence an Operations Division supervisor or commanding officer.

Berkeley Police Department

Law Enforcement Services Manual

Employee Absences

- (a) Except in the case of emergencies, absence because of illness or injury shall be reported at least one hour prior to the start of the employee's shift. Other absences shall be reported as far in advance of the effective date/time as possible.

Upon notification of an employee's unanticipated absence the supervisor shall prepare the Absence Report and, if applicable, forward it to the employee's actual supervisor.

1033.6 BPA ASSOCIATION RELEASE TIME

Berkeley Police Association Members are allotted a specified number of hours for "Release Time" each year for Association related activities (BPA meetings, negotiations, PRC representation and preparation, training, etc.). A BPA member using Release Time, should notify their supervisor as far in advance as possible so that a supervisor may fill any vacancies and post overtime if necessary

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 14, 1992

GENERAL ORDER P-17

SUBJECT: ABSENCE REPORT

PURPOSE

The purpose of this General Order is to define the Department's policies regarding reporting procedures for employee absences.

POLICY

It is the policy of the Berkeley Police Department that all employees adhere to prescribed procedures relative to all absences, including those which are anticipated and those which are an emergency.

ABSENCES REPORT FORM

- 1 - The Absence Report form (referred to in this Order as "form") shall be used whenever an employee will be absent from his/her assigned duty or becomes absent during the assigned duty.
 - (a) Instructions are printed on reverse side of the form.
 - (b) The form shall be used whenever an employee is absent because of vacation, floating holiday, recovery (compensatory time off), sick, family sick, military leave, death leave, parental leave, Worker's Compensation leave, suspension, leave without pay, organizational leave, or other absences not amounting to an extended leave without pay.
 - (1) Employees should refer to the procedures set forth in paragraphs 12 - 13 of this Order relative to additional procedures required in the use of union "release time."
 - (c) The form may be used for holiday or alternative holiday absence, but it shall not be used when the employee is on an extended leave without pay such as educational leave or long-term military obligation.
- 2 - Anticipated Absence
 - (a) The form is filled out and signed by the employee when the absence is anticipated.
 - (b) The form may serve initially as a request for recovery or unscheduled vacation, requiring supervisory approval in the space provided.
 - (c) The employee has the responsibility to submit with the form supporting documents, e.g., military leave orders, jury verification, etc.
- 3 - Unanticipated Absence

* Highlighted text is new

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 14, 1992

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- (a) Requests for sick leave, family sick leave, death leave, Worker's Compensation leave or other unanticipated (emergency) absence shall be made to a supervisor or commanding officer of the employee's division or, if none are available, the Communications Center supervisor on duty or in his/her absence a Patrol Division supervisor or commanding officer.
 - (b) Except in the case of emergencies, absence because of illness or injury shall be reported at least one (1) hour prior to the start of the employee's daily duties. Other absences shall be reported as far in advance of the effective date/time as possible.
- 4 - Upon notification of an employee's unanticipated absence the supervisor shall prepare the Absence Report and forward it to the employee's duty section.
- (a) When notified that an employee is unable to report for duty because of illness or injury, the direct or designated supervisor shall conduct an initial contact interview within 24 hours after notification.
 - (b) The supervisor shall enter the date and time of the initial contact on the Absence Report.
- NOTE:** An initial interview need not be conducted when an on-duty employee reports off because of illness or injury and appropriate notification has been made to the employee's supervisor, and an Absence Report completed.
- 5 - The direct or designated supervisor shall contact the employee at least once every seven (7) days.
- 6 - The first contact normally shall be made by telephone. If unable to contact by phone, a personal visit may be made.
- 7 - Subsequent contacts may be made in person or by phone unless direction is given by the Chief of Police to follow another course of action.
- 8 - At the discretion of the Chief of Police, contacts may be discontinued after the termination of the employee's Worker's Compensation payments (4850 C.L.C.) or other disability payments.
- 9 - The supervisor retains the form during the duration of the employee's absence.
- (a) The form may serve as a control indicator of an absent employee's whereabouts, anticipated date of return, need for follow-up contact, etc.
 - (b) Following the duration of the employee's absence, the supervisor will indicate the "Total Days and/or Hours of Absence" and forward the form to the unit's commanding officer.

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- 10 - The commanding officer will promptly review the completed form, sign and forward it to Public Safety Accounting.
- 11 - Public Safety Accounting staff will review the form to insure that information is consistent with time sheet and time cards, and the form will be filed alphabetically each calendar year.

UNION RELEASE TIME

- 12 - Guidelines regarding "release time" for designated union representatives are covered applicable Memorandums of Understanding. In normal circumstances, an employee must request this type of release time a minimum of 24 hours prior to the meeting and be an authorized representative of a recognized bargaining unit.
- 13 - In order to facilitate processing by the Public Safety Business office, the following procedure shall be used:
 - (a) Employee's shall utilize the City of Berkeley "Union Release Time Form." The "release form" serves as the primary control indicator to assist the employee's supervisor. A supply of these forms is maintained in the Service Bureau and/or the Business Office.
 - (1) Employee's shall notify their supervisor immediately upon return to the work site so that appropriate sections on the "release" form may be completed.
 - (2) The completed form shall be processed in the same manner prescribed in paragraphs 9 and 10 of this Order.

References: California Labor Code Section 4850
General Order A-1
City of Berkeley Personnel Memorandum dated 3/18/92

