



Police Review Commission (PRC)

LEXIPOL POLICIES SUBCOMMITTEE
Commissioners Perezvelez (Chair), Ramsey, Roberts
AGENDA

Wednesday, May 22, 2019
5:30 p.m.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER

2. PUBLIC COMMENT

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

3. APPROVAL OF AGENDA

4. OLD BUSINESS (DISCUSSION AND ACTION)

a. Complete review of the following Lexipol policies:

Lexipol #	G.O. (if any)	Title
322	E-12	Information Technology Use
324	P-29	Media Relations
329	A-49	Major Incident Notification
333	A-50	Private Persons Arrest
337	D-21	Biological Samples
341	V-08	Volunteer Program
342		Service Animals
343		Gun Violence Restraining Orders
344		Off Duty Law Enforcement Action

(See April 10, 2019 packet, except for Lexipol 324, in May 8, 2019 packet.)

5. NEW BUSINESS (DISCUSSION AND ACTION)

- a. Review Lexipol Policy 415, Immigration Law.
- b. Review the following Lexipol policies, returned to the Subcommittee from the PRC on March 13, 2019:

Lexipol #	G.O. (if any)	Title
605		Brady Material Disclosure
702		Vehicle Maintenance
705		Personal Protective Equipment
902		Prison Rape Elimination
1000		Recruitment and Selection
1004		Anti-Retaliation
1005		Reporting of Employee Convictions
1025		Nepotism and Conflicting Relationships

- b. Decide which policies to review next.

6. SCHEDULE NEXT MEETING DATE

7. ADJOURNMENT

Communications Disclaimer

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



Communication Access Information (A.R.1.12)

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

SB 343 Disclaimer

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

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

Immigration Law

415.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Berkeley Police Department relating to immigration and interacting with federal immigration officials. This policy includes elements from the California Government Code 7284, also known as the California Values Act, and from Berkeley City Council Resolution 68,131-N.S., City of Refuge Policy Regarding Interaction with U.S. Immigration and Customs Enforcement (ICE).

415.1.1 DEFINITIONS

The following definitions apply to this policy (Government Code § 7284.4):

Criminal immigration violation - Any federal criminal immigration violation that penalizes a person's presence in, entry, or reentry to, or employment in, the United States. This does not include any offense where a judicial warrant already has been issued.

Judicial warrant - An arrest warrant for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge.

415.2 POLICY

It is the policy of the Berkeley Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public, in compliance with California law and Berkeley Council policy. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

415.3 CITY COUNCIL RESOLUTIONS

The City of Berkeley was declared by Council resolution to be a City of Refuge in 1971. Subsequent Council resolutions in 1986, 2007, and 2016 reaffirmed and built upon the original policy. Most recently, on July 25, 2017, Council provided city-wide policy under Resolution 68,131-N.S., which is incorporated in this policy in full below:

- (a) No department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information status of individuals in the City of Berkeley unless required by law.
- (b) No department agency, commission, officer or employee shall deny access to any city services or benefits to residents on the basis of their immigration status.
- (c) The prohibition set forth shall include but not limited to:
 1. Assisting or cooperating, in one's official capacity, with any Department of Homeland Security (DHS) investigation, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provision of federal immigration law, except as required by law.

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2. Requesting information about, or disseminating information regarding, the immigration status of any individual, except as required by law.
 3. Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City of Berkeley any question regarding immigration status.
 4. It is the policy of the City of Berkeley to not allow any individual or organization to enter city facilities if their presence would disrupt city operations. Because the City Council believes that ICE activities in city facilities would constitute a severe disruption to the provision of city services, any request by ICE to any City officer or employee shall be immediately forwarded to the site director/supervisor and the Department Director for review and consultation with the City Attorney to ensure the safety of city employees and residents accessing city services and compliance with applicable state and federal laws.
 5. Except in limited circumstances where ICE agents have a valid judicial warrant, after review and consultation with the Department Director and City Attorney, city departments, agencies, commissions, officers or employees are not required to:
 - i. Cooperate with ICE agents
 - ii. Answer ICE agents' questions
 - iii. Comply with an ICE Administrative Warrant
 - iv. Immediately comply with a subpoena served by ICE agents
 - v. Speak with ICE agents at all

City officers or employees shall not consent to a warrantless search by ICE agents of a non-public area or non-public city records.

Employees must immediately notify site director/supervisor to report the interaction or warrants served. The site director/supervisor must immediately notify the Department Director for review and consultation with the City Attorney.

6. If any City resident has questions regarding their immigration status, City staff shall not refer them to Immigrations and Customs Enforcement or any other government agency. Instead City staff shall refer such individuals to local non-profit immigration law organizations. A list of such organizations shall be compiled and disseminated at City buildings and on the City's website. The City Manager is also encouraged to increase and enhance partnerships with community-based organizations, legal service providers, and educational institutions to provide resources for families and City residents facing deportation or other adverse immigration actions.
7. All requests for documents by ICE to City personnel shall be immediately forwarded to the Department Director for review and consultation with the City Attorney to ensure the safety of city employees and residents, and compliance with applicable state and federal laws.

415.4 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or interacting with members of the Berkeley Police Department will not automatically lead to immigration inquiry and/ or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, ethnicity or national origin in any way that would violate the United States or California constitutions.

415.5 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

415.6 DETENTIONS AND ARRESTS

An officer shall not investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including: inquiring into an individual's immigration status; detaining an individual on the basis of a hold request; providing information regarding a person's release date in response to a notification request from immigration authorities; providing personal information about an individual including but not limited to the individual home address or work address; making or participating in arrests based on civil immigration warrants; assisting immigration authorities in enforcement activities, or performing the functions of an immigration officer. (Government Code § 7284.6).

An officer shall not detain any individual, for any length of time, for a civil violation of federal immigration laws, or a related civil warrant, or for any violation of federal immigration laws (Government Code § 7284.6).

415.7 FEDERAL REQUESTS FOR ASSISTANCE

Absent an urgent issue of officer safety or other emergency circumstances, requests by federal immigration Enforcement and Removal Operations (ERO) officials for assistance from this department should be immediately directed to the Watch Commander. ICE's ERO is the principal immigration enforcement division. The Watch Commander shall be responsible for determining whether the requested assistance would be permitted under City policy and the California Values Act (Government Code § 7284.2 et seq.). The Watch Commander shall decline requests for assistance from ERO officials for immigration enforcement purposes, and notify the Chief of Police through the chain of command regarding the request as soon as practical.

Should a request be received for an urgent issue of officer safety or other emergency circumstance, the Communications Center should notify the Watch Commander or senior sergeant on duty, who should coordinate a response in order to make a scene safe, respond to the scene to manage the incident, and notify the Chief of Police through the chain of command as soon as practical.

Should a request be received for operational assistance from ICE's Homeland Security Investigations (HSI) unit, the Commander shall convey the request to the Chief of Police through the chain of command for consideration. HSI investigates transnational crimes which can imperil local community safety, such as Counter-Terrorism, Child Exploitation, Human Trafficking/Human

Smuggling and Transnational Gangs and Narcotics Trafficking. Assistance may be provided so long as the other provisions of this policy are followed.

415.7.1 IMMIGRATION DETAINERS

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 (Government Code § 7284.6).

Notification to a federal authority may only be made in connection with an outstanding criminal warrant.

415.7.2 NOTICE TO INDIVIDUALS

Individuals in custody shall be given a copy of documentation received from U.S. Immigration and Customs Enforcement (ICE) regarding a hold, notification, or transfer request along with an advisement that the Berkeley Police Department will not comply with the request (Government Code § 7283.1).

If, pursuant to court order, the Berkeley Police Department provides ICE with notification that an individual is being, or will be, released on a certain date, the same notification shall be provided in writing to the individual and to his/her attorney or to one additional person who the individual may designate (Government Code § 7283.1). Unless required by federal or state law, or court order, the Berkeley Police Department shall not provide information to ICE about an individual's release date.

415.7.3 ICE INTERVIEWS

The Berkeley Police Department shall not provide ICE personnel access to the Berkeley jail to interview any individual in custody about civil immigration violations.

415.7.4 TRANSFERS TO IMMIGRATION AUTHORITIES

Members shall not transfer an individual to immigration authorities.

415.7.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Detective Bureau Lieutenant or his/her designee shall ensure that data regarding the number of transfers of an individual to immigration authorities, as permitted by Government Code § 7284.6(a)(4), and the offense that allowed for the transfer is collected and provided to the Records Supervisor for required reporting to the DOJ (Government Code § 7284.6(c)(2)(see the Records Management Policy.)

415.8 U VISA AND T VISA NON-IMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Any request for assistance in applying for U visa or T visa status shall be forwarded in a timely manner to the Support Services Division Captain or his/her designee. The Support Services

Division Captain, or his/her designee shall:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
 - 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
 - 2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). Form I-914 Supplement B certification shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking).
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.

415.8.1 TIME FRAMES FOR COMPLETION

Officers and their supervisors who are assigned to investigate a case of human trafficking as defined by Penal Code § 236.1 shall complete the above process and the documents needed for indicating the individual is a victim for the T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Officers and their supervisors shall complete the above process and the documents needed certifying victim cooperation for a U visa or T visa application pursuant to Penal Code § 679.10 and Penal Code § 679.11 within 90 days of a request from the victim or victim's family related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within 14 days of the request.

415.8.2 REPORTING TO LEGISLATURE

The Support Services Division Captain shall ensure that certification requests are reported to the Legislature in January of each year and include the number of certifications signed and the number denied. The report shall comply with Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11).

415.9 TRAINING

The Personnel and Training Sergeant should ensure that all appropriate members receive training on this policy.

Training regarding this policy should include:

- (a) Prohibitions contained in the California Values Act (Government Code § 7284 et seq.).
- (b) Prohibitions contained in Berkeley Council Resolution 68,131-N.S.
- (c) Procedures for evaluating and responding to emergency requests for assistance, requests from ERO officials, and requests from HSI officials.

RESOLUTION NO. 68,131—N.S.

**AMENDING CITY OF REFUGE POLICY REGARDING INTERACTION WITH U.S.
IMMIGRATION AND CUSTOMS ENFORCEMENT**

WHEREAS, the residents of Berkeley have a long history and deep commitment to welcoming immigrants, refugees, and those in exile; and

WHEREAS, the Berkeley City Council declared Berkeley to be a City of Refuge in 1971 (Resolution 44,784-N.S.), reaffirmed that decision in 1986 relating to Central American refugees (Resolution 52,526-N.S.), in 2007 after ICE raids took place in Bay Area Communities (Resolution 63,711-N.S.), and again in 2016 due to increased hate crimes after the election of Donald Trump, and xenophobic rhetoric used during the campaign (Resolution 67,763-N.S.); and

WHEREAS, in early 2017, a Sanctuary City Task Force was convened, which brought immigration and civil rights groups, faith leaders, legal experts, school and university officials, and community activists together to discuss ways to strengthen our City of Refuge policy, as well as support our undocumented community members; and

WHEREAS, over the past several months, the Task Force and working groups have developed resources and protocols to clarify the rights of undocumented individuals and city/community partners in the case of ICE enforcement activity; and

WHEREAS, the Berkeley School Board in December passed a sanctuary campus policy which clearly articulated restrictions on information sharing, providing access to school facilities, and collaboration with immigration officials; and

WHEREAS; the Director of the Berkeley Health, Housing and Community Services Department also provided guidance to department staff on ICE protocols; and

WHEREAS, while the existing City of Refuge policy states that no city resources or employees are to be used to enforce federal immigration law, many questions have arisen in the Task Force about what to do when ICE officials visit city offices to ask questions or to arrest undocumented residents. It is important to clarify that no city services will be denied to any undocumented resident; and the procedures if ICE agents visit city facilities or engage with city staff; and

WHEREAS, including newly established City of Berkeley protocols on ICE interaction makes explicit our commitment to providing protections for all of our community members to the furthest extent of the law;

NOW THEREFORE, BE IT RESOLVED by the City Council that it reaffirms that the City of Berkeley is a City of Refuge and the following restrictions on the use of City funds and resources shall be applied relating to enforcement of federal immigration law:

1. No department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information on the status of individuals in the City of Berkeley unless required by law.
2. No department, agency, commission, officer or employee shall deny access to any city services or benefits to residents on the basis of their immigration status.
3. The prohibition set forth shall include but not be limited to:
 - a. Assisting or cooperating, in one's official capacity, with any Department of Homeland Security (DHS) investigation, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provision of federal immigration law, except as required by law.
 - b. Requesting information about, or disseminating information regarding, the immigration status of any individual, except as required by law.
 - c. Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City of Berkeley any question regarding immigration status.
 - d. It is the policy of the City of Berkeley to not allow any individual or organization to enter city facilities if their presence would disrupt city operations. Because the City Council believes that ICE activities in city facilities would constitute a severe disruption to the provision of city services, any request by ICE to any City officer or employee shall be immediately forwarded to the site director/supervisor and the Department Director for review and consultation with the City Attorney to ensure the safety of city employees and residents accessing city services and compliance with applicable state and federal laws.
 - e. Except in limited circumstances where ICE agents have a valid judicial warrant, after review and consultation with the Department Director and City Attorney, city departments, agencies, commissions, officers or employees are **not required to**:
 - Cooperate with ICE agents
 - Answer ICE agents' questions
 - Comply with an ICE Administrative Warrant
 - Immediately comply with a subpoena served by ICE agents
 - Speak with ICE agents at all

City officers or employees shall not consent to a warrantless search by ICE agents of a non-public area or non-public city records.

Employees must immediately notify site director/supervisor to report the interaction or warrants served. The site director/supervisor must immediately notify the Department Director for review and consultation with the City Attorney.

- f. If any City resident has questions regarding their immigration status, City staff shall not refer them to Immigrations and Customs Enforcement or any other government agency. Instead City staff shall refer such individuals to local non-profit immigration law organizations. A list of such organizations shall be compiled and disseminated at City buildings and on the City's website. The City Manager is also encouraged to increase and enhance partnerships with community-based organizations, legal service providers, and educational institutions to provide resources for families and City residents facing deportation or other adverse immigration actions.
- g. All requests for documents by ICE to City personnel shall be immediately forwarded to the Department Director for review and consultation with the City Attorney to ensure the safety of city employees and residents, and compliance with applicable state and federal laws.

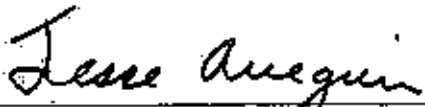
BE IT FURTHER RESOLVED that the Council shall instruct the City Clerk to transmit copies of this resolution including any future amendments thereto that shall be made, to every department, agency and commission and employee of the City of Berkeley.

The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2017 by the following vote:


Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf and Arreguin.

Noes: None.

Absent: Worthington.


Jesse Arreguin, Mayor

Attest:


Mark Numainville, City Clerk

West's Annotated California Codes
Government Code (Refs & Annos)
Title 1. General
Division 7. Miscellaneous
Chapter 17.25. Cooperation with Immigration Authorities (Refs & Annos)

West's Ann. Cal. Gov. Code § 7284

§ 7284. Short title

Effective: January 1, 2018

Currentness

This chapter shall be known, and may be cited, as the California Values Act.

Credits

(Added by Stats. 2017, c. 495 (S.B. 54), § 3, eff. Jan. 1, 2018.)

West's Ann. Cal. Gov. Code § 7284.2

§ 7284.2. Legislative findings and declarations

Effective: January 1, 2018

Currentness

The Legislature finds and declares the following:

(a) Immigrants are valuable and essential members of the California community. Almost one in three Californians is foreign born and one in two children in California has at least one immigrant parent.

(b) A relationship of trust between California's immigrant community and state and local agencies is central to the public safety of the people of California.

(c) This trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members fear approaching police when they are victims of, and witnesses to, crimes, seeking basic health services, or attending school, to the detriment of public safety and the well-being of all Californians.

(d) Entangling state and local agencies with federal immigration enforcement programs diverts already limited resources and blurs the lines of accountability between local, state, and federal governments.

(e) State and local participation in federal immigration enforcement programs also raises constitutional concerns, including the prospect that California residents could be detained in violation of the Fourth Amendment to the United States Constitution, targeted on the basis of race or ethnicity in violation of the Equal Protection Clause, or denied access to education based on

immigration status. See *Sanchez Ochoa v. Campbell, et al.* (E.D. Wash. 2017) 2017 WL 3476777; *Trujillo Santoya v. United States, et al.* (W.D. Tex. 2017) 2017 WL 2896021; *Moreno v. Napolitano* (N.D. Ill. 2016) 213 F. Supp. 3d 999; *Morales v. Chadbourne* (1st Cir. 2015) 793 F.3d 208; *Miranda-Olivares v. Clackamas County* (D. Or. 2014) 2014 WL 1414305; *Galarza v. Szalczyk* (3d Cir. 2014) 745 F.3d 634.

(f) This chapter seeks to ensure effective policing, to protect the safety, well-being, and constitutional rights of the people of California, and to direct the state's limited resources to matters of greatest concern to state and local governments.

(g) It is the intent of the Legislature that this chapter shall not be construed as providing, expanding, or ratifying any legal authority for any state or local law enforcement agency to participate in immigration enforcement.

Credits

(Added by Stats.2017, c. 495 (S.B.54), § 3, eff. Jan. 1, 2018.)

West's Ann.Cal.Gov.Code § 7284.4

§ 7284.4. Definitions

Effective: January 1, 2018

Currentness

For purposes of this chapter, the following terms have the following meanings:

(a) "California law enforcement agency" means a state or local law enforcement agency, including school police or security departments. "California law enforcement agency" does not include the Department of Corrections and Rehabilitation.

(b) "Civil immigration warrant" means any warrant for a violation of federal civil immigration law, and includes civil immigration warrants entered in the National Crime Information Center database.

(c) "Immigration authority" means any federal, state, or local officer, employee, or person performing immigration enforcement functions.

(d) "Health facility" includes health facilities as defined in Section 1250 of the Health and Safety Code, clinics as defined in Sections 1200 and 1200.1 of the Health and Safety Code, and substance abuse treatment facilities.

(e) "Hold request," "notification request," "transfer request," and "local law enforcement agency" have the same meaning as provided in Section 7283. Hold, notification, and transfer requests include requests issued by United States Immigration and Customs Enforcement or United States Customs and Border Protection as well as any other immigration authorities.

(f) "Immigration enforcement" includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States.

(g) "Joint law enforcement task force" means at least one California law enforcement agency collaborating, engaging, or partnering with at least one federal law enforcement agency in investigating federal or state crimes.

(h) "Judicial probable cause determination" means a determination made by a federal judge or federal magistrate judge that probable cause exists that an individual has violated federal criminal immigration law and that authorizes a law enforcement officer to arrest and take into custody the individual.

(i) "Judicial warrant" means a warrant based on probable cause for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant.

(j) "Public schools" means all public elementary and secondary schools under the jurisdiction of local governing boards or a charter school board, the California State University, and the California Community Colleges.

(k) "School police and security departments" includes police and security departments of the California State University, the California Community Colleges, charter schools, county offices of education, schools, and school districts.

Credits

(Added by Stats.2017, c. 495 (S.B.54), § 3, eff. Jan. 1, 2018.)

West's Ann.Cal.Gov.Code § 7284.6

§ 7284.6. Law enforcement agency personnel or resources; investigation or detainment of persons for immigration enforcement purposes; report on joint task forces

Effective: March 13, 2018

Currentness

(a) California law enforcement agencies shall not:

(1) Use agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:

(A) Inquiring into an individual's immigration status.

(B) Detaining an individual on the basis of a hold request.

(C) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public, or is in response to a notification request from immigration authorities in accordance with Section 7282.5. Responses are never required, but are permitted under this subdivision, provided that they do not violate any local law or policy.

(D) Providing personal information, as defined in Section 1798.3 of the Civil Code, about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public.

(E) Making or intentionally participating in arrests based on civil immigration warrants.

(F) Assisting immigration authorities in the activities described in Section 1357(a)(3) of Title 8 of the United States Code.

(G) Performing the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal.

(2) Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement. All peace officers remain subject to California law governing conduct of peace officers and the policies of the employing agency.

(3) Use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.

(4) Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or in accordance with Section 7282.5.

(5) Provide office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility.

(6) Contract with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees for purposes of civil immigration custody, except pursuant to Chapter 17.8 (commencing with Section 7310).

(b) Notwithstanding the limitations in subdivision (a), this section does not prevent any California law enforcement agency from doing any of the following that does not violate any policy of the law enforcement agency or any local law or policy of the jurisdiction in which the agency is operating:

(1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for a violation of, Section 1326(a) of Title 8 of the United States Code that may be subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and that is detected during an unrelated law enforcement activity. Transfers to immigration authorities are permitted under this subsection only in accordance with paragraph (4) of subdivision (a).

(2) Responding to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law.

(3) Conducting enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for purposes of task force investigations, so long as the following conditions are met:

(A) The primary purpose of the joint law enforcement task force is not immigration enforcement, as defined in subdivision (f) of Section 7284.4.

(B) The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to immigration enforcement.

(C) Participation in the task force by a California law enforcement agency does not violate any local law or policy to which it is otherwise subject.

(4) Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code or to comply with Section 922(d)(5) of Title 18 of the United States Code.

(5) Giving immigration authorities access to interview an individual in agency or department custody. All interview access shall comply with requirements of the TRUTH Act (Chapter 17.2 (commencing with Section 7283)).

(e)(1) If a California law enforcement agency chooses to participate in a joint law enforcement task force, for which a California law enforcement agency has agreed to dedicate personnel or resources on an ongoing basis, it shall submit a report annually to the Department of Justice, as specified by the Attorney General. The law enforcement agency shall report the following information, if known, for each task force of which it is a member:

- (A) The purpose of the task force.
- (B) The federal, state, and local law enforcement agencies involved.
- (C) The total number of arrests made during the reporting period.
- (D) The number of people arrested for immigration enforcement purposes.

(2) All law enforcement agencies shall report annually to the Department of Justice, in a manner specified by the Attorney General, the number of transfers pursuant to paragraph (4) of subdivision (a), and the offense that allowed for the transfer pursuant to paragraph (4) of subdivision (a).

(3) All records described in this subdivision shall be public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be disclosed.

(4) If more than one California law enforcement agency is participating in a joint task force that meets the reporting requirement pursuant to this section, the joint task force shall designate a local or state agency responsible for completing the reporting requirement.

(d) The Attorney General, by March 1, 2019, and annually thereafter, shall report on the total number of arrests made by joint law enforcement task forces, and the total number of arrests made for the purpose of immigration enforcement by all task force participants, including federal law enforcement agencies. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be included in the Attorney General's report. The Attorney General shall post the reports required by this subdivision on the Attorney General's Internet Web site.

(e) This section does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual, or from requesting from federal immigration authorities immigration status information, lawful or unlawful, of any individual, or maintaining or exchanging that information with any other federal, state, or local government entity, pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.

(f) Nothing in this section shall prohibit a California law enforcement agency from asserting its own jurisdiction over criminal law enforcement matters.

Credits

(Added by Stats.2017, c. 495 (S.B.54), § 3, eff. Jan. 1, 2018. Amended by Stats.2018, c. 8 (A.B.110), § 1, eff. March 13, 2018.)

West's Ann.Cal.Gov.Code § 7284.8

§ 7284.8. Attorney General; publication of model policies limiting assistance with immigration enforcement; guidance on database governance policies

Effective: January 1, 2018

Currentness

(a) The Attorney General, by October 1, 2018, in consultation with the appropriate stakeholders, shall publish model policies limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, public libraries, health facilities operated by the state or a political subdivision of the state, courthouses, Division of Labor Standards Enforcement facilities, the Agricultural Labor Relations Board, the Division of Workers Compensation, and shelters, and ensuring that they remain safe and accessible to all California residents, regardless of immigration status. All public schools, health facilities operated by the state or a political subdivision of the state, and courthouses shall implement the model policy, or an equivalent policy. The Agricultural Labor Relations Board, the Division of Workers' Compensation, the Division of Labor Standards Enforcement, shelters, libraries, and all other organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice, including the University of California, are encouraged to adopt the model policy.

(b) For any databases operated by state and local law enforcement agencies, including databases maintained for the agency by private vendors, the Attorney General shall, by October 1, 2018, in consultation with appropriate stakeholders, publish guidance, audit criteria, and training recommendations aimed at ensuring that those databases are governed in a manner that limits the availability of information therein to the fullest extent practicable and consistent with federal and state law, to anyone or any entity for the purpose of immigration enforcement. All state and local law enforcement agencies are encouraged to adopt necessary changes to database governance policies consistent with that guidance.

(c) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2), the Department of Justice may implement, interpret, or make specific this chapter without taking any regulatory action.

Credits

(Added by Stats.2017, c. 495 (S.B.54), § 3, eff. Jan. 1, 2018.)

West's Ann.Cal.Gov.Code § 7284.10

§ 7284.10. Duties of Department of Corrections and Rehabilitation

Effective: January 1, 2018

Currentness

(a) The Department of Corrections and Rehabilitation shall:

(1) In advance of any interview between the United States Immigration and Customs Enforcement (ICE) and an individual in department custody regarding civil immigration violations, provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present. The written consent form shall be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.

(2) Upon receiving any ICE hold, notification, or transfer request, provide a copy of the request to the individual and inform him or her whether the department intends to comply with the request.

(b) The Department of Corrections and Rehabilitation shall not:

(1) Restrict access to any in-prison educational or rehabilitative programming, or credit-earning opportunity on the sole basis of citizenship or immigration status, including, but not limited to, whether the person is in removal proceedings, or immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual.

(2) Consider citizenship and immigration status as a factor in determining a person's custodial classification level, including, but not limited to, whether the person is in removal proceedings, or whether immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual.

Credits

(Added by Stats.2017, c. 495 (S.B.54), § 3, eff. Jan. 1, 2018.)

West's Ann.Cal.Gov.Code § 7284.12

§ 7284.12. Severability

Effective: January 1, 2018

Currentness

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Credits

(Added by Stats.2017, c. 495 (S.B.54), § 3, eff. Jan. 1, 2018.)

West's Ann. Cal. Gov. Code § 7284.12, CA GOVT § 7284.12
Current with urgency legislation through Ch. 5 of 2019 Reg. Sess.

Brady Material Disclosure

605.1 PURPOSE AND SCOPE

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

605.1.1 DEFINITIONS

Definitions related to this policy include:

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

605.2 POLICY

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

605.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

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

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

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

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

605.4 DISCLOSURE OF PERSONNEL INFORMATION

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

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

605.5 INVESTIGATING BRADY ISSUES

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

~~605.6 TRAINING~~

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

Vehicle Maintenance

702.1 PURPOSE AND SCOPE

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

702.2 DEFECTIVE VEHICLES

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

702.2.1 DAMAGE OR POOR PERFORMANCE

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

702.2.2 SEVERE USE

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

702.2.3 REMOVAL OF WEAPONS

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

702.3 VEHICLE EQUIPMENT

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

702.3.1 PATROL VEHICLES

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

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

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

~~702.3.2 UNMARKED VEHICLES~~

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

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

702.4 VEHICLE REFUELING

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

702.5 WASHING OF VEHICLES

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

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

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

~~702.6—NON-SWORN EMPLOYEE USE~~

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

Personal Protective Equipment

705.1 PURPOSE AND SCOPE

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

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

705.1.1 DEFINITIONS

Definitions related to this policy include:

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

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

705.2 POLICY

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

705.3 OFFICER RESPONSIBILITIES

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

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

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

705.4 HEARING PROTECTION

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

705.5 EYE PROTECTION

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

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

705.6 HEAD AND BODY PROTECTION

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

705.7 RESPIRATORY PROTECTION

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

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

~~705.7.1 RESPIRATORY PROTECTION USE~~

~~State~~

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

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

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

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

~~eye or skin irritation associated with respirator use.~~

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

705.7.2—MEMBER RESPONSIBILITIES FOR RESPIRATORY PROTECTION

State

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

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

~~Members using respiratory PPE shall (8 CCR 5144):~~

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

705.7.3705.7.1 GAS MASK

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

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

Members shall ensure their gas mask filters are replaced whenever:

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

705.7.4 SELF-CONTAINED BREATHING APPARATUS

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

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

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

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

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

705.7.11705.7.2 GAS MASK SAFETY GLASSES

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

705.7.12705.7.3 RESPIRATOR GAS MASK FIT TESTING

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

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

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

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

705.7.13705.7.4 GAS MASK (RESPIRATORY) MEDICAL EVALUATION QUESTIONNAIRE

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

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

705.8 RECORDS

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

- (a) PPE training.

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

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

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

705.9 TRAINING

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

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

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

Prison Rape Elimination

902.1 PURPOSE AND SCOPE

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

902.1.1 DEFINITIONS

Definitions related to this policy include:

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

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

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

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

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

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

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

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

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

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

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

902.2 POLICY

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

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

902.3 PREA COORDINATOR

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

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

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

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

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

902.4 REPORTING SEXUAL ABUSE AND HARASSMENT

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

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

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

902.4.1 MEMBER RESPONSIBILITIES

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

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

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

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

902.4.2 SUPPORT SERVICES LIEUTENANT WATCH COMMANDER RESPONSIBILITIES

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

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

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

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

902.5 INVESTIGATIONS

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

902.5.1 FIRST RESPONDERS

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

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

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

902.5.2 INVESTIGATOR RESPONSIBILITIES

Investigators shall (28 CFR 115.171):

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

902.5.3 ADMINISTRATIVE INVESTIGATIONS

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

115.171).

902.5.4 SEXUAL ASSAULT AND SEXUAL ABUSE VICTIMS

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

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

902.5.5 CONCLUSIONS AND FINDINGS

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

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

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

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

902.6 RETALIATION PROHIBITED

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

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

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

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

902.7 REVIEWS AND AUDITS

902.7.1 INCIDENT REVIEWS

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

The review shall (28 CFR 115.186):

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

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

902.7.2 DATA REVIEWS

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

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

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

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

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

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

902.8 RECORDS

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

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

902.9 TRAINING

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

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

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

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

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

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

Recruitment and Selection

1000.1 PURPOSE AND SCOPE

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

1000.2 POLICY

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

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

1000.3 RECRUITMENT

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

The strategy should include:

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

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

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

1000.4 SELECTION PROCESS

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

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

1000.4.1 VETERAN'S PREFERENCE

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

1000.5 BACKGROUND INVESTIGATION

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

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

1000.5.1 NOTICES

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

1000.5.1 BACKGROUND INVESTIGATION UPDATE

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

1000.5.2 STATE NOTICES

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

1000.5.3 REVIEW OF SOCIAL MEDIA SITES

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

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

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

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

1000.5.4 DOCUMENTING AND REPORTING

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

1000.5.5 RECORDS RETENTION

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

1000.6 DISQUALIFICATION GUIDELINES

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

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

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

1000.7 EMPLOYMENT STANDARDS

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

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

1000.7.1 STANDARDS FOR OFFICERS

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

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

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

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

1000.7.2 STANDARDS FOR DISPATCHER

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

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

Anti-Retaliation

1004.1 PURPOSE AND SCOPE

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

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

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

1004.2 POLICY

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

1004.3 RETALIATION PROHIBITED

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

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

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

1004.4 COMPLAINTS OF RETALIATION

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

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

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

1004.5 SUPERVISOR RESPONSIBILITIES

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

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

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

1004.6 COMMAND STAFF RESPONSIBILITIES

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

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

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

1004.7 WHISTLE-BLOWING

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

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

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

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

1004.7.1 DISPLAY OF WHISTLE-BLOWER LAWS

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

1004.8 RECORDS RETENTION AND RELEASE

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

retention schedules.

1004.9 TRAINING

The policy should be reviewed with each new member.

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

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Reporting of Employee Convictions

1005.1 PURPOSE AND SCOPE

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

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

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

1005.2 DOMESTIC VIOLENCE CONVICTIONS, OUTSTANDING WARRANTS, AND RESTRAINING ORDERS

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

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

1005.3 OTHER CRIMINAL CONVICTIONS AND COURT ORDERS

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

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

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

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

1005.4 REPORTING PROCEDURE

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

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

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

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

1005.5 PROCEDURE FOR RELIEF

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

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

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

Nepotism and Conflicting Relationships

1026.1 PURPOSE AND SCOPE

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

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

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

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

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

1026.1.1 DEFINITIONS

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

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

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

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

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

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

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

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

1026.2 RESTRICTED DUTIES AND ASSIGNMENTS

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

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

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

1026.2.1 EMPLOYEE RESPONSIBILITY

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

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

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

1026.2.2 SUPERVISOR'S RESPONSIBILITY

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

1026.3 EXCEPTIONS TO POLICY

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

