

**Materials for Lexipol Subcommittee meeting of April 10, 2019**

4.b. Policies to be reconsidered

<b>Lexipol #</b>	<b>G.O.</b>	<b>Title (Notes)</b>
303	F-02	Control Devices and Techniques (PRC Feb. 27 asked for further review)
307	V-06	Vehicle Pursuits (Subcomm. Sept. 17 wanted to discuss further)
319	H-04	Hate Crimes (PRC Feb. 27 asked for further review)
418 (to be delivered)	Council Res. 51.408-N.S.	Obtaining Air Support (Subcomm. & PRC approved but conflict with Council policy discovered)
429	C-64	First Amendment Assemblies (Feb. 27 PRC asked for further review)
506	T-18	Disabled Vehicles (PRC Mar. 13 asked for further review)

5.a. New policies for review

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



## Conducted Energy Device

### 304.1 PURPOSE AND SCOPE

This policy provides guidelines for the ~~issuance and~~ use of ~~Tasers~~~~[EMDT device]s~~.

### 304.2 POLICY

The ~~Taser~~ ~~[EMDT TM device]~~ is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury. The appropriate use of such a device should result in fewer serious injuries to officers and suspects.

The use of police Tasers at the request of the Berkeley Police Department may be permitted with the approval of the Chief of Police or City Manager. Once approved, a Taser will only be deployed by Outside Agency Personnel responding to a request for assistance.

### 304.3 ISSUANCE AND CARRYING ~~[EMDT DEVICE]~~~~STASER~~~~Tasers~~

Members of the Berkeley Police Department are not issued Tasers and shall not carry a Taser while on duty. Only members who have successfully completed department-approved training may be issued and carry the [EMDT device].

~~[EMDT device]s are issued for use during a member's current assignment. Those leaving a particular assignment may be required to return the device to the department's inventory.~~

~~Officers shall only use the [EMDT device] and cartridges that have been issued by the Department. Uniformed officers who have been issued the [EMDT device] shall wear the device in an approved holster on their person. Non-uniformed officers may secure the [EMDT device] in the driver's compartment of their vehicle.~~

~~Members carrying the [EMDT device] should perform a spark test on the unit prior to every shift.~~

~~When carried while in uniform officers shall carry the [EMDT device] in a weak-side holster on the side opposite the duty weapon.~~

- ~~(a) All [EMDT device]s shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.~~
- ~~(b) Whenever practicable, officers should carry two or more cartridges on their person when carrying the [EMDT device].~~
- ~~(c) Officers shall be responsible for ensuring that their issued [EMDT device] is properly maintained and in good working order.~~
- ~~(d) Officers should not hold both a firearm and the [EMDT device] at the same time.~~

### 304.4 VERBAL AND VISUAL WARNINGS

When an Outside Agency has been called in to assist, a verbal warning of the intended use of the ~~[EMDT device]~~ Taser should precede its application, unless it would otherwise endanger the

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safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other officers and individuals with a warning that a the [EMDT device] Taser may be deployed.

~~If, after a verbal warning, an individual is unwilling to voluntarily comply with an officer's lawful orders and it appears both reasonable and feasible under the circumstances, the officer may, but is not required to, display the electrical arc (provided that a cartridge has not been loaded into the device), or the laser in a further attempt to gain compliance prior to the application of the [EMDT device]. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.~~

The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the case officer ~~deploying the [EMDT device]~~ in the related report.

### **304.5 USE OF THE TASER [EMDT DEVICE]**

The [EMDT device] Taser has limitations and restrictions requiring consideration before its use. The [EMDT device] Taser should only be used when its operator can safely approach the subject within the operational range of the device. Although the [EMDT device] Taser is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.

#### **304.5.1 APPLICATION OF A TASER THE [EMDT DEVICE]**

~~The [EMDT device] A Taser~~ may be requested \*used in any of the following circumstances, when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person:

- (a) The subject is violent or is physically resisting.
- (b) The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, him/herself or others.

\*The Taser may not be deployed without approval from the Chief of Police or City Manager.

~~Mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the [EMDT device] to apprehend an individual.~~

#### **304.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS**

The use of a the [EMDT device] Taser on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the device. This includes:

- (a) Individuals who are known to be pregnant.

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- (b) Elderly individuals or obvious juveniles.
  - (c) Individuals with obviously low body mass.
  - (d) Individuals who are handcuffed or otherwise restrained.
  - (e) Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capsicum (OC) spray.
  - (f) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

~~Because the application of the [EMDT device] in the drive-stun mode (i.e., direct contact without probes) relies primarily on pain compliance, the use of the drive-stun mode generally should be limited to supplementing the probe mode to complete the circuit, or as a distraction technique to gain separation between officers and the subject, thereby giving officers time and distance to consider other force options or actions.~~

~~The [EMDT device] shall not be used to psychologically torment, elicit statements or to punish any individual.~~

#### ~~304.5.3 TARGETING CONSIDERATIONS~~

~~Reasonable efforts should be made to target lower center mass and avoid the head, neck, chest and groin. If the dynamics of a situation or officer safety do not permit the officer to limit the application of the [EMDT device] probes to a precise target area, officers should monitor the condition of the subject if one or more probes strikes the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.~~

#### ~~304.5.4 MULTIPLE APPLICATIONS OF THE [EMDT DEVICE]~~

~~Officers should apply the [EMDT device] for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Multiple applications of the [EMDT device] against a single individual are generally not recommended and should be avoided unless the officer reasonably believes that the need to control the individual outweighs the potentially increased risk posed by multiple applications.~~

~~If the first application of the [EMDT device] appears to be ineffective in gaining control of an individual, the officer should consider certain factors before additional applications of the [EMDT device], including:~~

- ~~(a) Whether the probes are making proper contact.~~
- ~~(b) Whether the individual has the ability and has been given a reasonable opportunity to comply.~~
- ~~(c) Whether verbal commands, other options or tactics may be more effective.~~

~~Officers should generally not intentionally apply more than one [EMDT device] at a time against a single subject.~~

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### ~~304.5.5~~ 304.5.3 ACTIONS FOLLOWING DEPLOYMENTS

Officers shall notify a supervisor of all ~~[EMDT device]~~ Taser discharges. Confetti tags should be collected and the expended cartridge, along with both probes and wire, should be submitted into evidence. The cartridge serial number should be noted and documented in the police report ~~in the evidence paperwork~~. ~~The evidence packaging should be marked "Biohazard" if the probes penetrated the subject's skin.~~

### ~~304.5.6~~ 304.5.4 DANGEROUS ANIMALS

A ~~The [EMDT device]~~ Taser may be requested in order to be deployed against an animal as part of a plan to deal with a potentially dangerous animal, such as a dog, if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

### ~~304.5.7~~ TASER@CAM™

~~The TASER CAM is activated any time the safety is in the off position. The safety should be in the safe position unless the officer intends to use the device. Because the TASER CAM memory is limited, the video and audio data should be downloaded frequently and retained as required by the department records retention schedule.~~

### ~~304.5.8~~ OFF-DUTY CONSIDERATIONS

~~Officers are not authorized to carry department [EMDT device]s while off-duty.~~

~~Officers shall ensure that [EMDT device]s are secured while in their homes, vehicles or any other area under their control, in a manner that will keep the device inaccessible to others.~~

## **304.6 DOCUMENTATION**

~~Officers shall document all Taser discharges in a police report. Officers shall document all [EMDT device] discharges in the related arrest/crime report and the [EMDT device] report form. Notification shall also be made to a supervisor in compliance with the Use of Force Policy. Unintentional discharges, pointing the device at a person, laser activation and arcing the device will also be documented on the report form.~~

### ~~304.6.1~~ [EMDT DEVICE] FORM

~~Items that shall be included in the [EMDT device] report form are:~~

- ~~(a) — The type and brand of [EMDT device] and cartridge and cartridge serial number.~~
- ~~(b) — Date, time and location of the incident.~~
- ~~(c) — Whether any display, laser or arc deterred a subject and gained compliance.~~
- ~~(d) — The number of [EMDT device] activations, the duration of each cycle, the duration between activations, and (as best as can be determined) the duration that the subject received applications.~~
- ~~(e) — The range at which the [EMDT device] was used.~~
- ~~(f) — The type of mode used (probe or drive-stun).~~
- ~~(g) — Location of any probe impact.~~

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- ~~(h) Location of contact in drive-stun mode.~~
  - ~~(i) Description of where missed probes went.~~
  - ~~(j) Whether medical care was provided to the subject.~~
  - ~~(k) Whether the subject sustained any injuries.~~
  - ~~(l) Whether any officers sustained any injuries.~~

~~The Personnel and Training Sergeant should periodically analyze the report forms to identify trends, including deterrence and effectiveness. The Personnel and Training Sergeant should also conduct audits of data downloads and reconcile [EMDT device] report forms with recorded activations. [EMDT device] information and statistics, with identifying information removed, should periodically be made available to the public.~~

#### ~~304.6.2~~ 304.6.1 REPORTS

The officer should include the following in the arrest/crime report:

- (a) Identification of all personnel firing ~~[EMDT device]~~ Tasers
- (b) Identification of all witnesses
- (c) Medical care provided to the subject
- (d) Observations of the subject's physical and physiological actions
- (e) Any known or suspected drug use, intoxication or other medical problems

#### **304.7 MEDICAL TREATMENT**

Consistent with local medical personnel protocols and absent extenuating circumstances, only appropriate medical personnel should remove ~~[EMDT device]~~ Taser probes from a person's body. Used ~~[EMDT device]~~ Taser probes shall be treated as a sharps biohazard, similar to a used hypodermic needle, and handled appropriately. Universal precautions should be taken.

All persons who have been struck by ~~[EMDT device]~~ Taser probes or who have been subjected to the electric discharge of the device shall be medically assessed prior to booking. Additionally, any such individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

- (a) The person is suspected of being under the influence of controlled substances and/or alcohol.
- (b) The person may be pregnant.
- (c) The person reasonably appears to be in need of medical attention.
- (d) The ~~[EMDT device]~~ Taser probes are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).
- (e) The person requests medical treatment.

Any individual exhibiting signs of distress or who is exposed to multiple or prolonged applications

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(i.e., more than 15 seconds) shall be transported to a medical facility for examination or medically evaluated prior to booking. If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

The transporting officer shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of a Taser~~the [EMDT device]~~.

### 304.8 SUPERVISOR RESPONSIBILITIES

~~Supervisors shall respond to any call wherein a Taser was requested. When possible, supervisors should respond to calls when they reasonably believe there is a likelihood the [EMDT device] may be used. A supervisor should respond to all incidents where the [EMDT device] was activated.~~

~~A supervisor should review each incident where a person has been exposed to an activation of the [EMDT device]. The device's onboard memory should be downloaded through the data port by a supervisor or Personnel and Training Sergeant and saved with the related arrest/crime report. Photographs of probe sites should be taken and witnesses interviewed.~~

### TRAINING

~~Personnel who are authorized to carry the [EMDT device] shall be permitted to do so only after successfully completing the initial department-approved training. Any personnel who have not carried the [EMDT device] as a part of their assignment for a period of six months or more shall be recertified by a department-approved [EMDT device] instructor prior to again carrying or using the device.~~

~~Proficiency training for personnel who have been issued [EMDT device]s should occur every year. A reassessment of an officer's knowledge and/or practical skill may be required at any time if deemed appropriate by the Personnel and Training Sergeant. All training and proficiency for [EMDT device]s will be documented in the officer's training file.~~

~~Command staff, supervisors and investigators should receive [EMDT device] training as appropriate for the investigations they conduct and review.~~

~~Officers who do not carry [EMDT device]s should receive training that is sufficient to familiarize them with the device and with working with officers who use the device.~~

~~The Personnel and Training Sergeant is responsible for ensuring that all members who carry [EMDT device]s have received initial and annual proficiency training. Periodic audits should be used for verification.~~

~~Application of [EMDT device]s during training could result in injury to personnel and should not be mandatory for certification.~~

~~The Personnel and Training Sergeant should ensure that all training includes:~~

~~A review of this policy.~~

~~A review of the Use of Force Policy.~~

~~Performing weak-hand draws or cross-draws to reduce the possibility of unintentionally drawing and firing a firearm.~~

~~Target area considerations, to include techniques or options to reduce the unintentional application of probes near the head, neck, chest and groin.~~

~~Handcuffing a subject during the application of the [EMDT device] and transitioning to other force options.~~

~~De-escalation techniques.~~



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~~Restraint techniques that do not impair respiration following the application of the [EMDT device].~~



## Information Technology Use

### 322.1 PURPOSE AND SCOPE

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

#### 322.1.1 DEFINITIONS

Definitions related to this policy include:

**Computer system** - All computers (on-site and portable), electronic devices, hardware, software, and resources owned, leased, rented or licensed by the Berkeley Police Department that are provided for official use by its members. This includes all access to, and use of, Internet Service Providers (ISP) or other service providers provided by or through the Department or department funding.

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

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

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

### 322.2 POLICY

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

### 322.3 PRIVACY EXPECTATION

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

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

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

#### **322.4 RESTRICTED USE**

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

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

##### **322.4.1 SOFTWARE**

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

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

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

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

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

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

##### **322.4.2 HARDWARE**

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

##### **322.4.3 INTERNET USE**

Internet access provided by or through the Department shall be strictly limited to department-

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

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

#### 322.4.4 OFF-DUTY USE

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

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

#### 322.5 PROTECTION OF AGENCY SYSTEMS AND FILES

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

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

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

#### 322.6 INSPECTION OR REVIEW

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

Reasons for inspection or review may include, but are not limited to, computer system malfunctions, problems or general computer system failure, a lawsuit against the Department involving one of its members or a member's duties, an alleged or suspected violation of any department policy, a request for disclosure of data, or a need to perform or provide a service.

The IT staff may extract, download or otherwise obtain any and all temporary or permanent files

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residing or located in or on the department computer system when requested by a supervisor or during the course of regular duties that require such information.

# BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 15, 2013

GENERAL ORDER E-12

SUBJECT: ELECTRONIC COMMUNICATIONS

## PURPOSE

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

## POLICY

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

## PROCEDURES

### Electronic Communications – Limited To Official Purposes

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

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 15, 2013

GENERAL ORDER E-12

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

### Account Security

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



## BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 15, 2013

GENERAL ORDER E-12

### Department Access to Electronic Mail

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

### Electronic Communication Systems, Initiation/Cancellation of Access

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

### Crime Forum Administration

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

**BERKELEY POLICE DEPARTMENT**

**DATE ISSUED: August 15, 2013**

**GENERAL ORDER E-12**

**Web and Cloud Access**

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

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**GENERAL ORDER E-12**

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

**PUBLIC RECORDS, DISCLOSURE OF EMAIL**

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

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



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### 329.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members of this department in determining when, how and to whom notification of major incidents should be made.

### 329.2 POLICY

The Berkeley Police Department recognizes that certain incidents should be brought to the attention of supervisors or other specified personnel of this department to facilitate the coordination of activities and ensure that inquiries from the media and the public may be properly addressed.

### 329.3 MINIMUM CRITERIA FOR NOTIFICATION

Most situations where the media show a strong interest are also of interest to the Chief of Police and the affected Division ~~Commander~~Captain. The following list of incident types is provided as a guide for notification and is not intended to be all inclusive:

- Homicides
- Traffic accidents with fatalities
- Officer-involved shooting - on or off duty (see Officer-Involved Shootings and Deaths Policy for special notifications)
- Significant injury or death to employee - on or off duty
- Death of a prominent Berkeley official
- Arrest or investigation of a city employee ~~department employee~~ or prominent Berkeley official
- Aircraft crash with major damage and/or injury or death
- In-custody deaths

### 329.4 WATCH COMMANDER RESPONSIBILITY

The Watch Commander is responsible for making the appropriate notifications. The Watch Commander shall make reasonable attempts to obtain as much information on the incident as possible before notification. The Watch Commander shall attempt to make the notifications as soon as practicable. Notification should be made by calling the home telephone number first and then by any other available contact numbers.

#### 329.4.1 STAFF NOTIFICATION

In the event an incident occurs described in the Major Incident Notification Policy, the Chief of Police shall be notified along with the affected Division ~~Commander~~Captain and the Detective Lieutenant if that division is affected.

#### 329.4.2 DETECTIVE NOTIFICATION

If the incident requires that a detective respond from home, the immediate supervisor of the

appropriate detail shall be contacted who will then contact the appropriate detective.

#### 329.4.3 TRAFFIC BUREAU NOTIFICATION

In the event of a traffic fatality or major injury, the Traffic Sergeant shall be notified who will then contact the appropriate accident investigator. The Traffic Sergeant will notify the Traffic Lieutenant.

#### 329.4.4 PUBLIC INFORMATION OFFICER (PIO)

The Public Information Officer shall be called after members of staff have been notified that it appears the media may have a significant interest in the incident.

**329.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidance to members of this department in determining when, how and to whom notification of major incidents should be made.

**329.2 POLICY**

The Berkeley Police Department recognizes that certain incidents should be brought to the attention of supervisors or other specified personnel of this department to facilitate the coordination of activities and ensure that inquiries from the media and the public may be properly addressed.

**329.3 MINIMUM CRITERIA FOR NOTIFICATION**

Most situations where the media show a strong interest are also of interest to the Chief of Police and the affected Division ~~Commander~~Captain. The following list of incident types is provided as a guide for notification and is not intended to be all inclusive:

- Homicides
- Traffic accidents with fatalities
- Officer-involved shooting - on or off duty (see Officer-Involved Shootings and Deaths Policy for special notifications)
- Significant injury or death to employee - on or off duty
- Death of a prominent Berkeley official
- Arrest or investigation of a city employee ~~department employee~~ or prominent Berkeley official
- Aircraft crash with major damage and/or injury or death
- In-custody deaths

**329.4 WATCH COMMANDER RESPONSIBILITY**

The Watch Commander is responsible for making the appropriate notifications. The Watch Commander shall make reasonable attempts to obtain as much information on the incident as possible before notification. The Watch Commander shall attempt to make the notifications as soon as practicable. Notification should be made by calling the home telephone number first and then by any other available contact numbers.

**329.4.1 STAFF NOTIFICATION**

In the event an incident occurs described in the Major Incident Notification Policy, the Chief of Police shall be notified along with the affected Division ~~Commander~~Captain and the Detective Lieutenant if that division is affected.

**329.4.2 DETECTIVE NOTIFICATION**

If the incident requires that a detective respond from home, the immediate supervisor of the

appropriate detail shall be contacted who will then contact the appropriate detective.

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In the event of a traffic fatality or major injury, the Traffic Sergeant shall be notified who will then contact the appropriate accident investigator. The Traffic Sergeant will notify the Traffic Lieutenant.

#### 329.4.4 PUBLIC INFORMATION OFFICER (PIO)

The Public Information Officer shall be called after members of staff have been notified that it appears the media may have a significant interest in the incident.



## BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 31, 2005

GENERAL ORDER A-49

SUBJECT: IMPROPER CONDUCT OR ARREST OF CITY EMPLOYEES

### PURPOSE

- 1 - The purpose of this Order is to define the proper procedure to follow in the event a City employee becomes the subject of an arrest or investigation alleging improper conduct.

### POLICY

- 2 - When a City of Berkeley employee is arrested, the arresting officer shall forward a copy of the report to the Support Services Division Captain.

### PROCEDURES

- 3 - The report shall be clearly marked "CITY EMPLOYEE" in capital letters across the top of the first page.
- 4 - This Order shall apply to criminal cases, as well as reports of improper conduct, whether or not an arrest is made.
- 5 - The Captain of Support Services Division shall notify the Chief of Police and forward a copy of the report to the Office of the Chief as soon as possible. The Chief of Police will determine if it is necessary to contact the City Manager and forward a copy of the report to the City Manager. Should a Department Head be the subject of the report, the City Manager shall be notified as soon as possible.



## Private Person's Arrests

### 333.1 PURPOSE AND SCOPE

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

### 333.2 ADVISING PRIVATE PERSONS OF THE ARREST PROCESS

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

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

### 333.3 ARRESTS BY PRIVATE PERSONS

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

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

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

### 333.4 OFFICER RESPONSIBILITIES

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

- (a) Should any officer determine that there is no reasonable cause to believe that a private person's arrest is lawful, the officer should take no action to further detain or restrain the individual beyond that which reasonably appears necessary to investigate the matter, determine the lawfulness of the arrest and protect the public safety.
  - 1. Any officer who determines that a private person's arrest appears to be unlawful should promptly release the arrested individual pursuant to Penal Code § 849(b)(1).

The officer must include the basis of such a determination in a related report.

2. absent reasonable cause to support a private person's arrest or other lawful grounds to support an independent arrest by the officer, the officer should advise the parties that no arrest will be made and that the circumstances will be documented in a related report.
- (b) Whenever an officer determines that there is reasonable cause to believe that a private person's arrest is lawful, the officer may exercise any of the following options:
1. Take the individual into physical custody for booking
  2. Release the individual pursuant to a Notice to Appear
  3. Release the individual pursuant to Penal Code § 849

### **333.5 REPORTING REQUIREMENTS**

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

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

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 1, 1988

GENERAL ORDER A-50

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

### LEGAL BASIS

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

### PROCEDURE

#### Citizen Arrests

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

#### Signing of Complaints - Non-Custody

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

### REPORTS

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

**BERKELEY POLICE DEPARTMENT**

**DATE ISSUED: September 1, 1988**

**GENERAL ORDER A-50**

6 - It shall be the responsibility of the **person** typing or transcribing the investigation report to insure that **sufficient** copies are **ready for routing to** the office of the prosecuting attorney in time to issue a complaint before the first court date subsequent to the arrest.

**(a) It shall be the responsibility of the Court Liaison Officer to provide needed documentation to the prosecuting officer.**

PIN AND NCIC CHECKS

7 - At the time of booking the arresting officer shall request a mandatory check on all prisoners through our terminal connected with the Police Information Network and an additional check with the National Crime Information Center.

**(a) It is the responsibility of the Telecommunications operator to make the requested checks and provide information needed.**

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

## 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.~~

~~(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 should 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

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DATE ISSUED: June 22, 2018

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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

## Volunteer Program

### 341.1 PURPOSE AND SCOPE

It is the policy of this department to use qualified volunteers for specified tasks and duties in order to create efficiencies for the Department and improve services to the community. Volunteers are intended to supplement and support, rather than supplant, sworn officers and civilian personnel. Volunteers can be an important part of any organization and are proven to be a valuable asset to law enforcement agencies. Volunteers help to increase departmental responsiveness, delivery of services and information input, and provide new program opportunities. In addition, volunteers bring new skills and expertise to the Department and prompt new enthusiasm.

#### 341.1.1 DEFINITION OF VOLUNTEER

An individual who performs a service for the Department without promise, expectation or receipt of compensation for services rendered. This may include unpaid chaplains, ~~unpaid reserve officers~~, interns, persons providing administrative support and youth involved in a law enforcement ~~education programs~~ Explorer Post, among others.

### 341.2 VOLUNTEER MANAGEMENT

#### 341.2.1 VOLUNTEER COORDINATOR

The Volunteer Coordinator shall be appointed by the Community Services Bureau Lieutenant. ~~Support Services Division Commander~~. The function of the Volunteer Coordinator is to provide a central coordinating point for effective volunteer management within the Department, and to direct and assist staff and volunteer efforts to jointly provide more productive services. The Volunteer Coordinator should work with other Department staff on an ongoing basis to assist in the development and implementation of volunteer-staffed positions.

The Volunteer Coordinator, or his/her designee, shall be responsible for the following:

- (a) Recruiting, selecting and training qualified volunteers for various positions.
- (b) Facilitating the implementation of new volunteer activities and assignments.
- (c) Maintaining records for each volunteer.
- (d) Tracking and evaluating the contribution of volunteers.
- ~~(e) Maintaining the volunteer handbook and outlining expectations, policies and responsibilities for all volunteers.~~
- ~~(f)~~(e) Maintaining a record of volunteer schedules and work hours.
- ~~(g)~~(f) Completion and dissemination as appropriate of all necessary paperwork and information.

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~~(h)~~(g) Planning periodic recognition events.

~~(i)~~(h) Administering discipline when warranted.

~~(j)~~(i) Maintaining liaison with other volunteer-utilizing programs in the community and assisting in community-wide efforts to recognize and promote volunteering.

#### 341.2.2 RECRUITMENT

Volunteers should be recruited on a continuous and ongoing basis consistent with department policy on equal opportunity nondiscriminatory employment. A primary qualification for participation in the application process should be an interest in, and an ability to assist the Department in serving the public.

Requests for volunteers should be submitted in writing by interested staff to the Volunteer Coordinator through the requester's immediate supervisor. A complete position description and a requested time-frame should be included in the request. All parties should understand that the recruitment of volunteers is enhanced by creative and interesting assignments. The Volunteer Coordinator may withhold assignment of any volunteer until such time as the requesting unit is prepared to make effective use of volunteer resources.

#### 341.2.3 SCREENING

All prospective volunteers should complete the volunteer application form. The Volunteer Coordinator or his/her designee should conduct a face-to-face interview with ~~an~~ applicants under consideration.

A documented background investigation shall be completed on each volunteer applicant and shall include, but not necessarily be limited to, the following:

- (a) Traffic and criminal background check. Fingerprints shall be obtained from all applicants and processed through the California Criminal Information Index.
- (b) Employment
- (c) References
- (d) Credit check

A Computer Voice Stress Analysis (CVSA)~~polygraph exam~~ may be required of each applicant depending on the type of assignment.

#### 341.2.4 SELECTION AND PLACEMENT

Service as a volunteer with the Department shall begin with an official notice of acceptance or appointment to a volunteer position. Notice may only be given by an authorized representative of the Department, who will normally be the Volunteer Coordinator. No volunteer should begin any assignment until they have been officially accepted for that position and completed all required screening and paperwork. At the time of final acceptance, each volunteer should complete all required enrollment paperwork and will receive a copy of their position description and agreement of service with the Department. All volunteers shall receive a copy of the volunteer handbook and shall be required to sign a volunteer agreement.



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Volunteers should be placed only in assignments or programs that are consistent with their knowledge, skills, abilities and the needs of the Department.

#### 341.2.5 TRAINING

Volunteers will be provided with an orientation program to acquaint them with the Department, personnel, policies and procedures that have a direct impact on their work assignment.

Volunteers should receive position-specific training to ensure they have adequate knowledge and skills to complete tasks required by the position and should receive periodic ongoing training as deemed appropriate by their supervisor or the Volunteer Coordinator.

Training should reinforce to volunteers that they may not intentionally represent themselves as, or by omission infer that they are sworn officers or other full-time members of the Department. They shall always represent themselves as volunteers.

All volunteers shall comply with the rules of conduct and with all orders and directives, either oral or written, issued by the Department.

#### 341.2.6 FITNESS FOR DUTY

No volunteer shall report to work or be on-duty when his/her judgment or physical condition has been impaired by alcohol, medication, other substances, illness or injury.

Volunteers shall report to their supervisor any changes in status that may affect their ability to fulfill their duties. This includes, but is not limited to, the following:

- (a) Driver license
- (b) Medical condition
- (c) Arrests
- (d) Criminal investigations

All volunteers shall adhere to the guidelines set forth by this department regarding drug and alcohol use.

#### 341.2.7 DRESS CODE

As representatives of the Department, volunteers are responsible for presenting a professional image to the community. Volunteers shall dress appropriately for the conditions and performance of their duties.

Volunteers shall conform to department-approved dress consistent with their duty assignment. Uniforms authorized for volunteers should be readily distinguishable from those worn by sworn officers. The uniform or identifiable parts of the uniform shall not be worn while off-duty except volunteers may choose to wear the uniform while in transit to or from official department assignments or functions provided an outer garment is worn over the uniform shirt so as not to bring attention to the volunteer while he/she is off duty.

Volunteers shall be required to return any issued uniform or department property at the termination of service.

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### **341.3 SUPERVISION OF VOLUNTEERS**

Each volunteer who is accepted to a position with the Department must have a clearly identified supervisor who is responsible for direct management of that volunteer. This supervisor will be responsible for day-to-day management and guidance of the work of the volunteer and should be available to the volunteer for consultation and assistance.

A volunteer may be assigned as, and act as, a supervisor of other volunteers provided that the supervising volunteer is under the direct supervision of a paid staff member.

Functional supervision of volunteers is the responsibility of the supervisor in charge of the unit where the volunteer is assigned. Following are some considerations to keep in mind while supervising volunteers:

- (a) Take the time to introduce volunteers to employees on all levels.
- (b) Ensure volunteers have work space and necessary office supplies.
- (c) Make sure the work is challenging. Do not hesitate to give them an assignment or task that will tap these valuable resources.

### **341.4 CONFIDENTIALITY**

With appropriate security clearance, volunteers may have access to confidential information such as criminal histories or investigative files. Unless otherwise directed by a supervisor or departmental policy, all information shall be considered confidential. Only that information specifically identified and approved by authorized personnel shall be released. Confidential information shall be given only to persons who have a need and a right to know as determined by departmental policy and supervisory personnel.

Each volunteer will be required to sign a nondisclosure agreement before being given an assignment with the Department. Subsequent unauthorized disclosure of any confidential information, verbally, in writing or by any other means, by the volunteer is grounds for immediate dismissal and possible criminal prosecution.

Volunteers shall not address public gatherings, appear on radio or television, prepare any article for publication, act as correspondents to a newspaper or other periodical, release or divulge any information concerning the activities of the Department, or maintain that they represent the Department in such matters without permission from the proper department personnel.

### **341.5 PROPERTY AND EQUIPMENT**

Volunteers will be issued an identification card that must be worn at all times while on-duty. Any fixed and portable equipment issued by the Department shall be for official and authorized use only. Any property or equipment issued to a volunteer shall remain the property of the Department and shall be returned at the termination of service. Loss of the identification card is to be reported to the on-duty shift supervisor or the Volunteer Coordinator immediately.

#### **341.5.1 VEHICLE USE**

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Volunteers assigned to duties such as vacation house checks or other assignments that require the use of a vehicle must first complete the following:

- (a) A driving safety briefing and department approved driver safety course.
- (b) Verification that the volunteer possesses a valid California Driver License.
- (c) Verification that the volunteer carries current vehicle insurance.

The Volunteer Coordinator should ensure that all volunteers receive safety briefing updates and license and insurance verification at least once a year.

When operating a Department vehicle, volunteers shall obey all rules of the road, including seat belt requirements. Smoking is prohibited in all Department vehicles.

Volunteers should not operate a marked patrol car (unless there is a prominently placed sign indicating that it is out of service) and are not authorized to operate a Department vehicle Code-3.

#### 341.5.2 RADIO AND MDT USAGE

Volunteers shall successfully complete CLETS and radio procedures training prior to using the police radio or MDT and comply with all related provisions. The Volunteer Coordinator should ensure that radio and CLETS training is provided for volunteers whenever necessary.

#### 341.6 DISCIPLINARY PROCEDURES/TERMINATION

A volunteer may be removed from the volunteer program at the discretion of the Chief of Police or the Volunteer Coordinator. Volunteers shall have no property interests in their continued appointment. However, if a volunteer is removed for alleged misconduct, the volunteer will be afforded an opportunity solely to clear his/her name through a liberty interest hearing which shall be limited to a single appearance before the Chief of Police or authorized designee.

Volunteers may resign from volunteer service with the Department at any time. It is requested that volunteers who intend to resign provide advance notice of their departure and a reason for their decision.

##### 341.6.1 EXIT INTERVIEWS

Exit interviews, where possible, should be conducted with volunteers who are leaving their positions. The interview should ascertain why the volunteer is leaving the position and solicit the volunteer's suggestions on improving the position. When appropriate, the interview should also include a discussion on the possibility of involvement in some other capacity with the Department.

#### 341.7 EVALUATION

An evaluation of the overall volunteer program will be conducted on an annual basis by the Volunteer Coordinator. Regular evaluations should be conducted with volunteers to ensure the best use of human resources available, to ensure personnel problems can be identified and dealt with promptly and fairly, and to ensure optimum satisfaction on the part of volunteers.



# BERKELEY POLICE DEPARTMENT

DATE ISSUED: December 15, 1999

GENERAL ORDER V-8

SUBJECT: VOLUNTEER PROGRAM

## PURPOSE

- 1 - The purpose of this General Order is to establish the guidelines and procedures for the Berkeley Police Department Volunteer Program.

## POLICY

- 2 - The Volunteer Program is designed to provide citizens with an opportunity to assist the Berkeley Police Department. All employees are expected to support this Program to the extent possible.

## BACKGROUND

- 3 - The Berkeley Police Department has utilized volunteers for many years in different assignments. The Program provides volunteers with an opportunity to participate and observe actual police activities. An ongoing training program provides volunteers with the necessary background to assist the Police Department.

## PROCEDURES

- 4 - The **Volunteer Coordinator\*** administers the Volunteer Program, **under the guidance of the Community Services Bureau Sergeant.\***
  - (a) The Chief of Police will be the final authority on all appointments to the Volunteer Program or severance from service.
- 5 - It shall be the responsibility of the **Volunteer Coordinator\*** to assist in the overall planning, administration, and supervision of the Volunteer Program.
- 6 - The **Volunteer Coordinator\*** will serve as the advisor. He/she shall coordinate all relations between volunteers and regular police Divisions/Bureaus.

## ELIGIBILITY FOR VOLUNTEER PROGRAM MEMBERSHIP

- 7 - Volunteer applicants must:
  - (a) Be at least eighteen (18) years of age.
  - (b) Have no serious criminal history.
  - (c) Possess a valid California Driver's License (only for certain assignments).
  - (d) Possess enthusiasm, drive and an interest in making a difference in the community.

\*Highlighted text is new.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: December 15, 1999

GENERAL ORDER V-8

### APPLICATION FOR VOLUNTEER PROGRAM

- 8 - All persons seeking to **become a member\*** of the Berkeley Police Volunteers Program shall be referred to the **Volunteer Coordinator**. **The applicant will complete the BPD Volunteer Application form (BPD81998) and the BPD Volunteer Agreement and Release from Liability form (BPD81998L).** After completion of an Oral Board for each candidate, a background investigation will be completed, including (at minimum) a records check, Department of Motor Vehicles check and a fingerprint check. Upon completion of the above, each candidate will attend the Volunteer Academy, which will run for one night a week for four consecutive weeks.\*

### UNIFORM AND EQUIPMENT

- 9 - Uniform and equipment for the Volunteer Program includes:
- (a) **Appropriate civilian attire to be able to meet the general public and ID Badge\***
  - (b) **"Polo type" shirt with "V.I.P.S." (Volunteer In Police Service) logo\***

### FUNCTIONS

- 10 - Some of the functions which volunteers may be assigned to might include, but are not limited to:
- (a) Assisting the **Volunteer Coordinator\*** or others on special projects and on-going programs.
  - (b) Providing assistance to other divisions as needed.
  - (c) Any other tasks that may be deemed appropriate by the Chief of Police.
- 11 - Volunteers **for the most part\*** will not perform duties, which are normally performed by sworn personnel **or other full time employees of the Berkeley Police Department.** **They are here to augment not supplant.\***

### DISCIPLINARY ACTION

- 12 - All members of the Volunteer Program shall be required to observe and obey the policies, rules, regulations, and procedures as set forth in the Berkeley Police Department General Orders and Regulations binder, as well as directives issued by the Chief of Police, or his/her duly designated representatives. A copy of the Berkeley Police Department General Orders and Regulations binder is maintained in the **Volunteer\*** Office. Disciplinary action may include:

# BERKELEY POLICE DEPARTMENT

DATE ISSUED: December 15, 1999

GENERAL ORDER V-8

- (a) Verbal reprimand.
- (b) Written reprimand.
- (c) Suspension.
- (d) Dismissal.

## SEPARATION FROM SERVICE

13 - All persons separated from the Volunteer Program will return all Departmental equipment immediately. Persons may be separated from the Volunteer Program in the following manner:

- (a) Resignation.
- (b) **Dismissal.\***

Reference: CALEA Standards





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## Service Animals

### 342.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to ensure the rights of individuals who use service animals to assist with disabilities are protected in accordance with Title II of the Americans with Disabilities Act of 1990 (ADA).

#### 342.1.1 DEFINITIONS

Definitions related to this policy include:

**Service animal** - A dog that is trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. The work or tasks performed by a service animal must be directly related to the individual's disability (28 CFR 35.104; Health and Safety Code § 113903).

**As** Service animal also includes a miniature horse if the horse is trained to do work or perform tasks for people with disabilities, provided the horse is housebroken, is under the handler's control, the facility can accommodate the horse's type, size and weight, and the horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility (28 CFR 35.136(i)).

**Service Dog in Training:** A service dog in training is any dog that is being trained to assist a person with a disability. Other than guide dogs for the blind, there are no state-wide certifications, standards or qualifications for service dogs in training or their trainers. Thus, a service dog trainer may be the disabled owner of the dog or a licensed dog trainer.

### 342.2 POLICY

It is the policy of the Berkeley Police Department to provide services and access to persons with service animals in the same manner as those without service animals. Department members shall protect the rights of persons assisted by service animals in accordance with state and federal law.

### 342.3 IDENTIFICATION AND USE OF SERVICE ANIMALS

Some service animals may be readily identifiable. However, many do not have a distinctive symbol, harness or collar.

Service animals may be used in a number of ways to provide assistance, including:

- Guiding people who are blind or have low vision.
- Alerting people who are deaf or hard of hearing.
- Retrieving or picking up items, opening doors or flipping switches for people who have limited use of their hands, arms or legs.
- Pulling wheelchairs.

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- Providing physical support and assisting with stability and balance.
  - Doing work or performing tasks for persons with traumatic brain injury, intellectual disabilities or psychiatric disabilities, such as reminding a person with depression to take medication.
  - Alerting a person with anxiety to the onset of panic attacks, providing tactile stimulation to calm a person with post-traumatic stress disorder, assisting people with schizophrenia to distinguish between hallucinations and reality, and helping people with traumatic brain injury to locate misplaced items or follow daily routines.

#### **342.4 MEMBER RESPONSIBILITIES**

Service animals that are assisting individuals with disabilities are generally permitted in all public facilities and areas where the general public is allowed. Department members are expected to treat individuals with service animals with the same courtesy and respect that the Berkeley Police Department affords to all members of the public (28 CFR 35.136).

##### **342.4.1 INQUIRY**

If it is apparent or if a member is aware that an animal is a service animal, the individual generally should not be asked any questions as to the status of the animal. If it is unclear whether an animal meets the definition of a service animal, the member should ask the individual only the following questions (28 CFR 35.136(f)):

- Is the animal required because of a disability?
- What task or service has the service animal been trained to perform?

If the individual explains that the animal is required because of a disability and has been trained to work or perform at least one task, the animal meets the definition of a service animal and no further questions as to the animal's status should be asked. The individual should not be questioned about his/her disability nor should the person be asked to provide any license, certification or identification card for the service animal.

##### **342.4.2 ANIMALS IN TRAINING**

A service animal in training, that is not a dog, may be denied entry into public establishments. A service dog in training may be allowed entry into public establishments under either of the following conditions:

- The individual with the disability advises they are in the process of training the dog to become a service animal, OR
- The individual advises they are not disabled but are in the process of training the dog to become a service animal and the person has some documentation to identify him or her as a dog trainer.

##### **342.4.2342.4.3 CONTACT**

Service animals are not pets. Department members should not interfere with the important work performed by a service animal by talking to, petting or otherwise initiating contact with a service animal.

##### **342.4.4 REMOVAL**

If a service animal is not housebroken or exhibits vicious behavior, poses a direct threat to the health of others, or unreasonably disrupts or interferes with normal business operations, an officer may direct the handler to remove the animal from the premises. Barking alone is not a threat nor

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does a direct threat exist if the person takes prompt, effective action to control the service animal (28 CFR 35.136(b)).

Each incident must be considered individually and past incidents alone are not cause for excluding a service animal. Removal of a service animal may not be used as a reason to refuse service to an individual with disabilities. Members of this department are expected to provide all services as are reasonably available to an individual with a disability, with or without a service animal.

#### 342.4.5 COMPLAINTS

When handling calls of a complaint regarding a service animal, members of this department should remain neutral and should be prepared to explain the legal-ADA requirements concerning service animals to the concerned parties. Businesses are required to allow service animals to accompany their handlers into the same areas that other customers or members of the public are allowed (28 CFR 36.302).

Absent a violation of law independent of ~~the disability laws~~ADA, officers should take no enforcement action beyond keeping the peace. Individuals who believe they have been discriminated against as a result of a disability should be referred to the Civil Rights Division of the U.S. Department of Justice (DOJ).



# Gun Violence Restraining Orders

## 343.1 PURPOSE AND SCOPE

**Best Practice**

The purpose of this policy is to provide guidelines for petitioning and serving gun violence restraining orders and accounting for the firearms obtained pursuant to those orders.

### 343.1.1 DEFINITIONS

**State**

Definitions related to this policy include:

**Gun violence restraining order** - Civil restraining order prohibiting a named person from controlling, owning, purchasing, possessing, receiving or otherwise having custody of any firearms or ammunition, including an ammunition magazine (Penal Code § 18100).

## 343.2 POLICY

**Best Practice**

It is the policy of the Berkeley Police Department to petition and serve gun violence restraining orders in compliance with state law and to properly account for firearms and ammunition obtained by the Department pursuant to such orders.

## 343.3 GUN VIOLENCE RESTRAINING ORDERS

**State**

An officer who reasonably believes a person is a present danger to him/herself or another person by controlling, owning, purchasing, possessing, receiving or otherwise having custody of a firearm may request permission from his/her supervisor to petition the court for a gun violence restraining order.

Officers petitioning the court should use the forms established by the Judicial Council (Penal Code § 18105). The petition should describe the number, types and locations of any firearms and ammunition that the officer believes to be possessed or controlled by the person (Penal Code § 18107). The petition should also describe why less-restrictive alternatives are ineffective or inadequate for the circumstances (Penal Code § 18125; Penal Code § 18150; Penal Code § 18175).

If it is not practical under the circumstances to submit a written petition, an officer may orally request an order using the procedures for obtaining an oral search warrant and preparing the order using the appropriate Judicial Council form and then prepare and sign a declaration under penalty of perjury that recites the oral statements provided to the judicial officer and memorialize the order of the court on the appropriate Judicial Council form (Penal Code § 18140; Penal Code § 18145).

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## 343.4 SERVICE OF GUN VIOLENCE RESTRAINING ORDERS

State

An officer serving any gun violence restraining order shall:

- (a) Verbally ask the subject of the order if he/she has any firearm, ammunition, or magazine in his/her possession or under his/her custody or control (Penal Code § 18160).
- (a)(b) Request that any firearms or ammunition be immediately surrendered and issue a receipt for the surrendered items (Penal Code § 18120).
- (b)(c) Take into temporary custody any firearm or other deadly weapon discovered in plain view or pursuant to consent or other lawful search (Penal Code § 18250) and issue the restrained person a Property Receipt.
- (e)(d) Inform the restrained person of any scheduled hearing regarding the order (Penal Code § 18160).
- (d)(e) Submit the Transmit the original proof of service form to Records Management so that it may be transmitted to the issuing court as soon as practicable but within one business day (Penal Code § 18115).
- (e)(f) As soon as practicable, but by the end of his/her shift, submit proof of service to Telecomthe Public Safety Business Manager for prompt entry into the California Restraining and Protective Order System (Penal Code § 18115).

The officer should also inform the restrained person that he/she is required, within 24 hours, to surrender to a law enforcement agency any other firearms and ammunition he/she owns or that are in his/her custody or control or sell them to a firearms dealer. This notification should be documented.

All firearms and ammunition collected shall be handled and booked in accordance with the Property and Evidence Policy.

### 343.4.1 SERVICE OF ORAL GUN VIOLENCE RESTRAINING ORDERS

State

If a gun violence restraining order is obtained orally, the officer shall (Penal Code § 18140):

- (a) Serve the order on the restrained person in the manner outlined above, if the restrained person can reasonably be located.
- (b) File a copy of the order with the court as soon as practicable after issuance.
- (c) Ensure the order is provided to the Records Management for entry into the computer database system for protective and restraining orders maintained by the Department of Justice.

## 343.5 SEARCH WARRANTS

State

If a person who has been served with a gun violence restraining order refuses to surrender any firearm or ammunition, the officer should consider whether to seek a search warrant. If a search warrant is to be obtained, the preparation and service of the search warrant shall be done in accordance with the Warrant Service Policy. Additionally, (Penal Code § 1542.5):

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- (a) The officer serving the warrant shall take custody of any firearm or ammunition that is controlled, possessed or owned by the person who is the subject of the gun violence restraining order, including any discovered pursuant to the warrant, a consensual search or other lawful search.
  - (b) If the location being searched is jointly occupied and the firearm or ammunition is owned by a person other than the restrained person, the firearm or ammunition should not be seized if the following conditions are met:
    - 1. The firearm or ammunition can be stored in a manner that does not allow the restrained person to have control or access.
    - 2. There is no evidence that the owner unlawfully possesses the firearm or ammunition.
  - (c) If a locked gun safe belonging to someone other than the subject of a gun violence restraining order is discovered, the officer shall not search the contents of the safe unless the owner consents or there is a valid search warrant for the safe. Any search of the safe must be done in the owner's presence.

**343.6 SUPPORT SERVICES BUREAU LIEUTENANT OR DESIGNEE~~PUBLIC SAFETY~~**

**State**

**BUSINESS MANAGER RESPONSIBILITIES**

The Support Services Bureau Lieutenant or designee~~Public Safety Business Manager~~ is responsible for ensuring:

- (a) Proof of service of any gun violence restraining order served by an officer or received from the clerk of the court is entered in the computer database system for protective and restraining orders maintained by the Department of Justice within one business day of service if served by an officer, or within one business day of receipt of proof of service if served by a person other than a law enforcement officer (Penal Code § 18115).
- (b) Oral orders are entered into the California Restraining and Protective Order System (Penal Code § 18140).
- (c) Copies of receipts of surrendered firearms or ammunition issued by other agencies for gun violence restraining orders issued by the Department are properly maintained (Penal Code § 18120).

**343.7 COURT-ORDERED FIREARMS AND AMMUNITION SURRENDERS**

**State**

Authorized members shall accept firearms and ammunition from any individual who is the subject of a gun violence restraining order. The member receiving any firearm or ammunition shall:

- (a) Record the individual's name, address and telephone number.
- (b) Record the serial number of the firearm.
- (c) Prepare an incident report and property report.
- (d) Provide a property receipt to the individual who surrendered the firearms and ammunition.
- (e) Package and submit the firearms and ammunition in accordance with the Property and Evidence Policy.

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### **343.8 RELEASE OF FIREARMS AND AMMUNITION**

**State**

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order and in accordance with Penal Code § 18120 and the Property and Evidence Policy.



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## Off-Duty Law Enforcement Actions

### 344.1 PURPOSE AND SCOPE

The decision to become involved in a law enforcement action when off-duty can place an officer as well as others at great risk and must be done with careful consideration. This policy is intended to provide guidelines for officers of the Berkeley Police Department with respect to taking law enforcement action while off-duty.

### 344.2 POLICY

Initiating law enforcement action while off-duty is generally discouraged. Officers should not attempt to initiate enforcement action when witnessing minor crimes, such as suspected intoxicated drivers, reckless driving or minor property crimes. Such incidents should be promptly reported to the appropriate law enforcement agency.

Officers are not expected to place themselves in unreasonable peril. However, any sworn member of this department who becomes aware of an incident or circumstance that he/she reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage may take reasonable action to minimize the threat.

When public safety or the prevention of major property damage requires immediate action, officers should first consider reporting and monitoring the activity and only take direct action as a last resort.

### 344.3 FIREARMS

Officers of this department may carry firearms while off-duty in accordance with federal regulations and department policy. All firearms and ammunition must meet guidelines as described in the department Firearms Policy. When carrying firearms while off-duty officers shall also carry their department-issued badge or authorized flat badge and identification.

Officers should refrain from carrying firearms when the consumption of alcohol is likely or when the need to carry a firearm is outweighed by safety considerations. Firearms shall not be carried by any officer who has consumed an amount of an alcoholic beverage or taken any drugs or medications or any combination thereof that would tend to adversely affect the officer's senses or judgment.

### 344.4 DECISION TO INTERVENE

There is no legal requirement for off-duty officers to take law enforcement action. However, should officers decide to intervene, they must evaluate whether the action is necessary or desirable, and should take into consideration the following:

- (a) The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.

- (b) The inability to communicate with responding units.
- (c) The lack of equipment, such as handcuffs, OC or baton.
- (d) The lack of cover.
- (e) The potential for increased risk to bystanders if the off-duty officer were to intervene.
- (f) Unfamiliarity with the surroundings.
- (g) The potential for the off-duty officer to be misidentified by other peace officers or members of the public.

Officers should consider waiting for on-duty uniformed officers to arrive, and gather as much accurate intelligence as possible instead of immediately intervening.

#### 344.4.1 INTERVENTION PROCEDURE

If involvement is reasonably necessary the officer should attempt to call or have someone else call 9-1-1 to request immediate assistance. The dispatcher should be informed that an off-duty officer is on-scene and should be provided a description of the officer if possible.

Whenever practicable, the officer should loudly and repeatedly identify him/herself as ~~an Berkeley Police Department~~ a police officer until acknowledged. Official identification should also be displayed.

#### 344.4.2 INCIDENTS OF PERSONAL INTEREST

Officers should refrain from handling incidents of personal interest, (e.g., family or neighbor disputes) and should remain neutral. In such circumstances officers should call the responsible agency to handle the matter.

#### 344.4.3 NON-SWORN RESPONSIBILITIES

Non-sworn personnel should not become involved in any law enforcement actions while off-duty except to notify the local law enforcement authority and remain at the scene, if safe and practicable.

#### 344.4.4 OTHER CONSIDERATIONS

When encountering a non-uniformed officer in public, uniformed officers should wait for acknowledgement by the non-uniformed officer in case he/she needs to maintain an undercover capability.

### 344.5 REPORTING

Any off-duty officer who engages in any law enforcement activity, regardless of jurisdiction, shall notify the Watch Commander as soon as practicable. The Watch Commander shall determine whether a report should be filed by the employee.

Officers should cooperate fully with the agency having jurisdiction in providing statements or reports as requested or as appropriate.