

Police Review Commission meeting of July 24, 2019

Agenda Item #10.d.: Lexipol Polices for review and approval

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Hate Crimes

319.1 PURPOSE AND SCOPE

The purpose of this policy is to meet or exceed the provisions of Penal Code § 13519.6(c) and provides members of this department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

319.1.1 DEFINITIONS

Hate crimes - A criminal act committed in whole or in part, because of one or more of the following actual or perceived characteristics of the victim (Penal Code § 422.55; Penal Code § 422.56; Penal Code § 422.57):

- (a) Disability
- (b) Gender, gender identity or gender expression
- (c) Nationality
- (d) Race or ethnicity
- (e) Religion
- (f) Sexual orientation
- (g) Association with a person or group with one or more of these actual or perceived characteristics
- (h) Examples of hate crimes include, but are not limited to:
 - 1. Interfering with, oppressing or threatening any other person in the free exercise or enjoyment of any right or privilege secured by the constitution or laws because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6).
 - 2. Defacing a person's property because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6(b)).
 - 3. Terrorizing a person with a swastika or burning cross (Penal Code § 11411).
 - 4. Vandalizing a place of worship (Penal Code § 594.3).

The federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expands federal hate crimes to include crimes motivated by a victim's actual or perceived sex, sexual orientation, gender identity or disability (18 USC § 249).

Victim - Includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library or other victim or intended victim of the offense (Penal Code § 422.56).

319.2 POLICY

The Berkeley Police Department recognizes and places a high priority on the rights of all

individuals guaranteed under the state and federal constitution and incorporated in state and federal law.

319.3 PREVENTION AND PREPARATION

While it is recognized that not all crime can be prevented, this department is committed to taking a proactive approach to preventing and preparing for likely hate crimes by, among other things:

- (a) Make an affirmative effort to establish contact with persons and groups within the community, who are likely targets of hate crimes and forming networks that address prevention and response.
- (b) Accessing assistance by, among other things, activating the California Department of Justice Hate Crime Rapid Response Protocol when necessary.
- (c) Providing victim assistance and community follow-up as outlined below.
- (d) Educating community and civic groups about hate crime laws.
- (e) Establishing a community relations liaison to work with community organizations and leaders to coordinate public meetings, local group meetings and school assemblies on recognizing, preparing for and preventing hate crimes.

319.4- HATE CRIME vs. HATE INCIDENT

Many acts of hate violence fall under the category of a hate crime, which is punishable by law. However, not all hate incidents are hate crimes. For example, verbal name calling, although offensive, is not a crime and must be accompanied by a viable threat of violence and the ability to carry out the threat.

For a hate incident to be categorized as a hate crime, it must violate a criminal law. A hate crime might include threatening phone calls, physical assaults, destruction of property, bomb threats, and/or the disturbance of religious meetings.

A hate incident that does not constitute a hate crime might include hate speech, display of offensive materials on one's property, the distribution of hate materials in public places, and the posting of hate materials that does not result in property damage. Even if a hate incident does not rise to the level of a hate crime, the victim will still need support and assistance and may have an actionable civil claim as well.

319.5 CRIMINAL STATUTES

The key criminal statutes on hate crimes are:

- (a) Penal Code § 422.6 which provides that it is a misdemeanor to both (a) threaten or injure an individual or (b) damage property because of the real or perceived beliefs or characteristics of the other person; and
- (b) Penal Code § 422.7 which provides that it is a felony to both (a) threaten or injure an individual (when the injury could or does result in great bodily injury) or (b) damage property (when the damage is in excess of \$950) because of the real or perceived beliefs or characteristics of the other person.

319.4319.6 INVESTIGATIONS

Whenever any member of this department receives a report of a suspected hate crime or other activity that reasonably appears to involve a potential hate crime, the following should occur:

- (a) Assigned officers should promptly contact the victim, witness, or reporting party to investigate the matter further as circumstances may dictate
- (b) A supervisor should be notified of the circumstances as soon as practical.
- (c) Once in-progress aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of present suspects at the scene, etc.), the assigned officers should take all reasonable steps to preserve evidence that establishes a possible hate crime.
- (d) Based upon available information, officers should take appropriate action to mitigate further injury or damage to potential victims or the community.
 1. Officers should contact the property owner to remove any evidence that cannot be physically removed (i.e., painted words or signs on a wall) by the officer once the offense is documented.
- (e) The assigned officers ~~shall~~should interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
 1. No victim of or a witness to a hate crime who is not otherwise charged with or convicted of a crime under state law may be detained for or turned over to federal authorities exclusively for any actual or suspected immigration violation (Penal Code § 422.93(b))
 2. Statements of victims and witnesses should be audio or video recorded if practicable (see the Portable Audio/Video Recorders Policy).
- (f) Depending on the situation, the assigned officers or supervisor may request additional assistance from detectives or other resources to further the investigation
- (g) The assigned officers ~~shall~~will include all available evidence indicating the likelihood of a hate crime in the relevant reports. All related reports should be clearly marked as "Hate Crimes" and, absent prior approval of a supervisor, should be completed and submitted by the assigned officers before the end of the shift
- (h) The assigned officers ~~shall~~will provide the victims of any suspected hate crime with a brochure on hate crimes (Penal Code § 422.92). Such brochures will also be available to members of the general public upon request. The assigned officers should also make reasonable efforts to assist the victims by providing available information on local assistance programs and organizations
- (i) The assigned officers and supervisor ~~shall~~should take reasonable steps to ensure that any such situation does not escalate further and should provide information to the victim regarding legal aid (e.g., Possible Temporary Restraining Order through the District Attorney or City Attorney Penal Code § 136.2 or Civil Code § 52.1 as indicated).

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319.4.1 SUPERVISOR RESPONSIBILITY

The supervisor ~~should~~~~should~~ confer with the initial responding officers to identify reasonable and appropriate preliminary actions. The supervisor sh~~all~~~~ould~~.

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- (a) Review related reports to verify whether the incident is appropriately classified as a hate crime for federal and state bias crime-reporting purposes.
- (b) Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- (c) Consider the need for further action to be taken for the protection of the victims or vulnerable sites, such as assigning an officer at specific locations that could become targets or increase neighborhood surveillance.
- (d) Ensure that members who are responsible for the conduct and maintenance of information on criminal groups are notified and that they make appropriate inquiries and entries into criminal intelligence systems ~~(see Criminal Organizations Policy)~~.

319.4.2 DETECTIVE BUREAU RESPONSIBILITY

If a hate crime case is assigned to the Detective Bureau, the assigned detective will be responsible:

- (a) Coordinating further investigation with the District Attorney and other appropriate law enforcement agencies.
- (b) Maintaining contact with the victims and other involved individuals as needed.
- (c) Maintaining statistical data and tracking on suspected hate crimes as indicated for required reporting to the Attorney General (Penal Code § 13023). See the Records Management Policy.
- (d) Make reasonable efforts to identify additional witnesses.
- (e) Utilize available criminal intelligence systems as appropriate, ~~(see Criminal Organizations Policy)~~.
- (f) Provide the supervisor and the Public Information Officer with information that can be responsibly reported to the media.
 1. When appropriate, the PIO should reiterate that the hate crime will not be tolerated and will be taken seriously.

319.5319.7 TRAINING

All members of this department will receive POST approved training on hate crime recognition and investigation as provided by Penal Code § 13519.6. Training should also include recognition of bias motivators such as ranges of attitudes and perceptions toward a specific characteristic or group.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 1, 2000

GENERAL ORDER H-4

SUBJECT: HATE CRIME POLICY AND PROCEDURES

PURPOSE

- 1 - The purpose of this General Order is to establish a policy and procedure for handling crimes and incidents that are motivated by hatred or prejudice arising from differences in race, religion, gender, ethnic background, culture, or sexual orientation.

POLICY

- 2 - The policy of the Berkeley Police Department is to ensure that the rights guaranteed by Federal, State, and Local laws, and the U. S. Constitution are protected for all people regardless of their race, gender, ethnic background, national origin, religious belief, sex, age, disability, sexual orientation, or political affiliation. When such rights are infringed upon by violence, threats, or other harassment, the Department will use all resources necessary to rapidly identify the persons responsible for criminal offenses, arrest them and bring them before the courts.
- 3 - All criminal acts of racial, religious or political hate motivated violence or threats will be viewed as serious, and the investigation of them will be given high priority. Such acts generate fear and concern among victims and the public, and have the potential for recurring, escalating, and possibly causing counter-violence.
- 4 - All reported incidents that are non-criminal and that are motivated by race, gender, ethnicity, religion, sexual orientation, or political affiliation will be investigated as high priority and documented by a police report. Such incidents may have the potential to reoccur and escalate into a criminal offense.

DEFINITION

- 5 - The California Attorney General's Office most recent edition on "Law Enforcement Guidelines for Hate Crime Policy", defines "hate crime " as "any criminal act or attempted criminal act directed against a person or persons by another based upon the victim's actual or perceived race, nationality, religion, sexual orientation, gender, mental disability, or physical disability. A hate crime includes any criminal act or attempted criminal act against the property of a public agency or a private institution because it is identified or associated with a person or group of an identifiable race, nationality, religion, sexual orientation, gender, mental disability, or physical disability. "

REPORTING AND INVESTIGATION PROCEDURES

- 6 - Communications Center
 - (a) Upon receipt of a report of a possible/suspected hate motivated crime or incident, the Communications personnel shall:

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- (1) Dispatch a field unit as soon as reasonably practical in accordance with the Communications Center Procedures Manual.
- (2) Notify an area Patrol Sergeant of the reported incident.

7 - Patrol Officer

- (a) When a Patrol Officer responds to a report of a hate-motivated crime or incident, the officer shall:
 - (1) Arrest the responsible(s) if applicable.
 - (2) Advise their Patrol Supervisor of the situation.
 - (3) Attempt to effectively calm the victim by being empathetic and supportive.
 - (4) Conduct a thorough preliminary investigation consistent with Department policy and procedure.
 - (5) Provide assistance to the victim by giving them referral information such as counseling and other appropriate support and assistance agencies.
 - (6) Designate hate-motivated crime or incident by writing "Hate Crime Incident" across the top of the report form.
 - (7) Include information on the report form indicating why the motivation appears all or in part to be based on differences in race, religion, ethnicity or sexual orientation.

8 - Patrol Supervisor

- (a) The Patrol Supervisor, upon being notified of a possible hate-motivated crime or incident, shall:
 - (1) Respond to the scene, interview the patrol officer, and confirm whether or not a hate-motivated crime or incident has occurred.
 - (2) Take whatever steps are necessary to ensure that the situation does not escalate.
 - (3) Assist in calming the victim by being empathetic and supportive.
 - (4) Insure that a thorough preliminary investigation is conducted by the assigned officer.
- (b) The Patrol Supervisor shall notify the Watch Commander, Duty Command Officer, or on-call Captain, as appropriate.

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- (c) The Patrol Supervisor shall include a summary of the incident in the Supervisor's Daily Report.
- 9 - Patrol Watch Commander
 - (a) The Patrol Watch Commander, upon being notified of a possible hate-motivated crime or incident, shall:
 - (1) Discuss the incident with the Patrol Sergeant, as appropriate.
 - (2) Notify any other person(s) deemed appropriate due to the circumstances of the crime or non-criminal incident.
 - (b) The Patrol Watch Commander shall report the incident in his/her Watch Commander's Daily report, as appropriate.
- 10 - Support Services Division - Detective Bureau
 - (a) If the type of crime requires a follow-up, the investigator assigned the case shall:
 - (1) Conduct a thorough follow-up investigation consistent with Department policy and procedure.
 - (2) Keep the **Support Services Division Lieutenant*** informed of the progress of the investigation.
 - (3) Prepare the case for prosecution in court, if a suspect is known.
 - (b) The **Support Services Division Lieutenant*** shall ensure all necessary follow investigations are completed.
- 11 - Support Services Division - Report Review Sergeant
 - (a) The **Support Services Division Lieutenant*** shall insure that all hate-motivated crime or incident statistics are recorded and **reported*** in accordance with State and Federal laws.
- 12 - Public Information Officer
 - (a) The Public Information Officer shall serve as the liaison between the Department and the press and community, religious, and civic leaders.
- 13 - Community Services Bureau
 - (a) The **Community Services Bureau Lieutenant** shall meet with neighborhood group as necessary, to allay fears, reduce the potential for counter-violence, and provide safety and protection information.

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- (b) The Community Services Bureau Lieutenant shall assist the victim and victim family, as needed.

References: General Orders C-2, D-2, M-1
Police Regulation 232
Training & Information Bulletin #201
California Penal Code Sections 136.2, 139, 190.2(a) (16), 302,
422.6(a) (b) (c), 422.7, 427.9, 538 (c), 594.1, 594.3, 640.8,
1170.75, 1170.8, 1170.85, 11141 (a), 11410, 11411, 11412, and
11413
California Civil Code Sections 51.0, 51.5, 51.7, 52.0 and 52.1

Information Technology Use

322.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the proper use of department information technology resources, including computers, electronic devices, hardware, software and systems.

322.1.1 DEFINITIONS

Definitions related to this policy include:

Computer system - All computers (on-site and portable), electronic devices, hardware, software, and resources owned, leased, rented or licensed by the Berkeley Police Department that are provided for official use by its members. This includes all access to, and use of, Internet Service Providers (ISP) or other service providers provided by or through the Department or department funding. This does not include body worn cameras; see the Body Worn Cameras policy for information regarding their use.

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Hardware - Includes, but is not limited to, computers, computer terminals, network equipment, electronic devices, telephones, including cellular and satellite, pagers, modems or any other tangible computer device generally understood to comprise hardware.

Software - Includes, but is not limited to, all computer programs, systems and applications, including shareware. This does not include files created by the individual user.

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Temporary file, permanent file or file - Any electronic document, information or data residing or located, in whole or in part, on the system including, but not limited to, spreadsheets, calendar entries, appointments, tasks, notes, letters, reports, messages, photographs or videos.

322.2 POLICY

It is the policy of the Berkeley Police Department that members shall use information technology resources, including computers, software and systems, that are issued or maintained by the Department in a professional manner and in accordance with this policy.

322.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to emails, texts or anything published, shared, transmitted or maintained through file-sharing software or any Internet site that is accessed, transmitted, received or reviewed on any department computer system.

The Department reserves the right to access, audit and disclose, for whatever reason, any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Department, including the department email system, computer network and/or any information placed into storage on any department system or device. This includes records of all keystrokes or Web-browsing history made at any department computer or over any department network. The fact that access to a database, service or website requires a username or password will not create an expectation of privacy if it is accessed through department computers, electronic devices or networks.

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However, the Department may not require a member to disclose a personal username or password or open a personal social website, except when access is reasonably believed to be relevant to the investigation of allegations of work-related misconduct (Labor Code § 980).

322.4 RESTRICTED USE

Members shall not access computers, devices, software or systems for which they have not received prior authorization or the required training. Members shall immediately report unauthorized access or use of computers, devices, software or systems by another member to their supervisors or Watch Commanders.

Members shall not use another person's access passwords, logon information and other individual security data, protocols and procedures unless directed to do so by a supervisor.

322.4.1 SOFTWARE

Members shall not copy or duplicate any copyrighted or licensed software except for a single copy for backup purposes in accordance with the software company's copyright and license agreement.

To reduce the risk of a computer virus or malicious software, members shall not install any unlicensed or unauthorized software on any department computer. Members shall not install personal copies of any software onto any department computer.

When related to criminal investigations, software program files may be downloaded only with the approval of the information systems technology (IT) staff ~~and the member's supervisor, and with the authorization of the Chief of Police or the authorized designee.~~

No member shall knowingly make, acquire or use unauthorized copies of computer software that is not licensed to the Department while on department premises, computer systems or electronic devices. Such unauthorized use of software exposes the Department and involved members to severe civil and criminal penalties.

Introduction of software by members should only occur as part of the automated maintenance or update process of department- or City-approved or installed programs by the original manufacturer, producer or developer of the software.

Any other introduction of software requires prior authorization from IT staff and a full scan for malicious attachments.

322.4.2 HARDWARE

Access to technology resources provided by or through the Department shall be strictly limited to department-related activities. Data stored on or available through department computer systems shall only be accessed by authorized members who are engaged in an active investigation or assisting in an active investigation, or who otherwise have a legitimate law enforcement or department-related purpose to access such data. Any exceptions to this policy must be approved by a supervisor.

322.4.3 INTERNET USE

Internet access provided by or through the Department shall be strictly limited to department-related activities. Internet sites containing information that is not appropriate or applicable to department use and which shall not be intentionally accessed include, but are not limited to, adult forums, pornography, gambling, chat rooms and similar or related Internet sites. Certain exceptions may be permitted with the express approval of a supervisor as a function of a member's assignment.

Downloaded information shall be limited to messages, mail and data files.

322.4.4 OFF-DUTY USE

~~Members shall only use technology resources provided by the Department while on-duty or in conjunction with specific on-call assignments unless specifically authorized by a supervisor. This includes the use of telephones, cell phones, texting, email or any other "off the clock" work-related activities. This also applies to personally owned devices that are used to access department resources.~~

Refer to the Personal Communication Devices Policy for guidelines regarding off-duty use of personally owned technology.

322.5 PROTECTION OF AGENCY SYSTEMS AND FILES

All members have a duty to protect the computer system and related systems and devices from physical and environmental damage and are responsible for the correct use, operation, care and maintenance of the computer system.

Members shall ensure department computers and access terminals are not viewable by persons who are not authorized users. Computers and terminals ~~shall~~ **should** be secured, users logged off and password protections enabled whenever the user is not present. Access passwords, logon information and other individual security data, protocols and procedures are confidential information and are not to be shared. Password length, format, structure and content shall meet the prescribed standards required by the computer system or as directed by a supervisor and shall be changed at intervals as directed by IT staff or a supervisor.

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It is prohibited for a member to allow an unauthorized user to access the computer system at any time or for any reason. Members shall promptly report any unauthorized access to the computer system or suspected intrusion from outside sources (including the Internet) to a supervisor.

322.6 INSPECTION OR REVIEW

A supervisor or the authorized designee has the express authority to inspect or review the computer system, all temporary or permanent files, related electronic systems or devices, and any contents thereof, whether such inspection or review is in the ordinary course of his/her supervisory duties or based on cause.

Reasons for inspection or review may include, but are not limited to, computer system malfunctions, problems or general computer system failure, a lawsuit against the Department involving one of its members or a member's duties, an alleged or suspected violation of any

department policy, a request for disclosure of data, or a need to perform or provide a service.

The IT staff may extract, download or otherwise obtain any and all temporary or permanent files residing or located in or on the department computer system when requested by a supervisor or during the course of regular duties that require such information.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 15, 2013

GENERAL ORDER E-12

SUBJECT: ELECTRONIC COMMUNICATIONS

PURPOSE

- 1 - This Order sets forth policy with regard to access to, use of, and disclosure of electronic communications - messages sent or received by Department employees with the use of the City of Berkeley's email system and Berkeley Police Crime Forum (Crime Forum).

POLICY

- 2 - All email and Crime Forum computer files are the property of the City of Berkeley, regardless of their physical location or form in which they are maintained.
- 3 - All employees shall comply with the requirements set forth in this Order in their use of the City's email, Crime Forum systems, and Web/Cloud access.
 - (a) An employee's use of the City's email, Crime Forum systems, and Web/Cloud storage implies their knowledge of, and agreement to comply with, the policies and procedures set forth in this Order.

PROCEDURES

Electronic Communications – Limited To Official Purposes

- 4 - Employees shall use electronic communications systems in an appropriate and professional manner for official business.
 - (a) In addition to activities and communications that further the interests of this Department and the City of Berkeley, "official business" may include work-related social events, such as lunches, retirement parties, birthdays, and notices of bereavement.
- 5 - Employees shall check their email account and Crime Forum Account for new messages at least two times each duty shift.
 - (a) It is recommended that email and the Crime Forum be checked close to the beginning and end of each shift worked in order to maximize the employee's exposure to new mail messages and crime information.
- 6 - When requested by the sender of a message, or as otherwise necessary or appropriate, employees shall respond to received email in a timely fashion.
- 7 - Misaddressed email shall be sent back to the original sender with a notation the message was misaddressed.

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- 8 - Employees may forward or re-distribute copies of email messages only when doing so fulfills a legitimate work-related purpose.
- 9 - Use of the email or Crime Forum systems to send messages of a threatening, harassing, obscene or profane manner is prohibited.
 - (a) Electronic communications containing offensive or inappropriate content, or is otherwise in violation of this Order, shall be forwarded to the recipient's supervisor for appropriate administrative action.
 - (b) An employee who observes another person use the City's email system inappropriately shall immediately notify their supervisor, or if unavailable, the next person in their Chain of Command.
- 10 - Employees shall exercise discretion when sending Department-wide email messages, and restrict such broad dissemination to matters having Department-wide importance.
 - (a) Fundraising events not specifically sanctioned or endorsed by the Department should not be the subject of Department-wide email messages.
 - (b) Employees shall not send a City-wide mass email message without the prior authorization of the Chief of Police or City Manager.
- 11 - Employees shall manage the volume of email messages in their City email account to ensure their mailbox does not become "full" and unable to receive new messages.
 - (a) Employees should not rely on the City email server as an archive for their email files.

Account Security

- 12 - Employees should protect the security of their email and Crime Forum accounts by regularly changing their private network login password.
 - (a) Employees shall not share their private network login password or Crime Forum password with any other individual.
- 13 - "Electronic snooping" or misuse of another employee's email account or Crime Forum account is prohibited.
 - (a) "Electronic snooping" is the unauthorized use, or attempted use, of, another employee's network access password, or the unauthorized entry, or attempted entry, to the computer files and communications of another without that person's expressed consent.

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GENERAL ORDER E-12

Department Access to Electronic Mail

- 14 - The Department shall have the right to access and disclose all messages sent over and contained in the City's email and Crime Forum systems.
- 15 - The Department shall have the right to delete or retain any email file of an employee who is no longer employed by the City of Berkeley.

Electronic Communication Systems, Initiation/Cancellation of Access

- 16 - The Professional Standards Division Captain, or his/her designee, shall ensure the Department of Information Technology is notified when an employee is hired, or subsequent to the employee's service termination, in order to add or cancel that person's email system access.
- 17 - Non-employees may be authorized by the Chief of Police to use the email or Crime Forum systems on a case-by-case basis, and only upon the condition that the non-employee shall use the system according to the rules and procedures established in this Order and has been given access to the system in accordance with Department of Information Technology protocols.

Crime Forum Administration

- 18 - The Investigations Division Crime Analysis Detail will conduct the day to day moderation of content of the Berkeley Police Crime Forum. Crime Analysis Detail Personnel will be assigned to the Forum as "Moderator".
- 19 - The Professional Standards Bureau will conduct routine audits of the Crime Forum to ensure compliance with this order. The Professional Standards Bureau will be assigned to the Forum as "Administrator".
- 20 - The City of Berkeley Department of Information Technology will maintain the Berkeley Police Crime Forum.
- 21 - Crime Forum content will only be retained for a period of 5 years. Information posted to the Crime Forum will be automatically deleted if the information is unused for a period of 5 years.
- 22 - The Crime Forum shall not be used as a repository for digital evidence. Digital evidence must be stored in accordance with General Order P-65.

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Web and Cloud Access

- 23- In the past fifteen years, the number of crimes involving computer use and the Internet has rapidly expanded, which has in turn brought about an increase in companies and products to assist law enforcement make use of digital forensics to determine the perpetrators, methods, timing and victims of computer crime. The vast majority of those companies and products are web-based, employing "cloud" computing for storage or Software as a Service (SaaS).
- 24- When Information and applications are stored remotely, they can be accessed from any permitted device with an Internet connection, including laptops, tablets, and smart phones. Thus, the Department must address security and privacy issues for each device accessing cloud computing spaces and services.
- 25- The Criminal Justice Information Services (CJIS) Security Policy sets the minimum standards for security requirements to ensure confidentiality, integrity and availability of criminal justice information maintained by the Federal Bureau of Investigation Criminal Justice Information Services Division. In order to access CJIS data, the Berkeley Police Department has a formal agreement in place with FBI CJIS affirming compliance with the policy. In accordance with CJIS Security Policy addressing web and Cloud access, the following protocols shall be followed:
- (a) Employees have access to and may perform investigative activities on their systems, data and content.
 - (b) Employees are prohibited from uploading for storage, posting, linking to, emailing or otherwise transmission of any content that:
 - i. violates local, state, federal or international laws or regulations
 - ii. install programs or configure systems to allow the monitoring, or "sniffing," of data traveling over a shared network
 - (c) The Department must maintain a list of authorized users and accounts that are permitted to remotely access web and Cloud systems.
 - i. The list will be maintained by the City of Berkeley IT ATA CLETS coordinator.
 - ii. Employees shall notify the CLETS administrator of usage by submitting information as to date, time, site accessed and purpose.

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iii. Log of access shall be maintained for a period of one year.

PUBLIC RECORDS, DISCLOSURE OF EMAIL

26 - Employees should be aware that all records, whether on paper or computerized, are subject to the mandatory public disclosure requirements of the Public Records Act, subject to the exceptions provided under the Act.

References: Administrative Regulation 4.2, General Order R-23, General Order P-65

Private Person's Arrests

333.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the handling of private person's arrests made pursuant to Penal Code § 837.

333.2 ADVISING PRIVATE PERSONS OF THE ARREST PROCESS

Penal Code § 836(b) expressly mandates that all officers shall advise victims of domestic violence of the right to make a private person's arrest, including advice on how to safely execute such an arrest. In all other situations, officers should use sound discretion in determining whether or not to advise an individual of the arrest process.

- (a) When advising any individual regarding the right to make a private person's arrest, officers should refrain from encouraging or dissuading any individual from making such an arrest and should instead limit advice to the legal requirements for such an arrest as listed below.
- (b) Private individuals should be discouraged from using force to effect a private person's arrest, and absent immediate threat to their own safety or the safety of others, private individuals should be encouraged to refer matters to law enforcement officials for further investigation or arrest.

333.3 ARRESTS BY PRIVATE PERSONS

Penal Code § 837 provides that a private person may arrest another:

- (a) For a public offense committed or attempted in his or her presence;
- (b) When the person arrested has committed a felony, although not in his or her presence;
- (c) When a felony has been in fact committed, and he or she has reasonable cause for believing the person arrested has committed it.

Unlike peace officers, private persons may not make an arrest on suspicion that a felony has been committed - the felony must in fact have taken place.

333.4 OFFICER RESPONSIBILITIES

Any officer presented with a private person wishing to make an arrest must determine whether or not there is reasonable cause to believe that such an arrest would be lawful (Penal Code § 847).

- (a) Should any officer determine that there is no reasonable cause to believe that a private person's arrest is lawful, the officer should take no action to further detain or restrain the individual beyond that which reasonably appears necessary to investigate the matter, determine the lawfulness of the arrest and protect the public safety.
 1. Any officer who ~~confirms~~ ~~determines~~ that a private person's arrest ~~appears to be~~ ~~is~~ unlawful ~~shall~~ ~~should~~ promptly release the arrested individual pursuant to Penal Code

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§ 849(b)(1). The officer must include the basis of such a determination in a related report.

2. Absent reasonable cause to support a private person's arrest or other lawful grounds to support an independent arrest by the officer, the officer should advise the parties that no arrest will be made and that the circumstances will be documented in a related report.

(b) Whenever an officer determines that there is reasonable cause to believe that a private person's arrest is lawful, the officer may exercise any of the following options:

1. Take the individual into physical custody for booking
2. Release the individual pursuant to a Notice to Appear
3. Release the individual pursuant to Penal Code § 849

333.5 REPORTING REQUIREMENTS

In all circumstances in which a private person is claiming to have made an arrest, the individual must complete and sign a department Private Person's Arrest form under penalty of perjury.

In addition to the Private Person's Arrest Form (and any other related documents such as citations, booking forms, etc.), officers shall complete a **narrative** report regarding the circumstances and disposition of the incident.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 1, 1988

GENERAL ORDER A-50

**SUBJECT: ARRESTS OR SIGNING OF COMPLAINTS BY PRIVATE PERSONS,
HOLDING PRISONERS**

LEGAL BASIS

- 1 - A private person may arrest for public offenses not committed in the officer's presence, and the officer is required to receive a person so arrested.

PROCEDURE

Citizen Arrests

- 2 - At the time the prisoner is received the officer shall obtain a signed statement indicating that the private person has made the arrest and shall attach the statement to the original report.
- 3 - **A Report Receipt shall be given to the complainant or victim with explicit instructions to call the appropriate investigative Detective detail prior to 10:00 a.m. on the next scheduled work day. The complainant should understand that the prisoner will be released if this is not done.**
 - (a) If circumstances beyond the control of the complainant, such as serious injury, make it impossible to comply with the time limit, the officer should indicate in his/her report and on the Consolidated Arrest Report (CAR) the period of time the prisoner is to be held.

Signing of Complaints - Non-Custody

- 4 - In Non-Custody cases where a private party desires to sign a complaint, the complainant shall be instructed to follow procedure outlined in paragraph 3 above.

REPORTS

- 5 - When a prisoner is held on assumption a private person will sign the complaint, Section 42 of the CAR shall be completed listing the name of the citizen who will sign the complaint. **In this instance the officer will instruct the citizen to CALL THE DISTRICT ATTORNEY'S OFFICE, 2120 MARTIN LUTHER KING JR. WAY, 644- 6683, AT 10:00 A.M. THE NEXT COURT DAY.** In the narrative section a notation shall be made indicating the date and time of the next court session. The prisoner is to be released if the complaint is not signed.
 - (a) The Jailor shall determine if a complaint has been signed and if not, shall complete a Certificate of Release form in duplicate. The original shall be given to the prisoner and the subject released "no complaint."
 - (b) The duplicate of the form shall be routed to the original case file.

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- 6 - It shall be the responsibility of the person typing or transcribing the investigation report to insure that sufficient copies are ready for routing to the office of the prosecuting attorney in time to issue a complaint before the first court date subsequent to the arrest.
- (a) It shall be the responsibility of the Court Liaison Officer to provide needed documentation to the prosecuting officer.

PIN AND NCIC CHECKS

- 7 - At the time of booking the arresting officer shall request a mandatory check on all prisoners through our terminal connected with the Police Information Network and an additional check with the National Crime Information Center.
- (a) It is the responsibility of the Telecommunications operator to make the requested checks and provide information needed.

References: General Orders A-53, C-63 and 0-7
California Penal Code Sections 837, 847, 849.5, and 851.6