



Police Review Commission (PRC)

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

AGENDA

Wednesday, July 24, 2019
5:30 p.m.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER

2. PUBLIC COMMENT

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

3. APPROVAL OF AGENDA

4. OLD BUSINESS (discussion and action)

- a. Review the following Lexipol policies, with revisions from BPD based on Subcommittee comments:

Lexipol #	G.O. (if any)	Title
200	D-06, Police Regs Ch. 4	Organizational Structure and Responsibility
409		Crisis Intervention Incidents
410	I-16	Mental Illness Commitments
413	U-04, V-04	Rapid Response and Deployment

(To be delivered.)

- b. Review the following:

Lexipol #	G.O. (if any)	Title
411	C-10	Cite and Release Policy

(See July 10, 2019 packet.)

5. NEW BUSINESS (discussion and action)

a. Review the following:

Lexipol #	G.O. (If any)	Title
349	F-06	Tactical Rifle Operator Program
351	T&IB 249	Second Response
419	F-03	Field Training Officer Program
420		Foot Pursuits
421	R-29	Contacts and Temporary Detentions
424		Mobile Data Terminal Use

b. Decide which policies to review next.

6. SCHEDULE NEXT MEETING DATE

7. ADJOURNMENT

Communications Disclaimer

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

 Communication Access Information (A.R.1.12)

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

SB 343 Disclaimer

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

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

Tactical Rifle Operator Program

349.1 PURPOSE AND SCOPE

The purpose of this Policy General Order is to outline administrative protocols for the Tactical Rifle Operator Program. It is also intended to communicate procedures governing the training, deployment, storage and maintenance of tactical rifles issued to and employed by sworn employees assigned to Patrol Teams, the Detective Bureau, and the Special Enforcement Unit.

349.2 POLICY

The Berkeley Police Department shall employ authorized sworn personnel equipped with tactical rifles to exercise expeditious control over critical incidents or potentially violent situations.

Tactical Rifle Operators shall conduct themselves with respect to Patrol Response Procedures described in relevant Department policy documents, and in accordance with Tactical Rifle Operator Procedures set forth in this policy procedures set forth in this Order.

349.3 DEFINITIONS

Definitions related to this policy include:

Tactical Rifle: The rifle, detachable box magazines, and ammunition authorized by the Chief of Police for use by designated Tactical Rifle Operators.

Tactical Rifle Operator (TRO): A sworn employee of the Berkeley Police Department who has been trained and qualified to possess and deploy a tactical rifle in the course of their primary duty assignment.

349.4 EMPLOYEE OWNED TACTICAL RIFLES

Employees who purchase their own tactical rifles for on duty use must adhere to this policy and the procedures herein. Employee owned rifles may not be deployed without the successful completion of the required training and the approval of the Lead Armorer and Division Captain.

349.5 TACTICAL RIFLE SPECIFICATIONS

- Rifles:

The COLT LE6920 and the COLT LE6940 models, 16 inch barrel, chambered in the 5.56x45mm NATO, solid black color, are the approved models.

- Magazines:

30 round Colt factory magazines and Magpul polymer magazines (PMAGS) or their equivalent are authorized for duty use.

- Aiming Devices:

Lasers and/or other electronic aiming devices are not approved for duty use unless

authorized by the Chief of Police.

- **Ammunition:**

Duty ammunition will be supplied by the department. Only departmentally approved ammunition shall be used for duty.

- **Accessories:**

Approved aftermarket accessories include, but are not limited to:

1. Pistol grips
2. Stocks
3. Accessory rail systems
4. Optic sighting devices
5. Slings
6. Lights

It is the responsibility of the Departmental Armorer to install all approved aftermarket accessories on tactical rifles.

348.4 PROCEDURES

349.1349.6 348.4.1 DEPLOYMENT OF RIFLES

Tactical rifles shall be deployed only by Tactical Rifle Operators.

In light of known or potential risks, a TRO should deploy the firearm which best meets the needs of the police response, and in which he/she has the greatest accuracy and operational confidence.

Not including deployment during a planned operation, a TRO who deploys a tactical rifle shall make a verbal notification of the deployment to their supervisor, as soon as practical.

349.2349.7 348.4.2 STORAGE AND MAINTENANCE OF TACTICAL RIFLES

TROs shall be responsible for the care and storage of their assigned tactical rifle and associated equipment.

349.7.1 GENERAL

When not in use, TROs shall securely store their tactical rifle in the issued carry case within an authorized location at the Public Safety Building (PSB).

- A TRO may temporarily store his/her tactical rifle in a location other than the PSB to facilitate training or other official duty, provided all reasonable safety and security precautions are taken during transportation and storage.

When in storage, the tactical rifle shall be in the following condition:

- ~~(a)~~ Selector lever is in the "safe" position;
- The chamber of the weapon is empty; and,
- The magazine well is vacant.

349.7.2 INTO SERVICE

When placed into service and transported in a vehicle, the tactical rifle shall be maintained*:

1. Within its carry case in the vehicle's secure trunk; (sedan only) or,
2. In a storage rack specifically designed to secure the tactical rifle within the vehicle's passenger compartment (sedan, truck, or SUV).

*There may be times when placing the rifle in the trunk or storage rack isn't feasible, such as when responding to a call in progress immediately after briefing. On such occasions, the rifle may be placed in the vehicle on a seat or floorboard, with the understanding that it will be deployed or otherwise secured upon arrival at the scene.

~~When placed into service and transported in a vehicle, the tactical rifle shall be maintained:~~

- ~~(a) Within its carry case in the vehicle's secure trunk; or,~~
- ~~(b) In a storage rack specifically designed to secure the tactical rifle within the vehicle's passenger compartment.~~

When placed into service and transported in a vehicle, the tactical rifle shall be in the following operational condition:

- (a) Selector lever is in the "safe" position; and,
- (b) The chamber of the weapon is empty.

When a tactical rifle is placed into service in conformance with ~~this policy paragraphs 13 and 14 of this Order~~, a loaded magazine may be inserted into and maintained within the magazine well.

329.7.3 REMOVAL FROM SERVICE

When a tactical rifle is removed from service and returned to storage, a TRO shall perform the following firearm safety procedures:

- (a) Remove the tactical rifle from the vehicle's weapon rack or its carry case;
- (b) Confirm the selector lever is in the "safe" position;
- (c) Confirm the magazine well is vacant;
 1. If necessary, remove the magazine from the magazine well and secure it in the tactical rifle carry case;
- (d) Lock the bolt open and conduct a visual and physical inspection to ensure the chamber is empty;
- (e) Close the bolt on an empty chamber; and,
- (f) Secure the rifle within its carry case.

When not secured in an authorized location, the tactical rifle **shall** be under the control of the TRO.

349.3349.8 MAINTENANCE OF RIFLES

A TRO **shall** be responsible for routine maintenance of their tactical rifle, including effective cleaning and sufficient lubrication subsequent to weapon use.

Advanced maintenance (i.e., that which is beyond normal cleaning and lubrication), authorized modification to, and periodic 'quality/assurance' inspection of tactical rifles **shall** be the responsibility of trained and certified department armorers.

349.9 MODIFICATIONS

A TRO **shall** not make or facilitate unauthorized modifications, maintenance or repair of a tactical rifle.

Modification to a tactical rifle may only occur upon the authorization of the Operations Patrol Division Captain and carried out by certified department armorers.

Defective parts or parts needing replacement will be the financial responsibility of the weapon's owner. Departmental Armorers shall be responsible for the installation of replacement parts outside of the factory, or factory service providers.

348.5 PROGRAM ADMINISTRATION

The coordination and administration of the Program **shall** be the responsibility of a Patrol Bureau Division Lieutenant designated by the Operations Patrol Division Captain.

The Firearms and Tactics Unit (FTU) will develop and implement a training program for TROs that will address:

- (a) Initial and periodic training and qualification for TROs;
- (b) ~~Ensure instruction of~~ Wweapon system fundamentals, including, but not limited to, tactical rifle nomenclature, operation, emergency action procedures, and render safe procedures.
- (c) Tactical containment procedures employed by the Barricaded Subject/Hostage Negotiation Team, including, but not limited to, fundamental tactics and communication protocols.

~~Upon recommendation of the Patrol Division Captain, appointment of an applicant officer to the Program will be at the discretion of the Chief of Police.~~

348.6 SELECTION PROCESS

CRITERIA

Officers may apply for appointment to the Program if the following criteria are met:

- (a) (a)—Applicants must be a full time, sworn officer, with a minimum of one year of experience as a sworn officer with the Berkeley Police Department.
- a. Upon recommendation of the Operations Division Captain, appointment of an applicant officer to the Program will be at the discretion of the Chief of Police.
 - (b) Applicants must have demonstrated their ability to work with minimal supervision.
 - (c) Applicants must have demonstrated their ability to maintain a calm and professional demeanor during stressful situations.
 - (d) Applicants must have demonstrated their ability to exercise good judgment and make sound decisions.
 - (e) Applicants must have demonstrated their ability to handle firearms safely and effectively during departmental firearms training.

PROCESS

The selection process shall include:

- (a) A review of the applicant's personnel file for sustained complaints involving the improper use of force, poor judgment, dishonesty, or mistreatment of equipment.
- (b) A review of comments by the applicant's supervisors and commanding officers, as presented in annual evaluations and the applicant's special assignment form, relating to the applicant's job performance and suitability to be a TRO.
- (c) A review of the applicant's firearms training records and comments by FTU instructors regarding the applicant's participation and demonstrated abilities during firearms training.
- (d) The applicant will participate in an interview panel comprised of officers, sergeants and/or command officers assigned by the Operations Patrol Division Captain.
 - (1) The interview will include questions regarding Use of Force General Order U-2, as well as situational questions intended to assess the applicant's qualifications.

INACTIVITY

A TRO who has been inactive for any period of time may be reactivated at the discretion of the Operations Patrol Division Captain.

- (a) A TRO requesting reactivation to the Program must meet the previously listed minimum selection criteria listed in paragraph 25 of this Order, and successfully complete a recertification training and related firearms qualification program.

When an officer becomes inactive, resigns, or is decertified from the Program, his/her

tactical rifle and associated equipment **shall** be returned to the Department in the unmodified condition it was issued.

348.7 DECERTIFICATION PROCESS

A TRO may be decertified by the Chief of Police for any of the following reasons:

- (a) When work performance has been deemed "Unsatisfactory" or "Needs Improvement" over an extended period of time in the TRO's Performance Appraisal Report, as defined in General Order P-28, and the TRO has not demonstrated significant improvement in the course of a Performance Improvement Plan.
- (b) Failure to attend or successfully complete required Program training.
- (c) Any documented mistreatment, neglect, or improper use of a tactical rifle, other firearm or weapon.
- (d) Exhibiting a pattern of unsafe weapon handling or tactics during tactical rifle deployment or firearms training programs.
- (e) Demonstration of poor judgment or inability to make sound decisions during his/her regular assigned duties.
- (f) Failure to comply with the provisions of this Policy Order.

References: General Orders F-2, P-28, U-2 and X-1

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 29, 2008

GENERAL ORDER F-6

SUBJECT: TACTICAL RIFLE OPERATOR PROGRAM

PURPOSE

- 1 - The purpose of this General Order is to outline administrative protocols for the Tactical Rifle Operator Program. It is also intended to communicate procedures governing the training, deployment, storage and maintenance of tactical rifles issued to and employed by sworn employees assigned to Patrol Teams, the Detective Bureau, and the Special Enforcement Unit.

POLICY

- 2 - The Berkeley Police Department **shall** employ authorized sworn personnel equipped with tactical rifles to exercise expeditious control over critical incidents or potentially violent situations.
- 3 - Tactical Rifle Operators **shall** conduct themselves with respect to Patrol Response Procedures described in relevant Department policy documents, and in accordance with procedures set forth in this Order.

DEFINITIONS

- 4 - Tactical Rifle: The rifle, detachable box magazines, and ammunition authorized by the Chief of Police for use by designated Tactical Rifle Operators.
- 5 - Tactical Rifle Operator (TRO): A sworn employee of the Berkeley Police Department who has been trained and qualified to possess and deploy a tactical rifle in the course of their primary duty assignment.
 - (a) This designation does not include sworn employees authorized to possess and deploy approved rifles pursuant to General Order X-1.
- 6 - Terminology definitions described in General Order U-2 **shall** be applicable to this Order.

PROCEDURES

Deployment of Rifles

- 7 - Tactical rifles **shall** be deployed only by Tactical Rifle Operators.
- 8 - In light of known or potential risks, a TRO **should** deploy the firearm which best meets the needs of the police response, and in which he/she has the greatest accuracy and operational confidence.
- 9 - Not including deployment during a planned operation, a TRO who deploys a tactical rifle **shall** make a verbal notification of the deployment to their supervisor, as soon as practical.

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DATE ISSUED: September 29, 2008

GENERAL ORDER F-6

Storage and Maintenance of Tactical Rifles

- 10 - TROs **shall** be responsible for the care and storage of their assigned tactical rifle and associated equipment.
- 11 - When not in use, TROs **shall** securely store their tactical rifle in the issued carry case within an authorized location at the Public Safety Building (PSB).
 - (a) A TRO may temporarily store his/her tactical rifle in a location other than the PSB to facilitate training or other official duty, provided all reasonable safety and security precautions are taken during transportation and storage.
- 12 - When in storage, the tactical rifle **shall** be in the following condition:
 - (a) Selector lever is in the "safe" position;
 - (b) The chamber of the weapon is empty; and,
 - (c) The magazine well is vacant.
- 13 - When placed into service and transported in a vehicle, the tactical rifle **shall** be maintained:
 - (a) Within its carry case in the vehicle's secure trunk; or,
 - (b) In a storage rack specifically designed to secure the tactical rifle within the vehicle's passenger compartment.
- 14 - When placed into service and transported in a vehicle, the tactical rifle **shall** be in the following operational condition:
 - (a) Selector lever is in the "safe" position; and,
 - (b) The chamber of the weapon is empty.
- 15 - When a tactical rifle is placed into service in conformance with paragraphs 13 and 14 of this Order, a loaded magazine may be inserted into and maintained within the magazine well.
- 16 - When a tactical rifle is removed from service and returned to storage, a TRO **shall** perform the following firearm safety procedures:
 - (a) Remove the tactical rifle from the vehicle's weapon rack or its carry case;
 - (b) Confirm the selector lever is in the "safe" position;

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- (c) Confirm the magazine well is vacant;
 - (1) If necessary, remove the magazine from the magazine well and secure it in the tactical rifle carry case;
 - (d) Lock the bolt open and conduct a visual and physical inspection to ensure the chamber is empty;
 - (e) Close the bolt on an empty chamber; and,
 - (f) Secure the rifle within its carry case.
- 17 - When not secured in an authorized location, the tactical rifle **shall** be under the control of the TRO.
- 18 - A TRO **shall** be responsible for routine maintenance of their tactical rifle, including effective cleaning and sufficient lubrication subsequent to weapon use.
- 19 - Advanced maintenance (i.e., that which is beyond normal cleaning and lubrication), authorized modification to, and periodic 'quality/assurance' inspection of tactical rifles **shall** be the responsibility of trained and certified department armorers.
- 20 - A TRO **shall** not make or facilitate unauthorized modifications, maintenance or repair of a tactical rifle.
- 21 - Modification to a tactical rifle may only occur upon the authorization of the Patrol Division Captain and carried out by certified department armorers.

Program Administration

- 22 - The coordination and administration of the Program **shall** be the responsibility of a Patrol Division Lieutenant designated by the Patrol Division Captain.
- 23 - The Firearms and Tactics Unit (FTU) will develop and implement a training program for TROs that will address:
- (a) Initial and periodic training and qualification for TROs;
 - (b) Ensure instruction of weapon system fundamentals, including, but not limited to, tactical rifle nomenclature, operation, emergency action procedures, and render safe procedures.
 - (c) Tactical containment procedures employed by the Barricaded Subject/Hostage Negotiation Team, including, but not limited to, fundamental tactics and communication protocols.

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- 24 - Upon recommendation of the Patrol Division Captain, appointment of an applicant officer to the Program will be at the discretion of the Chief of Police.

Selection Process

- 25 - Officers may apply for appointment to the Program if the following criteria are met:
- (a) Applicants must be a full time, sworn officer, with a minimum of one year of experience as a sworn officer with the Berkeley Police Department.
 - (b) Applicants must have demonstrated their ability to work with minimal supervision.
 - (c) Applicants must have demonstrated their ability to maintain a calm and professional demeanor during stressful situations.
 - (d) Applicants must have demonstrated their ability to exercise good judgment and make sound decisions.
 - (e) Applicants must have demonstrated their ability to handle firearms safely and effectively during departmental firearms training.
- 26 - The selection process **shall** include:
- (a) A review of the applicant's personnel file for sustained complaints involving the improper use of force, poor judgment, dishonesty, or mistreatment of equipment.
 - (b) A review of comments by the applicant's supervisors and commanding officers, as presented in annual evaluations and the applicant's special assignment form, relating to the applicant's job performance and suitability to be a TRO.
 - (c) A review of the applicant's firearms training records and comments by FTU instructors regarding the applicant's participation and demonstrated abilities during firearms training.
 - (d) The applicant will participate in an interview panel comprised of officers, sergeants and/or command officers assigned by the Patrol Division Captain.
 - (1) The interview will include questions regarding General Order U-2, as well as situational questions intended to assess the applicant's qualifications.
- 27 - A TRO who has been inactive for any period of time may be reactivated at the discretion of the Patrol Division Captain.

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- (a) A TRO requesting reactivation to the Program must meet the minimum selection criteria listed in paragraph 25 of this Order, and successfully complete a recertification training and related firearms qualification program.
- 28 - When an officer becomes inactive, resigns, or is decertified from the Program, his/her tactical rifle and associated equipment shall be returned to the Department in the unmodified condition it was issued.

Decertification Process

- 29 - A TRO may be decertified by the Chief of Police for any of the following reasons:
- (a) Work performance deemed "Unsatisfactory" or "Needs Improvement" over an extended period of time, as defined in General Order P-28, and the TRO has not demonstrated significant improvement in the course of a Performance Improvement Plan.
 - (b) Failure to attend or successfully complete required Program training.
 - (c) Any documented mistreatment, neglect, or improper use of a tactical rifle, other firearm or weapon.
 - (d) Exhibiting a pattern of unsafe weapon handling or tactics during tactical rifle deployment or firearms training programs.
 - (e) Demonstration of poor judgment or inability to make sound decisions during his/her regular assigned duties.
 - (f) Failure to comply with the provisions of this Order.

References: General Orders F-2, P-28, U-2 and X-1

Second Response

351.1 BACKGROUND

In 1993, the Berkeley City Council recognized that various City services, especially the Police Department, ~~often had to respond~~ frequently responded to "unruly gatherings", in order to restore and maintain the peace and protect public safety. Such gatherings were, and continue to be, a burden on City resources and often result in delayed police responses to ~~other regular and emergency~~ calls for service ~~and emergencies~~.

Inadequate supervision and a lack of personal responsibility allowed some gatherings to become problematic, ~~uncommonly~~. Uncommonly loud and disruptive to others. ~~These~~, ~~these~~ events were deemed by Council to constitute a threat to the peace, health, safety, or general welfare of the public as a result of inappropriate conduct. ~~To~~ To discourage the repeated occurrence of loud and unruly gatherings, the Council enacted Berkeley Municipal Code §13.48, the "Second Response" Ordinance, to recognize such incidents as public nuisances, and provide for civil fines as the punitive action for ordinance violation.

351.2 THE ORDINANCE

Berkeley Municipal Code §13.48.010 states it shall be unlawful and a public nuisance to conduct a gathering, which incorporates the following criteria:

- Ten or more persons involved;
- The event is occurring on private property; and,
- The gathering occurs in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as a result of conduct constituting a violation of law.

Examples of such unlawful conduct may include the following: excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service of alcohol to minors, ~~public urination~~, fights, disturbances of the peace, and littering. A gathering constituting a public nuisance may be abated by all reasonable means including, but not limited to, an order requiring the gathering be disbanded, and citation and/or arrest of any law violators under any applicable local laws and state statutes.

The Ordinance explicitly prohibits targeted enforcement against student housing. However, nothing in the Ordinance precludes the City from setting priorities in the use of its resources by employing the Ordinance against events that are the most disruptive, against properties at which disruptive events are held most often, or on the basis of other similar legitimate factors.

351.3 PATROL OFFICER RESPONSIBILITIES

When the police intervenes at a gathering which constitutes a nuisance under the Ordinance, a "Notice" must be prominently posted at the premises at which the nuisance occurred. The Notice, referred to in the ordinance as an "Exhibit A," states that the intervention by the policeCity has been necessitated as a result of a public nuisance caused by an event at the premises. The "Exhibit A" also indicates:

- the date and time of the police intervention;
- any subsequent police intervention at the same premises within a one hundred twenty-day (120) period, including an intervention on the same day as the posting of the "Exhibit A," **shall** result in joint and/or several liability (i.e., one or more people may be responsible for the applicable fine); and,
- liability may fall upon any guests causing the public nuisance, all sponsors of the gathering, all residents of the premises, all persons in control of the premises, and all owners of the premises that reside on or adjacent to the premises or are present at the premises when the nuisance occurs.

The residents or persons in control of the property, if present, must be consulted regarding a location where the Notice can be conspicuously and securely posted. When consulted, those persons, as well as sponsors of the nuisance event, if involved in the decision, become responsible for ensuring that the "Exhibit A" is neither removed nor defaced. If either occurs, those responsible for the security of the notice become liable for a civil penalty of \$100.00, in addition to any other penalties which may be due under the Ordinance.

351.4 PROCEDURE - OFFICER StepStep-by-Step Procedure

1. Contact the resident, person in control of the property, or event organizer, and determine if Ordinance enforcement is appropriate.
2. Complete an "Exhibit A" or "Exhibit B" form (in duplicate, including the date, time, address, issuing officer, and case number.)
3. Confer with the resident, person in control of the property, or event organizer and identify a conspicuous and secure location to post the "Exhibit ~~A~~" form. **Should** the resident, person in control of the property, or event organizer decline to confer, the officer **should** choose an appropriate posting location and inform the parties present that removal or defacement of the notice within the 120 day period may result in a \$100.00 fine.
4. Post the duplicate (yellow) copy of the "Exhibit ~~A~~" form at the premises and retain the original (white) for the report.

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5. Complete a [NGIR "Case" report](#) to document your observations relevant to the Ordinance violation and responsible parties contacted. The following information **should** be included:
 - known complainant's identification and report information;
 - identification of parties responsible for the property hosting the event;
 - the overall condition and/or general environment of the premises;
 - the number of people involved in the unruly gathering;
 - whether or not alcohol was a factor;
 - traffic conditions effected by the gathering;
 - any other information that may be relevant to the Ordinance violation; and,
 - the exact location the notice was posted.

 6. ~~Submit Route the original~~ the -report in AEGIS, route the original exhibit to Records Management and place a copy of -the exhibit in the CSB and Exhibit A or B mailbox form to Records Detail in Support Services Division, and photocopies to the appropriate Community Services Bureau Area Coordinator to ensure proper administrative follow-up.

~~Patrol~~ Patrol officers **should** be aware of what properties in their assigned area have been posted for Ordinance violation(s) and **should** monitor them for repeat violation within the prescribed term. If, within 120 days of the initial posting, an officer investigates another unruly gathering as described in the Ordinance, officers **should** ~~ensure~~ replace the "Exhibit A" ~~is still conspicuously posted and not defaced~~ posting with an "Exhibit B", and document their observations and actions (as in #5 above) on a ~~supplemental~~ new "Case" report. A copy of that report **should** also be forwarded to the appropriate Area Coordinator for administrative follow-up.

It is important to know that with each subsequent ~~report~~ occurrence of a nuisance at a previously posted property, the 120 day "clock" resets. For example, if an address was initially posted on January 1st, and there was a reported violation on March 1st, the 120 day period restarts and would ~~concluded~~ conclude, absent a subsequent violation, on June 28th. As such, knowing the date of the most recent documented Ordinance violation at a posted property will allow an officer to determine if the 120 day term is still in effect or has expired.

351.5 ADMINISTRATIVE FOLLOW-UP PROCEDURES

Administrative follow-up of Ordinance violations is the responsibility of the Community Services Bureau Area Coordinator responsible for the area in which the subject property is located. Follow-up responsibilities include: contacting the Communication Center to ensure the posting is logged into CAD as a "Premise Alert"; mailing of requisite notices of police intervention; and, one or more site inspections to examine the "Exhibit" form-A posting.

When advised of an "Exhibit A" or "Exhibit B" form posting, the responsible Area Coordinator **should** work with the Communication Center staff to ensure a Premise Alert has been entered into CAD for the subject property. Minimally, the CAD entry **should** include: the date/time the "Exhibit A (or B)" form was posted; the name and phone number of the liable person(s) contacted; and, the location where the notice form was posted. Additionally, if regarding an "Exhibit B", the alert **should** include the fine amount to be assessed against the property. Having this information available in CAD will help patrol officers enforce the Ordinance **should** they respond to subsequent loud, unruly parties during the 120 day period. Additionally, requesting the Communication Center staff to revise the CAD event description to "2nd Response" will help with event tracking and future administrative research efforts.

BMC 13.48.030(B) requires a notice of police intervention be mailed to the property owner(s) on file in the City's property tax assessment records. The notice, commonly a letter from the Chief responsible Area Coordinator and a copy of the "Exhibit A/B" form, informs the property owner(s) that any subsequent event within 120 days on the same premises necessitating City intervention **shall** result in liability of the property owner for all penalties associated with such intervention as more particularly set forth in the Ordinance.

The Area Coordinator **should** set a three week follow-up in order to conduct an initial inspection visit of the site to examine the Exhibit A posting. In the event the form has been removed, **post** a new Exhibit A form **shall be posted**. Observed violations of the Ordinance and related enforcement actions must be documented in a supplemental report, which will support a demand for the prescribed civil fine. Additional inspections **should** be conducted to ensure Ordinance compliance.

For each instance wherein an Ordinance violation is identified, the Area Coordinator is responsible for mailing an "Exhibit B" notice letter to the person(s) liable for the civil penalty.

351.6 PROCEDURE - CSB Step-by-Step Procedure

1. Ensure the incident's CAD event record is updated with relevant contact and form posting information.
2. Identify the property owner(s) as indicated in City property tax assessment records and mail that party a notice of violation and copy of the "Exhibit A" notice of police intervention form.
3. Set an initial follow-up date within three weeks of the initial "Exhibit A" posting to examine the form. Replace a missing form, if necessary, and document observed violations.
4. Conduct supplemental site inspections, as necessary.

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5. If police intervention is necessary after the initial posting of "Exhibit A" and Ordinance violations are discovered, ensure they are documented in a ~~supplemental~~ new "Case" report, complete the "Exhibit B" letter, and mail it to all parties liable for the civil fine (e.g., the event organizer, property residents, and/or property owner.)
 6. Provide the City of Berkeley Finance Department with copies of all reports and letters associated with any Ordinance violation to facilitate billing of the responsible parties.

CIVIL CIVIL PENALTIES AND COLLECTION PROCEDURES

Civil penalties may be assessed against all persons liable for the City's intervention to abate a gathering deemed a public nuisance. ~~The~~ The schedule of penalties is as follows:

- For ~~the~~ the second violation of the Ordinance- response in any ~~in any~~ during the 120-day period, the penalty **shall** be the sum of \$750.
- For ~~the~~ the ~~third~~ third violation of the Ordinance ~~response in any~~ during the 120-day period, the penalty **shall** be the sum of \$1,500.
- For any subsequent violation of the Ordinance ~~further response in any~~ during the 120-day period, the penalty **shall** be the sum of \$2,500 for each intervention by police.

Billed by "Exhibit B", all persons liable for applicable civil penalties will be directed to remit payment within thirty days of the letter's postmark to the City of Berkeley Finance Department, who will be responsible for collections. If payment is not received within the stated term, the bill will be deemed delinquent, and all persons liable for the penalties will be subject to accrued interest at the maximum legal rate, as well as an additional penalty of \$100.

351.7 SUMMARY

A tool wielded to quell public nuisances, the "2nd Response" Ordinance can improve, if not restore, the quality of life in neighborhoods adversely ~~effected~~ affected by loud and unruly gatherings. This result cannot occur, however, unless the Ordinance is used effectively. Knowing the elements of the statute and the role the police officer plays in its enforcement will help ensure success. Make and document detailed observations in your report, post the "Exhibit A" form appropriately, and route the report package properly so the administrative effort that follows may be readily accomplished.

BERKELEY POLICE DEPARTMENT TRAINING AND INFORMATION BULLETIN



DATE: September 25, 2007

Number: 249

BERKELEY MUNICIPAL CODE §13.48, THE "SECOND RESPONSE" ORDINANCE

BACKGROUND

In 1993, the Berkeley City Council recognized that various City services, especially the Police Department, often had to respond multiple times to social events, often described as "unruly gatherings", in order to restore and maintain the peace and protect public safety. Such gatherings were, and continue to be, a burden on City resources and often result in delayed police responses to regular and emergency calls for service.

Inadequate supervision and a lack of personal responsibility allowed some gatherings to become problematic, uncommonly loud and disruptive to others. These events were deemed by Council to constitute a threat to the peace, health, safety, or general welfare of the public as a result of inappropriate conduct. To discourage the repeated occurrence of loud and unruly gatherings, the Council enacted Berkeley Municipal Code §13.48, the "Second Response" Ordinance, to recognize such incidents as public nuisances, and provide for civil fines as the punitive action for ordinance violation.

THE ORDINANCE

Berkeley Municipal Code §13.48.010 states it **shall** be unlawful and a public nuisance to conduct a gathering, which incorporates the following criteria:

- Ten or more persons involved;
- The event is occurring on private property; and,
- The gathering occurs in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as a result of conduct constituting a violation of law.

Examples of such unlawful conduct may include the following: excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service of alcohol to minors, fights, disturbances of the peace, and littering. A gathering constituting a public nuisance may be abated by all reasonable means including, but not limited to, an order requiring the gathering be disbanded, and citation and/or arrest of any law violators under any applicable local laws and state statutes.

The Ordinance explicitly prohibits targeted enforcement against student housing. However, nothing in the Ordinance precludes the City from setting priorities in the use of its resources by employing the Ordinance against events that are the most disruptive, against properties at which disruptive events are held most often, or on the basis of other similar legitimate factors.

PATROL OFFICER RESPONSIBILITIES

When the City intervenes at a gathering which constitutes a nuisance under the Ordinance, a "Notice" must be prominently posted at the premises at which the nuisance occurred. The Notice, referred to in the ordinance as an "Exhibit A," states that the intervention of the City has been necessitated as a result of a public nuisance caused by an event at the premises. The "Exhibit A" also indicates:

- the date and time of the police intervention;
- any subsequent police intervention at the same premises within a one hundred twenty-day (120) period, including an intervention on the same day as the posting of the "Exhibit A," shall result in joint and several liability (i.e., one or more people may be responsible for the applicable fine); and,
- liability may fall upon any guests causing the public nuisance, all sponsors of the gathering, all residents of the premises, all persons in control of the premises, and all owners of the premises that reside on or adjacent to the premises or are present at the premises when the nuisance occurs.

The residents or persons in control of the property, if present, must be consulted regarding a location where the Notice can be conspicuously and securely posted. When consulted, those persons, as well as sponsors of the nuisance event, if involved in the decision, become responsible for ensuring that the "Exhibit A" is neither removed nor defaced. If either occurs, those responsible for the security of the notice become liable for a civil penalty of \$100.00, in addition to any other penalties which may be due under the Ordinance.

Step-by-Step Procedure

1. Contact the resident, person in control of the property, or event organizer, and determine if Ordinance enforcement is appropriate.
2. Complete an "Exhibit A" form (in duplicate, including the date, time, address, issuing officer, and case number.)
3. Confer with the resident, person in control of the property, or event organizer and identify a conspicuous and secure location to post the "Exhibit A" form. Should the resident, person in control of the property, or event organizer decline to confer, the officer should choose an appropriate posting location and inform the parties present that removal or defacement of the notice within the 120 day period may result in a \$100.00 fine.

4. Post the duplicate (yellow) copy of the "Exhibit A" form at the premises and retain the original (white) for the report.
5. Complete a NCIR to document your observations relevant to the Ordinance violation and responsible parties contacted. The following information **should** be included:
 - known complainant's identification and report information;
 - identification of parties responsible for the property hosting the event;
 - the overall condition and/or general environment of the premises;
 - the number of people involved in the unruly gathering;
 - whether or not alcohol was a factor;
 - traffic conditions effected by the gathering;
 - any other information that may be relevant to the Ordinance violation; and,
 - the exact location the notice was posted.
6. Route the original report and Exhibit A form to Records Detail in Support Services Division, and photocopies to the appropriate Community Services Bureau Area Coordinator to ensure proper administrative follow-up.

Patrol officers **should** be aware of what properties in their assigned area have been posted for Ordinance violation(s) and **should** monitor them for repeat violation within the prescribed term. If, within 120 days of the initial posting, an officer investigates another unruly gathering as described in the Ordinance, officers **should** ensure the Exhibit A is still conspicuously posted and not defaced, and document their observations and actions (as in #5 above) on a supplemental report. A copy of that report **should** also be forwarded to the appropriate Area Coordinator for administrative follow-up.

It is important to know that with each subsequent report of a nuisance at a previously posted property, the 120 day "clock" resets. For example, if an address was initially posted on January 1st, and there was a reported violation on March 1st, the 120 day period restarts and would concluded, absent a subsequent violation, on June 28th. As such, knowing the date of the most recent documented Ordinance violation at a posted property will allow an officer to determine if the 120 day term is still in effect or has expired.

ADMINISTRATIVE FOLLOW-UP PROCEDURES

Administrative follow-up of Ordinance violations is the responsibility of the Community Services Bureau Area Coordinator responsible for the area in which the subject property is located. Follow-up responsibilities include: contacting the Communication Center to ensure the posting is logged into CAD as a "Premise Alert"; mailing of requisite notices of police intervention; and, one or more site inspections to examine the Exhibit A posting.

When advised of an Exhibit A form posting, the responsible Area Coordinator **should** work with the Communication Center staff to ensure a Premise Alert has been entered into CAD for the subject property. Minimally, the CAD entry **should** include: the date/time the Exhibit A form was posted; the name and phone number of the liable person(s) contacted; and, the location

where the notice form was posted. Having this information available in CAD will help patrol officers enforce the Ordinance **should** they respond to subsequent loud, unruly parties during the 120 day period. Additionally, requesting the Communication Center staff to revise the CAD event description to "2nd Response" will help with event tracking and future administrative research efforts.

BMC 13.48.030(B) requires a notice of police intervention be mailed to the property owner(s) on file in the City's property tax assessment records. The notice, commonly a letter from the Chief and a copy of the Exhibit A form, informs the property owner(s) that any subsequent event within 120 days on the same premises necessitating City intervention **shall** result in liability of the property owner for all penalties associated with such intervention as more particularly set forth in the Ordinance.

The Area Coordinator **should** set a three week follow-up in order to conduct an initial inspection visit of the site to examine the Exhibit A posting. In the event the form has been removed, post a new Exhibit A form. Observed violations of the Ordinance and related enforcement actions must be documented in a supplemental report, which will support a demand for the prescribed civil fine. Additional inspections **should** be conducted to ensure Ordinance compliance.

For each instance wherein an Ordinance violation is identified, the Area Coordinator is responsible for mailing an Exhibit B notice to the person(s) liable for the civil penalty.

Step-by-Step Procedure

1. Ensure the incident's CAD event record is updated with relevant contact and form posting information.
2. Identify the property owner(s) as indicated in City property tax assessment records and mail that party a copy of the Exhibit A notice of police intervention form.
3. Set an initial follow-up date within three weeks of the initial Exhibit A posting to examine the form. Replace a missing form, if necessary, and document observed violations.
4. Conduct supplemental site inspections, as necessary.
5. If police intervention is necessary after the initial posting of "Exhibit A" and Ordinance violations are discovered, ensure they are documented in a supplemental report, complete the "Exhibit B" letter, and mail it to all parties liable for the civil fine (e.g., the event organizer, property residents, and/or property owner.)
6. Provide the City of Berkeley Finance Department with copies of all reports and letters associated with any Ordinance violation to facilitate billing of the responsible parties.

CIVIL PENALTIES AND COLLECTION PROCEDURES

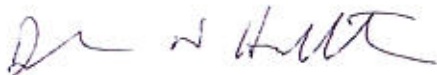
Civil penalties may be assessed against all persons liable for the City's intervention to abate a gathering deemed a public nuisance. The schedule of penalties is as follows:

- For the second response in any 120-day period, the penalty shall be the sum of \$750.
- For the third response in any 120-day period, the penalty shall be the sum of \$1,500.
- For any further response in any 120-day period, the penalty shall be the sum of \$2,500 for each intervention by police.

Billed by "Exhibit B", all persons liable for applicable civil penalties will be directed to remit payment within thirty days of the letter's postmark to the City of Berkeley Finance Department, who will be responsible for collections. If payment is not received within the stated term, the bill will be deemed delinquent, and all persons liable for the penalties will be subject to accrued interest at the maximum legal rate, as well as an additional penalty of \$100.

SUMMARY

A tool wielded to quell public nuisances, the "2nd Response" Ordinance can improve, if not restore, the quality of life in neighborhoods adversely effected by loud and unruly gatherings. This result cannot occur, however, unless the Ordinance is used effectively. Knowing the elements of the statute and the role the police officer plays in its enforcement will help ensure success. Make and document detailed observations in your report, post the Exhibit A form appropriately, and route the report package properly so the administrative effort that follows may be readily accomplished.



Douglas N. Hambleton
Chief of Police

References: Berkeley Municipal Code §13.48

Field Training Officer Program

419.1 PURPOSE AND SCOPE

The Field Training Officer Program is intended to provide a standardized program to facilitate the officer's transition from the academic setting to the actual performance of general law enforcement duties of the Berkeley Police Department.

It is the policy of this department to assign all new police officers to a structured Field Training Officer Program that is designed to prepare the new officer to perform in a patrol assignment, and possessing all skills needed to operate in a safe, productive and professional manner.

419.2 FIELD TRAINING OFFICER - SELECTION AND TRAINING

The Field Training Officer (FTO) is an experienced officer trained in the art of supervising, training and evaluating entry level and lateral police officers in the application of their previously acquired knowledge and skills.

419.2.1 SELECTION PROCESS

FTOs will be selected based on the following requirements:

- (a) Desire to be an FTO
- (b) Minimum of ~~three~~ **four** years of patrol experience, two of which **shall** be with this department
- (c) Demonstrated ability as a positive role model
- (d) Participate ~~in and pass~~ an internal oral interview selection process
- (e) Evaluation by supervisors and current FTOs
- (f) Possess a POST Basic certificate

419.2.2 TRAINING

An officer selected as a Field Training Officer **shall** successfully complete a POST certified (40-hour) Field Training Officer's Course prior to being assigned as an FTO.

All FTOs must complete a 24-hour Field Training Officer update course every three years while assigned to the position of FTO (11 CCR 1004).

All FTOs must meet any training mandate regarding crisis intervention behavioral health training pursuant to Penal Code § 13515.28.

419.3 STATUS CHANGE OR REMOVAL FROM PROGRAM

419.3.1 VOLUNTARY

Field Training Sergeants and/or Field Training Officers may voluntarily leave the Program by resignation or upon an approved request for transfer to "inactive" status.

- (a) The notice of resignation or request for transfer to "inactive" status **shall** be submitted in writing by the requesting sergeant or officer to the Field Training Lieutenant.**

(b) A request for transfer to "inactive" status shall include the period of anticipated inactivity and, if known, the date of return to active service with the Program.

(c) A request for transfer to "inactive" status shall not be effective until expressly approved by the Operations Division Captain.

419.3.2 INVOLUNTARY

A Program staff member (i.e., lieutenant, sergeant or officer) may be involuntarily transferred to an "inactive" status by the Operations Division Captain in the following circumstances:

(a) Failure to meet any of the minimum qualification criteria outlined in this policy.

(b) Failure to perform the duties of the member's position as outlined in this policy, or as may be assigned by the Program's chain of command.

(c) Failure to meet acceptable standards of individual performance in his/her primary duty assignment.

(d) If the member is the subject employee of a personnel complaint investigation and, due to the nature of the alleged misconduct, the integrity of the Program or the member's service could be impugned.

A Program staff member shall remain in an "inactive" status until the circumstances causing the temporary status change have been resolved.

A Program staff member who has been transferred to "inactive" status shall not perform any action, duty or responsibility associated with the Program unless expressly authorized by the Operations Division Captain or Chief of Police.

A Program staff member may be removed from the Program by the Chief of Police only for cause and as a disposition of a sustained disciplinary investigation.

419.3419.4 FIELD TRAINING OFFICER PROGRAM SUPERVISOR

The FTO Program supervisors should be selected from the rank of sergeant or above by the Operations Division Captain Commander or a designee and should possess, or be eligible to receive, a POST Supervisory Certificate.

The responsibilities of the FTO Program supervisor include the following:

- (a) Assignment of trainees to FTOs
- (b) Conduct FTO meetings
- (c) Maintain and ensure FTO/trainee performance evaluations are completed
- (d) Maintain, update and issue the Field Training Manual to each trainee
- (e) Monitor individual FTO performance
- (f) Monitor overall FTO Program
- (g) Maintain liaison with FTO coordinators of other agencies

-
- (h) Maintain liaison with academy staff on recruit performance during the academy
 - (i) Develop ongoing training for FTOs

The FTO Program supervisor will be required to successfully complete a POST approved Field Training Administrator's Course within one year of appointment to this position (11 CCR 1004(c)).

419.4419.5 TRAINEE DEFINED

Any entry level or lateral police officer newly appointed to the Berkeley Police Department who has successfully completed a POST approved Basic Academy.

419.5419.6 REQUIRED TRAINING

Entry level officers **shall** be required to successfully complete the Field Training Program, consisting of a minimum of 160 weeks.

The training period for a lateral officer may be modified depending on the trainee's demonstrated performance and level of experience, ~~but shall consist of a minimum of eight weeks. A lateral officer may be exempt from the Field Training Program requirement if the officer qualifies for an exemption as provided in 11 CCR 1005(a)(B).~~

To the extent practicable, entry level and lateral officers **should** be assigned to a variety of Field Training Officers, shifts and geographical areas during their Field Training Program.

419.5.1419.6.1 FIELD TRAINING MANUAL

Each new officer will be issued a Field Training Manual ~~before at the beginning of his/her~~ Orientation Primary Training Phase. This manual is an outline of the subject matter and/or skills necessary to properly function as an officer with the Berkeley Police Department. The officer **shall** become knowledgeable of the subject matter as outlined. He/she **shall** also become proficient with those skills as set forth in the manual.

The Field Training Manual will specifically cover those policies, procedures, rules and regulations adopted by the Berkeley Police Department.

419.6419.7 EVALUATIONS

Evaluations are an important component of the training process and **shall** be completed as outlined below.

419.6.1419.7.1 FIELD TRAINING OFFICER

The FTO will be responsible for the following:

- (a) Complete and submit a written evaluation on the performance of his/her assigned trainee to the FTO Coordinator on a daily basis.
- (b) Review the Daily Trainee Performance Evaluations with the trainee each day.
- (c) Complete a detailed end-of-phase performance evaluation on his/her assigned trainee at the end of each phase of training.
- (d) Sign off all completed topics contained in the Field Training Manual, noting the method(s) of

learning and evaluating the performance of his/her assigned trainee.

~~419.6.2~~ 419.7.2 ~~IMMEDIATE SUPERVISOR~~ FTO SERGEANT

The FTO Sergeant ~~immediate supervisor~~ shall review and approve the Daily Trainee Performance Evaluations, ~~and forward them to the Field Training Administrator.~~

~~419.6.3~~ ~~FIELD TRAINING ADMINISTRATOR~~

~~The Field Training Administrator will review and approve the Daily Trainee Performance Evaluations submitted by the FTO through his/her immediate supervisor.~~

~~419.6.4~~ 419.7.3 ~~TRAINEE~~

At the completion of the Field Training Program, the trainee shall submit a confidential performance evaluation on each of their FTOs and on the Field Training Program.

~~419.7.4~~ 419.8 ~~DOCUMENTATION~~

All documentation of the Field Training Program will be retained in the officer's training files and will consist of the following:

- (a) Daily Trainee Performance Evaluations
- (b) End of phase evaluations
- ~~(c) A Certificate of Completion certifying that the trainee has successfully completed the required number of hours of field training~~

BERKELEY POLICE DEPARTMENT

DATE ISSUED: April 18, 2010

GENERAL ORDER F-3

SUBJECT: FIELD TRAINING PROGRAM

PURPOSE

- 1 - The purpose of this Order is to outline procedures for training, monitoring, and evaluating new sworn officers, as well as those returning to Patrol Division after an extended absence.

POLICY

- 2 - All police officers, whether newly hired or returning to duty after a prolonged absence, shall successfully complete the Field Training Program (hereafter "Program") prior to working without immediate supervision.

PROCEDURES

General

- 3 - Unless otherwise approved by the Chief of Police, all sworn officers assigned to the Program shall participate in a full training Program, as described in paragraph 6 of this Order.
 - (a) Lateral officers with prior police experience may be accelerated in and be allowed early completion of the Program according to their individual performance.
 - (1) All training material in the Program training manual shall be completed by the lateral officer and signed off by Field Training Officers prior to his/her accelerated completion of the Program.
 - (b) Lateral officers without prior experience (i.e., police academy graduates) shall complete the entire Program.
- 4 - All officers returning to this Department after an authorized leave of absence, injury leave, military leave, or other extended absence of one (1) year or more, shall be assigned to and successfully complete a Program approved by the Patrol Division Captain.
 - (a) Program training shall minimally consist of:
 - (1) A one (1) week update on policy, patrol procedure, and equipment changes; and,
 - (2) A one (1) week final evaluation period to confirm solo officer status.
 - (3) If more training is deemed necessary by Program staff, the returning officer's time in the Program will be extended.

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- 5 - The Field Training Program Lieutenant, or his/her designee, **shall** meet with officers returning to Patrol Division from other special or temporary duty assignments to determine if training is needed to reacquaint the officer with policies and procedures.
- (a) An officer may receive training from a Patrol sergeant or he/she may be assigned to a Field Training Officer (FTO) for refresher training, as needed.
 - (b) The amount of training will be dependent upon the length of time the officer has been absent from Patrol and his/her familiarity with current procedures.

Field Training Program Structure

- 6 - The Program **shall** be administered over a prescribed period and consist of employee orientation, three phases of training, and final evaluation period provided by Field Training Officers.
- (a) Orientation **shall** be two (2) weeks in length and cover specified learning domains presented in the Program training manual.
 - (1) The FTO **shall** show the recruit important locations within the Department and region, introduce him/her to co-workers and other city employees, and familiarize him/her with important policies and procedures he/she will be expected to know prior to working in the field.
 - (2) No formal evaluation takes place during Orientation Phase.
 - (b) Phase 1 **shall** be scheduled for four (4) weeks and cover specified learning domains presented in the Program training manual.
 - (1) Phase 1 **shall** be focused on training, with the recruit expected to perform at about 25% – 40% of workload activity expected of a solo officer.
 - (i) "Workload activity" includes in-field activity such as victim and witness interviews, suspect contacts, report writing, and operational decision-making.
 - (2) The formal evaluation process will begin and daily feedback on performance **shall** be provided to the recruit.
 - (c) Phase 2 **shall** be scheduled for four (4) weeks and cover specified learning domains presented in the Program training manual.

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- (1) Phase 2 **shall** be focused on training, with the recruit expected to perform at about 40% – 75% of workload activity expected of a solo officer.
 - (2) Daily performance evaluation and feedback **shall** continue through this training phase.
- (d) Phase 3 **shall** be scheduled for four (4) weeks and cover specified learning domains presented in the Program training manual.
- (1) The recruit **shall** perform most of the daily tasks and assignments during this training phase, with workload increasing to 100% police activity expected of a solo officer prior to progression to Final Evaluation.
 - (2) Daily performance evaluation and feedback **shall** continue through this training phase.
- (e) Final Evaluation: **shall** be scheduled for two (2) weeks, and conducted to allow the recruit to demonstrate he/she can function at the level of "solo officer", as defined in the Program training manual.
- (1) An FTO, in plain clothing, **shall** supervise the recruit during Final Evaluation.
 - (i) The FTO **shall** not intervene in the activities of the recruit in Final Evaluation unless necessary for officer or public safety, or required with respect to law or policy.
 - (2) Daily evaluations **shall** not be prepared and feedback **should** be limited to input intended to clarify or resolve issues related to the recruit's application of law, policy or procedure, or to emphasize important training opportunities.
 - (i) Unless otherwise directed by Program staff, the FTO will only prepare an End of Phase report to document the recruit's performance during Final Evaluation.
 - (3) Final Evaluation may be terminated at any time by the Program Lieutenant and the recruit returned to a supervised training phase **should** the recruit require further training to reach solo officer status.

Performance Issue Management

- 7 - A recruit who is not meeting the minimum performance standards required to progress to the next Program phase may be extended within the current training phase.

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- (a) Phase extension may be allowed by the Program Lieutenant upon the recommendation of the recruit's assigned FTO and Field Training Sergeant, and only as long as the recruit continues to show improvement in the areas of substandard performance.
- 8 - In the event a recruit's performance is below minimum standard and he/she is no longer deemed responsive to training, the assigned Field Training Sergeant may propose instituting a Performance Improvement Contract.
- (a) A Performance Improvement Contract may be initiated upon the recommendation of the Field Training Sergeant and approval of the Program Lieutenant.
 - (b) The Performance Improvement Contract **shall** describe the following terms for completion:
 - (1) A specific period of time (usually 2-4 weeks) in which the recruit's performance **shall** improve to expected standards;
 - (2) Define all deficiencies and steps taken prior to the Performance Contract to improve them;
 - (3) Outline the minimum level of performance, and steps to be taken in order to reach that level, expected by the end of the Contract in order to continue in the Program; and,
 - (4) A warning that failure to accomplish the terms of the Contract may result in termination from the Program.

Field Training Program, Removal from Program

- 9 - Upon failure of a recruit to satisfactorily complete his or her performance contract, and when further retraining is deemed unlikely to improve performance, the Field Training Sergeant **shall** prepare and submit to the Program Lieutenant a written recommendation of termination.
- (a) The recommendation memorandum **shall** include descriptions of: the pattern of below-minimum performance; all efforts employed to provide training; and the failure of the recruit to satisfactorily respond to training and demonstrate improvement.
 - (b) If applicable, the Field Training Sergeant **shall** attach a copy of the Performance Contract and other relevant documents to the recommendation memorandum.
- 10 - The Program Lieutenant **shall** review the recommendation package, add his/her comments, and forward the package to the Patrol Division Captain.

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- (a) Prior to forwarding the package to the Patrol Division Captain, the Program Lieutenant **should** meet with the recruit, inform him/her of the recommendation to terminate his/her participation in the Program.
 - (1) With prior approval of the Patrol Division Captain and Chief of Police, the Program Lieutenant may discuss with and present the recruit the opportunity to resign in lieu of possible termination from employment.
- 11 - The Patrol Division Captain **shall** review the recommendation package, add his/her comments, and forward the package to the Chief of Police for review and final disposition.

Field Training Program Staff

- 12 - Field Training Lieutenant: Responsible for Program management and performance of related duties assigned by the Patrol Division Captain, which may include, but are not limited to:
 - (a) Act as the departmental liaison with the Commission on Police Officer Standards and Training (POST) for Program compliance issues.
 - (b) Review and final sign-off of completed recruit training files.
 - (c) Maintain and secure all Field Training Program files.
 - (d) Direct supervision of all Field Training Sergeants.
 - (e) The coordination of all POST-mandated training for field training personnel.
 - (f) Maintain a current roster of available Field Training Officers, sufficient to address the projected training needs of the department.
- 13 - Field Training Sergeant: Responsible for general Program supervision duties and related assignments as directed by the Program Lieutenant, which may include, but are not limited to:
 - (a) The direct supervision of Field Training Officers.
 - (b) Evaluation of Field Training Officer performance.
 - (c) Maintenance of schedule board outlining FTO/recruit assignments.
 - (d) The review of all Daily Observation Reports and Daily Training Notes.
 - (e) Assist FTO's in formulating remedial training to address needs as they surface in review of Daily Observation Reports above.

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- (f) The preparation and assembly of the recruit's training file, sign off for completeness, and submission to the Program Lieutenant at the time of the recruit's completion of the Program.
 - (g) Scheduling of FTO and recruit officers to phase training.
 - (h) Act as a liaison with Personnel and Training, which may include attending academy graduations, scheduling training, or any task required to assist the recruit in his/her transition from the academy to the Program.
- 14 - Field Training Officer: Responsible for primary training of recruits and duties assigned by the Field Training Sergeants, which may include, but are not limited to:
- (a) The direct supervision of any assigned recruit.
 - (b) The review and sign-off on all reports and other official documents prepared by the recruit.
 - (c) The completion of Daily Observation Reports and Daily Training Notes for each day of training, and submission of those reports to the assigned Field Training Sergeant at the end of each duty shift.
 - (d) The timely completion of End of Phase reports prior to passing a recruit on to the next training phase.
 - (e) The completion of recruit's Field Training Manual for assigned training phase prior to his/her progression to the next FTO.
 - (f) The planning of and implementation of specialized remedial training for a recruit when deficiencies in performance are noted and result in a below-minimum rating.
 - (g) Participate in the selection process for Field Training Officers.
 - (h) Coordinate with the Program Lieutenant on any matter or action that will affect the Program.
 - (i) The preparation of memorandums or other documentation regarding recruit performance as requested by a Field Training Sergeant.

Field Training Program Staff, Appointment

- 15 - The Field Training Lieutenant **shall** be a Patrol Division Lieutenant appointed by the Patrol Division Captain, and approved by the Chief of Police.

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- 16 - Field Training Sergeants shall be appointed by the Patrol Division Captain upon recommendation of the Field Training Lieutenant and approval of the Chief of Police.
- (a) Applicants for Field Training Sergeant must meet the following minimum criteria in order to be eligible.
 - (1) Completion of his/her promotional probation period.
 - (2) Is currently assigned to a Patrol Division team, or returning to Patrol Division by the start of the timesheet following appointment to the Program.
 - (3) Agree to remain in Patrol Division for at least one (1) year after appointment to the Program.
 - (4) Meet or exceed requirements in all areas of most recent performance evaluation.
 - (5) Demonstrate a positive attitude, professional appearance, and good interpersonal skills as demonstrated in daily interactions with subordinates, co-workers, supervisors, and the public.
 - (6) Have no sustained personnel complaint that would undermine the applicant's credibility to the point where supervising, teaching, and/or being a positive role model is impaired.
- 17 - An officer who meets the following minimum eligibility criteria may be appointed to the Program as a Field Training Officer upon recommendation of the Patrol Division Captain and approval of the Chief of Police:
- (a) Completion of his/her two (2) year probationary period.
 - (1) The second year of the probationary requirement may be waived by the Chief of Police for officers with a minimum of two (2) years prior police experience.
 - (b) Be currently assigned to a Patrol Division team or be returning to Patrol Division at the end of the current timesheet.
 - (c) Agree to remain in Patrol Division for one (1) year after appointment.
 - (d) Meet or exceed requirements in all areas of his/her most recent performance evaluation.
 - (e) Have no sustained personnel complaint that would undermine the applicant's credibility to the point where supervising, teaching and/or being a positive role model is impaired.

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- (f) Possess a positive attitude, professional personal appearance, and good interpersonal skills as demonstrated in daily interactions with co-workers, supervisors, and the public.
- 18 - The process of application for the positions of Field Training Sergeant and Field Training Officer shall adhere to the procedures set forth in General Order P-15.

Field Training Program and Staff, Performance Evaluation

- 19 - The Field Training Program shall be evaluated by each recruit within one timesheet following his/her successful completion of the Program.
- (a) This evaluation shall be submitted on an approved form provided and only address Program-related issues.
 - (b) This evaluation shall be retained by the Program Lieutenant and used to identify training needs and/or the overall Program effectiveness.
- 20 - Field Training Sergeants shall be evaluated annually by the Program Lieutenant as a component of the sergeants' annual departmental performance evaluation.
- (a) The Program Lieutenant's evaluation shall be prepared and submitted for employee review as a written attachment to the employee's annual performance evaluation package.
- 21 - Field Training Officers shall be evaluated annually by the Field Training Sergeants, and periodically by the recruits whom they instruct in the course of the Program.
- (a) A Field Training Sergeant assigned by the Program Lieutenant shall be responsible for preparing and submitting for employee review a written attachment to the employee's annual performance evaluation package.
 - (b) Recruits shall submit a written evaluation of their FTO's performance as a Program instructor within one timesheet of Program completion.
 - (1) FTO evaluation by a recruit shall be submitted at the same time as, but distinct from, the recruit's Program evaluation.
 - (2) FTO evaluation by a recruit shall be deemed a confidential supervisory record administered by the recruit's Field Training Sergeant.
 - (i) Evaluations of FTO performance submitted by recruits shall be used by Program staff to identify trends and training needs, and maintained in a secure temporary file to support the annual supervisor-subordinate evaluation process.

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- (ii) Unless required as part of an official disciplinary process, periodic FTO evaluations by recruits **shall** not be retained in the FTO's personnel file.
- 22 - Recruits participating in the Program **shall** be evaluated by assigned FTOs and a Field Training Sergeant as required by Program structure and General Order P-28.
 - (a) The assigned FTO **shall** prepare a Daily Observation Report, share its contents with the recruit, and submit the signed original for review by the assigned Field Training Sergeant after each day of training.
 - (b) The assigned FTO **shall** prepare an End Of Phase Report for review by the assigned Field Training Sergeant prior to the beginning of the recruit's next scheduled training phase.
 - (c) The assigned Field Training Sergeant **shall** complete required departmental Performance Evaluation Forms, share their contents with the recruit, and submit signed originals for administrative review via the chain of command (ref. General Order P-28.)

Field Training Program Staff, Status Change or Removal from Program

- 23 - Field Training Sergeants and/or Field Training Officers may voluntarily leave the Program by resignation or upon an approved request for transfer to "inactive" status.
 - (a) The notice of resignation or request for transfer to "inactive" status **shall** be submitted in writing by the requesting sergeant or officer to the Field Training Lieutenant.
 - (b) A request for transfer to "inactive" status **shall** include the period of anticipated inactivity and, if known, the date of return to active service with the Program.
 - (c) A request for transfer to "inactive" status **shall** not be effective until expressly approved by the Patrol Division Captain.
- 24 - A Program staff member (i.e., lieutenant, sergeant or officer) may be involuntarily transferred to an "inactive" status by the Patrol Division Captain in the following circumstances:
 - (a) Failure to meet any of the minimum qualification criteria outlined in this Order.
 - (b) Failure to perform the duties of the member's position as outlined in this Order, or as may be assigned by the Program's chain of command.

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- (c) Failure to meet acceptable standards of individual performance in his/her primary duty assignment.
 - (d) If the member is the subject employee of a personnel complaint investigation and, due to the nature of the alleged misconduct, the integrity of the Program or the member's service could be impugned.
- 25 - A Program staff member **shall** remain in an "inactive" status, when directed pursuant to paragraph 24 of this Order, until the circumstances causing the temporary status change have been resolved.
- 26 - A Program staff member who has been transferred to "inactive" status **shall** not perform any action, duty or responsibility associated with the Program unless expressly authorized by the Patrol Division Captain or Chief of Police.
- 27 - A Program staff member may be removed from the Program by the Chief of Police only for cause and as a disposition of a sustained disciplinary investigation.

Program Staff, Mandatory Training

- 28 - Newly appointed Field Training Officers **shall** successfully complete a 40 hour Field Officer Training course, certified by the Commission on Police Officer Standards and Training (POST), prior to being assigned an officer for training.
- 29 - Field Training Officers who have been inactive with the Program for three (3) or more years must complete a 24-hour Field Training Officer update course certified by POST prior to being assigned an officer for training.
- 30 - Field Training Officers **shall** be provided and successfully complete 24 hours of update training, either a POST-certified class or other approved program(s), every three (3) years.
- 31 - Newly appointed Field Training Lieutenants and Sergeants **shall** successfully complete a POST-certified Field Training Manager course within twelve (12) months of appointment to the Program.

References: General Orders P-15, P-26 and P-28
P.O.S.T. Administrative Manual
P.O.S.T. Field Training Program Guide

420

Foot Pursuits

427.1 PURPOSE AND SCOPE

This policy provides guidelines to assist officers in making the decision to initiate or continue the pursuit of suspects on foot.

427.2 POLICY

It is the policy of this department that officers, when deciding to initiate or continue a foot pursuit, continuously balance the objective of apprehending the suspect with the risk and potential for injury to department members, the public or the suspect.

Officers are expected to act reasonably, based on the totality of the circumstances.

427.3 DECISION TO PURSUE

The safety of department members and the public **should** be the primary consideration when determining whether a foot pursuit **should** be initiated or continued. Officers must be mindful that immediate apprehension of a suspect is rarely more important than the safety of the public and department members.

Officers may be justified in initiating a foot pursuit of any individual the officer reasonably believes is about to engage in, is engaging in or has engaged in criminal activity. The decision to initiate or continue such a foot pursuit, however, must be continuously re-evaluated in light of the circumstances presented at the time.

Mere flight by a person who is not suspected of criminal activity **shall** not serve as justification for engaging in an extended foot pursuit without the development of reasonable suspicion regarding the individual's involvement in criminal activity or being wanted by law enforcement.

Deciding to initiate or continue a foot pursuit is a decision that an officer must make quickly and under unpredictable and dynamic circumstances. It is recognized that foot pursuits may place department members and the public at significant risk. Therefore, no officer or supervisor **shall** be criticized or disciplined for deciding not to engage in a foot pursuit because of the perceived risk involved.

If circumstances permit, surveillance and containment are generally the safest tactics for apprehending fleeing persons. In deciding whether to initiate or continue a foot pursuit, an officer **should** continuously consider reasonable alternatives to a foot pursuit based upon the circumstances and resources available, such as:

- (a) Containment of the area.
- (b) Saturation of the area with law enforcement personnel, including assistance from other agencies.

- (c) A canine search.
- (d) Thermal imaging or other sensing technology.
- (e) Air support.
- (f) Apprehension at another time when the identity of the suspect is known or there is information available that would likely allow for later apprehension, and the need to immediately apprehend the suspect does not reasonably appear to outweigh the risk of continuing the foot pursuit.

427.4 GENERAL GUIDELINES

When reasonably practicable, officers **should** consider alternatives to engaging in or continuing a foot pursuit when:

- (a) Directed by a supervisor to terminate the foot pursuit; such an order **shall** be considered mandatory
- (b) The officer is acting alone.
- (c) Two or more officers become separated, lose visual contact with one another, or obstacles separate them to the degree that they cannot immediately assist each other **should** a confrontation take place. In such circumstances, it is generally recommended that a single officer keep the suspect in sight from a safe distance and coordinate the containment effort.
- (d) The officer is unsure of his/her location and direction of travel.
- (e) The officer is pursuing multiple suspects and it is not reasonable to believe that the officer would be able to control the suspect **should** a confrontation occur.
- (f) The physical condition of the officer renders him/her incapable of controlling the suspect if apprehended.
- (g) The officer loses radio contact with the dispatcher or with assisting or backup officers.
- (h) The suspect enters a building, structure, confined space, isolated area or dense or difficult terrain, and there are insufficient officers to provide backup and containment. The primary officer **should** consider discontinuing the foot pursuit and coordinating containment pending the arrival of sufficient resources.
- (i) The officer becomes aware of unanticipated or unforeseen circumstances that unreasonably increase the risk to officers or the public.
- (j) The officer reasonably believes that the danger to the pursuing officers or public outweighs the objective of immediate apprehension.
- (k) The officer loses possession of his/her firearm or other essential equipment.
- (l) The officer or a third party is injured during the pursuit, requiring immediate assistance, and there are no other emergency personnel available to render assistance.

- (m) The suspect's location is no longer definitely known.
- (n) The identity of the suspect is established or other information exists that will allow for the suspect's apprehension at a later time, and it reasonably appears that there is no immediate threat to department members or the public if the suspect is not immediately apprehended.
- (o) The officer's ability to safely continue the pursuit is impaired by inclement weather, darkness or other environmental conditions.

427.5 RESPONSIBILITIES IN FOOT PURSUITS

427.5.1 INITIATING OFFICER RESPONSIBILITIES

Unless relieved by another officer or a supervisor, the initiating officer **shall** be responsible for coordinating the progress of the pursuit. When acting alone and when practicable, the initiating officer **should** not attempt to overtake and confront the suspect but **should** attempt to keep the suspect in sight until sufficient officers are present to safely apprehend the suspect.

Early communication of available information from the involved officers is essential so that adequate resources can be coordinated and deployed to bring a foot pursuit to a safe conclusion. Officers initiating a foot pursuit **should**, at a minimum, broadcast the following information as soon as it becomes practicable and available:

- (a) Location and direction of travel
- (b) Call sign identifier
- (c) Reason for the foot pursuit, such as the crime classification
- (d) Number of suspects and description, to include name if known
- (e) Whether the suspect is known or believed to be armed with a dangerous weapon

Officers **should** be mindful that radio transmissions made while running may be difficult to understand and may need to be repeated.

Absent extenuating circumstances, any officer unable to promptly and effectively broadcast this information **should** terminate the foot pursuit. If the foot pursuit is discontinued for any reason, immediate efforts for containment **should** be established and alternatives considered based upon the circumstances and available resources.

When a foot pursuit terminates, the officer will ~~notify the dispatcher of~~ broadcast his/her location and the status of the pursuit termination (e.g., suspect in custody, lost sight of suspect), and will direct further actions as reasonably appear necessary, to include requesting medical aid as needed for officers, suspects or members of the public.

427.5.2 ASSISTING OFFICER RESPONSIBILITIES

Whenever any officer announces that he/she is engaged in a foot pursuit, all other officers **should** minimize non-essential radio traffic to permit the involved officers maximum access to the radio frequency.

427.5.3 SUPERVISOR RESPONSIBILITIES

Upon becoming aware of a foot pursuit, the supervisor **shall** make every reasonable effort to ascertain sufficient information to direct responding resources and to take command, control and coordination of the foot pursuit. The supervisor **should** respond to the area whenever possible; the supervisor does not, however, need not be physically present to exercise control over the foot pursuit. The supervisor **shall** continuously assess the situation in order to ensure the foot pursuit is conducted within established department guidelines.

The supervisor **shall** terminate the foot pursuit when the danger to pursuing officers or the public appears to unreasonably outweigh the objective of immediate apprehension of the suspect.

Upon apprehension of the suspect, the supervisor **shall** promptly proceed to the termination point to direct the post-foot pursuit activity.

427.5.4 THE COMMUNICATIONS CENTER RESPONSIBILITIES

Upon notification or becoming aware that a foot pursuit is in progress, the dispatcher is responsible for:

- (a) Clearing the radio channel of non-emergency traffic.
- (b) Coordinating pursuit communications of the involved officers.
- (c) Broadcasting pursuit updates as well as other pertinent information as necessary.
- (d) Ensuring that a field supervisor is notified of the foot pursuit.
- (e) Notifying and coordinating with other involved or affected agencies as practicable.
- (f) Notifying the Watch Commander as soon as practicable.
- (g) Assigning an incident number and logging all pursuit activities.

429427.6 REPORTING REQUIREMENTS

The initiating officer **shall** document the incident. Documentation may be accomplished via an MDT, Field Interview, Incident or Case report. The following information **should** be contained in the report: complete appropriate crime/arrest reports documenting, at minimum:

- (a) Date and time of the foot pursuit.
- (b) Initial reason and circumstances surrounding the foot pursuit.
- (c) Course and approximate distance of the foot pursuit.
- (d) Alleged offenses.
- (e) Involved vehicles and officers.
- (f) Whether a suspect was apprehended as well as the means and methods used.
 - 1. Any use of force **shall** be reported and documented in compliance with the Use of Force Policy.
- (g) Arrestee information, if applicable.

- (h) Any injuries and/or medical treatment.
- (i) Any property or equipment damage.
- (j) Name of the supervisor at the scene or who handled the incident.

Assisting officers taking an active role in the apprehension of the suspect **shall** complete supplemental reports as necessary or as directed.

The supervisor reviewing the report will make a preliminary determination that the pursuit appears to be in compliance with this policy or that additional review and/or follow-up is warranted.

In any case in which a suspect is not apprehended and there is insufficient information to support further investigation, a supervisor may authorize that the initiating officer need not complete a formal report.

Contacts and Temporary Detentions

421.1 PURPOSE AND SCOPE

Best Practice MODIFIED

The purpose of this policy is to establish guidelines for temporarily detaining but not arresting persons in the field, conducting field interviews (FI) and pat-down searches, and the taking and disposition of photographs.

421.1.1 DEFINITIONS

Federal

Definitions related to this policy include:

Consensual encounter - When an officer contacts an individual but does not create a detention through words, actions, or other means. In other words, a reasonable individual would believe that his/her contact with the officer is voluntary.

Field interview - The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purpose of determining the individual's identity and resolving the officer's suspicions.

Field photographs - Posed photographs taken of a person during a contact, temporary detention, or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a ~~Mobile Audio Video (MAV) system~~, body-worn camera, or public safety camera when persons are not posed for the purpose of photographing are not considered field photographs.

Pat-down search - A type of search used by officers in the field to check an individual for dangerous weapons. It involves a thorough patting-down of clothing to locate any weapons or dangerous items that could pose a danger to the officer, the detainee, or others.

Reasonable suspicion - When, under the totality of the circumstances, an officer has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

Temporary detention - When an officer intentionally, through words, actions, or physical force, causes an individual to reasonably believe he/she is required to restrict his/her movement without an actual arrest. Temporary detentions also occur when an officer actually restrains a person's freedom of movement.

421.2 POLICY

Federal

The Berkeley Police Department respects the right of the public to be free from unreasonable searches or seizures. Due to an unlimited variety of situations confronting the officer, the decision to temporarily detain a person and complete a field interview (FI), pat-down search, or field photograph shall be left to the officer based on the totality of the circumstances, officer safety considerations, and constitutional safeguards.

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Contacts and Temporary Detentions

421.3 FIELD INTERVIEWS

Federal

Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop of a person, and conduct an FI, when there is articulable, reasonable suspicion to do so. A person, however, **shall** not be detained longer than is reasonably necessary to resolve the officer's suspicion.

Nothing in this policy is intended to discourage consensual contacts. Frequent casual contact with consenting individuals is encouraged by the Berkeley Police Department to strengthen community involvement, community awareness, and problem identification.

421.3.1 INITIATING A FIELD INTERVIEW

Federal

When initiating the stop, the officer **should** be able to point to specific facts which, when considered with the totality of the circumstances, reasonably warrant the stop. Such facts include but are not limited to an individual's:

- (a) Appearance or demeanor suggesting that he/she is part of a criminal enterprise or is engaged in a criminal act
- (b) Actions suggesting that he/she is engaged in a criminal activity
- (c) Presence in an area at an inappropriate hour of the day or night
- (d) Presence in a particular area is suspicious
- (e) Carrying of suspicious objects or items
- (f) Excessive clothes for the climate or clothes bulging in a manner that suggest he/she is carrying a dangerous weapon
- (g) Location in proximate time and place to an alleged crime
- (h) Physical description or clothing worn that matches a suspect in a recent crime
- (i) Prior criminal record or involvement in criminal activity as known by the officer

421.4 PAT-DOWN SEARCHES

Federal **MODIFIED**

Once a valid stop has been made, and consistent with the officer's training and experience, an officer may pat a suspect's outer clothing for weapons if the officer has a reasonable, articulable suspicion the suspect may pose a safety risk. The purpose of this limited search is not to discover evidence of a crime, but to allow the officer to pursue the investigation without fear of violence. Circumstances that may establish justification for performing a pat-down search include but are not limited to:

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.
- (b) Where more than one suspect must be handled by a single officer.

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- (c) The hour of the day and the location or neighborhood where the stop takes place.
- (d) Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
- (e) The actions and demeanor of the suspect.
- (f) Visual indications which suggest that the suspect is carrying a firearm or other weapon.

Whenever practicable, a pat-down search **should** not be conducted by a lone officer. A cover officer **should** be positioned to ensure safety and **should** not be involved in the search.

421.5 FIELD PHOTOGRAPHS

Best Practice **MODIFIED**

All available databases **should** be searched before photographing any field detainee. If a photograph is not located, or if an existing photograph no longer resembles the detainee, the officer **shall** carefully consider, among other things, the factors listed below.

421.5.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT

Best Practice

Field photographs may be taken when the subject being photographed knowingly and voluntarily gives consent. ~~When taking a consensual photograph, the officer **should** have the individual read and sign the appropriate form accompanying the photograph.~~

421.5.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT

Federal

Field photographs may be taken without consent only if they are taken during a detention that is based upon reasonable suspicion of criminal activity, and the photograph serves a legitimate law enforcement purpose related to the detention. The officer must be able to articulate facts that reasonably indicate that the subject was involved in or was about to become involved in criminal conduct. ~~The subject **should** not be ordered to remove or lift any clothing for the purpose of taking a photograph.~~

If, prior to taking a photograph, the officer's reasonable suspicion of criminal activity has been dispelled, the detention must cease and the photograph **should** not be taken.

All field photographs and related reports **shall** be submitted to a supervisor and retained in compliance with this policy.

421.5.3 SUPERVISOR RESPONSIBILITIES

Best Practice

While it is recognized that field photographs often become valuable investigative tools, supervisors **should** monitor such practices in view of the above listed considerations. This is not to imply that supervisor approval is required before each photograph is taken.

Access to, and use of, field photographs **shall** be strictly limited to law enforcement purposes.

421.6 WITNESS IDENTIFICATION AND INTERVIEWS

Best Practice

Berkeley Police Department

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Because potential witnesses to an incident may become unavailable or the integrity of their statements compromised with the passage of time, officers **should**, when warranted by the seriousness of the case, take reasonable steps to promptly coordinate with an on-scene supervisor and/or criminal investigator to utilize available members for the following:

- (a) Identifying all persons present at the scene and in the immediate area.
 1. When feasible, a recorded statement **should** be obtained from those who claim not to have witnessed the incident but who were present at the time it occurred.
 2. Any potential witness who is unwilling or unable to remain available for a formal interview **should** not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, officers **should** attempt to identify the witness prior to his/her departure.
- (b) Witnesses who are willing to provide a formal interview **should** be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by Berkeley Police Department members.
 1. A written, verbal, or recorded statement of consent **should** be obtained prior to transporting a witness. When the witness is a minor, consent **should** be obtained from the parent or guardian, if available, prior to transport.

421.7 DISPOSITION OF PHOTOGRAPHS

Agency Content

All detainee photographs must be assigned an incident or case number and uploaded to the BPD evidence database or booked into the property room.

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DATE ISSUED: November 1, 1999

GENERAL ORDER R-29

SUBJECT: FIELD INTERVIEWS

PURPOSE

- 1 - The purpose of this General Order is to establish policy and procedures for conducting field interviews and maintaining records of those citizen contacts.

POLICY

- 2 - Field interviews **should** be used only in the pursuit of legitimate goals of the Department and not to harass any individual. Field interviews are a productive tool and source of information for the Department. When used properly, they can discourage criminal activity, identify suspects, and add useful information to Department files.

PROCEDURES

- 3 - The Field Interview Card (referred to in this order as "Form") **shall** be used to record information where persons are stopped and interviewed in the field and where no numbered report is made. Field Interview Cards **should** be completed under the following circumstances:
 - (a) The person contacted is a named suspect in a reported crime, but additional information, such as current address or photograph for a lineup, is needed to complete an ongoing investigation.
 - (b) The person contacted is a possible suspect in a crime, or his/her physical description matches the suspect in a specific crime. A photograph may be taken for identification or elimination purposes.
 - (c) The person committed a minor infraction in the officer's presence and was warned; the Field Interview Card was completed in lieu of arrest.
 - (d) The subject was engaged in suspicious activity which caused the officer's attention to be focused upon him/her. Examples of such activity would include loitering around a closed business or known drug spot without apparent business, erratic driving, attempting to hide from the officer, etc.
- 4 - A supply of the forms will be maintained in the **Squad Room with additional forms available in Support Services Division.***
- 5 - The originating officer **shall** legibly print the required information on the form at the time contact is made. The officer **shall** be responsible for determining whether or not there are any outstanding warrants or "wants" on the subject.
 - (a) The officer **should** also search the criminal files to determine whether the subject has a criminal record.

* Highlighted text is new

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- (1) If a record is located, the officer **should** indicate by a check mark in the appropriate box at the bottom of the form whether it is a felony or misdemeanor.
 - (2) If the subject has a CORPUS personal file number, the number **should** be written on the lower portion of the form.
 - (3) If there is no record, the word "No" **should** be written in each box.
- (b) The FI form **should** be fully completed before being turned in.
- 6 - The officer **should** promptly place the completed form into the "Stop Card Tray*" located in the Squad Room.
- (a) It **shall** be the responsibility of the Detective **Bureau Secretary*** to remove the completed forms from the tray* and process them properly.
 - (b) The **Detective Bureau Secretary*** will be responsible for entering the forms into the Records Management System.
 - (c) By agreement with the Police Review Commission, Field Interview Cards are purged from the Records Management System after 90 days.
- 7 - In those instances where the officer feels that the person stopped would be of interest to a particular Detective **Bureau*** detail, e.g., Sex, Robbery, etc., the officer **shall** photocopy the form and route the copy to the particular detail.
- (a) Appropriate information **shall** be included in the section titled, "Circumstances of Stop," as well as the notation that a copy has been sent to the concerned detail, e.g., "cc: Sex Detail."
 - (b) The original of the form **shall** be handled as outlined in paragraph 6, above.

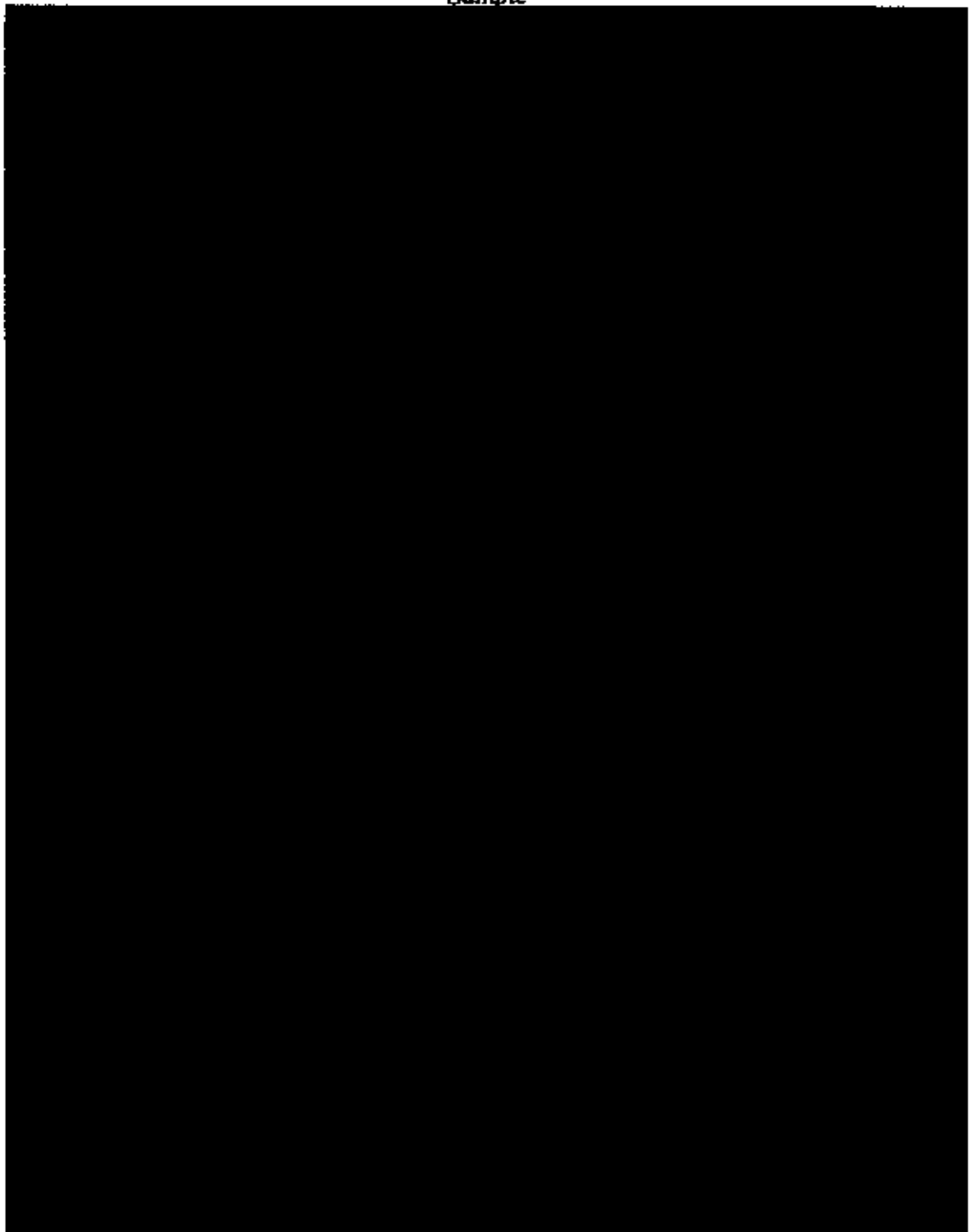
Reference: CALEA Standards

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*Sample**



* Highlighted text is new

Mobile Data Terminal Use

424.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the proper access, use and application of the Mobile Data Terminal (MDT) system in order to ensure appropriate access to confidential records from local, state and national law enforcement databases, and to ensure effective electronic communications between department members and the Communications Center.

424.2 POLICY

Berkeley Police Department members using the MDT **shall** comply with all appropriate federal and state rules and regulations and **shall** use the MDT in a professional manner, in accordance with this policy.

424.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to messages accessed, transmitted, received or reviewed on any department technology system (see the Information Technology Use Policy for additional guidance).

424.4 RESTRICTED ACCESS AND USE

MDT use is subject to the Information Technology Use and Protected Information policies.

Members **shall** not access the MDT system if they have not received prior authorization and the required training. Members **shall** immediately report unauthorized access or use of the MDT by another member to their supervisors or Watch Commanders.

Use of the MDT system to access law enforcement databases or transmit messages is restricted to official activities, business-related tasks and communications that are directly related to the business, administration or practices of the Department. In the event that a member has questions about sending a particular message or accessing a particular database, the member **should** seek prior approval from his/her supervisor.

Sending derogatory, defamatory, obscene, disrespectful, sexually suggestive, harassing or any other inappropriate messages on the MDT system is prohibited and may result in discipline.

It is a violation of this policy to transmit a message or access a law enforcement database under another member's name or to use the password of another member to log in to the MDT system unless directed to do so by a supervisor. Members are required to log off the MDT or secure the MDT when it is unattended. This added security measure will minimize the potential for unauthorized access or misuse.

424.4.1 USE WHILE DRIVING

Use of the MDT by the vehicle operator **should** be limited to times when the vehicle is stopped. Information that is required for immediate enforcement, investigative, tactical or safety needs **should** be transmitted over the radio.

Short transmissions, such as a license plate check, are permitted if it reasonably appears that it can be done safely. In no case **shall** an operator attempt to send or review lengthy messages while the vehicle is in motion.

424.5 DOCUMENTATION OF ACTIVITY

Except as otherwise directed by ~~the Watch Commander~~ supervisor or other department-established protocol, all calls for service assigned by a dispatcher **should** be communicated by voice over the police radio and electronically via the MDT unless security or confidentiality prevents such broadcasting.

MDT and voice transmissions are used to document the member's daily activity. To ensure accuracy:

- (a) All contacts or activity **shall** be documented at the time of the contact.
- (b) Whenever the activity or contact is initiated by voice, it **should** be documented by a dispatcher.
- (c) Whenever the activity or contact is not initiated by voice, the member **shall** document it via the MDT.

424.5.1 STATUS CHANGES

All changes in status (e.g., arrival at scene, meal periods, in service) will be transmitted over the police radio ~~or through the MDT system.~~

Members responding to in-progress calls **should** advise changes in status over the radio to assist other members responding to the same incident. ~~Other changes in status can be made on the MDT when the vehicle is not in motion.~~

~~424.5.2 EMERGENCY ACTIVATION~~

~~If there is an emergency activation and the member does not respond to a request for confirmation of the need for emergency assistance or confirms the need, available resources will be sent to assist in locating the member. If the location is known, the nearest available officer **should** respond in accordance with the Officer Response to Calls Policy.~~

~~Members **should** ensure a field supervisor and the Watch Commander are notified of the incident without delay.~~

~~Officers not responding to the emergency **shall** refrain from transmitting on the police radio until a no-further-assistance broadcast is made or if they are also handling an emergency.~~

424.6 EQUIPMENT CONSIDERATIONS

424.6.1 MALFUNCTIONING MDT

Whenever possible, members will not use vehicles with malfunctioning MDTs. Whenever

members must drive a vehicle in which the MDT is not working, they **shall** notify the Communications Center. It **shall** be the responsibility of the dispatcher to document all information that will then be transmitted verbally over the police radio.

424.6.2 BOMB CALLS

When investigating reports of possible bombs, members **should** not communicate on their MDTs when in the evacuation area of a suspected explosive device. Radio frequency emitted by the MDT could cause some devices to detonate.

