



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, July 10, 2019
7:00 P.M.**

**South Berkeley Senior Center
2939 Ellis Street, Berkeley**

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. 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 the agenda or any matter within the PRC's jurisdiction at this time.)

- 4. APPROVAL OF MINUTES**

Regular Meeting of June 26, 2019

- 5. CHAIR'S REPORT**

- 6. PRC OFFICER'S REPORT**

Status of complaints, other items.

- 7. CHIEF OF POLICE'S REPORT**

Crime, budget, staffing, training updates, other items.

- 8. SUBCOMMITTEE REPORTS (discussion & action)**

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Lexipol Policies Subcommittee - update from July 10 meeting.
- b. MOU Compendium Subcommittee
- c. Standard of Proof Subcommittee

- d. Probation & Parole Questioning Subcommittee – next meeting July 11 at 11:00 a.m.

9. OLD BUSINESS (discussion & action)

- a. Consider recommending to the City Council that it endorse Senate Bill 233, prohibiting the arrest of a person for certain sex crimes if that person is reporting sexual assault, human trafficking, or other violent crimes.
From: Commissioner Ramsey
(See materials on pp. 31 - 51 of June 26, 2019 packet.)
- b. Report from Commissioner Mikiten on the Mental Health Commission meeting of May 23, 2019, and possible joint request to the City Council for increased funding for the mobile crisis unit or other mental health services.
- c. Consider establishing a subcommittee to review the BPD's Use of Force policy.
From: Commissioner Perezvelez
(See materials on pp. 61 - 99 of June 12, 2019 packet.)
- d. Lexipol Policies for review and approval (from March 13, 2019 PRC meeting.)

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

(See separate June 26 packet.)

10. NEW BUSINESS (discussion & action)

- a. Review and approve the following Surveillance Use Policies and Surveillance Acquisition Reports under Surveillance Technology Use & Community Safety Ordinance, revised by BPD following discussion on June 12, 2019:
 - 1300 – Body Worn Camera (BWC) Surveillance Use Policy
 - 1300 – BWC Acquisition Report
 - 1301 – Global Positioning System (GPS) Trackers Acquisition Report
 - 1302 – Automated License Plate Reader (ALPR) Surveillance Use Policy
- b. Policy Complaint #2455: Decide whether to accept policy complaint and, if accepted, determine how to proceed.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached

12. 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 the agenda at this time.)

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter(s):

13. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2454 DUE TO FRIVOLOUS NATURE OF COMPLAINT

End of Closed Session

14. ANNOUNCEMENT OF CLOSED SESSION ACTION

15. 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.

PRC REGULAR MEETING ATTACHMENTS

July 10, 2019

MINUTES

June 26, 2019 Regular Meeting Draft Minutes Page 7

AGENDA-RELATED

Item 10.a. – Surveillance Technology Use & Community Safety Ordinance – Guide to documents distributed to the PRC. Page 13

Item 10.a. – 6-21-19 email from Sgt. Speelman: Updated Surveillance Policies. Page 15

Item 10.a. – BPD Policy 1300: Surveillance Use Policy – Body Worn Cameras. (Draft) Page 17

Item 10.a. – 1300 Appendix A, BPD Surveillance Acquisition Report – Body Worn Cameras. (Draft) Page 25

Item 10.a. – 1301 Appendix A, BPD Surveillance Acquisition Report – GPS Trackers. (Draft) Page 33

Item 10.a. – BPD Policy 1302: Surveillance Use Policy – ALPR. (Draft) Page 35

Item 10.b. – Policy Complaint #2455. Page 39

COMMUNICATION(S)

Memo dated 7-1-19 to the Mayor and Members of the City Council, from the PRC Chairperson: Law Enforcement Use of Restraint Devices in the City of Berkeley (July 9, 2019 City Council Action Calendar Item #18). Page 41

Communication submitted June 26, 2019 re The use of spit Hoods. Page 49

Commissioner Attendance Report for the period January 1 through June 30, 2019. Page 51

11/11/11



Police Review Commission (PRC)

DRAFT

**POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(draft)**

Wednesday, June 26, 2019
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:06 P.M.

Present: Commissioner George Perezvelez (Chair)
Commissioner Gwen Allamby (Vice-Chair)
Commissioner Kitty Calavita
Commissioner LaMonte Earnest
Commissioner Sahana Matthews (left 9:48 p.m.)
Commissioner Elisa Mikiten
Commissioner Ismail Ramsey (arrived 7:46 p.m.)
Commissioner Terry Roberts (left 9:48 p.m.)

Absent: None

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andy Greenwood, Lt. Dave Lindenau, Sgt. Cesar Melero

2. APPROVAL OF AGENDA

Motion to approve the agenda with the addition of public comment before Item #9.a.

Moved/Second (Allamby/Mikiten) Motion Carried

Ayes: Allamby, Calavita, Earnest, Matthews, Mikiten, Perezvelez, and Roberts.

Noes: None

Abstain: None

Absent: Ramsey

3. PUBLIC COMMENT

There were 3 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes Draft of June 12, 2019

Moved/Second (Mikiten/Allamby) Motion Carried

Ayes: Allamby, Calavita, Earnest, Matthews, Mikiten, Perezvelez, and Roberts.
Noes: None Abstain: None Absent: Ramsey

5. CHAIR'S REPORT

Reminder that annual NACOLE Conference will be held Sept. 22-26 in Detroit.

6. PRC OFFICER'S REPORT

- Comm. Mikiten will attend NACOLE Conference funded by PRC.
- Two new complaints filed in the past 4 weeks. Byron is assisting in searching for records responsive to Public Records Act requests under SB 1421.
- At the June 3 Council Public Safety Committee meeting, Chief Greenwood gave his report responding to referrals on stop data collection and analysis; public comment heard. The Committee voted to "send the item back to the City Council with a qualified positive recommendation for the Mayor to convene the task force, as outlined in Councilmember Harrison's amended referral, in an expeditious manner and to request that adequate budget resources be allocated to allow the task force to complete its work."
- For the July 10 PRC meeting, agenda items will be needed by noon Tues., July 2 so the agenda can be sent July 3.
- PRC Officer will be on vacation July 5.
- PRC Officer asked commissioners who staffed PRC table at Juneteenth (Allamby, Calavita, Earnest, Mikiten, Perezvelez) to share their impressions of how it went.

7. CHIEF OF POLICE'S REPORT

Chief Greenwood reported:

- Council passed the budget last night. The presentations given to the Budget & Finance Committee helped.
- BPD will have contingent marching in the SF Pride Parade and staff a booth on Sunday. Next Coffee With a Cop will be Sat., July 20 at Nabolom on College & Russell.
- Currently 158 sworn officers. Swore in a lateral this morning; had been only 10 weeks since oral boards. Recruitment team working on speed/capacity of hiring. Doing backgrounds. Having an 8 – 10 week turnaround is beneficial.
- Will have 3 new officers within next couple weeks and another 4 after that. Another lateral coming late July; 4 more laterals going through background.
- Berkeley Wildfire evacuation checklist being circulated to residents. PG&E discussing cutting power to significant amount of region if threat of fire or actual fire. Issue is PG&E has to physically examine power lines before powering back up, with real effects on community.

Chief Greenwood answered questions from Commissioners

8. SUBCOMMITTEE REPORTS (discussion & action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Lexipol Policies Subcommittee – Chair Perezvelez said they met June 12 & June 18. Next meeting July 10 at 5:30 p.m.
- b. MOU Compendium Subcommittee – still waiting for answers from Chief.
- c. Standard of Proof Subcommittee. Chair Ramsey - Waiting for results of meet and confer.
- d. Probation & Parole Questioning Subcommittee – Chair Calavita gave an update from the June 10 & June 18 meetings; very productive. Lt. Montgomery attended last meeting and very helpful. Next meeting July 11 at 11:00 a.m.

9. OLD BUSINESS (discussion & action)

- a. Consider and approve Lexipol Policy #302, Handcuffing and Restraints, and communicate the PRC's recommendation on the use of spit hoods/spit masks to the City Council.

Public comment: 0 speakers

Motion to approve Policy 302 with amendments to Section 302.10: 1) change "when" to "while" in the second paragraph, and 2) adopt the Chief's proposed language regarding trauma to the end of the first paragraph; recommend that the City Council direct the City Manager and Chief to return with a plan to gather more data on the BPD's use of spit hoods and further review other potential alternatives to spit hoods. Moved/Second (Roberts/Ramsey)

Friendly Amendment: That the Council and City Manager review the use of spit hoods on juveniles.

Moved by Perezvelez; Accepted by Roberts and Ramsey

Substitute motion to recommend approval of the Policy 302 with the following recommendations: 1) In the second paragraph of Section 302.10, change the word "when" to "while" [so the sentence begins, "Spit hoods may be placed upon person in custody while the officer reasonable believes" etc.]; 2) that the PRC endorses the BPD's commitment to crisis intervention training and de-escalation strategies; 3) that the Chief propose data collection measures for the PRC's consideration, including the types of circumstances hoods are used under; 4) that the BPD utilize other available methods of restraint when possible, such as placing a person in a vehicle; 5) the use of spit hoods with minors shall be restricted by Policy 302.7.

Moved/Second (Mikiten/Ramsey)

Friendly amendment that 5) should read: "the use of spit hoods on pre-adolescent children is prohibited."

Moved by Calavita; Accepted by Mikiten and Ramsey

Friendly amendment to add, at the end of 2): "and promotes the use of CIT officers in the application of spit hoods when practical."

Moved by Matthews; Accepted by Mikiten and Ramsey

Substitute motion, as amended, Carried

Ayes: Matthews, Mikiten, Perezvelez, Ramsey, and Roberts.

Noes: Calavita, Earnest Abstain: Allamby Absent: None

- b. Lexipol Policies for review and approval.

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

Motion to approve Lexipol Policies 316, 321, 325, and 418

Moved/Second (Ramsey/Perezvelez) **Motion Carried**

Ayes: Allamby, Calavita, Earnest, Mikiten, Perezvelez, and Ramsey

Noes: None Abstain: None Absent: Matthews, Roberts

- c. Consider recommending to the City Council that it endorse Senate Bill 233, prohibiting the arrest of a person for certain sex crimes if that person is reporting sexual assault, human trafficking, or other violent crimes.
(Item postponed to the next meeting.)
- d. Report from Commissioner Mikiten on the Mental Health Commission meeting of May 23, 2019, and possible joint request to the City Council for increased funding for the mobile crisis unit or other mental health services.
(Item postponed to the next meeting.)
- e. Consider establishing a subcommittee to review the BPD's Use of Force policy.
(Item postponed to the next meeting.)
- f. Lexipol Policies for review and approval (from March 13, 2019 PRC meeting.)

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

(Item postponed to the next meeting.)

10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached

11. PUBLIC COMMENT

There were 2 speakers.

12. ADJOURNMENT

By general consent, the meeting was adjourned at 9:53 p.m.

Surveillance Technology Use & Community Safety Ordinance -- Guide to documents distributed to the PRC

The Ordinance was included in the PRC's May 22, 2019 packet, and the remaining documents were distributed to the PRC at that meeting. The underlined documents have been revised and are included in the agenda packet for the July 10, 2019 meeting.

ORDINANCE

Berkeley Municipal Code Ch. 2.99 -- Acquisition and Use of Surveillance Technology

BODY WORN CAMERAS (BWCs)

Policy 1300 Surveillance Use Policy

Policy 1300 Appendix A – Surveillance Acquisition Report

Policy 425 Body Worn Cameras (issued 9-28-18, rev. 1-31-19)

GLOBAL POSITIONING SYSTEM (GPS) TRACKING DEVICES

Policy 1301 Surveillance Use Policy

Policy 1301 Appendix A – Surveillance Acquisition Report

AUTOMATED LICENSE PLATE READERS (ALPRs)

Policy 1302 Surveillance Use Policy

Policy 1302 Appendix A – Surveillance Acquisition Report

Policy 422 ALPRs (proposed conversion of Admin. Order to Lexipol)

Administrative Order #001-2016 ALPRs (issued 2-18-16)

Lee, Katherine

From: Speelman, Samantha M.
Sent: Friday, June 21, 2019 12:18 PM
To: Lee, Katherine
Cc: Greenwood, Andrew; Rolleri, Rico
Subject: Updated Surveillance Policies
Attachments: 1300 BWC Surveillance Policy DRAFT (2).docx; 1300 BWC Acquisition Report DRAFT (2).docx; 1301 GPS Acquisition Report DRAFT (2).docx; 1302 ALPR Surveillance Policy DRAFT (2).docx

Hi Kathy,

Here are the updated versions of 4 of the surveillance policies. The changes are described below and visible with track changes in the docs...

1. **1300 – BWC Surveillance Policy**
 - 1300.1 : First sentence: “This Surveillance.... BMC 2.99, and incorporates **by reference** language...”
2. **1300 – BWC Appendix A: (Acquisition Report)**
 - E. Mitigation - Renumber this numbered list, from 3-9 to **1-7**
 - G. Data Security, 1st para. “In circumstances when the officer cannot... take custody of the BWC and be responsible for **transferring the data into the digital evidence management system.**”
3. **1301 – GPS Appendix A (Acquisition Report)**
 - B. Purpose - “The trackers are utilized.... Court order, or with **the consent of the property owner or agent as described below.**”
4. **1302 – ALPR Surveillance Policy**
 - 1302.1 - First sentence: “This Surveillance Use ... incorporates **by reference** language from ... “
 - 1302.2 - (b) “An ALPR may be used ~~in conjunction with any routine~~ **to support a patrol operation or criminal investigation.**”
 - 1302.5 (d) (Sentence needs a period at the end.)
 - 1302.9 para 1 - Add this sentence: ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Thanks,
Sam

Sgt. S. Speelman, #5-12
Berkeley Police Department
Professional Standards Bureau
Phone: 510.981.5974

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Surveillance Use Policy - Body Worn Cameras

1300.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates **by reference** language from the Berkeley Police Department Body Worn Camera Policy #425 and adds elements as required by BMC 2.99.

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel. (Ref. policy 425.2)

1300.2 AUTHORIZED USE

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation. (Ref. policy 425.7)

1300.2.1 PROHIBITED USE

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. (Ref. policy 425.13)

1300.3 DATA COLLECTION

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. (Ref. policy 425.3)

1300.4 DATA ACCESS

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 1300.4.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report. (Ref. policy 425.17)

1300.4.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage

of the incident until such time as the criminal investigator(s) have reviewed the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident." (Ref. policy 425.17.1)

1300.4.2 SUPERVISORY REVIEW

With the exception of section 1300.4.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates. (Ref. policy 425.17.2)

1300.4.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance. (Ref. policy 425.17.3)

-
- (a) Recorded files may also be reviewed:
1. Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
 2. Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
 3. By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
 4. Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.
- (b) Investigators conducting criminal or internal investigations shall:
1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
 2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
 3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

1300.4.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video. (Ref. policy 425.17.4)

1300.4.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee. (Ref. policy 425.17.5)

1300.5 DATA PROTECTION

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each

recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. (Ref. policy 425.14)

1300.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of BWC data. These policies will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1300.7 DATA RETENTION

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days. (Ref. policy 425.15)

1300.8 PUBLIC ACCESS

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy. (Ref. policy 425.18)

1300.9 THIRD-PARTY DATA-SHARING

1300.9.1 CITY ATTORNEY

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur. (Ref. policy 425.18)

1300.9.2 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation. (Ref. policy 425.18.1)

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

1300.10 TRAINING

Training for the operation of BWC's shall be provided by BPD personnel. All BPD personnel who use BWC's shall be provided a copy of this Surveillance Use Policy.

1300.11 AUDITING AND OVERSIGHT

Division Captains for divisions utilizing BWC's shall ensure compliance with this Surveillance Use Policy.

1300.12 MAINTENANCE

The BWC system will be maintained by the Applications Programmer Analyst and assigned Department of Information and Technology (IT) staff.

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18) (Ref policy 425.4):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.
- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.
- (h) All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

BODY WORN CAMERAS (BWCs)

A. DESCRIPTION

The BWC system consists of four main components: The camera, the docking station, and the Digital Information Management System (DIMS) and smartphone applications.

The first component, the Axon camera, is a system which incorporates an audio and video recording device. It is designed to record events in real time for secure storage, retrieval, and analysis. The camera is to be attached to an officer's uniform and is powered by an internal rechargeable battery. The camera features low-light performance, full-shift battery life, a capture rate of 30 frames per second with no dropped frames, HD video, pre-event buffering, multi-camera playback, and the ability to automatically categorize video using the police department's computer aided dispatch system. An officer can start and stop recording by pressing a button on the front of the camera. The camera does not contain a screen for footage review.



The second component of the system is the docking station. Once the Axon camera is placed in the docking station it recharges the camera's battery. The dock also triggers the uploading of data from the camera to a cloud based Digital Information Management System (DIMS) called Evidence.com. The dock does not directly provide functionality to view, modify or delete video data stored on Axon cameras.



The third component is the Digital Information Management System called Evidence.com. Evidence.com streamlines data management and sharing on one secure platform. The evidence management system is comprehensive, secure, and intuitive to use. The DIMS is located in a cloud-based data center for security, scalability, and ease of administration. Users can add

metadata to existing videos such as associated case numbers, incident type, incident dispositions, etc. to make the videos easier to find. However, the videos themselves cannot be altered by the user.

The fourth component of the system to be utilized are two Axon mobile applications, which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The applications are called Axon View and Axon Capture. Axon View allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannot be manipulated or deleted. Axon Capture allows officers to use their city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to Evidence.com. These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications use secure technology to add value and efficiency to the BWC program.

B. PURPOSE

The primary objective of the BWC system is to document officer contacts, arrests, and critical incidents. Video footage collected by the BWCs will be used as evidence in both criminal and administrative investigations. Video footage not relevant to any investigation will be discarded after a defined retention period.

In instances where the officer might be expected to take law enforcement action of any kind, the officer is expected to record the encounter for the benefit of both the officer and the member of the public.

1. The BWC shall be activated in any of the following situations:
 - i. All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
 - ii. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
 - iii. Self-initiated field contacts in which a member would normally notify the Communications Center.
 - iv. Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

- v. Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- vi. Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is an officer expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the user can do so safely.

Officers should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Officers shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

2. Prohibited uses of the BWC system include:

- i. Officers shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.
- ii. Officers are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.
- iii. Officers are prohibited from retaining BWC recordings.
- iv. Officers shall not duplicate or distribute such recordings, except for department business purposes.

C. LOCATION

Officers may use BWCs anywhere where officers have jurisdiction to operate as sworn officers, in accordance with BPD policy #425.

D. IMPACT

With the introduction of BWCs, officers record all enforcement contacts with the public. To that end, an officer could find themselves engaged in their lawful duties in both public and private areas. Additionally, due to the nature of law enforcement work, an officer may be required to engage in sensitive conversations with individuals of all ages, including children.

The right to maintain someone's anonymity versus the need to gain information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the

strictest requirements of both state and federal law concerning release of audio/video recordings.

E. MITIGATION

In order to minimize violations of privacy, BWC policy provides that:

1. Officers should record any incident they feel would be appropriate or valuable to document. The BWC policy shall require officers to activate the BWC under the criteria listed above.
2. Officers should not activate the BWC and/or use caution when entering a public locker room, changing room, restroom, doctor's or attorney's office, or other place where individuals unrelated to the investigation are present and would have a heightened expectation of privacy unless the officer is investigating criminal activity or responding to a call for service.
3. BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy.
4. BWC footage will be retained or released in accordance with applicable state and federal law. Criminal defendants will have access to relevant BWC footage via the court discovery process.
5. Officers are prohibited from retaining BWC recordings, Officers shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.
6. Officers are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Officers may request restriction and subsequent deletion of an accidental recording according to the BWC policy.
7. Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted by law and department policy. Department policy does not authorize release of investigative files or documents that would constitute an unwarranted invasions of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy"

F. DATA TYPES AND SOURCES

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigations, and other proceedings protected by confidentiality laws and department policy.

The BWC collects video and audio recordings of events occurring in the user's presence. As each video is created, the system automatically stamps the video with the current date/time and the camera user's identity. The user has the option to add metadata manually to existing recordings after they are created. Such metadata may include but is not limited to:

1. Category of contact (from Department's defined list)
2. Disposition of contact (arrest, citation, etc.)
3. Associated case number

G. DATA SECURITY

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for ~~transferring-uploading~~ the data into the digital evidence management system. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.

Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code Section 832.18) (Ref. policy 425.14):

1. Establishing a system for uploading, storing and security of recordings.
2. Designating persons responsible for uploading recorded data.
3. Establishing a maintenance system to ensure availability of BWCs.
4. Establishing a system for tagging and categorizing data according to the type of incident captured.
5. Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
6. Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
7. Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file,

thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

H. FISCAL COST

In 2017, the Berkeley City Council approved a resolution authorizing a contract between BPD and Axon. Axon was chosen after a competitive Request for Proposal (RFP) process. The contract will not exceed \$1,218,103 and includes the cost of 200 body worn cameras, charging stations, accessories, software licenses, training and unlimited storage for five years. The purchase also includes replacement cameras and charging stations during the third and fifth year of the contract.

There will be an annual cost of approximately \$250,000 to the police department's budget for a staff person to administer the body worn camera program beginning in FY 2019.

I. THIRD PARTY DEPENDENCE AND ACCESS

All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.

J. ALTERNATIVES

Officers rely primarily on traditional policing techniques to gather evidence related to criminal investigations such as speaking to witnesses and suspects, gathering information from observations, and using standard data aggregation systems. These methods will continue to be employed as primary investigative tools that will be supplemented by use of BWCs to document police activity.

BWC technology provides video and audio documentation of policing activity in addition to the oral and written statements of officers, victims, and witnesses. Alternatives to the use of BWCs would be vehicle-based cameras and/or not utilizing BWCs. However, BPD sees the use of BWCs as an integral strategy to strengthen police transparency, prevent and resolve complaints against the police by civilians, document police-public interaction, and promote the perceived legitimacy and sense of procedural justice that communities have about their departments. There is a broad consensus – among community leaders, the ACLU, the Department of Justice, the Berkeley Police Department, and elected officials – that body-worn cameras can be an important tool for improving the high-quality public service expected of police officers.

K. EXPERIENCE OF OTHER ENTITIES

Numerous police agencies have adopted BWCs as a tool to help combat crime, to reduce citizen complaints and to reduce use of force situations. Many departments have developed their own usage policies which may include standards for required officer use, supervisory review, storage and data retention standards, and internal and public access.

A report for the U.S. Bureau of Justice Administration, https://www.bja.gov/bwc/pdfs/14-005_Report_BODY_WORN_CAMERAS.pdf - pages 6-8, cites a 2013 Rialto, CA study that showed that the use of BWCs led to a 59 percent decrease in UOF and an 87.5 percent decrease in citizen complaints. Likewise, the Mesa, AZ report noted in "Impact" Section above also points to large decreases in UOF and citizen complaints.

The 2017 Police Body Worn Cameras: A Policy Scorecard, <https://www.bwccscorecard.org/>, provides an analysis of how scores of different police agencies have employed BWCs through a defined list of metrics.

GPS TRACKING DEVICES

A. DESCRIPTION

Global Positioning System (GPS) trackers are devices designed to track the movements of vehicles, bicycles, cargo, machinery, and/or individuals.

The Berkeley Police Department currently uses two types of GPS Tracking Devices. The manufacturer, 3SI Security System, describes them as follows:

1. The "Slap-n-Track" (SNT) tracker tracks vehicles, cargo, and other large assets for long deployments. Offers extended battery life, rugged and weatherproof housing, and optional magnets - per the manufacturer.
2. The "Electronic Stake Out" (ESO) tracker offers Law Enforcement miniaturized and covertly packaged GPS Tracking Solutions to target property crimes, especially pattern crimes, in their local jurisdictions.

B. PURPOSE

The purpose of GPS trackers is to enhance the quality of active investigations. The trackers are utilized during active investigations and shall be used pursuant to a lawfully issued search warrant, court order, or with the consent of the property owner or agent as described below.

C. LOCATION

GPS tracking devices shall be deployed in locations consistent with the authority granted by consent or a lawfully issued search warrant or court order.

D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with GPS trackers help to ensure unauthorized use of its data. The policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

E. MITIGATION

Data from a GPS tracker is encrypted from the vendor. Data shall be maintained in a secure, non-public location, such as locations requiring security access or badge access, thereby safeguarding the public from any impacts identified in subsection (D).

F. DATA TYPES AND SOURCES

Location data is obtained through the use of a GPS Tracker.

Latitude and longitude data is captured and stored indefinitely by 3SI when both types of trackers are used. This data is only shared with the District Attorney's Office for prosecution purposes.

G. DATA SECURITY

Data from a GPS tracker is encrypted from the vendor. Data shall be maintained in a secure, non-public location, such as locations requiring security access or badge access. In addition, Captains for Divisions utilizing GPS trackers are responsible for ensuring compliance with the procedures for utilizing GPS Trackers.

H. FISCAL COST

The initial cost of the GPS trackers totaled \$4,335.

- Between 2015-present BPD purchased 5 GPS "ESO" trackers for \$2,250 (\$450 each).
- In 2017 BPD purchased 3 GPS "SNT" trackers for \$2,085 (\$695 each).

The annual cost for the GPS data service totals \$1,920.

- The annual data service for the five ESO trackers is \$1,020 (\$204 each).
- The annual data service for the three SNT trackers is \$900 (\$300 each).

Personnel costs are minimal in that the GPS trackers are used as a resource during normal working hours.

GPS trackers are funded through the Investigations Division's general budget.

I. THIRD PARTY DEPENDENCE AND ACCESS

Data collected from the GPS trackers may be shared with the following:

- a. The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- b. Other law enforcement offices as part of a criminal investigation;
- c. Other third parties, pursuant to a Court Order.

J. ALTERNATIVES

None.

K. EXPERIENCE OF OTHER ENTITIES

The use of GPS technology is common amongst law enforcement agencies throughout the country.

Surveillance Use Policy - ALPR

1302.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review. (Ref. policy 422.2)

1302.2 AUTHORIZED AND PROHIBITED USES USE

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

1302.3 DATA COLLECTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

1302.4 DATA ACCESS

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (c) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

1302.5 DATA PROTECTION

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- (c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1302.7 DATA RETENTION

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media

and booked into evidence. (Ref. policy 422.5)

- (a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

1302.8 PUBLIC ACCESS

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

1302.9 THIRD-PARTY DATA-SHARING

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager. (Ref. policy 422.6 (e))

1302.10 TRAINING

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

1302.11 AUDITING AND OVERSIGHT

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

1302.12 MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

1302.12.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing

guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.



POLICY COMPLAINT FORM

Police Review Commission (PRC)
1947 Center Street, 1st Floor, Berkeley, CA 94704

Website: www.ci.berkeley.ca.us/prc/

E-mail: prc@ci.berkeley.ca.us

Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Received by PRC

Date Received:

JUN 20 2019 6/20/2019

PRC CASE #

2485

1

Name of Complainant: Williams, Elaine
Last First Middle

Mailing Address: 2870 Adeline 204
Street City State Zip

Primary Phone: (510) 8479087 Alt Phone: ()

E-mail address: _____

Occupation: Retired Gender: Female Age: _____

Ethnicity: Asian Black/African-American Caucasian
 Latino/Hispanic Multiethnic: _____ Other: _____

2

Identify the Berkeley Police Department (BPD) policy or practice you consider to be improper or would like the Commission to review.

Slowness to respond
or no response

3

Location of Incident (if applicable) When Police Calls

Date & Time of Incident (if applicable) are ignored

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

Many times in the Past

4

What changes to BPD policy, practice, or procedure do you propose?

Just Show up

5

Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Commission in evaluating your complaint.)

6

CERTIFICATION

I hereby certify that, to the best of my knowledge, the statements made on this complaint are true.

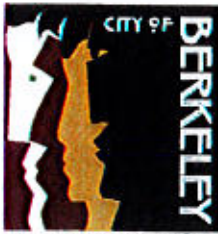
Elaine Williams
Signature of Complainant

6/20/2019
Date

7

How did you hear about Berkeley's Police Review Commission?

- Internet
- Publication: _____
- Referral: _____
- Other: X



Police Review Commission

July 1, 2019

To: Honorable Mayor and Members of the City Council
From: George Perezvelez, ^{STU by KJ} Chairperson, Police Review Commission
Re: Law Enforcement Use of Restraint Devices in the City of Berkeley
(July 9, 2019 City Council Action Calendar Item #18)

After careful consideration, the Police Review Commission voted to approve the Berkeley Police Department's use of spit hoods, under certain circumstances and conditions.

The PRC reviewed BPD Policy 302, Handcuffing and Restraints, with particular attention to Section 302.10, Application of Spit Hoods/Masks/Socks, and considered the Mental Health Commission's report to the Council, as well as City staff's companion report. The PRC asked the Berkeley Police Department to make a presentation of their use of spit hoods, and Chief Greenwood and other officers did so at the PRC's June 12, 2019 meeting. The PRC also received public comment on this subject at the meeting, but its request to have a representative from the Mental Health Commission address the PRC was declined.

Chief Greenwood offered some revisions to Policy 302 in response to concerns raised by commissioners at the June 12 PRC meeting. The PRC's Lexipol Policies Subcommittee discussed these changes at a meeting on June 18. The Subcommittee made additional suggestions, which the full Commission considered at its June 26 meeting. After hearing additional public comment and engaging in extensive debate, the PRC passed the following motion (moved/seconded by Mikiten/Ramsey):

To recommend approval of Policy 302 as follows: 1) In the second paragraph of Section 302.10, change the word "when" to "while" [so the sentence begins, "Spit hoods may be placed upon person in custody while the officer reasonable believes" etc.]; 2) that the PRC endorses the BPD's commitment to crisis intervention training and de-escalation strategies, and promotes the use of CIT officers in the application of spit hoods when practical; 3) that the Chief propose data collection measures for the PRC's consideration, including the types of circumstances hoods are used under; 4) that the BPD utilize other available methods of restraint when possible, such as placing a

person in a vehicle; 5) the use of spit hoods on pre-adolescent children is prohibited.

The vote was as follows: Ayes -- Matthews, Mikiten, Perezvelez, Ramsey, Roberts; Noes -- Calavita, Earnest; Abstain -- Allamby; Absent -- None.

The version of BPD Policy 302 that the PRC considered on June 26, 2019 is attached. Please note that it does *not* incorporate language changes recommended at that meeting.

Attachment

cc: Police Review Commissioners
Dee Williams-Ridley, City Manager
Andrew Greenwood, Chief of Police
David White, Deputy City Manager
Karen Klatt, Mental Health Commission Secretary

Handcuffing and Restraints

302.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of handcuffs and other restraints during detentions and arrests.

302.2 POLICY

The Berkeley Police Department authorizes the use of restraint devices in accordance with this policy, the Use of Force policy and department training. Restraint devices shall not be used to punish, to display authority or as a show of force.

302.3 USE OF RESTRAINTS

Only members who have successfully completed Berkeley Police Department approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use any restraint, officers should carefully balance officer safety concerns with factors that include, but are not limited to:

- (a) The circumstances or crime leading to the arrest
- (b) The demeanor and behavior of the arrested person
- (c) The age and health of the person
- (d) Whether the person ~~may be~~ is known to be pregnant
- (e) Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes
- (f) Whether the person has any other apparent disability

302.4 RESTRAINT OF DETAINEES

Situations may arise where it may be reasonable to restrain an individual who may, after brief investigation, be released without arrest. Unless arrested, the use of restraints on detainees should continue only for as long as is reasonably necessary to assure the safety of officers and others. When deciding whether to remove restraints from a detainee, officers should continuously weigh the safety interests at hand against the continuing intrusion upon the detainee.

302.5 ALTERNATIVE MEANS OF RESTRAINT

Alternative Means of Restraint include but are not limited to:

- (a) Handcuffing the person with their hands in front of their body
- (b) Handcuffing the person with multiple sets of linked handcuffs
- (c) Use of the entire WRAP system

(d) Use of the WRAP's ankle strap

(e) Use of plastic handcuffs 'flex-cuffs'

(f) An ambulance gurney with five point straps

302.6302.6 RESTRAINT OF PREGNANT PERSONS

Persons who are known to be pregnant should be restrained in the least restrictive manner that is effective for officer safety and in no event shall these persons be restrained by the use of leg irons, waist chains or handcuffs behind the body.

No person who is in labor, delivery or recovery after delivery shall be handcuffed or restrained except in extraordinary circumstances and only when a supervisor makes an individualized determination that such restraints are necessary for the safety of the arrestee, officers or others (Penal Code § 3407; Penal Code § 6030).

302.6302.7 RESTRAINT OF JUVENILES

A juvenile under 14 years of age should not be restrained unless he/she is suspected of a dangerous felony or when the officer has a reasonable suspicion that the juvenile may resist, attempt escape, injure him/herself, injure the officer or damage property.

302.7302.8 NOTIFICATIONS

Whenever an officer transports a person with the use of restraints other than handcuffs, the officer shall inform the jail staff upon arrival at the jail that restraints were used. This notification should include information regarding any other circumstances the officer reasonably believes would be potential safety concerns or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration) that may have occurred prior to, or during transportation to the jail.

302.8302.9 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS

Handcuffs, including temporary ~~nylon or~~ plastic cuffs (aka 'flex-cuffs'), may be used only to restrain a person's hands to ensure officer safety.

Although recommended for most arrest situations, handcuffing is ~~discretionary and~~ not an absolute requirement of the Department. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that regardless of the circumstances, in order to avoid risk every person should be handcuffed. ~~regardless of the circumstances~~

In most situations handcuffs should be applied with the hands behind the person's back. When feasible, handcuffs should be applied between the base of the palm and the ulna bone of the wrist. When feasible, handcuffs should be double-locked to prevent tightening, which may cause undue discomfort or injury to the hands or wrists.

In situations where one pair of handcuffs does not appear sufficient to restrain the individual or may cause unreasonable discomfort due to the person's size, officers should consider using a ~~ternative means of restraint, alternatives,~~ such as using an additional set of handcuffs or multiple plastic

Commented [SSM1]: Jun 2019 - Section changed back to Lexipol language from our prior H6 language per the PRC 6/18/19

cuffs

if the person being handcuffed is on the ground or in a prone position, officers should, as soon as possible, place the person in an upright sitting position or on their side for respiratory recovery and to mitigate the potential for positional asphyxia.

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

302.0302.10 APPLICATION OF SPIT HOODS/MASKS/SOCKS

Spit hoods, aka 'spit masks' or 'spit socks'/masks/socks are temporary protective devices designed to prevent the wearer from biting and/or transferring or transmitting fluids (saliva and mucous) to others. As the Department recognizes that use of a spit hood may cause alarm and concern to onlookers, this policy provides clear and specific guidelines for their use, in service of the safety of all parties involved.

Spit hoods may be placed upon persons in custody when the officer reasonably believes the person will bite or spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport.

Officers utilizing spit hoods shall ensure that the spit hood is applied properly to allow for adequate ventilation and that the restrained person can breathe normally. Officers should provide assistance during the movement of restrained individuals due to the potential for impaired or distorted vision on the part of the individual. Officers should avoid comingling individuals wearing spit hoods with other detainees.

Spit hoods shall not be used in situations where the restrained person is bleeding profusely from the area around the mouth or nose, or if there are indications that the restrained person has a medical condition evident in the area around the mouth or nose, such as difficulty breathing or vomiting. In such cases, prompt medical care should be provided. If the person vomits while wearing a spit hood, the spit hood shall be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should be thoroughly decontaminated including hair, head and clothing prior to application of a spit hood.

Those who have been placed in a spit hood should be continually monitored and shall not be left unattended until the spit hood is removed. Spit hoods shall be discarded after each use.

302.10302.11 APPLICATION OF THE WRAP LEG RESTRAINT DEVICES

The WRAP is a temporary restraining device comprised of a Velcro strapped leg panel, torso harness, ankle strap and backside handcuff carabiner. The device immobilizes the body into a straight-legged seated position. Used properly, it restricts a subject's ability to do harm to oneself or others. Officer safety is enhanced and the risk of injury to the subject is reduced.

Leg restraints may be used to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Only restraint devices approved by the Department shall be used.

Commented [SSM2]: Sep 2018 - Added per PRC request from 9/17/18

Commented [SSM3]: Jun 2019 - Changed back to 'hoods' per PRC 6/18/19 meeting

Commented [SSM4]: Jun 2019 - Chief's language

Commented [SSM5]: Jun 2019 - Shall per PRC 6/18/19 meeting

Commented [SSM6]: Jun 21 - changed back to shall - accidental deletion in previous version.

Commented [SSM7]: Jun 12 2019 Chief's changes

Commented [SSM8]: Jun 2019 - Per PRC

In determining whether to use the WRAP leg restraint, officers should consider:

- (a) Whether the officer or others could be exposed to injury due to the assaultive or resistant behavior of a suspect.
- (b) Whether it is reasonably necessary to protect the suspect from his/her own actions (e.g., ~~hitting his/her head against the interior of the patrol unit~~, running away from the arresting officer while handcuffed, kicking at objects or officers).
- (c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol unit).
- (d) Whether conventional methods of restraint have failed.

302.11.1 GUIDELINES FOR USE OF THE WRAP LEG RESTRAINTS

When applying the WRAP leg restraints the following guidelines should be followed:

- (a) If practicable, officers should notify a supervisor of the intent to apply the ankle WRAP strap device. In all cases, a supervisor shall be notified as soon as practicable after the application of the ankle strap device WRAP.
- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) Restraint straps should be checked frequently for tightness, and adjusted as necessary until the WRAP is removed. The harness straps shall never be tightened to the point they interfere with the person's ability to breathe.
- (d) The restrained person should be continually monitored by an officer while the WRAP ankle strap is in use. The officer should ensure that the person does not roll onto and remain on his/her stomach.
- (e) The officer should look for signs of distress such as sudden quiet or inactivity, complaints of chest pain, change in facial color, complaint of extreme heat, vomiting and/or labored breathing, and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
- (f) Movement of the person can be accomplished in three ways, depending on the level of their cooperation. The person can either be carried, allowed to stand and shuffle walk, or be transported in a vehicle.
- (g) Once secured in a vehicle, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.
- (h) If in custody and transported by ambulance/paramedic unit, the restrained person should be accompanied by an officer when requested by medical personnel. The transporting officer

Commented [SSM9]: Per PRC 6/18/19

Commented [SSM10]: Per PRC 6/18/19

should describe to medical personnel any unusual behaviors or other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

302.11.2 DEVICE REMOVAL

Based on the person's combativeness or level of aggression, officers should employ appropriate control techniques and tactics when removing the WRAP.

302.11.3 THE WRAP'S ANKLE STRAP

The ankle strap is a part of the WRAP restraint system. The ankle strap may be used alone, without the rest of the WRAP system to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Use of the ankle strap will follow the same guidelines listed above for the WRAP.

302.11.302.12 APPLICATION OF AUXILIARY RESTRAINT DEVICES

Auxiliary restraint devices include transport belts, waist or belly chains, transportation chains, leg irons and other similar devices. Auxiliary restraint devices are intended for use during long-term restraint or transportation. They provide additional security and safety without impeding breathing, while permitting adequate movement, comfort and mobility.

Only department-authorized devices may be used. Any person in auxiliary restraints should be monitored as reasonably appears necessary.

302.12302.13 REQUIRED DOCUMENTATION

If an individual is restrained and released without an arrest, the officer shall document the details of the detention and the need for handcuffs or other restraints.

If an individual is arrested, the use of restraints other than handcuffs shall be documented in the related report. The officer should include, as appropriate:

- ~~(a) The amount of time the suspect was restrained.~~
- ~~(b) How the suspect was transported and the position of the suspect.~~
- ~~(c) Observations of the suspect's behavior and any signs of physiological problems.~~
- ~~(d) Any known or suspected drug use or other medical problems.~~

Submitted June 26, 2019

The use of spit Hoods

Good evening. My name is Karl Knobler. I am a member of the committee for racial justice as part of the Wellstone Democratic Renewal Club, and Indivisible. I am also a member of DSA. In my appearance with you, I am a clinical psychologist in practice in Berkeley for the past 40 years.

I wanted to communicate with you that the use of domination oriented tools with scared people with emotional and thought problems, particularly under stress is humiliating, debasing of their humanity, counter productive and is not in the best interest of either the police nor the subject of the police's interest.

Apparently, the BPD does not collect data on how often spit hoods are used, under what conditions etc. It would be good to know if this is a once a week situation or twice a year. We have no idea. The hoods they use are nylon mesh and look and feel sort of like mosquito netting, but how often do people feel like they are suffocating? How often nationally and locally are people physically or psychologically injured?

As well, we do not know what the police are responding to and what they have done to de-escalate the situation first. They appear not to take the mask off even as the subject has calmed down. So there is no protocol for the actual use of the mask, only put it on if you think so and then leave it on. There is no thought about the subjective effects of using the mask either on the police or on the subject

The police are concerned about their own safety and putting their own concerns before the interests of their subject. If someone comes at you with an approach that is not interested in you but only in changing your behavior then there is usually trouble, now or later. What do the police do that helps to make the situation calmer versus being aggressive? As well, there appears to be no finding where the diseases of interest, HIV and Hepatitis were passed through sputum. It would certainly be less an issue for the subject if the police wore masks if they were so concerned. The problem of doing something to the Other instead of doing something to yourself is obviously a problem for many Americans. It may feel disgusting to oneself to be spat upon. But that is not a reason to dominate the other.

Hooding of prisoners has been declared inhumane treatment by the European Court of Human Rights. It is a form of torture as it degrades and enforces the control of one group over the other.

Hooding restricts both communication and breathing. A person may not be able to communicate as well, and it is scary. When folks get scared and anxious, we may begin to hold our breath, breathing in a more shallow way, creating a positive feedback loop creating greater anxiety and hypoxia while will create the experience of not being able to breathe.

People with mental/emotional problems have a high rate of having been traumatized earlier in their lives, and hooding or having to submit only takes them back to the raw experience of being abused in the past. And of course they then do one or more of three things: Fight, Flight or Freeze. Without an attempt to de-escalate the situation and work together in resolving the conflict, handling it with respect and concern, mental health issues only grow and the subject may well feel like s/he is fighting for his/her life.

Primary in this situation is the interaction between the police and people who are having a bio-psycho-social-spiritual confrontation with someone else who is having their own personal experience, but the subject is and feels alone and the other persons, the police people, seem not interested, which makes the subject wary and between a rock and a hard place of being dominated or fighting for his/her own integrity and freedom.

The hoods should not be used, and finding new techniques and interventions is recommended. Approaches that support mutual respect and understanding that moves toward de-escalation and help for those who suffer and are acting out their suffering must be put in place.

Thank you



Commissioner Attendance Report

For the period January 1 through June 30, 2019

Commission Name: Police Review Commission

Secretary Name: Katherine J. Lee

Commissioner Last N	9-Jan	23-Jan	13-Feb	27-Feb	13-Mar	27-Mar	10-Apr	24-Apr	8-May	22-May	12-Jun	26-Jun
1 Allamby	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
2 Calavita	Attended	Absent	Attended	Leave of Absence	Attended	Leave of Absence	Attended	Leave of Absence	Attended	Attended	Attended	Attended
3 Earnest	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Attended	Attended	Attended	Attended
4 Matthews	Absent	Attended	Attended	Attended	Attended	Absent	Attended	Absent	Attended	Absent	Attended	Attended
5 Mikiten	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
6 Perezvelez	Attended	Attended	Attended	Attended	Attended	Attended	Absent	Attended	Attended	Attended	Attended	Attended
7 Ramsey	Attended	Absent	Attended	Attended	Attended	Attended	Attended	Leave of Absence	Attended	Attended	Absent	Attended
8 Roberts	Attended	Attended	Leave of Absence	Attended	Attended	Attended	Leave of Absence	Attended	Attended	Attended	Attended	Attended

Instructions for Completing the form

This report tracks attendance of current commissioners at REGULAR commission meetings. Special meetings and subcommittee meetings are NOT included.

1. Gather your 2019 REGULAR meeting dates and roster of current commissioners.
2. Enter dates of REGULAR meetings. Add columns as needed if you had more than one REGULAR meeting in a month.
3. Enter the names of your *current* commissioners in the column provided. Add rows if needed for commissions with more than 9 members.
4. For each meeting, select from the dropdown options to indicate whether the commissioner attended the meeting, had an approved *leave of absence*, an *excused absence* for *cultural or religious holidays*, or was *absent*. TIP: Click only *once* in a cell to view the dropdown menu.
5. For meetings prior to a commissioner's appointment, choose "N/A"
6. Return to the Commission inbox as soon as possible after your last June meeting, but no later than **July 1, 2019**. Call us at x6908 with any questions about filling the form.

