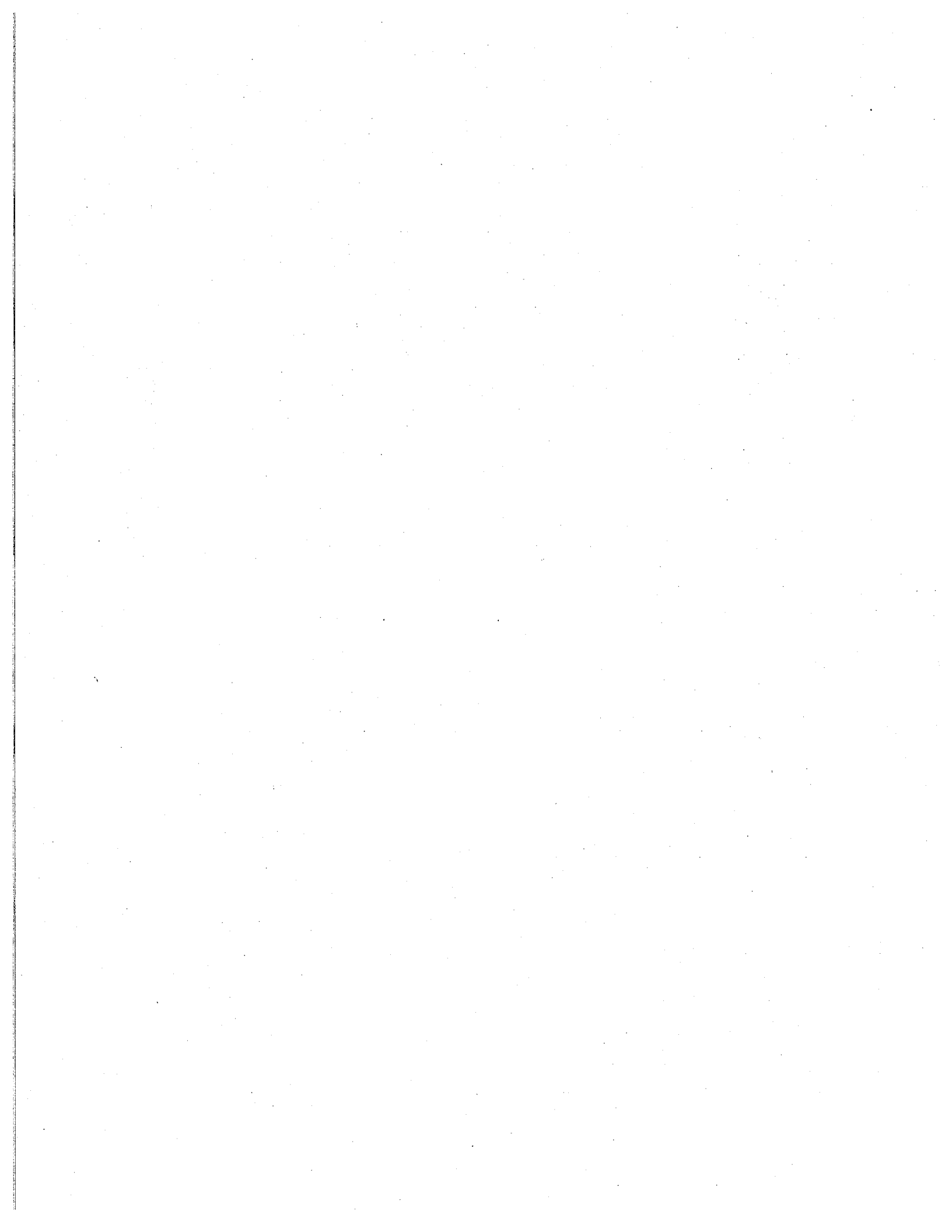


Police Review Commission meeting of May 22, 2019

Agenda Item #10.c.

Page #	Lexipol #	G.O.	Title
642, 648	316	M-01	Missing Persons
654, 662	321	P-26	Standards of Conduct
680, 688	325	C-62	Subpoenas and Court Appearances
696, 698	418	Council Res. 51,408-N.S.	Obtaining Air Support



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, should ensure that 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
- 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 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).
- (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).
- (e) Ensure that entries are made into the appropriate missing person networks as follows:
 1. 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 four hours from the time of the officer's contact with the reporting party.
- (f) Complete the appropriate report forms accurately and completely and initiate a search as applicable under the facts.
- (g) Collect and/or review:
 1. A photograph of the missing person, if available.
 2. Any documents that may assist in the investigation, such as court orders regarding custody.

-
3. Any other evidence that may assist in the investigation, including personal electronic devices (e.g., cell phones, computers).
- (h) When circumstances permit and if appropriate, attempt to determine the missing person's location through his/her telecommunications carrier. 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.

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) Ensuring resources are deployed as appropriate.
- (c) Initiating a command post as needed.
- (d) Ensuring applicable notifications and public alerts are made and documented (Nixle, AMBER, etc., see Public Alerts Policy).
- (e) Ensuring that records have been entered into the appropriate missing persons networks.
- (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.
- (d) Forward a copy of the report to the Detective Bureau.
- (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 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 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 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.
- (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 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 (MUPS).

-
- (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).

316.10 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 shall ensure that, upon receipt of information that a missing person has been located, the following occurs (Penal Code § 14213):

- (a) The person's name is removed from MUPS.
- (b) The missing person's school is notified, if applicable.
- (c) Notification shall 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.

316.11 CASE CLOSURE

The Detective Bureau Lieutenant or his/her designee, 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.

316.12 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
- (b) Briefing of department members at the scene.
- (c) Identifying NCIC Missing Person File categories (e.g., disability, endangered, involuntary, juvenile and catastrophe).
- (d) Verifying the accuracy of all descriptive information.
- (e) Initiating a neighborhood investigation.
- (f) Investigating any relevant recent family dynamics.
- (g) Addressing conflicting information.
- (h) Key investigative and coordination steps.
- (i) Managing a missing person case.
- (j) Additional resources and specialized services.
- (k) Update procedures for case information and descriptions.
- (l) Preserving scenes.
- (m) Internet and technology issues (e.g., Internet use, cell phone use).
- (n) Media relations.

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;**

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 13, 2006

GENERAL ORDER M-1

- (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**.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 13, 2006

GENERAL ORDER M-1

- 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.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 13, 2006

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**

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 countermanding 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.

-
- (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.

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 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.
- (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.
 - (i) Engaging in political activities during assigned working hours except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
 - (j) 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.
 - (k) Failure to secure the permission of a Commanding Officer before placing any material on a Departmental bulletin board.
 - (l) 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 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.
 - (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.
 - (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.).
 - (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.
 - (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 (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) **POSSESSION** - 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.

(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.

(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.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

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)

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

(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.

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

(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.

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

(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.

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

- 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.

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

- (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.

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

- (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.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

- (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.

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

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.

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

- (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.

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

- (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.

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

- (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.

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

- (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.

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

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

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

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

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

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

*Highlighted text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 4, 2010

GENERAL ORDER P-26

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

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 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 contact telephone numbers to the subpoenaing party.

If a member on standby changes his/her location during the day, the member shall notify the subpoenaing party 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 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.

- (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".

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 have their subpoenas signed and dated by the issuing party, or 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) Complete a "Notice of Correction and Proof of Service" form.
- (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.

-
- (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, mailed; and
 - 3. Copy for officer
 - (d) Attach a photocopy of the form to the subpoena,
 - (e) Acknowledge receipt of the subpoena on the form.
 - (f) 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.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 24, 2005

GENERAL ORDER: C-62

- (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;

*Highlighted text is new.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 24, 2005

GENERAL ORDER: C-62

- (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

*Highlighted text is new.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 24, 2005

GENERAL ORDER: C-62

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**.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 24, 2005

GENERAL ORDER: C-62

- 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

*Highlighted text is new.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 24, 2005

GENERAL ORDER: C-62

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

*Highlighted text is new.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 24, 2005

GENERAL ORDER: C-62

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.

*Highlighted text is new.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 24, 2005

GENERAL ORDER: C-62

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

Obtaining Air Support

418.1 PURPOSE AND SCOPE

The use of a police helicopter can be invaluable in certain situations. This policy specifies potential situations where the use of a helicopter may be requested and the responsibilities for making a request.

418.2 REQUEST FOR HELICOPTER ASSISTANCE

If a supervisor or officer in charge of an incident determines that the use of a helicopter would be beneficial, a request to obtain helicopter assistance may be made to the City Manager. If it is an emergency situation wherein the City Manager is not immediately available, the request may be made to the Chief of Police.

418.2.1 REQUEST FOR ASSISTANCE FROM ANOTHER AGENCY

After consideration and approval of the request for a helicopter, the Watch Commander, or his/her designee, will call the closest agency having helicopter support available. The Watch Commander on duty will apprise that agency of the specific details of the incident prompting the request.

418.2.2 CIRCUMSTANCES UNDER WHICH AID MAY BE REQUESTED (Per Berkeley City Council resolution No. 51.408 N.S.)

Police use of helicopters from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

- (a) To assist in case of a disaster; or
- (b) To assist in rescue efforts (specifically excluding the rescue of hostages); or
- (c) To assist in locating missing persons.

While it is recognized that the availability of helicopter support will generally provide valuable assistance to ground personnel, the presence of a helicopter will rarely replace the need for officers on the ground.

RESOLUTION NO. 51,408 -N.S.

ESTABLISHING POLICIES FOR USE OF DOGS AND HELICOPTERS BY THE POLICE DEPARTMENT OF THE CITY OF BERKELEY, AND RESCINDING THE PROVISIONS OF RESOLUTION NO. 48,630-N.S. AS THEY APPLY TO THE USE OF DOGS AND HELICOPTERS.

BE IT RESOLVED by the Council of the City of Berkeley as follows:

That the following policies for use of dogs and helicopters by the Police Department of the City of Berkeley are hereby established:

1. Police use of dogs from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

a. To apprehend suspects

- (1) Where there is a threat to human life, and
- (2) Where the suspect is reasonably believed to be armed with a deadly weapon, and
- (3) Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect; or

b. To locate missing persons; or

c. To locate crime scenes.

Provided, however, that the use of dogs is explicitly prohibited for use in crowd control.

2. Police use of helicopters from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

a. To assist in case of a disaster; or

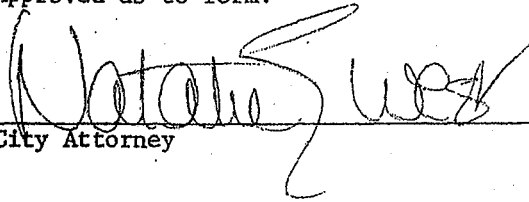
b. To assist in rescue efforts (specifically excluding the rescue of hostages); or

1.

c. To assist in locating missing persons.

FURTHER, RESOLVED, that the provisions of Resolution No. 48,630-N.S. as they apply to the use of dogs and helicopters are hereby rescinded.

Approved as to form:



City Attorney

Copies sent 8/12/82

To: City Manager
Police Department

RESOLUTION

No. 51,408 N.S.

Dated July 15, 1982

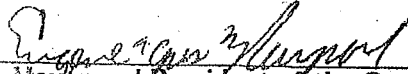
Adopted by the Council of the City of Berkeley by the following vote:

Ayes: Councilmembers Bach, Dean, Feller, Sweeney, Washburn

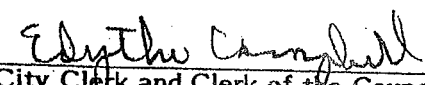
Noes: Councilmembers Denton, Fukson, McDonald, President Newport

Abstaining: None

Absent: None



Mayor and President of the Council

Attest 

City Clerk and Clerk of the Council

