



LEXIPOL POLICIES SUBCOMMITTEE

Commissioners Perezvelez (Chair), Ramsey

AGENDA

Wednesday, March 27, 2019
5:30 p.m.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER

2. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

3. APPROVAL OF AGENDA

4. NEW BUSINESS (discussion and action)

a. Review the following Lexipol policies:

Lexipol #	G.O.	Title
208	R-18	Departmental Forms
316	M-01	Missing Persons
317	E-11	Public Alerts
321	P-26	Standards of Conduct
324	P-29	Media Relations
325	C-62	Subpoenas and Court Appearances
327	M-02	Mutual Aid and Outside Agency Assist

b. Decide which policies to review next.

5. SCHEDULE NEXT MEETING DATE

6. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the PRC Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information.

 Communication Access Information (A.R.1.12)

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 1st floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

Departmental Forms, Letters, and Wanted Circulars

208.1 PURPOSE AND SCOPE

The purpose of this Policy is to delineate proper procedures to follow when creating a new form; ~~posting wanted fliers, sending out form letters,~~ or revising a currently used form.

208.2 POLICY

All Departmental forms ~~and form letters~~, including revisions, shall be approved by the Chief of Police.

208.3 PROCEDURES

~~(a) Requests for n~~New forms ~~or revisions to current forms~~ shall be submitted to the ~~Captain of the~~ Support Services Division ~~Captain~~ along with a short statement explaining the ~~intended use and need for the form or form revision.~~

~~(a)(b)~~ The Support Services Division Captain shall review the ~~request form~~ and forward it to the Chief of Police with recommendations.

~~The Chief of Police shall indicate approval or disapproval of the form and return it to the Captain of the Support Services Division.~~

~~(c) (a) — If approved, t~~The Support Services Division Captain shall arrange for ~~the implementation or revision of the form reproduction of the form if approved, or if not approved,~~ return the form to the originator. ~~if disapproved.~~

~~Revisions of existing forms shall be forwarded by the Captain of the Support Services Division to the Chief of Police, together with a short statement as to the necessity for revision.~~

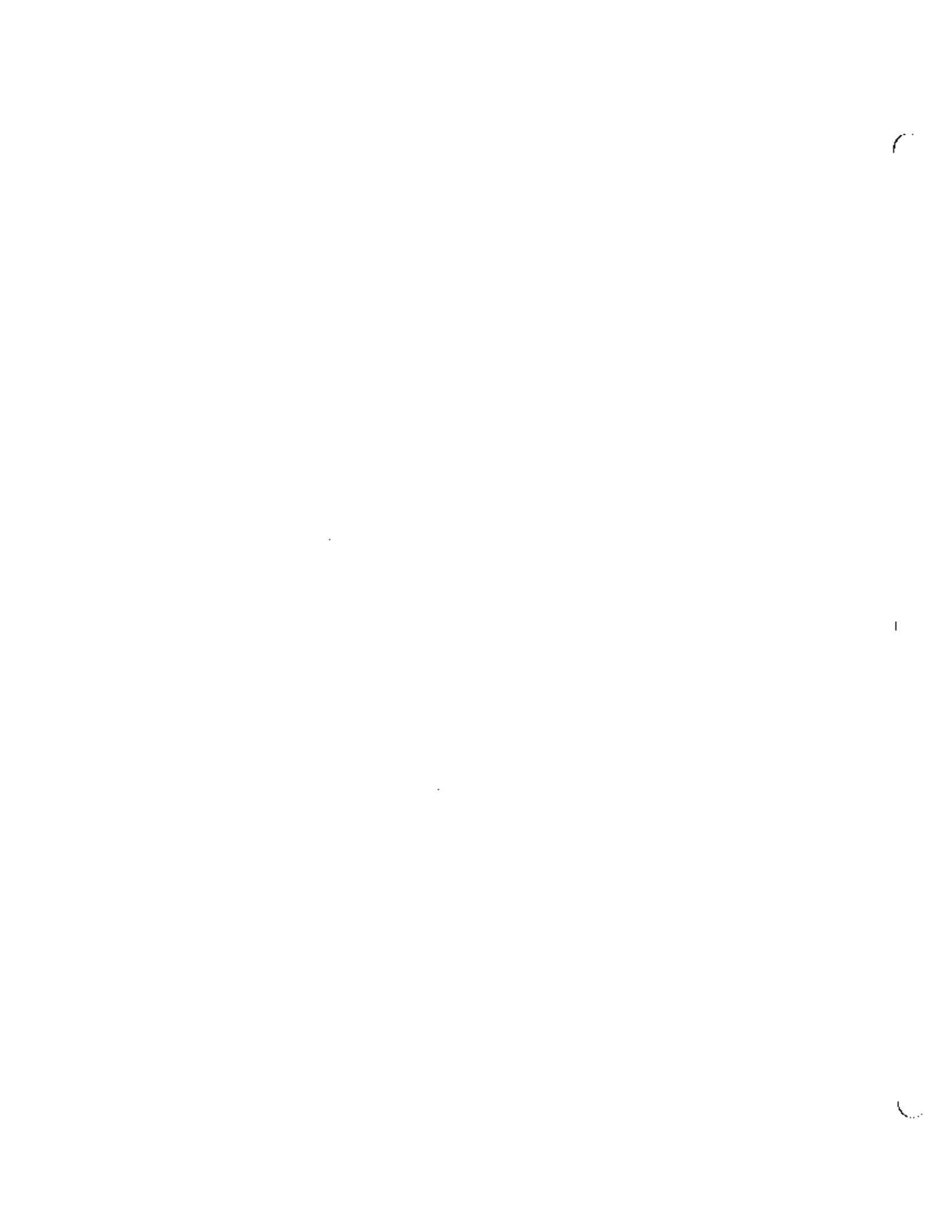
~~(a) — Upon approval, they shall be returned to the Captain of the Support Services Division.~~

~~(d)~~ The Captain of the Support Services Division shall maintain a file of ~~all~~ approved forms.

208.4 SPECIAL FORMS

This ~~policy Order~~ shall not apply to special forms designed for a project of temporary duration, provided the form is not to be used outside of ~~the~~ Department and that its use ceases with completion of the project.

~~This Order shall apply to all wanted circulars for distribution outside of the Department, except fingerprint circulars and wanted bulletins, which shall be approved as to form, content and extent of distribution by the Captain of the Support Services Division.~~



Departmental Forms

208.1 PURPOSE AND SCOPE

Agency Content

The purpose of this policy is to delineate proper procedures to follow when creating a new form or revising a currently used form.

208.2 POLICY

Agency Content

All departmental forms, including revisions, shall be approved by the Chief of Police.

208.3 NEW AND REVISED FORMS

Agency Content

New and revised forms shall be submitted to the Support Services Division Captain along with a short statement explaining the intended use and need for the form. The Captain shall review the form and forward it to the Chief of Police with recommendations. If approved, the Captain shall arrange for reproduction of the form. If rejected, the Captain shall return the form to the originator.

208.4 RECORDS

Agency Content

The Support Services Division Captain shall maintain a file of approved forms.

208.5 SPECIAL FORMS

Agency Content

This policy shall not apply to special forms designed for a project of temporary duration, provided the form is not to be used outside of the Department and that its use ceases with completion of the project.



BERKELEY POLICE DEPARTMENT

DATE ISSUED: January 13, 1994

GENERAL ORDER R-18

SUBJECT: FORMS, FORM LETTERS AND WANTED CIRCULARS

PURPOSE

- 1 - The purpose of this Order is to delineate proper procedures to follow when creating a new form, posting wanted fliers, sending out form letters, or revising a currently used form.

POLICY

- 2 - All Departmental forms and form letters, including revisions, except those mentioned in Paragraph 7 below, shall be approved by the Chief of Police.

PROCEDURES

- 3 - New forms shall be submitted to the Captain of the **Support Services** Division along with a short statement explaining the intended use and need for the form.
 - (a) The **Support Services** Division Captain shall review the form and forward it to the Chief of Police with recommendations.
- 4 - The Chief of Police shall indicate approval or disapproval of the form and return it to the Captain of the **Support Services** Division.
 - (a) The **Support Services** Division Captain shall arrange for reproduction of the form if approved, or return the form to the originator if disapproved.
- 5 - Revisions of existing forms shall be forwarded by the Captain of the **Support Services** Division to the Chief of Police, together with a short statement as to the necessity for revision.
 - (a) Upon approval, they shall be returned to the Captain of the **Support Services** Division.
- 6 - The Captain of the **Support Services** Division shall maintain a file of approved forms.
- 7 - This Order shall not apply to special forms designed for a project of temporary duration, provided the form is not to be used outside of this Department and that its use ceases with completion of the project.
- 8 - This Order shall apply to all wanted circulars for distribution outside of the Department, except fingerprint circulars and wanted bulletins, which shall be approved as to form, content and extent of distribution by the Captain of the **Support Services** Division.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: January 13, 1994

GENERAL ORDER R-18

Reference: CALEA Standards

Missing Persons

316.1 PURPOSE AND SCOPE

This policy provides guidance for handling missing person investigations.

316.1.1 DEFINITIONS

At risk - Includes, but is not limited to (Penal Code § 14215):

- A victim of a crime or foul play.
- A person missing and in need of medical attention.
- A missing person is age 11 or younger.
- A missing person with no pattern of running away or disappearing.
- A missing person who may be the victim of parental abduction.
- A mentally impaired missing person, including cognitively impaired or developmentally disabled.

Missing person - Any person who is reported missing to law enforcement when the person's location is unknown. This includes a child who has been taken, detained, concealed, enticed away or kept by a parent in violation of the law (Penal Code § 277 et seq.). It also includes any child who is missing voluntarily, involuntarily or under circumstances that do not conform to his/her ordinary habits or behavior, and who may be in need of assistance (Penal Code § 14215).

Missing person networks - Databases or computer networks available to law enforcement and that are suitable for information related to missing persons investigations. These include the National Crime Information Center (NCIC), the California Law Enforcement Telecommunications System (CLETS), and the Missing and Unidentified Person System (MUPS).

316.2 POLICY

The Berkeley Police Department does not consider any report of a missing person to be routine and assumes that the missing person is in need of immediate assistance until an investigation reveals otherwise. The Berkeley Police Department gives missing person cases priority over property-related cases and will not require any time frame to pass before beginning a missing person investigation (Penal Code § 14211).

316.3 REQUIRED FORMS AND BIOLOGICAL SAMPLE COLLECTION KITS

The Detective Bureau Lieutenant, or their designee, Investigation-supervisor should ensure that ate forms and kits are developed and available in accordance with this policy, state law, federal law and the California Peace Officer Standards and Training (POST) Missing Persons Investigations guidelines, including:

- Department report form for use in missing person cases

- Missing person investigation checklist that provides investigation guidelines and resources that could be helpful in the early hours of a missing person investigation (Penal Code § 13519.07)
- Missing person school notification form
- Medical records release form ~~from the California Department of Justice~~
- California DOJ missing person forms as appropriate
- Biological sample collection kits

316.4 ACCEPTANCE OF REPORTS

Any member encountering a person who wishes to report a missing person or runaway shall render assistance without delay (Penal Code § 14211). This can be accomplished by accepting the report via telephone or in-person and initiating the investigation. Those members ~~who do not take such reports or~~ who are unable to render immediate assistance shall promptly dispatch or alert a member who can take the report.

A report shall be accepted in all cases and regardless of where the person was last seen, where the person resides or any other question of jurisdiction (Penal Code § 14211).

316.5 INITIAL INVESTIGATION

Officers or other members conducting the initial investigation of a missing person should take the following investigative actions, as applicable:

- (a) Respond to a dispatched call for service as soon as practicable.
- (b) Interview the reporting party and any witnesses to determine whether the person qualifies as a missing person and, if so, whether the person may be at risk.
- (c) Notify a supervisor immediately if there is evidence that a missing person is either at risk or may qualify for a public alert, or both (see the Public Alerts Policy).
- (e)(d) Broadcast a "Be on the Look-Out" (BOLO) bulletin if the person is under 21 years of age or there is evidence that the missing person is at risk. The BOLO should be broadcast as soon as practicable but in no event more than one hour after determining the missing person is under 21 years of age or may be at risk (Penal Code § 14211).
- (d)(e) Ensure that entries are made into the appropriate missing person networks as follows:
 1. Immediately Within 2 hours of the initial report, when the missing person is under 21 years old or is considered at risk.
 2. In all other cases, as soon as practicable, but not later than fourtwo hours from the time of the officer's contact with the reporting party, the initial report.
- (e)(f) Complete the appropriate report forms accurately and completely and initiate a search as applicable under the facts.
- (f)(g) Collect and/or review:
 1. A photograph and a fingerprint card of the missing person, if available.

~~1.2.~~ Any documents that may assist in the investigation, such as court orders regarding custody.

~~2.3.~~ Any other evidence that may assist in the investigation, including personal electronic devices (e.g., cell phones, computers).

- ~~(g)~~—When circumstances permit and if appropriate, attempt to determine the missing person's location through his/her telecommunications carrier.
- (h) Contact the appropriate agency if the report relates to a previously made missing person report and another agency is actively investigating that report. When this is not practical, the information should be documented in an appropriate report for transmission to the appropriate agency. If the information relates to an at-risk missing person, the member should notify a supervisor and proceed with reasonable steps to locate the missing person.

316.6 REPORT PROCEDURES AND ROUTING

Employees should complete all missing person reports and forms promptly and submit them for supervisor approval, advise the appropriate supervisor as soon as a missing person report is ready for review.

316.6.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of the supervisor shall include, but are not limited to:

- (a) Reviewing and approving missing person reports upon receipt.
- ~~(b)~~—~~The reports should be promptly sent to the Records Management.~~
- ~~(c)~~~~(b)~~ Ensuring resources are deployed as appropriate.
- ~~(d)~~~~(c)~~ Initiating a command post as needed.
- ~~(e)~~~~(d)~~ Ensuring applicable notifications and public alerts ~~are made and documented.~~ (Nixle, AMBER, etc., see Public Alerts Policy).
- ~~(f)~~~~(e)~~ Ensuring that records have been entered into the appropriate missing persons networks.
- ~~(g)~~~~(f)~~ Taking reasonable steps to identify and address any jurisdictional issues to ensure cooperation among agencies.

If the case falls within the jurisdiction of another agency, the supervisor should facilitate transfer of the case to the agency of jurisdiction.

316.7 RECORDS MANAGEMENT RESPONSIBILITIES

The receiving member shall:

- (a) As soon as reasonable under the circumstances, notify and forward a copy of the report to the law enforcement agency having jurisdiction over the missing person's residence in cases where the missing person is a resident of another jurisdiction (Penal Code § 14211).
- (b) Notify and forward a copy of the report to the law enforcement agency in whose jurisdiction the missing person was last seen (Penal Code § 14211).

(c) Notify and forward a copy of the report to the law enforcement agency having jurisdiction over the missing person's intended or possible destination, if known. _

(e)(d) Forward a copy of the report to the Detective Bureau.

(d)(e) Coordinate with the NCIC Terminal Contractor for California to have the missing person record in the NCIC computer networks updated with additional information obtained from missing person investigations (42 USC § 5780).

316.8 OFFICER / DETECTIVE BUREAU FOLLOW-UP FOLLOW UP TIMELINE

(a) Adult Missing Person Cases: The initial assigned investigator handles the 24 hour and one week follow ups, then forwards the case to the Homicide Detail for follow up.

(b) Juvenile Missing Person/Runaway Cases: The initial assigned investigator handles the 24 hour follow up, then forwards the case to the Youth Services Detail for follow up.

316.9 DETECTIVE FOLLOW UP

In addition to completing or continuing any actions listed above, the investigator assigned to a missing person investigation:

(a) Shall ensure that the missing person's school is notified within 10 days if the missing person is a juvenile.

1. The notice shall be in writing and should also include a photograph (Education Code § 49068.6).

2. The investigator should meet with school officials regarding the notice as appropriate to stress the importance of including the notice in the juvenile's student file, along with contact information if the school receives a call requesting the transfer of the missing child's files to another school.

(b) Should recontact the reporting person and/or other witnesses within 30 days of the initial report and within 30 days thereafter to determine if any additional information has become available via the reporting party.

(c) Should consider contacting other agencies involved in the case to determine if any additional information is available.

(d) Shall Should verify and update CLETS, NCIC and any other applicable missing person networks within 30 days of the original entry into the networks and every 30 days thereafter until the missing person is located (42 USC § 5780).

(e) Should continue to make reasonable efforts to locate the missing person and document these efforts at least every 30 days.

(f) Shall-Should maintain a close liaison with state and local child welfare systems and the National Center for Missing and Exploited Children® (NCMEC) if the missing person is under the age of 21 and shall promptly notify NCMEC when the person is missing from a foster care family home or childcare institution (42 USC § 5780).

(g) Should make appropriate inquiry with the Coroner[Medical Examiner/JOP].

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- (h) Should obtain and forward medical and dental records, photos, X-rays and biological samples pursuant to Penal Code § 14212 and Penal Code § 14250.
 - (i) ~~Shall~~ **Should** attempt to obtain the most recent photograph for persons under 18 years of age if it has not previously been obtained and forward the photograph to California DOJ (Penal Code § 14210) and enter the photograph into applicable missing person networks (42 USC § 5780).
 - (j) Should consider making appropriate entries and searches in the National Missing and Unidentified Persons System (**NamUsMUPS**).
 - (k)** In the case of an at-risk missing person or a person who has been missing for an extended time, should consult with a supervisor regarding seeking federal assistance from the FBI and the U.S. Marshals Service (28 USC § 586).

316.9316.10 WHEN A MISSING PERSON IS FOUND

When any person reported missing is found, the assigned investigator shall document the location of the missing person in the appropriate report, notify the relatives and/or reporting party, as appropriate, and other involved agencies and refer the case for additional investigation if warranted.

The ~~assigned investigator~~ **Public Safety Business Manager** shall ensure that, upon receipt of information that a missing person has been located, the following occurs (Penal Code § 14213):

- (a) ~~Notification is made to California DOJ~~ **The person's name is removed from MUPS.**
- (b) The missing person's school is notified, if applicable.
- ~~(c) Entries are made in the applicable missing person networks.~~
- ~~(d) Immediately notify the Attorney General's Office.~~
- ~~(e)~~ **(c)** Notification ~~shall~~ **should** be made to any other law enforcement agency that took the initial report or participated in the investigation within 24 hours.

316.8.1 UNIDENTIFIED PERSONS

Department members investigating a case of an unidentified person who is deceased or a living person who cannot assist in identifying him/herself should:

- (a) Obtain a complete description of the person.
- (b) Enter the unidentified person's description into the NCIC Unidentified Person File.
- (c) Use available resources, such as those related to missing persons, to identify the person.

316.10316.11 CASE CLOSURE

The Detective Bureau ~~Lieutenant or his/her designee, supervisor~~ may authorize the closure of a missing person case after considering the following:

- (a) Closure is appropriate when the missing person is confirmed returned or evidence has

matched an unidentified person or body.

- (b) If the missing person is a resident of Berkeley or this department is the lead agency, the case should be kept under active investigation for as long as the person may still be alive. Exhaustion of leads in the investigation should not be a reason for closing a case.
- (c) If this department is not the lead agency, the case can be made inactive if all investigative leads have been exhausted, the lead agency has been notified and entries are made in the applicable missing person networks as appropriate.
- (d) A missing person case should not be closed or reclassified because the person would have reached a certain age or adulthood or because the person is now the subject of a criminal or civil warrant.

316.11316.12 TRAINING

Subject to available resources, the Personnel and Training Sergeant should ensure that members of this department whose duties include missing person investigations and reports receive regular training that includes:

(a) The initial investigation:

1. Assessments and interviews
2. Use of current resources, such as Mobile Audio Video (MAV)
3. Confirming missing status and custody status of minors
4. Evaluating the need for a heightened response

~~4.—Identifying the zone of safety based on chronological age and developmental stage~~

~~(e)(b)~~ Briefing of department members at the scene.

~~(d)(c)~~ Identifying NCIC Missing Person File categories (e.g., disability, endangered, involuntary, juvenile and catastrophe).

~~(e)(d)~~ Verifying the accuracy of all descriptive information.

~~(f)(e)~~ Initiating a neighborhood investigation.

~~(g)(f)~~ Investigating any relevant recent family dynamics.

~~(h)(g)~~ Addressing conflicting information.

~~(i)(h)~~ Key investigative and coordination steps.

~~(j)(i)~~ Managing a missing person case.

~~(k)(j)~~ Additional resources and specialized services.

~~(l)(k)~~ Update procedures for case information and descriptions.

~~(m)(l)~~ Preserving scenes.

~~(n)(m)~~ Internet and technology issues (e.g., Internet use, cell phone use).

(b)(7)(D) Media relations.

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BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 13, 2006

GENERAL ORDER M-1

SUBJECT: MISSING PERSON REPORTS

PURPOSE

- 1 - This Order sets forth policies and procedures to be followed for accepting and initiating missing person investigations. These policies and procedures are based on guidelines adopted by the Alameda County Sheriff and Chiefs of Police, and Penal Code Sections 14205, **et seq.**

POLICY

- 2 - A missing person investigation (adult or juvenile) shall be initiated without delay. We shall give priority to the investigation of these reports over the handling of reports relating crimes involving property. Officers shall accept any reported missing person case, either in person or via phone, regardless of the city of residence. (There is NO requirement for a 24-hour "waiting period" before a report is accepted.)
- 3 - The agency responsible for follow-up of the investigation is that agency which has jurisdiction over the residence of the missing person, absent evidence of foul play in another jurisdiction.
- 4 - Regardless of residence, the agency responsible for conducting the investigation is that which has jurisdiction over the location where evidence of foul play against the missing person occurred.

DEFINITION

- 5 - The term "missing person" shall include, **but not be limited to, any person who is missing voluntarily, involuntary, or under circumstances not conforming to his or her ordinary habits or behavior and who may be in need of assistance.**
 - (a) **"Missing juveniles" shall include, but not be limited to, a child who has been taken, detained, concealed, enticed away, retained by a person or parent in violation of Penal Code §277, et seq., or a known or suspected runaway.**
 - (b) **Evidence or indication a reported missing person is "at risk" may include, but not be limited to, any of the following:**
 - (1) **The person missing is the victim of a crime or foul play;**
 - (2) **The person missing is in need of medical attention;**
 - (3) **The person missing has no pattern of running away or disappearing;**

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- (4) The person missing may be the victim of parental abduction;
or,
- (5) The person missing is mentally impaired.

INVESTIGATION ASSIGNMENT

- 6 - The agency first accepting a missing person investigation shall conduct a preliminary investigation. When it is determined that another agency is responsible for the investigation, that agency shall be immediately notified and should conduct the follow-up investigation.
- 7 - Notification shall be by telephone and the **responsible agency** employee receiving the information shall be identified. This notification shall be promptly followed by a **teletype** message to the responsible agency.
- 8 - In the case of minors, the notification shall be done within 24 hours and a copy of the original receiving agency's report forwarded to the responsible agency within a 24 hour period.
 - (a) No referral shall be made until the investigating agency has been identified and arrangements have been made for this second agency to accept the investigation. A copy of the preliminary investigation report shall be sent to the responsible agency.
- 9 - The assigned Patrol Division officer is responsible for conducting the initial investigation as follows:
 - (a) The assigned officer shall receive the initial report and **take** reasonable steps to locate the missing person.
 - (b) **Adult Missing Person Cases: Initial two (2) follow-ups.**
 - (1) The first follow-up should be made within 24 hours of the original reporting time, and a seven day follow-up, if necessary, shall be set.
 - (2) If the missing person has not been relocated by the second follow-up, the investigation should be reassigned to **the Homicide Detail.**
 - (c) **Juvenile Missing Person/Runaway Cases: Initial follow-up.**
 - (1) The first follow-up should be made within 24 hours of the original reporting time. If the juvenile has not been located, the investigation should be reassigned to the **Youth Services Detail.**

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- 10 - Members of the Homicide Detail will follow-up adult missing person cases after the handling officer completes the first **two (2)** follow-ups. They will review cases to determine if the above listed entries have been properly completed.
- 11 - Members of the Youth Services Detail will follow-up juvenile missing person/runaway cases after the handling officer completes the initial follow-up. They will review investigations to determine if the above listed entries have been properly completed.

DISSEMINATION OF INFORMATION

- 12 - Names of missing persons shall be entered into the **Missing and Unidentified Persons System (MUPS)** by the handling officer within four (4) hours, unless the missing person has been located within that time frame.
- 13 - If the person reported missing is under 16 years of age, or if there is evidence that the missing person is at risk, a **"Be On the Look-Out" (BOLO) bulletin shall be broadcast to on-duty personnel without delay. Similar BOLO notifications may be issued to other agencies in the region. Out-agency notifications should include the description of the missing person and a summary of the circumstances under which he/she is missing.**
- 14 - Penal Code §14206 establishes an expectation upon the missing person's family or next of kin to be primarily responsible for obtaining and presenting to the investigating agency relevant medical information about the missing person. If they fail to act in this regard, or if no one can be located to accomplish this task, Homicide Detail or Youth Services Detail, depending on the missing person's age, will be responsible for executing a written declaration as soon as practical to obtain dental records and/or skeletal x-rays from the dentist, physician, surgeon, and/or medical facility associated with the missing person:
 - (a) if the missing person is under 18 years of age and it is determined the disappearance involves evidence the missing person is at risk;
 - (b) when the missing person is under 16 years of age and has been missing for at least 14 days; or,
 - (c) in all other cases, when a person has not been located within 30 days of the date of report.
- 15 - Pursuant to Penal Code §14206, the appropriate investigative unit in Detective Bureau (Homicide Detail or Youth Services Detail) shall forward copies of our missing person report and dental records/skeletal x-rays, if available, to the **Office of the Attorney General (OAG; more commonly, "DOJ") Missing and Unidentified Persons Unit** within 45 days of accepting the missing person's report.

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GENERAL ORDER M-1

NOTIFICATIONS

- 16 - Any missing person investigation involving the following circumstances shall require the immediate notification of the on-duty Patrol Division Watch Commander, or in his/her absence the Duty Command Officer:
- (a) The missing juvenile is under 12 years of age; or
 - (b) Where foul play is suspected, regardless of age.
- 17 - The Patrol Division Watch Commander shall determine what additional notifications (i.e., Chief of Police, Patrol Division Captain, Field Support Division Captain, etc.) shall be made.
- (a) In the case of a missing juvenile under 12 years of age, or foul play is suspected or has occurred, the Youth Services Detail Sergeant shall be notified immediately.
 - (b) In the case of a missing adult where foul play is suspected or has occurred, the Homicide Detail shall be notified immediately.
 - (c) If the appropriate Detective Bureau Detail is not available, the on-duty Patrol Division Watch Commander shall assume responsibility for notification of additional Detective Bureau personnel.
 - (d) In the case of a suspected or confirmed child abduction or other extraordinary criminal violation, personnel and equipment resources from other Alameda County law enforcement agencies may be requested by the on-duty Patrol Division Watch Commander, upon approval of the Chief of Police, pursuant to the Alameda County Inter-Agency Child Abduction Protection Protocol Agreement.
- 18 - In cases involving juveniles under the age of 12, or any case where foul play is suspected, regardless of age, Patrol Division will maintain continuous around the clock (24 hours per day) investigative efforts to locate the missing person until relieved by Detective Bureau personnel.
- (a) Around the clock investigative efforts to locate the missing person means a continuous transfer of responsibility from shift to shift with a minimum of one officer assigned full time to the investigation.
- 19 - Unless accomplished during the preliminary investigation, Youth Services Detail will be responsible for notifying the school in which the juvenile is enrolled that the juvenile is missing. The notification shall be in writing, and include a photograph of the missing juvenile, if available, and shall be given within ten (10) days of the juveniles disappearance. (Education Code §49068.6)

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 13, 2006

GENERAL ORDER M-1

References: California Penal Code §§14205, 14206, **14210** and 14213
California Education Code §49068.6
General Orders C-2, D-2, J-18, and R-31
Training and Information Bulletins 165, **210, 285 and 290**

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Public Alerts

317.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for alerting the public to important information and soliciting public aid when appropriate.

317.2 POLICY

Public alerts may be employed using the Emergency Alert System (EAS), local radio, television and press organizations and other groups to notify the public of incidents, or enlist the aid of the public, when the exchange of information may enhance the safety of the community. Various types of alerts may be available based upon each situation and the alert system's individual criteria.

317.3 TYPES OF ALERTS

Alameda County (AC) Alert: A notification sent to subscribers via phone, text and/or email.

Amber Alert: A notification regarding an abducted child

Blue Alert: A safety notification regarding an at large suspect who killed or injured a police officer

Emergency Alert System (EAS) Activation: A notification to be broadcast via radio and television

Emergency Digital Information System (EDIS): A notification sent to commercial media outlets for distribution

Nixle Alert: A notification sent to subscribers via phone and email

ReddiNet Alert: A notification sent to local hospitals regarding missing persons

Silver Alert: A notification regarding an elderly or cognitively impaired missing person

Yellow Alert: A notification regarding a hit and run injury accident

317.3317.4 RESPONSIBILITIES

317.4.1 EMPLOYEE RESPONSIBILITIES

Employees of the Berkeley Police Department should notify their supervisor, Watch Commander or the Detective Bureau Lieutenant as soon as practicable upon learning of a situation where public notification, a warning or enlisting the help of the media and public could assist in locating a missing person, apprehending a dangerous person or gathering information.

317.4.2 SUPERVISOR RESPONSIBILITIES

A supervisor apprised of the need for a public alert is responsible to make the appropriate notifications based upon the circumstances of each situation. The supervisor shall promptly notify ~~the Chief of Police,~~ the appropriate division captain ~~Division Commander~~ and the Public Information Officer when any public alert is generated.

The supervisor in charge of the investigation to which the alert relates is responsible for ensuring

for the following:

- (a) ~~The alerts are updated, as necessary~~Updating alerts
- (b) ~~The alert is canceled, when required~~Canceling alerts
- (c) ~~Ensuring~~All appropriate reports are completed

317.5 ALAMEDA COUNTY (AC) ALERT

AC Alert is an emergency notification system within Alameda County. It quickly provides critical information in a variety of situations such as missing persons, evacuations, road closures, severe weather, fires, etc. The alerts are distributed via phone call, text or email, depending on the user's preference.

317.12.1 AC ALERT ACTIVATION

Sworn employees holding the rank of sergeant and above are authorized to activate an AC Alert.

317.12.2 AC ALERT PROCEDURE

The alerts may be entered and activated by anyone with AC Alert credentials, usually a dispatcher. The user logs in and creates a "new notification" for email/text or a voice recording for phone calls.

- ~~(d) Preparing an after-action evaluation of the investigation to be forwarded to the Division Commander~~

317.4317.6 AMBER ALERTS

The AMBER Alert™ Program is a voluntary partnership between law enforcement agencies, broadcasters, transportation agencies and the wireless industry, to activate urgent bulletins in child abduction cases.

317.6.1 AMBER ALERT CRITERIA

The following conditions must be met before activating an AMBER Alert (Government Code § 8594(a)):

- (a) A child has been abducted or taken by anyone, including but not limited to a custodial parent or guardian.
- (b) The victim is 17 years of age or younger, or has a proven mental or physical disability.
- (c) The victim is in imminent danger of serious injury or death.
- (d) There is information available that, if provided to the public, could assist in the child's safe recovery.

317.4.2317.6.2 AMBER ALERT PROCEDURE

The supervisor in charge will ensure the following:

- (a) An initial press release is prepared that includes all available information that might aid in locating the child:

1. The child's identity, age and description
2. Photograph if available
3. The suspect's identity, age and description, if known
4. Pertinent vehicle description
5. Detail regarding location of incident, direction of travel, potential destinations, if known
6. Name and telephone number of the Public Information Officer or other authorized individual to handle media liaison
7. A telephone number for the public to call with leads or information

(b) The Alameda County Sheriff's Office is contacted to initiate a local/countywide broadcast. It is specific Alameda County protocol that the county alert is sent out before the statewide alert.

(b)(c) The local California Highway Patrol communications center should be contacted to initiate a multi-regional or statewide EAS broadcast, following any policies and procedures developed by CHP (Government Code § 8594). The California Highway Patrol's Emergency Notification and Tactical Alert Center (ENTAC) is contacted to initiate a statewide broadcast at (916) 843-4199 (Government Code § 8594).

(e)(d) The press release information is forwarded to the Sheriff's Department Emergency Communications Bureau so that general broadcasts can be made to local law enforcement agencies.

(d)(e) Information regarding the missing person should be entered into the California Law Enforcement Telecommunication System (CLETS).

(e)(f) Information regarding the missing person should be entered into the California Department of Justice Missing and Unidentified Persons System (MUPS)/National Crime Information Center (NCIC).

(f)(g) The following resources should be considered as circumstances dictate:

1. The local FBI office
2. The National Center for Missing and Exploited Children (NCMEC)

317.5317.7 BLUE ALERTS

Blue Alerts may be issued when an officer is killed, injured or assaulted and the suspect may pose a threat to the public or other law enforcement personnel.

317.7.1 BLUE ALERT CRITERIA

All of the following conditions must be met before activating a Blue Alert (Government Code § 8594.5):

- (a) A law enforcement officer has been killed, suffered serious bodily injury or has been assaulted with a deadly weapon, and the suspect has fled the scene of the offense.

- (b) The investigating law enforcement agency has determined that the suspect poses an imminent threat to the public or other law enforcement personnel.
- (c) A detailed description of the suspect's vehicle or license plate is available for broadcast.
- (d) Public dissemination of available information may help avert further harm or accelerate apprehension of the suspect.

317.7.2 BLUE ALERT PROCEDURE

The supervisor in charge should ensure the following:

- (a) An initial press release is prepared that includes all available information that might aid in locating the suspect:
 1. The license number and/or any other available description or photograph of the vehicle
 2. Photograph, description and/or identification of the suspect
 3. The suspect's identity, age and description, if known
 4. Detail regarding location of incident, direction of travel, potential destinations, if known
 5. Name and telephone number of the Public Information Officer or other authorized individual to handle media liaison
 - 5—6. A telephone number for the public to call with leads or information
- ~~(b) The local California Highway Patrol communications center is contacted to initiate a multi-regional or statewide EAS broadcast. Requests for a Blue Alert shall be made by contacting the California Highway Patrol's Emergency Notification and Tactical Alert Center (ENTAC) at (916) 843-4199.~~
- ~~(c)(b)~~ The information in the press release is forwarded to the Sheriff's Department Emergency Communications Bureau so that general broadcasts can be made to local law enforcement agencies.
- ~~(d)(c)~~ The following resources should be considered as circumstances dictate:
 1. Entry into the California Law Enforcement Telecommunication System (CLETS)
 2. The FBI local office

317.8 EMERGENCY ALERT SYSTEM (EAS)

The Emergency Alert System is a federal system used to alert the public in the event of an emergency. Initiated by the California Highway Patrol, EAS messages are directed to participating radio, television and digital media outlets for immediate public dissemination of critical, time-sensitive information.

317.8.1 EAS ACTIVATION

Sworn employees holding the rank of sergeant and above are authorized to activate EAS.

317.10.2 EAS PROCEDURE

Write a 50-60 second Warning message to be broadcast by all AM, FM, TV and cable stations in the FCC local area plan. To ensure broadcast and timely rebroadcasts, the message should be kept under one minute. A call back contact number must be included for the media.

Telephone the Alameda County Sheriff's Dispatch Center at 510-667-7721 and tell them you are faxing an EAS message for broadcast. They will provide you with the appropriate fax number.

317.9 EMERGENCY DIGITAL INFORMATION SYSTEM (EDIS)

The EDIS is provided by the Governor's Office of Emergency Services, and delivers official information about emergencies and disasters to law enforcement, news media and the public in California. Electronic, newswire-style emergency bulletins posted via EDIS are distributed by e-mail, and RSS feed. In addition, multi-media content (image, sound, or video files) can be posted on the EDIS Web site (www.edis.oes.ca.gov) for access by the media, law enforcement agencies and the public.

317.9.1 EDIS ACTIVATION

Sworn employees holding the rank of sergeant and above are authorized to activate EDIS.

317.9.2 EDIS PROCEDURE

The Communications Center may send a message via computer through the California Law Enforcement Telecommunications System (CLETS) or they may contact the State OES Warning Center 24/7 at (800) 421-2921 or (916) 845-8911.

317.10 NIXLE ALERT

Nixle is a local alert system that allows subscribers to receive alerts or advisories (via text and/or email) regarding upcoming events, community meetings, severe weather, criminal activity, traffic conditions or missing persons.

317.10.1 NIXLE ACTIVATION

A Nixle alert may be sent by anyone with Nixle login credentials, this includes but is not limited to the PIO, Dispatch Supervisors, Area Coordinators and Watch Commanders. Officers must receive Supervisor approval before initiating a Nixle Alert.

317.10.2 NIXLE PROCEDURE

Compose a brief summary of the incident with pertinent information. Relay the information to one of the above listed persons for dissemination.

317.11 REDDINET ALERT

ReddiNet is a dedicated emergency medical communications network. It facilitates information exchange among emergency medical personnel, dispatch centers, hospitals and law enforcement. Usually, it is used by BPD when conducting a missing person investigation, so that local hospitals could be on the lookout for the missing person.

317.11.1 REDDINET ACTIVATION

Dispatchers and sworn officers are authorized to send a ReddiNet alert.

317.11.2 REDDINET PROCEDURE

Call the Alameda County Fire Department in Livermore (925) 422-7595 and relay the information. There is no need to call back if the person is located. Notify BFD's Duty Chief via email, call dispatch to determine who it is, it changes every 48 hours. The DC will need to be notified if the missing person is located.

317.6317.12 SILVER ALERTS

Silver Alerts® is an emergency notification system for people who are 65 years of age or older, developmentally disabled or cognitively impaired and have been reported missing (Government Code § 8594.10).

317.12.1 SILVER ALERT CRITERIA

All of the following conditions must be met before activating a Silver Alert (Government Code § 8594.10):

- (a) The missing person is 65 years of age or older, developmentally disabled or cognitively impaired.
- (b) The department has utilized all available local resources.
- (c) The investigating officer or supervisor has determined that the person is missing under unexplained or suspicious circumstances.
- (d) The investigating officer or supervisor believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or that there are other factors indicating that the person may be in peril.
- (e) There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

317.12.2 SILVER ALERT PROCEDURE

Requests for a Silver Alert shall be made ~~through the California Highway Patrol (Government Code § 8594.10)~~ by contacting: the California Highway Patrol's Emergency Notification and Tactical Alert Center (ENTAC) at (916) 843-4199. (Government Code § 8594.10)

317.7317.13 YELLOW ALERTS

Yellow Alerts are notifications related to hit-and-run incidents resulting in the death or injury (Vehicle Code § 20001; Government Code § 8594.15).

317.13.1 YELLOW ALERT CRITERIA

All of the following conditions must be met before requesting the activation of a Yellow Alert (Government Code § 8594.15):

- (a) A person has been killed or has suffered serious bodily injury due to a hit-and-run.
- (b) It is likely the suspect may be seen on a state highway.
- (c) There is additional information concerning the suspect's vehicle, including, but not limited

to any of the following:

1. The suspect or the suspect's vehicle can be particularly described (e.g., a complete or partial license plate number)
 2. Unique vehicle characteristics (e.g., make, model and color of suspect's vehicle)
 3. The identity of the suspect
- (d) Public assistance can mitigate danger to the public or quicken the apprehension of the suspect.

317.13.2 YELLOW ALERT PROCEDURE

~~Requests for a Yellow Alert shall be made through the California Highway Patrol (Government Code § 8594.15).~~ Requests for a Yellow Alert shall be made by contacting the California Highway Patrol's Emergency Notification and Tactical Alert Center (ENTAC) at (916) 843-4199. (Government Code § 8594.15)

~~317.8~~317.14 MUTUAL AID

The experiences of other law enforcement jurisdictions that have implemented similar plans indicate an AMBER Alert or Blue Alert will generate a high volume of telephone calls to the handling agency.

The Sheriff's Department Emergency Communications Bureau facilities and staff can be made available in the event of a high call volume.

If the Watch Commander or Detective Bureau ~~Supervisor~~Lieutenant elects to use the services of the Sheriff's Department, the following will apply:

- (a) Notify the Sheriff's Department Watch Commander of the incident and the request for assistance. He/she will provide you with a telephone number for the public to call.
- (b) In the press release, direct the public to the telephone number provided by the Sheriff's Department Watch Commander.
- (c) The Public Information Officer will continue to handle all press releases and media inquiries. Any press inquiries received by the Sheriff's Department will be referred back to this department.

The Berkeley Police Department shall assign a minimum of two detectives/officers to respond to the Sheriff's Department Emergency Communications Bureau to screen and relay information and any clues received from incoming calls. As circumstances dictate, more staff resources from the handling law enforcement agency may be necessary to assist the staff at the Emergency Communications Bureau.

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BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 16, 2004

GENERAL ORDER E-11

SUBJECT: **EMERGENCY ALERT SYSTEM (EAS) AND EMERGENCY DIGITAL INFORMATION SYSTEM (EDIS)**

PURPOSE

- 1 - The intent of this General Order is to establish a protocol for the use of the Emergency Alert System (EAS) and the Emergency Digital Information System (EDIS). EAS and EDIS shall only be used to deliver warning and alerting messages in a life-threatening emergency. EAS and EDIS are warning and notification systems that give Public Safety Personnel the ability to communicate critical information to a large number of locations quickly and efficiently using commercial radio and television broadcasts. EAS and EDIS have the distinct advantage of providing clear emergency instructions.

POLICY

- 2 - It shall be the policy of this department to institute the EAS or EDIS in order to have a direct link with media outlets and other agencies for warnings or emergency notifications.

DEFINITIONS

- 3 - **Activation** – The process through which the City of Berkeley sends an ALERT or WARNING message to commercial radio and television stations for broadcast.
- 4 - **Authorized Agencies** – Only two agencies are authorized to activate EAS in Alameda County: the Alameda County Sheriff's Office and the City of Oakland Office of Emergency Services.
- 5 - **Authorized User** – A department member approved by the Chief to activate the EAS and EDIS systems through an authorized agency.
- 6 - **Emergency Alert System** – A nationwide system that uses commercial radio and television stations to broadcast public warning messages.
- 7 - **Emergency Digital Information System (EDIS)** – a system operated by California OES giving local, state, and federal law enforcement agencies a direct link with commercial media outlets and other agencies.
- 8 - **FCC Local Area Plan** – The plan prepared by the Local Emergency Communications Committee (LECC) representing the appropriate administrative Area. There are 22 administrative areas in the State.
- 9 - **Life Threatening Emergencies** – Examples of life threatening emergencies include, but are not limited to: hazardous materials incidents, fires, earthquakes, and 911 system failures, severe weather, or evacuation orders.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 16, 2004

GENERAL ORDER E-11

AUTHORIZATION

- 10 - Sworn employees holding the rank of Sergeant and above are authorized to activate the EAS and the EDIS.

PROCEDURES FOR EAS ACTIVATION

- 11 - Write a 50-60 second Warning message to be broadcast by all AM, FM, TV and Cable Stations in the FCC local area plan. To ensure broadcast and timely rebroadcasts, the message should be kept under one minute. A call back contact number must be included for the media.
- 12 - Telephone the Alameda County Sheriff's Dispatch Center at 510-667-7721 and tell them you are faxing an EAS message for broadcast. They will provide you with the appropriate fax number.
- 13 - Follow up the EAS message with the written message uploaded to EDIS. The commercial broadcasters will use the exact wording in digital format in programming their equipment.

PRODECURES FOR EDIS ACTIVATION

- 14 - There are two ways to activate the EDIS. The dispatch center can send a message via the California Law Enforcement Telecommunications System (CLETS) or the State OES Warning Center can be contacted 24/7 at 800-421-2921 or 916-845-8911.

CLETS INSTRUCTIONS FOR AN ACTIVATION

- 15 - Log on to CLETS and direct the message to group code 3200 (all law) and Oes0 (OES zero). Write the message including a brief description of the situation and the agency contact name and phone number. End the message with the characters: "NNNN". Transmit the message.
- 16 - To rapidly notify key staff of the EAS and EDIS message activation use Berkeley Emergency Notification System (BENS) "Check numbers list" through FirstCall. See Training and Information Bulletin #285 for instructions on using BENS and the FirstCall service.

POINT OF CONTACT

- 17 - The Berkeley Fire Department Emergency Services Manager is the City's Point of Contact (POC) with the Alameda County Sheriff's and California's Office of Emergency Services as contacts for routine matters related to EAS and EDIS.

Reference: Training & Information Bulletin #285

Standards of Conduct

321.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Berkeley Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

321.2 POLICY

The continued employment or appointment of every member of the Berkeley Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

321.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

321.3.1 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order

or directive that was initially issued.

The person countermanning the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

321.3.2 SUPERVISOR RESPONSIBILITIES

Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

- (a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.
- (b) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.
- (c) Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.
- (d) The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

321.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Employees shall at all times be courteous and civil to the public and to one another. They shall be quiet, orderly, attentive and respectful and shall exercise patience and discretion in the performance of their duties.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

321.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

321.5.1 LAWS, RULES AND ORDERS

- (a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.
- (b) Disobedience of any legal directive or order issued by any department member of a higher rank.

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- (c) Violation of federal, state, local or administrative laws, rules or regulations.

321.5.2 ETHICS

- (a) Using or disclosing one's status as a member of the Berkeley Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
- (b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- (d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.
- (e) Offer or acceptance of a bribe or gratuity.
- (f) Misappropriation or misuse of public funds, property, personnel or services.
- ~~(g) Any other failure to abide by the standards of ethical conduct.~~

321.5.3 DISCRIMINATION, OPPRESSION OR FAVORITISM

Discriminating against, oppressing or providing favoritism to any person because of age, race, color, creed, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, marital status, physical or mental disability, medical condition or other classification protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power or immunity, knowing the conduct is unlawful.

321.5.4 RELATIONSHIPS

- (a) Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.
- (b) Engaging in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.
- (c) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- (d) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
- (e) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.

321.5.5 ATTENDANCE

- (a) Leaving the job to which the member is assigned during duty hours without reasonable

excuse and proper permission and approval.

- (b) Unexcused or unauthorized absence or tardiness.
- (c) Excessive absenteeism or abuse of leave privileges.
- (d) Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.
- (e) Failure to sign in/out for duty on the timesheet, unless specifically authorized by a supervisor.

321.5.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE

- (a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member's position with this department.
 - 1. Members of this department shall not disclose the name, address or image of any victim of human trafficking except as authorized by law (Penal Code § 293).
- (b) Disclosing to any unauthorized person any active investigation information.
- (c) The use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
- (d) Loaning, selling, allowing unauthorized use, giving away or appropriating any Berkeley Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.
- (e) Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.

321.5.7 EFFICIENCY

- (a) Neglect of duty.
- (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.
- (c) Concealing, attempting to conceal, removing or destroying defective or incompetent work.
- (d) Unauthorized sleeping during on-duty time or assignments.
- (e) Failure to notify the Department within 72-24 hours of any change in residence address, contact telephone numbers or marital status.

321.5.8 PERFORMANCE

- (a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
- (b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.

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- (c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.
 - (d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
 - (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
 - (f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
 - 1. While on department premises.
 - 2. At any work site, while on-duty or while in uniform, or while using any department equipment or system.
 - 3. Gambling activity undertaken as part of an officer official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
 - (g) Entering any place of amusement while on duty, except when necessary in the performance of duty or periodic inspection.
 - (h) Improper political activity including:
 - 1. Unauthorized attendance while on-duty at official legislative or political sessions.
 - 2. Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty or, on department property except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
 - Engaging in political activities during assigned working hours except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
 - Joining or participating in any employee organization except an employee organization which is composed solely of peace officers which concerns itself solely and exclusively with the wages, hours, working conditions, welfare and advancement of academic and vocational training in furtherance of the police profession and which is not subordinate to any other organization.
 - Failure to secure the permission of a Commanding Officer before placing any material on a Departmental bulletin board.
 - Using departmental business cards for anything other than official business
 - (m) Any act on- or off-duty that brings discredit to this department.

321.5.9 CONDUCT

- (a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency ~~or~~ that may result in criminal prosecution or discipline under this policy.
- (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.

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- (c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
 - (d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
 - (e) Engaging in horseplay that reasonably could result in injury or property damage.
 - (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.
 - (g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.
 - (h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
 - (i) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.
 - (j) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.
 - (k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
 - (l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.
 - (m) Incurring unauthorized expense - Employees shall not knowingly and intentionally incur any unauthorized Departmental expense or liability without approval of a superior officer or supervisor when necessary under emergency conditions.
 - (n) Failure to provide information to citizens - Employees shall comply whenever possible with requests by citizens for public information. If necessary, they shall direct such persons to the nearest location where information may be obtained.
 - (m)(o) Failure to Identify - Employees on official business shall identify themselves as Berkeley Police employees or officers. When requested, employees shall promptly state their name, rank and badge number, except when disclosure of identity could compromise safety and/or an investigation (i.e., riot situations, undercover operations, etc.).
 - (n)(p) Failure to maintain communication, when on duty or officially on call - Employees who are on duty or officially on call shall be directly available by normal communication or shall keep their office, supervisor, or commanding officer informed of the means by which they may be reached when not immediately available.
 - (o)(q) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

321.5.10 SAFETY

- (a) Failure to observe or violating department safety standards or safe working practices.
- (b) Failure to maintain current licenses or certifications required for the assignment or position

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- (e.g., driver license, first aid).
- (c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
 - (d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.
 - (e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
 - (f) Unsafe or improper driving habits or actions in the course of employment or appointment.
 - (g) Any personal action contributing to a preventable traffic collision in the course of employment or appointment.
 - (h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

321.5.11 INTOXICANTS

(a) **REPORTING TO WORK** - Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.

(b) **POSESSION** - Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.

Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.

(c) ON DUTY - Use of Intoxicants. Except as necessary in the performance of an official assignment, having the odor of an alcoholic beverage on the person, clothing, or breath, being under the influence of alcohol or other intoxicants, or the consumption of alcohol or other intoxicants while on duty is strictly prohibited.

A Command Officer must give prior approval for any use of alcohol in the performance of an official assignment.

(e)(d) PRESCRIPTION MEDICATION - Employees may use prescription medications, except medical marijuana, while on duty pursuant to the specific instructions of a physician who has advised the employee that the prescribed medication in the amount actually ingested does not adversely affect the employee's ability to safely perform their duties, including tasks that require physical coordination, mental alertness and sound judgment, such as, operating office equipment and driving a vehicle, or, in the case of sworn officers, making detentions/arrests and handling weapons.

(e) USE OF MARIJUANA - Possession of marijuana, including medical marijuana, or being under the influence of marijuana on- or off-duty is prohibited and may lead to disciplinary action.

(f) INTOXICANTS IN UNIFORM - No employee off duty and in uniform, or in any part of uniform dress, shall:

- Consume any alcoholic beverage or other intoxicant in public view or in any place

accessible to the public;

- Be in public with the odor of an alcoholic beverage on the person, clothing, or breath;
or
- Be under the influence of alcohol or other intoxicants.

(d)(g) INTOXICANTS OFF DUTY - No off-duty employee shall consume any alcoholic beverage or other intoxicant to an extent which renders one unfit to report for one's next regular tour of duty (including having the odor of an alcoholic beverage on the person), which results in the of violation of any law, or which results in the commission of an obnoxious or offensive act which might tend to discredit the Department.

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GENERAL ORDER P-26

SUBJECT: PERSONNEL COMPLAINT PROCEDURE AND DISPOSITION AND THE
INTERNAL AFFAIRS BUREAU

PURPOSE

- 1 - The purpose of this order is to establish the policy and procedures for handling personnel complaints and to define the responsibilities of the Internal Affairs Bureau.

POLICY

- 2 - The Berkeley Police Department shall objectively and, in accordance with applicable law, employee Memorandum Agreements and this Order, review and investigate complaints of police misconduct received from any source.
- 3 - All complaints alleging misconduct by a Police Department employee will be promptly investigated.

PROCEDURE

Personnel Complaints and Employee Misconduct

- 4 - A personnel complaint is defined as an allegation of misconduct by a Police Department employee working within the Police Department received from any source.
- 5 - Employee misconduct is defined as follows:
 - (a) Violation of Department rules, regulations, Orders, policies or procedures.
 - (b) Commission of a criminal offense.
 - (c) Categories and definitions of police misconduct.

- (1) Improper Use of Force

All allegations concerning the improper use of force that goes beyond reasonable or lawful limits of physical power that may be used upon a person including:

- (i) Improper use or display of a firearm,
- (ii) Improper use of any object,
- (iii) Improper use of hands or feet.

(As may be defined in Police Regulation 202, 318, 321 or 322)

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(2) Discourtesy

All allegations concerning a failure to be courteous and civil to the public. Complaints may include improper hand gestures or signs, and/or the failure of an employee to give a proper response or explanation to a citizen.

All employees are expected to be quiet, orderly, attentive, and respectful and to exercise patience and discretion in the performance of their duties.

(As may be defined in Police Regulation 234)

(3) Improper Stop/Street Detention/Search/Seizure/Arrest

All allegations concerning police actions conducted without sufficient lawful reason, particularly as they relate to improper stops, street detentions, searches, seizures and arrests. This category does not include complaints about improperly issued traffic citations or improper police tows (see paragraph 5(c)(9)).

(As may be based upon the presumptions of proper police conduct defined in Police Regulation 401.)

(4) Improper Detention Procedures

All allegations concerning a failure to follow proper procedures for arrest, booking, incarceration and release of prisoners. May include allegations concerning a failure to advise of the reasons for an arrest; failure to "Mirandize" a suspect; failure to utilize the proper citation release procedure; a failure to follow proper bail procedures; failure to follow proper juvenile processing procedures; failure to allow phone calls and/or access to attorneys, and unnecessary delays in releasing prisoners.

(As may be defined in reference to Police Regulations, 203, 204, 205, 206, 207, 208, 209, 213, 214, 215, 400, 401 and General Order J-1)

(5) Inadequate Investigation or Improper Police Report

All allegations concerning a failure to adequately and impartially investigate and to accurately provide a written account of an incident. May include the failure of an employee to take a report or to make a lawful arrest.

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(As may be defined in Police Regulations 265, 267 and 401; General Orders C-2 and R-24, and appropriate Penal Code sections)

(6) Discrimination

All allegations concerning a favorable or unfavorable treatment or action by a police employee which exhibits partiality or prejudice based upon a person's race, color, religion, ancestry, national origin, age, sex, gender, sexual orientation, marital status, political affiliation, physical disability or medical condition (including cancer and HIV status).

(As may be defined in Police Regulations 232, 234, 235, 273 and 401)

(7) Harassment

Any allegation asserting a consistent, deliberate annoyance by police employees where the complainant can attest to repetitious contact over a period of time. (Police Regulation 250)

(8) Improper Police Procedures

Any allegation concerning a failure to follow approved Departmental policies, procedures, orders, or guidelines.

(As may be defined in official Police Training and Information Bulletins, Administrative Instructions, Police Regulations, or General Orders)

(9) Improper Traffic Citation or Police Tow

All allegations of improperly issued traffic citations or improper towing by a police employee.

(As may be defined by the California Vehicle Code or local ordinance)

(10) Other

All other allegations concerning police employee misconduct that do not fit into any of the other listed categories. These allegations may include, but are not limited to complaints concerning criminal misconduct, abuse of discretion, or failure of a police employee to properly identify self.

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(As may be defined by Police Regulation 248, 266 and General Order A-1)

- 6 - A complaint initiated by a Police Department employee against another Police Department employee working within the Police Department is defined as an "Internal Complaint".
- 7 - A complaint received from any other source is defined as an "External Complaint."
- 8 - Inquiries regarding employee conduct wherein the concerned party specifically requests only advice or that the matter be resolved without a personnel complaint investigation may be handled as an "informal inquiry" by either the Internal Affairs Bureau or by supervisors and/or staff within the Department (See "Informal Inquiries," paragraph 28).

External Complaints

- 9 - External complaints may be made in person, by telephone or by mail and may be initiated by a third party (i.e., a witness, a representative of an organization, the City Manager's Office, District Attorney's Office, etc.).
 - (a) Complaints made to the Police Review Commission shall also be investigated by the Internal Affairs Bureau as "external complaints."
 - (1) As directed by the City Manager, the requirement to testify before the Police Review Commission shall not apply to non-sworn Parking personnel affiliated with the Field Support Division.
 - (2) Personnel falling within the provisions of this exempted classification, however, shall fully cooperate with all aspects of external/internal personnel complaint investigations conducted by IAB and/or other designated Departmental staff.
- 10 - An external complaint should be made within thirty days of the date of the incident upon which the complaint is based unless the complainant, for reasons beyond his/her control, is unable to do so (i.e., illness, injury, out of the immediate area, etc.). The decision as to the acceptability of a complaint shall be made by the Chief of Police.
 - (a) Complaints filed with the Police Review Commission beyond the thirty day limit and accepted for late filing by that body will be accepted for investigation by the Internal Affairs Bureau.

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- 11 - A person making a complaint in person or by telephone during the hours the Internal Affairs Bureau office is open shall be referred there directly.
 - (a) If Internal Affairs Bureau personnel are unavailable, the provisions of paragraph 12 will apply.
 - (b) A brochure has been prepared to provide citizens with a description of the complaint investigation procedure. A supply of these brochures will be maintained in the Internal Affairs Bureau and at the front counter of the Police Department to be available to citizens upon request.

- 12 - During the hours the Internal Affairs Bureau is closed or IAB personnel are unavailable, individuals making a complaint in person or by telephone shall be interviewed by the Patrol Division Watch Commander.
 - (a) If the Watch Commander is not available, the complaint shall be referred to an appropriate Sergeant or supervisor.
 - (b) Complainants shall not be told to return during Internal Affairs Bureau business hours to make their complaint.

- 13 - An Internal Affairs Bureau "Complaint Investigation" form shall be completed by the Command Officer or supervisor receiving the complaint. If possible the complainant should write a brief statement describing the complaint incident on the reverse side of the form. If for any reason that cannot be done, the Command Officer/Supervisor receiving the complaint shall write or type the narrative account for the complainant. The complainant should then sign the form. The completed complaint form shall be forwarded directly to the Internal Affairs Bureau.

- 14 - When an employee, who is not a supervisor, becomes aware of or observes what he/she believes to be possible misconduct by another Department employee, he/she shall, by the end of the employee's current shift or if off duty within 24 hours, notify a supervisor, or in the absence of a supervisor, a Command Officer or the Internal Affairs Bureau.
 - (a) Serious allegations, including but not limited to those listed below, shall be reported immediately.
 - (1) Dishonesty.
 - (2) Any act which may constitute the commission of a misdemeanor or felony crime.
 - (3) Improper use of force.
 - (4) Employee(s) under the influence of intoxicants.

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- (5) Any discrimination or harassment on the basis of race, color, religion, ancestry, national origin, sexual orientation, gender, marital status, age, political affiliation, family care leave status, physical or mental disability or medical condition.
 - (b) A written report documenting the alleged misconduct shall be made by the reporting employee initiating the complaint if required by the Supervisor, Command Officer or Internal Affairs.
- 15 - A Supervisory or Command Officer with knowledge of, or who is made aware of alleged acts of misconduct, shall take appropriate corrective action. Supervisor shall also notify their Commanding Officer or the Duty Command Officer, who shall give direction as to the proper procedure for documenting the complaint. Generally, the procedures will follow the guidelines listed in this Order relating to either external or internal complaints.
- (a) Serious allegations, including but not limited to those listed below, shall be reported immediately.
 - (1) Dishonesty.
 - (2) Any act which may constitute the commission of a misdemeanor or felony crime.
 - (3) Improper use of force.
 - (4) Employee(s) under the influence of intoxicants.
 - (5) Any discrimination or harassment on the basis of race, color, religion, ancestry, national origin, sexual orientation, gender, marital status, age, political affiliation, family care leave status, physical or mental disability or medical condition.
- 16 - When the alleged act of misconduct is of a nature that the integrity of the investigation might be jeopardized by reducing the allegations to writing, the concerned Supervisor shall report orally to the on-duty Watch Commander, or if he/she is unavailable, to the on-call Duty Command Officer who will notify the Chief of Police.

Internal Complaints

- 17 - An internal complaint may be initiated by any employee of the Police Department to his or her sworn or non-sworn Supervisor or, in the absence of a supervisor, to his/her Commanding Officer or to a Sergeant from the Internal Affairs Bureau. Complaints will be documented in writing either by the employee making the complaint or by the Supervisor/Command Officer receiving the complaint.

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- (a) The complaint report shall document alleged violation(s) of appropriate Department rules, regulations, Orders, policies or procedures.
 - (b) The report shall also include an explanation of the circumstances surrounding the alleged violation.
- 18 - Employees may make complaints confidentially and the matter shall be investigated without disclosure of the complainant's name unless disclosure of the complainant's identity is necessary to provide the subject employee with his/her procedural due process rights or disclosure of the complainant's identity is required by law.
- 19 - An internal personnel complaint should be initiated within thirty days of knowledge by the employee initiating the complaint of the incident precipitating it.
- (a) Questions as to the acceptability of a complaint shall be resolved by the Chief of Police.
- 20 - The Chief of Police and the Commanding Officer of the division to which the **subject** employee(s) is assigned shall be notified at the earliest possible time as to allegations of misconduct made against the employee(s).
- 21 - Primary responsibility for the investigation of an internal complaint shall rest with the Commander of the division to which the **subject** employee is assigned.
- (a) If the Division Commander feels that the investigation should not be conducted within the division, a request may be made to the Chief of Police that the matter be investigated by the Internal Affairs Bureau.
- 22 - If the internal complaint involves any of the following circumstances, the Division Commander shall make a request to the Chief of Police that the matter be investigated by the Internal Affairs Bureau.
- (a) When the complaint involves employees assigned to different divisions and/or the alleged act(s) of misconduct encompasses more than one division.
 - (b) When the complaint involves serious allegations, including but not limited to the following:
 - (1) Dishonesty.
 - (2) Any act which may constitute the commission of a misdemeanor or felony crime.
 - (3) Improper use of force.
 - (4) Employee(s) under the influence of intoxicants.

*Highlighted text is revised.

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- (5) Any discrimination or harassment on the basis of race, color, religion, ancestry, national origin, sexual orientation, gender, marital status, age, political affiliation, family care leave status, physical or mental disability or medical condition.
- 23 - Investigations handled within the involved division shall be conducted in a complete and thorough manner. Such investigations should include the following:
- (a) Summary of the complaint incident.
 - (b) Identification of specific violations of Departmental rules, regulations, policy, Orders or procedures.
 - (c) Statements from all involved parties (complainant, witnesses, **subject** employees).
 - (d) Notification of the "**subject**" employee(s) in writing and verbally as to the nature of the allegations made against them as well as their rights and responsibilities relative to the investigation.
 - (1) To satisfy the written requirement, the employee will be provided with a copy of the IAB Notification form, (copies of which will be available to all supervisors and staff for this purpose).
 - (e) All relevant background material associated with the complaint (police reports, Communication Center tape recordings, supervisor's logs, citations, stop cards, etc.).
- 24 - When an internal complaint investigation is handled within the division, it shall be forwarded directly to the Chief of Police who may consult with the appropriate Division Commander(s) prior to making a disposition.
- 25 - When an internal complaint is investigated by the Internal Affairs Bureau, the completed investigation shall be forwarded directly to the Chief of Police who may consult with the appropriate Division Commander(s) prior to making a disposition.
- 26 - Internal personnel complaint dispositions shall be consistent with paragraphs 44-46 of this Order.
- 27 - The Division Commander or Chief of Police shall advise the **subject** employee of the final disposition of the complaint.
- (a) The complaining employee shall be advised of the disposition to the complaint by his/her Division Commander.

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Informal Inquiries

- 28 - As noted in paragraph 8, inquiries regarding employee conduct wherein the complaining party specifically requests only advice or that the matter be resolved without a personnel complaint investigation may be handled by the Internal Affairs Bureau and/or supervisors/staff within the Department as an "informal inquiry."
- (a) Serious allegations including, but not limited to those listed below, require a personnel complaint investigation.
 - (1) Dishonesty.
 - (2) Any act which may constitute the commission of a misdemeanor or felony crime.
 - (3) Improper use of force.
 - (4) Employee(s) under the influence of intoxicants.
 - (5) Any discrimination or harassment on the basis of race, color, religion, ancestry, national origin, sexual orientation, gender, marital status, age, political affiliation, family care leave status, physical or mental disability or medical condition.
 - (b) Informal inquiries will be recorded in a log kept for such "inquiries."

INTERNAL AFFAIRS BUREAU

- 29- The Internal Affairs Bureau is organized under the supervision of two Sergeants who report directly to the Chief of Police.
- 30 - The Internal Affairs Bureau shall:
- (a) Investigate all externally received complaints alleging employee misconduct.
 - (b) Investigate internally initiated complaints of misconduct as may be assigned by the Chief of Police.
 - (c) Prepare investigations and reports on inquiries into employee conduct as may be required by the Chief of Police.
 - (d) Prepare letters, documents and memoranda associated with the disciplinary process in complaint matters.
 - (e) Prepare letters and correspondence on other matters as may be required by the Chief of Police.

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- (f) Maintain liaison with the District Attorney's office during investigations involving alleged criminal conduct on the part of an employee.
- 31 - No Supervisor or Command Officer shall conduct a complaint or administrative investigation of a subject employee who is a "near relative," as defined in City of Berkeley Administrative Regulation 2.12, or when the investigator and the subject of the investigation have a personal relationship that could compromise objectivity.
- (a) When there is a question regarding what constitutes a "personal relationship that could compromise objectivity," the investigator shall inform his/her Commanding Officer or Chief of Police of any such relationship, and the Chief shall determine if the investigation should be reassigned.
- 32 - The Internal Affairs Bureau has responsibility for record keeping and preservation duties associated with all complaint investigation matters and associated records, to include:
- (a) Registering/recording the receipt of all external and internally generated complaints, assigning an appropriate file number to each.
 - (b) Logging and preserving a record of the status and disposition of each external and internal complaint received.
 - (c) Finalizing or closing the file on all complaints and supervising the routing of the cover/disposition sheet of each complaint.
- 33 - The Internal Affairs Bureau is responsible for storing and keeping secure in its offices the files and records associated with all external and internal complaints received and investigated.
- (a) Personnel complaint files shall not include information other than materials directly associated with complaint matters and process; other personnel files shall be maintained under the control of the Administrative Division Captain.
 - (b) Complaint files are confidential documents and may not be released except as prescribed by law and as directed by this Order.
 - (c) The offices of the Internal Affairs Bureau shall be kept secure at all times, with keys distributed only to Bureau staff and the Chief of Police.

Complaint Investigations

- 34 - Following receipt of an external personnel complaint, the Internal Affairs Bureau will conduct an investigation of the complaint incident.

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- (a) Complainants will be notified by the Internal Affairs Bureau of the existence/availability of the Police Review Commission.
 - (b) Complainants will be notified in writing that their complaint has been received and that it will be investigated.
 - (c) Allegations of misconduct made by complainants will be attached to the complaint as the initial basis for receipt and investigation of the complaint. The complainant shall be provided with a copy of his or her statement, if requested.
 - (d) Employees who are designated as "**subject**" employees will be notified in writing and verbally as to the nature of the allegations made against them and their rights and responsibilities relative to the investigation.
 - (e) To insure that all possible allegations of apparent misconduct are brought forth, investigated and presented to the Board of Review and that individual employee's rights to due process are protected, obvious or apparent violations of Departmental rules, regulations, Orders, policies, procedures, directives and/or training guidelines noted by the Internal Affairs Bureau at any time during the complaint investigation process will be added to the complaint by the Internal Affairs Bureau. Each new allegation will be matched with the "**subject**" employee (where possible), bureau, division or the Department (policy complaint) with each new allegation.
- 35 - The Internal Affairs Bureau will advise the Chief of Police of all external complaints received, providing an update as to the status of each as it progresses through the investigative process towards disposition. This will be accomplished by providing weekly updates to the Chief of Police outlining complaint investigations on file with the Internal Affairs Bureau.
- (a) The Chief of Police will be immediately notified of the receipt of external complaints of a sensitive or urgent nature.

BOARD OF REVIEW

- 36 - Following the investigation of each complaint by a member of the Internal Affairs Bureau, a Board of Review may be convened by the Chief of Police for the purpose of reviewing and making findings on the complaint matter.
- (a) The Chief of Police may choose to make findings on an external personnel complaint without sending the complaint to the Board of Review.
- 37 - The Board of Review shall be presided over by a captain appointed by the Chief of Police to serve as the Board of Review Hearing Officer.

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- (a) The Chief of Police may attend the Board of Review hearing, but will not participate in the **recommendation consideration** process.
- 38 - Unless directed otherwise by the Chief of Police or the Hearing Officer, the Board of Review shall consist of a **designated on-duty Patrol Division Sergeant, the Division Commander of the subject employee, a representative of the City Manager's Office, and two representatives of the subject employee's labor group (i.e., Berkeley Police Association, SEIU Local 1021, etc.)**.
- (a) All sworn participating members of the Board of Review must be of equal or higher rank than the **subject officer** in the complaint under consideration.
 - (1) **BPA representation of the same or higher rank at the Board of Review shall still apply, if requested.**
 - (b) The Chief of Police may invite other person(s) to sit with the Board as participating members as he/she deems appropriate.
- 39 - The **subject employee and/or his/her chosen representative** is encouraged to attend the Board of Review hearing to present arguments or explanations and to answer questions which may be presented to them by Board members. **Subject employees are not required to attend unless specifically ordered to do so by the Chief of Police. The subject employee will be excused during the decision-making stage of the review process.**
- 40 - Following the Board's review and discussion, each Board member will make a recommendation to the Board of Review Hearing Officer relative to finding(s) and possible dispositions.
- (a) The Board of Review Hearing Officer will listen to the recommendations made by other Board members but will have the responsibility for making the final disposition recommendation to the Chief of Police.
- 41 - The Chief of Police retains the right to agree or disagree with the final recommendations of the Board of Review, and to limit or augment those recommendations.
- 42 - The **subject employee** will be notified of the decision of the **Chief of Police** as soon as possible after the decision is made.
- 43 - The Internal Affairs Bureau investigation is a confidential document that will not be released to the **subject officer** or his/her chosen representative prior to the time that copies of the complaint investigation are sent to members of the Board of Review and/or Chief of Police.

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- (a) In cases of great sensitivity the Chief of Police retains the right to maintain full confidentiality of the investigative report until such time as required by law to release the information.

Complaint Disposition

44 - Reviewer(s) must determine whether or not the allegations made in a complaint are supported by the investigation. The conclusion or finding in a complaint shall fall within one of the following categories:

- (a) If the investigation clearly establishes that the allegation is not true, the finding shall be "Unfounded."
- (b) If the investigation fails to support the allegation(s), but the allegation(s) cannot be shown as false, the finding shall be "Not Sustained."
- (c) If the investigation clearly establishes that the actions of the Employee that formed the basis for the complaint are not violations of law or departmental policy, the finding shall be "Exonerated."
- (d) If the investigation shows the allegation did occur and disciplinary action may be warranted, the finding shall be "Sustained."

45 - If the finding of a complaint is "Sustained," a disciplinary disposition must be selected. Disciplinary actions that may be selected include:

- (a) Written Advice.
- (b) Written Reprimand.
- (c) Suspension (including forfeiture of compensatory or vacation time).
- (d) Dismissal.
- (e) Dismissal with criminal charges pending.

46 - The dispositions made in Section 45 are not all inclusive and may be modified or expanded upon at the discretion of the Chief of Police.

EXTERNAL COMPLAINTS, COMPLAINANT NOTIFICATION

47 - The Internal Affairs Bureau investigator shall advise the complainant of the disposition of his/her complaint. The Internal Affairs Bureau investigator shall advise the complainant in writing of the disposition of his/her complaint, within 30 days of the disposition being reached. If the complainant is not satisfied with the disposition or the manner in which the complaint was investigated, he/she shall again be advised of the existence/availability of the Police Review Commission.

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APPEAL PROCESS

- 48 - Employees receiving discipline as a result of a "Sustained" finding made against them in any personnel complaint matter may appeal/grieve the findings such appeal or grievance shall be based upon and follow guidelines established by appropriate Memoranda of Understanding, City Personnel Rules and Regulations and Department Regulations.

POLICE OFFICER BILL OF RIGHTS

- 49 - When a sworn employee of the Berkeley Police Department is subject to either an external or internal complaint, the investigator(s) conducting that investigation shall ensure that the subject officer is aware of his/her rights enumerated within Sections 3300-3311 of the Government Code (the Public Safety Officers Procedural Bill of Rights Act).
- 50 - Employees may be photographed for purposes of a complaint investigation. This is to include photographing for purposes of formation/presentation of a photo line-up by Internal Affairs investigators.
- (a) Employees shall not be required to stand in "physical" line-up proceedings for the purpose of complaint investigations.
- 51 - Subject employees shall not be required to submit financial disclosure statements or other items of personal property records in connection with complaint investigations.

POLYGRAPH EXAMINATIONS

- 52- Employees, sworn and civilian, shall not be required to submit to a polygraph examination or to similar tests which test for deception.
- (a) This shall not preclude the Internal Affairs Bureau from administering such tests at the request of a "subject" employee, following approval by the Chief of Police.

CHEMICAL SUBSTANCE EXAMINATION

- 53 - During the administrative investigation of an incident covered by this Order, the Department shall adhere to the existing City of Berkeley and department policy regarding chemical substance testing.

EMPLOYEES - RELIEF FROM DUTY

- 54 - An employee may be temporarily relieved from duty, with pay and benefits intact, due to demonstrated or suspected physical or psychological inability to perform his/her duties, allegations of misconduct made in a complaint against the

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employee, or in any other situation where such action is deemed immediately necessary by the Chief of Police.

- (a) An employee may only be relieved from duty by the Chief of Police, the Acting Chief of Police, or a Command Officer acting pursuant to the authority of the Chief of Police.
 - (1) A supervisor may relieve an employee from duty with the approval of the Chief of Police or a command officer acting in accordance with paragraph 54(a) of this Order.
- (b) In the absence of emergency or immediate necessity, an employee may only be relieved from duty and placed on administrative leave upon the approval of the City Manager.
 - (1) If circumstances require an employee's immediate relief from duty, the City Manager shall be notified as soon as practical.

55- An employee relieved from duty shall refrain from engaging in work-related activity, exercising authority associated with his/her office, and, upon demand, surrender any requested Department equipment (i.e., badge, identification, firearm, etc.).

56 - Unless otherwise directed, the employee shall report to his/her Division Commander every duty day for instructions and other information until the employee returns to active duty status.

- (a) Unless otherwise directed or authorized, the employee should remain at home during his/her assigned duty hours while on administrative leave.

RETENTION OF RECORDS

55 - When a complaint has been reviewed and disposition made, the completed complaint investigation file or a legible copy thereof shall be reviewed and initialed by the **subject** employee and other employees listed on the face sheet of the complaint package. The original (initialed) copy of the completed complaint package will then be placed in the employee's personnel complaint file located in the Internal Affairs Bureau office.

- (a) Records so maintained shall include all letters, documents or statements provided by complainants, **subject employees** and witnesses, all investigative reports, a face sheet summarizing the complaint, disposition of the complaint and related information and the endorsement by the employee acknowledging the material being entered into his/her complaint file.
- (b) The Internal Affairs Bureau will maintain a separate numbered file

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containing complete copies of all external and internal complaints received and processed. In this file the reports/investigations will be filed sequentially by the Internal Affairs Bureau control number.

- (c) Both files shall be maintained in the offices of the Internal Affairs Bureau.
- 56 - Access to the employee's personnel complaint file is limited to the employee, the Chief of Police, authorized administrative staff, the employee's Division Commander, the City Attorney, Internal Affairs Bureau personnel, the Human Resources Director and the City Manager and others as required by law.
- 57 - When an employee terminates employment with the Department, his/her personnel complaint records shall be retained in accordance with the records management timetable set by the Department.
- (a) If an investigation of officer conduct results in a suspension or dismissal, the officer shall receive a statement citing the reason for suspension or dismissal and the effective date(s) as provided for by *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.
- (1) If the misconduct results in dismissal, the employee is referred to the following agencies for information concerning the status of fringe and retirement benefits:
- | | |
|---|-----------------|
| Public Employees' Retirement System: | City Auditor |
| Medical and Dental Benefits (COBRA): | Human Resources |
| Supplemental Retirement Income Program: | Finance |
- (b) The City of Berkeley Employee Transaction Form will be completed by designated administrative staff and will describe the specific reason for the suspension or termination. A copy of this form is provided to the employee.

POLICY COMPLAINTS

- 58 - Either the Internal Affairs Bureau or a designated command officer, as directed by the Chief of Police, will investigate policy complaints, generally received as a result of external complaints, Police Review Commission complaints, findings made by the Police Department's Board of Review (e.g., when an officer followed an existing policy in need of revision), or special Review Boards (see General Order R-3).

MONTHLY AND ANNUAL REPORTS

- 59 - The Internal Affairs Bureau Sergeants are responsible to insure that the Monthly Management Report and Annual Report, as described in General Order M-3, are completed. These reports provide statistical summaries which include the type

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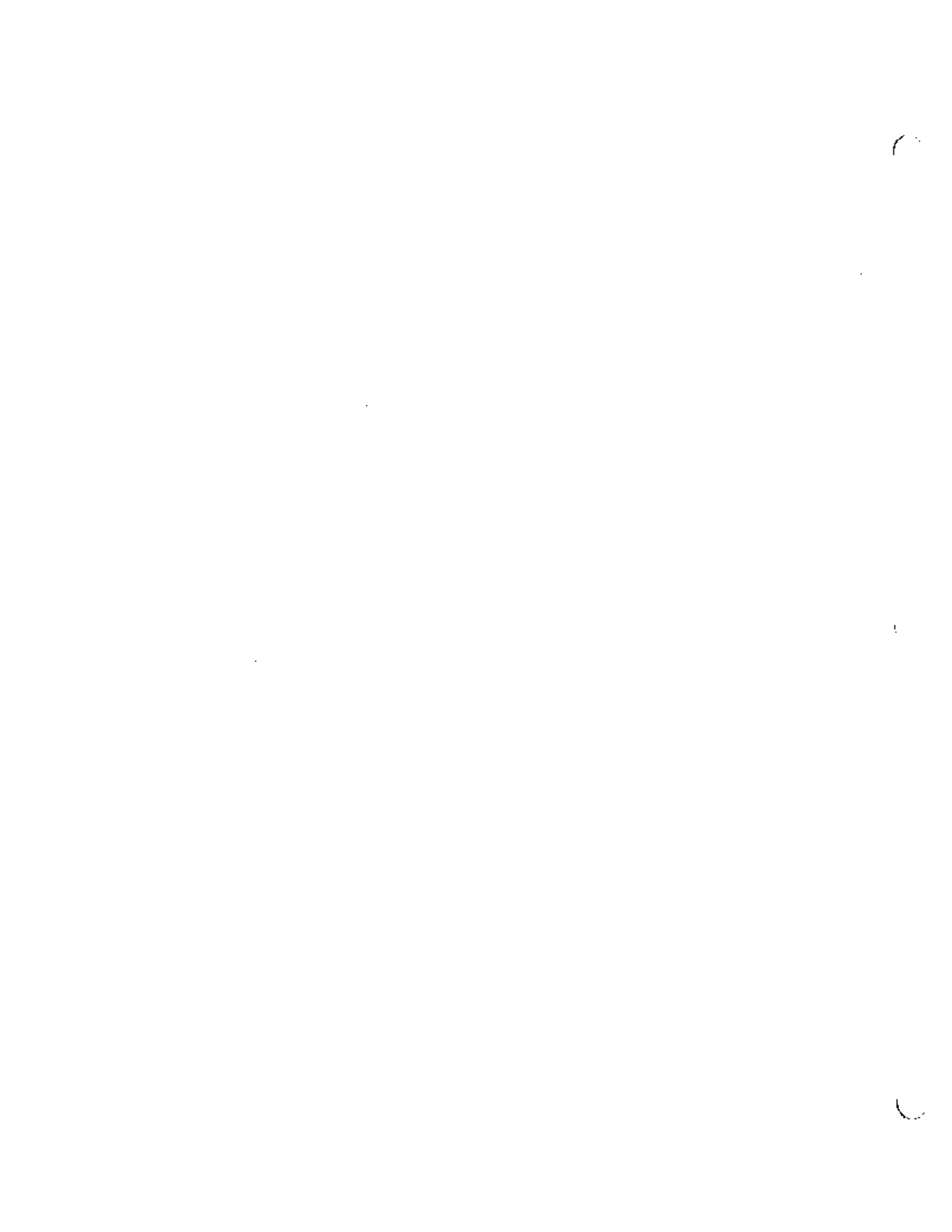
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of complaints received on a monthly basis, as well as the total number of complaints received during the calendar year. The reports also compare statistics from previous years.

TRAINING NEEDS

- 60 - The Internal Affairs Bureau Sergeants are responsible for identifying areas of disciplinary concern where remedial/refresher training may be beneficial to one or more employees. After discussing the perceived training need with the Chief of Police and gaining his/her concurrence, IAB will work with the Personnel and Training Sergeant to devise an appropriate training course to address the problem(s).

References: Penal Code §832.7(a)
Government Code §§3300 - 3311, "Public Safety Officers Procedural Bill of Rights of Act"
Skelly v. State Personnel Board (1975) 15 Cal.3d 194
General Orders A-1, C-2, E-3, J-1, M-3, P-12, R-3, R-24 and Appendix 2
Police Regulations 200, 201, 202, 213, 214, 215, 232, 234, 235, 248, 250, 265, 266, 267, 273, 400 and 401
Administrative Regulation 2.12, "Employment of Near Relatives Policy (9/9/2005)"
Memorandum re "Subject Officer Testimony" from City



Media Relations

324.1 PURPOSE AND SCOPE

This policy provides guidelines for media releases and media access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities.

As used in this policy, "Media" shall mean entities, their employees and official agents, whose primary service and professional purpose is the communication of news and information to the general public via print, radio, television or digital/electronic means.

324.2 POLICY

It is the policy of this department to provide accurate and timely information about crime, public safety and departmental activities to the news media and public.

324.3 CATEGORIES

Categories of information that may be released to the media are:

- (a) Routine: These are reports of incidents of human interest which would not affect normal police operations, and information about available police services.
- (b) Major: These are reports of incidents that impact normal police operations and create a large volume of media interest, information about which is disseminated via the department's PIO, in conjunction with involved investigators.
- (c) Policy News Release: These are reports about the internal operations of the Police Department, which originate from the Office of the Chief.
- (d) Publicity Releases: These are reports about incidents and programs designed to arouse public interest, understanding, or involvement, dissemination of which are coordinated by the PIO upon the approval of the Chief of Police.
- (e) Newsworthy Events: These are reports of major crimes, arrests, disasters, unusual occurrences, or traffic accidents which would be of interest to the media, including, but not limited to:
 - 1. Any information necessary to obtain public assistance in the investigation of a crime or apprehension of a criminal suspect.
 - 2. Any information warning the public of danger, or of the nature and frequency of crime in the community.

324.2324.4 RESPONSIBILITIES

The ultimate authority and responsibility for the release of information to the media shall remain with the Chief of Police, however, in situations not warranting immediate notice to the Chief of Police and in situations where the Chief of Police has given prior approval, Division

Captain commanders, Watch Commanders and designated Public Information Officer(s) may prepare and release information to the media in accordance with this policy and the applicable law.

- (a) The release of police reports, official department documents, and information contained therein shall comply with the Records Maintenance and Release Policy.
- (b) During non-business hours, the on-duty Watch Commander, or in his/her absence the senior on-duty Patrol Sergeant, shall be responsible for media relations and related notifications.
- (c) Unless dissemination is authorized by policy and appropriate given the circumstances of the inquiry, media requests for information concerning any incident under investigation shall be referred to the PIO.
- (d) When an employee of this Department provides information to the media, that employee shall, as soon as practical, inform the PIO of the scope of media's inquiry and of the information provided.

324.5 PUBLIC INFORMATION OFFICER (PIO)

The PIO shall be a department employee appointed by the Chief of Police to serve as the primary liaison with representatives of the media.

324.5.1 PIO NOTIFICATIONS

The PIO shall be notified as soon as practical of the following offenses/situations:

- (a) Arson (e.g., major events, series, offense with injuries).
- (b) Bombing and explosions.
- (c) Escapes.
- (d) Kidnapping.
- (e) Homicide.
- (f) Deployment of the Special Response Team (SRT).
- (g) In all other offenses/situations, when the Watch Commander determines circumstances warrant PIO notification.

Upon notification, the PIO shall determine the proper actions to be taken in accordance with department policy to ensure that good media relationships are maintained.

323.5.2 PIO RESPONSIBILITIES

The PIO is responsible for providing relevant, timely, and accurate information to the media at disasters, major crime scenes, catastrophes, special events, and unusual occurrences.

During normal business hours when the PIO is absent, or on-duty but unavailable, the PIO's supervisor shall either serve as Acting PIO or designate a trained subordinate to temporarily serve

in that capacity.

The PIO shall coordinate the preparation and release of factual information regarding all major Departmental incidents, major crimes, or other newsworthy events.

Whenever necessary or appropriate, the PIO may be called to an incident scene by the Watch Commander to perform in-field media liaison duties.

In the event of a major disturbance, disaster, or state of emergency, a second PIO may be designated to assist the primary PIO with media relations and public dissemination of information.

In the event the National Incident Management System (NIMS) is employed, the PIO will report to the Incident Commander (Command Section) and perform media liaison activities in support of the PIO Branch.

If a Joint Information Center (JIC) is activated, the department PIO, or his/her designee, will report to that location to coordinate information management with other involved agency PIOs.

324.2.1 MEDIA REQUESTS

Any media request for information or access to a law enforcement situation shall be referred to the designated department media representative, or if unavailable, to the first available Watch Commandersupervisor. Prior to releasing any information to the media, employees shall consider the following:

- (a) At no time shall any employee of this department make any comment or release any official information to the media without prior approval from a supervisor or the designated department media representative.
- (b) In situations involving multiple law enforcement agencies, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this department.
- (c) Under no circumstance should any member of this department make any comments to the media regarding any law enforcement incident not involving this department without prior approval of the Chief of Police.

(e)(d) When the PIO receives a media request for information, he/she shall:

- Obtain and review a copy of the police report(s).
- Review the facts of the case with the investigating officer or Detail prior to release of information concerning an ongoing criminal investigation.
- Unless precluded by law, policy or direction of a command rank officer, employees shall provide information requested by the PIO without delay.
- Provide the requesting media representative relevant information permitted by law and department policy.
- When known or advised, the PIO should regularly report contacts with

representatives of the media to his/her chain of command.

- The PIO will be responsible for notification of the City Manager's Office regarding non-routine contacts with media representatives as required by COB AR 1.14.

324.2.2 Media Conferences:

Media conferences shall only be called by the City Manager, Assistant City Manager, Chief of Police or individuals serving in those capacities, see COB AR 1.14.

- (a) The department's PIO will act as a liaison between the media and the department in arranging for, or coordinating media conferences.

324.3 MEDIA ACCESS

Authorized members of the media shall be provided access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities subject to the following conditions (Penal Code § 409.5(d)):

- (a) The media representative shall produce valid press credentials that shall be prominently displayed at all times while in areas otherwise closed to the public.

1. While the Berkeley Police Department does not issue "Press Passes", official press documents issued by other law enforcement agencies shall be honored.

- 4.2. Reporters or photographers who are not affiliated with or employed by established media entities (i.e., "Freelance") will not be considered authorized media representatives for the purpose of this policy.

- (b) Media representatives may be prevented from interfering with emergency operations and criminal investigations.

1. Reasonable effort should be made to provide a safe staging area for the media that is near the incident and that will not interfere with emergency or criminal investigation operations.

- Employees allowing the entry of an authorized media representative shall advise that person of any known danger existing within the restricted area.

- Employees should not provide general escort services to media representatives into, through, or out of dangerous areas.

- Employees shall not refuse to rescue media personnel who are in danger, providing such assistance can be provided with reasonable effort and without unnecessary hazard to rescuers.

All information released to the media should be coordinated through the department Public Information Officer or other designated spokesperson.

- 4.2. Employees shall not take action which would prohibit media aircraft from flying over disaster scenes. Whenever the presence of media or other aircraft pose a threat to public or officer safety or significantly hampers incident operations, the field

supervisor should consider requesting a Temporary Flight Restriction (TFR). All requests for a TFR should be routed through the Watch Commander. The TFR request should include specific information regarding the perimeter and altitude necessary for the incident and should be requested through the appropriate control tower. If the control tower is not known, the Federal Aviation Administration should be contacted (14 CFR 91.137).

(c) Employees shall, upon request of a private property owner or agent thereof, prohibit media access to private property wherein a crime scene is located.

1. Regarding access to crime scenes located on private property, media representatives have no right of access greater than the general public and, therefore, are subject to any access restrictions established by the owner or person in charge of the property

(e)(d) No member of this department who is under investigation shall be subjected to media visits or interviews without the consent of the involved employee (Government Code § 3303(e)).

(e) Media interviews with individuals who are in custody should not be permitted without the approval of the Chief of Police and the express consent of the person in custody. Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being photographed or televised.

(d)(f) Unless unavoidable, department employees shall not appear in authorized and facilitated photographs or filming of prisoners.

A tactical operation should be handled in the same manner as a crime scene, except the news media shall be permitted within the outer perimeter of the scene, subject to any restrictions as determined by the supervisor in charge. Department members shall not jeopardize a tactical operation in order to accommodate the news media. All comments to the media shall be coordinated through the Watch Commandera-supervisor or the Public Information Officer.

324.3.1 PROVIDING ADVANCE INFORMATION

To protect the safety and rights of officers and other persons, advance information about planned actions by law enforcement personnel, such as movement of persons in custody or the execution of an arrest or search warrant, should not be disclosed to the news media, nor should media representatives be invited to be present at such actions except with the prior approval of the Chief of Police.

Any exceptions to the above should only be considered for the furtherance of legitimate law enforcement purposes. Prior to approving any exception the Chief of Police will consider, at minimum, whether the release of information or presence of the media would unreasonably endanger any individual, prejudice the rights of any person or is otherwise prohibited by law.

324.4 SCOPE OF INFORMATION SUBJECT TO RELEASE

The Department will maintain a daily information log of significant law enforcement activities that shall be made available, upon request, to media representatives through the Watch Commander.

This log will generally contain the following information:

- (a) The date, time, location, case number, type of crime, extent of injury or loss, and names of individuals (except confidential informants) involved in crimes occurring within this jurisdiction unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation
- (b) The date, time, location, case number, name, birth date and charges for each person arrested by this department unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation
- (c) The time and location of other significant law enforcement activities or requests for service with a brief summary of the incident subject to the restrictions of this policy and applicable law
- (e)(d) Employees representing this department shall refrain from offering any opinion as to an arrestee's guilt or innocence, the merits of a particular case, or the existence, nature or value of evidence unless expressly authorized by the Chief of Police to issue such official comment.

At no time shall identifying information pertaining to a juvenile arrestee (13 years of age and under), victim or witness be publicly released without prior approval of a competent court. The identity of a minor 14 years of age or older shall not be publicly disclosed unless the minor has been arrested for a serious felony and the release of such information has been approved by the Watch Commander (Welfare and Institutions Code § 827.5).

Identifying information concerning deceased individuals shall not be released to the media until notification of next of kin or otherwise cleared through the Coroner's Office.

Any requests for copies of related reports or additional information not contained in this log shall be referred to the designated department media representative, the custodian of records, or if unavailable, to the Watch Commander. Such requests will generally be processed in accordance with the provisions of the Public Records Act (Government Code § 6250, et seq.).

324.6 MEDIA RELEASES

"Media Releases" or other official media-directed documents shall be disseminated by the PIO, Patrol Division Watch Commander, or the Office of the Chief of Police in accordance with department information release policy.

(a) A press release of high media and public interest should be forwarded by the PIO to the City Manager's Office, when feasible, for review prior to public dissemination.

(b) Publications intended for the media which require significant Department time and effort (e.g., in-depth articles, feature stories, etc.) should be prepared by the PIO.

Documents intended for distribution to media representatives may be left at the Front Counter of the Public Safety Building.

Employees are encouraged to collaborate with the PIO to develop media releases regarding

outstanding service performed by members of this department, significant events, community participation, and proactive projects that enhance the quality of life in Berkeley.

324.7 COMMUNICATIONS CENTER RESPONSIBILITIES

When the Communications Center receives a media inquiry for routine matters including, but not limited to, traffic conditions in Berkeley, Communications Center personnel shall furnish the information requested.

Specific or general media requests for information on newsworthy cases, (e.g., rape, major burglaries or robberies, felony assaults/batteries, cases involving death, etc.) received by the Communication Center shall be referred to the PIO (normal business hours) or Watch Commander (non-business hours.)

324.3324.8 324.4.1 RESTRICTED INFORMATION

It shall be the responsibility of the authorized employee dealing with media requests to ensure that restricted information is not inappropriately released to the media by this department. When in doubt, authorized and available legal counsel should be obtained.

324.9 Involved Party's Request for "No Release"

"No Release" shall be requested sparingly, and only when it is necessary for the successful investigation or prosecution of a case or the security of principals, witnesses, or the premises involved, when disclosure of event information would subject the victim to serious embarrassment of mental distress, or when required by law (e.g., PC §293).

- (a) Any officer requesting "No Release" shall include at the end of his/her report full justification for the request.
- (b) In the event a request for "No Release" is, or appears to be, for purely personal reasons, the requesting person should be advised police cases are matters of public record and, as such, are subject to media review.
 - (1) In certain situations, the officer may include at the top of his/her report, "Request No Release."

324.10 CONDUCT OF MEDIA REPRESENTATIVES

An employee having a complaint regarding the conduct of any media representative should submit the complaint in writing to the Community Service Bureau Lieutenant.

- (a) The CSB Lieutenant shall investigate the allegation and, if appropriate, forward the results and action recommendation to the Chief of Police via the chain of command.
- (b) Any official action that may affect the involved media representative, including, but not limited to, communication of the complaint to the person's media organization, shall be taken only at the direction of the Chief of Police.

324.11 Suggested Changes to Media Relations Policy

Any suggestion for significant change in department policy and/or procedure concerning media relations received from a media representative shall be forwarded in writing to the Chief of Police via the recipient employee's chain of command.

(a) The Chief of Police shall be responsible for evaluating the suggested change and, if appropriate, directing its implementation.

(a)(b) The PIO shall be responsible for advising the involved media representative of any changes and/or actions taken by the Department in response to their suggestion.

DRAFT

Media Relations

324.1 PURPOSE AND SCOPE

This policy provides guidelines for media releases and media access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities.

324.2 RESPONSIBILITIES

The ultimate authority and responsibility for the release of information to the media shall remain with the Chief of Police, however, in situations not warranting immediate notice to the Chief of Police and in situations where the Chief of Police has given prior approval, Division Commanders, Watch Commanders and designated Public Information Officer(s) may prepare and release information to the media in accordance with this policy and the applicable law.

324.2.1 MEDIA REQUEST

Any media request for information or access to a law enforcement situation shall be referred to the designated department media representative, or if unavailable, to the first available Watch Commanders supervisor. Prior to releasing any information to the media, employees shall consider the following:

- (a) At no time shall any employee of this department make any comment or release any official information to the media without prior approval from a supervisor or the designated department media representative.
- (b) In situations involving multiple law enforcement agencies, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this department.
- (c) Under no circumstance should any member of this department make any comments to the media regarding any law enforcement incident not involving this department without prior approval of the Chief of Police.

324.3 MEDIA ACCESS

Authorized members of the media shall be provided access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities subject to the following conditions (Penal Code § 409.5(d)):

- (a) The media representative shall produce valid press credentials that shall be prominently displayed at all times while in areas otherwise closed to the public.
- (b) Media representatives may be prevented from interfering with emergency operations and criminal investigations.
 1. Reasonable effort should be made to provide a safe staging area for the media that

is near the incident and that will not interfere with emergency or criminal investigation operations. All information released to the media should be coordinated through the department Public Information Officer or other designated spokesperson.

2. Whenever the presence of media or other aircraft pose a threat to public or officer safety or significantly hampers incident operations, the field supervisor should consider requesting a Temporary Flight Restriction (TFR). All requests for a TFR should be routed through the Watch Commander. The TFR request should include specific information regarding the perimeter and altitude necessary for the incident and should be requested through the appropriate control tower. If the control tower is not known, the Federal Aviation Administration should be contacted (14 CFR 91.137).
- (c) No member of this department who is under investigation shall be subjected to media visits or interviews without the consent of the involved employee (Government Code § 3303(e)).
 - (d) Media interviews with individuals who are in custody should not be permitted without the approval of the Chief of Police and the express consent of the person in custody.

A tactical operation should be handled in the same manner as a crime scene, except the news media shall be permitted within the outer perimeter of the scene, subject to any restrictions as determined by the supervisor in charge. Department members shall not jeopardize a tactical operation in order to accommodate the news media. All comments to the media shall be coordinated through the Watch Commander ~~supervisor~~ or the Public Information Officer.

324.3.1 PROVIDING ADVANCE INFORMATION

To protect the safety and rights of officers and other persons, advance information about planned actions by law enforcement personnel, such as movement of persons in custody or the execution of an arrest or search warrant, should not be disclosed to the news media, nor should media representatives be invited to be present at such actions except with the prior approval of the Chief of Police.

Any exceptions to the above should only be considered for the furtherance of legitimate law enforcement purposes. Prior to approving any exception the Chief of Police will consider, at minimum, whether the release of information or presence of the media would unreasonably endanger any individual, prejudice the rights of any person or is otherwise prohibited by law.

324.4 SCOPE OF INFORMATION SUBJECT TO RELEASE

The Department will maintain a daily information log of significant law enforcement activities that shall be made available, upon request, to media representatives through the Watch Commander. This log will generally contain the following information:

- (a) The date, time, location, case number, type of crime, extent of injury or loss, and names of individuals (except confidential informants) involved in crimes occurring within this jurisdiction unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation

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- (b) The date, time, location, case number, name, birth date and charges for each person arrested by this department unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation
 - (c) The time and location of other significant law enforcement activities or requests for service with a brief summary of the incident subject to the restrictions of this policy and applicable law

At no time shall identifying information pertaining to a juvenile arrestee (13 years of age and under), victim or witness be publicly released without prior approval of a competent court. The identity of a minor 14 years of age or older shall not be publicly disclosed unless the minor has been arrested for a serious felony and the release of such information has been approved by the Watch Commander (Welfare and Institutions Code § 827.5).

Identifying information concerning deceased individuals shall not be released to the media until notification of next of kin or otherwise cleared through the Coroner's Office.

Any requests for copies of related reports or additional information not contained in this log shall be referred to the designated department media representative, the custodian of records, or if unavailable, to the Watch Commander. Such requests will generally be processed in accordance with the provisions of the Public Records Act (Government Code § 6250, et seq.).

324.4.1 RESTRICTED INFORMATION

It shall be the responsibility of the authorized employee dealing with media requests to ensure that restricted information is not inappropriately released to the media by this department. When in doubt, authorized and available legal counsel should be obtained.



BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 17, 2009

GENERAL ORDER P-29

SUBJECT: PUBLIC / MEDIA RELATIONS

PURPOSE

- 1 - The purpose of this General Order is to establish policies and procedures regarding contacts and relations with media organizations and their representatives, and responsibilities for the release of information by the Public Information Officer (PIO) and other authorized department representatives.

POLICY

- 2 - It is the policy of this department to provide accurate and timely information about crime, public safety and departmental activities to the news media and public.
 - (a) Within the confines of practicality and in accordance with law, it is the Department's intention to keep the community informed of and engaged in public safety issues relevant to their lives.
 - (b) In accordance with information release policy set forth in General Order R-23, consideration shall be given to the confidentiality, integrity and security of investigations (e.g., reference to/discussion of suspect statements), compliance with applicable law, and the privacy rights of victims, witnesses and suspects prior to release of any information.
- 3 - As used in this Order, "Media" shall mean entities, their employees and official agents, whose primary service and professional purpose is the communication of news and information to the general public via print, radio, television or digital/electronic means.

PROCEDURES

Categories of Information

- 4 - Categories of information that may be released to the media are:
 - (a) Routine: These are reports of incidents of human interest which would not affect normal police operations, and information about available police services.
 - (b) Major: These are reports of incidents that impact normal police operations and create a large volume of media interest, information about which is disseminated via the department's PIO, in conjunction with involved investigators.
 - (c) Policy News Release: These are reports about the internal operations of the Police Department, which originate from the Office of the Chief.

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- (d) Publicity Releases: These are reports about incidents and programs designed to arouse public interest, understanding, or involvement, dissemination of which are coordinated by the PIO upon the approval of the Chief of Police.
- (e) Newsworthy Events: These are reports of major crimes, arrests, disasters, unusual occurrences, or traffic accidents which would be of interest to the media, including, but not limited to:
 - (1) Any information necessary to obtain public assistance in the investigation of a crime or apprehension of a criminal suspect.
 - (2) Any information warning the public of danger, or of the nature and frequency of crime in the community.

General

- 4 - Cooperation: As authorized by Police Regulation 226, and within the parameters of relevant General Orders, employees shall cooperate with members of the media.
 - (a) A media inquiry that cannot be answered or is inappropriate for response by an employee shall be referred to the PIO or a superior officer.
- 5 - Information Release: Employees shall follow policy set forth in General Order R-23 regarding release of police reports, official department documents, and information contained therein.
- 6 - Opinion: Employees representing this department shall refrain from offering any opinion as to an arrestee's guilt or innocence, the merits of a particular case, or the existence, nature or value of evidence unless expressly authorized by the Chief of Police to issue such official comment.
- 7 - Persons In-Custody, Intentional Exposure to Media: Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being photographed or televised.
- 8 - Persons In-Custody, Media Interviews: Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being interviewed by such representatives, except if all of the following conditions exist:
 - (a) The prisoner requests or consents to an interview after being informed adequately of the right to consult with counsel and of the right to refuse to grant an interview.
 - (1) A prisoner's consent to a media interview shall be obtained in writing.

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- (b) If the prisoner has legal counsel, the attorney affirms his/her client's request or consent to a media interview, and authorizes said activity.
 - (1) Whenever practical, the attorney's affirmation and authorization should be obtained in writing.
 - (2) When represented by legal counsel, any request by the media to interview or photograph a person in-custody shall be referred to the prisoner's attorney.
 - (c) Unless unavoidable, department employees shall not appear in authorized and facilitated photographs or filming of prisoners.
- 9 - **Media Conferences:** Media conferences shall only be called by the City Manager, Assistant City Manager, Chief of Police or individuals serving in those capacities (ref. City of Berkeley Administrative Regulation (AR) 1.14.)
- (a) The department's PIO will act as a liaison between the media and the department in arranging for, or coordinating media conferences.
- 10 - During non-business hours, the on-duty Patrol Division Watch Commander, or in his/her absence the senior on-duty Patrol Division supervisor, shall be responsible for media relations and related notifications.
- 11 - Unless dissemination is authorized by policy and appropriate given the circumstances of the inquiry, media requests for information concerning any incident under investigation shall be referred to the PIO.
- (a) When an employee of this Department provides information to the media, that employee shall, as soon as practical, inform the PIO of the scope of media's inquiry and of the information provided.
- 12 - When the Communications Center receives a media inquiry for routine matters including, but not limited to, traffic conditions in Berkeley, Communications Center personnel shall furnish the information requested.
- (a) Specific or general media requests for information on newsworthy cases, (e.g., rape, major burglaries or robberies, felony assaults/batteries, cases involving death, etc.) received by the Communication Center shall be referred to the PIO (normal business hours) or Patrol Division Watch Commander (non-business hours.)
- 13 - Media inquiries regarding department policy, personnel, or administrative investigations should be handled in accordance with General Order R-23 and, as appropriate, forwarded to the Office of the Chief of Police.

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- 14 - "Media Releases" or other official media-directed documents shall be disseminated by the PIO, Patrol Division Watch Commander, or the Office of the Chief of Police in accordance with department information release policy.
 - (a) A press release of high media and public interest should be forwarded by the PIO to the City Manager's Office, when feasible, for review prior to public dissemination.
 - (b) Publications intended for the media which require significant Department time and effort (e.g., in-depth articles, feature stories, etc.) should be prepared by the PIO.
- 15 - Documents intended for distribution to media representatives may be left at the Front Counter of the Public Safety Building.
- 16 - Employees are encouraged to collaborate with the PIO to develop media releases regarding outstanding service performed by members of this department, significant events, community participation, and proactive projects that enhance the quality of life in Berkeley.
- 17 - A request for information received from a private person concerning police operations, procedures, authority, or concerning interpretation of the law shall be referred to the on-duty Patrol Division Watch Commander, or, if necessary, the Office of the Chief of Police.

Public Information Officer

- 18 - The PIO shall be a department employee appointed by the Chief of Police to serve as the primary liaison with representatives of the media.
 - (a) The PIO is responsible for providing relevant, timely, and accurate information to the media at disasters, major crime scenes, catastrophes, special events, and unusual occurrences.
- 19 - During normal business hours when the PIO is absent, or on-duty but unavailable, the PIO's supervisor shall either serve as Acting PIO or designate a trained subordinate to temporarily serve in that capacity.
- 20 - The PIO shall coordinate the preparation and release of factual information regarding all major Departmental incidents, major crimes, or other newsworthy events.
- 21 - The PIO shall be notified as soon as practical of the following offenses/situations:
 - (a) Arson (e.g., major events, series, offense with injuries).
 - (b) Bombing and explosions.

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- (c) Escapes.
 - (d) Kidnapping.
 - (e) Homicide.
 - (f) Deployment of the Barricaded Subject Hostage Negotiation Team.
 - (g) In all other offenses/situations, when a Patrol Division command officer determines circumstances warrant PIO notification.
- 22 - Subsequent to notification of an event described in paragraph 21 of this Order, the PIO shall determine the proper actions to be taken in accordance with department policy to insure that good media relationships are maintained.
- 23 - When the PIO receives a media request for information, he/she shall:
- (a) Obtain and review a copy of the police report(s).
 - (b) Review the facts of the case with the investigating officer or Detail prior to release of information concerning an ongoing criminal investigation.
 - (1) Unless precluded by law, policy or direction of a command rank officer, employees shall provide information requested by the PIO without delay.
 - (c) Provide the requesting media representative relevant information permitted by law and department policy.
- 24 - When known or advised, the PIO should regularly report contacts with representatives of the media to his/her chain of command.
- (a) The PIO will be responsible for notification of the City Manager's Office regarding non-routine contacts with media representatives as required by AR 1.14.

Involved Party's Request for "No Release"

- 25 - "No Release" shall be requested sparingly, and only when it is necessary for the successful investigation or prosecution of a case or the security of principals, witnesses, or the premises involved, when disclosure of event information would subject the victim to serious embarrassment or mental distress, or when required by law (e.g., PC §293).
- (a) Any officer requesting "No Release" shall include at the end of his/her report full justification for the request.

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- (b) In the event a request for "No Release" is, or appears to be, for purely personal reasons, and does not fall within the provisions of paragraph 25, the requesting person should be advised police cases are matters of public record and, as such, are subject to media review.
 - (1) In situations noted in paragraph 25(b), the officer may include at the top of his/her report, "Request No Release."

In-Field Media Management

- 26 - Whenever the media is present at a police scene, a Patrol Division Watch Commander, supervisor, or a designated liaison officer may release appropriate factual information about an incident and/or police activity in accordance with the information release policies described in this Order and General Order R-23.
 - (a) Whenever necessary or appropriate, the PIO may be called to an incident scene by the Patrol Division Watch Commander to perform in-field media liaison duties.
- 27 - In the event of a major disturbance, disaster, or state of emergency, a second PIO may be designated to assist the primary PIO with media relations and public dissemination of information.
- 28 - In the event the National Incident Management System (NIMS) is employed, the PIO will report to the Incident Commander (Command Section) and perform media liaison activities in support of the PIO Branch.
 - (a) If a Joint Information Center (JIC) is activated, the department PIO, or his/her designee, will report to that location to coordinate information management with other involved agency PIOs.

Media Relations at Multi-Agency Incidents

- 29 - For incidents involving the mutual efforts of the Berkeley Police Department and any other department or agency, the ranking department employee present at the scene shall confer with the ranking personnel from all other involved agencies to determine which agency shall be responsible for the release of information to the media.
 - (a) Unless upon mutual agreement or when necessary, the agency having primary jurisdiction over an incident shall be responsible for the dissemination of information to the media.

Media Access to Disaster or Accident Scenes

- 30 - Employees involved in the management of a disaster, accident, or riotous civil disturbance shall not prohibit duly authorized media representatives from entering and remaining in any area closed to the public pursuant to Penal Code

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§409.5.

- (a) Authorized media representatives are those persons possessing valid press passes issued by any bona fide law enforcement agency, or other suitable identification establishing regular news media affiliation or employment.
 - (1) While the Berkeley Police Department does not issue "Press Passes", official press documents issued by other law enforcement agencies shall be honored.
 - (2) Reporters or photographers who are not affiliated with or employed by established media entities (i.e., "Freelance") will not be considered authorized media representatives for the purpose of this policy.
 - (b) Authorized media representatives shall be permitted free movement in police-controlled or otherwise publicly restricted areas as long as they do not hamper, deter, or interfere with law enforcement or public safety functions.
 - (c) Employees allowing the entry of an authorized media representative shall advise that person of any known danger existing within the restricted area.
 - (d) Employees should not provide general escort services to media representatives into, through, or out of dangerous areas.
 - (e) Employees shall not refuse to to rescue media personnel who are in danger, providing such assistance can be provided with reasonable effort and without unnecessary hazard to rescuers.
- 31 - Employees shall not take action which would prohibit media aircraft from flying over disaster scenes.
- (a) Notwithstanding the exemption afforded to media aircraft, law enforcement officers may employ Federal regulations to stop both commercial and civilian aircraft from flying over a disaster scene.
 - (1) To implement over-flight control at a disaster scene in Berkeley, the request shall be made to the Federal Aviation Administration (FAA) Office at Oakland Airport.

Media Access to Crime Scenes

- 32 - Employees involved in a criminal investigation may prohibit media access to a crime scene.

BERKELEY POLICE DEPARTMENT

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- (a) Media representatives shall be kept sufficiently distant from a crime scene to ensure officer safety and preservation of evidence.
 - (b) A crime scene located in an area of public access may be opened for media inspection after the area is secure and any search for, preservation, and processing of evidence has been completed.
- 33 - Employees shall, upon request of a private property owner or agent thereof, prohibit media access to private property wherein a crime scene is located.
- (a) Regarding access to crime scenes located on private property, media representatives have no right of access greater than the general public and, therefore, are subject to any access restrictions established by the owner or person in charge of the property.
- 34 - The immediate area (i.e., inner perimeter) of an in-progress critical incident, including, but not limited to, a hostage situation or barricaded subject, is deemed a "crime scene" and shall be subject to the media access restrictions set forth in this Order.
- (a) Authorized media representatives may be permitted access to areas within the outer perimeter of a critical incident, subject to any restrictions established by the Incident Commander.
- 35 - Department employees shall not jeopardize public or officer safety in order to accommodate media access or inquiry, but reasonable effort shall be made to keep the media informed of the progress of police activity.

Suggested Changes to Media Relations Policy

- 36 - Any suggestion for significant change in department policy and/or procedure concerning media relations received from a media representative shall be forwarded in writing to the Chief of Police via the recipient employee's chain of command.
- (a) The Chief of Police shall be responsible for evaluating the suggested change and, if appropriate, directing its implementation.
 - (b) The PIO shall be responsible for advising the involved media representative of any changes and/or actions taken by the Department in response to their suggestion.

CONDUCT OF MEDIA REPRESENTATIVES

- 37 - An employee having a complaint regarding the conduct of any media representative should submit the complaint in writing to the Community Service Bureau Lieutenant.

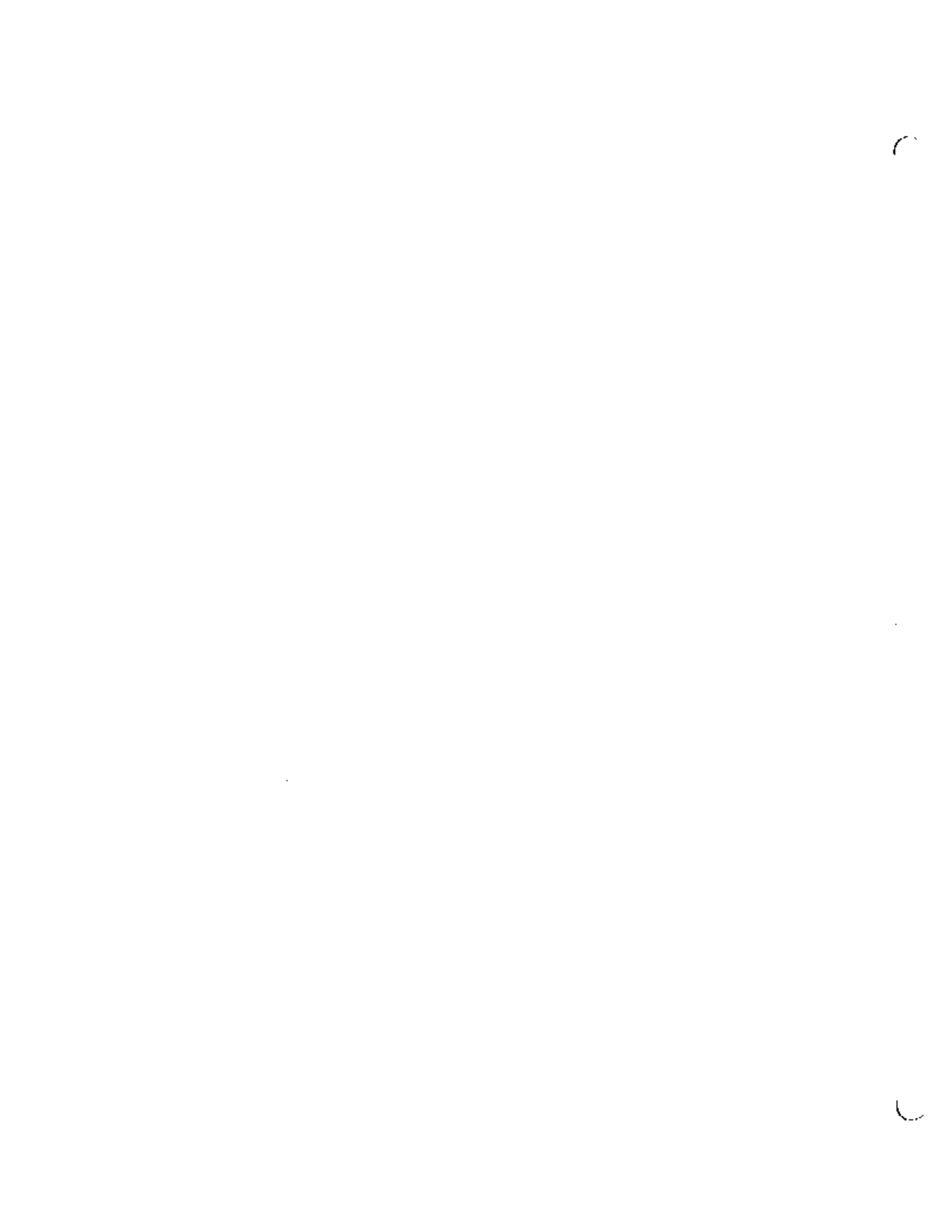
BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 17, 2009

GENERAL ORDER P-29

- 38 - The CSB Lieutenant shall investigate the allegation and, if appropriate, forward the results and action recommendation to the Chief of Police via the chain of command.
- 39 - Any official action that may effect the involved media representative, including, but not limited to, communication of the complaint to the person's media organization, shall be taken only at the direction of the Chief of Police.

References: *South Coast Newspapers, Inc. vs. City of Oceanside* (160 Cal.App.3d 261 (1984))
T.N.G. vs. Superior Court, (4 CA, 3rd 767)
14 CFR §91.137 (Federal Aviation Administration Regulations)
Penal Code §§409.5 and 832.7
City of Berkeley Administrative Regulation 1.14
General Order R-23
Police Regulation 226
"ABA Standards for Criminal Justice: Fair Trial and Free Press" (3rd Ed., 1992), a publication of the American Bar Association



Subpoenas and Court Appearances

325.1 PURPOSE AND SCOPE

This policy establishes the guidelines for department members who must appear in court. It will allow the Berkeley Police Department to cover any related work absences and keep the Department informed about relevant legal matters.

325.2 POLICY

Berkeley Police Department members will respond appropriately to all subpoenas and any other court-ordered appearances.

325.3 SUBPOENAS

Only department members authorized to receive a subpoena on behalf of this department or any of its members may do so. This may be accomplished by personal service to the officer or by delivery of two copies of the subpoena to the officer's supervisor or other authorized departmental agent (Government Code § 68097.1; Penal Code § 1328(c)).

The party that issues a civil subpoena to an officer to testify as a witness must tender the statutory fee of \$275 with the subpoena for each day that an appearance is required before service is accepted of the subpoena (Government Code § 68097.2).

An immediate supervisor or authorized individual may refuse to accept service for a criminal subpoena if (Penal Code § 1328(d)(e)):

- (a) He/she knows that he/she will be unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena.
- (b) It is less than five ~~working~~ days prior to the date listed for an appearance and he/she is not reasonably certain that service can be completed.

If, after initially accepting service of a criminal subpoena, a supervisor or other authorized individual determines that he/she is unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena, the supervisor or the subpoena clerk shall notify the server or the attorney named on the subpoena of such not less than 48 hours prior to the date listed for the appearance (Penal Code § 1328(f)).

325.6.1 SPECIAL NOTIFICATION REQUIREMENTS

Any member who is subpoenaed to testify, agrees to testify or provides information on behalf of or at the request of any party other than the City Attorney or the prosecutor shall notify his/her immediate supervisor without delay regarding:

- (a) Any civil case where the City or one of its members, as a result of his/her official capacity, is a party.
- (b) Any civil case where any other city, county, state or federal unit of government or a member of

any such unit of government, as a result of his/her official capacity, is a party.

- (c) Any criminal proceeding where the member is called to testify or provide information on behalf of the defense.
- (d) Any civil action stemming from the member's on-duty activity or because of his/her association with the Berkeley Police Department.
- (e) Any personnel or disciplinary matter when called to testify or to provide information by a government entity other than the Berkeley Police Department.

The supervisor will then notify the Chief of Police and the appropriate prosecuting attorney as may be indicated by the case. The Chief of Police should determine if additional legal support is necessary.

No member shall be retaliated against for testifying in any matter.

325.6.2 CIVIL SUBPOENA

The Department will compensate members who appear in their official capacities on civil matters arising out of their official duties, as directed by the current memorandum of understanding or collective bargaining agreement.

The Department should seek reimbursement for the member's compensation through the civil attorney of record who subpoenaed the member.

325.6.3 OFF-DUTY RELATED SUBPOENAS

Members receiving valid subpoenas for off-duty actions not related to their employment or appointment will not be compensated for their appearance. Arrangements for time off shall be coordinated through their immediate supervisors.

325.4 FAILURE TO APPEAR

Any member who fails to comply with the terms of any properly served subpoena or court-ordered appearance may be subject to discipline. This includes properly served orders to appear that were issued by a state administrative agency.

325.5 STANDBY

To facilitate standby agreements, members are required to provide and maintain current ~~information on their addresses and~~ contact telephone numbers towith the subpoenaing party.
Department

If a member on standby changes his/her location during the day, the member shall notify the subpoenaing party designated department member of how he/she can be reached. Members are required to remain on standby until released by the court or the party that issued the subpoena.

325.6 COURTROOM PROTOCOL

When appearing in court, members shall:

- (a) Be punctual and prepared to proceed immediately with the case for which they are scheduled to

appear.

(b) Dress in the department uniform or business attire.

(c) Observe all rules of the court in which they are appearing and remain alert to changes in the assigned courtroom where their matter is to be heard.

325.6.1 TESTIMONY

Before the date of testifying, the subpoenaed member shall obtain request a copy of relevant reports and become familiar with the content in order to be prepared for court.

Employees shall avoid any indication of bias, prejudice or anger, and shall testify in a clear, concise, and professional manner. Questions shall be answered truthfully, and without trace of evasion. Personal behavior shall be exemplary while waiting to testify and while testifying.

325.7 OVERTIME APPEARANCES

When a member appears in court on his/her off-duty time, he/she will be compensated in accordance with the current memorandum of understanding or collective bargaining agreement.

325.8 RESPONSIBILITIES

The Records Management Supervisor, or his/her designee, shall be responsible for maintaining effective administrative liaison among the Courts, the District Attorney's office and the Department on matters concerning police personnel who have been subpoenaed for appearances in criminal, civil or traffic court.

325.9 MASTER COURT APPEARANCE CALENDAR - CRIMINAL CASES

A Master Court Appearance Calendar will be maintained by the Records Management Supervisor, or his/her designee. The calendar will provide current information on the status of subpoenas and court dates. The calendar will contain information concerning the status of current court cases requiring officers' appearance (e.g., going, canceled or rescheduled).

(a) A telephone Court Appearance recording is available 7 days a week, 24 hours per day. The Telephone Court Appearance recording may be accessed by dialing 981-7991.:

325.10 CRIMINAL SUBPOENA RECEPTION AND SERVICE PROCEDURES

The Records Management Supervisor, or his/her designee, will receive and acknowledge receipt of all subpoenas for police personnel, either on the part of the people or of the defendant. Individual subpoenas will then be processed as follows:

(a) Subpoenas will be forwarded to the immediate supervisor of the subpoenaed employee.

(b) Supervisors will personally "serve" the employee and acknowledge service by signing the original subpoena.

(c) The subpoenaed employee will sign the subpoena, indicating receipt of the subpoena.

(d) Supervisors will return the original subpoena to the Record Management's "Served Subpoenas" tray and give a copy of the subpoena to the employee.

(e) If service of the subpoena is not possible, the reason for "no service" will be noted on the subpoena. The supervisor shall also fill out a "Subpoena Continuation Request" form on behalf of the subpoenaed employee and attach it to the subpoena. Both subpoena and form shall be returned to the Record Management's "Served Subpoenas" tray.

(b)(f) The Records Management Supervisor, or his/her designee, will return all subpoenas, served or unserved, to the issuing party.

325.11 EMPLOYEE RESPONSIBILITY AFTER RECEIPT OF CRIMINAL SUBPOENA

Upon receipt of a subpoena, the subpoenaed employee shall carefully review the case report to determine the need for his/her testimony. If the employee feels that he/she has been improperly subpoenaed, or that his/her testimony would be of little or no value, the officer should contact the subpoenaing party to discuss the matter.

If the subpoenaed employee will be unavailable to appear in court due to pre-approved leave of absence (i.e., vacation, training courses, parental leave), the "Subpoena Continuation Request" form shall be completed, attached to the subpoena and returned upon receipt. The form must be approved by the supervisor of the subpoenaed employee and then forwarded to the Records Management Supervisor, or his/her designee. The Records Management Supervisor, or his/her designee, shall forward the paperwork to the subpoenaing party and file a copy in the "Subpoena Master File".

~~The Records Management Supervisor~~
~~the Records Management Supervisor~~
EMPLOYEE RESPONSIB

Subpoenas are usually received by Records Management. Whenever an employee receives a subpoena directly from the District Attorney's Office or from any other source, including a personal notification to appear the employee shall inform Records Management as soon as possible.

(a) Employees should comply with any subpoena that directs them to contact the District Attorney's Office. However, if any change is made regarding date/time of appearance, cancellation or telephone stand-by status, the employee shall inform Records Management as soon as possible.

(b) Notification of Records Management in these situations is required so that the Records Management Supervisor, or his/her designee, can administer the subpoena process as outlined in this Policy.

Officers who appear for court, on an off duty day, whether they testify or not, should all have their subpoenas signed and dated by the issuing party, or their designee/his/her designee.

If the case is prolonged, and the officer is needed for more than one day, the officer should obtain a new subpoena from the subpoenaing party for each additional day of testimony. The subpoena shall be signed and dated by the issuing party.

325.12 CONFIRMATION OF CRIMINAL COURT APPEARANCE

The Records Management Supervisor, or his/her designee, shall confer with the assigned Deputy District Attorney during the afternoon hours of the business day prior to a scheduled court hearing

to determine if:

- (a) The case will proceed as scheduled;
- (b) The subpoenaed employee's testimony will actually be needed for that court session;
- (c) If additional witnesses, information, or evidence are needed.

In the event of a late cancellation or other change in an employee's scheduled court appearance, the Records Management Supervisor, or his/her designee, will arrange for the notification of the employee.

325.13 TRAFFIC SUBPOENAS RECEPTION AND SERVICE PROCEDURES

The Records Management Supervisor, or his/her designee, will record and acknowledge receipt of all traffic subpoenas. Traffic subpoenas include those requesting an actual appearance in court, Informal Discovery Request, and those requesting "Trial by Declaration".

- (a) Traffic subpoenas will be forwarded and served upon the subpoenaed employee in the same manner as a criminal subpoena. ~~as prescribed in section 5 of this Order.~~
- (b) The employee's supervisor shall take steps to ensure all traffic subpoenas, requests for "Trial by Declaration", "Informal Discovery Request" and requested documents are returned to the Records Management Supervisor, or his/her designee, by the date specified. There is no specified date on an Informal Discovery Request. Informal Discovery Requests shall be returned within 10 days of the request.
 1. If the supervisor determines that special circumstances justify a longer response time or is unable to serve the subpoena by the date specified, he/she shall fill out a subpoena continuation request, on behalf of the subpoenaed employee, and route it to the Records Management Supervisor, or his/her designee.
 2. If the subpoenaed employee will be unavailable to appear in court due to a pre-approved leave of absence (i.e., vacation, training courses, parental leave), the "Subpoena Continuation Request" form shall be completed and attached to the subpoena and returned upon receipt. The form must be approved by the supervisor of the subpoenaed employee and then forwarded to the Records Management Supervisor, or his/her designee.

If an officer becomes aware they cannot make a scheduled court appearance on the day of appearance, regardless of the reason, he/she must notify a supervisor and the issuing party.

325.14 TRAFFIC CITATION DISMISSALS

Only the Court can dismiss an issued citation. Employees who receive a traffic subpoena but determine there is a need to dismiss the original traffic citation because they are not able to recall sufficient information regarding the incident in order to testify in traffic court, or for any other reason, shall complete the following procedure:

- ~~(a) Acknowledge receipt of the subpoena on the form.~~

(b)(a) Complete a "Notice of Correction and Proof of Service" form.

(c)(b) Check the "Other" box for correction reason and write in, "Request the Court to consider dismissing in the interest of justice" or "Request the Court dismiss due to lack of officer recall" or any other reason.

(d)(c) Complete the dissemination process on the Notice of Correction and Proof of Service form:

1. Copy to the Court, placed in team review tray;
2. Copy to cited party~~Citizen~~, mailed; and
3. Copy for o~~O~~fficer

(d) Attach a photocopy of the form to the subpoena,

(e) Acknowledge receipt of the subpoena on the form.

(f) ~~and p~~Place the documents in the served subpoena tray, or return them to the supervisor.

325.15 SUBPOENAING OF RESIDENTS IN CRIMINAL CASES

Subpoenas for Berkeley residents from either the District Attorney' Office or an outside law enforcement agency, will be sent to Records Management for processing.

(a) The Records Management Supervisor, or his/her designee, shall stamp the subpoena, obtain a case number from Dispatch, and forward the subpoena to a Team 1 Sergeant (Mon-Thurs) or Team 5 Sergeant (Fri-Sun) for service.

(b) Upon completing service, the Proof of Service form shall be returned to Records Management's "Served Subpoenas" tray and the Records Management Supervisor, or his/her designee, will ensure the form is returned to the Court.

325.16 SUBPOENA DUCES TECUM

A subpoena duces tecum requires the production of records. Records must be produced by the production date. A subpoena duces tecum must be served 15 days before the production date.

A copy of the supporting affidavit must be attached to the subpoena duces tecum when the production of documents is requested.

An employee served with a subpoena duces tecum shall notify the Records Management Supervisor and give the subpoena to the Subpoena Clerk without delay. The latter shall ensure the necessary documents or objects are made available for the Court by the due date.

325.17 FOR CIVIL ACTIONS - OFFICER PRESENCE REQUIRED

The process for receiving a civil subpoena is the same as the process for a criminal subpoena.

Any officer served with a subpoena requiring appearance as a witness in any court or for the taking of a deposition in any civil action in connection with on-duty employment shall promptly deliver that subpoena to the Records Management Supervisor for processing. The supervisor will complete Part A of BPD Form J (Reimbursement for Appearance on Civil Subpoena) and make a copy for the master file in triplicate. The original will be given to the officer, the duplicate attached to the master file, and the triplicate forwarded to the Public Safety Business Office. On those occasions

when the civil subpoena is delivered directly to the Service Section Subpoena Clerk he/she will prepare a BPD Form J without delay and route as prescribed above.

Following the officer's appearance in response to the subpoena, he/she shall complete Form J, attach it to their subpoena and forward the documents to the timekeeper.

The Records Management Supervisor or designee, shall be responsible for maintaining adequate records of all required appearances of on-duty officers before a court or for the taking of a deposition in connection with any civil action or proceeding.

325.18 COMPENSATION FOR CIVIL ACTIONS - RECORDS PRODUCTION ONLY

When a civil subpoena duces tecum only requires production of the documents, the initial cost shall be \$15, additional costs may be accumulated. A fee of 10 cents per page for copying records and 20 cents per page for copying of documents from microfilm shall be charged.

325.19 CIVIL CASES INVOLVING THE CITY

Any employee subpoenaed to testify in a civil case involving the City of Berkeley shall confer with the City Attorney in advance of testifying.

325.20 CIVIL CASES NOT INVOLVING THE CITY

Government Code § 68097.1 provides for the service of civil subpoenas and summons not associated with the City but involving department personnel. The following procedures will be followed regarding the acceptance and delivery of those subpoenas involving department personnel:

- (a) Records Management staff or other personnel who are contacted by individuals attempting to serve such subpoena shall first contact the employee's immediate supervisor. The immediate supervisor shall ensure the subpoena/summons is personally served upon the named employee.
 - 1. If unable to contact the immediate supervisor, personnel shall then contact another supervisor affiliated with the employee's Division.
 - 2. In the event the above individuals are not available, such requests are to be directed to the Support Services Division Captain during regular business hours or, in his/her absence, the on duty Watch Commander or senior sergeant.
- (b) The individual accepting the subpoena shall forward the summons via the chain of command for the named employee.



BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 24, 2005

GENERAL ORDER: C-62

SUBJECT: SUBPOENAS AND COURT APPEARANCES

PURPOSE

- 1 - The purpose of this General Order is to outline policies and procedures for processing all subpoenas for Police Department personnel pertaining to criminal, civil and traffic related cases. All subpoenas for Police Department personnel relating to criminal and civil prosecution shall be processed by the designated employee(s) assigned to the Records Bureau of the Support Services Division.

POLICY

- 2 - It is the policy of the Berkeley Police Department that subpoenas for police personnel be administered and honored in a prompt and efficient manner.

RESPONSIBILITIES

- 3 - Designated employee(s) assigned to the Records Bureau of the Support Services Division will function as the Court Liaison Program Coordinator (CLP) and the Records Bureau Subpoena Clerk. He/she shall be responsible for maintaining effective administrative liaison among the Courts, the District Attorney's office, and the Department on matters concerning police personnel who have been subpoenaed for appearances in criminal, civil or traffic court.

MASTER COURT APPEARANCE CALENDAR - CRIMINAL CASES

- 4 - A Master Court Appearance Calendar will be maintained by the CLP Coordinator and will provide current information on the status of subpoenas and court dates. The calendar will contain information concerning the status of current court cases requiring officers' appearance (e.g., going, canceled or rescheduled).
 - (a) A telephone Court Appearance recording is available 7 days a week, 24 hours per day. The Telephone Court Appearance recording may be accessed by dialing 981-5990 X 7991.

CRIMINAL SUBPOENA RECEPTION AND SERVICE PROCEDURES

- 5 - The Coordinator will receive and acknowledge receipt of all subpoenas for police personnel, either on the part of the people or of the defendant. Individual subpoenas will then be processed as follows:
 - (a) Subpoenas will be forwarded to the immediate supervisor of the subpoenaed employee.
 - (b) Supervisors will personally "serve" the employee and acknowledge service by signing the original of the subpoena.

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- (c) The subpoenaed employee will sign in the Subpoena Acknowledgement Receipt box, indicating receipt of the subpoena.
 - (d) Supervisors will return the original subpoena to the Coordinator, giving the copy of the subpoena to the employee.
 - (e) If service of the subpoena is not possible, the reason for "no service" will be noted on the subpoena. The supervisor shall also fill out a "Subpoena Continuation Request" form on behalf of the subpoenaed employee, attaching it to the subpoena. Both subpoena and form shall be returned to the Coordinator.
 - (f) The Coordinator will return all subpoenas, served or unserved, to the issuing Court.
- 6 - The Police Department and the Housing Department have arranged a "subpoena" process that will insure the needed officer(s) is notified in a timely fashion of the date, time and location of an administrative hearing. The notice will be handled by the Subpoena Clerk in a manner very similar to a normal criminal subpoena.

EMPLOYEE RESPONSIBILITY AFTER RECEIPT OF CRIMINAL SUBPOENA

- 7 - Upon receipt of a subpoena the subpoenaed employee shall carefully review the case report to determine the need for his/her testimony. If the employee feels that he/she has been improperly subpoenaed, or that his/her testimony would be of little or no value, this opinion shall be forwarded in writing, via his/her designated supervisor, to the CLP Coordinator.
- 8 - The Coordinator will discuss the need for the employee's testimony with the District Attorney and report back to the employee. The District Attorney's office shall make the final determination concerning the need for the employee to appear and testify.
- 9 - If the subpoenaed employee will be unavailable to appear in court due to pre-approved leave of absence (i.e., vacation, training courses, parental leave), the "Subpoena Continuation Request" form shall be completed, attached to the subpoena and returned upon receipt. The form must be approved by the supervisor of the subpoenaed employee and then forwarded to the Coordinator.

CONFIRMATION OF CRIMINAL COURT APPEARANCE

- 10 - The Coordinator shall confer with the assigned Deputy District Attorney during the afternoon hours of the business day prior to a scheduled court hearing to determine if:
 - (a) The case will proceed as scheduled;

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- (b) The subpoenaed employee's testimony will actually be needed for that court session;
 - (c) If additional witnesses, information, or evidence are needed.
- 11 - Subpoenaed police employees scheduled to appear for court can confirm their need to appear by checking the Court Calendar posted in the squad room and Service Bureau, (by listening to the recorded court list on the telephone); or they may contact the Coordinator between 1600 and 1630 hours the afternoon before they are scheduled to appear
- 12 - In the event of a late cancellation or other change in an employee's scheduled court appearance, the Coordinator will arrange for the notification of the employee.
- 13 - **Subpoenas are usually received by the Subpoena Clerk. Whenever an employee receives a subpoena directly from the District Attorney's Office or from any other source, including a personal notification to appear the employee shall inform the Subpoena Clerk as soon as possible.**
- (a) **Employees should comply with any subpoena that directs them to contact the District Attorney's Office. However, if any change is made regarding date/time of appearance, cancellation or telephone stand-by status, the employee shall inform the Subpoena Clerk as soon as possible.**
 - (b) **Notification of the Subpoena Clerk in these situations is required so that the Clerk can administer the subpoena process as outlined through this order.**
- 14 - All completed court overtime slips shall be routed immediately to the employee's supervisor, then forwarded onto the Lieutenant and Captain prior to forwarding to the Coordinator. The Coordinator will initial the overtime slip and forward it to Accounting for processing.

TRAFFIC SUBPOENAS RECEPTION AND SERVICE PROCEDURES

- 15 - The Coordinator will record and acknowledge receipt of all traffic (section removed) subpoenas. Traffic subpoenas include those requesting an actual appearance in court, Informal Discovery Request, and those requesting "trial by declaration" (TBD).
- (a) Traffic subpoenas will be forwarded and served upon the subpoenaed employee as prescribed in section 5 of this Order.
 - (b) The employee's supervisor shall take steps to insure all traffic subpoenas, requests for "trial by declaration", "Informal Discovery Request" and

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requested documents are returned, to the Coordinator, by the date specified. There is no specified date on an Informal Discovery Request. Informal Discovery Requests shall be returned promptly.

- (1) If the supervisor determines that special circumstances justify a longer response time or is unable to serve the subpoena by the date specified, he/she shall fill out a subpoena continuation request, on behalf of the subpoenaed employee, and route it to the Coordinator.
 - (2) If the subpoenaed employee will be unavailable to appear in court due to a pre-approved leave of absence (i.e., vacation, training courses, parental leave), the "Subpoena Continuation Request" form shall be completed and attached to the subpoena and returned upon receipt. The form must be approved by the supervisor of the subpoenaed employee and then forwarded to the Coordinator.
- 16 - If an officer becomes aware they cannot make a scheduled court appearance on the day of appearance, regardless of the reason, he/she must notify a supervisor who will then notify the Department's Subpoena Clerk. The Subpoena Clerk will notify the courts.
- 17 - Employees who are not able to recall sufficient information regarding the incident in order to testify in traffic court shall advise their supervisor of this prior to the court date. The Courts need to know if an Officer is unable to appear at least 10 business days prior to the appearance date. Employees who are not able to testify shall notify their supervisor as early as possible.
- (a) The employee's supervisor shall take appropriate action, depending upon the circumstances, regarding why the employee was not able to testify. Such actions may range from an employee/supervisor counseling session, training or initiation of disciplinary sanctions.
 - (b) The employee's supervisor shall relay this information, in writing, as set forth in paragraph 6 of this Order.
 - (c) No monetary (overtime) compensation shall be provided for employees who appear in court and are unable to testify due to being unprepared and/or unable to recall.

SUBPOENAING OF CITIZENS IN CRIMINAL CASES

- 18 - In the majority of criminal cases, the District Attorney's office will send notice of court appearance to **civilian witnesses.**

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- 19 - In those cases subpoenas presented to the Police Department for service on civilian witnesses will be sent to the Records Bureau of the Support Services Division by the District Attorney's office for processing.
- (a) The Service Bureau Subpoena Clerk shall immediately stamp it, enter the report number, or arrange for preparation of a numbered report, and then forward the subpoena to the on-duty sergeants for service.
- (b) Upon completing service, the subpoena shall be returned to the Records Bureau Subpoena Clerk, who will then insure that the form is returned to the Court.

CRIMINAL SUBPOENAS FROM OTHER JURISDICTIONS

- 20 - Criminal subpoenas for Berkeley residents from Law Enforcement agencies shall be received by the Records Bureau of the Support Services Division. The Records Bureau Subpoena Clerk shall immediately time stamp them, arrange for the preparation of a numbered report, and route them to the on-duty team sergeants for service.
- 21 - Upon completing service, the subpoena shall be returned to the Records Bureau Subpoena Clerk for return to issuing agency.

SUBPOENA DUCES TECUM

- 22 - A subpoena duces tecum requires the production of documents, witness, or other objects to be examined.
- (a) A copy of the supporting affidavit must be attached to the subpoena when the production of documents is requested.
- 23 - An employee served with a subpoena duces tecum shall notify the Subpoena Clerk and give the subpoena to the Subpoena Clerk without delay. The latter shall insure that the necessary documents or objects are made available for the Court by the due date.

FOR CIVIL ACTIONS - OFFICER PRESENCE REQUIRED

- 24 - California law requires that a City be compensated at the rate of 150.00 dollars per day or actual expenses, whichever is less, for each day of service lost the City by reason of an officer responding to a subpoena for appearance in court or for the taking of a deposition in connection with any civil action or proceeding regarding an event or transaction which was perceived or investigated in the course of his/her duties. "In the course of his/her duties" shall be construed to mean during his/her regular tour of duty or an extension thereof preceding or following; while enroute to or from work; or during an off-duty period when, because of his/her peace officer status, he/she takes any police action. If the

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officer merely witnesses an event while off-duty, but takes no action normally required or expected of a peace officer, the content of this Order does not apply.

- 25 - **The process for receiving Civil Subpoena is the same as the process for criminal subpoena as outlined in Section 5 of this Order.**
- 26 - Any officer served with a subpoena requiring appearance as a witness in any court or for the taking of a deposition in any civil action in connection with on-duty employment shall promptly deliver that subpoena to the **Records Bureau Subpoena Clerk** who will **process it as outlined in Section 5 of this Order** and complete Part A of BPD Form J (Reimbursement for Appearance on Civil Subpoena) in triplicate. The original will be given to the officer, the duplicate attached to the master file, and the triplicate forwarded to the Public Safety Business Office. On those occasions when the civil subpoena is delivered directly to the Service Bureau Subpoena Clerk he/she will prepare a BPD Form J without delay and route as prescribed above.
- 27 - Following the officer's appearance in response to the subpoena, he/she shall complete Part B of his/her copy of the form, attach the subpoena, and forward them to the **Records Bureau Subpoena Clerk**.
- 28 - The **Records Bureau Subpoena Clerk** shall be responsible for maintaining adequate records of all required appearances of on-duty officers before a court or for the taking of a deposition in connection with any civil action or proceeding.
- 29 - Upon notification by the Service Bureau Subpoena Clerk, the Public Safety Business Office shall complete Part C of the original of Form J and forward it to the Tax and License Bureau, Finance Department.

COMPENSATION FOR CIVIL ACTIONS - RECORDS PRODUCTION ONLY

- 30 - When a civil subpoena duces tecum only requires production of the documents, the costs shall be computed at **\$6.00** per quarter hour and/or any portion thereof per person labor not to exceed **\$24.00** per person per hour. **A fee of 10 cent per page for copying records** and 20 cents per page for copying of documents from microfilm **shall be charged.**

CIVIL CASES INVOLVING THE CITY

- 31 - Any employee subpoenaed to testify in a civil case involving the City of Berkeley shall confer with the City Attorney in advance of testifying.

CIVIL CASES NOT INVOLVING THE CITY

- 32 - Government Code Section 68097.1 provides for the service of civil subpoenas and summons not associated with the City but involving Department personnel. The following procedures will be followed regarding the acceptance and delivery

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of those subpoenas involving Department personnel:

- (a) Service Bureau or other personnel who are contacted by individuals attempting to serve such subpoena shall first contact the employee's immediate supervisor. The immediate supervisor shall insure the subpoena/summons is personally served upon the named employee.
 - (1) If unable to contact the immediate supervisor, personnel shall then contact another supervisor or command officer affiliated with the employee's Division.
 - (2) In the event the above individuals are not available, such requests are to be directed to the Administrative Division Captain during regular business hours or, in his/her absence, the on duty Watch Commander or senior ranking officer.
 - (3) The individual accepting the subpoena shall forward the summons via the Divisional chain of command for the named employee.

COURT HEARINGS AND APPEARANCES

- 33 - Employees shall appear in any court or at any hearing authorized by any public law when:
 - (a) Subpoenaed;
 - (b) Requested by a member of a District Attorney's Office;
 - (c) Requested by a judge or officer of a court;
 - (d) Requested by a referee or hearing officer.
- 34 - Employees subpoenaed to Municipal or Superior Court for matters being heard before a jury shall wear conservative civilian clothing. **Male personnel shall wear a suit or sport coat, slacks, shirt, tie and dress shoes. Female personnel shall appear in correspondingly appropriate attire. This attire shall consist of suits, including pants suits and conservative dresses. No jeans shall be worn by either male or female personnel attending court. Any employee subpoenaed for matters being heard without a jury may appear in either uniform or appropriate civilian attire as described above. Deviations from this regulation may be authorized by a commanding officer or a Deputy District Attorney.**
- 35 - Employees shall avoid any indication of bias, prejudice or anger, and shall testify in a clear, concise and distinct manner. Questions shall be answered promptly, truthfully, and without trace of evasion. Personal behavior shall be exemplary while waiting to testify and while testifying.

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36 - Employees required to be in court by Departmental Order or subpoena shall be prompt in attendance and shall remain until excused by competent authority.

References: California Penal Code, Section 1328
Government Code Section 68097.1 and 68097.2
Civil Code Procedures 415.20(b)
Police Regulations 222, 223, and 225
Berkeley City Attorney Memorandum of April 27, 1988
Captain's Instruction 99-27
Captain's Instruction 9-27-96
Training & Information Bulletin #270

Outside Agency Assistance

327.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members when requesting or responding to a request for mutual aid or when assisting another law enforcement agency.

327.2 POLICY

~~It is the policy of the Berkeley Police Department to promptly respond to requests for assistance by other law enforcement agencies, subject to available resources and consistent with the applicable laws and policies of this department.~~

Berkeley Police Department employees are expected to follow the procedures of the California Law Enforcement Mutual Aid Plan as well as the written agreements made with other law enforcement agencies. The Berkeley Police Department is also expected to take an event management approach to crowd control management situations, and to evaluate the threat to public safety posed by each group prior to responding to, or requesting Mutual Aid.

327.3 MUTUAL AID

California's Law Enforcement Mutual Aid Plan was formulated in the early 1950's and enacted into law as part of the Government Code in 1970. The authority of the State of California Law Enforcement Mutual Aid Plan is granted under California Government Code Sections 8550, 8569, 8616, and 8668. The Berkeley City Council grants authority to the Police Department for mutual aid participation in accordance with Berkeley Municipal Code Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS, 1973).

- (a) The California Law Enforcement Mutual Aid Plan is contained in a compendium titled, "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".

A copy of the current compendium is publically available online through the City of Berkeley website.

~~327.3~~ 327.4 ASSISTING OUTSIDE AGENCIES

Best Practice

Generally, requests for any type of assistance from another agency should be routed to the Watch Commander's ~~office~~ for approval. In some instances, a memorandum of understanding or other established protocol may exist that eliminates the need for approval of individual requests.

When another law enforcement agency requests assistance from this department, the Watch Commander may authorize, if available, an appropriate number of personnel to assist. Members are reminded that their actions when rendering assistance must conform with applicable laws and be consistent with the policies of this department.

Officers may respond to a request for emergency assistance, however, they shall notify a supervisor of their activity as soon as practicable.

Arrestees may be temporarily detained by this department until arrangements for transportation

are made by the outside agency. Probation violators who are temporarily detained by this department will not ordinarily be booked at this department. Only in exceptional circumstances, and subject to supervisor approval, will this department provide transportation of arrestees to other facilities on behalf of another agency.

When transportation assistance is rendered, a report shall be prepared and submitted by the handling member unless otherwise directed by a supervisor.

327.3.1 INITIATED ACTIVITY

Best Practice

Any on-duty officer who engages in law enforcement activities of any type that are not part of a mutual aid request and take place outside the jurisdiction of the Berkeley Police Department shall notify his/her supervisor or the Watch Commander and the Communications Center as soon as practicable. This requirement does not apply to special enforcement details or multi-agency units that regularly work in multiple jurisdictions.

327.4327.5 REQUESTING OUTSIDE ASSISTANCE

Best Practice

If assistance is needed from another agency, the member requesting assistance should, if practicable, first notify a supervisor. The handling member or supervisor should direct assisting personnel to where they are needed and to whom they should report when they arrive.

The requesting member should arrange for appropriate radio communication capabilities, if necessary and available, so that communication can be coordinated between assisting personnel.

327.5327.6 REPORTING REQUIREMENTS

Best Practice

Incidents of outside assistance or law enforcement activities that are not documented in a crime report shall be documented in an Incident Report-general case report or as directed by the Watch Commander.

327.6327.7 MANDATORY SHARING

Best Practice

Equipment and supplies purchased with federal funds or grants that require such equipment and supplies be shared with other agencies should be documented and updated as necessary by the Support Services Division Captain Commander or his/herthe authorized designee.

The documentation should include:

- (a) The conditions relative to sharing.
- (b) The training requirements for:
 1. The use of the supplies and equipment.
 2. The members trained in the use of the supplies and equipment.
- (c) ~~Any other requirements for use of the equipment and supplies. Copies of the documentation should be provided to the Communications Center and the Watch Commander to ensure use of the equipment and supplies is in compliance with the applicable sharing agreements.~~

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- (c) The Personnel and Training Sergeant should maintain documentation that the appropriate members have received the required training.

327.8 MUTUAL AID DETERMINATIONS

All requests for mutual aid will be made via the Alameda County Sheriff, and all responses to mutual aid will result from mutual aid notification from the Alameda County Sheriff.

- (a) When the Chief of Police determines that an emergency situation may become or is already beyond the control of dDepartmental resources, it is the Chief of Police's responsibility to request mutual aid from the Alameda County Sheriff. Generally, this process will be authorized by the Chief of Police in conjunction with notification of and approval by the City Manager.
1. The Chief of Police or his/her designee will also attempt to determine if the only crimes being committed are civil disobedience offenses, and whether these offenses pose a threat to public safety.
 2. If individuals are committing crimes that do not present a threat to public safety the Chief of Police or his/her designee should seriously evaluate whether or not the Berkeley Police Department should request or participate in Mutual Aid. Crimes which do present a threat to public safety include property damage, utilizing weapons, creating physical hazards, or threats to community members or public safety personnel.

(a)(b) It is the responsibility of the Alameda County Sheriff to provide assistance and coordination to control the problem (California Government Code Section 26602).

1. It is also possible to obtain other services from the Alameda County Sheriff (such as a bus for prisoner transportation at a small demonstration) without invoking mutual aid.

327.9 MUTUAL AID REQUEST PROCEDURES

To request Mutual Aid from the Alameda County Sheriff, the Berkeley Police Department must:

- (a) Place all Berkeley Police Department sworn personnel on the following shifts: 12 hours on and 12 hours off.
- (b) Contact the Alameda County Sheriff Emergency Services Unit, 667-7755, 667-7721 and verbally request mutual aid.
- (c) Send a written message to the Alameda County Sheriff's Department (FAX is acceptable).
- (b)(d) Meet with Alameda County Sheriff's Department Mutual Aid personnel to discuss, plan, and coordinate the use of outside personnel regarding:
1. The dates and times that mutual aid personnel are required.
 2. The number of personnel needed to assist.
 3. The staging area for responding personnel to meet.
 4. Mass processing procedures for persons arrested.
 5. Transportation plans for persons arrested.

6. Operation of temporary detention facilities, if needed.

- (e) An estimate of the number of available personnel in each agency is maintained by the Alameda County Sheriff's Department. The Alameda County Sheriff's Department will poll local agencies to obtain the necessary number of officers requested at the time of each incident.

Costs for mutual aid are the responsibility of each participating agency. In the case of State or Federal involvement, mutual aid costs will be paid for by the State/Federal government.

327.10 STATE MUTUAL AID REQUESTING STATE MUTUAL AID ASSISTANCE

The Law Enforcement Division of the State of California Office of Emergency Services (OES) is responsible for coordination of State resources in support of local law enforcement during "unusual occurrences" such as disorders, demonstrations, riots, and natural or war caused disturbances. Authority is granted to OES under Article 5, Chapter 7, of the California Government Code. A 24-hour communications center is maintained at the Office of Emergency Services in Sacramento. A representative of the Law Enforcement Division can be reached at any hour of the day or night by calling (1-916) 427-4235 or 427-4341, (916) 845-8700

- (a) Five State agencies have specific responsibilities to support local law enforcement during emergency situations:

1. The California Highway Patrol: Provide traffic control and maintenance of law and order.
2. The State Military Department, which includes the California Army and Air National Guard, the State Military Reserve and the Naval Militia: Provide military support to local jurisdictions only after a request for same is made by the Chief Executive (City Manager) of a City or County Sheriff, and only after the disturbance is beyond the capabilities of local law enforcement mutual aid forces.
3. The Department of Justice: Provide legal advice and intelligence.
4. The Department of Corrections: Provide support for local law enforcement (with resources).
5. Office of the California State Police: Provide personnel who remain under the command of the State Police.

327.11 FEDERAL MUTUAL AID REQUESTING FEDERAL MUTUAL AID ASSISTANCE

Only State government may make the request to the President to provide Federal resources to assist in restoring or maintaining law and order. State government may only make such requests after all of its available forces, including the State military, are unable to control the emergency. The Department of the Army has the responsibility for the temporary loan of Federal military resources to National Guard units and local civil authorities in anticipation of or during disturbances.

327.7327.12 REPORTS TO CITY COUNCIL

The Berkeley City Council reviews and approves agreements with other law enforcement agencies pursuant to California Government Code Section 8617, and in accordance with Berkeley Municipal Code (BMC) Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS 1973).

(a) Written agreements are maintained with agencies who have concurrent jurisdictions in Berkeley, as well as agencies who have "understandings" with the Berkeley Police Department.

1. The agreements are maintained in a compendium entitled: "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".

i. The compendium is publically available from the City of Berkeley website.

ii. A list of the agreements with other agencies is listed in the table of contents.

(c)(b) The Berkeley Police Department will provide a report to Berkeley City Council summarizing all requests, responses, and denials of requests for Mutual Aid that involve civil disobedience offenses and First Amendment activity - submitted in conjunction with the agreements contained in the above referenced compendium which is submitted annually as per BMC Sections 2.04.150 - 2.04.210

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BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

SUBJECT: MUTUAL AID AND AGREEMENTS WITH LAW ENFORCEMENT AGENCIES

PURPOSE

- 1 - The purpose of this General Order is to describe Mutual Aid procedures and written agreements that the Berkeley Police Department has with other law enforcement agencies. **It is also to provide guidance to the Command Staff members regarding the philosophy of Mutual Aid application.**

POLICY

- 2 - Berkeley Police Department employees are expected to follow the procedures of the California Law Enforcement Mutual Aid Plan as well as the written agreements made with other law enforcement agencies. **The Berkeley Police Department is also expected to take an event management approach to crowd control situations, and to evaluate the threat to public safety posed by each group prior to responding to, or requesting Mutual Aid.**

MUTUAL AID

- 3 - California's Law Enforcement Mutual Aid Plan was formulated in the early 1950's and enacted into law as part of the Government Code in 1970. The authority of the State of California Law Enforcement Mutual Aid Plan is granted under California Government Code Sections 8550, 8569, 8616, and 8668. The Berkeley City Council grants authority to the Police Department for mutual aid participation in accordance with Berkeley Municipal Code Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS, 1973).
 - (a) The California Law Enforcement Mutual Aid Plan is contained in a **compendium** titled, "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".
 - (1) **Copies are publically available on line through the City of Berkeley website.**

PROCEDURES

- 4 - All requests for mutual aid will be made via the Alameda County Sheriff, and all responses to mutual aid will result from mutual aid notification from the Alameda County Sheriff.
 - (a) When the Chief of Police determines that an emergency situation may become or is already beyond the control of Departmental resources, it is the Chief of Police's responsibility to request mutual aid from the Alameda County

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

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Sheriff. Generally, this process will be authorized by the Chief of Police in conjunction with notification of and approval by the City Manager.

I. **The Chief or his/her designee will also attempt to determine if the only crimes being committed are civil disobedience offenses, and whether these offenses pose a threat to public safety.**

II. **If individuals are committing crimes that do not present a threat to public safety the Chief or his/her designee should seriously evaluate whether or not the Berkeley Police Department should request or participate in Mutual Aid. Crimes which do present a threat to public safety include property damage, utilizing weapons, creating physical hazards, or threats to community members or public safety personnel.**

(b) It is the responsibility of the Alameda County Sheriff to provide assistance and coordination to control the problem (California Government Code Section 26602).

(1) It is also possible to obtain other services from the Alameda County Sheriff (such as a bus for prisoner transportation at a small demonstration) without invoking mutual aid.

5 - To request Mutual Aid from the Alameda County Sheriff, the Berkeley Police Department must:

(a) Place all Berkeley Police Department sworn personnel on the following shifts: 12 hours on and 12 hours off.

(b) Contact the Alameda County Sheriff Emergency Services Unit, 667-7755, and verbally request mutual aid.

(c) Send a*written message to the Alameda County Sheriff's Department. (FAX is acceptable.)*

(d) Meet with Alameda County Sheriff's Department Mutual Aid personnel to discuss, plan, and coordinate the use of outside personnel regarding:

(1) The dates and times that mutual aid personnel are required.

(2) The number of personnel needed to assist.

(3) The staging area for responding personnel to meet.

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- (4) Mass processing procedures for persons arrested.
 - (5) Transportation plans for persons arrested.
 - (6) Operation of temporary detention facilities, if needed.
 - (e) An estimate of the number of available personnel in each agency is maintained by the Alameda County Sheriff's Department. The Alameda County Sheriff's Department will poll local agencies to obtain the necessary number of officers requested at the time of each incident.
- 6 - Costs for mutual aid are the responsibility of each agency participating. In the case of State or Federal involvement, mutual aid costs will be paid for by the State/Federal government.

REQUESTING STATE MUTUAL AID ASSISTANCE

- 7 - The Law Enforcement Division of the State of California Office of Emergency Services (OES) is responsible for coordination of State resources in support of local law enforcement during "unusual occurrences" such as disorders, demonstrations, riots, and natural or war caused disturbances. Authority is granted to OES under Article 5, Chapter 7, of the California Government Code. A 24-hour communications center is maintained at the Office of Emergency Services in Sacramento. A representative of the Law Enforcement Division can be reached at any hour of the day or night by calling (1-916) 427-4235 or 427-4341.
- (a) Five State agencies have specific responsibilities to support local law enforcement during emergency situations:
 - (1) The California Highway Patrol: Provide traffic control and maintenance of law and order.
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 - (3) The Department of Justice: Provide legal advice and intelligence.
 - (4) The Department of Corrections: Provide support for local law enforcement (with resources).
 - (5) Office of the California State Police: Provide personnel who remain

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under the command of the State Police.

REQUESTING FEDERAL MUTUAL AID ASSISTANCE

- 8 - Only State government may make the request to the President to provide Federal resources to assist in restoring or maintaining law and order. State government may only make such requests after all of its available forces, including the State military, are unable to control the emergency. The Department of the Army has the responsibility for the temporary loan of Federal military resources to National Guard units and local civil authorities in anticipation of or during disturbances.
- 9 - The Berkeley City Council reviews and approves agreements with other law enforcement agencies pursuant to California Government Code Section 8617, and in accordance with Berkeley Municipal Code (BMC) Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS 1973).
 - (a) Written agreements are maintained with agencies who have concurrent jurisdictions in Berkeley, as well as agencies who have "understandings" with the Berkeley Police Department.
 - (1) The agreements are maintained in a **compendium** entitled: "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".
 - (a) The compendium is publically available from the City of Berkeley website.
 - (b) A list of the agreements with other agencies is listed in the table of contents.
 - (b) The Berkeley Police Department will provide a report to Berkeley City Council summarizing all requests, responses, and denials of requests for Mutual Aid that involve civil disobedience offenses and First Amendment activity -- submitted in conjunction with the agreements contained in the above referenced compendium which is submitted annually as per BMC Sections 2.04.150 - 2.04.210