



Police Review Commission (PRC)

**LEXIPOL POLICIES SUBCOMMITTEE**  
Commissioners Perezvelez (Chair), Ramsey, Mikiten

**AGENDA**

Wednesday, October 23, 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 policies, revised following discussion:

Lexipol #	G.O. (If any)	Title
327	M-2	Outside Agency Assistance (discussed May 8)
421	R-29	Contacts and Temporary Detentions
301	R-03	Use of Force Review Board
343		Gun Violence Restraining Orders
344		Off-Duty Law Enforcement Actions

*(All except 327 discussed Oct. 9 and to be delivered.)*

b. Review Lexipol Policy 1202 (formerly 351), Second Response.

**5. NEW BUSINESS (discussion and action)**

a. Discuss how to proceed on the following:

- 303 – Control Devices and Techniques
- 304 – Conducted Energy Devices
- 428 – First Amendment Assemblies

(Not included in this packet. Distributed April 10, 2019.)

b. Review the following policies:

Lexipol #	G.O. (if any)	Title
337	D-21	Biological Samples
408	B-3	Response to Bomb Calls
427		Medical Marijuana

c. Decide what policies to consider 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, 1<sup>st</sup> floor, during regular business hours.

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

## Outside Agency Assistance

### 327.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members when requesting or responding to a request for mutual aid or when assisting another law enforcement agency.

### 327.2 POLICY

~~It is the policy of the Berkeley Police Department to promptly respond to requests for assistance by other law enforcement agencies, subject to available resources and consistent with the applicable laws and policies of this department.~~

Berkeley Police Department employees are expected to follow the procedures of the California Law Enforcement Mutual Aid Plan as well as the written agreements made with other law enforcement agencies. The Berkeley Police Department is also expected to take an event management approach to crowd control management situations, and to evaluate the threat to public safety posed by each group prior to responding to, or requesting Mutual Aid or emergency assistance.

### 327.3 MUTUAL AID

California's Law Enforcement Mutual Aid Plan was formulated in the early 1950's and enacted into law as part of the Government Code in 1970. The authority of the State of California Law Enforcement Mutual Aid Plan is granted under California Government Code Sections 8550, 8569, 8616, and 8668. The Berkeley City Council grants authority to the Police Department for mutual aid participation in accordance with Berkeley Municipal Code Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS, 1973).

- (a) The California Law Enforcement Mutual Aid Plan is contained in a compendium titled, "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".

A copy of the current compendium is publically available online through the City of Berkeley website.

### ~~327.3~~ 327.4 ASSISTING OUTSIDE AGENCIES

#### Best Practice

Generally, requests for any type of assistance from another agency should be routed to the Watch Commander's ~~office~~ for approval. In some instances, a memorandum of understanding or other established protocol may exist that eliminates the need for approval of individual requests.

When another law enforcement agency requests unplanned or emergency assistance from this department, the Watch Commander may authorize, if available, an appropriate number of personnel to assist. Members are reminded that their actions when rendering assistance must conform with applicable laws and be consistent with the policies of this department.

Officers may respond to a request for emergency assistance, however, they shall notify a

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supervisor of their activity as soon as practicable.

Arrestees Persons arrested during an incident taking place outside the City of Berkeley may be temporarily detained by this department until arrangements for transportation are made by the outside arresting agency. Probation violators who are temporarily detained by this department the Berkeley Police Department will not ordinarily be booked at this department the Berkeley City Jail. Only in exceptional circumstances, and subject to supervisor approval, will this department provide transportation of arrestees to other facilities on behalf of another agency.

When transportation assistance is rendered, a report shall be prepared and submitted by the handling member unless otherwise directed by a supervisor.

### 327.3.1 INITIATED ACTIVITY

#### Best Practice

Any on-duty officer who engages in law enforcement activities of any type that are not part of a mutual aid request and take place outside the jurisdiction of the Berkeley Police Department shall notify his/her supervisor or the Watch Commander and the Communications Center as soon as practicable. This requirement does not apply to special enforcement details or multi-agency units that regularly work in multiple jurisdictions.

### 327.4327.5 REQUESTING OUTSIDE ASSISTANCE

#### Best Practice

If assistance is needed from another agency, the member requesting assistance should, if practicable, first notify a supervisor. The handling member or supervisor should direct assisting personnel to where they are needed and to whom they should report when they arrive.

The requesting member should arrange for appropriate radio communication capabilities, if necessary possible and available, so that communication can be coordinated between assisting personnel.

### 327.5327.6 REPORTING REQUIREMENTS

#### Best Practice

Incidents of outside assistance or law enforcement activities that are not documented in a crime report shall be documented in an Incident Report-general case report or as directed by the Watch Commander and routed to the Chief of Police through the chain of command.

### 327.6327.7 MANDATORY SHARING

#### Best Practice

Equipment and supplies purchased with federal funds or grants that require such equipment and supplies be shared with other agencies should be documented and updated as necessary by the Support Services Division Captain Commander or his/her the authorized designee.

The documentation should include:

- (a) The conditions relative to sharing.

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- (b) The training requirements for:
1. The use of the supplies and equipment.
  2. The members trained in the use of the supplies and equipment.
- ~~(c) Any other requirements for use of the equipment and supplies. Copies of the documentation should be provided to the Communications Center and the Watch Commander to ensure use of the equipment and supplies is in compliance with the applicable sharing agreements.~~
- ~~(c) The Personnel and Training Sergeant should maintain documentation that the appropriate members have received the required training.~~

### **327.8 MUTUAL AID DETERMINATIONS**

All requests for pre-planned mutual aid will be made via the Alameda County Sheriff's Office, and all responses to pre-planned mutual aid will result from mutual aid notification from the Alameda County Sheriff's Office. Emergency requests for Mutual Assistance may be routed directly to or from a law enforcement agency.

- (a) When the Chief of Police determines that an emergency situation may become or is already beyond the control of departmental resources, it is the Chief of Police's or his/her designee is responsible for requesting mutual aid from through the Alameda County Sheriff's Office. Generally, this process will be authorized by the Chief of Police in conjunction with notification of and approval by the City Manager.
1. The Chief of Police or his/her designee will also attempt to determine if the only crimes being committed are solely civil disobedience offenses, and whether these offenses pose a threat to public safety.
  2. If a situation individuals are committing crimes that does not present a threat to public safety, the Chief of Police or his/her designee should seriously evaluate consider whether or not the Berkeley Police Department should request or participate in a Mutual Aid request. Crimes which do Situations that present a threat to public safety include crimes consisting of property damage, utilizing weapons, creating physical hazards, or threats to community members or public safety personnel.
- ~~(a)(b) It is the responsibility of the Alameda County Sheriff's Office to provide assistance and coordination to control the problem (California Government Code Section 26602).~~
1. It is also possible to obtain other services from the Alameda County Sheriff's Office (such as a bus for prisoner transportation at a small demonstration) without invoking mutual aid.

### **327.9 MUTUAL AID REQUEST PROCEDURES**

To request pre-planned Mutual Aid from through the Alameda County Sheriff's Office, the Chief of Police or his/her designee must:

- (a) Place all Berkeley Police Department sworn personnel on the following shifts: 12 hours on

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and 12 hours off.

(b) Contact the Alameda County Sheriff's Office Emergency Services Unit, 667-7755, 667-7721 and verbally request mutual aid.

(c) Or, Send a written message to the Alameda County Sheriff's Department (email or FAX is acceptable).

(b)(d) Meet with Alameda County Sheriff's Office Department Mutual Aid personnel to discuss, plan, and coordinate the use of outside personnel regarding:

1. The dates and times that mutual aid personnel are required.
2. The number of personnel needed to assist.
3. The staging area for responding personnel to meet.
4. Mass processing procedures for persons arrested.
5. Transportation plans for persons arrested.
6. Operation of temporary detention facilities, if needed.

A more complete list of coordination considerations can be found in the California Law Enforcement Mutual Aid Plan.

(e) An estimate of the number of available personnel in each agency is maintained by the Alameda County Sheriff's Office Department. The Alameda County Sheriff's Office Department will poll local agencies to obtain the necessary number of officers and resources requested at the time of each incident.

Costs for mutual aid are the responsibility of each participating agency. In the case of State or Federal involvement, mutual aid costs will be paid for by the State/Federal government.

### **327.10 STATE MUTUAL AID :**

The Law Enforcement Division of the State of California Office of Emergency Services (OES) is responsible for coordination of State resources in support of local law enforcement during "unusual occurrences" such as disorders, demonstrations, riots, and natural or war caused disturbances. Authority is granted to OES under Article 5, Chapter 7, of the California Government Code. A 24-hour communications center is maintained at the Office of Emergency Services in Sacramento. A representative of the Law Enforcement Division can be reached at any hour of the day or night by calling (1-916) 427-4235 or 427-4341. (916) 845-8700

(a) Fourive State agencies have specific responsibilities to support local law enforcement during emergency situations:

1. The California Highway Patrol: Provide traffic control and maintenance of law and order.
2. The State Military Department, which includes the California Army and Air National Guard, the State Military Reserve and the Naval Militia: Provide military support to

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local jurisdictions only after a request for same is made by the Chief Executive (City Manager) of a City or County Sheriff, and only after the disturbance is beyond the capabilities of local law enforcement mutual aid forces.

3. The Department of Justice: Provide legal advice and intelligence.
4. The Department of Corrections: Provide support for local law enforcement (with resources).
5. Office of the California State Police: Provide personnel who remain under the command of the State Police.

**327.11 FEDERAL MUTUAL AID REQUESTING FEDERAL MUTUAL AID ASSISTANCE**

Only State government may make the request to the President to provide Federal resources to assist in restoring or maintaining law and order. State government may only make such requests after all of its available forces, including the State military, are unable to control the emergency. The Department of the Army has the responsibility for the temporary loan of Federal military resources to National Guard units and local civil authorities in anticipation of or during disturbances.





## Second Response

### 1202.1 BACKGROUND

In 1993, the Berkeley City Council stated,

"Due to inadequate supervision, some large gatherings of people, such as parties, frequently become loud and unruly to the point that they constitute a threat to the peace, health, safety, or general welfare of the public as a result of conduct such as one or more of the following: excessive noise, excessive traffic, obstruction of public streets or crowds who have spilled over into public streets, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, and litter.

The City of Berkeley is required to make multiple responses to such unruly gatherings in order to restore and maintain the peace and protect public safety. Such gatherings are a burden on scarce City resources and can result in police responses to regular and emergency calls being delayed and police protection to the rest of the City being reduced. In order to discourage the occurrence of repeated loud and unruly gatherings, the persons responsible for the public nuisance created by these gatherings should be fined."

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 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 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.

### 1202.2 THE ORDINANCE

Berkeley Municipal Code §13.48.02~~10~~ states it shall be unlawful and a public nuisance to conduct a gathering, which incorporates the following criteria:

- Ten or more persons are involved;
- The event is occurring on private property; and,
- The gathering is occurring 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 unlawful 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,

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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.

### **1202.3 EXHIBIT A**

When the police intervene 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 police 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 civil penalties; joint and/or several liability (i.e., one or more people may be responsible for the applicable fine); and, 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 notice is posted 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.

### **1202.31202.4 EXHIBIT B**

Should the police intervene at a premises with an active "Exhibit A", a new notice shall be posted and a fine imposed against the property by means of an administrative citation. The new notice, referred to in the Ordinance as an "Exhibit B," states that the intervention by the police has been necessitated as a result of a public nuisance caused by an event at the premises. The "Exhibit B" also indicates:

- The date and time of the police intervention;
- Whether the nuisance is the second, third, fourth, etc. at the premises within the last 120 days;
- The fine amount associated with the violation (second - \$750, third - \$1,500, fourth and subsequent violations - \$2,500);
- The 120 day period is extended another 120 days from the date of the "Exhibit B" posting;
- 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.

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For every subsequent violation of the Ordinance, a new "Exhibit B" form shall be completed and posted. 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 B" 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.

#### **1202.41202.5 PROCEDURE - OFFICER**

An officer responding to a "loud party", "unruly gathering", etc. type call for service should:

- (a) Contact the resident, person in control of the property, or event organizer, and determine if Ordinance enforcement is appropriate.
- (b) Complete an "Exhibit A" or "Exhibit B" form, (in duplicate, including the date, time, address, issuing officer, and case number.)
- (c) 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.
- (d) Post the duplicate ~~(yellow)~~ copy of the "Exhibit ~~A~~" form at the premises and retain the original ~~(white)~~ for the report.
- (e) Complete a Case Report to document your observations relevant to the Ordinance violation and responsible parties contacted. The following information should be included: and document the following information:
  - Known complainant's identification and report information;
  - Identification of parties responsible for the property hosting the gathering event;
  - The overall condition and/or general environment of the premises;
  - The number of people involved at the ~~unruly~~ gathering;
  - Whether or not alcohol was a factor;
  - Any traffic conditions eaffected by the gathering;
  - Any other information that may be relevant to the Ordinance violation; and,
  - The exact location the Exhibit notice form was posted.
- (f) Submit the report in AEGIS, route the original Exhibit form to Records Management and place a copy 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.

#### **1202.51202.6 REPEAT VIOLATIONS**

Patrol ~~o~~fficers should be aware of what properties in their assigned area have been posted for Ordinance violation(s) and should monitor them for repeat violations s within the prescribed term.

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If, within 120 days of the initial posting, an officer investigates another unruly gathering as described in the Ordinance, the officers should 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 new Case Report and forward a ~~A copy of the report should also be forwarded CSB for to the appropriate Area Coordinator for~~ administrative follow-up.

It is important to know that with each subsequent occurrence of a nuisance at a previously posted property, the 120 day "clock" resets. For example, if an address was initially posted on January 1<sup>st</sup>, and there was a reported violation on March 1<sup>st</sup>, the 120 day period restarts and would conclude, absent a subsequent violation, on June 28<sup>th</sup>. 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.

### **1202-61202.7 CSB AREA COORDINATOR FOLLOW-UP PROCEDURES**

An Area coordinator receiving a follow up request for a Second Response violation should: Administrative follow-up of Ordinance violations is the responsibility of the Community Services Bureau Area Coordinator. 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.

(b)(a) Ensure a Premise Alert has been entered into CAD for the subject property: Minimally, the CAD entry should include: the date/time the Exhibit 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 violation number (second, third, fourth, etc.) and the fine amount to be imposed 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 "2<sup>nd</sup> Response" will help with event tracking and future administrative research efforts.

(c)(b) Mail a notice of the police intervention to the property owner(s): 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 is a letter from the Chief responsible Area Coordinator along with and a copy of the Exhibit A/B form, which advises informs the property owner(s) that any subsequent event within 120 days on the same premises necessitating policeCity intervention shall result in liability of the property owner for all penalties associated with such intervention as more particularly set forth in the Ordinance.

(c) Set a three week follow-up inspection: 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, 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.

(d) Conduct ad Additional inspections should be conducted to ensure Ordinance compliance and document any subsequent violations on a Case Report.

(e) Mail an Exhibit B notice letter for each subsequent violation: 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.

(f) Provide the City of Berkeley Finance Department with copies of all reports and letters

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associated with any Ordinance violation to facilitate billing of the responsible parties.

#### **1202.7 PROCEDURE – CSB**

- 330. ~~Ensure the incident's CAD event record is updated with relevant contact and form posting information.~~
- 330. ~~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.~~
- 330. ~~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.~~
- 330. ~~Conduct supplemental site inspections, as necessary.~~
- 330. ~~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.)~~
- 330. ~~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.~~

#### **1202.141202.8 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~~a second violation of the Ordinance ~~response in any~~during the 120-day period, the penalty shall be the sum of \$750.
- For ~~the~~a 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 the "Exhibit B" form, 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.

#### **1202.151202.9 SUMMARY**

A tool wielded to quell public nuisances, the "2<sup>nd</sup> Response" Ordinance can improve, if not restore, the quality of life in neighborhoods adversely ~~effected~~affected by loud and unruly gatherings. This

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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.

## Biological Samples

### 337.1 PURPOSE AND SCOPE

This policy provides guidelines for the collection of biological samples from those individuals required to provide samples upon conviction or arrest for certain offenses. This policy does not apply to biological samples collected at a crime scene or taken from a person in conjunction with a criminal investigation. Nor does it apply to biological samples from those required to register, for example, sex offenders.

### 337.2 POLICY

The Berkeley Police Department will assist in the expeditious collection of required biological samples from offenders in accordance with the laws of this state, ~~and with as little reliance on force as practicable.~~

### 337.3 PERSONS SUBJECT TO DNA COLLECTION

Those who must submit a biological sample include (Penal Code § 296):

- (a) A person, including a juvenile, upon conviction or other adjudication of any felony offense.
- (b) A person, including a juvenile, upon conviction or other adjudication of any offense if the person has a prior felony on record.
- (c) An adult arrested or charged with any felony.

### 337.4 PROCEDURE

When an individual is required to provide a biological sample, a trained employee **shall** obtain the sample in accordance with this policy.

#### 337.4.1 COLLECTION

The following steps **should** be taken to collect a sample:

- (a) Verify that the individual is required to provide a sample pursuant to Penal Code § 296; Penal Code § 296.1.
- (b) Verify that a biological sample has not been previously collected from the offender by querying the individual's criminal history record for a DNA collection flag or, during regular business hours, calling the California Department of Justice (DOJ) designated DNA laboratory. There is no need to obtain a biological sample if one has been previously obtained.
- (c) Use a DNA buccal swab collection kit provided by the California DOJ to perform the collection and take steps to avoid cross contamination.

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### 337.5 INVOLUNTARY DNA COLLECTION USE OF FORCE TO OBTAIN SAMPLES

If a person refuses to cooperate with the sample collection process, officers **should** attempt to identify the reason for refusal and seek voluntary compliance without resorting to using force. Force will not be used in the collection of samples except as authorized by a court order **and only with** the approval of the Watch Commandera supervisor. ~~Methods to consider when seeking voluntary compliance include contacting:~~

~~The person's parole or probation officer when applicable.~~

~~The prosecuting attorney to seek additional charges against the person for failure to comply or to otherwise bring the refusal before a judge.~~

~~The judge at the person's next court appearance.~~

~~The person's attorney.~~

~~A chaplain.~~

~~Another custody facility with additional resources, where an arrestee can be transferred to better facilitate sample collection.~~

~~A supervisor who may be able to authorize custodial disciplinary actions to compel compliance, if any are available.~~

~~The supervisor shall review and approve any plan to use force and be present to document the process. The following employees **shall** be involved in the administration of an involuntary DNA collection procedure:~~

~~(a) A sworn supervisor,~~

~~(b) An assigned officer and~~

~~(c) An assisting employee~~

~~The incident supervisor **shall** involve as many assisting employees as may be required to ensure the restraint of the individual and to accomplish the DNA collection. The incident supervisor **shall** explain to the individual that their refusal will result in his/her physical restraint, and that reasonable force may be employed to promote the safety of all involved parties during the impending collection.~~

#### 337.5.1 RESTRAINT EQUIPMENT

~~When available and practical, restraint equipment **should** be employed if its use would enhance the safety of persons involved in an involuntary DNA collection process.~~

~~"Restraint equipment", as used in this pPolicy, may include, but is not limited to, a padded phlebotomy chair, a hospital gurney equipped with soft-restraints and "The Wrap" restraint device. The use of restraint equipment **shall** not preclude the physical restraint of an individual's person by an employee if such action is necessary to mitigate the potential for injury.~~

~~The incident supervisor **shall** monitor the restraint process to ensure only reasonable force is employed. If confronted with violent resistance, the incident supervisor may elect to terminate the~~



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procedure, and develop an alternate plan for the DNA collection.

Should employees use physical force to overcome an individual's violent resistance to the DNA collection process, the incident supervisor shall adhere to the reporting protocols in the Use of Force Policy. The arresting officer shall document the conduct of the individual during the DNA collection procedure in his/her report.

In the event an individual is injured, or complains of injury, as a result of police action, the incident supervisor shall ensure the medical service protocols are followed.

### 337.5.2 VIDEO RECORDING

A video recording shall ~~ould~~ be made anytime force is used to obtain a biological sample. The recording should document all staff participating in the process, in addition to the methods and all force used during the collection. The recording should be part of the investigation file, if any, or otherwise retained in accordance with the department's records retention schedule (15 CCR 1059).

### 337.5.3 CELL EXTRACTIONS

If the use of force includes a cell extraction, the extraction shall be video recorded, including audio. Video shall be directed at the cell extraction event. The video recording shall be retained by the Department for the length of time required by statute. Notwithstanding the use of the video as evidence in a criminal proceeding, the tape shall be retained administratively (15 CCR 1059).

## 337.6 LEGAL MANDATES AND RELEVANT LAWS

California law provides for the following:

### 337.6.1 DOCUMENTATION RELATED TO FORCE

The Watch Commander shall prepare prior written authorization for the use of any force (15 CCR 1059). The written authorization (the BPD "Upgraded Search and DNA Collection Request" form) shall include information that the individualsubject was asked to provide the requisite specimen, sample or impression and refused, and if applicable, as well as the related court order authorizing the force.

### 337.6.2 BLOOD SAMPLES

A blood sample should only be obtained under this policy when:

- (a) The California DOJ requests a blood sample and the individualsubject consents, or
- (b) A court orders a blood sample following a refusal.

The withdrawal of blood may only be performed in a medically approved manner by health care providers trained and qualified to draw blood. A California DOJ collection kit shall be used for this purpose (Penal Code § 298(a); Penal Code § 298(b)(2)).

### 337.6.3 LITIGATION

The Chief of Police or authorized designee should notify the California DOJ's DNA Legal Unit in

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the event this department is named in a lawsuit involving the DNA Data Bank sample collection, sample use or any aspect of the state's DNA Data Bank Program.

### **337.7 EXPUNGEMENT FROM CAL-DNA DATA BANK**

California Penal Code § 299 sets forth the criteria for DNA Database sample expungement. Expungement can be accomplished easily and quickly when a DNA sample qualifies for removal from the State database and a person provides sufficient documentation of his/ her identity, legal status and criminal history to the California Department of Justice, DNA Database Program (CAL-DNA). A petitioner whose sample qualifies for DNA database sample expungement and who provides appropriate documentation can expedite the process so that neither a court hearing, nor a 180-day waiting period permitted by Section 299, likely will be necessary.

If CAL-DNA receives sufficient documentation showing that an individual meets the criteria for expungement of his or her DNA sample, CAL-DNA will review and research the request and issue a response to the petitioner indicating that the expungement was completed and the sample destroyed, or notify the petitioner of the legal reason the Department is required to retain the sample and profile.

A form to request CAL-DNA to expunge a DNA database sample and profile can be obtained by contacting the California Office of the Attorney General. The Attorney General's website is <https://oag.ca.gov> or a petitioner can call 800-952-5225. The form to request the expungement is the "Streamlined DNA Expungement Application Form" (State of California DLE 244). Expungement of a DNA sample and profile are the responsibility of the Department of Justice. The Berkeley Police Department has no influence on this decision.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 22, 2018

GENERAL ORDER D-21

SUBJECT: DNA SAMPLE COLLECTION

### PURPOSE

1. The purpose of this policy is to provide guidelines for the collection of DNA evidence from those individuals required to provide such samples under the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, and the State of California DNA Data Bank Program (Penal Code § 295, et seq.).

### POLICY

2. Upon a determination that any individual is qualified and required to provide DNA samples under the Act, the arresting officer, jail staff, or other employee designated by a supervisor **shall** obtain DNA samples in accordance with this policy.

### PERSONS SUBJECT TO DNA COLLECTION

3. While the courts may order DNA samples taken in a variety of circumstances under the Act, members of this department are only authorized to obtain DNA samples from the following individuals absent other lawful means (e.g., consent or a search warrant). Only those qualifying individuals whose DNA sample is not currently on file with the Department of Justice may be required to provide samples. Verification of DNA samples on file may be determined by a DNA collection flag on the individual's criminal history record or, during regular business hours, by calling the Department of Justice designated DNA laboratory at (510) 620-3300.
4. All DNA collection flags **should** be verified by contacting DOJ prior to the collection of the sample (Penal Code § 298(b)(5)).
5. It is a misdemeanor for any qualified individual to refuse to give any or all required DNA samples following written notice of the requirement to do so (Penal Code § 298.1(a)).

### ARRESTEES

6. Any adult arrested or charged with any felony offense is required to provide DNA samples. DNA samples **should** be collected immediately following arrest, or during the booking process, or as soon as administratively practicable after arrest but in any case prior to release on bail or other physical release from custody (Penal Code § 296.1(a)(1)(A)).

### SEX AND ARSON REGISTRANTS

7. Any adult or juvenile who is required to register as a sex offender under Penal Code §290 or arsonist under Penal Code § 457.1, including those whose

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 22, 2018

GENERAL ORDER D-21

registration resulted from a qualifying misdemeanor crime is required to submit a DNA sample. (Penal Code § 296(a)(3)). At the time that any such registrant registers, updates registration, or is notified by the Department of Justice or other law enforcement officer, an appointment **shall** be made designating the time and place for the collection of DNA samples if no such sample has already been provided (Penal Code § 296.2(c)).

### BUCCAL SWABS

8. Buccal swab samples (taken from the inside of the mouth) may only be procured by employees who have successfully completed departmentally approved training in the collection of buccal swabs and with the use of Department of Justice buccal swab collectors. (Penal Code § 298(a) and (b)(3)). A right thumbprint **shall** be placed on the collector along with other required identifying information.

### USE OF FORCE TO OBTAIN SAMPLES

9. If, after a written or oral request, a qualified individual refuses to provide any or all of the required DNA samples, a sworn member of this department may use reasonable force to obtain such sample(s).
10. *For the purpose of this section, the "use of reasonable force" **shall** be defined as the force that an objective, trained and competent officer faced with similar facts and circumstances would consider necessary and reasonable to gain compliance. (Penal Code § 298.1(c)(1)(A)).*
11. The following conditions must be met prior to proceeding with an involuntary DNA collection procedure:
  - (a) Prior to the use of reasonable force, the officer(s) **shall** take and document reasonable steps to secure voluntary compliance (Penal Code § 298.1(c)(1)(C)).
  - (b) Prior to the use of reasonable force, the assigned officer **shall** obtain written authorization from a supervisor using the "Upgraded Search and DNA Collection Request" Form. The narrative on the form **shall** minimally include that the individual was asked to provide the sample(s) and refused (Penal Code § 298.1(c)(1)(B)).
  - (c) If the authorized use of reasonable force includes an extraction from a jail cell, such extraction **shall** be videotaped (Penal Code § 298.1(c)(1)(D)).
12. The following employees **shall** be involved in the administration of an involuntary DNA collection procedure:
  - (a) A sworn supervisor.

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- (b) An assigned officer.
  - (c) An assisting employee.
13. The incident supervisor **shall** involve as many assisting employees as may be required to ensure the restraint of a qualified individual and to accomplish the DNA collection.
  14. Prior to conducting the DNA collection, the assigned officer **shall** seek the consent of the qualified individual. The assigned officer will document the refusal in writing, and obtain a sworn supervisor's written authorization before proceeding.
  15. **Should** the qualified individual refuse the assigned officer's request for consent to collect DNA, the incident supervisor **shall** explain to the individual that their refusal will result in his/her physical restraint, and that reasonable force may be employed to promote the safety of all involved parties during the impending collection.
  16. Upon authorization of the incident supervisor, employees may employ physical force to restrain a qualified individual who refuses to participate in the DNA collection process.
  17. The incident supervisor **shall** monitor the restraint process to ensure only reasonable force is employed.
  18. If confronted with violent resistance, the incident supervisor may elect to terminate the procedure, and develop an alternate plan for the DNA collection. This section does not negate employees' duty to respond appropriately to physical assaults, or to prevent injury to involved parties if assaulted by the qualified individual.
  19. When available and practical, restraint equipment **should** be employed, if its use would enhance the safety of persons involved in an involuntary DNA collection process.
  20. "Restraint equipment", as used in this Order, may include, but is not limited to, a padded phlebotomy chair, a hospital gurney equipped with soft-restraints, and "The Wrap" restraint device.
  21. The use of restraint equipment **shall** not preclude the physical restraint of a qualified individual's person by an employee(s) if such action is necessary to mitigate the potential for injury.
  22. **Should** employees employ physical force to overcome a qualified individual's violent resistance to the DNA collection process, the incident supervisor **shall** adhere to "Use of Force" reporting protocols described in General Order U-2.

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23. The arresting officer **shall** document in the criminal investigation report the conduct of a qualified individual during the DNA collection procedure.
24. In the event a qualified individual is injured, or complains of injury, as a result of police action, the incident supervisor **shall** ensure the medical service protocols described in General Order A-17 are followed.

### EXPUNGEMENT FROM CAL-DNA DATA BANK

25. **California Penal Code section 299 sets forth the criteria for DNA Database sample expungement. Expungement can be accomplished easily and quickly when a DNA sample qualifies for removal from the State database and a person provides sufficient documentation of his/ her identity, legal status and criminal history to the California Department of Justice, DNA Database Program (CAL-DNA). A petitioner whose sample qualifies for DNA database sample expungement and who provides appropriate documentation can expedite the process so that neither a court hearing, nor a 180-day waiting period permitted by Section 299, likely will be necessary.**
26. **If CAL-DNA receives sufficient documentation showing that an individual meets the criteria for expungement of his or her DNA sample, CAL-DNA will review and research the request and issue a response to the petitioner indicating that the expungement was completed and the sample destroyed, or notify the petitioner of the legal reason the Department is required to retain the sample and profile.**
27. **A form to request CAL-DNA to expunge a DNA database sample and profile can be obtained by contacting the California Office of the Attorney General. The Attorney General's website is <https://oag.ca.gov> or a petitioner can call 800-952-5225. The form to request the expungement is the "Streamlined DNA Expungement Application Form" (State of California DLE 244). Expungement of a DNA sample and profile are the responsibility of the Department of Justice. The Berkeley Police Department has no influence on this decision.**

#### References:

California Penal Code §§ 290, 295, 296(a), 296.1, 296.2, 298, 298.1, 299, 457.1  
General Orders A-17, P-65, U-2

## Response to Bomb Calls

### 408.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to assist members of the Berkeley Police Department in their initial response to incidents involving explosives, explosive devices, explosion/bombing incidents or threats of such incidents. Under no circumstances **should** these guidelines be interpreted as compromising the safety of first responders or the public. When confronted with an incident involving explosives, safety **should** always be the primary consideration.

### 408.2 POLICY

It is the policy of the Berkeley Police Department to place a higher priority on the safety of persons and the public over damage or destruction to public or private property.

### 408.3 RECEIPT OF BOMB THREAT

Department members receiving a bomb threat **should** obtain as much information from the individual as reasonably possible, including the type, placement and alleged detonation time of the device.

If the bomb threat is received on a recorded line, reasonable steps **should** be taken to ensure that the recording is preserved in accordance with established department evidence procedures.

The member receiving the bomb threat **should** ensure the Watch Commander or Duty Command Officer is immediately advised and informed of the details. This will ~~enable the Watch Commander to~~ ensure that the appropriate personnel are dispatched, and, as appropriate, the threatened location is given an advance warning.

### 408.4 GOVERNMENT FACILITY OR PROPERTY

A bomb threat targeting a government facility may require a different response based on the government agency.

#### 408.4.1 BERKELEY POLICE DEPARTMENT PUBLIC SAFETY BUILDING FACILITY

If the bomb threat is against the Berkeley Police Department's Public Safety Building facility, the Watch Commander will direct and assign officers as required for coordinating a general building search or evacuation of the police department, as he/she deems appropriate.

#### 408.4.2 OTHER COUNTY OR MUNICIPAL FACILITY OR PROPERTY

If the bomb threat is against a county or municipal facility within the jurisdiction of the Berkeley Police Department **but** that is not the property of this department, the appropriate agency will be promptly informed of the threat. Assistance to the other entity may be provided as the Watch Commander deems appropriate.

#### 408.4.3 FEDERAL BUILDING OR PROPERTY

If the bomb threat is against a federal building or property, the Federal Protective Service **should**

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be immediately notified. The Federal Protective Service provides a uniformed law enforcement response for most facilities, which may include use of its Explosive Detector Dog teams.

If the bomb threat is against a federal government property where the Federal Protective Service is unable to provide a timely response, the appropriate facility's security or command staff **should** be notified.

Bomb threats against a military installation **should** be reported to the military police or other military security responsible for the installation.

#### **408.5 PRIVATE FACILITY OR PROPERTY**

When a member of this department receives notification of a bomb threat at a location **within** the City of Berkeley, the member receiving the notification **should** obtain as much information as reasonably possible from the notifying individual, including:

- (a) The location of the facility.
- (b) The nature of the threat.
- (c) Whether the type and detonation time of the device is known.
- (d) Whether the facility is occupied and, if so, the number of occupants currently on-scene.
- (e) Whether the individual is requesting police assistance at the facility.
- (f) Whether there are any internal facility procedures regarding bomb threats in place, such as:
  1. No evacuation of personnel and no search for a device.
  2. Search for a device without evacuation of personnel.
  3. Evacuation of personnel without a search for a device.
  4. Evacuation of personnel and a search for a device.

The member receiving the bomb threat information **should** ensure that the ~~Watch Commander~~**Watch Commander or DCO-Duty Command Officer** is immediately notified. ~~so that he/she can communicate with the person in charge of the threatened facility.~~

#### **408.6 INITIAL RESPONSE**

When handling an incident where a threat of an explosive device has been made, the following guidelines, while not all inclusive, **should** be followed:

- (a) Leave **the decision to evacuate a building to the building manager or person in charge, unless a suspected explosive device is located.**
- (b) Do not transmit on any equipment that is capable of producing radio frequency energy within the evacuation area. This includes the following:
  1. Two-way radios
  2. Body Worn Cameras
  3. Cell phones
  4. Other personal communication devices



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- (c) Ascertain if there have been previous threats of an explosive device at this location.
    - 1. If there have been prior threats, and the person in charge of the building decides to evacuate the building, the occupants **should** reassemble at a different location from where they assembled during previous evacuations.
  - (d) Search the premises, in the company of a person who is familiar with the areas to be searched. No more than one officer **should** search any given area at one time.
  - (e) Search the outside of the building before entering. Once cleared, search the building starting at the lowest floor and work upward. The search **should** cover, at minimum, all public-access areas, restrooms (with a special emphasis on trash containers), window sills, shrubbery, etc.
  - (f) Assist in evacuation, if commenced, and require occupants to reassemble at least 300 feet away from the target building and out of the direct line of sight.
  - (g) Be calm; avoid panic behavior.
  - (h) See that all doors and windows are opened.
  - (i) If no suspicious items are located after a reasonable search, notify the person responsible for premises exactly that, and no more. Do not say that there are no explosives on the premises.
  - (j) If the threat is time specific, terminate search activity of the area at least 30 minutes before, and do not resume until at least 30 minutes after the threatened time of detonation.

#### **408.6408.7 FOUND DEVICE**

When handling an incident involving a **found** suspected explosive device, the following guidelines, while not all inclusive, **should** be followed:

- (a)(k) No known or suspected explosive item **should** be considered safe regardless of its size or apparent packaging.
- (b)(l) The device **should** not be touched or moved except by the bomb squad or military explosive ordnance disposal team.
- (e)(m) Personnel **should** not transmit on any equipment that is capable of producing radio frequency energy within the evacuation area around the suspected device. This includes the following:
  - 1. Two-way radios
  - 1-2. Body Worn Cameras
  - 2-3. Cell phones
  - 4. Other personal communication devices
- (n) The appropriate notifications **should** be made in the following order:
  - 1. The Watch Commander
  - 2. The appropriate Explosive Ordinance Disposal Team
    - i. BPD Explosive Ordinance Disposal Team

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- ii. UCPD Explosive Ordnance Disposal Team
  - iii. ACSO Explosive Ordnance Disposal Team
  - iv. 60<sup>th</sup> Civil Engineering Squadron - Travis Airforce Base (only if suspected military device)
- 3. The Operations Captain or Duty Command Officer
  - 4. Investigations Division Captain
  - 5. Berkeley Fire Department (standby for special equipment, ambulance, etc.)
- (d) ~~The appropriate bomb squad or military explosive ordnance disposal team should be summoned for assistance.~~
- (e)(o) The largest perimeter reasonably possible, at least 300 feet, **should** initially be established around the device based upon available personnel and the anticipated danger zone.
- (f)(p) A safe access route **should** be provided for support personnel and equipment.
- (g)(q) Search the area for secondary devices as appropriate and based upon available resources.
- (h)(r) Consider evacuation of buildings and personnel near the device or inside the danger zone and the safest exit route.
- (i)(s) Promptly relay available information to the Watch Commander or Duty Command Officer including:
- 1. The time of discovery.
  - 2. The exact location of the device.
  - 3. A full description of the device (e.g., size, shape, markings, construction).
  - 4. The anticipated danger zone and perimeter.
  - 5. The areas to be evacuated or cleared.

#### **408.7408.8 EXPLOSION/BOMBING INCIDENTS**

When an explosion has occurred, there are multitudes of considerations which may confront the responding officers. As in other catastrophic events, a rapid response may help to minimize injury to victims, minimize contamination of the scene by gathering crowds, or minimize any additional damage from fires or unstable structures.

##### 408.6.1 CONSIDERATIONS

Officers responding to explosions, whether accidental or a criminal act, **should** consider the following actions:

- (a) Assess the scope of the incident, including the number of victims and extent of injuries, and the possibility of secondary devices.
- (b) Request additional personnel and resources, as appropriate.
- (c) Assist with first aid.
- (d) Identify and take appropriate precautions to mitigate scene hazards, such as collapsed structures, bloodborne pathogens and hazardous materials.

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- (e) Assist with the safe evacuation of victims, if possible.
  - ~~(f)~~ Establish an inner perimeter to include entry points and evacuation routes.
  - ~~(f)(g)~~ Search for additional or secondary devices.
  - ~~(g)(h)~~ Preserve evidence.
  - ~~(h)(i)~~ Establish an outer perimeter and evacuate if necessary.
  - ~~(i)(j)~~ Identify witnesses.

#### 408.6.2 NOTIFICATIONS

When an explosion has occurred, the following people **should** be notified as appropriate:

- Fire department
- Bomb squad
- Additional department personnel, such as **Property Crimes detectives/investigators**
- **ID Technician and forensic services**
- **Field supervisor**
- Watch Commander or Duty Command Officer
- Other law enforcement agencies, including local, state or federal agencies, such as the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
- Other government agencies, as appropriate

#### 408.6.3 CROWD ~~CONTROL~~ **MANAGEMENT**

Only authorized members with a legitimate need **should** be permitted access to the scene. Spectators and other unauthorized individuals **should** be restricted to a safe distance as is reasonably practicable given the available resources and personnel.

#### 408.6.4 PRESERVATION OF EVIDENCE

As in any other crime scene, steps **should** immediately be taken to preserve the scene. The ~~Watch Commander~~ **Watch Commander or Duty Command Officer** **should** assign officers to protect the crime scene area, which could extend over a long distance. Consideration **should** be given to the fact that evidence may be imbedded in nearby structures or hanging in trees and bushes.



## BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 31, 2005

GENERAL ORDER B-3

SUBJECT: BOMB INCIDENT PROCEDURES: PATROL AND COMMUNICATION CENTER

### PURPOSE

- 1 - The purpose of this General Order is to establish procedures for handling investigations related to all explosives, incendiary devices and bombings.

### POLICY

- 2 - Members of the Department are expected to comply with the procedures **and related directives** described in this Order when dealing with all incidents involving explosives, incendiary devices and bombings.

### COMMUNICATIONS CENTER PROCEDURE

- 3 - When a bomb threat is received:
  - (a) Obtain complete information as to time, location **and** type of device.
  - (b) Record **the** exact conversation, **taking note of** sex, voice or language characteristics.
  - (c) Make necessary assignments.
  - (d) Notify the on duty command officer when appropriate.

### PATROL PERSONNEL

- 4 - All bomb threats will be treated as valid.
- 5 - The assigned officer and supervisor will conduct an investigation and assist in a search of the premises in company with a person familiar with the area. If the bomb threat gives a time when the bomb is to **detonate**, officers **shall** not search within 30 minutes **before or after the stated** time.
  - (a) If no **device** is found, the person in charge of the premises will be so advised; but **officers shall** refrain from stating that there are no bombs on the premises.
  - (b) Under any circumstances, if a suspected explosive device is found, the following notifications **shall** be made:
    - (1) **The Berkeley Police Department Bomb Squad Commander and at least two Berkeley Police Department Bomb Technicians. The Bomb Technician Sergeant or the Senior Bomb Technician responding to the incident and the Bomb Squad Commander are the only persons authorized to request mutual**

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 31, 2005

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aid assistance.

- (2) The Communications center will call the University of California Police Department (UCPD) and request mutual aid assistance only under the following circumstances:
  - (i) If the Communications Center is unable to contact any of the Berkeley Police Department Bomb Technicians within 15 minutes of calling/paging them.
  - (ii) No Berkeley Police Department Bomb Technicians are able to respond to the scene.
  - (iii) At the direction of the Bomb Technician Sergeant (or the Senior Bomb Technician) or Bomb Squad Commander.
- (3) If University of California Police Department (UCPD) Bomb Technicians are unable to respond, the Communications Center will call the Alameda County Sheriff's Office and request mutual aid assistance.
- (4) Berkeley Fire Department.
- (5) The Patrol Division Watch Commander, or in his/her absence, the Duty Command Officer.
- (6) The Support Services Division Commander will be notified if the found device constitutes a violation of the 12300 series of the Penal Code.
- (5) The police have the authority to force an evacuation of the premises, and the evacuees shall be moved at least 300 feet away and out of the line of sight of the target building. The evacuees shall be told to bring their belongings with them and stage nearby.

### RENDER SAFE AND TRANSPORTATION OF EXPLOSIVE DEVICES

- 6 - It will be the responsibility of the Bomb Squad personnel to direct searches for additional devices, render safe and arrange for the transportation of explosive materials.
  - (a) His/her decisions in these matters will be final unless relieved by a Commanding Officer.
- 7 - The assigned Explosive Ordinance Disposal Technicians shall assist the Detective Sergeant assigned by the Support Services Division Commander in the investigation of all explosives, incendiary devices and bombings, if needed.

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- 8 - Detailed information as to the construction of an explosive device, the reason it may have failed to detonate, or method used in rendering safe **shall** not be released to the news media. All officers are required to be familiar with the fundamentals of bomb investigation contained in the Berkeley Police Department Training Bulletin No. 15 (revised) and **shall** follow the stated procedures.
- 9 - All officers are required to be familiar with the fundamentals of bomb investigation contained in the Berkeley Police Department Training Bulletin No. 15 (revised) and **shall** follow the stated procedures.

References: Berkeley Police Department Training Bulletin NO. 15 (revised)  
California Penal Code, 12300 series





## Medical Marijuana

### 427.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this department with guidelines for investigating the acquisition, possession, transportation, delivery, production or use of marijuana under California's medical marijuana laws.

#### 427.1.1 DEFINITIONS

Definitions related to this policy include:

**Cardholder** - A person issued a current identification card.

**Compassionate Use Act (CUA)** (Health and Safety Code § 11362.5) - California law intended to provide protection from prosecution to those who are seriously ill and whose health would benefit from the use of marijuana in the treatment of illness for which marijuana provides relief. The CUA does not grant immunity from arrest but rather provides an affirmative defense from prosecution for possession of medical marijuana.

**Identification card** - A valid document issued by the California Department of Public Health to both persons authorized to engage in the medical use of marijuana and also to designated primary caregivers.

**Medical marijuana** - Marijuana possessed by a patient or primary caregiver for legitimate medical purposes.

**Medical Marijuana Program (MMP)** (Health and Safety Code § 11362.7 et seq.) - California laws passed following the CUA to facilitate the prompt identification of patients and their designated primary caregivers in order to avoid unnecessary arrests and provide needed guidance to law enforcement officers. MMP prohibits arrest for possession of medical marijuana in certain circumstances and provides a defense in others.

**Patient** - A person who is entitled to the protections of the CUA because he/she has received a written or oral recommendation or approval from a physician to use marijuana for medical purposes or any person issued a valid identification card.

**Primary caregiver** - A person designated by the patient, who has consistently assumed responsibility for the patient's housing, health or safety, who may assist the patient with the medical use of marijuana under the CUA or the MMP (Health and Safety Code § 11362.5; Health and Safety Code § 11362.7).

**Statutory amount** - No more than 8 ounces of dried, mature, processed female marijuana flowers ("bud") or the plant conversion (e.g., kief, hash, hash oil), and no more than six mature or 12 immature marijuana plants (roots, stems and stem fibers should not be considered). (Health and Safety Code § 11362.77).

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## 427.2 POLICY

It is the policy of the Berkeley Police Department to prioritize resources to forgo making arrests related to marijuana that the arresting officer reasonably believes would not be prosecuted by state or federal authorities.

California's medical marijuana laws are intended to provide protection to those who are seriously ill and whose health would benefit from the use of medical marijuana.

However, California medical marijuana laws do not affect federal laws and there is no medical exception under federal law for the possession or distribution of marijuana. The Berkeley Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under California law and public resources.

## 427.3 INVESTIGATION

A sworn supervisor shall be summoned to the scene of any situation where a suspect asserts a claim of medical marijuana prior to any enforcement action being taken. Supervisors are expected to oversee the investigation to ensure enforcement actions are consistent with this policy.

Investigations involving the possession, delivery, production or use of marijuana generally fall into one of several categories:

- (a) Investigations when no person makes a medicinal claim.
- (b) Investigations when a medicinal claim is made by a cardholder.
- (c) Investigations when a medicinal claim is made by a non-cardholder.

### 427.3.1 INVESTIGATIONS WITH NO MEDICINAL CLAIM

In any investigation involving the possession, delivery, production or use of marijuana or drug paraphernalia where no person claims that the marijuana is used for medicinal purposes, the officer should proceed with a criminal investigation if the amount is greater than permitted for personal use under the Control, Regulate and Tax Adult Use of Marijuana Act (Health and Safety Code § 11362.1; Health and Safety Code § 11362.2). A medicinal defense may be raised at any time, so officers should document any statements and observations that may be relevant to whether the marijuana was possessed or produced for medicinal purposes.

### 427.3.2 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A CARDHOLDER

A cardholder or designated primary caregiver in possession of an identification card shall not be arrested for possession, transportation, delivery or cultivation of medical marijuana at or below the statutory amount unless there is probable cause to believe that (Health and Safety Code § 11362.71; Health and Safety Code § 11362.78):

- (a) The information contained in the card is false or falsified.
- (b) The card has been obtained or used by means of fraud.

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- (c) The person is otherwise in violation of the provisions of the MMP.
  - (d) The person possesses marijuana but not for personal medical purposes.

Officers who reasonably believe that a person who does not have an identification card in his/her possession has been issued an identification card may treat the investigation as if the person had the card in his/her possession.

Cardholders may possess, transport, deliver or cultivate medical marijuana in amounts above the statutory amount if their doctor has concluded that the statutory amount does not meet the patient's medical needs (Health and Safety Code § 11362.71; Health and Safety Code § 11362.77). Investigations involving cardholders with more than the statutory amount of marijuana should be addressed as provided in this policy for a case involving a medicinal claim made by a non-cardholder.

#### 427.3.3 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A NON-CARDHOLDER

No patient or primary caregiver should be arrested for possession or cultivation of an amount of medical marijuana if the officer reasonably believes that marijuana is in a form and amount reasonably related to the qualified patient's current medical needs (Health and Safety Code § 11362.5). This arrest guidance also applies to sales, transportation or, delivery of medical marijuana, or maintaining/renting a drug house or building that may be a nuisance if otherwise in compliance with MMP (Health and Safety Code § 11362.765).

Officers are not obligated to accept a person's claim of having a physician's recommendation when the claim cannot be readily verified with the physician but are expected to use their judgment to assess the validity of the person's medical-use claim.

Officers should review any available written documentation for validity and whether it contains the recommending physician's name, telephone number, address and medical license number for verification.

Officers should generally accept verified recommendations by a physician that statutory amounts do not meet the patient's needs (Health and Safety Code § 11362.77).

#### 427.3.4 INVESTIGATIONS INVOLVING A STATE LICENSEE

No person issued a state license under the Business and Professions Code shall be arrested or cited for cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution or sale of medical cannabis or a medical cannabis product related to qualifying patients and primary caregivers when conducted lawfully. Whether conduct is lawful may involve questions of license classifications, local ordinances, specific requirements of the Business and Professions Code and adopted regulations. Officers should consider conferring with a supervisor, the applicable state agency or other member with special knowledge in this area and/or appropriate legal counsel before taking enforcement action against a licensee or an employee or agent (Business and Professions Code § 26032).

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#### 427.3.5 ADDITIONAL CONSIDERATIONS

Officers should consider the following when investigating an incident involving marijuana possession, delivery, production or use:

- (a) Because enforcement of medical marijuana laws can be complex, time consuming and call for resources unavailable at the time of initial investigation, officers may consider submitting a report to the prosecutor for review, in lieu of making an arrest. This can be particularly appropriate when:
  1. The suspect has been identified and can be easily located at a later time.
  2. The case would benefit from review by a person with expertise in medical marijuana investigations.
  3. Sufficient evidence, such as photographs or samples, has been lawfully obtained.
  4. Other relevant factors, such as available department resources and time constraints prohibit making an immediate arrest.
- (b) Whenever the initial investigation reveals an amount of marijuana greater than the statutory amount, officers should consider the following when determining whether the form and amount is reasonably related to the patient's needs:
  1. The amount of marijuana recommended by a medical professional to be ingested.
  - ~~2. The quality of the marijuana.~~
  - ~~3.2.~~ The method of ingestion (e.g., smoking, eating, nebulizer).
  - ~~0. The timing of the possession in relation to a harvest (patient may be storing marijuana).~~
  - ~~0. Whether the marijuana is being cultivated indoors or outdoors, the climate, etc.~~
- ~~(e)(c)~~ Before proceeding with enforcement related to collective gardens or dispensaries, officers should consider conferring with a supervisor, an applicable state regulatory agency or other member with special knowledge in this area and/or appropriate legal counsel (Business and Professions Code § 26010; Business and Professions Code § 26060). Licensing, zoning and other related issues can be complex. Patients, primary caregivers and cardholders who collectively or cooperatively cultivate marijuana for medical purposes ~~are provided a defense under the MMP (Health and Safety Code § 11362.775; Business and Professions Code § 26032).~~ may be licensed or may have a defense in certain circumstances (Business and Professions Code § 26032; Business and Professions Code § 26033).
- ~~(f)(d)~~ Investigating members should not order a patient to destroy marijuana plants under threat of arrest.

#### 427.3.6 EXCEPTIONS

This policy does not apply to, and officers should consider taking enforcement action for the following:

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- (a) Persons who engage in illegal conduct that endangers others, such as driving under the influence of marijuana in violation of the Vehicle Code (Health and Safety Code § 11362.5).
  - (b) Marijuana possession in jails or other correctional facilities that prohibit such possession (Health and Safety Code § 11362.785).
  - (c) Smoking marijuana (Health and Safety Code § 11362.79):
    - 1. In any place where smoking is prohibited by law.
    - 2. In or within 1,000 feet of the grounds of a school, recreation center or youth center, unless the medical use occurs within a residence.
    - 3. On a school bus.
    - 4. While in a motor vehicle that is being operated.
    - 5. While operating a boat.
  - (d) Use of marijuana by a person on probation or parole, or on bail and use is prohibited by the terms of release (Health and Safety Code § 11362.795).

#### **427.4 FEDERAL LAW ENFORCEMENT**

Officers should provide information regarding a marijuana investigation to federal law enforcement authorities when it is requested by federal law enforcement authorities or whenever the officer believes those authorities would have a particular interest in the information.

#### **427.5 PROPERTY ROOM SUPERVISOR RESPONSIBILITIES**

The Property Room Supervisor should ensure that marijuana, drug paraphernalia or other related property seized from a person engaged or assisting in the use of medical marijuana is not destroyed pending any charges and without a court order. The Property Room Supervisor is not responsible for caring for live marijuana plants.

With the Detective Bureau Lieutenant's approval and upon the prosecutor's decision to forgo prosecution, or the dismissal of charges or an acquittal, the Property Room Supervisor should, as soon as practicable, return to the person from whom it was seized any useable medical marijuana, plants, drug paraphernalia or other related property that was seized as evidence. Absent approval from the Detective Lieutenant, the owner should be advised to seek a court order for the return of property.

Medical marijuana booked for "safekeeping" may be returned to the listed owner without additional approval needed.

The Property Room Supervisor may release marijuana to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Detective Bureau Lieutenant.

